INTERNATIONAL SCIENTIFIC CONFERENCE “ARCHIBALD REISS DAYS”
THEMATIC CONFERENCE PROCEEDINGS OF INTERNATIONAL SIGNIFICANCE

INTERNATIONAL SCIENTIFIC CONFERENCE

"ARCHIBALD REISS DAYS"

Belgrade, 2-3 October 2018

THEMATIC CONFERENCE PROCEEDINGS OF INTERNATIONAL SIGNIFICANCE

VOLUME I

Academy of Criminalistic and Police Studies
Belgrade, 2018

Publisher
ACADEMY OF CRIMINALISTIC AND POLICE STUDIES
Belgrade, 196 Cara Dušana Street (Zemun)

Computer Design
JOVAN PAVLOVIĆ
DRAGOLJUB MILUTINOVIĆ

Impression
200 copies

Print
Službeni glasnik, Belgrade

THE CONFERENCE AND THE PUBLISHING OF PROCEEDINGS WERE SUPPORTED BY THE MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGICAL DEVELOPMENT OF THE REPUBLIC OF SERBIA

ISBN 978-86-7020-404-1
ISBN 978-86-7020-190-3

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SOCIAL, ECONOMIC AND POLITICAL FACTORS OF CRIME

HELP ME TELL YOU WHAT REALY HAPPENED: FORENSIC INTERVIEW WITH CHILDREN VICTIMS AND WITNESSES

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Abstract: A huge number of children around the globe are victims of crime, violence and abuse. As a number of reported cases increases each year we are becoming more aware that they present only the "tip of the iceberg" of all such cases. Most of those acts, usually happen behind closed doors, are done by an individual a child is close to, the child may be only witness and corroborate evidence may be lacking. Children are also traumatized, scared, ashamed and feel guilty themselves with strong tendency to protect the loved ones, which makes even more difficult for them to report the case. Even when child breaks silence, her/his testimonies may be accepted with suspicions, distorted or contaminated by inappropriate investigating strategies. All of that may lead to losing crucial evidence necessary for identifying and prosecuting suspect, protecting rights of the child, as well as the rights of unlawfully accused individuals.

The purpose of this paper is to review cutting edge literature looking for answer to simple question: what and how can be done to enhance willingness of children to report, provide full disclosure and reliable and valid testimony to satisfy strong legal standards. The paper therefore will: (a) define unique nature, purpose and development of child forensic interview; (b) discuss most recent concepts and research findings related to child development in context of their capacity and limitations to accurately convey their experiences; (c) introduce state of the art principles and the best practices (protocols); (d) briefly outline phases, strategies and techniques for interviewing children victims; (e) analyze empirical evidence of effectiveness of child forensic interview protocols and (f) provide some directions for further research and practices improvements. The paper will strongly argue the promotion of semi-structured, developmentally appropriate, multidisciplinary, and neutral investigative interview protocols for young victims and witnesses done by highly trained interviewers.

Keywords: *child forensic interview, child abuse, interviewing protocols for child victim and witnesses, capacity and limitations of children victims and witnesses.*

DEFINITION, PURPOSE AND IMPORTANCE OF FIC

A forensic interview of a child (FIC) is developmentally sensitive and legally sound method of gathering factual information regarding child abuse or exposure to violence allegations, conducted in a child friendly environment, using neutral, objective approach and evidence-based standardized semi structured protocols.

The main purpose of FIC is to gather valid, reliable and legally sound information from a child victim or witness to be used in legal setting and court proceedings.

The FIC is a crucial part of broader investigative procedure of alleged child abuse cases performed by well-trained coordinated multidisciplinary team of professionals, which usually includes: law enforcement and child protection investigators, prosecutors, child protection attorneys, victim advocates, and medical and mental health practitioners etc.The multidisciplinary approach presents standard of good practice of FIC, and may prevent the need for multiple, duplicative interviews that may compromise the quality of child's disclosure and increase possibility of secondary victimization.

FIC conducted with alleged victims of child abuse is often essential to the investigation because (a) the alleged victim and alleged perpetrator may be the only people who know what really happened (Mart, 2010), (b) in most cases alleged perpetrator is a person the child is in very close relationship with (parent, family member, school teacher…), (c) disclosure may be postponed for years which may lead to luck of corroborative evidence. Quality and quantity of information collected during FICis therefore critical for protecting the best interest and safety of the child, prosecuting the perpetrator as well as for protecting of the rights of the innocent alleged perpetrator.

HISTORY AND DEVELOPMENT

After several high-profile controversial child abuse cases in early 1980s in the U.S. public awareness on the incidence, long term consequences for child, and investigative procedures used, have increased (Faller, 2015). Those investigative procedures come under severe scrutiny with the aim to establish appropriate protocols to elicit accurate information from children regarding abuse (Saywitz, Lyon, and Goodman, 2011).

In very first FIC model - *"medical model,"* law enforcement investigators used mental health professionals due to their knowledge of mental health issues in childhood and adolescence and ability to establish rapport with children. Mental health practitioners often used therapeutic techniques that later were criticized and even marked as inappropriate for legal/court procedures and standards due to high level of suggestibility, and "make-believe," and "pretending" techniques used.

In the following two decades scholars and professionals have gained significant insight into how to maximize children's potential to accurately convey information about their past experiences. As a result, the focus has shifted from the mental health to a forensic conceptualization and two new models of FIC have been introduced: (1) *The Cognitive Interview* (Fisher and Geiselman, 1992) and (2) *Narrative Elaboration* (Saywitz, Geiselman, and Bornstein, 1992). Both of those models have applied neutral, developmental, memory-based techniques to assist children to provide detailed yet reliable information from witnesses and served as a blueprint for development of contemporary evidence-based forensic interviewing protocols and methodologies.

Contemporary state of the affairs in the field of FIC is characterized with vehement search for new FIC models as well as looking for similarities, standardization and evidence-based models of practice.

During last 30 years many different FIC models have been developed each of which claiming that their approach provides the best way to obtain reliable information from the child.

The existence of different protocols has created new challenges for mental health and law scholars and professionals: to define models, and to compare their approaches. In order to do so, in 2010, representatives of several major U.S. forensic interview training programs get together to discuss their programs' differences and similaritiesaiming to articulate common ground principles and core criteria for standardization of forensic child interviewing practices.

Besides the obvious differences, all models were designed to achieve the same goal: to obtain valid and reliable information from the child, in a way that is sensitive to the child's developmental needs, and capabilities, as well as to avoid any sort of reducing interviewer contamination of child's disclosure.

Key FIC issues include (a) conceptualization of the child's capacities and limitations as a witness, (b) role of the FIC in more comprehensive child abuse investigative process and (c) process and methodology of direct FIC.

THE CHILD

Involvement of the child as a victim or witness in court procedures request in-depth understanding of the child's developmental level, memory and suggestibility, trauma experiences, disabilities and disclosure patterns.

Developmental level and age. FIC is challenging for children, as it involves very different conversational patterns and an unfamiliar demand for detail about personally sensitive and traumatic experiences. FIC interviewers and investigators must consider the influence of all relevant factors on perception of experiences, memory formation, language, linguistic style, comfort with talking to strangers in a formal setting, and values about family loyalty and privacy when questioning children and evaluating their statements. Some jurisdictions have policies about the minimum age a child must be (often 3 years of age) to participate in a forensic interview, while all others request that forensic interviewer carefully assess the developmental level of the child and to adopt their strategies, way of questioning and other strategies with the individual capacities and limitations of the child.

Memory and suggestibility. Children in various stages of development perceive, remember, and report events in different ways. The interviewer's fundamental task is to cue the child's memory to an event that occurred in the past without tainting the memory or adversely affecting the way it is reported.

"Memory" refers to the child's capability or capacity to bring elements of an experience from one moment in time to another by creating an internal representation of the external world. *"Suggestibility"* refers to the degree to which an individual's memory or recounting of events is susceptible to suggestive, leading, or misleading information.

A child's suggestibility is influenced by the strength of memory, source monitoring, and the social context of the interview. All children are suggestible with some categories of children being more suggestible than others. Depending on a range of factors, such as cognitive ability, mental state, motivation, family and, social status, culture, some children may be susceptible to having their memories altered based on how the interviewer phrases questions or otherwise presents information (Hritz at al., 2015). Suggestibility is less likely to be a risk

when the memory includes strong, salient details that are personal, meaningful, and have a direct impact on the child. Recollection of peripheral or mundane details is more susceptible to suggestion. Suggestibility increases with long periods of time between experiencing the event and recalling it. Memory recall accuracy may decline with repeated, suggestive retrieval attempts; however, details and accuracy may improve when an open-ended, non-leading approach is used.

When interviewers (a) adequately prepare ad empower children for their role, (b) avoid asking children to pretend or imagine, (c) avoid being coercive, (d) avoid repeating questions or asking misleading questions within the interview, and (e) keep children focused on central details of personally experienced events, children are able to resist misleading questions and provide meaningful and accurate accounts of their experiences (Pipe et all., 2007)

Trauma. Children who have been victims of sexual abuse may experience impairment of their memory, by shaping how children store, maintain, recall and communicate their memories of the event. Although some children may remember the traumatic event with the same clarity as a nontraumatic event, others may not be able to provide the same level of detail or coherence (Fanetti, et al., 2015). FIC interviewers must be cognizant of factors that mitigate or enhance the impact, as trauma symptoms may interfere with a child's ability or willingness to report information about violent incidents. Children who are severely traumatized may benefit from additional support and multiple, non-duplicative interview sessions (Faller, 2015), in particular to avoid that FIC becomes a secondary traumatic experience for child.

Disabilities. Children with disabilities are potentially at greater risk for abuse and neglect than children without disabilities (Kendall-Tackett et al., 2005). Disabilities affecting children can be numerous and complex condition(medical, educational, or psychological) that interferes with their ability to: speak, understand, and use language (Communication Disabilities); think and reason (Intellectual Disabilities); behave appropriately, socially and emotionally, in most settings (Social/Emotional Disabilities); see, hear, move, and be healthy (Physical Disabilities).

Interviewers should (a) educate themselves about various disabilities, (b) put aside any potential biases, fears, and assumptions about children with disabilities, (c) use local resources—including disability specialists or other professionals who work with children —to gain insight into the functioning of specific children and any needs they may have for special accommodations.The interviewer may have to adapt each stage of the interview and consider whether more than one interview session may be necessary to gain the child's trust, adapt to the child's communication style and limitations, and allow adequate time to gather information.

The most important thing to remember when interviewing a child with disabilities is that the child is first and foremost a child - the disability should not define the child.

Disclosure. Research on children's disclosure of sexual abuse indicates that no single pattern of disclosure is predominant. Disclosure happens along a continuum ranging from denial to non-disclosure, and from incomplete disclosure to a full accounting of an abusive incident. Some children also disclose less directly, over a period of time, through a variety of behaviors and actions, and when disclosure does occur, significant delays are common. Alaggia (2010) found that as many as 60 to 80 percent of children and adolescents do not disclose until adulthood. The interaction of individual characteristics, interviewer behavior, family relationships, community influences, and cultural and societal attitudes determines whether, when, and how children disclose abuse. Child abuse professionals should understand the many complex dynamics that help a child disclose maltreatment and should be open to the possibility that disclosure is not an all-or-nothing event.

THE FORENSIC INTERVIEW WITH CHILD

The forensic interview is a specific sort of interview with distinctive goals, objectives, and methodologies. FIC presents integral part of more comprehensive investigative process that includes three sequences: pre-interview, direct forensic interview with the child, and post-interview.

The pre-interview.The purpose of pre-interview phase is to inform decision making regarding necessity of in dept, direct FIC and if needed to help with appropriate planning of FIC process and methodology. Individualized interviewing plan include the following: (a) structure and techniques of FIC; (b) recording methods and equipment; (c) location and setting; (d)people to be present and (e) timing, duration, and number of sessions needed.The interview plan should be reviewed and revised as necessary following the interview preparation. Initial responders also should make every effort to limit the number of times a child is talked with about the allegations.

The direct FIC. This essential part is of FIC consisting of three phases (1) rapportguiding, (2) substantial and (3) closing phase will be explored here in details.

The post-interview. Purpose of this phase is to conclude, evaluate and document information collected through direct FIC. It is opportunity for FIC multidisciplinary team to return forensic interview to its wider context – investigative procedures and make any effort to make information as useful as possible for court proceedings to follow.

THE DIRECT FIC – GENERAL CONSIDERATIONS

Timing.The FIC should be conducted right after the initial disclosure of abuse, or after witnessing violence, as the child's mental status will permit and as soon as a multidisciplinary team response can be coordinated. As time passes, the opportunity to collect potential corroborative evidence may diminish, children's fortitude to disclose may wane, and opportunities for contamination, whether intentional or accidental, increase.

Child friendly – neutral and objective setting. It is important to provide child friendly settings that are comfortable, private, and both physically and psychologically safe for diverse populations of children and their non-offending family members. Interview rooms are to be minimal distractive thus are often painted in warm colors, may incorporate child-sized furniture, and should only use discrete artwork of a non-fantasy nature.

Documentation.Recordings make the interview process transparent, documenting that the interviewer and the multidisciplinary team avoided inappropriate interactions with the child.Electronic, video recordings are the most complete and accurate way to document forensic interviews, capturing the exchange between the child and the interviewer and the exact wording of questions (Faller, 2007).Recorded forensic interviews also allow interviewers to review their work and facilitate skill development and integrity of practice.

Role of the interviewer.Forensic interviewers should facilitate the most accurate, complete, and candid information from a child and, thus the child should be the most communicative during the forensic interview (Teoh and Lamb, 2013). Interviewers must balance forensic concerns with decisions about how much information to introduce and avoid any sort of suggestive, leading questioning. The interviewers are also encouraged to tell to the child that they do not know what happened because they were not there, therefore the child, not the interviewer, is an expert and should be listened to.

Role of supportive caregivers.The presence of parents, school personnel, private therapists of other people in interview room is strongly discouragedbecause they can intentionally or

unintentionally contaminate the interviewing process and diminish authenticity of the child's free recall statements. There may however be some exceptions including highly traumatized children, children with disabilities, very young children etc.

Role of observes. All professionals with investigative responsibilities (law enforcement officers, social workers, prosecutors etc.) who observe the interview should do that from outside of the interviewing room through one-way mirror or TV screen. The interviewer should inform the child and parents and offer appropriate explanation why it is necessary. During the interview and the break at the end of it the interviewer may receive some inputs form observers regarding necessity to clarify some crucial aspects of the child testimony.

The interviewer's bias. Interviewers should be aware that they view allegations through the lens of their professional and personal experiences as well as their value system, and that this could affect the child and the investigation. Interviewers who believe they already know what happened to the children or that no maltreatment occurred may try to elicit that information to confirm the bias or ignore information that does not conform to their preconceived narratives (McCoy & Keen, 2014). Testing an alternative hypothesis and working closely with a multidisciplinary team member could help mitigate the effects of any biases.

Type of questions. The task of a forensic interviewer is to help the child provide a complete and reliable account of the events of their abusive/traumatic experiences. Forensic interviewers use open-ended, closed, and cued questions skillfully and appropriately to support children's ability and willingness to describe remembered experiences in their own words (Saywitz, Lyon, and Goodman, 2011).

Asking open ended question first and more focused questions later in the interview is generally accepted as the best strategy since it reduces the risk of the interviewer contaminating the child's account. There are two memory prompts used in FIC: recall and recognition memories, based on the type of memory accessed.

Recall prompts are *open-ended questions*, inviting the child to tell everything he or she remembers in his or her own words. Such prompts have been shown to increase both accuracy and amount of information provided.Recall prompts may include directives or questions, such as *"Tell me everything that happened,"* "*And then what happened?"* and *"Tell me more about ..."* Although the accounts retrieved through the use of recall prompts can be quite detailed and accurate, they may not be complete. Interviewers than may ask specific, focused, or *closed questions* to obtain additional details about topics the child has already mentioned, using a *"who, what, where, when, and how"* format. These detailed questions focus the child on certain aspects of his or her report that are missing, but they do not introduce any new information (Herschkowitz et al., 2012). (*"You said you were in the house. What room were you in?"* followed by *"Tell me about that").*

Recognition prompts provide the child with context or offer interviewer-created options. Recognition prompts may elicit greater detail once the child has exhausted his or her capability for free narrative. Recognition prompts is that they may elicit responses that are less accurate or potentially erroneous if the child feels compelled to reach beyond his or her stored memory. It is essential to use these questions judiciously, as overuse can significantly affect the integrity and fact-finding function of the interview (Faller, 2007).

Suggestive, or leading questions are those that suggest that the interviewer is looking for a particular answer" therefore should be avoided. *Repeated questions,* also should be avoided since they put pressure on the child to change previous answer and comply with interviewer's intention -bias.

"Nonverbal language." Nonverbal communication plays an important role in a forensic interview. It may involve emotional expressions, actions, body language, such as gestures, facial

expressions, spatial distance, voice tones and even silence. The interviewer should be aware of the impact that his/her nonverbal communication may have on the child. Conversely, the interviewer should pay attention and note nonverbal communication from the child.

Interview Aids/Media. The goal of a forensic interview is to have the child verbally describe his or her experience. Limiting children to verbal responses may not allow all children to fully recount their experiences, so some media (e.g., paper, markers, anatomically detailed drawings or dolls) may be used during the interview to aid in descriptions (Katz and Hamama, 2013). Using tools however can dramatically increase risk of wrongful answers and conclusions. Tools are most often used with younger children, who often need external cues to facilitate memory retrieval and communication. Before introducing these tools in an interview, the interviewer should be appropriately trained in their application, benefits, and limitations.

Multiple interviews. One comprehensive forensic interview is sufficient for many children, particularly if the child made a previous disclosure, has adequate language skills, and has the support of a family member or other close adult. The literature clearly demonstrates the dangers of multiple interviewers repeatedly questioning a child or conducting duplicative interviews. However, some children may require more time and familiarity to become comfortable and to develop trust in both the process and the interviewer. Multiple interview sessions may allow reluctant, young, or traumatized children the opportunity to more clearly and completely share information (Leander, 2010).

Recantation.It is not uncommon for children who have experienced abuse or trauma to delay or withhold disclosures or deny abuse altogether. Recantation of prior statements is also a common phenomenon. Recantation occurs when a victim later states that their original report of abuse was untrue or minimizes the extent of the abuse. In order to facilitate and maximize the opportunity for children to disclose, it is important to understand the reasons for delayed disclosure or recantation may occur and identify effective ways to reduce denials and minimizations.

DIRECT FIC – THREE PHASES OF INTERVIEWING PROCESS

Forensic interview model's protocols guide the interviewer through the various stages of a legally sound interview. All models include the following three phases:

- *The initial rapport-building phase* comprises of establishing trustful working relationship with the child; introductions with an explanation of the purpose of the interview, describing the interviewing process, documentation methods, a review of interview instructions, a discussion of the importance of telling the truth, and practice providing narratives and episodic memory training.
- *The substantive phase* includes eliciting a narrative description of events, detail-seeking strategies, clarification, and testing of alternative hypotheses, when appropriate.
- *The closure phase* gives more attention to the socio-emotional needs of a child, transitioning to non-substantive topics, allowing for questions, and discussing safety or educational messages.

Rapport building phase. Rapport development is associated with greater willingness and accuracy in event reports.There are basically four goals to be achieved in this phase: (1) to establish trustful working relationship with the child; (2) to orient the child by providing crucial information about the interview; (3) to prepare the child by instructing him/her about the communication patterns and ground rules and (4) to practice implementation of ground rules to avoid any misunderstanding and make the questioning process that will follow up easier.

Trustful working relationship. During rapport building phase, the child begins to trust the interviewer and becomes oriented to the interview process. The interviewer begins to understand the child's linguistic patterns, gauge the child's willingness to participate, and start to respond appropriately to the child's developmental, emotional, and cultural needs.

Instruction and orientation. The exact instructions, or ground rules, presented to the child include requesting that the child only provide information about things that actually happened, giving the child permission to say *"I don't know,"* advising the child to ask the interviewer to clarify a question if the child does not understand, and informing the child to alert the interviewer if the interviewer provides incorrect information.

*Practice.*The interviewer also provides the child with opportunities to practice following the instructions in order to check out how well the child understood instruction and more importantly to try following and using information and guidelines provided. The practice exercise usually consists of (a) practicing basic ground rules, (b) truth and lies discussion and (c) general narrative practice.

- *Ground rules*. The interviewer should create age appropriate scenarios for each ground rule introduced so that the child can exercise. The interviewer could for example ask the child a question to which he or she would not know the answer in order to see if he or she will respond with *"I don't know."*
- *Truthfulness discussion.* Most models request that the interviewer ask the child to promise to tell the truth and/or for the interviewer to address the difference between telling the truth and a lie. Recent research indicates that children may be less likely to make false statements if they have promised to tell the truth before the substantive phase of the interview (Lyon and Evans, 2014).
- *Narrative practice – episodic memory training.* A substantial body of research indicates that encouraging children to give detailed responses early in the interview enhances their informative responses to open-ended prompts in the substantive portion of the interview. When interviewers encourage these narrative descriptions early on, children typically will begin to provide more details without interviewers having to resort to more direct or leading prompts (Brubacher, and La Rooy, 2014). To help a child practice providing narratives, the interviewer uses open-ended question, prompts, asks the child to tell about a salient event, such as a recent birthday, to elicit practice narrative, encouraging them to tell all about the event, from the beginning to the end (*"Tell me about your last birthday/recent holiday." "Tell me everything that happened." "Tell me what happened from the beginning to the end.").* The interviewer should continue to use cued, open-ended questions that incorporate the child's own words or phrases to prompt the child to greater elaboration. The interviewer may cue the child to tell more about an object, person, location, details of the activity, or a particular segment of time. A child's ability to comprehend time is dependent on their age and developmental capacities. Asking a child for details regarding specific events, rather than the number of times an event occurred, will help them recount reliable information.This allows the child to provide a forensically detailed description of a non-abuse event and enables the interviewer to begin to understand the child's linguistic ability and style (Walker, 2013).

Narrative practice increases the child's comfort level and facilitates rapport building. It allows the interviewer to assess the child's developmental level, cognitive functioning, and language abilities. It also establishes the precedent that the child provides narrative responses to the interviewer's questions. Conducting a practice narrative using open-ended questions increases the amount of reliable information the child provides later in the interview.

Substantive phase. Once the child is informed, instructed, feels comfortable and safe and has established trustful relationship with the interviewer the interviewer can launch transition to substantive phase of the interview.

The transition. The transition to the "allegation-focused portion" should be done in the most open-ended, non-suggestive way possible. This can be achieved in many ways: (a) spontaneous disclosure may occur during the early stages of the interview, allowing a natural transition to the topic of concern; (b) in the absence of a spontaneous disclosure, it is the best practice to continue with using a prompt such as *"What are you here to talk to me about today?"* If the child acknowledges the target topic, the interviewer follows up with another open invitation, such as *"Tell me everything and don't leave anything out"* and proceed to the narrative and detail-gathering phase of the interview. However, if a child is anxious or embarrassed, has been threatened or cautioned not to talk, or has not made a prior outcry of abuse, the interviewer may need a more focused approach. Interviewers use more focused or direct prompts only if good reason exists to believe the child has been abused and the risk of continued abuse is greater than the risk of proceeding with an interview if no abuse has occurred (Orbach and Pipe, 2011).

Free narrative and detail gathering. The interviewer asks the child to provide a *free narrative account* of his or her experience to gain a clear and accurate description of alleged events in the child's own words. The interviewers do not interrupt the child's narrative, as it is the primary purpose of the forensic interview. Three general rules for free recall include: (1) open-ended invitations *("Tell me more" or "What happened next?")* and cued narrative requests *("Tell me more about [fill in with child's word]")*would elicit longer, more detailed, and less self-contradictory information from children and adolescents (Orbach and Pipe, 2011; (2) cued and open-ended prompts, attentive listening, silence, and facilitators, such as reflection and paraphrasing, help child to continue and provide details and (3) interviewers should delay the use of *recognition prompts* and *questions that pose options* for as long as possible (Saywitz, Lyon, and Goodman, 2011).Once the child's narrative account of an alleged incident(s) has been fully explored, the interviewer can follow with focused questions, asking for clarification, and other missing elements. Forensic interviewers should proceed with caution when encouraging children through the use of recognition prompts to provide such information. *Introducing externally derived information* may be appropriate in some interviews, but interviewers should use such information with caution and only after attempting other questioning methods.Before or during the interview, *multidisciplinary teams* should discuss how, if, and when to introduce externally derived information or evidence. The manner and extent to which this information is presented varies across jurisdictions and models.

Alternative hypothesis testing. Questions that explore other viable hypotheses for a child's behaviors or statements are essential to the overall integrity of the interview. The interviewer should allow the child to explain apparently contradictory information, particularly as it concerns forensically relevant details (e.g., the suspect's identity or specific acts committed). Alternative hypotheses exploration forensic interviews test confirm hypotheses.

Exploring Risk Factors. Additional risk factors, other than the abuse allegation(s), may/should be explored with the child during the interview. The interviewer may discuss topics such as exposure to violence, drug and alcohol abuse, animal abuse, exposure to pornography, weapons, and family dynamics, including divorce or separation. The FIC protocols may determine whether or when to ask additional risk factor questions.

Closure phase. A child forensic interview can be concluded once the interviewer has obtained sufficient information and/or the child is unwilling or unable to further participate in the interview. The closure phase helps provide a respectful end to a conversation that may have been emotionally challenging for the child.

Prior to ending the interview, the interviewer should attempt to consult with multidisciplinary team, specifically law enforcement and child protection professionals, to ensure that sufficient information has been obtained and crucial elements of the interview have not been overlooked. Forensic interviews are best conducted within a multidisciplinary team context, as coordinating an investigation has been shown to increase the efficiency of the investigation while minimizing system-induced trauma in the child.

Key components of closure phase include: (a) ask the child if there is something else the interviewer needs to know; (b) ask the child questions such as: *"are there any questions that I forgot to ask you today?"* or *"is there anything else you remember that you think is important for me to know?"* allow the child to discuss topic or issue they feel are important, including topics not previously addressed; (c) acknowledge the child's feeling, *("I see that you have tears in your eyes, tell me about that")* and assist the child to understand and neutralize those feelings before they leave the office; (d) transit to neutral topics, try to involve the child in discussion any neutral perhaps pleasant topic (pets, school, friends, favorite activities …) to help child exit form challenging and stressful interview conversation and (e) thank the child for their participation in the interview and letting them know that their statements are important.

TRAINING, SUPERVISION AND PEER REVIEW

FIC interviewers must have appropriate training, supervised experience, ongoing continuum education and peer review support in order to achieve and maintain their professional competence.

Training. Case workers, law enforcement officers, or other professionals require training in order to conduct effective forensic interviews. Basic training generally ranges from 4 days to 1 week. Advanced training is also available on a variety of topics, such as interviewing young children, interviewing across cultures, interviewing developmentally challenged children, managing bias, delivering court testimony, and secondary trauma. Many forensic interviewers are trained in the use of more than one model.

Supervision. Although agreement exists that knowledge of forensic interviewing significantly increases through training, this newly acquired knowledge does not always translate into significant changes in interviewer practices (Price and Roberts, 2011). Supervision involves the interviewer meeting individually with a more experienced interviewer, who can review interview transcripts or video and provide feedback. This may assist in ensuring the newer interviewer is adhering to the model being implemented as well as general best practices. Supervision facilitates one-on-one interaction between a more experienced forensic interviewer and a professional new to the job and may or may not include assessment of the interviewer's performance.

Peer review allows interviewers to discuss cases and current research and provide feedback and support to each other in a group setting. Peer review is a facilitated discussion with other interviewers or team members and is intended to both maintain and increase desirable practices in forensic interviewing (Stewart, Katz, and La Rooy, 2011).

CONCLUSION

There is consensus among juvenile justice and developmental scientist and professionals that children, even at a very young age, can store, remember, recall and communicate their experiences related to their abuse experiences, thus children can and should be considered as a reliable source of crucial court evidence in such cases.

Children do have both capacities and limitations to provide legally sound testimony about their life experiences. The way they are accepted, motivated, supported and questioned by court professionals may dramatically increase or compromise quality and reliability of their testimonies.

During the last 30 years, thorough synergy of research and knowledge from law and developmental sciences, forensic child interview has been developed and introduced as a developmentally sensitive and legally sound tool aiming to assist to the child to provide detailed yet reliable testimony about their life experience.

There are well established FIC models with coherent conceptual and methodological framework, specific goals and objectives, interviewing strategies, structured protocols for implementation and programs for training and supervision of professionals.

There are, also many different FIC protocols offering solutions suitable to country and local communities needs and legal systems specifics. Scholars and professionals are currently working together to locate and discuss differences and establish FIC general principles, standards and methodologies to be in accordance with UN Convention of the Rights the Cild and sets of international standards for juvenile justice, local laws and regulations and cutting edge developmental sciences research finding.

There is a need for ongoing research, re-conceptualization, refinement of protocols and careful, empirical evaluation of practice for continued improvement of FIC to truly become a powerful tool for promotion of the best interest of the child as well as protecting rights of all participants in investigative process.

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MONEY LAUNDERING AND TERRORIST FINANCING ON INTERNATIONAL AND NATIONAL LEGAL LEVEL

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Abstract: This study highlights some of the phenomena of money laundering and terrorist financing at the national and international legal level. It elaborates the meaning of these two phenomena and interprets legal standards in international and internal practice. Special emphasis is put on analysis of our new *Law on Prevention of Money Laundering and Terrorist Financing* adopted on 14 December 2017. The Law was passed after Serbia entered in the procedure of enhanced supervision by The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) of the Council of Europe. This body is in charge of evaluating actions and measures taken by individual states to combat money laundering and terrorist financing. The evaluation focuses on reviewing technical compliance with international standards (International Standards against Money Laundering and Financing of Terrorism and the Proliferation of Weapons of Mass Destruction – the FATF Recommendations of February 2012). Given that Serbia is leading negotiations on accession to the EU, it must harmonize fully its legislation with European standards in this field especially with the 4th Anti-Money Laundering Directive (Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing). Consequently, Serbia will have to take concrete measures from the action plan in order to avoid the appropriate risks that it could bring in the long term to the so-called a black list of countries that do not respect international standards in this area. Any failure in this plan could lead to the suspension in the accession of Serbia to the EU, and to a lengthy slowdown in the process of European integration.

Keywords: *Money laundering, terrorist financing, legal instruments.*

INTRODUCTION

Money laundering is one of the most prevalent of criminal offences whose entire process is directed towards the conversion of illegally acquired money or other assets through various business activities in a legal profit and it's incorporating into legal financial and non-financial flows. Essentially, criminals by placing this capital and illegally acquired funds into legal ones flows conceal its real origin and sources. This in fact makes it difficult to prove the criminal activity from which the "dirty money" came from (Škulić, 2015: 339). This process of "legalization" of financial capital and assets is, as a rule, an accompanying process with globalization and internationalization of the national markets which led to the emergence of new forms of transnational organized crime. Dynamics, adaptability to economic and social changes and

the concealed nature of new forms of organized crime make these actions more difficult to detect, and then to punish. It does not therefore have to be surprised that money laundering, as an accompanying form of organized crime, is rapidly spreading beyond national borders and is a threat to international security (UNDOC, 2018).[1] Hence, it should not be surprising that money laundering as a special form of criminal acts goes hand in hand with the financing of terrorism. However, while money laundering as a criminal activity relates primarily to the use of funds derived from other criminal offences for legal business transactions, the financing of terrorism refers to the collection and distribution of financial funds (legal and illegal), with the purpose of using them for various terrorist acts which in themselves constitute the most serious international crimes that can be manifested in the most diverse aspects - from war and crimes against humanity, to a separate international crime against individuals, groups, states and international organizations. Therefore, it is necessary to pay special attention to the national and international level in order to prevent its negative consequences for state's security and its political and economic systems through various preventive measures and procedures for its detection, suppression and punishment (*US Department of the Treasury, 2017).*

INTERNATIONAL LEGAL INSTRUMENTS ON COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

United Nations (UN)

The international response to money laundering has taken a number of forms, including multilateral treaties, regional agreements and universal counter-laundering measures. In that sense, the UN played a very important role. This universal organisation adopted some international convention in the field of money laundering. Thus, the UN was the first to adopt the *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances* in 1988 (Vienna Convention, 1988: 95). Although this Convention does not use the term "money laundering", its Article 3(1) (b) stipulates that every state should adopt legislation sanctioning money laundering. In fact, the Convention requires the signatory jurisdictions to take specific actions, including steps to enact domestic laws criminalizing the laundering of money derived from drug trafficking and provide for the forfeiture of property derived from such offenses. The Convention also promotes international cooperation as a key to reducing the global threat of money laundering and requires states to provide assistance in obtaining relevant financial records when requested to do so without regard to domestic bank secrecy laws. This international legal act remains until today a benchmark in identifying counter-laundering measures on an international level.

The basic international legal act of the UN which determines the obligations of states parties in the fight against money laundering is the *Convention against Transnational organized crime* from 2000 (Palermo Convention, 2000: 209). In accordance with the Article 7, the parties to the Palermo Convention should "institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions". In addition, they should ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where ap-

1 The estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or $800 billion - $2 trillion in current US dollars.

propriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. Also, the state should consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, states are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. Also they should endeavour to develop and promote cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. This notion of money laundering has been maintained in the following *Convention against Corruption* adopted by the UN in 2003 (New York Convention, 2003: 41). This Convention has established a special duty of criminalizing money laundering from corruption offenses. Also it has provided for certain conditions regarding the seizure of money or assets acquired through the commission of criminal acts of corruption.

In the legal sphere, the UN also played a decisive role in the regulation of the prevention and suppression of international terrorism. Special conventions concluded under the umbrella of a UN in the form of multilateral agreements are the codification and progressive development in the matter of anti-terrorism. Given the limited space of the study, at this point author shall mention only the *International Convention for the Suppression of the Financing of Terrorism* adopted 1999 which has gone furthest in terms of a comprehensive definition of terrorism. Thus, Article 2(1) (b) of the Convention defines terrorism as: "Any other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or the context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act" (UN International Instruments, 2008: 91). From the definition it is clear that the financing of terrorism is just an additional offense connected with terrorist acts (Dimitrijević, 2016: 61-78). Although the definition adopted only for the purposes of this Convention, but not for the purpose to criminalize international terrorism in whole, this definition still has an essential importance because it regulates the issue of criminalization of terrorism in all its forms in which it is manifested and it was sanctioned in the convention previously adopted and listed in the Annex to the Convention.[2] In this respect, the Convention aims to more broadly establish mechanisms for combating the financing of terrorist acts by the prosecution and punishment of their perpetrators. States are obliged to cooperate in the prevention of the offenses set forth in the Convention and that, by preventing illegal activities of persons (physical and legal) who perform or encourages illegal acts of the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or through engaging in illicit activities such as drug trafficking or arms trade. This Convention, unlike other anti-terrorist conventions therefore provides the liability of legal persons, which is a complete novelty. Article 5 of the Convention applies

2 The said Annex with anti-terrorist conventions listed is not constant because the Convention provides that the states may be supplemented by other relevant treaties or even excluded some of them because the convention has not been ratified. But despite that, the Convention represents a milestone in the development of international law in area of terrorism, because it is the first treaty definition to refer to the purpose of terrorism as recognized by general international law.

only to legal entities located in the territory of a contracting parties or which are established by their laws. In that sense each states has the opportunity to determine their responsibility towards their own law (criminal, civil or administrative). In addition to these novelties in the regulation of terrorism, the Convention introduced the obligation for parties to take appropriate measures to check the suspicious financial transactions and to provide identification, freezing and seizure of funds allocated for terrorist activities. States are committed to cooperate through the exchange of accurate and verifiable information, and the conduct of investigations related criminal offenses. The Convention establishes the obligation for states to inform the Secretary-General of the UN about the final outcome in action against the perpetrators of criminal acts who forwards this notification to other member states of the Convention.

Council of Europe (CE)

At the regional level, the CE, as an organization in charge of strengthening democracy, human rights and the rule of law by harmonizing public policies and establishing legal standards, adopted in 1990 the *Convention on Laundering, Search, Seizure and Confiscation of Proceedings from Crime* (Strasbourg Convention, 1990). The Strasbourg Convention obliges states parties to adopt laws sanctioning money laundering. Basically, it sets a minimum standard for facilitating international cooperation in terms of investigative assistance, search, seizure and confiscation-measures, which were considered essential for the suppression of various forms of organized crime, including of course, and money laundering. In 2005, the CE adopted a new *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* which essentially replaced the previous Strasbourg Convention (Warsaw Convention, 2005).[3] Article 9 of the Convention defines the activities that can be used to launder money, such as: "the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system; the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds; participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article". For the purposes of implementing or applying this legal solutions, state parties may prescribed that it shall not matter whether the predicate offence was subject to its criminal jurisdiction or they may provide that the offences set forth in Convention do not apply to the persons who committed the predicate offence. They may also adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred before, in either or both of the following cases where the offender suspected that the property was proceeds and ought to have assumed that the property was proceeds. In accordance with paragraph 4 of Article 9 of the Convention, each state of the EC may, at the time of signature or when depositing its instrument of ratification, acceptance, approval

3 In addition to the Convention, the Council of Europe has also adopted a special Convention on the Prevention of Terrorism in 2005. It aims to strengthen the efforts of member states to prevent terrorism by establishing as criminal offenses certain acts that may lead to the commission of terrorist offenses (public provocation, recruitment and training) and by strengthening co-operation on prevention both internally (national prevention policies), and internationally (modification of existing extradition and mutual assistance arrangements and additional means). The Convention contains a provision on the protection and compensation of victims of terrorism.

or accession, by a declaration addressed to the Secretary General of the CE, declare that acts referred before (in paragraph 1) applies: "only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or only to a list of specified predicate offences; and/or to a category of serious offences in the national law of the party". Finally, the Convention provides that each party shall ensure that a prior or simultaneous conviction for the predicate offense is not a prerequisite for a conviction for money laundering. Also, that a money laundering judgment should in any case be based on factual evidence that proves that the property was created by some of the referenced offenses mentioned to in paragraph 1 of this article, but without the need to determine which form of criminal offense is concerned. The Warsaw Convention still prescribes the obligation for contracting parties to establish Financial Intelligence Units (FIU), as well as the adoption of the necessary legislative and other measures necessary for the proper implementation of anti-money laundering tasks.

European Union (EU)

The European Anti Money Laundering legal framework has been developed through the provisions of the four directives introduced by the competent authorities of the EU. The directives have been transposed to national legislation in the member states (Jakulin, 2015: 11-21).

The first significant act is the *Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering* (Official Journal, 1991). The First Directive introduced general standards for member states in terms of protecting the financial and non-financial sector from harmful effects of money laundering. The Directive did not limit the scope of its application to drug offences. It underlined that "preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the cooperation of credit and financial institutions and their supervisory authorities".

Ten years later were adopted *Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering* (Official Journal, 2001). The Second Directive obliged the member states to extend the list of predicate offenses with which money laundering was related. It underlined the "trend in recent years towards a much wider definition of money laundering based on a broader range of predicate or underlying offences", and recalled the necessity of ensuring a wider range of predicate offences in order to facilitate suspicious transactions reporting. The events of terrorist attacks in New York and Washington on 11 September 2012, in addition, had diverted the attention to the fight against terrorism and "from that date on the money laundering Directive was widely considered as part of the fight against terrorism In this regard, the states have also undertaken the obligation to report suspicious transactions to the competent authorities.

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the financial system for the purpose of money laundering and terrorist financing replaced the previous two directives (Official Journal, 2005). The Third Directive represents a significant progress in terms of the comprehensive fighting money laundering. On the one hand, while highlighting the negative effects of money laundering on the economic and financial systems of the state and the Single Market, on the other hand, this Directive establishes a certain balance between European and world standards because, it includes 40

Financial Action Task Force - FATF recommendations. (Mei&Gao, 2014: 111-120). In this respect, the Third Directive had better effects in the fight against money laundering.

Finally, with the adoption of *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing*, Third Directive 2005/60/EC of the European Parliament and the Council has also been replaced (Official Journal, 2015). The Fourth Directive builds upon the mechanics employed by the Third Directive and brings about new, innovative changes in combating Anti-Money Laundering (AML) /Counter Terrorism Financing (CTF) across the Union. The Fourth Directive is inspired by the FATF recommendations of 2012, on improving the EU's AML - CTF laws. The fourth Directive extends the effect of not a larger circle of credit and financial institutions and legal and natural persons performing professional activities - the so-called "Obliged Entities". The Directive has expanded the list of offenses related to gambling and direct and indirect taxes. Also, the Fourth Directive expands the list of so-called Politically-Exposed Persons (PEPs) on two categories: domestic and foreign which will now be subject to the same scrutiny (for example, on heads of state, members of parliament, members of supreme courts, ambassadors, members of the governing bodies of the political parties, senior staff in international organizations, etc.). The Fourth Directive requires member states to identify, understand and mitigate the risks on a national level. These national assessments are expected to assist "Obliged Entities" in conducting their own AML risk assessments, where factors such as customer, product and geography must be taken into consideration. These assessments should be recorded and verified, as well as refreshed and updated frequently. The Commission will conduct an assessment of the AML and Terrorist Financing risks to identify cross-border threats. The Fourth Directive imposes the requirement on each EU member states to establish a Financial Intelligence Unit (FIU) to "prevent, detect and effectively combat money laundering and terrorist financing" (Article 32). Such FIUs shall be independently set up as central national units responsible for the transmission and analysis of suspicious transaction reports. Furthermore, states should require "Obliged Entities" to immediately inform the FIU and refrain from carrying out transaction in case of reasonable grounds of funds being the proceeds of criminal activity or are related to terrorist financing and to provide the FIU with any necessary information it may request in accordance with the law. It is important to point out that such disclosure of information by an "Obliged Entity" shall not constitute a breach of any restriction on disclosure of information. The Fourth Directive is in line with the Third Directive and still requires the identification of the "beneficial owner". Beneficial owner is: "any natural person who ultimately owns or controls a corporate entity or other legal entity and as well the natural person on whose behalf a transaction or activity is being conducted."[4] In accordance with the Fourth Directive, member states will be required to hold satisfactory, accurate and current information on the beneficial owners of all corporate and other legal entities (including Anglo-American trust structures) incorporated within their territory in a National Central Register. "Obliged Entities" subject to the Fourth Directive, competent authorities and the FIU will be able to access these interconnected Registers as well as any person or organization demonstrating "a legitimate interest", a term which is not defined and most certainly will raise issues in the future. The Directive has amplified the importance of cooperation between EU and member state level and between FIUs and the Commission. The Directive provides for cross-border cooperation between FIUs of the different member states in order to ensure a fully-integrated system for

4 The essence of the beneficial ownership is precisely not ownership in the ordinary sense of the word, but rather control and exercise of dominant influence. In some instances control and legal title may not lie in the same hands.

combating AML/CFT. Member states of the EU are required to undertake legislative action to implement the Fourth Anti Money Laundering Directive by June 26, 2017.[5]

DOMESTIC LEGAL INSTRUMENTS ON COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

The Criminal Code of the Republic of Serbia

Since terrorism has become a threat to world peace and security, sanctioning its forms in national legal system therefore no longer are limited. This vividly shows the Criminal Code of the Republic of Serbia. According to Article 245 of the *Criminal Code of the Republic of Serbia*, money laundering is defined as a criminal offence committed by a person who conducts the conversion or transfer of property, knowing that the property originates from criminal activity, with the intention of concealing or falsely depicts the unlawful origin of the property, or conceals or falsely presents the facts of the property with the knowledge that such property originates from criminal activity, or acquires, holds or uses assets with knowledge, at the time of receipt, that that property originates from criminal activities. The law provides for imprisonment for the said offence from six months to five years as well as a fine. A qualified form of criminal offence is possible under the law if the amount of money or property is greater than 1.5 million dinars in which case the perpetrator will be punished by imprisonment of one to ten years. (Official Gazette, 2016).[6]

The Law on Prevention of Money Laundering and Terrorist Financing

In addition to the Criminal Code, Serbia has also adopted the new *Law on Prevention of Money Laundering and Financing of Terrorism* (hereinafter: the Law), on December 14, 2017, whose application was postponed until April 1, 2018 (Official Gazette, 2017). The subjects of the Law are actions and measures that are taken to prevent and detect money laundering and terrorist financing. Additionally, the Law regulates the competencies of the Administration for the Prevention of Money Laundering (within the ministry responsible for finance), and other bodies for the implementation of the provisions of this Law. According to Article 2 of the Law, money laundering is considered as: "1) the conversion or transfer of property acquired through the commission of a criminal offense; 2) concealment or misrepresentation of the true nature, origin, location of finding, movement, disposal, ownership or rights in

5 The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) launched a public consultation on two anti-money laundering and countering the financing of terrorism (AML/CFT) Guidelines. These Guidelines are meant to promote a common understanding of the risk-based approach to AML/CFT and set out how it should be applied by credit and financial institutions and competent authorities across the EU. The consultation closes in January 2016.

6 According to Article 393 of the *Criminal Code,* the perpetrator of the terrorist financing is the person who directly or indirectly gives or collects funds in order to use it (or knowing that it will be used), completely or in part, for the purpose of committing criminal offences (for example, for executions and killings, for kidnapping and hostage taking, for the use of conventional and non-conventional weapons, as well as for undertaking other criminal acts that could endanger the lives of people, etc.). Also, the preparatory of the terrorist financing is the person who is financing other person or an organized criminal group with the aim of carrying out such criminal offences. According to this provision, the preparatory shall be punished by imprisonment from one to ten years. As with the criminalization of money laundering, the subject of the commission of financing of terrorism under the Criminal Code is subject to confiscation

relation to property acquired through the commission of a criminal offense; 3) acquiring, holding or using property acquired through the commission of a criminal offense". The same article of the Law also defines terrorism financing as "the providing or collecting of property, or an attempt to do so, with the intention of using it, or in the knowledge that it may be used, in full or in part: 1) in order to carry out a terrorist act; 2) by terrorists; 3) by terrorist organizations. Terrorism financing means aiding and abetting in the provision or collection of property, regardless of whether a terrorist act was committed or whether property was used for the commission of the terrorist act". It is also important to note that the Law assumes the definition of a "terrorist act" in accordance with the definitions contained in international agreements whose list is attached to the International Convention for the Suppression of the Financing of Terrorism from 1999. The Law also establishes an alternative definition of this part by stating that the "terrorist act" are any other offense whose purpose is "to cause death or a serious bodily injury to a civilian or any other person not taking an active part in hostilities in a situation the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or international organization to do or abstain from doing any act". The Law determines the term "terrorists" as persons who, independently or with other persons, have the intent: "1) attempts to commit acts of terrorism in any way, directly or indirectly; 2) aids and abets in the commission of a terrorist act; 3) has knowledge of an intention of a group of terrorists to commit a terrorist act, contribute to the commission, or assist in the continuation of commission of a terrorist act to a group acting with common purposes".

The law refers to the so-called "obliged entities" (for example: banks; authorized bureaux de change, business entities performing money exchange operations based on a special law governing their business activity; investment fund management companies; voluntary pension fund management companies; financial leasing providers; insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, except for insurance agencies and insurance agents for whose work the insurance company is responsible according to law; broker-dealer companies; organizers of special games of chance in casinos and organizers of special games of chance through electronic means; auditing companies and independent auditors; e-money institutions; payment institutions; intermediaries in the real estate or lease; factoring companies; entrepreneurs and legal persons providing accounting services; tax advisors; public postal service operator established in the Republic of Serbia, established in accordance with the Law governing postal services; persons providing the services of purchasing, selling or transferring virtual currencies or exchanging such currencies for money or other property through an internet platform, devices in physical form or otherwise, or which intermediate in the provision of these services; lawyers and public notaries in accordance with the special provisions of this Law). The "obliged entities" are responsible for taking appropriate measures and actions for the prevention and detection of money laundering and terrorist financing (for example: knowing the customer and monitoring of their business transactions; sending information, data, and documentation to the Administration for the Prevention of Money Laundering; designating persons responsible to apply the obligations laid down in this Law: regular professional education, training and development of employees; providing for a regular internal control of the implementation of the obligations laid down in this Law, as well as internal audit if it is in accordance to the scope and nature of business operations of the obliged entity; developing the list of indicators for identifying persons and transactions with respect to which there are reasons for suspicion of money laundering or terrorism financing; record keeping, protection and storing of data from such records; implementing the measures laid down in this Law by obliged entity branches and majority-owned subsidiaries located in foreign countries and implementing other actions and measures). The "obliged entities" should develop and regularly update a money laundering and terrorism financing risk anal-

ysis according to the guidelines adopted by the authority in charge of the supervision of the implementation of this Law. They are also obliged to for a regular internal control of execution of tasks for the prevention and detection of money laundering and terrorism financing, within the scope of the activities undertaken for the purpose of efficient managing of money laundering and terrorism financing risk. The "obliged entity" shall carry out internal control in line with the established money laundering and terrorism financing risk. Likewise, these persons should organize an independent internal audit, whose remit includes a regular assessment of the adequacy, reliability and efficiency of the system for managing money laundering and terrorism financing risk, when a law regulating the operations of the "obliged entity" requires an independent internal audit, or when the obliged entity assesses that, given the size and nature of its business, there is a need for independent internal audit within the meaning of this Law. It is important to point out that according to the Law, the Government has an obligation to establish a coordinating body in order to ensure efficient cooperation and coordination of the tasks of the competent authorities, performed in order to prevent money laundering and financing of terrorism.

Supervision of the proper implementation of this Law should be exercised the Administration for the Prevention of Money Laundering, National Bank of Serbia, Securities Commission, State authority competent for inspectional supervision in the area of foreign and currency exchange operations and games of chance, Ministry competent for supervisory inspection in the area of trade, Bar Association of Serbia, Ministry competent for postal communication, Chamber of Notaries Public. During the supervision, a risk based assessment procedure is conducted. In the event that the said authorities determine the existence of irregularities or unlawfulness in the application of this Law, they are obliged to take one of the following measures: to require that the irregularities and deficiencies be remedied within the deadline it sets, or to file a request to the competent state authority to institute an appropriate procedure or to take other measures and activities within its competences. They also have the ability to temporarily or permanently prohibit the activity of the "obliged entity" in particularly justified cases.

Although the Law uses a lot of precise legal formulations, in some parts, however, contains provisions that are in collision or are not aligned with the provisions of other related Laws.[7] In some cases, however, the Law leaves room for legal gaps,[8] while in other cases, it significantly increases the discretionary powers of public bodies which in itself increases the risks of corruptive actions.[9]

7 For example, when defining the terms "functionaries" and "related persons with the functionary" it differs in relation to the formulation present in The Law on the Anti-Corruption Agency.

8 For example, Article 70 paragraph 1 provides that the Government establishes a coordinating body that proposes measures for the Government to improve the system for combating money laundering and terrorist financing; however, the Law does not regulate the issues of composition, conditions for the election and the duration of the mandate of the members of this body.

9 For example, in Article 76, it is not sufficiently precisely defined in which situations the Administration for the Prevention of Money Laundering will issue to the "obliged entities" a written order to monitor the financial performance of the party, which leaves the possibility of abuse of authority, also, in the case of Article 77, it is not clearly defined in which situations the Administration for the Prevention of Money Laundering start the process of collecting data, information and documentation in relation to certain transactions or persons for whom there are existing reasonable suspicion for money laundering, terrorist financing or previous criminal offense, etc.

CONCLUSIONS

Based on the previous study, it could be concluded that Serbia has made some progress in upgrading its legislative framework and has made some effort to align its legislation to the greatest extent with international standards (Official Gazette, 2017).[10] However, what is still worrying is the fact that the adoption of the new *Law on Prevention of Money Laundering and Financing of Terrorism* came about afterwards the Serbia entered into the procedure of enhanced supervision by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL). This body of the Council of Europe is responsible for evaluating actions and measures taken by individual states to combat money laundering and terrorist financing. The evaluation focuses on reviewing technical compliance with the International Standards against Money Laundering and Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (FATF International Standards, 2012-2018). For Serbia, this assessment was made from December 2014 to April 2016 and MONEYVAL noted that FATF recommendations were not fully met (Fifth Round Mutual Evaluation Report for Serbia, 2016). In the last published report, MONEYVAL concludes that Serbia has made some progress in its anti money laundering and combat terrorist financing (AML/CFT) legal and institutional framework since the previous evaluation. Deficiencies remain with respect to some important FATF Recommendations, especially those dealing with financing terrorism and funding, proliferation financing, targeted financial sanctions, non-profit organizations, financial sanctions, supervision of certain designated non-financial businesses and professions, politically exposed persons, wire transfers and high-risk jurisdictions. According to publicly available information, Serbia accepted these recommendations and incorporated them into amendments to the Law on Accounting, the Law on Auditing and the Law on Factoring (Official Gazette, 2018).[11] Bearing in mind the aforementioned legislative response, the author consider that in the forthcoming period, through the practice of the competent state bodies and institutions, as well as through their evaluation by competent and independent international bodies, will be obtained conditions for a more realistic assessment of the effectiveness of the new systemic framework and the accepted strategic solutions of importance for combating money laundering and terrorist financing. [12]

10 In this regard, the Government of Serbia has also contributed to the adoption of strategically important documents such as *National Strategy against Money Laundering and Terrorism Financing* adopted on 31 December 2014.

11 The amendments to these laws included a predominantly ban on owners and founders of companies, members of the managing bodies of companies, as well as entrepreneurs dealing with accounting, auditing or factoring and for which there is evidence that they have been convicted in a lawsuit or are being prosecuted for criminal offenses which regulate the regulations on the liability of legal entities, i.e. for natural persons in for criminal offenses in the fields of labor, economy, property, judiciary, money laundering, financing of terrorism, public order and peace, legal traffic and official duties.

12 Considering that Serbia seeks to become a full member of the European Union, Serbia will have to increasingly align its legislation with international legal standards related to the suppression of money laundering and terrorist financing, in accordance with its assumed international obligations. In this respect, Serbia will have to develop good cooperation with the most important police organizations in the world such as International Police Organization (INTERPOL), European Union Agency for Law Enforcement Cooperation (EUROPOL) and others, as well as with all relevant AML/CFT international bodies such as: Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL), the Financial Action Task Force (FATF), the Committee of Experts on Terrorism (CODEXTER), the EGMONT Group, the International Association for Insurance Supervisors (IAIS), Basel Committee on Banking Supervision (BCBS), the WOLFSBERG Group, International Money Laundering Information Network (IMoLIN), etc. Also, Serbia should use the capacities of international financial institutions such as the World Bank and the International Monetary Fund.

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THE NEW DIGITAL CURRENCY - BITCOIN

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Abstract: The global financial crisis of 2007-2008 and the weakening of the credibility in the financial system impelled the emergence of a new form of an informal way of payment by the so-called bitcoin. The bitcoin is a new form of virtual or digital currency, which, for the way it is created and transferred, is called cryptocurrency.

The advantages of the bitcoin contribute to its more frequent use as a means of payment for goods and services. In many countries, the use of the bitcoin is prohibited, as it is in the Republic of Macedonia. Yet, a big number of countries have already accepted this currency as a means of payment.

In this paper we will present the functioning of the bitcoin as a new virtual currency, as well as the advantages and the risks of its usage. Will the bitcoin become the currency of the future?

Keywords: *bitcoin, history, functioning, risks.*

INTRODUCTION

In the history of humanity, the exchange of goods and services took place in so many different forms. First, there was the exchange economy, when precious metals and various objects and goods were used as a means of payment, depending on the countries and the eras. Slowly but steadily, paper money (bank notes) outran payment in the form of goods. Then, the use of sight deposits became widely spread. In present times, the speed, easiness, and the low expenses for converting one means into another blurred the conventional distinctions between money and the other related forms of property. The defining of money has been a subject of discussion for a while, and difficulties have increased in recent times by the computer revolution. The proper definition of money must embrace all permanent qualities by which money is characterized, and at the same time abstract from those qualities which are ephemeral, arbitrary, or characteristic for a certain country. Hard cash (bank notes and coins) is an indisputable form of money, even though a century ago there were doubts that they were as credible as the coins made of precious metals (www.investopedia.com/terms/m/money.asp, 2018).

By definition, money is a generally accepted means which serves for exchange of products, for maintenance of the value, and for payment of debts. This is based on agreement in the framework of a community for deployment of a certain means of exchange. This agreement for deployment of any material for money can be either explicit or implicit, freely chosen, or by force (Shostak, 2016).

In present times, we have paper money, mintage, non-cash money, and electronic money. They are all legal means.

By the development of information technology, a new type of currencies appeared - the so-called cryptocurrencies. At the moment, 525 currencies exist in the world site of cryptocurrencies. The first place, concerning the value and the volume of trade, belongs to the bitcoin.

In this paper we will elaborate the bitcoin as a type of virtual money, the way of functioning, as well as the advantages and the threats of its use.

HISTORY OF THE BITCOIN

In the middle of 2008 a Japanese programmer working under the alias of Satoshi Hakamoto invented the virtual currency of bitcoin. The *Bitcoin* is a payment system which appeared in 2009 as a programme with an open code. This digital currency is also called virtual currency, electronic money, or cryptocurrency, because of the cryptography which is used in its making and transfer. One is the "bit" – part, and a coin, which could mean a small coin, and the other is "bit" – information technology unit, and a coin, i.e. a currency based on information technology unit. Most often, when a big initial letter is used (Bitcoin), it refers to the technology and the network, while when a small initial letter is used (bitcoin), it refers to the digital currency. The bitcoin system is not controlled by any entity, such as a central bank, and because of this, it is often called a decentralized currency.

Bitcoins are created in a process which is called "digging" - using of the computer power in a network for verification and records of the payments publicly online, in exchange for commission on the transactions and the newly created bitcoins. The users send and receive bitcoins through a software application called *a wallet*, which could be used on a personal computer, a mobile device, or as a web application. Bitcoins can be acquired by "digging", in exchange for products, services, and other currencies.

The commercial deployment of the bitcoin is still low, compared to the speculations which are a reason for the fluctuation in price. The use of the bitcoin for payment for services and goods is constantly growing. One of the reasons is the low expenses compared to the commissions of the traditional credit cards, which are somewhere between 2 and 3 percents. As the paper "Bitcoin: A Peer-to-Peer Electronic Cash System" got uploaded on the internet, the main idea behind this virtual currency was revealed. The paper was uploaded by Satoshi Nakamoto, but it is still unknown who (if an individual or a group of individuals) is behind the idea. On January 9, 2009, the first Bitcoin client was released and on January 12 the first Bitcoin transaction was made between Satoshi Nakamoto and Hal Finney. The subject of this transaction was a genesis block (the initial block of the Bitcoin block chain) worth 50 BTC. The first Bitcoin exchange was established on February 6 by a member of the "bitcointalk" community dwdollar and by May 2010 the exchange rate reached 0.004 USD/BTC. The exchange rate was very volatile and it was based on user demand together with the supply. In July 2010 the first strictly commercial Bitcoin exchange was created out of a website for trading cards from "Magic: The Gathering Online" and it was called Mt. Gox. The value of Bitcoin before Mt. Gox. opened was 0.008 USD/BTC, but after only five days it increased to 0.08

USD/BTC. In August of 2010 a vulnerability issue was found in the Bitcoin protocol arose. This aspect caused that certain users were able to take advantage despite the level of security and create a payment with enormous amount of 184 billion of BTC. It created hyper-inflation making the entire currency worthless. Nevertheless, the suspicious transaction was spotted by the Bitcoin authority, the bug was solved and the amount of BTC was reversed. The bug of this character has not been done yet. On February 9, 2011, Bitcoin reached parity with USD on Mt. Gox. This issue catapulted Bitcoin from niche experiment to stage where it has been considered by broader public. An example for this can be the article from April 2011 about Bitcoin which was pressed at the Time magazine. This article contributed positively to the achievement of the point of 10 million USD of market capitalization. After that moment, Mt. Gox became the largest Bitcoin exchange method even though other Bitcoin markets were founded in 2011 such as Britcoin, Bitcoin Brazil or BitMarket.eu. Another round of a criminal activity took place when in March the amount of 50,000 BTC was stolen from an exchange called Linode (Malik, 2016). This event was followed by another not-enough-secured Bitcoin exchange called Bitfloor, from which more than 24,000 BTC were stolen. Moreover, in August 2012 Bitcoin Savings and Trust was closed and 5.6 million USD were left as a Bitcoin based debt (Miller, The Ultimate Guide to bitcoin, 2015). Nevertheless, in 2012 the first Bitcoin exchange, which used to be called Bitcoin-Central (now called Paymium), obtained a European bank license. This fact contributed to a better public opinion by the end of the year (Miller, 2015). In 2013 the price of Bitcoin reached 100 USD/BTC on April 1 after passing the peak of 31.91 USD/BTC from 2011. Bitcoin was finally solid enough to achieve 1 billion USD in market capitalization. Later that year Mt. Gox faced a setback after violating guidelines made by the U.S. Department of Homeland Security and, in consequence, 5 million USD was confiscated from the US accounts of Mt. Gox (Miller, 2015). The biggest Bitcoin transaction was made on March 20, 2014 for a purchase of a villa in Bali for the amount of 500.000 American dollars. (https://www.coindesk.com/500000-bali-villa-sold-biggest-bitcoin-purchase, n.d.)

WAY OF FUNCTIONING OF THE CRYPTOCURRENCY

The bitcoin is a virtual currency which takes time, high electricity bill, a good personal computer, and luck.

There is not a financial institution or a Central bank of the Bitcoin, and it does not exist in a material form but only in a digital; its value is not determined by the monetary policy of a certain country but simply by the supply and the demand of its users. Trade in bitcoins takes place on the global networks. The number of transactions is huge and constantly changes, and for this reason it must be regularly observed to have a foresight into the amount which is in circulation.

The sum of several transactions in bitcoins is called a block. For example, one person bought a book, another person sold a TV, and a third person paid some membership through the internet. That is a block.

The bitcoin is created virtually, in a computer system, and all transfers take place virtually. It consists of a cryptographic pair of keys, where one of the keys is a currency unit and the other serves as a permission for its access. When the owner wants to pay by this virtual money, they only send the public key together with a signature for the transaction, and this connects to the corresponding key of the receiver. By this, the owner is changed, as well as the permanent code of the amount.

Concerning the fact that the transaction is saved on each computer, manipulation is excluded.

The system of Bitcoin consists of all computers linked into the network of Bitcoin. Each computer contains a complete database of all transactions from the first one (from the beginning of the BTC) to the last one, without exceptions. This database is called "a blockchain" because it is made of joint blocks, and each block contains a series of transactions. The entry of the transaction is encrypted by using a system of public-private key which contains (enciphered) the address of the sender, the address of the recipient, and the amount.

Mining is an operation in which, through mathematical tasks, the block of transactions is confirmed. When the block is confirmed, it is added to the blocks of the previous transactions which exist in the network of the bitcoin. Thus, a chain of blocks is created. That chain is mathematically connected, and thus it guarantees reliability in the transactions, which prevents from all kinds of frauds or double spending (http://enauka.mk/fenomenot-na-bitkoin/, n.d.). In one so-called "mine" 100 bitcoins per day can be put. In order to make an entry of the last block into the database (blockchain) for it, a hash value is calculated. For this calculation, a great computer power is needed and used, and it must be completed for the proper functioning of the network. So, the computer which first calculates the appropriate hash value is granted new Bitcoins, and this is called *mining*. Now the prize is 25 BTC per a block, and this is usually conducted in combined possibilities of several tens of computers (mining pool). The number of granted BTC per block is reduced by half in every four years, and somewhere around 2140 all mining will stop, and there will be a total of about 21 million coins, divided by 8 decimals (~ 2 quadrillion of units).

If a certain user attempts to commit a fraud, the system will dismiss them because all transactions compose a joint chain and every irregularity or abnormality which would not match with the matrix indicates an attempt for a fraud. The chain of blocks also serves as a public book, a register of all transactions conducted till that moment, so that every user of the bitcoin network can have an insight into the financial operations, but not the private information about the users (Parker, n.d.).

Because of the difficulty of the mathematical tasks by which the validity of the block of transactions is confirmed, and with this the obtaining of a prize, the "miners" join in associations because the individual chance for success is minimal. Apart from this, special computer hardware made precisely for "mining" of this digital currency has already been developed.

THE BITCOIN VERSUS ELECTRONIC MONEY

The lack of familiarity with the way of functioning of the bitcoin can bring to confusion and its empathy with the electronic money. Although their nature is similar, they are different.

Electronic money (e-money, e-cash) or digital money (digital cash) is a synonym for a varied group of electronic means which perform the traditional function of money, i.e. they serve as a means of payment and a means for preserving of the value. Electronic money includes: money which is on the accounts in the internet banks or the accounts related to the internet banking (accounts from which it is possible to pay on the internet), the credit cards, smartcards, subscribers' cards, etc. Electronic money exists only in electronic form, for example, preserved on a magnet tape, as an electronic record into the computer disc or in the chip of the card (Petreski, 2010).

Electronic money has several systems of payment: eCash, NetCash, CyberCash, Billpoint, Chipknip, Mondex, PayPal.

Nowadays there is a lot of discussion regarding both virtual currencies and cryptocurrencies, and while these terms may be used interchangeably they are not strictly the same. In

a way, virtual currencies would be the genre while cryptocurrencies are the species. Virtual currencies started as a form of electronic value, issued and usually controlled by its developers and used among the members of a specific virtual community. Virtual currencies can be bought using fiat money or they can be generated within the virtual community that accepts them and in the case of cryptocurrencies serve as a means of payment for goods and services. Centralized irredeemable virtual currencies examples include tokens used for specific online platforms and ecosystems such as the former Facebook Credits which were used to pay for content in the social media platform; World of Warcraft Gold used in the popular online game World of Warcraft and even frequent flyer miles redeemable for airplane travel (8001). Cryptocurrencies are a form of decentralized convertible virtual currencies formed by the merger of cryptography and currency. Cryptography is the practice and study of techniques for secure communication in the presence of third parties called adversaries (Rivest, 1991). There are many similarities between the bitcoin and the electronic money. By a credit card, one can buy bitcoins for a certain bank commission. Both currencies are in a digital form. But, in terms of identification, way of creating or issuing and their creator, they completely differ. The bitcoin is a currency by itself, but the e-money is exchanged for certain effective currencies such as euro, dollars, or denars; the bitcoin's user is anonymous; it is bought or mathematically generated and its creators are users, so-called miners (Table 1).

Table 1. Difference between bitcoins and electronic money

	Electronic money	Bitcoin
Format	Digital	Digital
Unit	Currencies (USD, EUR, KES)	Bitcoins (BTC)
Identification	Financial Action Task Force (FATF) standards apply for customer identification (though such standards permit simplified measures for lower risk financial products)	Anonymity
Way of creation	Digitally emitted, on approval of the Central Bank	Digging/mathematical generation
Creator	Financial institution legal creator	Association/miners

Source: European Central Bank

Bitcoin differs from fiat currency in the following key ways:

1. It is decentralized. Bitcoin is based on a decentralized, peer-to-peer network that does not have a central clearing house or any other intermediary. No single institution controls the Bitcoin network like a central bank does with fiat currency. Every machine that mines Bitcoins and processes transactions makes up a part of the network.

2. t is not inflationary. Unlike fiat currency, which can be printed to create more supply, Bitcoin was designed to have a maximum number of coins. Only 21 million will ever be created according to a predetermined algorithm. There are about 12 million Bitcoins currently in existence (Lee, 2013). This represents 57 percent of all the Bitcoins that will ever be created, and by 2017, 75 percent will have been created. The last Bitcoin will be mined in 2140 (Hern, 2013).

3. It is anonymous, sort of. Users can hold multiple public Bitcoin addresses, but they are not linked to names, physical addresses, or other identifying information. However, as discussed below, recent regulation of exchanges has made it more difficult to retain the

anonymous aspect of Bitcoin. Researchers have also found ways to track transactions of public addresses, but it is still difficult to link a public address to a person's identity.

4. It is transparent. Although Bitcoin transactions are somewhat anonymous, they are also transparent. Bitcoins are really only records of Bitcoin transactions between different addresses making up the block chain. Everyone on the network can see how many Bitcoins are stored at each public Bitcoin address, but they cannot easily identify to whom the address belongs.

5. It is irrevocable. There is no way to chargeback a Bitcoin transaction unless the recipient actually sends the coins back to the sender (Parker, n.d.).

RISKS AND ADVANTAGES OF THE USE OF BITCOINS

The means of payment is based on the principle of cryptography, i.e. a science which deals with security communication. For this reason, one of the main features of the bitcoin is the anonymity of the user, because they are very difficult for tracing. Apart from this, the new currency offers a solution for three big problems related to trading on the internet:

- First, taking into consideration the fact that it is centralised and not controlled by a bank or other institution, it can be sent from a user to another user without the help of financial mediators. This reduces the expenses of payment to a big extent, because mediators such as PayPal or Western Union charge significant commissions.
- Second, the usual payment cards are not secure, because of the safety of the data of the user. Nowadays identity thefts and the flow of private information gain global extents.
- Third, a big problem in the payment on the internet is the problem known as "double spending problem", i.e. using of a certain amount of money (the same token) several times. Namely, the usual way of payment on the internet can bring to a situation in which by one transaction is applied for several purchases. Thus, it happens that a user is shop-soiled, not receiving the money for the service they provided or the goods they sold (http://enauka.mk/fenomenot-na-bitkoin/, n.d.).

The use of bitcoins is not protected from manipulation. False mediators who sell bitcoins appear. After the case of the Silicon Road in the USA it was established that a market was formed for illegal goods which could be paid in bitcoins. The founder of the market was arrested in 2013. In 2013, 800,000 of bitcoins were stolen and because the transactions were anonymous, it was accepted as a mistake on the part of the founders, and the system was even more protected.

Although the value of the bitcoin grows enormously, its volatility also grows (Diagram 1). It is sometimes even up to 65% of the value on a daily basis. At the beginning of 2009 a bitcoin could have been bought for 1 dollar. Today, its value is above 4,000 dollars per a bitcoin.

By definition, money in economy has the following functions (Hill, 2013):

- A means of exchange (in trade) - money is a means which the buyer gives to the seller when they want to buy goods and services.
- A means of payment (measure of value) - money is a measure by which people determine prices and mark their debts.
- A guardian of the value (wealth) - money is a means which can be used by people for transfer of the buying powers from the present into the future.

Figure 1 Value of bitcoin 2014-2017

Even though it is possible to obtain goods and services using bitcoins, it is yet not generally accepted means of payment, so bitcoins cannot bear the epithet of money. In some countries bitcoins are characterized as non-material goods, in others as livestock, but in third countries they are not accepted as a means of payment, and they are even prohibited by law.

Table 1. Regulation of Bitcoin in Selected Jurisdictions

Country	
European Union	✔ Legally, European Union does not have special legislation in relation to the status of bits as a currency, but declared that VAT/GST is not applied in conversion from traditional currencies to bitcoins. VAT/GST and other taxes (such as the income tax) are still applied in transactions for goods and services performed by bits.
G7	✔ Legal; In 2013 FATF issued instruction for companies which work with bitcoins.
Nigeria	✔ Legal; Since January 17, 2017, they are prohibited by the Central Bank of Nigeria.
South Africa	✔ Legal; In 2014 the Central Bank issues a document by which bitcoins do not have legal status.
Zimbabwe	✔ Legal; Accepted since 2017.
Canada	✔ Legal; Classified as non-material goods and regulated by the Law on Prevention of Money Laundering.

Country	
United States	✓ Legal; Classified by the Vault as a convertible decentralized virtual currency in 2013, and in 2015 as goods and it is subject to property taxing.
Nicaragua	✓ Legal; They are in use.
Argentina	✓ Legal; Money but not legal.
Bolivia	✗ Illegal; Prohibited by law in 2014
Brazil	✓ Legal; Non-regulated, but registered as cryptocurrencies since 2014.
Chile	✓ Legal, but without regulation.
Colombia	✓ Legal; non-regulated.
Ecuador	✗ Illegal; Prohibited.
Kyrgyzstan	✗ Illegal; Prohibited by law.
Cyprus	✓ Legal, but not regulated by law.
Israel	✓ Legal; They will not be defined as currency, but taxes will be paid by law.
Saudi Arabia	✗ Illegal; Proclaimed by law as illegal.
Jordan	✓ Legal; Although some entrepreneurs use bitcoins, the Government proclaimed them as illegal.

Source: Regulation of Bitcoin in Selected Jurisdictions - law.gov , Bitcoin Legality - Map of Current Regulatory Landscape - coindesk.com

REGULATION AND FIARS OF BITCOIN

The most controversial topics of 21 century are cryptocurrency. Unknown way of working? Unknown regulation? Unknown future? There are noted about several hundred cryptocurrencies. Also there are several instruments (derivatives, securities) which are working with cryptocurrencies.

Some of the questions which arise are the protection of financial system, financial crime, money laundering and tax evasion.

According Policy Department for Economic, Scientific and Quality of Life Policies cryptocurrencies are thought to be very suitable for money laundering, terrorist financing and tax evasion purposes because of their anonymity, cross-borders nature and quick transferability (assesment). According to many, aside from the instability of cryptocurrency prices, these cryptocurrencies must have greater regulatory oversight in order to prevent illegal activity and illegitimate use. Aside from the instability of cryptocurrency prices, regulators are worrying about criminals who are increasingly using cryptocurrencies for activities (trading away from official channels) like fraud and manipulation, tax evasion, hacking, money laundering and funding for terrorist activities. The problem is a significant one: even though the full scale of misuse of virtual currencies is unknown, its market value has been reported to exceed EUR 7 billion worldwide (assesment). AMLD5's definition of virtual currencies is sufficient to

combat money laundering, terrorist financing and tax evasion via cryptocurrencies. The key issue that needs to be addressed in the fight against money laundering, terrorist financing and tax evasion via cryptocurrencies is the anonymity surrounding cryptocurrencies.

In the research from the Policy Department for Economic, Scientific and Quality of Life Policies there are several key findings about the problems with cryptocurrencies. Those are:

- The existing European legal framework is failing to deal with this issue.
- The tide is changing: the fifth revision of the directive on money laundering and terrorist financing, AMLD5 includes a definition of virtual currencies and subjects virtual currency exchange services and custodian wallet providers to customer due diligence requirements and the duty to report suspicious transactions to financial intelligence units.
- A number of key players in cryptocurrency markets are not included in the scope of AMLD5, leaving blind spots in the fight against money laundering, terrorist financing and tax evasion.
- With respect to unveiling the anonymity of users in general, no immediate action is taken. The Commission will assess only in its next supranational risk assessment a system of voluntary registration of users. A mandatory registration and a pre-set date as of which it applies would be a better approach to unveil the anonymity of cryptocurrency users.
- For some aspects relating to some cryptocurrencies a ban should be considered.
- The European level is appropriate to address money laundering, terrorist financing and tax evasion via cryptocurrencies, but even more appropriate is the international level, as crypto activity is not limited by the European border (Robby HOUBEN, 2018).

INSTEAD OF CONCLUSION - THE BITCOIN NOWADAYS

The bitcoin at the beginning of the second half of 2017 reached a record-breaking high level of 4,483.55 dollars. The market capitalization of the Bitcoin reached 73.5 billion American dollars in the framework of the market capitalization of the famous Netflix stocks. If the bitcoin was a stock, it would have been the seventy-fourth biggest by the market capitalization, on S & P 500.

Simultaneously, the bitcoin is protected from inflation, i.e. decrease of the value, in a way that it would not be possible to produce it infinitely, as it is possible with the currencies controlled by a certain Central bank. Their limited maximum in circulation is 21 million. This amount is protected by a special mathematical formula. In January 2016 the number of bitcoins in circulation was 15 million. As we will approach the final amount, the mathematical formulas for confirmation of a block-transaction will become more and more difficult, and the prizes for finding out a solution to a block will be lower and lower and will not always be 25 bitcoins per a block. It is considered that all 21 million of bitcoins will be in circulation by 2140.

Buying in bitcoins is more and more available. There are websites which provide trade in bitcoins with cosmetics, clothes, white goods, car parts, alimentary products, internet marketing, various financial or legal services, membership on websites, real estate sales, tour agencies, and many other spheres of human living. The bitcoin has deeply entered the social life of humans. In Taiwan 6,000 ATMs were installed where people can exchange bitcoins for cash or simply buy bitcoins. As to the countries in the region, 3 ATMs were installed in Serbia, and the Croatian Central Bank declared bitcoins as illegal.

In reality, the bitcoin can seriously harm the economic system in the countries and also the global economy. Although the use of bitcoins is cheaper and faster, especially in interna-

tional payments, we should nonetheless preserve the existent manner of paying. The bitcoin is regulated as a result of the supply and demand. Here emerges the question: what will happen when the bitcoin reaches the value of 21 million, and there is still a demand? Which is the probability that the bitcoin will exist in the following years or that it will extinguish, or be replaced by a new cryptocurrency?

Today, the bitcoin is still in position of being far enough from, but yet close enough to the economic system. If it becomes credible and generally accepted as a currency, financial institutions will have to react accordingly and accept the new technology. It is also interesting whether it will gain the position of a speculation means which will also be monetary interesting for elaboration, or, the financial institutions will simply treat it as an opponent. If the bitcoin becomes generally accepted and integrated into our system of economic transactions, the nature of the bitcoin will retroactively be determined as a brilliant, efficient, cheap, democratic, and finally, a stable system of money.

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SHADOW ECONOMY – IMPOTENCEOR LIFESTYLE

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Abstract: This paper aims to present the problem of the shadow economy, to point out the structure of the informal economy and to evaluate its effects on the economy. Today, there is a widespread awareness that a large part of the added value in the economy ends up in informal channels and that the whole economy suffers great losses because of it. A number of scientific papers and research studies have been dedicated to this topic. Analyses show that new channels of shadow economy are always found. Economic policy makers are interested in defining precisely the structure and dimensions of the shadow economy and introducing informal part of the economy into formal flows. I will analyse the period from 2003 to 2016 and point out the dimensions and dynamics of the shadow economy in the European Union and in the Balkan region. The results of the work will be presented through qualitative and quantitative methods that are widely applied. I have found that the sources of the shadow economy are expanding, changing its structure and becoming unattainable by numerous systems. In some countries, they are represented to various degrees, and their dynamics show different effects on the economy - consumption, budget revenues, and state costs. Also, a realistic picture of the employment rate and the level of GDP is distorted, so economic policy makers choose and take inadequate measures and instruments. I can conclude that the basic problem of the shadow economy is in the state institutions and in the way of implementing the legislation. The research is based on a complex analysis of the shadow/informal economy and makes a significant place for economic policy makers to see how to deal with this everyday phenomenon.

Keywords: shadow economy, informal sector, EU, Balkans

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INTRODUCTION

The shadow economy has become a fact of life. It appears in various forms in every aspect of society. The problem is that the whole economy is expanding rapidly and it gets new forms. Due to this, it is hard to define. Scientific research confirms that the size of the shadow economy in the world is rising rapidly (Schneider and Buehn 2017, Hassan and Schneider 2016, Schneider and Williams 2013, Schneider 2005, Gerxhani 2003). The Governments attempt to control all informal activities in different ways using various measures like punishment, prevention, or education. Combating the shadow economy is often more a matter of society than a matter of the economy. It is hard to say which criterion is more important. However, one thing is certain. Short-term effects are visible in the economy, through money, while the

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long-term effects are visible in society through development and prosperity. In both cases, the outcome is obvious - an inadequate institutional system, the economic downturn and the collapse of society.

For an adequate response to the large share of the shadow economy in GDP, huge resources are needed. In addition, the collection of information is difficult because these activities on the goods and labour market are hidden from the public. The statistical analysis obtained on the collected data is often incomplete, so they are less reliable. All the above mentioned can lead the market makers to a wrong path and result in a bad choice of measures and instruments. So, it is very important what shadow economy activities include.

Only the economic aspect of the shadow economy will be analysed on the following pages. Market anomalies, as a consequence of the informal economy, threaten the redistribution of the national wealth. From the aspect of the economy, the reflection of the shadow economy is manifested through a lack of budget revenues. Actually, the problem of the negative effects of the shadow economy starts from the budget. The lack of money in the budget hampers the functioning of the state. The funds for public expenditures, investments and budget spending, social benefits, health, education and social protection are diminishing. There is a long list.

The shadow economy is mainly related to illegal flows of the economy and the black economy – e.g. corruption, crime, drugs, weapons, prostitution, trafficking in human beings, etc. However, the shadow economy is more than that because it exists in every social variety. It includes any unofficial transaction which is not recorded through the current tax system. In essence, there is no difference - the transactions are illegal, they circumvent the system and threaten the legitimate market. It means that some economic activities fall outside the official accounting, i.e. monetary, regulatory, and institutional authorities. There are numerous aspects of the shadow economy. But everyone agrees with the fact that the size of the shadow economy is in correlation with the tax evasion and shows inadequate control.

The goal of this paper is to estimate the level of the shadow economy in different countries in a similar way. It focuses on the major macroeconomic variables to find out informal sector effects on citizens and whole economy.

The paper is organised in the following five parts. In the next section, I will shortly describe a theoretical environment. Then, in the third section, I will introduce a real picture of the informal economy and present its effects on the state and society. Section four shows the measure of the shadow economy in EU countries and Balkan countries. The concluding observations are the last part. At the end of the paper there is a statistical supplement.

THEORETHICAL APPROACH

There are numerous definitions of shadow economy, but not a universal one. They differ only in the coverage and structure of informal activities. According to Medina and Schneider (2018, pp. 4) the shadow economy includes all economic activities which are hidden from official authorities for monetary, regulatory, and institutional reasons. Del'Anno and Schneider (2004) and Feige (1994) point out the shadow economy includes all activities that circumvent regulation, taxation and monitoring (see also Thomas, 1999). Tanzi (1999) distinguishes two definitions. On the one hand, it indicates production (or revenue) that is missing in official statistics. Therefore, the tax authorities are not able to collect taxes. This means that the state is richer than the official statistics expose, and tax administration collects less revenue than it should. Such activities escape taxation and budget revenues are lower than they can be. Also, Thomas (1999) advocates the position by which the shadow economy includes those activities that are not noted on the national income account, but Schneider and Enste (2000) empha-

sised that these are all economic activities that do not conduce to the official GDP calculation. There is also a slightly different approach, where the social environment and institutional rules play a major role. This approach explains the shadow economy as a change in the behaviour of participants due to institutional constraints. According to Feiga (1994), the special characteristic of the shadow economy is that market participants try to circumvent a set of institutional rules, while Loayza (1996) points out that, in every legal and social environment, state institutions are obliged to regulate all activities related to the informal economy. Within the National Accounts System (SNA2008, pp. 474), a non-observed (shadow) economy includes all product activities that can be grouped in the ensuing areas: 1) underground activities (refer to the economic reasons, and statistical reasons); 2) informal activities (refer to institutional problems, like level of organisation, factor of production and legal job creation); and 3) illegal activities (sale, distribution, possession). In this paper, I will show the view that shadow economy is an informal or illegal act that is implemented in the economy and is not covered by the official GDP calculation.

There are many controversies about the attitude towards the informal sector. It is still a hot topic. Opinions about effects of shadow economy on official economy are divided. Some think that the informal sector is positive for the economy, because it is dynamic, and important for small businesses reducing unemployment. The others think that the informal sector refers to wrong policies, and inadequate resource allocation. It is believed that in the underdeveloped economies, the negative consequences of the shadow economy dominate.

The theories and researches mainly try to explain the informal sector, i.e. to show the connections between formal and informal activities. Also, they establish structure in underdeveloped and developed countries. I have been proponent of the theoretical approach where the state influence is emphasized. Therefore, state regulation should include the informal into the formal economy.

WHAT THE SHADOW ECONOMY REALLY IS?

There are numerous elements that make up the shadow economy: inadequate tax system, lack of trust in institutions and lack of credibility, unproductive budget spending, avoidance of regulations, insufficient capacities in state institutions, unfair competition, etc.

In the literature, the informal sector has the following characteristics: absence of the regulations, inefficiency of the labour market, incomplete information, highly fragmentary sector, lower prices (than in the formal sector), lower capital intensity, lower productivity, as well as unfair competition. I have to mention here different causes and motives of individuals to participate in the informal sector: cash payment, tax evasion, circumventing regulations, profit, and lower real prices (of capital, goods, services).

The limitation of fight against the shadow economy is due to its broad effect. It is represented in all sectors of the economy and in all spheres of society. It complicates the normal functioning of the state, slows down the development of the economy, and threatens the fair resource allocation. The absence of the calculation of the informal GDP, as invisible part of the total real GDP, affects many other spheres of society – e.g. lack of children's schools and playgrounds, medicines, social welfare, benefits, and state investment.

All these things distort the real picture of economic activity. It means that the economic indicators became unrealistic - unemployment, government spending, budget revenues, pensions and health funds, etc. show inaccurate values. There is a chain reaction, in which all these effects are returned to a new lower GDP by the multiplication process. For example, if a portion of GDP is drawn from the formal flows of the economic system, the level of revenue

in the budget is reduced, because GDP is a function of tax revenues. There are several scenarios in the economy when tax revenues are lower, assuming unchanged public expenditures. According to the first, the budget deficit is growing. Behind this, there is either a reduction in public expenditure or indebtedness (a rise of public debt). Finally, in the long run, state expenditures are also reduced. Hence, the state becomes ineffective. Secondly, the grey economy can be identified with a lack of state money. Large amounts of money remain outside of formal flows. The money also flows into the black market. This increases corruption and brings about new, bigger losses. The biggest loss is the lack of a basis, for example, employment and earnings. Regarding the individual analysis, half of the workers receive a salary through a formal channel (by law), with regular payments of taxes and contributions for health insurance, pension insurance and unemployment insurance. The remaining workers are either registered on a minimum wage level (with lower contributions) or they are not registered as employees at all. Opponents of the great state influence on the market here point out that the state has become an enormous apparatus. The outcome of such a wrong approach is depleted economy.

A key step is to reduce the informal economy through an institutional order. In this way, establishing a predictable and stable business environment and fair market competition, without neglecting the state as an equal and important market player is of great importance. The implementation of repressive measures can deliver the expected and positive short-term results, but these measures are devastating in the medium and in the long term. The application of these measures is not sufficient because the problem of the shadow economy cannot be isolated. As a phenomenon, the shadow economy is heavily suppressed and spreads very easily, leaving serious losses to the state and society. The losses of the state are reflected in monetary funds, and in society through the level of development. So, system solutions are the only way to reduce the shadow economy and mitigate its negative effects. The Serbian government has decisively set out to fight corruption properly. New principles and measures included in the National program for countering shadow economy in Serbia are a systemic step forward and show that there is institutional solution. This was an opportunity for the institutions to connect and unify their databases, and that institutional action became transparent and coordinated. Through the Action Plan, as part of the National Program, the idea is to relax the business environment and legalize business flows by direct reduction of fiscal and para-fiscal charges. This will represent a smaller inflow into the budget based on the existing business environment, but some of the informal (grey) economies are expected to turn into formal economic trends. I find the approach is necessary, due to new shadow economy forms, their timely identification, adaptation system and institutional neglect. So, the consistency of application and further improvement of the entire system will be a key issue for achieving the set goal – restrain the shadow economy. The real picture of the grey economy level in Serbia will be obtained depending on how these measures are applied, whether they will be selective and how efficient the implementation of institutional solutions will be.

ANALYSIS OF THE SHARE OF SHADOW ECONOMY IN GDP IN EUROPEAN COUNTRIES

According to the results of numerous analyses in the observed period, the smallest share of the shadow economy in GDP was recorded by the OECD countries (below 20%), whereas it was more prominent in transitional economies (up to 40%) and in developing countries (over 40%). Causes should be sought in the political decisions of great economies that gradually excluded the role of the state from market, social and economic life (Reaganomics and Thatcherism, in the early 1980's). For decades, the less developed economies have failed to

overcome a contagion that can be shown through a continuously high level of illegal, black market, and grey economy, lack of regulation, poor institutions, lack of trust and credibility, etc. The most affected are the less developed economies and emerging economies (earlier transition economies). Transformation of the economic system during the 1990s and 2000s, abandonment of the closed economy and opening to the world, was accompanied by informal affairs - corruption, bribes, non-originating tax, tax evasion, suspicious privatization, broad liberalization of capital, etc.

Increasing informal part of GDP leads to lowering numerous benefits for citizens. Benefits not only measured in money, but also the quality of services, the level of development, and of course the standard of living. So, it is necessary to change the consciousness, tax culture and citizens' rules of conduct. The richest countries have the lowest level of informal GDP, below 10% of the overall GDP: Austria, Luxembourg, and the Netherlands. Transitional countries of Central and Eastern Europe have up to one third of GDP in the informal part of the economy. These are the newer EU members, among which are Bulgaria, Romania, and Croatia (see APPENDIX A, Table A1). The average size of the shadow economy for the EU from 2003 to 2015 was 20.2%. But, the share of the gray economy of GDP decreased in EU countries from year to year during the observed period. The largest ones were noted in Bulgaria with 32.8% and Romania with 30.2%. The lowest ones were noted in Austria with 8.8% and Luxembourg with 8.9%. The share of shadow economy in Balkan countries is dramatic. All the Balkan countries have a high share of the shadow economy in GDP, far above the level of the EU countries, over 30% during the observed period.[2]

If the shadow economy increases by one percent the growth rate of the "official" GDP of the Euro Area countries decreases by 0.2%, of the EU countries increases by 1.0%, and of Balkan countries increases by 1.3%. I have also found out that in the Balkan countries the informal economy is marked by low income, low wages and little accumulation capacity. Conversely, in developed EU countries there is more accumulation capacity, and high incomes and wages are in connection with formal economy (see APPENDIX C).

The main problem in the labour market is that there is a difference between the total labour cost in the official economy and the after-tax earnings (Schneider 2005, pp. 602). This difference is a key feature of the increase of the shadow economy. The shadow economy increases informal employment which is the major problem. This is of great importance for economists, because the whole shadow economy becomes a burden for both the budget and the citizens. But, by increasing formal employment, through sharper systemic measures aimed at the labour market, the level of personal consumption within the economy will increase. The growth of personal consumption, with unchanged propensity for consumption, will increase the aggregate demand. At the same time, with the increase in consumption, VAT revenues will increase. Indirectly, the resources available to the state are increasing and the pressure on budgetary resources is reduced (for example, for pensions, social payments, etc.).

The best example of informal activities is tax evasion. At the same time, it is the favourite way to save money. This is not just the case within Serbia or in the Balkan economies but worldwide. The state provides the conditions and methods to reduce tax burdens (investing in underdeveloped areas, start-ups, providing assistance, etc.) and this is not punishable. These are still legitimate activities, and there is no abuse. On the other hand, what is legally unacceptable is to turn to tricky or deceitful actions - then it becomes punishable.

2 Unfortunately, due to lack of data, numerous effects on the grey economy could not be explored and estimated (see APPENDIX B). During the 1990's Central and Eastern European countries made the transition from centralised to market economies. These economies were supposed to change the reporting method in a very short time, and adjust the (in)formal activities.

The biggest problem is that there are occupations in which informal business occurs - cafes, taxis, dentists, shoemakers, lawyers, etc. But they do not have to be lynched. It is necessary to change the consciousness and to remain in the state what it belongs to, for the better quality public goods that are offered to its citizens and, moreover, for future generations. Only a long-term active and systematic institutional approach gives the expected result - a reduction in the share of the grey economy in the overall economy.

If we want to reduce the level of informal economy, the institutional system is crucial. Developed economies have changed the awareness and habits of their citizens through the system's institutions and the active role of politics. Citizens are encouraged to legalize jobs so that there are fewer exceptions, and everyone equally shares in economic prosperity, social well-being, and higher standards of living. Therefore, they have a low share of the shadow economy in GDP. In these countries, it is normal for citizens to sue for unofficial actions or jobs. There are numerous films in which an individual is reluctant to decide on illegal jobs because he is aware of the potential consequences. A good example is the American film "The Shawshank Redemption", written by Stephen King, showing a strict tax system during the 1950s in the United States. A policeman is about to inherit money and thinks about the tax that should be paid to the state, which is not a small amount of money. A former banker, now a prisoner, advises him to save money by taking advantage of the state's facilities instead of violating the law. In contrast, the prison manager consciously avoids paying taxes. Likewise, the infamous Chicago gangster Al Capone was arrested for tax evasion, not for mafia charges and murders.

Changes in tax rates depend on the economy structure. The countries with lower tax rates can gather higher tax revenues, which leads to smaller levels of shadow economy. In developed countries, with better laws and adequate regulation, the rule of law is at a high level and therefore the percentage of shadow economy in GDP is lower. Contrary, in transition countries there is no well-established equilibrium between low level of taxes and regulatory burden, the rule of law is at low level and therefore the percentage of shadow economy in GDP is bigger (see also Schneider, 2016; SELDI, 2016; Tudose and Clipa, 2016; Fleming at al, 2000). But the relaxation of tax rates does not necessarily lead to the desired reduction in the shadow economy. This kind of reform can only avoid a further increase in the shadow economy, but will not to eliminate it. If personal interests and profits incite people to engage in informal activities, without moving into the official economy, politicians will remain helpless.

What can be the solution? Does it even exist? Obviously, yes! It exists because in many economies the share of gray economy in GDP has been below 10% for a number of years. All this means that governments should implement fiscal policy measures through a few following key elements:

1. To put more emphasis on enforcement of regulations (laws), rather than increasing their number;
2. To create a predictable tax system;
3. The tax base needs to be expanded instead of reducing tax rates;
4. The institutions need to be improved, which will increase the collection of tax revenues.

CONCLUDING REMARKS

The results of econometric analysis have shown statistical significance between the determinants of the informal economy. Also, there is a clear link between the shadow economy and the real GDP growth rate. In all countries when the participation of shadow economy

increases, the efficiency of institutions is reduced, budget spending rises, and formal unemployment is higher. The reduction in the share of the shadow economy in GDP comes only with the increase in the state efficiency (higher tax collection, institutional quality, stricter court judgments, and greater control of business). In the Balkan countries, the labour market does not reflect a significant link with the grey economy, which leads us to the conclusion that there are illegal workers or workers who do not get the full salary. In all economies, we observed that there was a statistically significant correlation between the official GDP and the unofficial GDP. Increasing shadow economy has negative effects on the official GDP. Also, there is a strong correlation in the opposite direction - any reduction in the official GDP affects the increase in the share of irregular GDP. The increase in the unemployment rate and self-employment is positively correlated with the shadow economy. The public consumption is positively correlated with the shadow economy and statistically significant. Increasing regulations (huge numbers of documents, license requirements, trade barriers, etc.) make it difficult to trade, and traders avoid official flows. Regulations in the labour market lead to an increase in labour costs in the official economy. Almost all of these costs are shifted to the employees, and that raises informal employment and the shadow economy. State regulation is significantly correlated with the share of the shadow economy, and extensive regulation measures lead to growing shadow economy. This percentage is higher in transition economies than in developed economies. The paper emphasises economic components, but for example in social aspects the number of kills and judicial efficiency do not have significant parameter values, so coefficients do not reflect the real situation.

The impact of the shadow economy is more significant in Balkan countries then in European Union countries, and much more significant than Euro-Area countries. This is explained by the fact that the EU countries include Bulgaria, Romania and Croatia, the countries with the highest share of the shadow economy in the GDP.

The consequences of the incorrect calculation of the GDP, due to the high share of the informal sector, can be detrimental to the economy. Namely, all measures and instruments used by economic policy makers can be wrong or untimely because they do not correspond to real economic situation. An incorrect decision can have negative consequences for the future growth and development. Citizens have to know that in the future they will not have high quality public goods (better health care, better infrastructure, better education, higher salaries, higher living standards, etc.).

This paper should help economic policy makers in Serbia to expand their influence aimed at bringing the informal economy into formal flows, which would significantly contribute to economic growth and development, and increase the number of formal employees.

APPENDIX A

Table A1. *Shadow Economy, percent of GDP, by countries*

% of GDP	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	AVERAGE BY COUNTRY
Austria	7.8	8.2	7.8	7.5	7.6	7.9	8.2	8.5	8.1	9.4	9.7	10.3	11.0	8.8
Belgium	16.1	16.2	16.1	16.4	16.8	17.1	17.4	17.8	17.5	18.3	19.2	20.1	20.7	17.9
Bulgaria	30.2	30.6	31.0	31.2	31.9	32.3	32.6	32.5	32.1	32.7	34.0	34.4	35.3	32.6

Croatia	27.1	27.7	28.0	28.4	29.0	29.5	29.8	30.1	29.6	30.4	31.2	31.5	32.3	29.8
Cyprus	24.7	24.8	25.7	25.2	25.6	26.0	26.2	26.5	26.0	26.5	27.9	28.1	28.3	26.4
Czech Republic	14.9	15.1	15.3	15.5	16.0	16.4	16.7	16.9	16.6	17.0	18.1	18.5	19.1	16.8
Denmark	11.6	12.0	12.8	13.0	13.4	13.8	14.0	14.3	13.9	14.8	15.4	16.5	17.1	14.3
Estonia	25.4	26.2	27.1	27.6	28.2	28.6	29.3	29.6	29.0	29.5	29.6	30.2	30.8	28.7
Finland	12.0	12.4	12.9	13.0	13.3	13.7	14.0	14.2	13.8	14.5	15.3	16.6	17.2	14.3
France	12.6	12.3	10.8	9.9	10.8	11.0	11.3	11.6	11.1	11.8	12.4	13.8	14.3	12.0
Germany	12.0	11.2	12.2	12.4	12.9	13.2	13.9	14.6	14.2	14.7	15.0	15.4	16.1	13.9
Greece	22.3	22.4	23.3	23.6	24.0	24.3	25.4	25.0	24.3	25.1	26.2	27.6	28.1	25.0
Hungary	22.1	21.9	21.6	22.1	22.5	22.8	23.3	23.5	23.0	23.7	24.4	24.5	24.7	23.2
Ireland	11.6	11.3	11.8	12.2	12.7	12.8	13.0	13.1	12.2	12.7	13.4	14.8	15.2	13.0
Italy	20.8	20.6	20.8	21.1	21.6	21.2	21.8	22.0	21.4	22.3	23.2	24.4	25.2	22.3
Latvia	24.1	23.6	24.7	25.5	26.1	26.5	27.3	27.1	26.5	27.5	29.0	29.5	30.0	27.0
Lithuania	25.1	25.8	27.1	28.0	28.5	29.0	29.7	29.6	29.1	29.7	30.6	31.1	31.7	29.1
Luxembourg	8.4	8.3	8.1	8.0	8.2	8.2	8.4	8.8	8.5	9.4	10.0	9.9	9.8	8.8
Malta	24.3	24.3	24.0	24.3	25.3	25.8	26.0	25.9	25.8	26.4	27.2	26.9	26.7	25.7
Netherlands	9.2	9.0	9.2	9.1	9.5	9.8	10.0	10.2	9.6	10.1	10.9	11.7	12.5	10.3
Poland	23.6	23.3	23.5	23.8	24.4	25.0	25.4	25.9	25.3	26.0	26.8	27.1	27.4	25.4
Portugal	18.1	17.6	18.7	19.0	19.4	19.4	19.2	19.5	18.7	19.2	20.1	21.2	21.7	19.6
Romania	29.1	28.0	28.1	28.4	29.1	29.6	29.8	29.4	29.4	30.2	31.4	32.2	32.5	30.1
Slovakia	14.3	14.1	14.6	15.0	15.5	16.0	16.4	16.8	16.0	16.8	17.3	17.6	18.2	16.2
Slovenia	23.5	23.3	23.5	23.1	23.6	24.1	24.3	24.6	24.0	24.7	25.8	26.0	26.5	24.6
Spain	18.7	18.2	18.5	18.6	19.2	19.2	19.4	19.5	18.4	19.3	20.2	21.3	21.9	19.6
Sweden	13.6	13.2	13.6	13.9	14.3	14.7	15.0	15.4	14.9	15.6	16.2	17.5	18.1	15.3
United Kingdom	9.6	9.4	9.6	9.7	10.1	10.5	10.7	10.9	10.1	10.6	11.1	12.0	12.3	10.6
AVERAGE EU-28	18.3	18.3	18.6	18.8	19.3	19.6	19.9	20.1	19.6	20.3	21.1	21.8	22.3	
Albania	31.2	31.0	30.2	30.9	31.5	31.4	32.0	32.2	32.5	32.9	33.3	33.7	33.9	32.2
Bosnia and Herzegovina	33.4	33.3	33.1	32.9	31.5	31.8	32.2	32.3	32.5	32.8	32.9	33.3	33.6	32.8
FYR Macedonia	34.0	33.4	33.1	33.3	33.4	33.7	34.1	34.5	34.8	34.9	36.0	36.9	37.4	34.9
Montenegro	34.7	34.4	34.1	34.4	34.7	34.9	35.4	36.2	:	:	:	:	:	34.9
Serbia	30.8	30.4	30.5	30.1	30.2	30.3	30.5	30.6	30.1	30.7	31.2	31.6	32.0	30.8

AVERAGE Balkan -28	32.8	32.5	32.2	32.3	32.3	32.4	32.8	33.2	32.5	32.8	33.4	33.9	34.2	

Source: Various sources from References.

APPENDIX B

DATA AND METHODOLOGY

This paper is only part of a complex analysis of the gray economy in European countries. In fact, the subject of this paper is an important topic with a wide structure and important effects on the state. This requires a serious approach and a large analysis that includes numerous methods and models, as well as a large number of economic and social determinants (tax rate, budget, real GDP, employment rate, unemployment rate, self-employment, government consumption, social status, number of murders, court judgments, state institutions, gambling, prostitution, stolen goods, smuggling, regulations). During the collection of a database of research databases, there were no data for individual countries, so that certain relations were omitted from the analysis.

In recent decades, the analysis of the gray economy has produced a number of theoretical concepts and models. Each of them has its advantages and disadvantages. It is common for them that no model is comprehensive and, from this aspect, the results obtained by any of the current models can be contested. The aim of the paper is to evaluate the share of the gray economy in the GDP, to analyze the available data more accurately and comprehensively, and to properly interpret the results obtained. In recent years, in the gray economy assessment, instead of the regression and the factor analyses, the Structural Equation Modelling (SEM) is used. A special role has been given to the new macro method of Multiple Indicators Multiple Causes (MIMIC). This model was first presented by Joreski and Goldberg (1975). This is a hybrid model that gives us estimates of the level and effects of the shadow economy. Also, this is the most used model that evaluates relations between the shadow economy and its determinants. In other words, it enables the analysis of unofficial or illegal activities and the official GDP.

The MIMIC method is reliable. It is based on the statistical theory of possible and declared variables. The MIMIC model considers several causes and several indicators of the informal economy. It possesses statistical techniques that distinguish it from other estimation techniques of shadow economy. This model is very flexible. It includes both direct and indirect methods. So it is only an adequate choice of analysts for the variables (see also Schneider and Enste, 2000; Cassar, 2001; Thomas, 1992).

As Del'Anno, R., Schneider, F. (2004) point out:

"The MIMIC approach considers the size of the hidden economy as a latent variable, linked, on the one hand, to a number of observable indicators (reflecting changes in the size of the shadow economy) and on the other, to a set of observed causal variables, which are regarded as some of the most important determinants of the unreported economic activity."

Basically, the MIMIC model consists of two parts. The structural equation model is given by:

$$\eta=\gamma^{\wedge}\text{'}\ X+\varsigma$$

where X'=(X1, X2,…, Xq) is a (1xq) vector and each Xi, i=1,…, q is a potential cause of the latent variable n and γ_{12}(1, 2,…, q) is a (1 q) vector of coefficients (describe the relationships between the latent variable and its causes). The latent variable is determined by a set of exogenous causes. While these causes only partially explain the latent variable , the error term represents the unexplained component. The variance of q is denoted by (q q, covariance matrix of the causes X). The measurement model (which represents the link between the latent variable and its indicators) is given by:

$$y=\lambda\eta+\varepsilon$$

where y'=(y1, y 2 ,…, yp) is a (1xp) vector of several indicator variables. Then, λ is the vector of regression coefficients, and ε' is a (1xp) vector of white noise disturbances. Their (pxp) covariance matrix is given by ψε.

In the MIMIC model the indicator is Real Gross Domestic Product (as variable of scale) and the explanatory variables (causes) are tax rate, budget, real GDP, employment rate, unemployment rate, self-employment, government consumption, social status, corruption, number of murders, court judgments, state institutions, gambling, prostitution, stolen goods, smuggling, regulations.

Prior to evaluation, it is necessary to start from the assumption that this technique would be applied appropriately (test of correlation, independence between measurement and structural error, different econometrics models, Hausman test etc.). I used the Ordinary Least Squares (OLS) Model, Fixed Effects Model and Random Effects Model to evaluate the parameters in pool model. The obtained results confirm, with a high degree of reliability, that the approach to the assessment of the shadow economy is adequate.

Extensive empirical material at my disposal cannot be presented on several pages. In a multi-month analysis of the structure of shadow economy, I have come up with numerous results and a lot of information. In this paper only basic results are presented. Also, an interpretation of the obtained results is given in such a way that the average reader can understand the structure and effects of the shadow economy.

APPENDIX C

Table C1. *MIMIC Estimations of the size of the shadow economy of 34 countries in the EU and the Balkans*

Cause Variables	Estimated Coefficients
Share of direct taxation (% of GDP)	λ1 = 0.201* (1.79)
Share of indirect taxation (% of GDP)	λ2 = 0.211* (2.29)
State regulation (share of public employment in total employment)	λ3 = 0.322* (3.16)
Unemployment	λ4 = 0.13* (2.69)
GDP per capita	λ5 = -0.088* (1.83)
Institutional quality	λ8 = 0.201* (1.86)

Indicator Variables	Estimated Coefficients
Employment (labour force 18-64)	Λ7 = -0.498* (1.22)
Annual rate of GDP	Λ8 = -1
Test-statistics	RMSEA1 = 0.000*
	(p-value) = 0.496
	Chi-square = 352.43
	(p-value = 0.000)
	N = 102
	DF= 22

Notes:t-statistics is given in parentheses ( ); * means | t-statistics | > 1.96 (| t-statistics | > 1.72).1) p-value for test of close fit; RMSEA < 0.05; the p-value varies between 0.0 and 1.0.

The estimated coefficients of the taxation and state regulation have the quantitative largest impact on the size of the shadow economy. Also, institutions quality is very important. It means that good regulations, adequate property right and freedom in new business increase the benefits in economy. On the other side, corruption and bureaucracy limit business activity and lead to an informal economy.

Table C2 *Results of the Panel Regression; Period of time 2000-2017, 34 countries, EU and Balkan countries*

Dependent Variable	**Annual GDP per capita Growth Rate**
Independent Variables:	**Estimated Coefficients:**
Shadow Economy EU Countries	0.067** (3.13)
Shadow Economy Balkan Countries	-0.051* (2.11)
Openness	0.32** (3.32)
Inflation Rate EU Countries	0.023 (1.32)
Inflation Rate Balkan Countries	-0.1 (2.55)
Government Consumption	-0.021* (4.51)
Lagged Annual GDP per capita Growth Rate	0.064** (1.76)
Total Population	0.00** (1.77)
Unemployment Rate	-0.03* (1.12)
Constant	0.102* (4.13)

Number of countries	34
Overall R-Squared	0.415
Within R-Squared	0.344
Between R-Squared	0.485
Wald-CHI²	76.36 (0.000)
Absolute value of z-statistics in parentheses * significant at 10%; ** significant at 5%. Random effects GLS-regressions; 34 countries, period 2000-2017; yearly data	

Source: Own calculation by the author

In general, shadow economy has a negative, but statistically significant, influence on the growth rate of Balkan countries and a positive, also statistically significant, influence on the growth rate of EU countries. Econometrically observed, if the shadow economy in EU countries rises by 1 percentage point of the GDP, the official GDP growth increases by 6.7 percent. Contrary, if the shadow economy in Balkan countries rises by 1 percentage point of the GDP, the official GDP growth decreases by 5.1 percent.

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ACTORS OF A POLITICAL PROCESS IN THE WASTELANDOF CHALLENGES IN COMBATINGPOLITICAL CORRUPTION

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Abstract: A very complex and multidimensional problem of corruption has been approached in this paper from a politology-based aspect that puts emphasis on the notion of "political corruption" as a "systemic problem" that requires a systemic solution. Starting from the concept of the political process as the axis of the political system, the authors try to determine analytically accurately the deterministic effect the position of the actors of the political process has on their overall role and obligations in the process of combating political corruption that always threatens to jeopardize the very foundations of the political order. Since the political process is the spot where the society and the state bind, the paper advocates the need for: 1) the perception of anticorruption engagement as an open and two-way activity leaning on 2) permanent upgrading and revitalization of the democratic capacities of the political process that would serve as a defense against corruption threats with 3) cooperation, coordination and distribution of responsibilities among citizens, their associations and the state. Civil activism and good governance are the best indicators of vitality of the political system and defense against political corruption, best demonstrating all their performances at all stages of the political process.

The conclusion points out that the combat against political corruption should be a permanent systemic task of all actors in the political process, and an analytical review of Aleksandar Vučić's political role in acceleration and deepening of the combat against corruption starting from 2012 to date is presented as a practical example of anti-corruption engagement.

Keywords: *political process, corruption, citizens, state, democracy* .

INTRODUCTION INTO THE PROBLEM OFPOLITICAL CORRUPTION

On March 1, 2018, the Law on the Organization and Jurisdiction of State Authorities in the Fight Against Organized Crime, Terrorism and Corruption started to apply. Up to now, pursuant to Article 18, special departments of the higher courts for the suppression of cor-

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ruption have been established in Belgrade, Novi Sad, Niš and Kraljevo. This is just another in a series of examples of the determination of the state authorities to put an end to corruption as a major problem of contemporary democracies.

In modern democratic systems, the state is just one of the actors of political processes, while the bearers of sovereignty are citizens, who are more than important. They become part of the political process.

Therefore, in this paper, we approach the very complex and multidimensional problem of corruption from the political viewpoint. The emphasis is placed on the notion of so-called "political corruption" as the "systemic problem" that requires a systematic solution. Such a solution implies the engagement of all actors in the political process. In order to properly understand political corruption, we should certainly bear in mind that the democratic foundations of modern states are endangered by its actions that may be most clearly seen in the field between the discretionary powers of the bearers of public office and the general requirement for transparency. Various "discretionary powers" are, of course, only one of many sources of political corruption.

Since in this paper we start from the theoretical point of view that the political system is based on the political process, it is important to emphasize that the actors of the political process are at the same time the actors of political corruption. Thus, the systemic dimension of the problem of political corruption becomes clear, and even more important is the role of the actors of the political process in its prevention as well as in the fight against it. If political corruption "cracks" the political process, this will soon be reflected in the entire political system given the possibility of a corruptive impact on the adoption of some "systemic laws". Then it becomes clear that the bearer of sovereignty is no longer a citizen but money.

POLITICAL CORRUPTION: THEORETICAL FRAME, DETERMINANTS, ACTORS AND HORIZONT OF COMMON FORMS

Corruption, in the most general sense and everyday use in public speech, can be defined as "abuse of office for private purposes". This is the most common definition that can be found in reference literature, although it is a very complex social phenomenon that has followed human civilization for centuries. If we look at the etymological origin of the term, we come to the Latin word *corruptio* in the sense of bribery, corruption, and deception.

Vito Tanzi says that "corruption exists when a conscious, deliberate violation of the principle of impartiality in decision-making occurs so that someone can gain some advantage" (Stojiljković, 2010, p. 201). The same author lists two criteria: 1) there is no corruption if there is no conscious, planned violation of the principle of impartiality; and 2) if there is not even a deferred payment of the service, or at least the proposal for the returning the favors, it does not necessarily involve corruption (Ibid).

In the Republic of Serbia, the official definition is used according to which corruption is "a relationship based on the abuse of an official, or social position or influence, in the public or private sector, in order to gain personal advantage or benefit for the other" (Narodna skupština Republike Srbije, 2013, p. 1).

The consequences of corruption can be terrible. The current National Anti-Corruption Strategy states: "The consequence of corruption is not exclusively the impoverishment of society and the state, but also the drastic decline in citizens' confidence in democratic institutions,

as well as in the creation of the uncertainty and instability of the economic system that is reflected, among other things, in the reduction of investments as well" (Ibid). Institutions of the system exist exclusively for the citizens, but if the citizens lose confidence in them, it becomes clear that the functioning of the whole system is jeopardized in this way. Thus, the reform and the fight against corruption should follow.

Corruption, in any manifestation, directly confronts democracy. Namely, the nature of the democratic order is inclusive, and corruption is exclusive (Arkhede Olsson, 2014). Corruption causes the unfair distribution of power and authority in the political system and creates great costs for citizens, for economic and political development (Perić, 2012).

We will try to find the way to define the political corruption as clear as possible using our political approach to the problem of corruption.

Precisely because it is sometimes difficult to clearly distinguish it from the bureaucratic corruption, political corruption in a more strict sense determines the involvement of decision-makers, so that it is always located in higher levels of the political system and therefore does not only lead to poor distribution of resources, but also affects how some decisions are being made (Amundsen, 1999, pp. 2-3).

The occurrence of political corruption depends on: 1) the existence of privileges that politicians can distribute to narrow social groups; 2) the ability of the wealthier groups to obtain these benefits legally; 3) the stability of political alliances over a period of time (Rouz Ejkerman, 2007, pp. 143-144).

As a form of political corruption, Zoran Stojiljković distinguishes "conscious preparation and voting for defective laws and by-laws full of 'loopholes', designing non-applicable legal solutions or legal solutions that are difficult to apply with numerous 'surprises' in transitional solutions, avoidance of taxes, insuring the black funds and non-transparent running of party incomes and expenditures" (*op. cit*., p. 202). Each of these forms can be institutionally prevented. For example, the Law on the Financing of Political Activities can introduce the financing of both the regular work of the political parties and the one during the elections into legal flows and put them under the public scrutiny.

The position of politicians in a corrupt act was used by an Italian political scientist Giovanni Sartori in order to determine two forms of political corruption: 1) there are politicians who "are getting bought" to do or not to do some things; 2) There are also politicians who take the money for their political career and then steal it for themselves (2003, p. 168). It was not difficult for Sartori to come up with such findings since the political life of Italy, until the collapse of the party system in the early 1990s, provided many examples of such corruptive practices. In his observation, politicians are important actors, but they are just one side of the corruption process.

The main deviation of the basic democratic principles and standards in the regular functioning of the national representation constitutes the so-called "political legislation". This practically means that basic, systemic laws are not adopted in the interests of the bearers of sovereignty, but rather of the relevant interest groups, and, through political corruption, beyond regular procedures. Legislative body is an important segment of the entire political system of a country, because it produces systemic laws, which thus become an integral part of the overall institutional architecture. At the same time, out of that comes the great desire of various rich interest groups to influence the legislative process as well as the danger to the overall democratic order. Tijana Perić says that political corruption in the legislative process can occur as: 1) creating interest-stained laws; 2) knowingly making bad laws; 3) failure to regulate certain socially relevant issues; 4) blocking anti-corruption regulations; 5) failure control the executive power; 6) ineffective parliamentary investigations (*op. cit*., p. 352).

The mechanism of the influence of money in making political decisions is complex. The corrupt process consists of two periods (electoral and post-election) and three segments (Stojiljković, *op. cit*., p. 207). The election period includes illegal forms of income and expenses, and the post-election period of debt repayment through patronage employment, appointment to high positions, voting in accordance with the promise, etc (Ibid).

The source of political corruption may also be a conflict of interest. It is "any situation in which the carrier of a function has a private interest that influences, may influence, or appears that it can influence his conduct in the exercise of public office or official duty, in a manner that might call into question the realization of the public interest. A private interest shall be any benefit, right or convenience that may be exercised by an official person and people connected to him/her" (Stojiljković, *op. cit*., p. 208). Targeting corruption also points to the importance of who can be considered the office-bearer. Stojiljković believes that the method of coming to a public function (selection and appointment procedure) is a clear demarcation of who can be considered as an official (Ibid).

In Serbia, the following forms of political corruption are distinguished: 1) trade in parliamentary mandates and buying votes; 2) illegal financing of political parties; 3) corruption in the field of public procurement; 4) corruption in the judiciary; 5) conflict of interests of senior state officials (Jovanović, 2007, p. 34).

POLITICAL PROCES AS A NOTION

One of the contemporary paradigms of politics is also a pluralistic one which emphasizes the importance of interest and political participation (Samardžić, 1993, pp. 882-883). Modern societies are pluralistic which means that a large number of different interests need to be institutionally channeled and transferred into corresponding collectively binding decisions. There is a great importance of the political process as a bridge between society and the state.

Milan Podunavac emphasizes that "the political process is the central notion of a pluralistic theory of political systems. It represents a way of making decisions that address conflicts of interest in social institutions and groups, especially as a way of making decisions of importance for the balance, functioning and development of the political system" (Podunavac, 1993, p. 858).

In this definition of the political process, all the neuralgic points of contemporary political systems are presented in a concise manner, among which the most important is the resolution of conflicts of interest and the establishment of a balance as a prerequisite for the further functioning of the political system. If there is no balance, the system is falling apart. Political corruption is precisely based on the conviction of some wealthy interest groups that the procedures of the political process can be circumvented through money. By manipulating the institutions of the system, instead of reaching the best possible outcome at the end of the political process, usually very bad solutions and decisions are reached and they very quickly call into question the democratic aspect of the whole system. The perception of the public in which citizens lose confidence in political institutions is the best indicator of this.

The phase model of the political process represents a clear, practical and detailed elaboration of its theoretical basis. The model recognizes three types of actors, depending on whether the articulation, aggregation or realization of interests is in question: 1) permanent *ad hoc* organized interest and lobby groups from the sphere of economy and civil society; 2) parties as key actors of interest aggregation; 3) parliament, government and state administration as key stakeholders in the realization and evaluation of interests (Stojiljković, 2012, p. 91). The political process, according to this model, has six successive phases: 1) articulation of the problem;

2) defining the problem; 3) defining policy; 4) program development; 5) implementation; 6) evaluation (Ibid).

If we take a look at this model, it becomes clear that by politics, as a process of creating and implementing collectively binding decisions, are not hierarchically controlled only state actors or political parties, but also many other actors (trade unions, associations, civic initiatives, etc.) (Ibid). It is also the most important feature of democracy as a form of government.

The very term "process" indicates the fact that these important political decisions are not made quickly and easily, as far as the democratic order is concerned, but with the participation of all interested actors. Political corruption is threatening to call into question all these characteristics of the political process, most of all the democratic component. In this regard, the responsibility of the actors of the political process is high.

ACTORS OF POLITICAL PROCESS AND POLITICAL CORRUPTION

Starting from the political approach to the problem of corruption and the concept of the political process as the axis of the political system, we will try to accurately determine the deterministic effect that the position of the actors of the political process has on the role and obligations of citizens, associations of citizens (NGOs), political parties and the state in the process of fighting political corruption.

The wider interest backbone of the action of the political process actors is the care for the common good and the preservation of the democratic foundations of the political order. Without this, one could not imagine a political process in which all the special social interests would come to expression. Political corruption just leads to the fact that the interests of some individuals or organized groups, due to a corrupt deviation of the political process, have an unfair advantage over the legitimate interests of other social groups.

As the strongest actor in the political process, the state (and its organs) has the greatest responsibility to achieve a proper environment in which all other actors would have equal chances to participate in the political process.

THE CITIZEN

From the basic theoretical definition of the term "citizen", the necessary guidelines for its functioning in the political process can be derived. A citizen is "a man with certain rights and duties within a socio-political community for which he is bound by relatively permanent belonging" (Matić, 1993, p. 345). Based on the possession of *political rights* and duties, the citizen is perceived as "a political subject in a relatively equal political relation to other members of the political community and to that community or state" (Ibid).

What does this definition tell us? We believe it is important to emphasize the link between rights and duties, as well as equality with other members of the political community. Apart from being the bearer of sovereignty, a citizen exercises their basic rights only through direct or indirect participation in the political process. Activism is indispensable especially if these rights are limited or called into question by a corruptive act of other actor in the political process.

Milan Matić says that the notions of "general good" and "good society" cannot be imagined without a fair and consistent application and acceptance of the principle of citizenship

(*op. cit*., pp. 349-350). It is also the basic orientation of all citizens' efforts in order for them to confirm their position by participating in making important political decisions which, if distorted by a corrupt act, can be in conflict with the common good.

NON-GOVERNMENTAL ORGANIZATIONS

The role of civil society in preventing corruption is high. From the time of Alexis de Tocqueville, the theoretical point of view is known according to which civil society represents the barrier for the abuse of power. An additional theoretical basis for civil society organizations in their fight against political corruption represents the civil strategy of democratic development. Its main social actors are *citizens*, forms and channels of the action are the *association of citizens*, and the basic field of action is a *system of values* (Pavlović, 2004, pp. 289-293).

It is necessary to point out the importance of building a system of values that would represent the political and cultural basis of a democratic order and at the same time defend corruptive activities in the field of politics. If citizens, who make up the composition of both political parties and state institutions, have a developed awareness of the necessity of preserving a democratic order, then the occurrence of corruption will be significantly reduced. The work of non-governmental organizations, in that sense, should focus most on educating citizens about democracy, which is definitely only the front of the political process in which citizens step in as mostly formed individuals.

Without the cooperation of the state and civil society organizations, there is no effective fight against political corruption. The asymmetry of power in favor of the state should be appropriately compensated in terms of logistic and resource support to civil society organizations. This is stated in the National Strategy for the Fight against Corruption in the Republic of Serbia: "It is necessary to improve the institutional and legal framework for the support given to civil society organizations. State support will be provided to all users who while submitting an application for the allocation of funds from public sources, file a statement of non-existence of conflicts of interest and an internal act on anti-corruption policy (e.g. Code of Ethics), as well as bookkeeping reports on income and budget management." This document shows that the main goal is to create a "stimulating framework for directing more active participation of civil society organizations in achieving strategic goals"(Narodna skupština Republike Srbije, *op. cit*.).

POLITICAL PARTIES

Political parties are a particularly important agent of the political process and therefore of political corruption. Although corruption as a social phenomenon is older than political parties as we know them today, there is no doubt that, with the growth of their importance in the overall functioning of modern political systems their susceptibility to corruption has simultaneously increased. Corruption began to rise in most European countries in the 1980s, and there was a breakdown of party systems in countries that had already developed clientelism (Ravlić, 2010, p. 1247). What were the structural conditions for such a scenario? Corruption spread most extensively when the parties were poorly socially rooted and organizationally over-decentralized and fragmented, as was the case with contemporary professional voter parties (*op. cit*., p. 1261). Contemporary European parties, due to dependence on state resources (organizational stabilization and electoral motivation), are increasingly subject to

corruption and at the same time alienated from society (Ibid). In Southeast Europe, corruption is systemic, and the parties are its main institutional source (Ibid).

It follows from all of the above that the role of political parties in the fight against political corruption is greatly hampered by the course of their development in the last couple of decades. But the overcoming of such a situation can simultaneously represent their most important political goal from which all the players of the political process would benefit. Political parties are a necessary segment of contemporary political systems and an actor of interest aggregation in the political process, which of course makes them an unavoidable factor of the fight against political corruption, as well.

As it is the case with civil society organizations, where the theoretical basis for their fight against corruption was a civil strategy of democratic development, political parties are about a political strategy for democratic development. Its main social actors are *political elites*, forms and channels of the action of the *political party*, and the basic field of action *of the institution* (Pavlović, *op. cit*., pp. 289-293).

POLITICAL LOBBYING

Lobbying in the political process, if conducted according to pre-established procedures, is a legitimate way of presenting different interests to decision-makers. However, at the same time it can be the perfect polygon of wanton political corruption.

It is important to provide institutional conditions for the use of lobbying as a means of influencing public policy making. In Belgrade, on April 17, 2018, the Public debate on Draft law on Lobbying was held. On that occasion, State Secretary at the Ministry of Justice Radomir Ilić stressed that it is "one of the preventive anti-corruption laws that should increase the transparency of changes in public administration regulations, contribute to the visibility of various processes, initiatives for change, application of laws and other acts in our country as well as to strengthen the integrity of the officials" ("Državni sekretar Ilić: Zakon o lobiranju preventivni antikorupcijski zakon", 17.04.2018., para. 2). One of the main goals of this law, according to Ilić's words, is to reduce the gray zone in any social aspect (Ibid). He pointed out that "the application of such a law depends not only on its quality, nor on the general conditions required for its implementation, but the Law on lobbying is one of the laws where an absolute will to apply it is necessary" (Ibid). Representatives of civil society organizations (Transparency Serbia, Pištaljka, Association of Serbian lobbyists, etc.) participated in this debate.

THE STATE

The state, as we have already pointed out, is the strongest and most authoritative actor of the political process in proportion to its power and resources. That is why it is the target of political corruption. Collective binding decisions behind which stands the state must be created in a democratic form and without interfering with political corruption. The work of the authorities at both the republic and the local level must be transparent and subject to control. Whether it is about adopting or implementing regulations and decisions, the public i.e. citizens must be familiar with all the details of the process and must be provided with direct or indirect participation.

The current National Strategy for Combating Corruption was adopted in 2013 and covers the period up to 2018. It is a top-notch, program-based platform for the fight against cor-

ruption, and "fourth branch of government" (independent and regulatory body) has a very important role in its implementation.

Authorities and public authority holders involved into preventing and combating corruption must be guided by the following principles: 1) the principle of the rule of law; 2) the principle of "zero tolerance" on corruption; 3) the principle of responsibility; 4) the principle of comprehensiveness of the application of the measures and co-operation of the subjects; 5) efficiency principle; 6) transparency principle (Narodna skupština Republike Srbije, *op. cit*.).

The current normative framework for the prevention of corruption in Serbia consists of: the Law on Financing Political Activities, the Law on the Anti-Corruption Agency, Law on Free Access to Information of Public Importance, the Public Procurement Law, the Law on Privatization. As can be seen, the list of laws illustrates at the same time key "neuralgic points" when it comes to preventing corruption. Action Plan of Republic of Serbia for Chapter 23, within the framework of Serbia's accession negotiations, has defined key issues of corruption prevention: conflict of interest, financing of political activities, access to information, public procurement, security of whistleblowers, professionalism and the integrity of state administration (2015, p. 137).

The main institutions involved in the corruption prevention process are: the Anti-Corruption Agency, the Anti-Corruption Council, the Public Information Officer and the Personal Data Protection, the State Audit Institution (Ibid). These institutions at the same time enable a clearer communication of the state with the citizens. An example of this is one of the accountabilities of the Anti-Corruption Agency that deals with solving citizens' requests. Controlling the financing of political entities is also an important aspect of the Agency's work, which can serve to determine whether political parties, through unlawful financing, are instrumentalized by certain social centers of power which, upon the arrival of parties to power, "charge" their service.

CIVIL SOCIETY, STATE AND POLITICAL CORRUPTION

Bearing in mind the position of the actors of the political process, which is at the same time the point of merging the society and the state, we believe that there is a need for: 1) the perception of anti-corruption engagement as an open and two-way activity relied on 2) permanent raising and revitalization of the democratic capacities of the political process that would have a defense against corrupt threats function, 3) cooperation, coordination and division of responsibilities between citizens, their associations, political parties and the state.

Article 5 of the United Nations Anti-Corruption Convention establishes the obligation of the State to "develop and apply or reflect a vibrant, coordinated corruption prevention policy that improves the participation of the society and reflects the principles of the rule of law, good governance of public affairs and public property, integrity, transparency and responsibility".

Anti-corruptive engagement as a two-way activity is a situation where civil society organizations point out to the state authorities the different suggestions on what to do in the fight against political corruption while providing them with the necessary resources for their further work in this field.

In the National Anti-Corruption Strategy "the process of adopting regulations in the Republic of Serbia at all levels is characterized by insufficient public participation, and that is why many regulations become an instrument of corruption and abuse instead of being a means of their eradication" (Narodna skupština Republike Srbije, *op. cit*., p. 3). Such a conclusion therefore further emphasizes the need for a permanent increase in the democratic

capacities of the political process in the sense of revitalizing the existing ones and providing new channels for the influence of citizens and civil society organizations on the creation of regulations and decisions with the power of collective validity.

Coordination of anticorruption activities is carried out both at the level of state authorities as well as between state and civil society.

State-level coordination was achieved on August 7, 2014, when the Government of Serbia established the Coordination Body for the implementation of the Action Plan for the National Anti-corruption strategy. The members of the body are the President of the Government (as President), the Minister of Justice, the Minister of Finance and a member of the Anti-Corruption Council.

On the other hand, cooperation between the executive and civil society in Serbia has entered a new phase by establishing the Office for Cooperation with Civil Society on 15 April 2010. Civil society organizations were involved in the preparation of the National Anti-corruption Strategy and the accompanying Action Plan. The activities of civil society organizations in the field of reviews of the organs of state in the fight against corruption mainly concern public hearings, conferences, roundtables and various debates organized by them or by state institutions (Narodna skupština Republike Srbije, Ibid).

Civil society organizations are involved in the process of co-ordination in the implementation of anti-corruption measures through the Office for the Cooperation with Civil Society to which they submit their reports and proposals, and then it forwards them to the Coordination Body.

EXAMPLES OF GOOD PRACTICES

The political role of Aleksandar Vučić in the acceleration and deepening of the fight against corruption in Serbia from 2012 to today is very significant. It only points to the importance of the existence of a political will on the part of the state government to enter into a decisive struggle against this very dangerous social phenomenon.

We are stating this due to the fact that the relation of citizens to corruption significantly changed in 2012 due to changes in the republican government. The newly-elected Government of the Republic of Serbia (July 2012) declared the fight against corruption as one of its important tasks, which relatively quickly reflected on public attitudes. Namely, in December of that same year, the percentage of citizens who evaluated the work of state organs concerning the fight against corruption as ineffective reduced (35% -9%) (CeSID & UNDP, 2015, p. 9). In December 2009, the number of those who would give the bribe was 24%, and three years later the number fell to 15% (Ibid). In the same survey, the number of those who report cases to the authorities also increased (16% -24%) (Ibid). Further actions by the executive authorities were directed at the coordination of anti-corruption activities of state organs. The above mentioned Coordination Body was established in 2014, and its first president was Aleksandar Vučić, then Prime Minister.

Political corruption is a phenomenon that is present at all levels of government. The announced changes to the Law on Local Self-Government unambiguously point to the conclusion that prevention of corruption is important also at the local community level. According to the amendments to the law, which at the time of writing this text were adopted at the Government session and are waiting to be included in the agenda of the National Assembly, "Municipal budgets would not be adopted in the future until citizens give their opinion, and investment planning should also be in their hands ("Pitaće građane o trošku", May 3, 2018).

Deputy Minister Branko Ružić said that changes to the Law on Local Self-Government make it possible for the Institute for Direct Democracy to be implemented better and a greater involvement of citizens in making decisions that are important to their communities (Ibid).

CONCLUSION

Harmonization of the general interest and the interest of particular social groups is a challenge faced by every modern political system in the world. This challenge is not easy. Adopting important political decisions and laws requires, in addition to political engagement, acting within certain institutional "game rules" as well. These rules have been established and concern the respect of basic democratic values. Each thought about their circumvention is the first step in taking corrupt action. If someone wants to use money to influence an important systemic law (i.e. about political parties) then it is political corruption *par excellence*. The trade on the influence of making important political decisions (or failure to make them!) is a sign of bad practice in the functioning of the political system.

Democracy is not a once-for-all established form of government, but, on the contrary, it requires the effort from every new generation of citizens to preserve its basic heritage. Political process as the heart of the political system and the place of the union of society and the state is most susceptible to the attempts of political order corruption. The determination of the actors of the political process to preserve the core values of democracy must be of strategic nature and directed against political corruption. In this connection, citizens and civil society organizations rely on the civilian strategy of democratic development, the political parties rely on the political strategy of democratic development, and the state with their organs relies on a special strategic document as an umbrella, normative act of the fight against political corruption, the production of which should represent the result of the work of all policy actors.

The struggle against political corruption should be a permanent systemic task and challenge of actors of the political process. Their role in this is clear and stems from their position in the political process itself. The burden of the fight against corruption cannot be limited merely to the state and it shouldn't be left entirely to the state either. Citizens and civil society organizations do not have enough capacity to carry out anti-corruption projects themselves.

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PERSPECTIVES OF FOUCALT'S PANOPTICISM IN 21ST CENTURY – IS THERE VOLUNTARY BREACH OF PRIVACY ?

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Abstract: Michel Foucalt in his famous book "Discipline and Punish" created special social theory of panopticism. Originally this theory came from Jeremy Bentham's proposal for better control of convicts, but it was widely used in any system where a lot of people should be controlled for their possible unexpected behavior. Foucault viewed the Panopticon (Bentham's word for the system of buildings with glass walls that can be controlled easily from one point- round building situated in the center of other cells) as a symbol of the disciplinary society of surveillance. He stated that the surveilled person was in that case always "the object of information, never a subject in communication". Always visible to the controller, but never knowing for how long was truly controlled, kept in the state of constant fear of possible punishment, the controlled subject losses its privacy for good.

Modern theorists think that there is voluntary breach of our privacy especially with appearance of social (digital, internet) networks and with their growing significance for individuals. No one can force us to share and infringe our own privacy but our need for informing other people what we do .Some say that there are 3 kinds of panopticism today, that we are talking about in our paper, as well about the theory of Panspectrons. All those new shapes of panopticism were created by new, modern society and its new needs-changed structure of society links to the changed concept of punishment, which is not that physical as in earlier centuries.

Our work is a modest attempt of summarizing some modern theories in context of the main theory of Panopticism, as well as kind of prediction what else can happen to our privacy if something in people's behaviour won't change.

Keywords: *Michel Foucalt, Panopticism, Jeremy Bentham, modern theories of panopticism*

ORIGIN OF PANOPTICON

In the 21st century, the one's privacy is considered as one of greatest treasure that everyone should and must keep secured. The only breach of privacy, that is legal, is breach of privacy for some special groups of people, in very specific situations. We are willing to infringe privacy of a child and look over his/her communication with others, especially on the internet and on social networks, in order to keep it safer in this digitalized world. Also, it is considered legal to infringe the privacy of people in order to find out who committed a crime or in case of prisoners- when they've decided to break the law, they accepted, in a way, future infringement of their privacy, their normal life and prosperity.

In a today's world of everyday's breaking of everyone's privacy, in a ways that we are almost not conscious of, we should consider some of the most efficient ways to control someone's privacy-at least, the most efficient in the theory. One of those ways is the Panopticon, a type of institutional building and a system of control designed by the English philosopher and social theorist Jeremy Bentham in the late 18th century (Bentham, 1995 : 29-95). This Bentham's writing (of the same name-Panopticon) had the next subtitle: "Panopticon, or the Inspection House : containing the idea of a new principle of construction applicable to any sort of establishment, in which persons od any description are to be kept under inspection; and in particular to penitentiary-houses, prisons, houses of industry, work houses, poor-houses, manufactories, hospitals, mad-houses and schools, with a plan for managment"(Bentham, 29). We see that Bentham, while developing this concept of Panopticon, had in mind special and big groups of people that are not easily controlled because of their lack of discipline, illness, or because of their lack of scrupules-which, in a way, lead them to prison because of breaking the law.

This idea came originally from Bentham's brother Samuel, who was at that time working in White Russia (today's Belarus) for Prince Potemkin (Steadman, 2012). The idea was to build cheaper system of prisons, who is also set to fully and better control prisoners, but even to control all bigger groups of people or children. It was also considered as a possible solution for schools[1], psychiatric asylums etc. The scheme of the design is allowing all inmates *of* an institution to be observed by even a single guardian without the inmates being able to tell whether or not they are being watched. Although it is physically impossible for the single guardian to observe all the inmates' cells at once, the fact that the inmates cannot know when they are being watched means that they are motivated to act, as they thought they are being watched all the time. That means that Panopticon is built upon a fear of watched or controlled people that somebody is watching over them always and that constant fear is making them to act properly with no much effort, without almost any expenses. The other question is, how much is that kind of breaking the privacy psychologically healthy and good for those watched people, and will they ever, when they get out of the Panopticon, gain confidence again in themselves, and in the world that surrounds them. Besides that, is the whole game of power and control of the guardians good even for them- because there is a slight possibility that, encouraged with the power of fear that they have upon the others, they will lose themselves and soon they will need the same control as those that they are controlling and watching over.

What is the Panopticon in general? The concept of Panopticon consists of a circular build structure with an "inspection house" (Bentham, 33-34) [2]at its center, from which the manager or staff (or guardian(s), watchmen) of the institution is (are) able to watch the people[3]. The

1 The inspection principle and its application in this kind of institutions was especially elaborated in works of Samuel's wife, Mary Sophia : Mary Sophia Bentham, 'On the Application of the Panopticon, or Central Inspection Principle to Manufactories and Schools', The Mechanics' Magazine, Museum, Register, Journal, and Gazette, vol. 50, (January-June 1849) pp. 295–7, and later on works. For more of her articles, see the bibliography mentioned in paper of Philip Steadman: Samuel Bentham's Panopticon.
2 In short, the Bentham's idea of Panopticon looks like this:"The building is circular. The apartments of the prisoners occupy the circumference. You may call them, if you please *the cells*.These cells are divided from one another, and the prisoners by that means secluded from all communication with each other, by partitions in the form of radii issuing from the circumference towards the centre, and extending as many feet as shall be thought necessary to form the largest dimension of the cell. The apartment of the inspector occupies the centre; you may call it if you please the *inspector's lodge*. It will be convenient in most, if not in all cases, to have a vacant space or area all round, between such centre and such circumference. You may call it if you please the *intermediate or annular area*. About the width of a cell may be sufficient for a passage from the outside of the building to the lodge. Each cell has in the outward circumference, a window, large enough, not only to light the cell, but, through the cell, to afford light enough to the correspondent part of the lodge".
3 There is a story how Samuel Bentham invented the first panopticon. While he was working as an architect for Prince Potemkin, he had a relatively unskilled workforce, so he sat himself in the middle of this factory and arranged his workforce in a circle around his central desk so he could keep an eye on what

people, who are stationed around the perimeter of the structure, are unable to see into the inspection house (which is the centre of the Panopticon building). Because they don't know when they are truly watched, prisoners, for example, will always try to act properly in order to be considered as good inmates, and maybe gain early exit from prison, because of the good behavior. On the other hand, as the guardians cannot be seen, they need not be on duty at all times, effectively leaving the watching to the watched-who are in constant fear with the idea that they are always watched[4].

No real Panopticon prisons in compliance with brothers Bentham designs have ever been built, although Jeremy Bentham was granted an amount of money to start with the preparation for building one. But in a way, it started the new era of especially prison architecture. Some prisons included the so- called panoptic tower (Dobson , Fisher , 2007: 307-323)[5], but that was not enough to keep the idea of surveillance and discipline mostly under fear of prisoners, or other groups of people that must be under the constant watch. Prisoners are now kept behind walls, with a lots of cameras that are following every their step, and a lot of armed guardians. Sometimes, even all of that mentioned isn't enough.

Jeremy Bentham was opponent of torture and corporal punishment-thus he was devoted to finding some new ways of punishing (Roth, 2006:33). But the Panopticon that he and his brother invented could cause more psychological damage than other corporal sanctions. That state of fear links sets of internal or external stimuli to patterns of behaviors, which can lead further to anxiety or to violence (Adolphs, 2013: 79). There are studies showing that stimuli that communicate or trigger fear can really lead to anxiety and violence, even when perception of those stimuli is subliminal, at least to some degree. It is the same situation like in the Panopticon- when people don't know whether they are truly under surveillance or not (which in the other mentioned case can lead to constant fear of being watched over). Conscious experience of fear is it's the most important part, and it is the matter that is discussed in biology, psychology and even in criminology, because it can lead, in a way, to the pathology, that can generate more violence than we had in the beginning. Therefore, fear as an emotion and as a state of mind must be observed from these mentioned aspects, and the results of these considerations must be included in discussion about Panopticon.

Fear was maybe powerful weapon against people's possible breach of law earlier. We think that the people overcome the fear as a threat to their personality and their privacy, especially in the 21st century. With set of human rights and mechanisms for practicing them, people changed the previous paradigm of Panopticon, so the system, which granted them all the rights, must be in a state of constant fear of its own members and especially that its members are – always watching on the system and how is it working. Fear is very manipulative mechanism (Smith, 2006): the one, who mastered it, can rule the world, not only the specific minor groups of people. So, it seems that the Panopticon has turned against its own creator, but why and for how long?

MICHEL FOUCAULT'S PANOPTICISM

Panopticon raised again as a metaphor for modern disciplinary, controlling societies because of the need for observing all and everything: "The ideal point of penalty today would be

everyone was doing". It was the only way that he could control all the workers and ongoing processes.

4 But this also raised a question, who will control the controllers? Having in mind that for example prisoners are in constant fear of being watched, they can decide, maybe, one day, no to fear any more. And they can even find out that there are no guardians, or that there are few of them, which can lead to mutiny.

5 For example: England's Millbank Penitentiary (1821) and the Virginia State Penitentiary (1800).In Pennsylvania the Western Penitentiary, near Pittsburgh (1826).

an indefinite discipline: an interrogation without end, an investigation that would be extended without limit to a meticulous and ever more analytical observation, a judgment that would at the same time be the constitution of a file that was never closed, the calculated leniency of a penalty that would be interlaced with the ruthless curiosity of an examination, a procedure that would be at the same time the permanent measure of a gap in relation to an inaccessible norm and the asymptotic movement that strives to meet in infinity" (Foucault, 1995:202). According to Foucault, modern societies are somehow frightened of their own members (we mentioned this in previous chapter), whether they truly broke the law, or not. In order to reduce its own fear, society controls its own members by putting them in state of constant fear and possibility that this means that they are watched, controlled, so it will be better for them to behave good. Only the structure of full visibility of some or all members of the society will help to the society to control them. Only the Panopticon Gaze can save the society from its own members, said Foucault ironically. The members of society became only objects; when they are depersonalized, they lose their (imagined) power over the society as a structure, and on the other hand the society efficiently controls all of the objects at the same time.

Something very bad has happened here, when the society wants to control its members in this way, whether they are offenders or not. Because of that, some call the Panopticon "an ordering machine" and also "a kind of sociomaterial assemblage for sorting and arranging social categories and individual persons so that they can be seen and understood" (Simon, 2005:4).

The Panopticon thus creates "a consciousness of permanent visibility as a form of power, where no bars, chains, and heavy locks are necessary for domination any more" (Allmer, 2012:22). "Just a threat of surveillance could be efficient and would help discipline the society and make all, or at least the most of the members to act according to rules and norms. This is discipline, "it arrests or regulates movements; it clears up confusion; it dissipates compact groupings of individuals wandering about the country in unpredictable ways" (Foucault, 1995:219). Although Bentham invented Panopticon as kind of external control, modern societies and their members implemented the panopticism as kind of their own internal surveillance. So, it is quite correct to consider panopticism as a self-controlling mechanism, by which are people encoded from the earliest days of their lives. Foucault described the principle of panopticism as "ensuring a surveillance which would be both global and individualizing whilst at the same time keeping the individuals under observation" (Foucault, 1995: 6). Practicing panopticism, according to Foucault, every system does three very important things:

-exercises its power at the lowest possible cost (a small group of people can handle with that- so the costs for that group is almost negligible, having in mind what impact the whole concept has - "a

superb formula power exercised continuously and for what turns out to be a minimal cost" (Foucault, 1995: 155));

-extends the effects of this social power to their maximum intensity (although that power is questionable, we cannot underestimate it);

-very efficiently links "economic" growth of power with the output of the apparatuses (for example military or educational) within which it is exercised (Foucault, 218)

We can see that central idea of Foucault's panopticism is the systematic ordering and controlling of people "through subtle and often unseen forces" - especially by fear, possible humiliation, or deprivation. This is not only physical confinement of people in prison (meaning, confinement of their freedoms of movement, public speaking, etc.), but also a psychological confinement as well.

Foucault's disciplinary modalities of power, have evolved over time, says Connor Sheridan in his thesis "Foucault, Power and the Modern Panopticon" (Foucault, 219) and the question

is, when the society will be ready for admit the simple truth: that we became the prisoners of ourselves, trading with our own privacy, and that there is almost nothing that can be done to make the future brighter.

The prison that was born in Foucault's work was ideological prison, in which we are now, more than ever, thanks to development of the technology and our impartiality. Prison is not around us, but- inside us.

MODERN PANOPTICON THEORIES

Future belongs to the technology. We can say that technology shapes our future in ways that we even couldn't imagine them as possible. It became our very first need, in order to be better, faster, and smarter for ourselves and for others around us. As well as some advantages, technology has some very serious disadvantages that, in combination with the topic of surveillance, can cause very serious problems. That is why modern theorists consider everything having in mind importance of technology in our lives. That is why we decided to list some modern theories of panopticism, as follows.

One of those theories is the ***Three Panopticons Theory***, posted by **Dobson and Fischer**. In their article they (Dobson, Fisher, 303) defined three types of panopticon:

1. ***Panopticon I*** is the very same and original model of Jeremy Bentham. It is considered outdated.

2. ***Panopticon II*** is George Orwell's concept of Big Brother- intensive use of technology in order to establish totalitarian government. Resembles a lot on Hobs' definition of state of constant war, where everyone can be considered as and an enemy to anyone. In this case, everyone could be watched by anyone, which is a state of constant fear and reconsideration of our own activities.

3. Panopticon III came with 90es of the 20th century and it is now present. "The total surveillant society","the stolen geography","the tragedy of the information commons" is the synonyms for "human-tracking systems," a new category of surveillance technologies based on geographic information systems (GIS), the Global Positioning System (GPS), and two-way radio transmission. Every man, or thing has its own geographical position, and it is surveilled with the help of several satellites. Even if you are searching something on the internet, you are always leaving your IP address. The paradigm changed: earlier, people were frightened to be surveilled, but today they are providing the material for their own tracking and they are very willing to do that.

Certainly we can say that those mentioned Panopticons aren't that different, but that they are the same concept evolving through times and due to technology advancement. Especially the third type of panopticon individualizes every subject and makes their personalized watching even easier than ever before.

Further, the **theory of Panspectron** is very interesting and also- very terrifying. The Panspectron was coined by **Manuel De Landa** . He says that"…there are many differences between the Panopticon and the Panspectron /…/ Instead of positioning some human bodies around a central sensor, a multiplicity of sensors is deployed around all bodies: its antenna farms, spy satellites and cable-traffic intercepts feed into its computers all the information that can be gathered. This is then processed through a series of "filters" or key-word watch lists. The Panspectron does not merely select certain bodies and certain (visual) data about them. Rather, it compiles information about all at the same time, using computers to select the segments of data relevant to its surveillance tasks" (DeLanda, 1991:24). There we can raise a

question, whether the theory of collecting personal data while playing video games online or just while surfing the internet, is kind of exaggeration or not (Taylor, Rooney, 2016:170_171).

In Panspectron there is no specified subject about who is system collecting information. Information is collected about everyone and everything, and is easily filtered when the specific name appears. But, as we mentioned earlier, in Bentham's Panopticon, subject were observed, and controlled by fear, but today -subjects voluntarily give all information about him/her, without any fear. Even if there is conscience on privacy, need of modern man to share and spread information about himself/herself to the world is exceeding intentions of the first Panopticon to control the society. People by themselves give the information about themselves in hands of those who want to control them. The concept of the Panspectron was considered at first theoretical, speculative, or at best predictive, especially in part when seemed impossible for people to hide physically from other people (Braman, 2006).

Mary Chayko is speaking about **Super connectedness** (Chayko, 2017). She says that technology created more and more ways for people to become connected and to impact the world around them, all those connections started slightly to change the world and the society, leading to a fully transformed everyday life. "Our societies are super connected, and so are we", says Chayko in her book, "never in human history have so many been connected to so many others, in so many ways, with such wide-ranging social implications". That visibility of our lives, thoughts, opinions, activities further lead to voluntarily breach of our privacy, which further lead to a paradox- By willingly revealing our own lives, we unconsciously facilitate the process of monitoring it by others. We thus create the Panopticon by ourselves, without any fear.

Although there are a lot of warnings about possible surveillance and that we are obligated to respect the rules of behavior even more today than it was required in the 19th century, or earlier, we willingly provide insight into our own life, behavior and activities. "Personal information collected through this process is routinely mined, gathered, shared, and sold for purposes that range from commercial to political to legal"(Chayko, 2017 : 26). And that is kind a terrifying one.

Some authors say that there is **"polite society**", that is much more like to Panopticon itself. Defined as 'a state of conscious and permanent visibility that assures the automatic functioning of power", polite society monitored itself by using constant visibility of all activities that makes the supervising power invisible, automat zed and deindividualized (Ylivuor, 2014:171). Politeness was kind of power practiced over women especially in 18th and 19th centuries. With knowing that every their move is carefully watched, they self-monitored themselves (like in the panopticon) and corrected their own behavior in advance to- behavior that required politeness itself.

The polite society mechanism later became The **Hawthorne effect** - the type of reactivity in which individuals modify an aspect of their behavior in response to their awareness of being observed. The term was coined by Henry A. Landsberger, after the psychologist Elton Mayo has conducted a research in Hawthorn Works factory during the 1920s and 30s. The effect was defined as "and increase in worker productivity produced by the psychological stimulus of being singled out and made to feel important" (McCarney et alia, 2007:9). It is important to mention that this kind of control has its implications for some clinical research and it is spread in medicine, biology, etc. Today, this Hawthorne effect evolved to **Surveillance**, which is "watchful vigilance from underneath" or the surveillance of oneself as a form of self-maintenance (Kingsley, 2008:349).

Very interesting is also the concept of **"looking glass self",** although it is not that modern**.** It was coined by sociologist, Charles Horton Cooley in 1922. (Horton, 1922 : 168-210), in order to explain the need of people to provide information about themselves to others, so that they could, based on the opinions of others about themselves, gain their own opinion about them-

selves. This "looking glass self" was even more facilitated by the emergence of information technology in the 21st century- that constant availability and continuous connectedness gives to digital tech users a channel they are eager to use, and on the other side, gives to the system of surveillance all the data it needs, without any special requests or without intimidation .

Nowadays, having in mind all that we said earlier in this paper, it became impossible to hide even electronically, on **World Wide Web**. According to a research that was done in Austria in 2008, 79.2% of the respondents[6] "knew or guessed right that many social networking platforms store certain data even after accounts have been deactivated by the users" (Fuchs, 2009:54-56) [7]. More than 70% of the respondents disagreed to the statement that one need not be afraid of surveillance if one has nothing to hide- it means that they are not understanding the concept of surveillance and the pressure that comes from the knowing that you are under the surveillance, and in according to that, that they are obligated to care more about their behavior. More than 50% think that our personal data, stored on social networks platforms are not safe – but we still leave them there. And the most interesting part of this research is that 87.0% of the respondents "agree or agree strongly that corporations have a strong interest in gathering personal data" (Fuchs, 2009:60)- so, why are we leaving our data and our privacy on open for them, especially when we know that our data, that is unlawfully collected, can also be further abused?

That is why The European Court of Justice determined, in 2014, that individuals have ***a right to be forgotten***-"the right, under certain conditions, to ask search engines to remove links with personal information about them". People must have control over their personal data, said ECJ. So, why did they share them in the first place and infringe themselves? Some theorist say that it is all up to understanding of the privacy itself – "continental law is avidly protective of many kinds of "privacy" in many realms of life, whether the issue is consumer data about credit reporting, workplace privacy, discovery in civil litigation, the dissemination of nude images on the Internet, or shielding criminal offenders from public exposure" (Whitman, 2004:1160). Due to that, Whitman says that the American culture is more liberal and it "often seems obvious that Americans do not understand the imperative demands of privacy at all" (Whitman, 2004:1158), so the 24/7 surveillance can be something normal for them. He sees the battle between "a European interest in personal dignity, threatened primarily by the mass media and an American interest in liberty, threatened primarily by the government" (Whitman, 2004:1220). The Panopticum is therefore real threat for the first ones, and also a great pleasure and fun the other ones.

CONCLUSION

It seems that the Panopticon, the whole architectural and ideological concept of it, is pretty unnecessary while in this modern world every information is just a click away. Also, sanctions changed their structure and purpose .There are needed more new sanctions, that would efficiently punish the modern perpetraitors and be reasonable cause and warning for all those who are thinking about doing something bad. What should we else do? There is a simple truth about social relations today: our own privacy, that we are so worrying about, is every day voluntarily broken because of our own ego, greed, or stupidity. Even if we are not always watched, we are almost praying for the attention of the whole world upon us. So, there

6 In this research 1979 people took part. The sample of respondents was double-stratified.

7"The Facebook privacy policy says that data can be stored for an unspecified amount of time after users have deactivated their profiles. My Space's privacy policy says that My Space continues to store personally identifiable information (name, email, address, phone number, credit card number) after profile deletion for judicial reasons" (Fuchs, 2009:55) .

is no need to be feared of possibility to be watched all the time in order to pursuit social norms of behavior. Without any fear, we are letting the world come into our bedrooms and elsewhere not for the punishment, but for the fun.

Some theorist see the Panopticon model as a very important marketing tool-companies watch over their consumers habits, needs and decide how to expose their products, in order to increase their sales. The Internet became a cultural necessity, because people believe that the Internet is the best way to communicate, consume information, or consume products, says Tom Brignall (2002). Having that in mind, we can say the implementation of the panopticon model can be perceived by users as a necessity because they are" convinced that such a structure would protect them or make their transactions online more efficient" (Brignall, 2002).That efficiency is not purely economic, but is also political and democratically, educational and also a great communication tool. So, it seems that we don't have any problem at all regarding surveillance through internet .It seems that the surveillance is quite good for us.

Panopticon became the reverse paradigm of itself: while there was a fear of being watched all the time needed for establishing the order in society earlier, today some are ready to break all social and legal norms to be watched all the time, not considering that putting themselves willingly under surveillance is punishment (as Bentham and Foucault stated), but a reward. Original Panopticon, in a way, could be a very cost-effective form of human control, and the future will tell how it might be good for people, social relations and the humanity in whole. In order to do that, the people must realize the benefits of their own, secured privacy again, on the one hand, and they must protect themselves by adopting the values and rules of conduct prescribed by the state in which they live, not because of the echo of sanctions that may follow a futile violation, but because they truly believe in the welfare of the whole society, on the other hand.

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ECONOMIC VICTIMISATION OF WOMEN IN THE LABOUR MARKET[1]

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Abstract: The paper first emphasises the fact that the equality of all citizens is clearly declared as part of the value system of modern states. International organisations, such as the United Nations and Council of Europe, began to promote combating abuse of and violence against women as a goal-oriented behaviour during the last decade of the twentieth century. Relevant studies in the field have endeavoured to explain the concept of economic victimisation of women in the labor market by drawing attention to the fact that it can be seen as a result of persistent domestic violence. They have focused on poverty, homelessness and social assistance for women who are in the labor market. The results of these studies show that unemployment at the time of social crisis does not only initiate the commission of property and other crimes but also deviant behaviours. According to the economic theory, the economic model of crime makes individuals choose between crime and legal work, depending on the characteristics, rewards and the price of either of them. This is important in those periods when individuals can only get odd, rather insecure and poorly-paid jobs. The theory states that the higher the level of the economy deterioration in terms of reducing number of jobs or even lower payments, the higher the crime rate. Job loss, inability to find new employment in the profession, inadequate remuneration all contribute to creating a situation which defines a new quality of family relationships. A newly-built attitude, which has become part of the cultural milieu of the new generation, the wish to illegally reach wealth in an easier, faster and more effective way will be much harder to eradicate. The Strategy to combat violence against women, the importance of training of women and the range of options contribute to the improving of their status and enable access to material goods and resources. The authors of this paper refer to certain macro-economic mechanisms that countries can implement to reduce the victimisation of women in the labor market and improve their economic situation, such as measures of gender budgeting, developing social entrepreneurship, subsidies and social cooperatives.

Keywords: *women, labour market, economic theory.*

1 This paper is a result of the scientific research conducted within the project *"Protection of Human and Minority Rights in the European Legal Area*" (No 170946), supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia
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INTRODUCTION

An entangled multitude of written or spoken ideas, attitudes and assumptions related to the concept of human rights requires a wider consideration and a particular focus on certain labels, such as "Understanding human rights" (Wolfgang, Nikolov, 2003: 18), because the content of such labels not only clarifies the concept, but also emphasises the necessity of renewing knowledge. The reason for this is to be found in Article 1 of the Universal Declaration of Human Rights proclaimed in 1948, which stipulates three basic tenets: freedom, equality and solidarity, or in other words "all human rights for all", which simultaneously presupposes the interdependence of the content. Freedom should include freedom of thoughts, conscience, religion, expression. Therefore, human rights are to be regarded as an instrument of securing equality of all people and protecting them against all forms of discrimination while providing the full enjoyment of human rights. One of the achievements of this is certainly gender equality. Solidarity represents the combination of economic and social rights, such as social security, fair remuneration, adequate standard of living and health and access to education. Considering the stated principles and their scope of influence, human rights are divided into five categories: political, civil, economic, social and cultural human rights. These rights are standardised by the Universal Declaration of Human Rights, as well as in two Pacts, so that they together form the Charter of Human Rights (Wolfgang, Nikolov, 2003: 18).

However, the development of the idea of human rights standardisation and realisation did not end with the adoption of the Universal Declaration of Human Rights in 1948. In the eighties of the twentieth century, characterised by an economic growth in the countries of Europe, as well as in the United States, the idea of establishing special rights for victims of unauthorised behaviour or for the individuals affected by devastating consequences of natural disasters was founded. With the development of victimology and critical criminology in the sociological thought of the Western world, as well as national economies that could fund the recovery process from the consequences of victimogenesis among citizens in general and among vulnerable groups of individuals in particular, the following rights pertaining to the field of human rights were distinguished: the right to peace, development and healthy environment. The reference materials related to the sources of human rights consider these rights to be the solidarity rights.

The necessity to distinguish and protect particularly vulnerable groups of individuals in one community has thus become essential. Vulnerability is defined as an inadequate or marginalised position that individuals and groups of people have in one society in comparison to other members of that society. The World Health Organisation determines that vulnerability is the degree to which a population, individual or organization, is unable to anticipate, cope with, resist and recover from the impacts of disasters. Vulnerable groups of people are children, pregnant women, elderly people, malnourished people and people who are ill or immunocompromised and who are particularly vulnerable when a disaster strikes. Poverty, as well as its common consequences such as malnutrition, homelessness, poor housing and destitution, is a major contributor to vulnerability[3]. UNESCO particularly focuses on the following groups: women with no or low literacy skills, out-of-school youth and young people with low literacy and basic skills, prisoners, refugees, indigenous people[4].

The most significant legally-binding documents on the suppression of all forms of violence against women were passed and adopted during the last two decades of the twentieth century.

3 World Health Organization. *Vulnerable groups*. http://www.who.int/environmental_health_emergencies/vulnerable_groups/en/, Accesssed: 26.5.2018.
4 UNESCO Institute for Lifelong Learning. *Vulnerable Groups*. http://uil.unesco.org/literacy/vulnerable-groups/, Accesssed on May 26, 2018.

One of them is the Convention on the Elimination of All Forms of Discrimination against Women[5].This Convention, together with its Optional Protocol, states numerous measures to be taken with the purpose of eliminating discrimination against women. Furthermore, it states the commitment to the task of eradicating all discriminatory laws and providing an efficient protection of women against discrimination by establishing adequate legal institutions[6]. Moreover, the UN Declaration on the Elimination of All Forms of Violence against Women[7] declares that states are required to improve their penal, civil, work and administrative sanctions in legislation in order to punish any violence against women and to compensate women for any damage done to them due to violence, as well as to adopt a series of other documents for the prevention of violent behaviour against women.

ECONOMIC VICTIMISATION AND POSITION OF WOMEN IN THE LABOUR MARKET (CAUSES AND CONSEQUENCES)

Work represents one of the most important aspects of the economic, cultural, political and personal prosperity of an individual which is interwoven into the process of development and advancement of one community. Work, understood as an overall human activity aimed at the creation of practical and useful benefits, results in the production of material and spiritual goods. Human existence and satisfaction of all human needs essential for their development as generic beings depend on work[8].

Criminologists agree upon the statement that numerous subjective and objective factors influence nonworking. It is difficult to determine whether nonworking is objective and caused by unemployment or whether it is a habit of an individual. Objective reasons imply a lesser possibility of employment due to economic crises or economic restructuring, the factors that an individual cannot confront or explicitly change. On the other hand, an overt indifference on the part of an individual regarding the sustention and improvement of their existence caused by particular mental states or personality deviations determines that individual's social status as permanently unfavourable and the individual as possessing the traits of a social misfit[9], i.e. the existence characterised by permanent domestic violence, vagrancy or homelessness.

Criminology studies, based on the methodological concept of gender equality, emphasise that various forms of social nonconformity exhibited by strikingly vulnerable groups of people, such as women, children or persons with disabilities, are frequently related to the experiences of domestic violence[10]. It is occasionally referred to as family violence, but the

5*Convention on the Elimination of All Forms of Discrimination against Women* was adopted by the UN General Assembly in its resolution 34/180 on December 18, 1979. It was instituted on September 3, 1981 in accordance with Article 27 (1). Ninety-four states ratified or adopted the convention by March 1, 1988. In "Law on Ratification of the Convention on the Elimination of All Forms of Discrimination against Women", "Official Gazette of SFRY", International treaties, no. 11/1981. http://www.zenskavlada.org.rs/downloads/konvencija_diskriminacija.pdf, Accessed on May 21, 2018.

6 Article 1 of the Convention defines "discrimination" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7*UN Declaration on the Elimination of All Forms of Violence against Women.*A/Res/48/104, UN 1993.http://www.prs.hr/index.php/medunarodni-dokumenti/un-dokumenti/270-un-deklaracija-o-uklanjanju-nasilja-nad-zenama Accessed on May 21,2018.

8 Konstantinović-Vilić, S., Kostić, M. (2006). *Penologija.* Niš: SVEN, p. 160.

9 In Perović, K. (1998). *Kriminologija.* Podgorica, Nikšić: Univerzitet Crne Gore, p. 338.

10 Domestic violence is discussed not only on the national level but also on the international level. The documents adopted by the UN and Council of Europe are among the most significant ones as regards the standards on domestic violence. They include the following: *Beijing Declaration and Platfrorm for*

latter is a broader term. Domestic or family violence is defined as all acts of physical, sexual, psychological or economic violence that may be committed by a family member notwithstanding the fact whether this kind of violent behaviour is legally incriminated or whether the abuser has been already reported to the police. Domestic violence disrupts security and relationship of confidence among family members, being one form of control and exercise of power over family members.

Spouse abuse is regarded as one form of domestic violence. It is defined as all forms of physical and sexual abuse committed by initmate partners, regardless of the fact whether this kind of violence has been reported, detected or tried in court and penalised. Criminology reference materials prove that it is very difficult to make a clear distinction between economic exploitation, political domination, psychological obsession and physical violence since one form of violence breeds another[11].

Besides domestic violence, unemployment is one of the factors that may drive a woman to vagrancy or homelessness. It is worth noting that the Hammurabi Code, which contains only the fragmentary provisions of criminal law, states in paragraph 143 that if a woman "is not a good housewife but a tramp, if she spends recklessly and neglects her husband, then she will be thrown into water"[12]. Vagrancy, within the scope of law, represents rather one form of a woman's disobedience and laziness that would result in poor housekeeping than a structurally determined behaviour that requires to be penalised.

Homelessness represents one of the crucial social issues in Europe that needs to be resolved explicitly and without any political ambiguities. The FEANTSA (European Federation of National Organisations Working with the Homelessness) is the organisation that attempts to resolve the social and legal status of homeless persons in the most enthusiastic way. It has developed the typology of homelessness and housing exclusion known as ETHOS (European Typology of Homelessness and Housing Exclusion). ETHOS typology is based on the conceptual understanding of three domains that constitute the word "home" and of the fact that the lack of either of them leads to homelessness. Having a "home" may be comprehended as the following: realisation of adequate housing (living space) where an individual and their family have property right (physical domain), preservation of privacy and enjoyment of certain relationships with others (social domain) and possession of legal right to residence (legal domain).

The absence of any of these three determinants inevitably contributes to the development of four concepts of homelessness: roofflesness, houselessness, living in insecure housing and living in inadequate housing. ETHOS classifies homeless persons with respect to the quality of their life or the nature of the situation at "home", i.e. living situation. These conceptual categories imply thirteen types of homeless persons, established with the purpose of running and applying various political procedures, such as: mapping of homeless issues, development, monitoring and evaluation policy to each of them. These categories are people living rough (living in the streets or public spaces, for example), people in emergency accommodation (living in overnight shelters or low threshold shelters), people in accommodation for the homeless, people in Women's Shelter (accommodated due to experience of domestic violence),

Action adopted in 1995, *Declaration on the Policy of Combating Violence against Women in Democratic Europe* adopted in 1993, *Recommendation of the Council of Europe* from 1582, *Domestic Violence against Women* from 2002. The starting point for all these international acts is that "violence against women is a manifestation of historically unequal relationships of social power between men and women, which have led to the domination and discrimination against women by men and the prevention of the full progress of women".

11Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M. (2012). *Kriminologija*. Niš: Centar za publikacije Pravnog fakulteta u Nišu, p. 122.

12 Jasić, S. (1968). *Zakoni starog i srednjeg vijeka*. Beograd, p. 37.

people in accommodation for immigrants, people due to be released from institutions, people receiving longer-term support, people living in insecure accommodation, people living under threat of eviction, people living under threat of violence, people living in temporary/non-conventional structures, people living in unfit housing, people living in extreme overcrowding[13]. Particularly targeted vulnerable groups are protected by issuing an explicit request for securing adequate housing in the form of various documents adopted by the UN or International Labour Organisation (ILO). They are: labourers (ILO, 1962), refugees (ILO, 1961), children (UN, 1959, 1989), women (UN, 1979), elderly labourers (ILO, 1980), immigrant labourers (ILO, 1990), minority groups (UN, 1991, indigenous people (UN, 1993).

LEARNING ABOUT ECONOMIC FACTORS OF POVERTY, HOMELESSNESS AND UNEMPLOYMENT OF WOMEN

A person is both a natural and social being and as such they endeavour to satisfy their needs which are prone to change depending on economic, social, cultural and technological prospects available in society. Social processes, such as urbanisation and industrialisation, have considerably augmented human needs but they have also inspired people to strive for a socially organised and institutionalised fulfillment of these increased needs, even in situations when individuals can hardly accomplish that.

Social and economic strata and classes determine human essential needs. Experience teaches us that essential human needs are those that are to be satisfied so as to convince members of one society or social class that their life is "normal" regarding the present division of labour[14]. This is related to the concept of the market basket or consumer basket, which represents a sample of goods and services offered at the consumer market and which are essential to the existence of individuals and families.

Judging by the living conditions all over the world and in our country as well, it is evident that not all categories of population can satisfy their fundamental needs essential to their survival – enough food, adequate apparel and footwear – so that sociological reference materials describe them as "living in poverty"[15]. The concept of absolute or extreme poverty is a condition of physical survival in which individuals can fulfill only basic human needs necessary for their existence. Therefore, the concept of absolute poverty is universally accepted. It includes standards of human survival that are generally alike for people of the similar age and built regardless of the place of origin. Any individual living below this universal standard is considered to be living in poverty.

However, since it is not possible to exactly determine all the elements that constitute this standard, sociologists have introduced the concept of relative poverty, which defines poverty "in relation to the overall social standard in one society"[16]. The proponents of this concept believe that poverty is a culturally conditioned phenomenon which cannot be determined on the basis of any universal standards. Human needs are not the same everywhere and they differ even within one social community.

Poverty may be also defined as a condition characterised by multidimensionality in which people are deprived of any options or alternatives needed for having one fulfilled life. The phenomenon of multidimensionality of poverty is characterised by a permanent or tempo-

13 ETHOS - European Typology of Homelessness and Housing Exclusion
http://www.feantsa.org/files/freshstart/Toolkits/Ethos/Leaflet/EN.pdf.Accessed on April 27, 2010.
14 Heler, A. (1981) *Vrednosti i potrebe*, Beograd: Nolit, p. 95-99.
15 Gidens, E. (2005). *Sociologija.* Beograd: Ekonomski fakultet, p. 317.
16 *Ibidem*.

rary deprivation of resources, abilities, options, security and other possibilities necessary for acquiring an adequate living standard and enjoyment of civil, economic, political, cultural and social rights. Poverty may be recognised variously: lack of income or other means essential to securing one's existence, starvation and malnutrition, poor health, limited or no access to education and other fundamental services, higher mortality rate including fatal diseases, homelessness and inadequate housing and accommodation, insecure environment, social discrimination and isolation. Life on social margins and "marginal citizens"[17]are important characteristics of human rights negation when deciding on civil, social and cultural life of one community.

A large number of criminologists, promoting various theories in the field of criminology as an independent science, have examined the relationship and connection between economic (external) conditions and criminality.

Criminal psychology, for instance, defines criminal behaviour as related to psychological personal traits, whereas social factors and their impact are recognised only as side effects. Yet, the frustration theory poses the question of crime activities committed by lower, i.e. poor social classes. The frustration-aggression theory states that "frustration always precedes aggression and that aggression is the sure consequence of frustration"[18].The inability to satisfy fundamental needs of one's family breeds dissatisfaction which further leads to frustrated and aggressive behaviour. This explains the criminality rate among people from lower social classes who react to their own feeling of dissatisfaction by committing property and other criminal acts[19].

One of the pioneering sociological explanations of the connection of poor living conditions and criminality rate is provided by a Dutch criminologist, Bonger, in his book *Crime and Economic Conditions*, in which he emphasises bad living conditions and rejects hereditary attitudes of anthopologically and biologically-oriented criminologists. Bonger writes: "Deprived of the means of production, the worker sells his work only not to starve. Capitalists use this state of emergency for workers and exploit it. (...) First, we have seen that the current economic system and its consequences subdue social feelings. The basis of the current economic system being exchange of goods, the economic interests of people are inextricably opposed. (...) This state of affairs particularly suffocates human social instincts;in those with power, it develops the feelings of domination and insensitivity towards the misfortunes of others while at the same time arousing jealousy and servitude of those who depend on them" (Bonger, 1916: 128)[20]. Therefore, Bonger concludes that "a large portion of economic crime (and prostitution to some extent) has originated in greediness caused by the present economic environment"[21].

17 Milutinović, M. (1988). *Kriminologija*, Beograd: Savremena administracija, p. 380.
18 More on the frustration-aggression theory in: Dollard, J. (1939) *Frustration and Agression*. In: Konstantinović-Vilić, S., Nikolić-Ristanović, V., Kostić, M., op. cit., p. 279.
19 The acceptance of the concept of learned aggression (unlike the concept of inherent aggression) means that society can implement control of aggression by developing the mechanisms of learning, i.e. the mechanisms of conditioning of its citizens. Aggression control is fundamental to the survival of one social community. Additionally, the concept of inherent aggression results in the attitude that the right of a society to control aggression is limited to the extent at which this control jeopardises the biological existence of its citizens. Fatić, A. (1995). *Kazna kao metafora*. Beograd: NIU Službeni list SRJ, p. 37.The question arises whether this idea related to "the psychiatric theory of punishment and aggression problem" (Fatić) might be understood in a wider context, i.e. within the scope of property crimes caused by poverty and committed to satisfy essential human needs and their adequate punishment.
20 Ignjatović, Đ. (2002). *Kriminološko nasleđe*. Beograd: Policijska akademija, p. 128.
21 Ignjatović, Đ., op. cit., p. 131.

Certain criminologists, such as Hale, Hayward etc.[22], determine a distinct trend in criminology, such as strain theory, social disorganisation (Chicago school), economic theory, theory of control and theory of opportunities and routine activities, which all describe the interconnectedness between poverty and crime, and which have been postulated and developed within the new trends of criminal sociology.

Emile Durkheim is one of the principal founders of the strain theory. His particular contribution to sociology and criminology was his concept of anomie postulated in the late nineteenth century by which he described the situation when all social rules are either destroyed or "blurred" and confusing to such an extent that people do not know what to expect from one another. This inevitably leads to the feeling of mutual isolation and meaninglessness of life.

Durkheim wrote his books in the nineteenth century, immediately after the industrial revolution boom that transformed rural agricultural communities into urban spaces dominated by manufacture and industrial production. According to Durkheim, anomie – a condition of normlessness–increases over the periods of accelerated social changes and leads to dissatisfaction, conflicts and deviations. These phenomena occur during periods of economic recession, but also during periods of enormous prosperity[23].

Merton also discusses the strain theory. Yet, unlike Durkheim, he does not regard crime and anomie as being caused by current social changes. He explains crime as a potential reaction to the strain created by unequally available prospects for success. The progress of achieving the "American Dream", i.e. material succes and striving to achieve it create an excessive anxiety, repulsion, neurosis and socially unacceptable behaviour, i.e. anger-based deliquency[24].

The Chicago school emerged at the University of Chicago in the period between the two world wars. It specialised in urban sociology and empirical research into the urban environment and ecology. Authors such asTracher, Shaw and Mckay created a concept according to which certain city boroughs and poor suburbs directly affect criminal behaviour of its citizens. An unsuccessful and barely accomplished adaptation of immigrants is a good breeding ground for deviant gangs that reject the existing social values. The representative authors of the Chicago school examined the deviations present in large cities and concluded that they were invariably triggered by certain behavioural patterns characteristic of local communities and social groups, poor ghettos and black ghettos known for a high rate of crime and other forms of deviant behaviour, such as prostitution and suicides. Their ideas have been criticised for extreme subjectivity[25].

The economic theory states that the economic model of crime presupposes individuals who have to choose between criminal activities and legal work depending on the offered possibilities, obtained rewards and the price of either of these options. Thus, individuals choose either to do a legal job or to commit crime as regards their job opportunities and wages in the labour market in comparison to the possibilities of illegal profit, crime hazards, types of punishemnt and its seriousness in case they decide to undertake criminal activities. This argument once revealed that the essence of this problem is in the choice of either legal or illegal job. Yet, it later exapanded to include the situations in which one person could perform both legal and illegal activities simultaneously. This phenomenon is closely related to the periods when individuals are offered only low-paid and insecure jobs. This theory emphasises that any deterioration of economy, such as unemployment problems or poor and low wages, increases the rate of crime[26].

22 Hale C., Hayward K., Wahidin A., Wincup E. (2005). *Criminology.* Oxford University Press, p. 326.
23 Dirkem, E. (1963). *Pravila sociološke metode*. Beograd: Savremena škola, p. 70-71.
24 Ignjatović, Đ., op. cit., p. 158.
25Bošković, M. (2005). *Kriminologija*. Novi Sad: Pravni fakultet u Novom Sadu, p. 56-58.
26 Hale C., Hayward K., Wahidin A., Wincup E., op. cit., p. 328-329.

The control theory is frequently called the theory of social ties or the social bond theory. It was created by Trevor Hirschi. According to one of Hirschi'spostulates stated in 1969, the emphasis is put on social bonding which includes attachment to families, commitment to school and work, involvement in daily activities and the belief that these things are important, the elements that inhibit us to commit crime. The first tenet of socialisation is loyalty expressed towards family and school, while the second one is commitment and is related to time, energy and efforts dedicated to education which bind all individuals by moral social values. The third tenet is involvement in the activities done in the conventional interests of the community. According to Hirschi, such an engagement leaves one little time for deviant behaviour. Hirschi defines the final social bond as faith, the bond which promotes the system of social values, i.e. the respect of laws and individuals and institutions that obey them[27].

Cohen and Felton developed the Crime Opportunity theory or the theory of Routine Activities which explains the connection between poverty and crime. These authors believe that criminals make rational choices based on the targeted victim and great rewards with little effort and risk. This theory is largely oriented towards the study of the life style or everyday, routine activities of people and how they influence criminal behaviour. Interpreting criminality as a mass phenomenon, Cohen and Felson emphasise three elements that contribute to the emergence of criminal behaviour: a motivated offender, a suitable victim and the absence of a capable guardian. Any change in routine activities of people (a higher rate of employment of spouses or partners, frequent trips, single-person households, etc.) means that numerous households and apartments are empty during the day and that people are thus deprived of any protection from crime[28]. Cantor and Land state that the increasing level of unemployment leads to an increase in the number of both motivated offenders and capable guardians. It means that the increasing rate of unemployment certainly causes a rise in the number of motivated offenders but also in the number of capable guardians since more capable individuals stay at home due to their being unepmployed. Therefore, these persons can secure and protect their own property but it will also mean a higher level of informal social control or neighbourhood watch. On the other hand, the very fact that unemployed individuals do not commute any more decreases the risk of their being victims of street crimes[29].

Hans Von Hentig explores the economic conditions of crime and emphasises that the majority of criminal activities are characterised by the attempts to fulfill everyday human needs in an illegal way (Hentig, 1959: 247). However, since there are various forms of human needs, their satisfaction does not imply only the fulfillment of an "existential minimum" but also of some other impulses and instincts. Thus, certain crimes are not exclusively property crimes. Hentig particularly points out the following economic conditions: unemployment, inflation, poverty, legal discrimination resulting from economic weakness, etc. According to Hentig, inflation is detrimental for members of the middle class, professionals with salary and retired persons. Wars, exiles and deportations, refugees, black market and smuggling give rise to all forms of deviant and socially inadequate behaviour[30].

The issue of unemployment[31]in the periods of social crises does not only cause more property crimes or other forms of crime but also more instances of deviant behaviour in general. According to Dorothy Thomas, economic elements prevail in the suicide rate of men during

27 Marsh, I. (2006). *Theories of Crime*. London and New York: Routledge, p. 109.
28 Reid, S.T. (2003). *Crime and Criminology*. Boston: McGrawHill, p. 136.
29 Hale C., Hayward K., Wahidin A., Wincup E., op. cit., p. 330.
30 Hentig, H. (1959). *Zločin – uzroci i uslovi*. Sarajevo: Veselin Masleša, p. 247.
31According to Booth, unemployed persons represent a distinct social class comprised of those who are incapable, misfit and poverty-stricken due to their being unemployed (Booth, C. (1892). Life and the Labour of the People of London, Vol. 1, p. 150. In: Hentig, H., op. cit., p. 247).This interpretation of one's personal characteristics is certainly not accorded with contemporary economic conditions in our country, for example.

economic crises. The periods of unemployment are characterised by fewer marriages, which is one of the reasons for the increasing suicide rate[32] (Hentig, 1959: 256).

The loss of job, inability to find new employment, inadequate wages and salaries are the factors that determine a new quality of life and family relations. Elli Ginzbergthus terms an unemployed male "a retired husband" – a deposed patriarch of the family. His being unable to perform the prescribed duty of the family provider undermines his reputation, which according to this author, results in "their loss of authority regarding their wives, and sometimes elder children who can now compare their unemployed father to other, more successful fathers"[33].

CONCLUSION

Since the last decade of the twentieth century, characterised by drastic changes implemented in the state organisational structure in the territory of former Yugoslavia, evident social differences based on different social status of newly-formed and restructured classes of the rich and the poor have been created. Starting from the period of the latest national wars up to the beginning of the twenty-first century, the impoverished middle class of our country, which once could successfully and legally satisfy its various needs far above the existential border line, has lost their economic power and influence on different areas of social life. The principles postulated by traditional theories on poverty-conditioned emergence of various forms of delinquent and devious behaviour should be discussed in the contemporary context, respecting the fact that the members of the contemporary poor class in Serbia are now the groups of people not traditionally considered to belong to this class.

However, the regulations and principles adopted from the Convention on the Elimination of All Forms of Violence against Women (CEDAW) by former SFRY are still binding for the Republic of Serbia.

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32 Hentig, H., op. cit., p. 256.
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DEPRIVATION OF LIFE CAUSED BY POLICE ACTS – DIFFERENTIATION BETWEEN LEGAL AND ILLEGAL ACTS[1]

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Abstract: Within the deliberation on police acts, the special focus of scientific and expert public is on the cases where police acts caused death. In addition to the gravity of the suffered consequence, the fact that deprivation of life does not necessarily have to be the result of illegal police acts makes this phenomenon especially delicate. It is known that members of the police have at their disposal such coercion measures whose application in the extreme case can result in death. Having the exclusive right offers greater possibility to police officers than common citizens to violate the right to life of other persons. At the same time, each individual case of violating other person's life is justified by interests of achieving the police function. The key problem is that this legitimate right can mask illegal acts of the members of the police and circumstance in which they can commit murder under pretence of police authority. Therefore, it can be said that deprivation of life in the police acts is a very complex phenomenon whose understanding demands detailed legal and criminological analysis. The aspiration of the author in this paper is to explain this concrete phenomenon, at least partially, especially in the sense of distinguishing between legal and illegal deprivation of life, in order to offer some suggestions in the conclusion on how to minimise the violation of the right to life during the police act while not jeopardising the achievement of the police function.

Keywords: *police, coercion, deadly force, deprivation of life, murder*.

INTRODUCTION

Protection of the basic rights and freedoms of citizens is undoubtedly one of the main functions of the police. Paradoxically, the police acts at the same time can be the source of violation of these rights and freedoms. In this sense, the use of coercive measures is especially indicative. Coercion is undoubtedly the most explicit characteristic of the police profession,

1 The paper is the result of scientific-research project entitled 'Criminal in Serbia and Instruments of Social Reaction' (*Kriminalitet u Srbiji i intrumenti državne reakcije*) financed and implemented by the Academy of Criminalistic and Police Studies in Belgrade. Scientific research cycle of 2015-2019. The project leader is Prof. Biljana Simeunović Patić, PhD
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through which its purpose is often defined. It is also the most delicate segment of the police acts, given that its application seriously interferes with human rights and freedoms. Therefore, it is not surprising that most of researchers, in their attempt to understand the work of the police and the system of value of its members, are focused mostly on some of the aspects of coercion application.

It is indisputable that the nature of police work demands use of coercion and in this regard members of the police have the right to use different coercive measures. However, the problem is the fact that the existence of the police in a society is justified primarily by the need to solve problems where coercion is necessary, which often puts its application at the central place of the police work. In these circumstances, limiting coercion to a reasonable level and using it as the last resort of control is an exceptionally hard task, which simultaneously makes the occurrence of overstepping it more likely, along with the misuse of this police power.

Starting from the fact that police officers have the right to use these coercion means, the application of which can deprive a person of life, and that they can overstep or misuse this right, the correct interpretation of the true nature of their acts demands more detailed explanation. In this sense, it is necessary to make a clear distinction between legal and illegal deprivation of life. The important precondition for this is to understand the notion of 'deadly force' and legal frame for its use during police acts.

THE NOTION OF DEADLY FORCE AND LEGAL FRAMES FOR ITS USE

According to one of the common interpretations, deadly force means 'the force used with the intention to cause serious physical injuries or death' (Roberg, Crank, Kuykendall, 2004: 398). If we review the problem in the context of committing murder (each action that can cause death), it seems that there is no doubt in the interpretation of deadly force. It is obvious that this logic guided Skolnick and Fyfe (1993: 37) when they classified certain forms of using physical force into the deadly force of the police (e.g. limiting air flow by pressing jugular vein). It is true that physical force, especially if used by trained individuals, is a special skill that can be used with intention to deprive a person of life. In this sense, physical force can be treated as a personal 'deadly weapon'.

Despite this rational explanation, the use of physical force cannot be classified as deadly force, at least in its legal sense, because police officers are not authorised to use physical force in this way and intensity. Actually, each case in which the use of physical force resulted in death of a person to which this force was applied should be interpreted as overstepping or misuse of physical force. Thereby, when a member of the police uses physical force with the intention to deprive someone of life, he or she is actually misusing the right to apply physical force. If, on the other hand, he or she did not have the intention of depriving the concrete person of life by using physical force, but the death was caused by inflicted injuries, then this act can be interpreted as overstepping in the use of physical force.

It is noticeable that deadly force in literature is mostly confined to the use of firearms. It is, however, worth a reminder that the use of firearms does not include the situation when an authorised police officer fires in the air in order to call for help, give warning or signal. Furthermore, this 'preventive use of firearms' - taking a gun out of a holster and pointing it in a certain direction without firing the ammunition - should not be treated as its use. Actually, only the situations when a bullet is shot in a direction of a concrete person, regardless of the consequences this causes, are considered the use of firearms. Therefore, it is necessary to

differentiate three categories that can help in determining the manner and degree of use of deadly force - death, causing injury and non-injury.

Although death can also occur as a result of using other coercive means, the fact is that only firearms in their base represent deadly force, since it is the most suitable means for causing deadly consequences. In addition, in armed interventions of the police, the possibility and certainty of causing human casualties is the greatest, which thus creates the biggest burden of responsibility of the members of the police when using firearms. As Greenwood explains: 'In none other field is the price of professional incompetence so high as in armed operations. Nothing will so powerfully destroy the trust in the police from injuring or killing innocent citizens' (Punch, 2011:3).

By having the right to use deadly force, police officers undoubtedly have greater possibility than common citizens to violate the right to life of other persons. Simultaneously, the position provides them with possibilities to justify the cases of violating the said right with interests of achieving the police function. Moreover, this privilege can be easily misused, because as some authors warn, 'legitimate police right can actually be masked as illegal acts of the police, in the same way as the legitimate authorisation to use deadly force can mask the intent of a police officer to kill a suspect in order to satisfy the sense of justice' (Kappeler, Sluder, Alpert, 1998:60).

Based on this claim, it can be easily concluded that police officers, contrary to other citizens, have the exclusive right to deprive other person of life and by doing so not be criminally responsible for this act. This perception, however, is an oversimplified interpretation of a complex phenomenon. Everything becomes clearer when the concrete phenomenon is viewed in the context of the existing distinction between notions of 'homicide' and 'criminal homicide'.

According to the specific approach, which can be observed in the Anglo-Saxon legislation, the term homicide is used as the widest term - it includes the criminal act of homicide, i.e. criminal homicide, as well as other acts that despite meaning deprivation of life of another person are not criminal acts, but acts permitted by law (Kolarić, 2008: 47). Taking into account the legal grounds for their application, these cases of deprivation of life could, by analogy, be seen as 'legal homicides', or more accurately legal deprivations of life. As a typical example of this phenomenon there is an execution of the capital punishment. However, could this term also include deprivation of life that occurred during the execution of police acts?

In order to answer this questions we have to analyse legal conditions under which police officers can use firearms. In relation to this, it is important to point out to the following provision: 'In the performance of police duties a police officer may use firearms only if he cannot achieve a legitimate policing goal by using other means of coercion and when it is absolutely necessary to repel a simultaneous unlawful life-threatening attack against himself or another person.'

It can be noticed that the conditions for using firearms, in contrast to other coercive measures, are much stricter, which is expected having in mind that it is the last level of police coercion. In this sense, it is especially indicative that in order to use firearms, the necessity for its use is not enough (other coercive means do not guarantee result), but the use is actually absolutely necessary in order to protect lives of people or perform other legal tasks, and only in cases of immediate threat to life.

This interpretation implies the conclusion that for the use of deadly force it is necessary to meet two key conditions - absolute necessity and immediate threat to life, which is additionally explained by the following: 'In order to make the use of firearms in line with legal provisions, i.e. in order to make it absolutely necessary in order to remove immediate threat to life, it is necessary to cumulatively meet the following conditions: • the use of firearms must

be focused on repelling the attack; • the use of firearms must be necessary for repelling the attack; • firearms must be used only against the attacker, and • the use of firearms must be simultaneous with the attack' (Milidragović, Milić, 2011: 208-9).

Furthermore, it is important to stress that regulation of this issue exceeds the frames of national legislations, which is one more proof of the importance and delicacy of this segment of the police work. More concretely, Crawshaw mentions two international instruments - Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and Basic Principles on the Use of Force and Firearms by Law - which protect public against arbitrary deprivation of life, limiting the use of deadly force to a degree that is objectively reasonable and necessary in circumstances police officers face that demand the force that is proportional (Bowling, et al., 2004: 16).

Additionally, it is important to mention the European Convention for the Protection of Human Rights and Fundamental Freedoms, and especially the part that discusses the absolute necessity as a general condition for using firearms in the performance of police work. As stated in the Convention: 'Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

In this regard, it is interesting to observe the stance of the European Court of Human Rights expressed in the verdict Andronicou and Constantinou v. Cyprus (1998) EHRR 491, that deprivation of life, as an exception from inviolability of the right to life, must be necessary and strictly proportional. In this case, the Court concluded that Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was not violated when the Cyprian special police forces deprived a kidnaper and a hostage of life, because it was deemed that this solution was absolutely necessary (Risimović, 2009: 394).

The importance of this case lies predominantly in the fact that members of the police can find themselves in temptation to use deadly force even against an innocent person. This situation, which undoubtedly creates a great dilemma for police officers when they need to decide how to act, gives rise to a wider discussion, which exceeds the frames of this paper. Here, predominantly, the question is whether the deprivation of life of an innocent person can be treated as absolutely necessary and as such be classified as a justified use of deadly force. Starting from the principle of necessity and proportionality, deprivation of life of an innocent person could be seen as absolutely necessary only if this act would protect lives of a larger number of people.

Taking into consideration the consequences that can arise from using deadly force, police officers are rightfully demanded to cautiously use firearms, while simultaneously the competent authorities are obliged to research each case where human lives have been lost by the police acts with due seriousness and caution. Therefore, Petrović concludes: 'If we speak about standards that police officers must respect in the situation when the used force was absolutely necessary and resulted in taking a life, then we must see these standards not only as legal grounds for justifying the use of force and grounds permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms, but also as standards that mean later investigation of the entire event in an urgent, official, objective, independent, adequate and efficient manner' (Petrović, 2010: 82).

Although deprivation of life is in conflict with the basic principles of the police work, this does not exclude the possibility that it can happen. However, even if death is the result of police intervention, in most cases it is not an intentional act of a police officer to murder a concrete person, but is actually the case of inherent incident or as Klinger (2004: 35) states: 'Death

is a by-product of using firearms, and not its goal.' Despite this, delicacy of these incidents and gravity of inflicted consequences are reason enough to carry out detailed investigation, during which it is necessary to determine whether the deprivation of life in the given case was justified (grounded) and necessary.

Protection of other persons' lives, which is a key imperative and reason behind the existence of the police profession, is mostly mentioned as the first and basic condition for using firearms. However, this condition, by itself, is not enough. In order to meet it, there has to be an attack that directly threatens human life. Dempsey and Forst remind that after civil unrests during the 1960s, most American states developed the rule of 'the protection of life', which enabled members of the police to use firearms against persons that used deadly force against police officers, as well as in certain situations of committing violent crimes. However, these authors add that during the 1990s, the first members of the FBI (Federal Bureau of Investigations) and then other police departments started using the standard of 'immediate danger', which comes down to application of deadly force only in situations where lives of police officers and other people are in direct danger (Dempsey and Forst, 2005: 393).

The principle of immediate danger was, as we could see, adopted by the Serbian legislation and made more precise by the following provision: 'An unlawful life-threatening attack against a police officer or another person within the meaning of paragraph 1 of this Article means an attack with firearms, imitation firearms, dangerous tool or an attack with another object, or attack in another way which may threaten the life of a police officer or another person'.

In order to meet the necessary conditions for using firearms the attack must exist realistically (actually) in the outside world. Thereby, this condition should be assessed in both subjective and objective sense. In the subjective sense, the attack is real then an attacker is aware that he or she is engaging in activity that can directly endanger human life, and in the objective sense if this attack can actually cause direct threat to human life. Otherwise, as explained by Jovašević (2007: 123) 'if a police officer wrongfully assesses that an attack exists, i.e. that it still lasts, and as a result uses firearms, then this constitutes exceeding of power, i.e. unlawful use of firearms'.

Additionally, in order for the use of firearms to be legal the attack cannot be caused by illegal or unofficial acts of a police officer. In this regard, Šantek (2005: 184) warns that 'a police officer cannot provoke with evil intent other person to attack with a cold weapon in order to shoot this person, but he or she is obliged to protect life and body even of those persons against whom he or she must apply coercive means in a way to cause as light harmful effects as possible'.

Based on the previously mentioned, it can be concluded that authorisation to use deadly force, although it is an exclusive right of police officers, is not absolute or unlimited, but it is actually clearly bounded by legal norms, violation of which turns a police act into an illegal one. Based on this, we can conclude that lack of fulfilment or existence of legal grounds for using deadly force automatically makes depravation of life illegal. Thus, this act of a police officer actually becomes criminal act, for which the literature uses mostly the term 'police homicide'.

FORMS OF ILLEGAL DEPRAVATION OF LIFE

From the discussion so far, it can be concluded that depravation of life in police acts is not a straightforward phenomenon, but that it actually has numerous manifestations and variations. Additionally, all these individual forms and ways of deprivation of life by police

officers have numerous characteristics, which cannot be recognised within a single review of this phenomenon, which is why they need to be analysed independently. In terms of illegal deprivation of life, i.e. 'police homicides', the special characteristics of this act are provided predominantly by the characteristic of a perpetrator (police officer) and circumstances in which deadly consequences occur (during performance of police duties and tasks). It is certain, however, that this phenomenon shares numerous common characteristics with other 'general' types of homicide. Thus, the important factors in the analysis of 'police homicides' are some of the usual criminological and criminal justice categorisations and classifications of homicide.

In this regard, one of the most important classifications is the one advocated by Carolyn and Richard Block who classify all homicides into two groups: • instrumental - homicide is a mean to achieve a certain act; and • expressive - the intention of a perpetrator is exclusively to deprive a certain person of life (Ignjatović, 2015: 112). By assessing the essential characteristics of police homicides in the context of this classification, we can conclude that most of these cases actually have the character of instrumental homicides. Namely, the fact is that police officers in performance of their official duties resort to using deadly force (as well as to violence in general) mostly to achieve another goal (e.g. to protect other persons' lives or to repel an attack that directly threatens their safety), and not with an exclusive intention to deprive other person of life. More accurately, in police homicides, deprivation of other person's life in most cases is not a reason by itself, although this possibility should not be easily and completely dismissed. Therefore, in the case of so-called 'police executions', the primary motive of a perpetrator is seen in the very act of violence and causing deadly injuries to another person.

The interesting approach to this phenomenon is offered by Wolfgang and Ferracuti (2012:111) by classifying separately the so-called normal homicides, differentiating between their two basic groups: 1) contemplated, intentional, planned and rational homicides; and 2) crime of passion or with intention of causing injuries, but not depriving of life. It is noticeable that these authors put the notion of normal in a wider context, viewing normal homicides predominantly as anticipation of pathological homicides. This approach offers possibility to identify completely different types of deprivation of life. Thus, for example, in judicial psychiatry we can find different classifications of homicide, that by analysing perpetrator's mind-set make difference between killer in the heat of passion, instinctive killer and rational killer (Kolarić, 2008: 261).

Earlier we mentioned that firearms are personification of deadly force, which makes them the most suitable, and at the same time, most common means that police officers use to inflict deadly injuries to other persons. Thus, the deprivation of life caused by using firearms is the most indicative expression of police homicides. Therefore, it seems logical that the analysis of this phenomenon should be focused on the cases of illegal deprivation of life caused by using firearms. However, although justified, this approach is still limited because it disregards the fact that death can be caused by using other coercive means (e.g. chemical weapons).

Obviously aware of the complex nature and diversity of police homicides, Brinks bases the research of this phenomenon on the following categories: • routine policing - shooting during routine policing (without an armed conflict); • execution - killing suspects during arrest or after they have been taken to official premises, wounded or otherwise incapacitated; • torture - cases of torture that cause death of a victim; • death while in custody - cases of staging suicide of inmates by their wardens, contribution of wardens to suicide of inmates by encouraging this act or procuring means to perform suicide and death caused by not providing or preventing provision of health protection and medical help; • bystander - death of an individual who was not the target of police action, but was accidentally killed during an intervention (Brinks, 2008: 42).

In light of this categorisation, it is possible to identify numerous manifestations of police homicides, reviewing them against different criteria (place of execution, used means, form of guild, etc.). The last criterion is considered especially important in reviewing the nature of a studied phenomenon. It can be used to classify all means of illegal deprivation of life in police acts as contemplated or negligence. Having in mind that these forms of depravation of life were the topic of earlier works (Kesić, 2013), here we will briefly discuss some of their key characteristics.

When we speak of contemplated deprivation of life we would like to focus on the fact that killing people was never an explicit goal and official part of the policies of the democratic work of the police. This, however, does not exclude the possibility of situations in which members of the police use deadly force with a clear intention to deprive a concrete person of life. This liberal approach is certainly contrary to very rigid policy of using deadly force in the police work. Therefore, such decisions mostly do not stem from written rules, but are implementation of informal policy, created under strong influence of values of the police subculture and specific circumstances. In addition to this, such an act can be the result of informal instructions and orders of the police authorities or even the result of personal judgement and beliefs of a police officer.

In this sense Bayley points to a characteristic practice of Indian police. As explained by this author 'in central India, it is customary to issue an order to members of interventional police to shoot without asking questions while searching for provincial dacoits (bandits) through woody areas of Madhya Pradesh and Odisha' (Bayley, 1996: 275). Such practice is usually justified by the interest of protecting safety of police officers when capturing dangerous criminals, for whom it is confirmed that they will put up armed resistance during the arrest. However, as much as this 'preventive' approach to using deadly force seem necessary, the fact is that this tactic can easily result in death of an innocent person that is 'in the wrong place at the wrong time'. Although the logic 'shoot to kill' may seem justified and necessary in solving certain problematic situations, there is the fact that this approach to deadly force in policing is delicate and controversial.

The fact is that deprivation of life due to negligence has a completely different character and nature when compared to cases in which this result is contemplated. Therefore it is natural to analyse these cases in a completely different light. One such explanation states: 'Homicide due to negligence is a special type of homicide, predominantly because this behaviour is not classified as violence, based on which it can be assumed that the delicts done out of negligence, in comparison to all other murders' are defined by a different hierarchy of factors' (Simeunović-Patić, 2003:9).

Having in mind the meaning and purpose of police coercion, as well as conditions and circumstances when it is used the most, we could freely state that most of the cases in which police acts resulted in depravation of life are due to negligence. There are numerous circumstances where policing can lead to deprivation of life out of negligence, but out of all of them the specific ones are death cases caused by transferred intent (lat. aberration ictus). This outcome can be caused by various circumstances. For example, after missing its target, a bullet can directly hit an innocent citizens, or it can ricochet and become a deadly threat to all who find themselves on its unpredictable path. Additionally, as a result of ricocheting, a bullet can be distorted, becoming capable to cause more damage (similar to those caused by the so-called dumdum bullets).

The proof that depravation of life by policing should not be analysed exclusively in the context of using firearms is best confirmed by the cases where a person suffered serious injuries resulting in death due to police acts. As Sherman (1986: 203) warns 'in discussions about

police homicides, not including media reports, less attention is given to cases where death was caused by "beating", which is much more cruel that shooting'.

There are different circumstances where police officers, in performing official duties, can inflict injuries of such intensity that they result in death of an injured person. In the police practice, there are such cases where police officers inflict serious pain and suffering to a person in order to seriously hurt this person. This behaviour is usually linked with police brutality or with application of different torture methods of suspects. The fact is, however, that police officers should not see coercion means as a form of punishment of person to which coercion means are applied. As the word itself states, they should be used as 'means' to achieve lawful goal and appointed role (Bikarević, 2016: 199).

In media reports, and increasingly in scientific and expert literature, there are warnings that arrested persons die under suspicious circumstances, either during detention in official facilities or soon after being released to freedom. It is also suspected that death occurs due to injuries caused during arrest or as a result of torture. Although in these cases police officers usually do not intend to cause death of a concrete person, this possibility cannot be excluded. In this sense, the following statement is important: 'Intentionally caused death, by itself, in many cases is not seen as a form of physical torture, but it still exists in cases when death is preceded or caused by actions that include unjustified suffering or pain' (Scott, 2005: 17).

CONCLUSION

The fact is that in solving certain problematic situations deadly force still does not have an adequate alternative, which is why its existence is still considered necessary in the police work. This circumstance makes the issue of defining policy of using deadly force and control of its application especially important. It is important to point out that an increasing number of studies show that implementation of restrictive policies on use of deadly force and enhanced measures of internal control can have a positive effect on the frequency of using firearms (Smith, 2004). This draws the conclusion that a clear policy within the police organisation in terms of using firearms and consistent control of its use can efficiently lower the total number of deaths caused by policing.

As one of the proposals for more efficient control of the use of deadly force that is often mentioned is establishment of independent commissions, whose only responsibility would be to monitor this segment of police work. Punch concretely believes that this commission could be in charge of the following activities: •deliberation on the level of armament and type of arms suitable for police work; •survey of public opinion and opinion of other stakeholders (Ministry of Interior, police syndicates and associations) on the policy of using firearms; •raising the issue of armament to a higher generic, principled and foreseeable attitude in terms of arms in society, reaction of the police on the possession of weapons and crimes committed by using firearms, as well as application of deadly force by the police in general (Punch, 2011: 196-7).

However, in order for this form of control to function in practice, it is necessary to meet numerous conditions, notably to raise awareness within the police themselves on the importance and necessity of independent control of their work. Furthermore, accepting responsibilities for actions taken must become one of the basic institutional values of the police, instead of the existing practice of denying responsibility and transferring guilt to others. In doing so, we do not only refer to mechanisms of blaming a victim, but also on a specific practice of bringing down responsibility to a level of direct perpetrators. Namely, if during a certain police operation things go wrong or if there are unforeseen consequences, in addition to di-

rect perpetrators in the field, the responsibility should also be borne by operative managers, who coordinate implementation of a concrete action from headquarters, as well as strategic managers, without whom a concrete action cannot be approved. In this sense, they bear even greater responsibility.

When we discuss the use of firearms in general, and especially in performing police function, we cannot lose track of the fact that it is potentially deadly force, the use of which will always be accompanied by certain number of unconscious oversights and mistakes. To put it simply, more shooting means more mistakes, more misses, more stray bullets, more accidents and consequently more death cases. These circumstances should be a strong signal to police officers to be exceptionally alert when using firearms, as well as incentive for reforms in the police work, which should predominantly be focused on limiting the use of deadly force and reviewing tactics for acting in interventions where the use of firearms does not have an alternative.

Accordingly, it is necessary to strongly support the principle of using deadly force as the last resort, of which police officers must be aware, choosing to use it only when it is absolutely necessary. In this sense, abstention should be considered a key principle. A good example of such an approach is traditional policy of using firearms by the British police, which is based on the following recommendations: • the focus is on risk assessment, negotiation and de-escalation that leads to surrender - a police officer is directed to 'play it long'; • use of the force as the last resort; • justified use of minimal and proportionate force; • necessity to justify each bullet fired; • personal liability of each individual police officer both in operational and judicial sense; • police officers cannot be directly ordered to shoot; and • avoid using deadly force on someone if it is possible (Punch, 2011: 63).

Abstention of police officers from using firearms is certainly reinforcing ethos of 'civil work of the police', which leads to policies and practices based on principles of lawfulness, minimal force, individual responsibility and, if possible, preserving life. Guided by this logic, we can expect that the scope of using firearms in policing would be quite small, and in comparison with using other coercive means almost non-existent. This is also confirmed by the results of research, as well as official data. In order to illustrate, Crank (2004: 92) determined that members of the NYPD use firearms in average five times in 1.762 conflicts.

Limiting the use of firearms is also possible to implement through revisions of certain legal conditions for application of deadly force. For example, legitimacy and legality of using firearms, according to the fleeing felon doctrine, which enabled police officers to use deadly force to stop a suspect from fleeing and deprive him or her of liberty, was called in question due to the legal concept of presumption of innocence, and it was declared unconstitutional in 1985 by the Supreme Court of the USA, acting upon the case Tennessee v. Garner (Zimring, 2017: 19-20).

By doing this, in contrast to the initial fleeing felon doctrine, the conditions were made more strict by criteria of 'protecting life' and 'immediate threat', according to which a police officer must follow a clear rule - in order to use firearms it is necessary that a perpetrator of the crime, who is fleeing after committing a criminal act, causes immediate threat to life of a police officer or another person, which cannot be removed by any other coercive means.

In order to lower possible death consequence to the least possible degree, and still secure the success rate in performing official tasks, it is necessary to provide police officers with a wide range of alternatives to deadly force. In this sense, it is necessary to raise the capacities of the police coercion by introducing non-deadly coercive means, as well as by introducing new technical means, whose characteristics could rightfully classify them as non-deadly weapons. In this regard, Bailey (1996: 536) states that non-deadly weapon can be especially efficient in the following situations: • overcoming resistance and arresting suspects for serious crimes; • conflicts with individuals armed with cold weapons; and • resolving situations with hostages.

In this regard, Taser is especially indicative – 'it works on the principle of overwhelming human body with electrical impulses that cause uncontrollable muscle spasms' (Stinson, Reyns, Liederbach, 2012). Weapons with this working principle are especially suitable for police interventions where lawful use of firearms is unavoidable, which makes it a key alternative to deadly force. Thereby, in contrast to firearms, by using this type of weapon, the damage caused and seriousness of injuries is brought down to a minimum. Thus, it is certain that this practice can lead to a decrease in criminal charges against police officers, and in payments of compensations for damages and invalidity allowances. It can also lead to the improvement of the police image in public, where it is otherwise recognised mostly as the symbol of force and repression.

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INFLUNCE OF DEMOCRACY CRISIS ON SECURITY

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Abstract: Security is the main social need. During the whole historical development a man has been and has stayed occupied with the question of his personal and property security. In a nutshell, security represents a condition where nothing threatens us or our property. A number of factors influence on the state of security, while in the same time there are a lot of sources of its endangerment. One of the main social sources is politics, which is especially expressed in insufficiently democratically developed societies. Democracy is definitely a factor that has reflex ions on safety, in particular on Balkans. According to the opinion of the most theoreticians, but also ordinary citizens, democracy is in a huge crisis, which is especially represented on the Balkan area.

International relations show that the state of security of a certain territorialized human collectivity, whose representative is a state as the most organized collectivity, can be one of the following: non-conflicting, pre-conflicting, conflicting and post-conflicting. Every country makes an effort to establish and preserve a non-conflicting condition of its national security. However, harsh security praxis warns that this type of engagement of a certain state sometimes is confronted with extern challenges and threats, whose carriers are sovereign or non-sovereign actors. Due to the presence of double normative on international political stage, it is not rare that exactly in the name of democracy a lot conflicts are being started, keeping for decades not only Balkans, but also a greater area in the stage of a complete conflict escalation.

There will be no change for sure as long as world powers (Great Britain, United States of America and their cooperates) do not accept the principles of Helsinki Chapter on non-interference in inner questions of other countries, because they still believe that they have a right to manipulate in order to break down governments. Ukraine is one of the most recent examples. Therefore, as long as the mind-set of this interference politics exists, either by financing the opposition, or by giving a support to the most extremist elements in the given country – in Ukraine that was the Right Sector, and in Syria islamists- new troubles will keep appearing.

Keywords: *security, democracy, crisis, politics, double normative.*

INTRODUCTION

Since its genesis until nowadays, different social creations have had a constant mutual preoccupation named security. It seems that security in modern conditions has culminated

and is now in a sphere of interest of all social categories. The word security in a modern politics language, along with some others (terrorism, globalisation, transition, etc.), has a total domination. Therefore, security has been in the focus of human interests during the whole historical development, as the society was getting more and more developed, so were the forms and sources of security endangerment, accompanied by numerous factors that directly or indirectly affects the state of security.

It is certain that among those factors, politics along with the way and mediums that accompany it, influence greatly on the state of security, from the lowest to the highest level. When you add a state of institutional development and a way of communication between different institutions on international and national levels, it becomes clear that formation of institutes and ways of communications, even the political ones, affects numerous social processes, and among them, security as well. In the whole ambient, democracy takes an important place as a generally accepted legal and political term, and especially the state of democracy in the today's globalized world.

From the beginning, some logical questions arose, among which some of them are especially actual: what is security? what is democracy?, what is crisis, with a special accent on democracy crisis?. In order to answer the central question: does democracy crisis influence on state of security, it is necessary to answer the mentioned questions first.

SECURITY

Some of terms could be understood in different ways, such as a term of security. Security is a phenomenon that has been in the centre of attention during the whole historical development, in the beginning just among the community members, and later on among professional, scientific and secular public. It can be claimed that without the understanding of this phenomenon it is not possible to understand the character of social relations and the meaning of interests of various organizations and institutions in the world of politics and economy for achieving human needs and more human society. (Markovic, 2014:15) Therefore, security has become the most used term in the last couple decades in science and in everyday life. That is a term that finds its use in all social relations. It is mentioned in politics, economics, sport, healthcare, business, psychology, and finance and similar. About how special interest of the term of security and its usage nowadays is, shows us the overall presentation of this term on internet, the greatest network in the world. On internet the word security is mentioned more than other words, such as: god, peace, war or politics. That is best illustrated by a fact, derived from a recent research in English language, which showed that the word security is mentioned 2 410 million times, god around 289 million times, war around 840 million times and politics around 909 million times. (Markova, 2014:25)

The word security (in Serbian- bezbjednost) itself is derived of prefix "bez"(meaning without, the absence) and the word "bijeda" (meaning great misery, poverty, a position that causes hate, accident, harm) and represents the state of the one, who is protected from jeopardy, the one who is secured and not in danger. Hence, the term of security in an objective way represents an absence of threats to values, while in a subjective way it represents an absence of fear that the given values would be endangered. Security is the main social need that implies a certain protection level of a human from different ways of endangerment and jeopardy of his rights and properties. While talking about security, it should be mentioned that it is not a natural, but a civilization fact, present from the origins of organized societies. This is supported by a fact that even Aristotle believed that realization of security and well-being of citizens is the main target of a state function. (Stajic, 2003:11) The overall historical development has

shown that there is no absolute security, and no matter how strong the country is, it cannot achieve the absolute prosperity. However, by usage of physical force, that is confined mostly to the police, a state has become the most legitimate to take care of the whole security through functions of its institutions.

According to that, a security of a country is a state of protection of the country from various endangerments, i.e. from hurting the main elements of the country, which is specially referred to its territory, citizens and authority, as well as legal order in general. If the level of protection of these country elements is kept well, then it can be claimed that an overall security level is satisfying. Security of some country elements could only be conditionally observed, as the security of a country practically mirrors in its totality. This means that security of a country and citizens represents two sides of the same thing, meaning that security basically comes down to the security of a human being. Therefore, it cannot be spoken about a security of a human being if a country is not safe and otherwise, if citizens are not safe then there is no dilemma that a country is considered safe. (Jovicic & Setka 2018:26)

In order to enable security of a state and its citizens, it is necessary to have a rule of law in the state. Only this can secure citizens, i.e. they are secured when they have their rights and freedom, both personal and property ones, while not being disturbed by other (persons) citizens. This means that security of citizens should be in this context observed as a certainty of law conduction, in a form of means of coercion in the case of security endangerment of any citizen.

A necessary safety of citizens and a state is being fulfilled, i.e. legal assumptions are being made for its realization by conducting a law and other regulations from "the security area". Through the conduction of legal and other regulations, it is being secured that a person stays constantly and completely within limits of its personal and property safety, without any illegal actions against other persons, organizations or a state.

DEMOCRACY

Democracy belongs to a group of political terms that are withstanding to concisely and simple defined determinations. In an etymologic way, democracy is derived from a Greek word demos (people) and kratein (to rule), which could literally be translated that democracy is a rule of people. On the other hand, in the reality a unanimous rule of people is impossible, so democracy is often defined as a rule of majority. There, where unanimity is assumed, requested or extorted, democracy basically does not exist, but represents some of political forms that are opposite to democracy. (Matic, 2002:158)

Since the antic period, there have been some comprehensive discussions and it could be claimed that there are a lot of different approaches to define a term and value of democracy. Almost every day it is spoken about democracy, but the word democracy itself can (and does) have a different meaning for different people, so nowadays there is a lot of confusion about what democracy really stands for. Is it a freedom of the one, a multi-party system, a majority rule, a minority rule, or something else? That is why this leads to an unavoidable question-are there any general criteria, which could estimate if a state is democratic or not, or what is being measured when it comes to a development of a certain state in a democratic way? Starting from an assumption (a fact) that it is unreasonable to adopt some general criteria, then comes the next question- who is the one (a state or a person), who decides if a state is democratic enough?

In order to understand better the complexity of democracy, it is important to realize that we (people) are members of different groups or communities during our whole lives, starting from the family, neighbourhood, different clubs and business associations, to nations and

countries. Often we belong to some communities reluctantly. Anyhow, in all these communities, decisions must be made in the name of the whole community. Decisions could be related to the wanted goals, to rules that must be respected within the community, to division of responsibilities or merits and similar. These decisions, which are made in a community, have a collective character, compared to the ones that are made on our own. Democracy, perceived in any way, belongs to the sphere of collective decisions. Therefore, we stick to the ideal that the decision, which affects a community in the whole, should be made by all community members, while everyone, of course, has the same right to participate. In other words, democracy implies two connected principles. The first one is the principle of public control over collective decisions, and the other one is the principle of rights equality in conducting of control. Some community can be considered as democratic to the extent to which the principles are being respected while making decisions. (Beetham & Boyle, 1997:1)

From this approach of understanding the word democracy, two things could become clear or at least clearer. The first fact is that democracy does not just belong to some country or government, like the most people think. This means that democratic principles are relevant for making decisions in any kind of a community. It could even be said that there is a significant relation between democracy on a state level and democracy in other social institutions. As a country is the greatest community, which has the right, but also the obligation to organize community questions, democracy on the state level is from the key importance for all spheres of social life, and therefore, as well, for security.

Hence, it is important that countries have a developed democratic decision system within its organs, because that is a prerequisite for a state to efficiently meet the needs of its citizens. Of course, there is a question- if the majority is making a decision actually, as we have stated that it is the greatest thing about democracy, is it always democratic? Equaling democracy with the majority rule is a common mistake. If a term democracy is understood basically as a majority rule, it means that it is a rule of the whole nation and not just of the one part over the other. In other words, the key fact about democracy is that everyone equally shares the right to make a decision, while on the other hand the majority decision is just a procedure to solve a disagreement in the case when all the other sources have been played-out (discussions, amendments, compromises). When the majority makes a decision that is more democratic than allowing the minority to decide or obstruct the majority will; however as the minority is left helpless and without any influence on the final outcome, the majority decision should be considered more as a harsh medium for making decisions rather than the peak of democratic perfection. (Beetham & Boyle, 1997:18)

Having in mind the mentioned facts, this is an opportunity to claim that political minds often tend to balance the principles of extern politics with the democratic ones. Neoconservatives think that military power of democracy is a neutral instrument, which allows a liberal state order in the unsecured world; they stand up for invasions of other countries, defeating tyranny and creating conditions for democracy by force implementation. Liberal principles of the United States are in that way connected to the force implementation and are considered as good attentions to restore freedom in other countries. (Brickman, 2008:159) As already being mentioned, views and definitions of democracy are very different, depending on who is interpreting it and with what exact cause. Definitely in this context it is interesting to mention the attitude of W. Churchill and J. Nehru, who thought that democracy is a good way to rule just because democracy is less bad than any other ways that are being conducted from time to time. (Matic, 2002:163) Despite everything claims, it is important to say that during the history there were many ways of legality, and nowadays the only realistic source of legality is democracy. (Fukuyama, 2007:38)

Beside numerous contraries opinions about the term, the value and the role of democracy in a function of a modern state, both theory and practice show that crisis situations (political, economic, security) could be solved successfully just by a stabile state system, which is based on democratic principles.

DEMOCRACY CRISIS

The word democracy itself in the present moment is definitely one of the common words in everyday communication. It is used, among others, to describe a state of personal, i.e. private situation, but is also used to describe a society in general or certain organizations, institutions or some other systems within a society. Theoretic and practical views on crisis are different, but the appropriate definition could be the one from Paul `t Hart, which says that "crisis is an unpleasant event that represents a challenge for the ones, who make decisions, testing them to act in conditions of endangerment, lack of time and vulnerability". Crisis is a serious threat to main structures or fundamental values and norms of a social system, which in situations of time pressure and unsecure conditions demands making critical decisions. (Kesetovic & Kekovic, 2008:8)

As a word, crisis has a medical root, but it has found its usage in all types of societies during historical development and has become unique, i.e. relevant in all forms of social actions. It is also present in functioning of a country as the greatest type of organization, while its presence or absence has a crucial impact on the sense of total security of every society member. We mentioned before that democracy as a legal and political term, especially in the modern age, is of crucial importance for stabile functioning of a country. Therefore, it is obvious that certain crisis situations in democracy can disturb, among others, stability of a society in general, but also of its members individually.

A development of a modern society has been related to development of democratic institutions. Democracy is, especially in the last hundreds of years, understood as a value, which is impossible to question, at least not on the public area of countries in the west hemisphere. Since the beginning of the XX century until nowadays, the idea of democracy is related to a fundamental idea – that every human being is free. Freedom in a social way means that a being, who is free, is responsible as well, as there is no freedom without responsibility, but there is also no responsibility without freedom. This means that a free human being in general – a citizen, a citizen is a free man, who overtakes his freedom and responsibility and becomes a subject of a society. If we understand democracy in the way that is mentioned above, it becomes certainly clear that it is a very complex term. What is more, we have understood that democracy has become a part of our everyday life.

As a part of our everyday life, democracy has become a subject of constant compromises. It has become not just a subject of inner compromises, but also on the outer (international) level. That is why it is very often (unfortunately) used as an excuse for harsh use of forces and violence all over the world, serving to realizations of some military, economic or politic interests. In the last few decades, we have witnessed various cases of harsh use of force in different parts of the world, which have produced numerous deaths, all in the name of democracy.

That is how we come to the question: what is the problem with democracy today? Why its value and importance is being questioned? Is democracy in crisis? These questions are justified by high levels of misuses and deviations of certain democratic principles and institutions, which are becoming more common with the development of society. These deviations and misuses are present on the extern, but also on the intern level. When we mention misuses on intern level, we should emphasize the presence of different corruption forms that mostly

represent a kind of symbiosis between large business and political structures in most of the countries, but of course are more expressed on Balkans than in the Western Europe. Some corruptive activities are used as democratic procedures (i.e. legal ones); in order to confirm some regulations, which will further benefit certain interest groups, while the country (and the society within) is being violated. On the intern level, there are some evident problems with functioning of representative democracy. Even though the representative model of democracy enables that someone is legally chosen to be a part of the highest level of authority, for this decision some financial fund is also necessary in order to conduct a campaign, which altogether opens different ways of possible misuses in the name of the one, who sponsored the campaign. What is more, the representative system is also a subject to deviations under the influence of particracy or partidespotism, where political parties do not protected interest of citizens, for what they have been selected, but protect their mutual interests. This means that we have absence of democratic control of authority, beside the fact that democratic procedures are being formally respected.

Compromising democracy, i.e. its misuse is often present on the extern, international level. It is not rare that exactly in the name of democracy some harsh force and violence is used, in order to achieve some military, economic or politic interests. Exclusive rights to behave like this belong to the so called big players, i.e. big forces. They realize this through overthrow of government in countries where they want to enable their impact on economic, political or some other currents. All of this is being conducted under the veil of democratisation of those countries, and by the rule in these countries after the interventionism, it comes to a complete collapse of democracy. By the rule these "big players" create crisis by giving support to some groups (opposition or they even create informal organizations), and then they show up as someone, who is going to solve the crisis. In these situations there are always double standards when it comes to interpretation of the source and the carrier of negative activities that are allegedly actors of the concrete critical situation in some country. It seems that there have never been so many crisis sources on the planet, which are produced by the ones, who, because of their powers and certain interests, interfere in inner relations of some countries. There are a lot of suitable examples, and after intervention in Iraq, almost the same scenario was applied in Egypt, Libya, Syria and Ukraine. If something does not change soon within international relations, it is only a question what could be further expected.

INFLUENCE OF DEMOCRACY CRISIS ON SECURITY

According to the eternal aspiration of the human being for a needed level of security, it can be accepted that the essence of human existence is in an organized civilised society with personal and legal security (personal physical security, social freedom, its certainty, and invulnerability of property), equality with other citizens in front of authorities and institutions, meaning the protection of state arbitrariness and search for the greatest level of general security, as an ideal of every person. These aspirations of the modern human being could only be ensured by a democratic state, where a rule of law is present. It is accepted that a legal state is the one, where not only one person or one group is the leader, but the law, and everyone is obligated, both individuals and legal entities, to obey objective legal norms. That is what a legal theory accepts as a characteristic of the rule of law, but unfortunately it is not a rare situation, where there is a huge gap between the normative and the reality. The similar is noticed in the modern world, where a large deviation is observed between characteristics of normative and the real situation of the given country.

A country, as we already know, has various functions, and, among them, is securing legal order, peace, security and general safety. In order for state to realize its functions, including the security one, it has to have a needed stability and capability of state authorities, and political willingness to act in that way. In the modern, globalized world, what is especially present in the last few decades, it has come to a great change in the sphere of international relations, resulting in numerous interventions by the so called "big players" (countries) and organizations (NATO) all around the planet. What is more, this has been happening sometimes even not according to the decisions of the OUN, leading to huge consequences on the security of citizens, including their property and the country in general.

Therefore, exactly the crisis that has been characterizing democracy lately, along with the inability of states and international communities to perform their normative functions, lead to the serious endangerment of people and property. Different theoreticians and experts differently interpret some facts, but there is a general opinion that the migrant crisis is a direct consequence of numerous interventions of the Western Alliance in the countries in Middle East, Africa etc., which among the numerous deaths on these places, allegedly in the name of democracy, and armed conflicts, also induced huge security problems in the most of the European countries. Naturally, this all is not according to Helsinki Charter of Non-Interference in inner questions of other countries, leading us to the conclusion that democracy crisis has its direct influence on the security situation on the planet.

What is more, there are also excepted opinions, which claim that the democracy crisis in state institutions and international communities, "took away" functional capacity so that they cannot perform their main roles any more. This means that security authorities by stepping away from democratic procedures also lost their operative power and the force to solve security problems in an adequate way. Hence, democracy crisis diminished functional potential of state and international institutions and achieved its negative influence on security, i.e. promoted the growth and escalation of security problems all over the world.

CONCLUSION

Beside the facts mentioned above, it should be claimed that accelerated promotion of communication technologies, energetic dependence and fast globalization are processes that inevitably influenced on the structure of international relations, and on priorities of national countries, as well as their unions to the new multinational ones on the regional level. These new conditions lead to obvious weakness of small countries, what has influenced greatly on economic and security spheres. Global security challenges are being changed a lot because of accelerated communication, energetic dependence and globalization. To the forefront nowadays come the so called security threats, with the main characteristic- trans-nationality, meaning they overcome the borders of single states, with terrorism as the most actual problem at the moment. This leads to a conclusion that countries themselves are less capable to answer the most of the security challenges.

The best indicator that countries alone cannot confront successfully the modern security challenges, are the examples of strong organized European countries, such as Germany, France, Italy and Belgium, that are nothing like countries in the Western Balkans, which are overwhelmed with numerous problems. These strong countries recently experienced terrible terrorist attacks on its territory. Global security challenges demand global responses, but certainly before everything, there should be a real analysis of causes of these new happenings in the security sphere in stabile countries. In the modern, accelerated world, with all the new characteristics, which contributed to the establishment of this type of international relations,

where some organization could make a decision in the name of democracy and bomb a sovereign country, the actual political security situation in the world could not be avoided.

Then we come to the question, does democracy still has its values that are ascribed to it from the beginning of the organized society? Should we give up on democratic concepts concerning organization and functioning of the society? The time will probably show it in the best way, but it is difficult to deny the theoretical approach that solution should be searched in the constant democratization of society, fight for rights, dignity and equality in general, of citizens and countries. This all is possible only if international documents are obeyed, and they confirm clearly that it should not be interfered in sovereign rights of other countries.

There is no doubt, that since the human society exists, there is a constant endangerment of security, along with the fact that the more developed the society is- the greater are the forms of its endangerment. Security never has cost more than nowadays, but, without question, we never had less of it, what is in the direct conflict with each other. The absolute security is definitely not possible and does not exist, but in order to change the security situation, it should be acted towards the elimination of causes that lead to the generation and development of these types of security endangerment, especially towards terrorism. The cause is completely visible, of course for the ones, who really want to see it and that is- interference to the inner questions of sovereign countries contrary to the international law. Therefore, great powers should respect international principles again and that will restore the state of human security to the tolerant level. It is only possible when rights of the others are respected, which demands respect of democratic principles that are promoted by a modern state-legal theory and practice.

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METAMORPHOSIS OF TERRORISM – FROM TYRANNICIDE TO THE GLOBAL JIHADIST MOVEMENT

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Abstract: Metamorphosis is a biological process and implies a change in the shape and structure of an individual through his or her development and differentiation. In that sense, the question arises as to whether it is possible to discuss the metamorphosis of terrorism. The roots of terrorism reach far into the past, since the existence of its elements, and since there have been conflicts. Thus, many tyrannicide and other forms of violence directed towards rulers have been termed as terrorism. On the other hand, the dilemma occurs when distinguishing different forms of political violence, the content of the phenomenon and its actors. Subsequently, this phenomenon was used to denote the "rule of the terror" and the action of radical rightist, leftist, and anarchist groups who sought to achieve their political goals by using various forms of violence. Finally, we may consider religious provenance of terrorism, that is, the phenomenon that has marked the last thirty years of terrorism. At this stage of its development, it manifests itself through the global jihadist movement, with pronounced feature of massiveness, brutality, the strength and scope of action, thus surpassing the so far known forms of terrorist activities. The aim of this paper is to examine different forms of terrorism through its historical genesis, identify common elements, as well as the key points of this phenomenon. A literature review was conducted to analyze the historical roots of terrorism, ideologically motivated terrorism, and finally ethno-nationalist and separatist terrorism. A comparative method has been used to compare the results obtained from the analysis of religion-motivated terrorism, which manifests itself through the global jihadist movement today.

Keywords: *terrorism, metamorphosis, forms, structures, global jihadist movement.*

INTRODUCTION

Terrorism is a paradox phenomenon. It is unquestionable that terrorism today presents the greatest threat to national and international security (Dyson, 2005: 3), as confirmed by the United Nations, which define this phenomenon as a threat to international peace and

security[1]. It is undeniable that terrorism has changed its meaning (Simeunović, 2009: 19) and forms of existence several times to date, which is understandable, given the pronounced dynamics of this phenomenon. It is also unquestionable that terrorism actors always strive for the "attractiveness" of their actions, either through attacks on rulers, aircraft abductions, suicide bombings, in order to attract public attention. On the other hand, terrorism is a topic that attracts the interest from the broader public, both professional and general, including media and political "considerations" of this phenomenon. It seems that everyone approaches this problem from his point of view, giving the problem different connotations in order to "explain" its nature, elements, motives, causes and conditions leading to terrorism, the forms of manifestation, and so on. Impressive adjectives have been used to "reinforce" the impression of terrorism, its consequences and danger, and some have even taken a step further and compared this phenomenon with similar phenomena from the past. In fact, as Simeunović (2009) notes, "the trouble is that terrorism is a very complex social problem that requires extensive and overwhelming scientific analysis, complete and qualified scientific explanations, rather than descriptive, emotional or daily political connotation, which is most likely just a story about it" (p. 13). Having conducted a thorough analysis of seven scientific journals and publications dedicated to researching contemporary social, political, legal and security phenomena and processes emerging in the Republic of Serbia, Bajagić and Mijalković (2012) reached a similar conclusion: "Although it is one of the most serious modern threats to security, terrorism, as a legal, sociological, political, and security phenomenon, is rather marginalized in relation to other topics" (pp. 296-297). The preceding quote reflects the main problem of understanding terrorism, which is a major condition for its suppression and prevention. These ascertainments have come to the fore in reviewing previous research into terrorism and the literature selected for writing this paper. It is clear that restrictions on the narrow circle of literature from one scientific field were not an option, because terrorism is a multidisciplinary subject of research, requiring such an approach. On the other hand, the excessive spread of literature could call into question a systematic approach to the research problem. It was necessary to consider terrorism from the standpoint of criminology (Ignjatović, 2011; Barakan, 2006; Mythen, Walklate, 2006), security studies (Mijalković, 2009; Savić, Stajić, 2006; Bajagić, Mijalković, 2012), political science (Simeunović, 2009; Simeunović, 1989; Bilandžić, 2013), criminal law (Simović, Šikman, 2017; Stojanović, Kolarić, 2014; Jakovljević, 1997), and sociology (Cinoğlu, 2010; Živaljević, Jugović, 2014; Šijaković, 2002) in order to provide answers to the question of the development of this conspicuous negative social phenomenon. This approach should answer the question of what terrorism is (criminology), how it manifests itself as a form of security threat and political violence (political science), legal and institutional (criminal law), and response to it within the broader social community (sociology). The aim of the paper is to determine the common characteristics of all behaviors that can be termed terrorism, how much terrorism has changed its shape and structure since its existence. Determining how terrorism changes its form and structure is also important for the suppression and prevention of its manifestation. This is particularly important given the fact that different forms of manifestation require a different approach to its prevention, which is particularly problematic considering the existing resources. All this has led to changes in the response to terrorism, which should be much broader than the pure response of the entities of formal social control, in the form of public bodies and judiciary. We do not suggest intro-

1 The 1368 Resolution of the United Nations Security Council of 12 September 2001 defines terrorism as a threat to international peace and security, and the 1377 Resolution of 12 November 2001 designates terrorism as one of the most serious threats to international peace and security in the 21st century. For further discussion, see: Security Council. (2001). Resolution 1368 (2001) Adopted by the Security Council at its 4370th meeting, on 12 September 2001, S/RES/1368 (2001); Security Council. (2001). Resolution 1377 (2001) Adopted by the Security Council at its 4413th meeting, on 12 November 2001, S/RES/1377 (2001).

ducing new entities in the "fight" against terrorism, such as armed forces (as is the case today, and even the creation of international military coalitions against terrorism), but entities of informal social control, including educational institutions, religious communities, and the broader community.

ROOTS OF TERRORISM

In the history of terrorism, this phenomenon has always been a current topic and has attracted considerable public attention (Šikman, 2015: 5). This phenomenon is typical of different periods of society and may be regarded as a universal phenomenon inherent to all forms of state communities, a phenomenon that knows no boundaries. It is a part of the history of almost every country in the world, and its consequences have become diverse over time (Griset, Mahan, 2003: 1). At different times, terrorists had different motives and ideological orientations. In the Ancient World and the Middle Ages, they were the killers of rulers, religious and political enemies, who were later to become nationalists, who felt (нејасно) or were oppressed and were not autonomous in their own state (nationalist and ethno-separatist), and left-oriented and right-oriented extremists who felt the need for radical, political, and social changes (Bandyopadhyay, n.d). Thus, the resistance to imposed authorities[2] and the cruel tyrannicide[3] in the Old and the Middle ages, the violence during the French Bourgeois Revolution (1789-1799)[4], the bomb attacks that marked the period of anarchism (in the 19th century)[5], the flows of the October Revolution (25 October, 1917)[6], the aircraft hijacks that have shocked the public since the second half of the 20th century[7], have given special significance to this form of violence, the criminal phenomenon, including the form of security threat. In fact, terrorism is, according to Bilandzic (2013), "a socially constructed historical contextual category of human behavior conditioned by concrete circumstances, the sociopolitical context and the actors' intentions" (p. 33). Therefore, we may say that terrorism, through different periods of history and the way it manifested itself and its consequences, has rightly provoked feelings of fear and vulnerability in a vast majority of people to achieve set terrorist goals. In this sense, the killing of rulers from the ancient period or bomb attacks by Molotov

2 In the vast body of literature, the roots of terrorism are linked to the activities of three religious groups: Zilote-Sikare in Judea, Tage in India, and Asasine in Persia. Thus, vast majority of research papers on terrorism, it is accepted that terrorism began in the first century AD in Judea, when Ziloti-Sikari massively used short swords (*sica*) to attack the Roman commanders of Judea and political opponents. Following the three-year resistance of the fanatic group of the Jews settled in the mountain fortress of Masada to the Roman invaders, the Jews refused to surrender; instead, they sacrificed themselves by committing collective suicide (Chaliand, 2007: 68 cited in Šikman, 2009: 67).

3 Obsessive killings of emperors are typical of the Roman Empire. Many emperors were killed by their own family members, while others were assassinated by the members of the Pretorian Guard or were killed by their enemies. Similar facts may be found in the Byzantine Empire, as well as in many other empires (Laqueur, 2000: 8).

4 Although revolutionaries called themselves "real terrorists" *vrais hommes de terrur*, the violence they used exceeded the frameworks of socially acceptable behavior, consequently changing the understanding of this concept.

5 The term '' terrorism '' denotes the actions of radical democrats, socialists and anarchists, who have sought to change this order by carrying out illegal acts, subversive activity and violence against the capitalist class and its supporters of capitalism (Vajt, 2004: 47).

6 The revolution in Russia used terrorism in a new manner and it had effects in line with people's understanding of terrorism in the twentieth century (Vajt, 2004: 50).

7 The development of air traffic made aircraft hijacking a favorite terrorist tactic. Thus, in 1968, the People's Front for the Liberation of Palestine (PFLP) took over the plane on a flight from Rome to Tel Aviv owned by the Israeli airline El Al. One the biggest terrorist attacks occurred in 1988 when a US Panam company airplane on a flight from London to New York was hijacked and crashed above Lockerbie, Scotland, when 270 passengers were killed.

cocktails at the beginning of the new century, including aircraft hijacks when they emerged as a new, modern means of transportation may be deemed equivalent to terrorist attacks today. However, one ought to be cautious when presenting these views. Simeunovic (2009) believes there are two types of mistakes that occur regarding the forerunners of terrorism. First mistake occurs when examples of terrorism are uncritically listed as historical examples of political violence, which is not terrorism, and the second mistake arising from the first one occurs when certain forerunners of terrorism are classified as terrorism, even though they do not resemble terrorism in any way (p. 97). According to Simenunovic (2009), mistakes are made in terms of the content of the phenomenon and actors (p. 97). In this context, it may be said that these phenomena are actually the roots of the modern terrorism, in terms of motivation, organization, methods, and goals (Šikman, 2009: 68). Nevertheless, it seems that this last stage in the historical genesis of terrorism has overcome the well-known notions of this phenomenon, with far-reaching consequences affecting not only the individual states but also the entire international community. This has been contributed to by a new type of terrorism manifested through a new type of terrorist mentality in the form of a new fanaticism with the rapid development of religious extremism that makes this threat unprecedented in the history of humankind (Bandyopadhyay, n.d.: 1). Additionally, the "evolution" of terrorist goals is evident. While terrorist used to center on overthrowing rulers, gaining independence, liberating a country from foreigners, or establishing a new social order, nowadays, as White (2004) noted, "the apocalyptic doctrine urges terrorists to fight as sacred warriors in the period of fanatic enthusiasm" (p. 31) in order to achieve goals which, in fact, are impossible to achieve[8]. Likewise, the metamorphosis of terrorism from an "individual terrorist" to "a terrorist state" is astounding. Massiveness reflected in large numbers of terrorist acts and victims of these attacks is also one of the significant features of terrorism today and is manifested by its substantial and symbolic consequences (Falk, 2003: 87). As a result, terrorism today represents a new phase of international relations and international security, and, as Bilandzic (2013) noted, "it replaced the cold war", unlike the earlier period, when terrorism was considered a marginal threat to international and national security (p. 31). Views that we have entered the "Age of Terror" seem justified (Talbott, Chanda, 2002). This has opened one of the fundamental dilemmas in every democratic society – how to achieve a balance between the security of society (the protective function of the state) and the freedom in society in the best possible way (Barakan, 2006: 412). This dilemma has fully come to the fore when considering the example of terrorism. Nation states are expected to simultaneously protect society and guarantee the highest level of freedom and rights to their citizens[9], representing one of the biggest controversies of modern society.

CONSTITUTIVE ELEMENTS OF TERRORISM

Terrorism is a *par excellence* multidisciplinary and interdisciplinary subject of research. Therefore, it is important to examine this problem from different perspectives, through the interaction of various disciplines or by stretching knowledge from one scientific discipline to another. Therefore, linking together different scientific disciplines is necessary in the entire process of acquiring knowledge about terrorism, on the one hand, and how to counter it,

8 Richard Falk (2003) calls this type of goals "visionary" and as such are far from being acceptable diplomatic demands that can be accepted to some extent (Falk, 2003), while Weiss and Hassan (2015) believe that extreme violence is used not only against unbelievers, but also against the impostors of the Islamic religion, which generates another sectarian war in the region (Weiss, Hassan, 2015).

9 The question arises as to whether the state demonstrates an authoritarian tendency with new anti-terrorist legislation that represents a negation of the rule of law, because it affects the essential human rights guaranteed by the most important international documents (Stojanović, Kolarić, 2014: 159).

on the other. The integration of knowledge about terrorism that undermines the security of nation states and the entire international community (a form of security threat), which is primarily used to achieve political goals (a form of political violence) and manifested in a certain space and at a certain time (type of crime), may help us understand what kind of phenomenon it is, what constitutes its structure, and how it manifests itself. This is important to effectively respond to terrorism as the major challenge of the modern day. Political science thus defines terrorism as a form of political violence, that is, as a complex form of political violence, a direct or indirect use of force in the sphere of politics (Simeunović, 1989: 27), with the distinction between different political and ideological supporters of terrorism (Savić, Stajić, 2006: 213). The security theory categorizes terrorism as a form of endangering security of certain states, regions, and even the international community, regardless of whether it is an internal or external form of security threat[10]. Criminological theories should shed light on the dominant understanding of terrorism (Mythen, Walklate, 2006); they should provide an overview of contemporary political and military responses to terrorism and the creation of a criminal justice framework against terrorism. In the criminal law sense, the question arises as to what terrorism represents in terms of criminal delicts and how to respond to such behaviors (Simović, Šikman, 2017: 96). Terrorism is a social deviation and, as such, stands in the causal and consequential relations with the political socioeconomic features of global societies. It is an antipode to human relations between people, as it may result in various forms of endangering human life and social goods (e.g., death, injuries or property damage) (Živaljević, Jugović, 2014: 89). Therefore, it is considered a large, if not the largest, problem of modern society, or, as Sijakovic (2002) noted, "terrorism is an obstacle to the development of the modern world as a global society; it has become the phenomenon, notion, thought and term that has entered the modern man's life" (p. 242). Yet, from a sociological standpoint, this process remains unclear, especially regarding the current forms of terrorism, that is, the connection between religion and terrorism (Cinoğlu, 2010: 201). Increases in the number of religiously motivated terrorist groups significantly different from secular groups may explain the increase in the number of deaths from such terrorist attacks in relation to decreases in the scale of attacks (Cinoğlu, 2010: 201). Regarding constitutive elements of terrorism, we consider those elements without which this criminal phenomenon would not exist. Without going into a deeper analysis[11], only those fundamental elements, which, among other things, represent essential criteria for differentiating terrorism from activities it has features in common with (Ignjatović, 2011: 118), have been discussed, including changes in their manifestation over time. The following constituent elements of terrorism include:

Violence is one of the most important features of terrorism. Each terrorist act is, in fact, an act of violence, which is reflected in the brutal use of force and various methods and means. One of the characteristics of violence is its disproportionate achievement of a particular goal. Violence is used to demonstrate force whose destruction can be overcome by psychological effects (Šikman, 2009: 111). The brutality, immorality, and irrationality of the terrorist act typical features of a terrorist act that give it a special connotation and rank among the greatest crimes and dangerousness of the modern day. By using extreme fanaticism (Scruton, 2002: 122,123), terrorists exceed the moral criteria for destroying innocent people, unnecessary and indiscriminate suffering and massive material destruction. Violence has changed through the

10 Terrorism, as a form of endangering security, creates a feeling of insecurity, weakness, impotence, restlessness, and citizens' distrust of the government which is obligated to ensure peace and security (Mijalković, 2009: 241).

11 Álex P. Schmid and Albert J. Jongman (1988) used a quantitative analysis of numerous definitions of terrorism and the separation of those characteristics constantly appearing in them (Schmid, Jongman, 1988: 5,6), while Leonard Weinberg, Ami Pedahzur, and Sivan Hirsch- Hoefler (2004) attempted to arrive at a consensual definition of terrorism through the empirical analysis of 73 definitions of terrorism (Weinberg, Pedahzur, Hirsch-Hoefler. 2004: 777-794).

historical development of terrorism. Primarily, the methods and means of using violence have changed. Thus, terrorism has switched from short swords (or *sica*) to using explosives of very destructive power. One should not forget the innovations regarding the use of violence, and the best example is the use of aircraft as a means of committing terrorist attacks (September 11, 2001). Violent acts have become increasingly "bloody" (Jenkins, 2006), leading to an increase in the number of victims of terrorism. Thus, new terrorists have changed the tactics from theatrical violent acts to alert the public in order to destroy targets more effectively and kill as many civilians as possible, and undermine the entire hostile society and culture (Bajagić, 2007: 217, 218).

Causing fear, anxiety, and horror, after a terrorist attack, is the desired effect the perpetrators of terrorism strive to achieve. This effect is achieved by fierce violence to shock and impress the target of the attack (indirect and immediate), which creates an illusion of the enormous capacity of violence that may be committed by terrorists, proving at the same time they are determined and uncompromising[12] (Simeunović, 2009: 71). Perhaps this element of terrorism has experienced the smallest change, but its perception has largely influenced the perception of terrorism, meaning the topic of fear of crime in general, including the fear of terrorism, is gaining substantial importance. This issue is crucial for determining the level of security of a community, because the lack of fear of crime means the sense of a greater level of security, and vice versa. In this sense, the existence of the fear of terrorist has a significant impact on the vulnerability of people and property, which is proportional to it. Terrorism always seeks to achieve the set goals. It may be concluded that different periods of terrorism were characterized by different objectives. Previously, they were predominantly of political nature, but the ethnic and religious connotations of terrorist aspirations may also be discussed. Nevertheless, even then their goals were political, because even though the religious motive stems from the religious pretense of terrorism, a political agenda is the basis of terrorism[13]. However, it is the fact that terrorists have changed their goals, which are becoming more and more unrealistic. Their "visionary" nature has already been discussed, which practically means that terrorists do not want to achieve the set goals. Rather, their purpose is terrorism and violence itself. How to explain the setting of a goal that they themselves are aware of is not achievable, unlike in the earlier period, when terrorists set achievable targets. At that time, the way of their realization was unacceptable (the deployment of violence), while its achievability and even legitimacy was not questionable (the right to self-determination, the release of political prisoners, and so on).

The term *terrorists*, rather than *collectivity*, has been used intentionally. They are the bearers of terrorism. At different phases of the manifestation of terrorism, there were different collectivities, but always on its basis are individuals who are ready to apply different forms of violence in order to achieve the set goals. Today, the astounding transformation of the organization of terrorist groups, which in a short period of time "evolved" from classical terrorist groups (hierarchical, organized by the system of three and five, etc.), through terrorist organizations dominated by a network type of organization (e.g. Al-Qaida), and "terrorist states" that control a particular region in which they establish an appropriate system of authority over the population living in it (a typical example of the Islamic state) and at the end of the

12 It is also important to mention one digression, noted by Simeunović (2009): "Terrorist activities tend to cause fear, but in terms of emotions, they tend to provoke other feelings, above all the joy of those who support terrorist activities. The terrorist act wants to achieve the sympathies of those who have or could have views similar to those of terrorists. Hence, terrorist acts also have the mobilization function of creating followers and maintaining their faith in terrorists" (p. 71).

13 For example, the former goal of Al Qaeda, and today the Islamic State in creating a unique social and territorial space in which life will follow strict religious rules, as much as it is of religious nature it has political elements, because it is directed against the existing constitutional order of the countries in which it is manifested and toward establishing a new one.

radicalized individuals, lonely wolves willing to execute the set terrorist targets independently prepare and execute terrorist attacks, including those of the suicidal charities. Many analysts see the problematic definition of terrorism in the phrase "one man's terrorist is another man's freedom fighter", which has become not only a cliché, but also a real problem in defining terrorism (Ganor, 2010). However, this understanding is largely a matter of perception, which is why it is irrational to engage in a deeper analysis of this problem.

Victims of terrorism are arbitrarily determined members of a group, and the arbitrariness of determining the target of an attack within that group is intended to create an atmosphere of fear, insecurity and disorder among a specific group. They are the target of terrorist attacks solely because of their ethnic, religious, national or civilian affiliations (Falk, 2003: 93). In addition, the victims or more precisely the targets of terrorism are also the symbols of the state, such as the police or the army, because in this way also they send a message to the state to demonstrate how vulnerable it is. There is an impression that anyone and anything can be the target of a terrorist attack. Thus, the target of a terrorist attack may be anything connected with a certain legal order, be it the population or various objects (national, representative, or symbolic objects) (Šikman, 2009: 114). The publicity of terrorism is an important element of terrorism, and we may consider its various sides. The first one is its traditional side, because terrorism always tries to convey a message or, as Falk termed it, "a message that echoes" because global terrorist attacks leave no one indifferent (Falk, 2003: 88). Its other side is peculiar to the modern age and concerns the misuse of modern technologies for terrorist purposes. The impact on the auditorium, the aspiration for publicity and the appeal to the international public through mass media by taking responsibility for crimes and openly propagating for the sake of attracting like-minded people suggest that terrorism has evolved into a particular kind of communication tending to influence the behavior of other participants in the global communication space. For this purpose, terrorism exploits modern forms of communication, including the Internet and social networks[14]. Terrorism today has enormous publicity and has a very stimulating influence on the same-minded terrorists and the terrorists themselves, while, on the other hand, it causes fear and horror in the broader public (Bajagić, Mijalković, 2012: 349). If these elements were observed in the context of the expulsion of terrorism through history, then one can see how they changed the shape and structure, which is why it bears less and less resemblance to terrorism in the 20th century (Bajagić, Mijalković, 2012: 349). In fact, terrorism is constantly changing its forms, types and forms of organization, modus operandi, technical equipment, and the like (Šijaković, 2002: 242). Violence, fear, terrorist targets, terrorists, victims of terrorism, and the publicity have always been immanent in terrorism, but they have manifested in a different manner. What is worrying is that the consequences of each new phase of terrorism have become more and more pronounced. However, these trends do not allow for clear forecasts and predictions, and the analysis, according to Brian Jenkins (2006), is certainly not a ''prophecy ''. He further states that "terrorists did not do many things we were worried about 30 years ago (our worst fears have not been realized yet). On the other hand, there are no precise forecasts and analyses of what each subsequent terrorist scenario might include" (Jenkins, 2006), which is why the future is likely to bring many surprises and shocks, what we have witnessed over the last 40 years (Jenkins, 2006).

14 The Internet may be used for terrorist propaganda, including recruitment, radicalization and public incitement to terrorism, financing terrorist activities, terrorism training, planning terrorist attacks (including secret communication), terrorist acts, and cyber terrorism (United Nations Office on Drugs and Crimes, 2012: 3).

TERRORISM TODAY – THE GLOBAL JIHADIST MOVEMENT

It has already been noted that terrorism today has overcome previous understanding of this phenomenon. This is actually a fact that may be viewed through all the elements that constitute this notion. Therefore, we believe that it is not desirable to label this phenomenon as "new", "contemporary", "modern", and the like, because these attributes always prevail over terrorism. In fact, terrorism should be viewed in the context of its key elements and in the time it manifests itself. Obviously, terrorism emerging at the time of globalization will have a global character, and terrorist threats will become a global problem, especially those coming from international terrorist networks. In fact, terrorist collectives are capable of leading global campaigns (Jenkins, 2006), because, under current circumstances, terrorism is characterized by a much wider distribution of places where terrorist attacks may occur. The global threat of terrorism is reflected in ideological nuances, various motives, complex relationships, and patterns of proliferation between terrorist movements, especially those that ensure their justification by religious ideologies (Falk, 2003: 89). As a result, current terrorist goals are supranational goals beyond the state and have a broader perspective. Therefore, an important determinant of global terrorism is the international membership connected by the same ideas in order to achieve a "universal" goal, irrespective of whether it is unrealistic, and factually unachievable (Šikman, 2009: 75).

The best example of global (transnational) terrorism is the terrorism that manifests itself through the global jihadist movement. It has been manifesting itself over the past 30 years, and it has been changing forms to date, but not the ideology that leads it. This is the idea of global jihad, which we may observe from Al Qa'ida in the 1980s to ISIL today, which manifests itself in a much more dangerous, brutal and different way (Bunzel, 2015). This idea was initiated in Afghanistan during the Soviet occupation by Sunni Islamic scholar Abdullah Azzam, who collected funds and recruited the Arabs to fight against the Soviet Union in Afghanistan. He may be considered as its creator and is responsible for shaping this ideology. In particular, as Hegghammer (2011) observes, he presented two traits that differ from other Jihad doctrines typical of the time period (p. 73). First, he focused on an external enemy, rather than on the change of the regime within the home country. Second, he gave direct power to foreign jihad, without any restrictions usually required by other jihad doctrines, such as parental authority[15]. In this context, he sought to awaken the awareness of Muslims within the Muslim community worldwide (mind) and to encourage their resistance against attackers, rather than aggression and expansion. Therefore, he needed Al Qaeda as an Islamic army and a solid base to fight for the sake of the *mind,* not as a terrorist network, which would later became one (Bilandžić, 2008: 35). Osama bin Laden used this framework to try to expand jihad outside Afghanistan and primarily directed it toward US targets. Thus, in 1996, he published the "Declaration of War against the American Occupying the Land of Two Holy Places", which requires the deportation of US forces from the Arabian Peninsula, the demolition of the Saudi authorities, and the suppression of radical Islamism worldwide (Esposito, 2008: 15 citated in Bilandžić, 2008: 35), and in 1998, he founded the World Islamic Front for Jihad against Jews and Crusaders.

In this respect, we agree with Bilandzic's (2008) statement that "it was the ultimate globalization of jihad and international terrorism. The Islamist movement, particularly its militant part, took on the characteristics of a global phenomenon that has ever since been unavoidable not only as a factor, but also as the subject of international relations" (p. 37). In essence, al-Qae-

15 Pan-Islamic solidarity norms existed long before Azzam, but private military participation was circumscribed by a larger set of theological restrictions (Hegghammer, 2011: 73, 74).

da's ideology is largely international, trying to exploit local conflicts, as part of a wider global movement against "degeneracy" and "infidels" (Rabasa, Chalk, Cragin, Daly, Gregg, Karasik, O'Brien, Rosenau, 2006: 4). This was the case with the war in Bosnia and Herzegovina (1992-1995), Chechnya (1994-1996, 1999), Afghanistan (since 2001), Syria and Iraq (from 2012 up until now), conflicts in Somalia, the Philippines, and other places. The following decade was marked by worldwide terrorist attacks carried out by Al-Qaida. Each of them shocked the public with their ruthlessness, scale and manner. Although many papers on Al-Qaida, its organization and structure have been written, it has become increasingly clear that terrorists, rather than a concrete organization, are leading the idea of global jihad throughout the world. This is best demonstrated by the establishment of ISIL, which, unlike Al Qaeda, went one step further. It occupied a certain territory in Syria and Iraq, established power over the population (i.e., declared a "caliphate" and named its leader Abu Bakr al-Baghdadi caliph), showing its expansionist intentions. Although ideology remained the same, the clear distinction between ISIL and other Islamic and Jihadist ranks (including Al-Qaida) is an emphasis on eschatology and apocalypticism (Mamouri, 2014; Wood, 2015 citated in Šikman, 2015: 12), resulting in the use of extreme violence not only against infidels, such as Christians, Shiites, mystics, Kurds, Yehuda, and other religious and ethnic minorities, but also against the impostors of Islamic religion, generating new sectarian wars in the region (Weiss, Hassan, 2015). An unprecedented flow of foreign terrorist fighters has marked this period of global jihad as never before. It is a phenomenon that the world has faced again since 2012. Citizens of more than 100 countries have gone to Syria and Iraq to participate in terrorist activities. Their number ranges from 30,000 (The Soufan Group, 2015: 5) to more than 40,000 (Boncio, 2017) which is more than the total of all the known participation of foreign terrorist fighters - the mujahedin in the conflicts in Bosnia and Herzegovina, Chechnya, Afghanistan, and Somalia[16]. Although much has been said about the collapse of ISIL, it does not mean the idea has been destroyed. There is justified fear that it will continue to exist, primarily through jihadists who have participated in the conflicts in Syria and Iraq[17],,or through other armed conflicts which have yet to take place (e.g. Libya, Yemen, Afghanistan, and the Caucasus) (Jenkins, 2015).

CONCLUSION

Based on the above critiques, comparative and descriptive analysis, it is clear that terrorism is a phenomenon that has undergone major changes in the form and manner of manifestation. Its essence has remained the same – the use of violent methods to achieve the set goals. Other elements have undergone significant changes as well. This has greatly contributed to the use of the Internet, making terrorism more visible in all its forms and dimensions. Likewise, greater availability of terrorism-related content has made this phenomenon a significantly more dynamic phenomenon. Thus, terrorism today is not limited to one region, members of one political, ethnic, religious or other affiliation – it is transnational in the true sense of the word. It is also not limited to a terrorist collectivity, strict organization and leadership. Rather, it is influenced by the idea, which is available, inter alia, on the Internet.

The terrorism that dominates today is mirrored in the global jihadist movement. It is based on the idea of global jihad and as such has existed for almost 30 years. Some of its characteristics concern the exploitation of local conflicts, the arrival of foreign terrorist fighters,

16 The number of terrorist fighters in the previous periods: Afghanistan (1978 – 1992): 5000-10000; Bosnia and Herzegovina (1992 - 1995): 1000-3000; Somalia (1993 – 2014: 250-450); Chechnya (1994 – 2009): 200-700; Afghanistan (2001-2014): 1000-1500 (Schmid, 2015: 3).

17It should not be forgotten that ISIL has called on its like-minded people to attack targets in their countries of origin. With the return of jihadists, this danger is growing rapidly.

their inclusion in these conflicts, all for the purpose of participating in global jihad and the implementation of its fundamental idea. The potential of this terrorist activity is enormous. It lies primarily in the fact that terrorists are linked to this idea, not by mere members of the terrorist organization, even by organizations such as Al-Qaida or ISIL. The simple idea that links terrorists across the world goes beyond the specific forms of terrorist organization and action. This was also clear when Osama bin Laden, as the personification of Al-Qaida, was eliminated. Although the scale of its operation has been reduced, this terrorist organization continues to pose a serious threat. Subsequently, ISIL emerged, which was led by the same ideology, but in a more brutal and unscrupulous way. Its actions have mobilized more foreign terrorist fighters than ever before, and the use of military technology for terrorist purposes gave a new dimension to this phenomenon. The decline of ISIL does not mean the end of this ideology. On the contrary, most of the foreign terrorist fighters are returning to their home countries, and some of them are going to search for other zones of conflicts. Radicalized individuals should be taken into account, who will surely continue to expend the idea of a global jihadist movement.

Finally, the question of how to protect ourselves from terrorism today should be asked. To date, almost all strategies have been tried. The last phase reflected in the military response to terrorism showed all the asymmetry of forces, but the idea prevailed. The concept of social response to terrorism, actors of informal social control, is increasingly being advocated. It refers to a process called deradicalization. On the other hand, this concept is highly criticized because the models applied (Belgian, German, Swedish, etc.) have not given the desired results. In other words, the exclusion of method selection proves to be a bad solution. Neither terrorism may be solved solely in a conventional way, nor vice versa. The synergy of strategies and involvement of entities of formal and informal social control is necessary. The potential of education, as the strongest weapon, should be used, because it should always be the fact that it is a fight against "the idea", "the movement", rather than the concrete forms of manifestation and organization.

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WOMEN IN PRISON: BANGKOK RULES, PRISONER'S RIGHTS AND MACEDONIAN REALITY

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Abstract: Prisoners' rights and their better treatment and successful resocialization process have always been an important issue on the agenda of international organizations and in most of democratic societies. The United Nations have brought many international documents in this area, trying to obligate the member states to guarantee prisoners' their human rights, but also a dignified life while they are imprisoned. Also, the UN with the Resolution 2010/16 have brought the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) which were meant to be used by countries in direction of improvement of conditions in female penitentiary institutions.

In the Republic of Macedonia, women are incarcerated in the only female penitentiary institution which is a part of the Penitentiary institution KPD "Idrizovo", at around 17 kilometres from the capital Skopje. It is also important that in addition to being the female prison the same institution functions as educational–correctional home for female juveniles. The reports of the Office of the Ombudsman of the Republic of Macedonia detect several institutional and professional weaknesses.

Which are the international rules and directions in the process of building a better life for incarcerated women? How does the Macedonian female penitentiary institution look like? Has it changed since 1947? Which are the steps that Republic of Macedonia has undertaken in making better living conditions for incarcerated women? What is left to be done?

Keywords: *Bangkok rules, human rights, incarcerated women, penitentiary institutions, Republic of Macedonia.*

INTRODUCTION

Over the years of human civilization sanctioning has changed its forms and goals. Starting with a clearly repressive philosophy and not being able to lower the levels of criminality, penalties have changed their punitive meaning to a restorative one, widening the forms of

sanctioning, using alternative measures in order not to use imprisonment in cases when it is not necessary.

Imprisonment on the other hand, being the most used sanction, after death penalty and bodily penalties, ceased to be used, became a state action where prisoners at first did not have any kind of rights to a sanction during which execution prisoners are under treatment and resocialization process, enjoying also the basic human rights and with certain post penal help.

Women were in most cases treated differently than males, with such perception rooted within the opinion that women criminals are depraved creatures who had denied their feminine nature and committed a crime. In such times, women were perceived as impossible to repent and to change. Their behaviour was even more serious, being "fallen" and ignoring their role of wives and mothers (Banks, 2003).

The international community has recognized the necessity of protecting prisoners' human rights with The Standard Minimum Rules for the Treatment of Prisoners, and this document applies to all prisoners with respect to their needs and without discrimination on any base and with the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) which are applied in finding alternatives of imprisonment. Both these documents apply to women offenders without any kind of exemptions. But also, United Nations in their Preliminary observations (UNODC, 2010) for the so called Bangkok Rules (United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders) have marked and noticed that being brought in 1955, the document did not draw the necessary attention towards the basic needs women prisoners have.

At the same time, there is an increase of the number of women prisoners worldwide, which draw the attention and need in consideration of the different kind of needs women prisoners have and to acquire another document which will deeply explore and guarantee their basic human rights. The average population of women prisoners in European countries is around 6.1%, in Africa – 3.4%, in Americas – 8.4%, in Asia – 6.7%, and in Oceania 7.4%. The World percentage of women and girls in the total prison population is 6.9% (ICPS, 2016). Although the percentage and the ratio between female and male prisoners still remains low, the data analysis through the years show that there is a larger proportionate rise in the number of female prisoners before and today. The data of the International Centre for Prison Studies show a change in female prison population since year 2000 until 2016 for +53.3% (from 465,900 to 714,417) with the lowest increase in Europe (+3.5%) and the highest in Oceania (+139.5%) (ICPS, 2016). But, the Americas have the highest female prison population rate (per 100,000 of general population) with 31.4 person per 100,000 citizens, and Africa has the lowest (3.2 persons per 100,000 citizens) (ICPS, 2016).

Even with these numbers and data, prisons are still perceived as primarily male institutions, with the majority of prisoners being men and also the majority of prison staff are men. That was one of the many reasons why a new document directed towards only women prisoners' rights and needs was needed.

Also, there are a large number of incarcerated women whose criminal pathways start with them being victims to any kind of interpersonal violence as adults, but also as children. Such traumatization results in different kinds of interpersonal, mental health and substance misuse issues, which are challenging the successful protection and resocialization of women prisoners (Tripodi et al., 2017).

The new document does not replace the Standard Minimum Rules for the Treatment of Prisoners or the Tokyo Rules, but it actually expands the area with clarifying some of their provisions and with covering new areas of women prisoners needs.

The research is directed towards the analysis of the Macedonian women prison's conditions and its regulations, the challenge regarding the building of better living conditions for every incarcerated woman, and of course, the range in which Macedonian prison legislation is in accordance with the United Nations' documents within this area.

The benefit of such analysis derives from the small number of scientific research in the area of female criminality overall and at the same time of the problems that incarcerated women offenders have, the living conditions they have inside the only Macedonian women's penitentiary institution, their everyday challenges and needs. Locally (in the Macedonian context) the results and conclusions can and should be used in the future administrative actions towards the building of better institutions, strengthening the resocialization sections, and making better implementation of legislative changes and undertaken measures.

MEASURES OF THE INTERNATIONAL COMMUNITY: THE BANKGKOK RULES AND BEYOND

As we have already mentioned before, the Bangkok rules as a United Nations document do not in any way replace the already existing documents in the area of treatment of prisoners, but they only widen the area of prisoners' rights and accommodate certain areas to the special needs of incarcerated women.

The Bangkok rules are divided into four sections; each one of them elaborates different aspect of women's imprisonment as a sanction, but also is covering the non–custodial sanctions and measures for women and juvenile female offenders.

Section I consists of rules covering the general management of institutions and the admission procedure when a woman should be incarcerated. At the beginning of the Section I of the Bangkok rules, there is a basic principle, which elaborates that for embodiment of the rule 6 from the Standard Minimum Rules for the Treatment of Prisoners, the special needs of incarcerated women should be taken into account and that providing of those needs will not be perceived as a discriminatory act.

Rule 2 explains the process of admission of women offenders into a penitentiary institution, asking the authorities to give women with children the possibility to make arrangements for their care and also, a possibility of a suspension of her detention (if such a measure is necessary for the best interest of a child). Also, as a result of women's vulnerability during the admission process, the newly arrived prisoners should be given the possibility to contact their relatives, get legal advice, and be informed regarding the prison rules and regulations in the language they understand (and if they are foreign nationals, they should be able to contact their embassies or consular representatives).

When being admitted, authorities get information regarding the number of children the woman has, they are medically screened (to determine their primary healthcare needs, but also to determine other conditions such as the presence of sexually transmitted diseases, mental health care needs, reproductive health problems, drug dependency, sexual abuse or other forms of violence prior their admission). While being inside the institution women prisoners have the right of having all necessary means which are required by the women's special hygiene needs. Also, during their presence inside the penitentiary institution, women prisoners shall receive different kinds of preventive health – care services, same as other women of the same age which are outside of the institution.

Disciplinary measures will not include prohibition of family contact, especially if there are children, with also not being able to apply punishment towards pregnant women, women with infants and breastfeeding mothers.

Visits by children should be organized in an environment where the visit will be a positive experience for the child, with allowing a direct and open contact between the mother and her child.

The first section also incorporates the rules regarding the staff training and their need for professionalism in their work with women prisoners especially in cases when the child is living together with the mother inside the prison.

The last part is dedicated to juvenile female prisoners as the most vulnerable category of prisoners.

Section II contains rules which are applicable to special categories of women prisoners and they are used and are applicable only when those categories of offenders are incarcerated. The rules from subsection A are applicable to women prisoners serving their sentence and the ones from subsection B are applicable to prisoners under arrest or awaiting trials.

Women prisoners serving their sentence should be classified with addressing to their gender specific needs in direction of ensuring successful rehabilitation, treatment and reintegration. Their classification should be in line with the risk they pose, using the essential background information.

This part has a special subsection dedicated to women prisoners with children and the cases when those children are living with their mothers inside the penitentiary institution. Then foreign nationals, minorities and indigenous people, with accent to the activities in direction to their protection from possible different forms of discrimination.

The Section III elaborates the usage of non–custodial measures, with the provisions of the Tokyo rules as the guide in the process of developing and implementing these measures in cases of women offenders. Namely, the decision of sentencing a woman offender should be taken in accordance with her past, possible history of victimization, family ties and other characteristics, which should help during the process of choosing specific diversionary measures and sentencing alternatives. Women in need of protection can also be given one by shelters which are managed by independent bodies, NGOs, different kinds of community services, but also if necessary there is a possibility for a custodial measure, but they have to be expressly requested by the concerned woman. Also, authorities should take into account the possibilities of early conditional release (parole), use of non–custodial sanctions in cases of pregnant women and women with dependent children, and to avoid institutionalization of juvenile female children in conflict with the law.

The fourth section is dedicated to the process of researching, evaluating and raising the public awareness about female criminality. Being the gender which is rarely part of the criminal data system, females are underrated in criminological and other kinds of researches, with less interest regarding the factors triggering their confrontation with the legal system. Also, of great importance are the analyses of secondary victimization, their impact, and the consequences of women's imprisonment that can help in the future with planning, programming, developing and formulating policies which would help women's reintegration in their societies. Such measures should help in overcoming the stigmatization and negative impact that incarcerated women, and their children, survive when they are released back to their communities.

In the context of the necessity in raising the public awareness, the media and ultimately the public will be informed about the factors influencing female criminality, the effective ways in responding to the phenomenon, at the same time helping the women offenders in

the process of their social reintegration. As good practices given to member states there is the publication and dissemination of research results, because they would help in forming a comprehensive policy in the responses towards women offenders, a policy that will improve the outcomes of their treatment.

The Bangkok Rules are a good practice of the international community in improving the position of women prisoners, especially because of the special needs that they have, with respect and non–discriminative acts towards them during the time they are being imprisoned. With implementing them, member states open a new, different, but more respectful process in executing institutional sanctions towards women, but also during the execution of other, non–custodial measures. Such provisions should help state authorities in their efforts of rising public awareness regarding ex–convicts and in such way also help women prisoners to reintegrate freely and successfully into their communities after being released out of prison.

WOMEN PRISONERS IN THE REPUBLIC OF MACEDONIA

Women offenders in the Republic of Macedonia are incarcerated in the only penitentiary institution for females which is a part of the biggest penitentiary institution in the country KPD Idrizovo, which is located at around 17 kilometres from the capital city of Skopje. At the same time, juvenile female offenders are imprisoned in the same institution who are sentenced to imprisonment and the same institution functions as the educational–correctional home for juvenile female offenders, which is not in accordance with international documents and the obligation of different correctional facilities for juveniles and adults.

Table 1: Total number of incarcerated offenders and women offenders and incarcerated women rate per 100,000 criminally liable citizens in the Republic of Macedonia

Year	Total number of criminally liable/responsible citizens (Age 14 years - more)	Total number of incarcerated offenders	Total number of incarcerated women	Percent (%) of incarcerated women in the total number of incarcerated offenders	Number of incarcerated perpetrators per 100 000 criminally liable citizens	Number of incarcerated women per 100 000 criminally liable citizens
2008	1,678,404	2,101	49		125	3
2009	1,689,265	2,215	55		131	3
2010	1,698,313	1,790	60		105	4
2011	1,706,069	1,842	53		108	3
2012	1,711,140	2,186	52		128	3
2013	1,717,353	2,462	75		143	4
2014	1,721,528	3,016	93		175	5
2015	1,726,369	3,087	105		179	6
2016	1,730,164	2,968	97		171	6

Source: State Statistical Office of the Republic of Macedonia

The data by the State Statistical Office given in Table 1 show that since 2013 the imprisonment rate of women offenders is increasing, especially in the period between 2014 and 2016.

What should also be emphasized about the mentioned period is that the Law on determining the type and assessing the severity of the punishment was effective during that period, which resulted in such an increasing trend in the incarcerated population. Namely, this Law obliged judges to sentence a person to imprisonment if there were circumstances which according to the mentioned Law classified the person for such type of sanctioning, even in cases when the free judgment and opinion of the judge would have been different. Such sanctioning practice had consequences towards the usage of alternative measures and made recidivists from primary offenders.

The only undertaken measure of the Macedonian government aimed at decreasing the number of incarcerated population, which includes the incarcerated women, was the Law on amnesty with which there was an early release for every prisoner imprisoned to six months, and 30% decreasing of their punishment for other prisoners. The amnesty did not include crimes such as homicide, crimes against elections and voting, crimes against sexual freedom and morality, crimes against state, crimes which include organized groups, crimes against humanity and international law (Law on amnesty, 2018).

The main reason this legal solution was proposed were the overcrowded capacities of penitentiary institutions, and of course, because it has been the easiest way of freeing space inside correctional facilities. Also, as one of the main reasons mentioned into the Ministry of Justice's proposition of this law, was the process of resocialization of incarcerated offenders, which is not correct, having in mind that beside early release (in cases when it is possible), there is a number of many other measures which are used in the process of treatment, rehabilitation and reintegration of prisoners.

SITUATION WITH WOMEN PRISONERS IN MACEDONIAN PENITENTIARY INSTITUTIONS

The KPD Idrizovo penitentiary institution was established in 1947 and it has been operational since then. The total capacity of it is around 1,000 persons, but most of the time it is overcrowded and understaffed. The Women's ward is located within the perimeter of the KPD Idrizovo and it has been operational since 1986. It has a capacity of 70 persons.

The reports of the Macedonian Ombudsman give us information regarding the lack of humane living conditions in the Women's Ward of the KPD Idrizovo institution. The Induction Unit is a room with 18 m^2 of area, with 8 iron beds, one table, two chairs and an integrated toilet. In the time of the visit of the Ombudsman, the beds were old, covered with dirty beddings, old woollen blankets and there were no mattresses for all beds. Also, the floors were dirty, the flooring was dirty and worn out, there was no sufficient natural light coming into the room. The toilet was overflown and in a deteriorated condition. Actually, women prisoners were using it as a toilet, a sink and a shower, all at the same time (Ombudsman of the Republic of Macedonia, 2016). In accordance with the rules, women inside the Induction Unit stay in between 15–30 days and have the right to a 2-hour daily walk.

The Open Unit has 4 different rooms for the women prisoners and one toilet. The rooms are of 10 m^2 area with two beds, two of them are of 18 m^2 area with six beds, and the last of 10 m^2 area and three beds. The rooms have chairs, TV and other necessary things for normal life. But also many of the necessities have been brought by the prisoners on their own. The conclusion about the Open Unit is the same as the previous one, the hygiene is at a non-satisfactory level.

The Closed Unit consists of 14 rooms where prisoners are housed, with a 310 m^2 of area. The general conclusions for this unit are that there is a lack of wardrobes and cabinets for storing of personal items. The level of hygiene is satisfactory, which is not the case with the toilet, and its state is just the same as the ones in the previous units.

Although women prisoners have the right of 12,500 Jules nutritious food, the Report of the Macedonian Ombudsman has shown that for several years there are no special diets for women in different health conditions, including conditions like diabetes, pregnancy and post-natal dietary requirements.

What is also a direct breaking of the obligations from the UN and Council of Europe documents is the situation with the right to education, because in the Women's ward of KPD Idrizovo there is no primary and secondary education for women prisoners. Also they do not have any kind of vocational courses for gaining different levels of professional qualifications.

As for the right to health care, there is no different doctor for the Women's Ward, it is actually the same doctor who works for the whole KPD Idrizovo institution. Also, the women prisoners do not get gynaecological medical assistance which is in direct collision with the Bangkok rules, especially because of the special needs women prisoners have.

As for exercising the right of communication with the outer world, women prisoners can make phone calls, receive visits and parcels. Namely, there is no special room that could be used when women who have children are visited by their children, which is not in accordance with the Bangkok rules and the European Prison Rules of the Council of Europe.

Work is the important segment of the resocialization process and women prisoners in most of the cases are assigned to work to various posts within the facility, mostly in the kitchen, the washing room, in the process of hygiene maintenance and in the administrative building.

During their free time, women are allowed to read books, daily newspapers and monthly magazines, also they can use the library and are allowed to have access to audio and visual public information. The lack of space outside of the institution does not give any opportunities for recreations, except for daily walks.

Women prisoners incarcerated in the KPD Idrizovo cannot practice their religion in a different room, and they are allowed to practice it in the rooms where they are accommodated.

The lack of educational program, no programs for work assignment, no creative activities, mean that the resocialization program is not implemented in the direction it was designed for. The activities undertaken by the Resocialization Sector are spontaneous and in accordance with the prisoners' needs at a particular moment. Resocialization is successful when a woman prisoner did not commit any kind of disciplinary offence, uses the benefits, understands its criminal actions and repents, has friendly relations with other prisoners, respects the House rules and the officers, and has rather low chances of becoming a recidivist. On the other hand, the resocialization process is unsuccessful when a woman prisoner repeats the crime, is frequently sanctioned for not respecting the discipline rules, does not use benefits, is not accepted by her family members, does not want to socialize and refuses to cooperate with the Unit's workers.

The Ombudsman's Report has shown the lack of many conditions which are in direct correlation with better living conditions of women prisoners, but also the lack of many measures which are part of a successful resocialization process. Such situation gives us the right to conclude that there is still a lot to be done so that we could say that the only women's penitentiary institution works in accordance with the UN and Council of Europe's documents and helps women prisoners in their treatment, rehabilitation and resocialization.

DISCUSSION AND CONCLUSIONS

One of the most common problems in Macedonian prisons, and also in the only penitentiary institution for women is their being overcrowded, which in the end results in obstructions in achieving prisoners' rights and in inadequate living and accommodating conditions. In most of the accommodating rooms, there are not enough area in accordance with the European Prison Rules and the Law on execution of sanctions, which should be 5 m^2 per person. The solution for such problems cannot be found in building new capacities, but in using non–custodial measures which can be the possible solution for decreasing the number of incarcerated women. Non–custodial measures are important in the process of reducing prison overcrowding, but also are a tool which facilitates the rehabilitation and reintegration process and of course, reduce the recidivism rate. But, the use of alternative measures cannot be used on a daily basis. It needs to be a part of broader strategy, with strictly chosen crimes and possible cases when they can be used. Using alternative measures without a planned strategy can easily influence and increase the recidivism rate (European Parliament, 2014).

Also, the right to health care is not adequately enjoyed by the women prisoners, with not having the possibility for regular gynaecological examinations (having in mind the specific needs of females), which is a consequence of the fact that the correctional facility does not have an employed specialist in gynaecology. Also, the institution is understaffed in the medical sector with having situations when other prisoners give medical therapy to their fellow inmates, which is unacceptable. At the same time, pregnant women and women in post-natal period are not given the right treatment and the necessary medical attention.

Regarding the working conditions and the necessity of having some kind of professional and vocational courses and of course, educational programs, the conclusion is that women prisoners are sent to work in the facility's kitchen (in accordance to gender roles – a woman's place is in the kitchen), very rarely women work outside the facility, they do not continue their education while they are incarcerated, and there are no other kinds of courses which will help them in developing any kind of professional skills that will be used in finding an employment after they are released.

The legal level of energetic value of nutritive food for prisoners, as well women prisoners, is 12,500 Jules, with three meals a day. What is found as an observation is the fact that fresh products are missing from the menu, the menu is not adapted to the prisoners' needs and they do not take part in the process of developing it. Also, the material from which the dishes are made is considered to be unsafe, and can be used in causing harm to other inmates or in causing self-harm. Such situation in Swedish prisons is merely different, because there the inmates have the possibility to meet and to discuss important issues with the warden (Von Hofer & Marvin, 2001).

Also, there are no conditions for any kind of sport or recreation activities, the free time is used for walks in the poorly spacious yard and is not directed to any kind of positive activity.

There is a general opinion that prisoners should be incarcerated closer to their homes. In doing so, it will help them in the process of maintaining closer links to their families and their children, which at the end will help them to easily reintegrate into their society after being released (Coyle, 2005). Is it possible in the Republic of Macedonia? Actually because of the low number of women who are incarcerated, all of them are incarcerated in one institution, which is a unit inside a larger prison for men. If there was a special institution which would only accommodate women prisoners, then maybe it would have been easier to build a more acceptable surroundings and a more dedicated environment which will apply to women prisoners' needs and everyday life. Or maybe it is possible to implement such improvements when the women's unit is part of a bigger correctional facility for men. We would say it is pos-

sible to be done. Although it is a unit, the Women's Ward in Macedonia is a different building where reconstructions can be made towards a better living and accommodating conditions. It will also open possibilities in making better conditions in the yard, where women will have the possibility to spend their free time in a better and more productive ways.

What is clear is that women's incarcerating institutions should base on premises where women will get care and support, and not be coerced and restricted in their everyday life (Coyle, 2005). This kind of model is used in Norwegian Prisons, where institutions have liberty inside of them (Halden Prison for example). One of the most unusual characteristics of this prison is the dynamic security, where prisoners and security staff socialize, during meals or free time activities. The facility is equipped with all the necessary elements for a normal life, the prisoners are preparing their meals, are running a grocery store (Benko, 2018). This is the right direction in creating a view that prisoners and other citizens are the same, and that they have to work together for building a better society for all (Stanojoska & Jurtoska, 2018).

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FORENSIC ACCOUNTING AND CRIMINAL ACTS IN BUSINESS COMMUNITY

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Abstract: The result of various types of criminal acts is an unlawful way of gaining benefits, causing significant economic damage to the business community. A special place among criminal activities is taken up in financial reports, which involve fictitious and incorrect processing of data, all with the aim of concealing the right picture of the state of assets, sources of funds or business results of the company. The growth of this category of criminal activities significantly reduces the objectivity and reliability of financial reporting. Since different types of crimes come in this way, forensic accounting through its procedures investigates the modalities of the execution of various forms of crime and collects evidence that will be relevant to the eventual court proceedings. The aim of this paper is to point out the role of forensic accounting in the modern business company and the necessity for further training and development of forensic investigation.

Keywords: *criminal acts, forensic accounting, financial statements, business community.*

INTRODUCTION

Forensic accounting is a relatively young scientific discipline, which is developing more intensively in the last decade. Therefore, its challenge to researchers in this field is greater. This branch of economic science has its practical application in the prevention and detection of all or almost all types of criminal activities, which relate to the credibility of presenting financial statements, ie the disposal of material and non-material assets of companies, both nationally and globally.

The risk of criminal offenses that organizations worldwide are increasingly facing, regardless of their activities, size, location or ownership structure, not only jeopardize the business

of one company in terms of its financial status, but significantly affect its reputation, but and on the morale of employees. Criminal acts can have catastrophic consequences for the business community. In the smallest form, the consequences of a criminal act can mean loss of resources and erosion of the value of the company. Various studies show that approximately 6% of reported annual profits are lost due to some of the different types of criminal activities, and under the influence of globalization, rapid technological development and market growth, it is logical to expect this amount to grow in the future. However, in order to detect the risks of criminal acts in time, it is necessary to recognize the symptoms of criminal actions in order to prevent them from being timely (Singleton, Singleton, Bologna, Lindquist, 2010).

Financial information users expect reliable financial reporting as the basis for making rational economic decisions. Despite this, the modern business environment is characterized by various irregularities in business, inadequate accounting techniques and disregard of legal and professional accounting regulations. The far-reaching implications of accounting fraud have influenced the need to increase the level of protection of investors' interests and other stakeholders, and have encouraged the development of forensic accounting that is aimed at preventing and detecting criminal activities in the financial statements. The jurisdiction of a forensic accountant is a thorough examination of suspicious transactions in a business entity and the collection of evidence that corroborates or contests indications of a criminal offense.

In the first part of this paper we will terminologically define the notion of forensic accounting and explain the scope of its work. In the second part of this paper, besides the conceptual determination of criminal activities, we will present the generally accepted classification of the same, while in the last part of the paper we will explain the steps and techniques that are used in the investigation of criminal activities. In conclusion, we will point out the importance of forensic accounting as a separate branch of accounting in combination with research skills.

FORENSIC ACCOUNTING - CRIMINAL ACTS DETECTION INSTRUMENT

The forensic word[1] was first published in the press in 1659. as a shortened form of the original one (forensically) in 1581. Today, the word forensic has its three basic meanings: 1) in connection, used or appropriate for the courts or for public discussion or argumentation; 2) in relation to, or used in discussions and debates; rhetorically, 3) uses science and technology to investigate and establish facts or evidence in a court (forensic ballistics, forensic chemistry, forensic medicine, forensic accounting, etc.).

In essence, forensic science should answer the following questions: was the criminal action executed; who is executor; and how the criminal act was committed. Therefore, forensic science involves the use and application of scientific methods as well as technical skills to investigate criminal acts in the sense of proving them, thus helping the judiciary to bring the right perpetrator to justice. Precisely because of the use of various forensic analyzes, this type of evidence often has a decisive influence on whether the accused will be found guilty or not.

1 The word forensic, comes from the Latin adjective forensis, which points to the forum and signifies the one who is in the market. In ancient Rome, various trade and state affairs, debates, and often trials were conducted on the forum or square. A person who would be accused of a fraudulent act should have been given in the forum, in front of a group of individuals, together with the accuser, to give answers to questions about the charge. After the statements and argumentation of the participants, the case would be given to the party with better argumentation and rhetorical ability. (Petković, 2010, p.154.)

Forensic accounting, according to many authors, is one of the oldest professions dating back to Egyptian times. The "eyes and ears" of the Pharaoh were embodied in faces that essentially played the role of an accountant-forensic scientists who were concerned about wheat stocks, gold and other assets. They had to be people of trust, responsibility and ability to perform such an influential function (Singleton, Singleton, Bologna, Lindquist, 2010).

Forensic accounting is a special branch of accounting, which deals exclusively with assessments of legal and professional records and reporting. Forensic accountants must know not only financial accounting, but also tax and business law, criminology, psychology, etc. He combines his accounting knowledge with research skills, using this unique combination in conflict management and accountancy. It also helps lawyers, courts, and regulatory bodies, and agencies, investigations into financial fraud, in the clarification of relationships, facts and economic transactions that may or may already be the subject of judicial proceedings. Forensic accounting can be preventive and curative. The purpose of preventive work is to prevent the occurrence of illicit economic and financial activities. In curative work, there are already phenomena that indicate unauthorized actions. Forensic accountants should review and evaluate such actions, should provide an independent and inappropriate opinion and provide evidence of a criminal offense (Đekić, Filipović, Gavrilović, 2011).

The main reasons that contribute to the forensic accounting are the protection of existing property and the detection of the manner of committed criminal activities. It is evident that forensic accounting, as a special discipline, has emerged as a necessary reaction to the various types of fraud that have evolved through history. Its development has contributed to the solution of various complex cases of criminal activities, but also to the development of economically-financial forensics as a diversified area that includes expertise in the fields of capital, property assessment, assessment of incurred damages, calculation of salaries, interest rates, financial management estimates, trade, banking, accounting, analysis of financial statements, insurance, IT, and statistical analyzes, etc. Therefore, forensic researchers and forensic accountants are increasingly engaged in the detection and prevention of criminal activities in the financial statements.

Despite performing a wide range of tasks, forensic accounting can be divided into two basic areas:

1. Investigative accounting, aimed at detecting fraud when there is a suspicion that a criminal activity has been committed in the financial statements, or when the client's business is preventively checked. Investigative accounting implies a comprehensive investigation of criminal activities. It involves the integration of knowledge from accounting, auditing and research techniques. Investigative accounting services are provided mainly in circumstances where there is suspicion or anticipation of the possibility of criminal acts in the financial statements, or when they want to check the preventive character in the client's business. In this type of engagement, knowledge and possible evidence of illegality should only be collected and delivered to the client and, if they are required by law, to the judicial authorities, and in order to initiate court proceedings. can occur in two forms:

a) Financial and criminal investigations - this is a special discipline in forensic accounting that investigates fraud in financial statements. This type of examination implies a proactive approach to the methodology aimed at spotting and identifying fraud in financial statements. Investigators engaged in this activity usually come from state control and investigative agencies, audit firms and criminal services, and all together represent a team with different knowledge, skills and experiences they use in detecting and documenting criminal activities.

b) Forensic audit - independent forensic audit of financial statements is a new specialized service within the audit process of the financial statements. Forensic revision involves

arranging special engagement with audit firms and requires the work of auditors with special training and experience in preventing and detecting fraud (Currents Accounts, 2008).

2. Judicial support, which aims to provide professional services when certain actions have already been identified and entered into court proceedings. It refers to the provision of professional services to persons involved in court proceedings. Professional services are performed by persons who possess accounting and auditing skills and other knowledge that contribute to dispute resolution, such as financial expertise, consulting and other services. The American Institute of Authorized Public Accountants (AICPA) defines judicial support services as any professional support provided to lawyers in court proceedings by persons not professionally represented by lawyers. In essence, judicial support for forensic accounting can be defined as any form of professional services provided to lawyers and parties in current or anticipated court proceedings from non-lawyers, but possesses accounting and auditing knowledge and can help resolve litigation. Unlike investigative accounting, court support as a field of forensic accounting is not restricted in criminal proceedings solely to criminal offenses, i.e. on criminal proceedings (Aleksić, Vujnović-Gligorić, Uremović, 2015). Judicial support services can be classified in three areas: consulting services, financial expertise services and other services (Fenton, 2007).

a) Consulting services - through these services, forensic accountants provide advice on accounting and financial matters that are important for court proceedings. Forensic accountants do not appear in court under this service, but advise all parties in the court dispute regarding certain problems;

b) Financial expertise services - forensic accountants may, based on their expertise, knowledge and experience, be engaged in a court in the role of a court expert. As an engaged court expert, a forensic accountant can submit his report and opinion on certain court cases;

c) Other services - within these services forensic accountants can appear in court as a mediator of a party in court proceedings, a court expert is appointed for testimony and similar.

From the foregoing it follows that forensic accounting implies the provision of a wide range of services and services, which, in addition to the foregoing, includes the provision of services in relation to various situations, including the valuation of assets in compensation claims, the valuation of business partners. The significance of forensic accounting in the functioning of the economy is that it prevents and reveals criminal actions that introduce uncertainty in the business process that deters fair entrepreneurs from further business activities (Belak, 2011). In addition, certain forms of criminal activity such as tax evasion jeopardize public revenues, and undermining the state's functioning.

CRIMINAL ACTIVITIES IN BUSINESS COMMUNITY – CONCEPT AND CLASSIFICATION

When it comes to investigating criminal activities, it is necessary first to start from defining the term. There are no definite and unchanging rules for defining a criminal act, because it implies an element of surprise, trick, cunning, dishonest ways through which others can be deceived, and the only boundaries in its definition are those that place human dishonesty. The criminal act essentially involves various ways of deceit that the human mind can think of, which individuals serve to gain advantage over others through false claims (Michigan Criminal Law, Chapter 86, Sec. 1529).

In modern terms, criminal acts involve dishonesty in the form of deliberate deception or deliberate misrepresentation of material facts. The International Standards for the Review of Fraud, or Criminal Offenses, are defined as an intentional act committed by one or more per-

sons, from management, employees or third parties, which results in the presentation of inaccurate information in the financial statements. There are two basic categories of criminal acts:

1. Malversation or deception - deliberately committed deception with the aim of ensuring unjust or
2. unlawful use,
3. Criminal actions in the financial statements (so-called white collar crime)

Scams or malversations involve any criminal activity that aims to gain the benefit, and whose act of execution is the use of fraud (Wells, 2011). The criminal activity in the financial statements, according to International Accounting Standards, is defined as an intentional act committed by one or more persons in managerial positions who is responsible for management, employees or third parties, including misappropriation, in order to obtain unfair or unlawful benefits. This is any act committed by an official or responsible person, which is prescribed by law as a criminal offense and which, in its mode of performance instead of force and threat, uses deception as a means of obtaining unlawful benefits, and as a result material misstatements in the financial statements. In the literature, the term criminality of a white collar is also often used. Sutherland states that the crime of white collar is most often expressed in the form of false presentation of corporate financial reports, stock market manipulations, commercial bribery or bribery of public officials in a direct or indirect way, in order to provide favourable contracts and the adoption of desired regulations; then in the form of misleading advertising and sales, embezzlement and unintentional use of funds, evasion of taxes, misuse of funds for forced and bankruptcy funds.

There are several ways in which criminal activities can be divided. One of them may be related to whether the criminal act was committed against or on behalf of the organization. For example, if an employee has committed a particular criminal offense to the detriment of the organization in which he is employed, the victim is in that case, the organization itself and the same has been committed against the organization. However, in the case of false financial reporting, then the administration usually commits a criminal act on behalf of the organization itself to show its financial situation is usually better than it is. Although there are several ways and categorization of criminal activities, the following basic groups often meet in the literature:

- Offenders of criminal acts
- Criminal legislation provisions
- Cycles in accounting
- Appearances and ways of committing a criminal act

Criminal actions against perpetrators - when it comes to criminal acts and their perpetrators can include (Albrecht, Albrecht, Zimbelman, 2012):

1. Those in which the organization is a victim of fraud:
- Frauds committed by employees where the perpetrator is an employee of the organization
- Fraud merchants - the executor is the company's supplier
- Customer fraud - the buyer is the executor

2. Fraud management where victims are shareholders or lenders of a company
3. Different types of fraud with investments and actions, as well as various frauds with consumers where victims are usually unwanted individuals
4. Other different types of fraud

This group includes: criminal actions of employees, management, investment fraud, fraud of sellers, customers, other misleading ones, which are not financial in nature. If scams do not belong to any of the three listed above then they are made by others, other types of fraud that are not are not financial in nature. If scams do not belong to any of the three listed above then they are made by others, other forms of fraud that have not been carried out for the purpose of financial gain, but for some other reason.

Criminal acts according to the provisions of criminal legislation - when it comes to accounting theory and practice, the most important are the laws and legal regulations that form the basis of the financial system of the state. Since legal regulations of a variable character can vary by the severity of sanctions in the form of misdemeanours, economic offenses or criminal offenses, the theory and practice of investigating criminal activities in the financial statements need to know the criminal legislation of the domicile state. There is a large number of crimes in the Criminal Code of the Republic of Serbia, but the focus will be on criminal offenses related to the economic and financial area. In this sense, we will mention the following crimes that are foreseen and sanctioned by the Criminal Code, which may have a direct or indirect effect on the financial statements:

- Criminal offenses against property: fraud, fraud and ill-founded acquisition and use of credit and other benefits;

- Criminal offenses against the economy: Fraud in carrying out business activities, Tax evasion, Abuse of the position of the responsible person, Misuse in the privatization process, Causing bankruptcy, Falsifying bankruptcy and Money laundering;

- Criminal offenses against legal traffic: Forgery of documents, Special cases of counterfeiting of documents, Forgery of official documents and Guidance on verification of false content.

- Criminal offenses against official duty: Abuse of office, Fraud at work, Pronevera.

In addition to the Criminal Code of the RS, the field of economic activity is also regulated by other laws that generally regulate business, as well as laws regulating specific areas of business (construction, energy, agriculture, etc.), and in that sense, we are referring to laws: Law on Business Companies on obligatory relations, on the Law on Banks, on the Law on VAT, on the Law on Income Tax, on the Law on Accounting, etc., but it should be emphasized that this is not the final list of laws that apply in the field of economic business.

Criminal actions against accounting cycles - This division of criminal activities into financial statements is from the point of view of accounting cycles, so criminal actions can be classified into the following cycles:

- Sales and billing
- Purchase and payment
- Payroll and staff
- Warehouses and supplies
- Acquisition of capital

Criminal acts are usually well designed and concealed, as perpetrators try to hide the traces of their illegal actions. However, it is known that there is no perfect crime, and accordingly, every criminal act always leaves some trace. The only question is the ability to spot certain indications and so-called "red flags", which can and should not always be a sign of committing criminal acts. In this sense, the "red flags" may indicate that at first glance "something is wrong" and point to the first indications of possible criminal acts. When it comes to "red flags" then there are many situations or conditions that may be factors that indicate the exis-

tence of criminal acts, or it discusses the conditions that favour their creation. In this regard, among many, it can be pointed out among other things:

Red flags for detecting criminal actions in the sales sector can be:

- analysis of transactions with customers shows a much lower net worth; giving non-existent discounts;

- client address analysis suggests that several clients do business with the same address or use the same phone numbers;

- the analysis of the costs of business trips suggests that employees often visit a particular client;

- the address of the client company is the address of another company that the customer uses only for receiving mail;

- incomplete documentation submitted by the client and others

- Red flags for detecting criminal actions in the procurement sector can be:

- the amounts on the supplier's invoices exceed the amounts that are registered in the system of the given supplier;

- the supplier's invoice numbers in succession for a long period of time;

- some of the employees are the owner or worker in a company with whom the business is contracted, ie it purchases goods or services;

- the address of the supplier company is located at the end of the city or used as the address of several companies;

- there is a lack of data on the invoices or data are fictitious, or incorrect, and so on.

Some of the tests for detecting criminal actions with stock may be:

- inventory inventory and document review to determine the existence of forged documents or the write-off of goods for no apparent reason;

- analysis of documents and checking the previous censuses to determine whether the goods were written off, etc.

However, signs that point to a criminal activity in a company are often small, and even when performing an audit, they are often hidden and are hard to spot. However, from the point of view of auditing, through the knowledge of accounting cycles, an assessment can be made that is characteristic of irregularities that can occur in a particular accounting cycle, and in that way direct appropriate procedures for the purpose of their detection.

Some authors, criminal acts in organizations, in addition to the three basic categories shown in the ACFE model, expand into five categories, introducing money laundering and computer crime (Wells, 2005):

- Illegal appropriation of funds
- Fake financial reporting
- Corruption
- Money laundering
- High-tech crime

RESEARCH PROCESS OF CRIMINAL ACTIVITIES

The decision on engaging forensic accountants can be made by the management of the company, the owner but also by other users of the financial statements if they need an objective, independent and expert assessment of whether there are criminal acts in a commercial company (Koletnik, Kolar, 2008) and therefore whether the data in the financial statements is true, reliable. Engagement of a forensic accountant aims (Muminović, 2011):

1. detecting the area of possible irregularities, or narrowing the error box;
2. detecting specific irregularities;
3. assessment of the level of risk of identified irregularities (deliberately or unintentionally, high or low level of irregularities, etc.);
4. presentation of evidence (for court proceedings).

Forensic accountants with the knowledge they possess in the fields of accounting, auditing, management and research skills, have the ability to clearly understand (in) correctness and (none) fairness that occur within the company. In criminal activities in organizations, the goal is to determine whether a criminal act has already happened or happens and determine who its perpetrator is. In support of disputes, the client is the one who determines the goal (Đekić, Filipović, Gavrilović, 2011).

The procedure for performing forensic accountant tasks takes place in the following steps:

1. the start of the investigation (engagement of forensics, defining the objectives of the investigation);
2. theoretical analysis of criminal activities;
3. forming a collection of evidence;
4. collecting evidence;
5. analysis of the collected evidence;
6. preparation of a report on the findings of a forensic accountant.

The first step in the investigation of a criminal act is the initiation of an investigation. If we are talking about criminal activities in the organization, then this usually starts with a warning or accidental discovery of a criminal act. Grounded suspicion is necessary in order to investigate criminal activities. A grounded suspicion is a set of circumstances that are reasonably and stated professionally trained individual to believe that a criminal act has already taken place, to be played or to be played. However, in support of disputes, the suspicion is based on the legal representative.

In a situation where the criminal act is not known, or has limited information about this criminal act, the next step would be the theoretical approach to the criminal act. Based on this approach, a forensic accountant uses "brainstorming" to suggest the most likely criminal scheme and the possible way in which such a criminal scheme could be committed in a damaged organization[2]. It is clear that the forensic accountant must know the methods of criminal actions and warning signs for each of these criminal schemes. Theoretical knowledge then serves as the basis for the elaboration of an investigation plan, i.e. a collection of evidence. Using this theory, a forensic accountant develops a plan for collecting sufficient and relevant evidence. This is a step in which a crime auditor comes to a special expression. Under this step,

2 Webster's (Merriam-Webster) dictionary defines brainstorming as a "group-solving technique that involves spontaneously arriving ideas of all members of the group in order to solve the problem," but also as "designing ideas by one or more individuals with the aim of solving a certain problem "

an examination of accounting records, transactions, documents and data is carried out in order to obtain sufficient evidence to confirm or challenge the previously identified criminal act.

After collecting accounting evidence, forensic accountants are trying to collect evidence from eyewitnesses through interviews and interviews. This process is based on people who are most furthest from a criminal act (they are not involved in such actions, but can possess certain knowledge) to the narrowing of the circle of people who were in the immediate vicinity of a criminal act (first-hand knowledge) until the last step, which is to conduct interviews with suspects.

It is important to note that the last step in the investigation process is to approach the suspect. This can happen with intent or by accident. Intentional approach is easy to avoid, but random access requires additional efforts. When an investigator encounters an anomaly (a document, an accounting transaction, or other evidence of something that should not be here or as a warning sign that relates to criminal acts or violations of internal controls) before accessing a particular person with the aim of obtaining an explanation, has to determine whether the cause of such anomaly is a possible criminal act or not. The reason for this prudence is the case when unconsciously we have proof in our hands and when we turn to the side responsible for the criminal act and ask that person to give explanations in the disclosure of the discovered anomaly. At this point, the research is, at best, significantly hampered and, in the worst case, already compromised.

Upon completion of the investigation, a forensic accountant expounds his findings in a report whose form and content depend on which purposes he has been compiled. As a result of the investigation, a report may be drawn up for the contracting authority under the name of an investigation report or a report for the purposes of judicial proceedings when designated as an expert report. Regardless of the form of the report, the forensic accountant must be objective and professional when compiling it. That is, regardless of whether the case will come to court, the work of a forensic accountant must be presented in an effective way. The purpose of the report is to present the results of the investigation in a way which would allow the users of the report to make the right decisions. The information contained in the report must be accurate, clear, impartial, relevant and timely.

So, after performing these steps, there are two possibilities. One is that the perpetrator of a criminal act has been identified and that there is sufficient evidence to substantiate the underlying suspicion of his criminal responsibility. While the other is just the opposite. If the perpetrator is not known, further research is required. Otherwise, the evidence collected during the investigation may include witness statements, collected documentation, and means of executing a criminal act, assets as a result of the criminal act committed and, possibly, recognition of the perpetrator. Experienced investigators know what evidence is essential and necessary to prove certain crimes and how to obtain such evidence. Interview with the suspect or the taking of a statement is done only after all relevant data is identified, collected, assessed and explained.

In the phases of carrying out his task, a forensic accountant applies various analytical procedures or techniques to determine the areas of committed criminal acts. In his work, among other things, he uses analytical techniques for analyzing the relationship between items in the financial statements, or analysis of business transactions. From procedures in contemporary accounting and financial practice, investigators use the following analytical procedures:

- horizontal analysis
- vertical analysis
- rational analysis
- mathematical methods and models

These are techniques that expose the problem to detail and act in the context of forming a comparison of certain interrelated segments of business, and these relationships in the end, possibly, imply the possibility of a criminal act. They represent a useful tool in determining whether individual accounts balances, balance positions, have a greater chance of being the subject of criminal actions.

Due to the fact that in the bookkeeping, every recorded business event is reflected in two or more accounts of financial statements, it is reasonable to expect that there are firm correlations between the data contained in those reports and disclosed (for example, accounts receivable by nature of things always have a correlation with accounts sales revenue.) It is precisely on these premises that an analysis of financial statements is essentially based on an analysis of significant indicators and trends, including test results, fluctuations and relationships that are not consistent with other important information or deviating from pre-set sizes (Andrić, Krsmanović, Jakšić, 2004). Based on the pronounced statement, it can be clearly concluded that it is a basic characteristic analytical procedures in that they bring their results and conclusions based on the comparison of certain data from which the most commonly used in practice is the following (Golden, Skalak, Clayton, 2006):

- comparison of the current data of the company in relation to the data from the previous periods

- comparison of the data of the company with regard to the data expressed in the budgets, forecasts or projections

- comparisons of data from companies in relation to business branch data and / or comparable data from other market participants

- comparison of the financial data of the company in relation to its non-financial (business) data

- comparison of the data of the company in relation to the previously determined and expected data

It is necessary to point out several mathematical methods and models that can be used to support the analysis of financial statements aimed at detecting illegal financial procedures, as well as predicting bankruptcy that may result from financial fraud. Among the most commonly used are Altman's Z, Benford's law and Beneish M-score.

Also, one of the methods of detecting criminal activities in the financial statements is the use of appropriate computer software, which is able to track and record certain incoherencies in posting, employee procedures, use of inadequate documentation, and the like. The unusual activities are recorded and reported by the software to the competent controllers. Analyzing data in the accounting system, the software can spot certain signals of possible fraud, among which the most important ones are: similar names of customers or suppliers, whereby the fraudster attempts to "swallow" false invoices using nonexistent customers or suppliers; similar customer or supplier data; the same address of the buyer or supplier and the address of one of the employees; payment to the buyer or supplier carried out on a current account or address that does not correspond to their underlying data; payment in identical or similar amounts; the frequency of repayment of payments made to customers or suppliers by employees (Coenen, 2008) .

CONCLUSION

As an effort to reduce the number of criminal actions and thus restore confidence in the financial statements, the forensic accounting has further developing. The increase in the com-

plexity of business in the environment has increased the need for this discipline. Corporate scandals, through various forms and schemes of criminal actions, also required the necessity of the forensic investigation of criminal activities. In this sense, forensic accounting has provided its contribution as one of the methods of discovering various types of criminal activities, as well as the collection of evidence that will be valid for the court and bring perpetrators of criminal activities to justice.

Forensic accounting is intended for those users who are concerned about the legality and professional integrity of accounting and accounting reports in companies and other business entities. Forensic accountants are most often engaged by management, investor or some third party (state, financial institutions, etc.). When there is a suspicion that a criminal act has been committed in the business of a company, forensic accountants are engaged for the purpose of testing and proofing, which are tasked with examining the justifiability of suspicions about the criminal act committed in a company. The forensic accountant begins his work on the basis of indications and suspicions of the existence of criminal activities in the business, focusing on these doubts, and conducting analyzes and tests in order to confirm or remedy the doubts. Therefore, the existence of doubt is a prerequisite for initiating a forensic investigation.

The task of forensic accountants is not only to investigate criminal activities in financial statements, but also all other types of criminal activities such as taxes, bankruptcy, etc. The objective of forensic accounting is the objective verification of financial events and the detection of criminal activities in the business, regardless of the size of their materiality, i.e. the degree of impact on the truthfulness and objectivity of the financial statements and the business of the company itself. It is a special branch of accounting that deals exclusively with the assessment of legal and professional impeccable records and reports. Such an assessment is specific, since it expects the executor of the task to recognize the potential danger of misunderstanding unauthorized work or already created works in terms of accounting records and reports.

False financial reporting is defined as intentionally misrepresentation or omission of certain data or disclosure in financial statements in order to mislead users of financial statements, while unlawful appropriation of funds relates to the appropriation of funds of a legal entity often followed by reversed, as well as false records for the purpose of hiding assets that are appropriated or used to be used without adequate authority.

However, apart from these two main types of criminal offenses, ACFE also includes the third and the corruption in which perpetrators illegally use their influence in business transactions in order to obtain some benefit for themselves or another person, contrary to their duties with respect to the employer or rights others. "This view is in the light of corporate as well as public expenditure audits justified because corruptive forms of behavior of holders of public office as well as responsible persons in legal entities can lead to material misstatement of financial statements and the detection of this type of criminal act is the most difficult.

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SOCIAL, ECONOMIC AND POLITICAL FACTORS OF ENVIRONMENTAL CRIME

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Abstract: Environmental crime includes a variety of criminal offences directed towards the environment, i.e. its integral parts such as: air, water, soil, flora and fauna. In the past couple of decades, the number of criminal offences against the environment has been increasing, causing serious concern on a global level, especially if committed in organised and/or transnational form. The consequences of environmental crime are serious and affect both the environment and humankind, particularly poor local communities whose incomes depend on limited natural resources. There are several social, economic and political factors of environmental crime that are closely interrelated with one another. However, the experiences of different countries presented in an array of reports published by prominent international and local organisations and institutions as well as in a number of academic papers suggest that some of these factors can be considered the most influential. These comprise: the attempts of financially superior multi-national corporations to enlarge their profit by avoiding to invest money in the protection of the environment from their industrial activities, lack of financial resources and institutional capacities for efficient monitoring of activities that pollute the environment, lack of political will to integrate environmental protection issues into sectoral public policies, insufficient cooperation among relevant subjects on both local and international level for the purpose of prevention, discovering and sanctioning the perpetrators of these criminal offences, low level of environmental awareness, etc. Becoming familiar with key factors that enhance the commission of environmental criminal offences can play an important role in the prevention of this type of crime through the minimisation or, when possible, complete elimination of its causes. Therefore, the author of this paper analyses key social, political and economic factors of environmental crime, suggesting the ways to influence these factors in order to contribute to its efficient and prompt prevention.

Keywords: *environment, environmental crime, environmental law, factors of crime, crime prevention.*

INTRODUCTION – THE DEFINITION AND TYPES OF ENVIRONMENTAL CRIME

Environmental crime issues are extremely complex, which makes the establishing of one universally accepted definition of this phenomenon rather difficult (Clifford & Edwards, 1998). For theoretical purposes, environmental crime can be defined as "an act committed with the intention to harm or with the potential to cause harm to ecological and/or biological

systems and for the purpose of securing business or personal advantage" (Clifford & Edwards, 1998, p. 26). Clifford and Edwards also propose a legal definition of this term, stating that an environmental crime refers to "any act that violates an environmental protection statute" (Clifford & Edwards, 1998, p. 26). Furthermore, Clifford and Edwards emphasise that the designation "environmental crime" comprises all activities that breach statutory provisions adopted in order to protect the ecological and physical environment (as cited in Shover & Routhe, 2005, p. 321) In a more narrow sense, environmental crime includes only those violations of environmental laws that are incriminated as criminal offences and is defined as "an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and sanction" (Situ & Emmons, 2000, p. 19.). Environmental Investigation Agency (EIA) states that environmental crimes can be generally defined as illegal acts that directly harm the environment, including: illegal trade in wildlife, smuggling of ozone depleting substances, illicit trade in hazardous waste, illegal, unregulated, and unreported fishing, and illegal logging and the associated trade in stolen timber (Banks *et al.*, 2008).

In Serbian theory of criminal law, environmental crime is commonly defined to comprise the so-called "environmental delicts", which means that it is not limited only to environmental criminal offences but includes environmental misdemeanours (i.e., administrative offences) as well. According to this standpoint, environmental crime includes "the totality of human behaviours that violate or endanger social values which determine the preconditions for the conservation, upgrading and protection of living and working environment" (Jovašević, 2009, p. 130). For the purpose of this paper, the aforementioned definition of environmental crime is applied. Defined in such manner, environmental crime includes three types of environmental delicts: 1) environmental criminal offences, 2) environmental economic offences, and 3) environmental misdemeanours. Environmental criminal offences represent the most serious environmental delicts, i.e. the most severe forms of harming and endangering the environment. They consist of all illegal and dangerous acts, committed either by individuals or by legal entities, which are directed against the environment and for which punishments are provided by the law (Đurđić & Jovašević, 2013).

There are three types of environmental criminal offences: 1) genuine, 2) counterfeit, and 3) subsidiary. Genuine, i.e. environmental criminal offences in the narrow sense are systematised within Chapter 24 of the Criminal Code of the Republic of Serbia,[1] named "Criminal Offences against the Environment". Until January 1, when the current Criminal Code of the Republic of Serbia came into force, these criminal offences were incriminated in various federal and republic laws as well as in subsidiary environmental legislation (Jovašević, 2011). The purpose of these incriminations is to provide the direct protection either of the environment as a whole or of its integral parts such as air, water, soil, flora and fauna (Jovašević, 2014). Counterfeit environmental criminal offences (also referred to as environmental criminal offences in the broader sense) are systematised within the Criminal Code of the Republic of Serbia, but in its chapters other than Chapter 24. Their primary purpose is not the protection of the environment, but the protection of other social values. However, they still do contribute to environmental protection, but in an indirect manner (Jovašević, 2014). Subsidiary criminal offences are not systematised within the Criminal Code of the Republic of Serbia, but are incriminated by the provisions of other laws, such as for example: 1) Law on the plant health,[2] 2) Law on plant protection products,[3] 3) Law on genetically modified organisms[4] (Jovašević, 2014), and 4)

1 Criminal Code, *Official Gazette of the Republic of Serbia*, No.85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.
2 Law on plant health, *Official Gazette of the Republic of Serbia*, No.41/2009.
3 Law on plant protection products, *Official Gazette of the Republic of Serbia*, No. 41/2009.
4 Law on genetically modified organisms, *Official Gazette of the Republic of Serbia*, No. 41/2009.

Law on veterinary medicine[5] (Batrićević, 2011). No matter how diverse environmental criminal offences may be, the provisions by which they are incriminated share one common purpose (expressed either directly or indirectly): the protection of the environment, including the protection of the right to healthy and relatively preserved natural environment (Stojanović, 2006) as one of the fundamental human rights (Paunović, Krivokapić & Krstić, 2007).

THE CHARACTERISTICS OF ENVIRONMENTAL CRIME

Environmental crime is multifaceted and includes a variety of criminal offences by which fundamental environmental values such as water, soil, air and wildlife are endangered or harmed (Joldžić, 2002). Moreover, environmental crime represents a serious international security issue, which is not limited to the acts of wildlife poaching and trafficking, polluting, illegal logging or illegal fishing, but also includes crimes that facilitate or accompany these acts such as fraud, document falsification, money laundering and corruption. Its features most commonly comprise: transnational trafficking, a criminal supply chain and links with other crimes (Interpol, 2017). The phenomenology of environmental criminal offences suggests that these are their most common features: 1) devastating, long-lasting and hardly reparable consequences, 2) difficulties regarding the estimation of the exact damage caused by this type of crime, 3) frequent commission by legal entities (i.e. corporations), 4) transnational character, 5) organised form, 6) link to other types of crime, 7) dark figures of crime, and 8) difficulties regarding their proving before the court.

The consequences of environmental crimes affect the entire society (Skinnider, 2013). They are serious, long lasting and extremely hard to repair. They have negative impacts on both the environment as a whole, as well as on its integral parts such as air, soil, water, flora and fauna, including vulnerable ecosystems and endangered wildlife species. Environmental crimes also generate harmful impacts on human health, livelihoods and lower property values (Skinnider, 2013). It is also important to mention that environmental crimes threaten the survival of indigenous communities whose incomes depend on the exploitation of limited natural resources. Local, often indigenous peoples in many parts of the world, such as for example, Cambodia, Democratic Republic of Congo (Westra, 2012) and Honduras (Wright, 2011), are affected by illegal logging since their sources of revenue are dependent on forest food resources (Helgesen, 2017). In Honduras, for example, criminal groups have forced communities to leave their land to engage in illegal logging and fishing (Wright, 2011). Another example comes from informal mining camps in Peru, Colombia, Bolivia and Brazil that are destroying the most diverse ecosystems in the world and polluting the land inhabited by hundreds of indigenous peoples with mercury (Amanicao, 2017). The particular vulnerability of indigenous peoples does not come only from their poverty and remoteness from the centres of power, but is also derived from their inability to move freely from their current locations for various reasons, regardless of the harmful impacts they are constantly being exposed to (Westra, 2012).

A research on environmental crime impacts conducted at the European Union level has shown that there are very few consolidated data sets on this issue as well as that the data on environmental crime are usually highly dispersed with a limited number of detailed data collections (Illes *et al.*, 2014). On the other hand, there seem to be several examples of data on such impacts in specific cases, i.e. for individual countries, instances or sites (Illes *et al.*, 2014). The aforementioned research has also confirmed that some areas of environmental crime appear to be particularly problematic for making cumulative quantitative assessments

5 Law on veterinary medicine, *Official Gazette of the Republic of Serbia*, No. 91/2005, 30/2010 and 93/2012.

of their impacts. These include: pollution incidents, which are highly location specific, incorrectly reported and almost impossible to be brought together, violations of the provisions of CITES,[6] for which data on impacts on specific populations are often highly problematic and crimes related to timber, due to differences regarding data collection at the national level and difficulties in their comparability (Illes *et al.*, 2014). Also, in some cases, the effects of a single environmental criminal offence may not seem significant but the cumulative environmental consequences of repeated violations over time can be considerable (Skinnider, 2013).

Even if one could estimate the value of the "profit" that environmental crime brings to its perpetrators, the amount of exact material damage it causes could not be calculated because it does not only generate money for those involved, but also costs states money (Wright, 2011). Although making precise estimations about the scale of environmental crime is rather challenging, Interpol claims that global wildlife crime is worth billions of dollars a year, whereas the World Bank claims that illegal logging causes the loss of 15 billion dollars of incomes from taxes and revenues per year for developing countries (Banks *et al.*, 2008). In addition, according to the 2014 United Nations Environmental Program (UNEP) report, "the international illegal wildlife trade is estimated at between 50 and 150 billion dollars per year, illegal fishing at between 10 and 23,5 billion dollars per year, whereas illegal logging at between 30 and 100 billion dollars per year" (UNEP, 2014, p. 25).

Environmental criminal offences are often committed by legal entities, i.e. powerful (international or national) corporations. Environmental criminal offences represent one of the most common types of criminal offences committed by corporations (Ignjatović, 2008). This type of environmental crime is referred to as "corporate environmental crime" or "green collar crime" (O'Hear, 2004; Wolf, 2011). Defined in the broader sense, corporate environmental crime includes all environmental delicts committed by legal entities (House of Commons - Environmental Audit Committee, 2005), whereas in the narrow sense it is limited only to criminal offences as the most serious form of violation of environmental provisions committed by legal entities (Batrićević, 2017).

Environmental crimes are becoming more and more serious and are frequently committed on a transnational level and in an organised manner (Banks *et al.*, 2008). Transnational environmental crime is often divided into two categories: 1) trafficking in natural resources (including the trade in endangered species, illegal logging and illegal exploitation and trafficking of mineral resources), and 2) trafficking in hazardous substances (including the illegal trade in ozone depleting substances and the dumping and trafficking of waste) (Wright, 2011).

The perpetrators of environmental crime (especially transnational) are commonly involved in other types of high profit transnational organised crime (Wright, 2011). For example, evidence of firearms dealing and money laundering are often discovered during the investigations of environmental crime and the illegal clearing of land can represent a precursor to drug cultivation, etc. (Blindell 2006). Furthermore, environmental crime is often interrelated with corruption, which is particularly notable in the cases of illegal wildlife trade when the representatives of the authorities allow the perpetrators to transport, sell or buy illegally wildlife flora or fauna specimens without appropriate permission and/or documentation or with counterfeit documents (Batrićević, 2012a). The perpetrators of transnational organised crimes often commit the criminal offence of bribery, and their illegally obtained financial benefits are sometimes returned to legal financial courses through money-laundering thanks to the assistance of corrupted officials and experts as well as via fictive companies (Eliot, 2012)

6 Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3rd, 1973, 993 U.N.T.S. 243. Retrieved from https://www.cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf

The difference between the number of criminal offences that are reported and the number of those that have actually been committed, known as "the dark figure of crime" is particularly high in the cases of environmental criminal offences (Bejatović & Šikman, 2014; Perreira, 2015). For example, it is estimated that only around 10% of the known environmental crimes in the United Kingdom end up in court, whereas a large number of such cases are never officially reported to the authorities (Select Committee on Environmental Audit, 2004). Likewise, law enforcement experts argue that only 10% of all contraband wildlife in the European Union is seized (Stiles *et al.,* 2013).

The cases of environmental crime are rather difficult to prove before the court. In order to successfully prosecute an environmental criminal case, the prosecutor has to prove, beyond a reasonable doubt, that the accused (a natural person or a legal entity) knowingly violated an environmental statute prescribing criminal sanctions (The Environmental Law Resources Centre, 2005). However, in the cases of environmental criminal offences, this may be quite hard for various reasons. Namely, the core difference between evidence collected at an environmental crime scene and the evidence collected at any other scene is the fact that environmental crime evidence may be harmful for the persons collecting it (Clifford & Edwards, 2011). The specific hazards and scientific demands of evidence collection at an environmental crime scene require the engagement of specially trained experts and the use of special professional equipment since the evidence has to be preserved in a proper and safe manner (Clifford & Edwards, 2011). Many pieces of physical evidence remain uncollected at the scene of environmental crime because the personnel has lacked the skills necessary to note their presence, which is particularly common in the cases of illegal abandonment of hazardous waste (Drielak, 2017). Locating and exposing fingerprint evidence inside of an environmental crime scene is also very difficult because of the high risk of evidence contamination with substances such as fingerprint powders, especially in the cases involving the collection of chemical evidence (Drielak, 2017). The proving of environmental crime is especially complicated in the cases when it is committed by corporations due to their complexity and the decentralisation of the decision-making process within each corporation (Sina, 2015).

KEY FACTORS OF ENVIRONMENTAL CRIME

Crime factors include "objective and subjective factors that have an impact on the process of emergence, forming and final occurrence of crime either as a social phenomenon or as an individual behaviour. Criminal factors affect the genesis of crime either as its causes, its preconditions or as its triggers" (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009, pp. 348-349). Crime factors can be either external (objective) or internal (subjective). External or objective crime factors include social, economic and political factors, whereas internal or subjective ones are of psychological character. However, they all produce a combined, synthetic and multifaceted impact (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009). In this paper, key economic, social and political factors of environmental crime as the most important objective or external crime factors are analysed. Moreover, the level of environmental awareness, as an internal or subjective factor that is strongly rooted in social and cultural circumstances, is also explained.

The causes and consequences of environmental harm seem to be closely interrelated on the global level and environmental harm represents only a part of this complex mosaic (White, 2018). Although environmental crime encompasses a variety of violations of environmental legal provisions, there are some economic, social and political factors that commonly contribute to its emergence and expansion. Like its causes and consequences, economic, social and

political factors of environmental crime are also closely interrelated and their impacts cannot be observed separately.

The influence of economic system as a crime factor on a macro level can be observed from various standpoints, depending on the socio-economic circumstances. For example, economic crises accompanied by unemployment and poverty can trigger the increase of crime rate (Konstantinović-Vilić, Nikolić-Ristanović & Kostić, 2009). This assumption can be applied on environmental criminal offences as well. Namely, practice has confirmed that environmental criminal offences are often committed with the intention of the perpetrator to obtain financial benefits or to avoid financial losses and additional expenses. This is particularly visible in the cases of corporate environmental crime, when large companies use dirty technologies (Ignjatović, 2008) or fail to provide adequate safety measures or to apply methods for the prevention of pollution or accidents in order to avoid extra expenses and investments. The intention to obtain financial benefit through the violation of environmental provisions is also one of key motives for the commission of criminal offences such as illegal logging (Batrićević, 2012b) and illegal trade in protected wildlife species (Batrićević, 2012a).

The described behaviours of individuals and responsible persons within legal entities can be explained via economic theory of criminal behaviour, according to which a potential perpetrator makes a rational decision to break the law after making a comparison between the benefits he or she can obtain through a criminal offence and the ones he or she can gain in a legal manner (Begović, 2007). In today's era of capitalism, gaining profit should be interpreted as an "imposed goal that is easily achieved if environmental legal provisions, particularly those obliging legal entities to provide filters and cleaners, are violated" (Stevanović, 2015, p. 304).

In the cases of corporate environmental crime, some specific risk factors can be singled out. First of all, there are indications that financial strain (that can be estimated measured in different ways) may significantly increase the probability of violating environmental laws by companies, plants, and managers (Simpson *et al.*, 2013). It is also argued that managers tend to engage more in price-fixing, bribery, fraud or violations of environmental provisions if they believe that these acts could put their company in a better position than its foreign competition or contribute to significant savings of the company's financial resources, particularly in the situations when company profits are slowing or declining (Simpson *et al.*, 2013). In the context of corporate environmental crime, the correlation between intra-organisational structure and offending should also be taken into consideration. Namely, it seems that managers, particularly the middle-level ones who are responsible for executing the orders but have little authority when it comes to decision-making, tend to obey authority even if it includes unethical or illegal behaviour (Simpson *et al.*, 2013).

Economic factor of environmental crime can also be observed from the state's perspective, i.e. through the manners in which the state consciously or unconsciously encourages the commission of environmental criminal offences. It seems that smaller companies that do not represent serious threat to the environment are often punished more severely than large and powerful corporations for the violations of environmental law. Namely, not only would frequent and severe punishing of large corporations have negative impact on their business, but it could also trigger an array of social and economic issues, including unemployment. Moreover, it appears that state authorities are willing to tolerate the violations of environmental provisions committed by large companies that regularly pay taxes because the termination of these legal persons would lead to budget losses. In that context, it could be said that the aforementioned legal persons and responsible persons within them have some kind of "factual immunity" (Stevanović, 2015, p. 305).

In spite of the fact that industrial development and the pollution that comes with it as well as the desire to increase profit are considered some of the most influential factors of envi-

ronmental crime, worldwide statistics show that the rate of environmental crime is higher in less developed countries. This paradox seems to emerge due to the fact that the level of environmental awareness (including environmental education) is much higher in the developed countries, whereas "less developed ones still do not have an appropriate attitude towards the environment and its values" (Stevanović, 2015, p. 307), i.e. developed environmental awareness. Environmental awareness is considered a precondition for the existence of environmental culture, but the existence of environmental awareness does not necessarily have to lead to the development of environmental culture (Kundačina, 1998). It should be accompanied by adequate activities of individuals and groups designed to conserve, improve or create healthy living environment (Koković, 2010, p. 78). Environmental awareness consists of three key components: 1) cognitive (which includes knowledge about environmental issues), 2) ethical (which comprises environmental values), and 3) active (which refers to behaviour towards the environment) (Vuković, Štrbac, 2016, p. 799). All of them are relevant to the commission of environmental crime, but the third one (i.e. the behaviour of the perpetrator) should be considered the most important one. However, it should be mentioned that the relation between low level of environmental awareness and willingness to commit environmental crime cannot be applied on the responsible persons who commit environmental criminal offences on behalf of legal persons, because these perpetrators are usually educated professionals (Stevanović, 2015).

When it comes to political factors of environmental crime, it should be taken into consideration that environmental criminal offences are sometimes committed for the purpose of achieving a political goal, either during an armed conflict or in the time of peace. Crime rate usually increases during an armed conflict or in the period that comes after it (Konstantinović-Vilić, Nikolić-Ristanović & Kostić, 2009). Environmental criminal offences committed with the intention to achieve a political goal are commonly referred to as "ecological or environmental terrorism" (Schwartz, 1998, p. 483). At the same time, all armed conflicts have devastating consequences on the environment. However, there is a difference between environmental damage caused during the war and the one that is made for the purpose of environmental terrorism. In the case of a "common" armed conflict, the environmental damage represents an unintended consequence of devastation, whereas in the cases of environmental terrorism, the primary goal of a criminal act is to "endanger or harm the environment in order to intimidate the citizens and create political pressure" (Schwartz, 1998, p. 484). For example, Al-Qaeda's threats that they will cause forest fires in Europe and America, also known as the "forest Jihad" are considered environmental terrorism in the time of peace (Fighel, 2009, pp. 802-810). On the other hand, the destroying of oil tanks by the Iraq troops in Kuwait during the Gulf war (1990-1991), when around 11 million barrels of oil was spilled in the Persian bay causing serious pollution of water and costal soil, represents an example of environmental terrorism committed during an armed conflict (Mannion, 2003; Seacor, 1994).

CONCLUSION – THE PREVENTION OF ENVIRONMENTALCRIME

As the results of the international community to create political will of governments to fight environmental crime, numerous international treaties dealing with various environmental crime issues have been adopted. At this moment, there are altogether 1,198 multilateral environmental agreements, 1,595 bilateral environmental agreements, and 250 other agreements relevant to the issue of environmental crime prevention and suppression (Interpol, 2014). Moreover, each country has got its own national legislation regulating environmental protection and prescribing sanctions for the violations of environmental provisions, includ-

ing the most serious ones, known as environmental crime. However, since the consequences of environmental crime are long-lasting, devastating and hard to remove, the key approach this issue should be the prevention based upon the minimisation or elimination of the factors contributing to the emergence of this type of crime. Therefore, understanding the factors that contribute to the increase of environmental crime can play an important role in the process of prevention and suppression of this phenomenon on global and local level. Namely, by estimating which economic, social, political or other circumstances enhance the commission of environmental criminal offences, relevant stakeholders (including both state bodies and civil sector) are enabled to influence these factors promptly in order to prevent or minimise the risk of environmental crime instead of acting *ad hoc*.

Since the desire to gain profit, even if that implies the violation of environmental legal provisions, seems to be an important factor of environmental crime, its prevention can be improved through the application of adequate economic measures. For example, environmental taxes represent a common way to prevent economically motivated commission of environmental criminal offences. They are considered efficient economic methods for the suppression of environmental crime that are primarily applied on legal persons. The strategy of environmental taxes is based on the approach that these taxes actually play the role of the prices and regulate various relations on the market. This economic instrument dwells upon the assumption that "there are negative external effects that need to be included in the final price of the product or activity that produces negative environmental impacts" (Stevanović, 2015, p. 306).

When economic factors of environmental crime are concerned, it should also be highlighted that this type of crime is often closely interrelated with corruption and money laundering. That is the reason why it is sometimes referred to as "green collar crime" (O'Hear, 2004; Wolf, 2011). Therefore, combating environmental crime also requires the elimination of corruption in public and private sector, breaking the structure of various organised criminal groups and discovering the perpetrators of other criminal offences such as corruption, money laundering, illegal trade in weapons and drugs, etc. (Batrićević, 2017).

Having in mind the fact that low level of environmental awareness contributes to the increase in the level of environmental crime, raising environmental awareness through the media and elementary, higher and university education should be perceived as an efficient method of its prevention. The mass media can be used as extremely influential tools for widening public awareness about environmental problems (Sampei & Aoyagi-Usui, 2009: 204). Although the mass media often tend to focus on environmental issues only in the cases of some serious environmental disasters (Stevanović, 2015), there are cases showing that the mass media are being efficiently used in many environmental campaigns across the world including energy conservation, waste disposal, GHG emission reduction, climate change, etc. (Sampei & Aoyagi-Usui, 2009). Television has been considered a particularly suitable transmitter of environmental knowledge, attitudes and practical experiences for a long time because it has the potential to boost individual's sensitivity, consciousness, understanding, critical opinion, responsibility and active role in the learning process (Đorđević, 1979). Nowadays, websites, blogs and social networks such as Facebook, Twitter, Instagram, etc. seem to be even more powerful and more popular means of spreading environmental knowledge, information and impact.

Environmental education conducted in regular educational system or via media, social networks, on-line platforms, public campaigns or other appropriate means should encourage the participation of all stakeholders in environmental protection as well as in the prevention, detection and reporting of environmental crime. Moreover, becoming familiar with the essential provisions of environmental law represents an important part of environmental education

and environmental crime prevention (Dragić, 2017). However, it should be noted that environmental education is a complex and long lasting process the results of which are not visible instantly but after several years (Stanišić, 2009). It is also considered that public participation in environment conservation and monitoring should be supported because it can provide additional (often low-cost) sources of information to government agencies, increase the trust in government decisions and contribute to the education and empowerment of the community members when it comes to ecological issues that affect them (O'Rourke & Macey, 2003).

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CHILD GROOMING THROUGH THE INTERNET

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Abstract: Easy access to communication technologies and especially a growing daily use of the Internet has created new opportunities for children to establish and maintain relationships with each other. On the other side, widespread Internet availability has led to increasingly common misuse of social networks for the grooming of children for sexual purposes through the Internet. Online grooming which occurs mostly via instant messaging apps, social networking sites, chat rooms, online gaming sites, photo sharing sites and dating apps, generates numerous problems in solving and proving of child sexual abuse. This is precisely the main reason why the first part of the paper covers the issue of combating sexual exploitation and sexual abuse of children through the Internet. Special attention is dedicated to the Convention on the protection of children against sexual exploitation and sexual abuse since it is the first international instrument that specifically addresses online grooming, as well as the Directive 2011/93/EU of the European Parliament and of the Council as of 13 December, 2011 on combating sexual abuse and sexual exploitation of children and child pornography. Furthermore, the author points out to the national legislative framework in order to examine whether the Criminal Code of the Republic of Serbia is in a compliance with adopted international and regional framework on combating online grooming. Since the grooming causes serious consequences to children, the second part of the article deals with the protection of the rights of child victims suffering from sexual exploitation and sexual abuse. In concluding remarks, the author highlights that, by adopting online grooming as a standalone offense at international level, a comprehensive criminal law response on preventing and combating sexual abuse of children through the Internet was created. Finally, some recommendations for accelerating the implementation of adopted measures on online grooming are listed.

Keywords: *grooming, the Internet, children, sexual abuse, abuse of computer networks.*

INTRODUCTION

The internet has revolutionized many aspects of human behavior, including the way individuals communicate and interact with one another (Whittle, et alia, 2013: 3). Nowadays, the Internet is increasingly used by adults to access children for the purpose of sexual abuse. Although there are different kinds of sexual abuse of children through the use of Internet including cyber-bullying and stalking (Davidson, et alia, 2011: 8), the focus of this article is on the online grooming. Following the case of Patrick Green from 2001, there was a general increase in concern about child groomers using the Internet to access victims for child sexual abuse. Green, in fact, a middle-aged man, met a 13-year-old girl, Georgie, in a chat room and after several months of contact via the Internet and telephone, they arranged to meet up. At

that time, it was not possible to convict Patrick Green, as his communication and arrangement to meet Georgie did not break any laws. This and other similar cases, which received a great deal of media coverage, led to an increased awareness and concern regarding the sexual grooming of children via the Internet (Craven, Brown, Gilchrist, 2007: 60). Internationally, the issue of child grooming through the use of Internet came to public attention with the case of former US marine, Toby Studabaker, who in 2004 was convicted of abducting and having sexual relations with a 12-year-old girl he had met in an online chat room. Studabaker groomed the girl through subsequent online exchanges of contents of sexual nature and convinced her to meet him in the UK for this purpose. In response to such events, legislatures have moved to establish offenses criminalizing the misuse of the internet to procure or groom children for sexual purposes. (Urbas, 2011:17).

Grooming of children for sexual abuse commences with groomers choosing a target area that is likely to attract them through the use of teen chat rooms, bulletin boards and online communities with the intention of gaining their trust. The anonymous nature of the Internet allows groomers to masquerade as children in cyberspace to gain the confidence and trust of their child victims over a period of time before introducing a sexual element into the online conversation and eventually arranging a physical meeting. (Raymond Choo, 2009: 1-2). Groomers gain more information about their victims by searching online databases, such as online phone books, profile searchers, blogs, pictures, etc. Online grooming allows groomers to be very specific and selective in the kind of person they want as a victim. If the victim rejects their advances, they can disappear, change their identity and reappear as someone else, approach the same victim, but this time wiser to what that victim's limits and preferences are. Groomers usually meet the victim in an open chat room and then go into a private chat room, where they start exchanging emails, messages, pictures, and videos, hidden from other people (Griffith, Roth, 2007: 10-11). The grooming cases usually involved the following behavior: sending an offensive image or material to the child; seeking sexualized images from the child and arranging a meeting with the child (Krone et alia, 2017: 55). Furthermore, grooming includes such behavior as showing a child extra attention, complimenting them, giving gifts, making promises and increasing contact (Pollack, MacIver, 2015: 167).

Although there are many issues to discuss concerning the online grooming, the focus of this article will be on the problems arising as a result of the lack of unique definition and understanding of online grooming; different approaches to defining a child; difficulties in identifying and combating online grooming; scope of European and national legal framework in relation to online grooming and the protection of child victims suffering from online grooming. To begin an analysis of understanding of online grooming and different approaches to defining a child will be provided.

UNDERSTANDING OF GROOMING ANDGROOMING STAGES

There is limited consensus on how grooming can be defined. Two definitions of grooming, one from practice and other proposed by theorists are offered below. The U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) utilizes the definition of grooming as a method used by offenders that involves building trust with a child and the adults around a child in an effort to gain access to and time alone with her/him (Pollack, MacIver, 2015: 161). On the other hand, theorists usually define grooming as the act of preparing a child with the intent of sexually abusing them, but the process also involves the act of manipulating people and situations to gain and main-

tain access to the victim/s. It has two main elements: building a trusting relationship with the child and isolating the child in order to abuse him/her. There are a lot of other definitions of online grooming that can be found in theory (Randhawa, Jacobs, 2013: 10; Quayle, 2017: 6-7; Kool, 2011: 48), but the common disadvantage of all of them is that they explain the concept of online grooming incompletely. For the purpose of this paper, online grooming is defined as the enticement for the sexual purposes of a child who has not reached the age required to engage in sexual activities by an adult, through the use of information and communication technology. It should be kept in mind that the act of grooming does not include an agreement between the child and groomer on the meeting, nor even less, appearance of the perpetrator at the meeting place. In this sense there is opinion that at a minimum, a definition of online grooming should address the communication, enticement, luring, proposal, solicitation, or similar action by an adult with respect to a child via the Internet or other information and communication technology to coerce the child into sexual activity, either online or offline (International Centre for Missing & Exploited Children, 2017:10).

Considering online grooming it is noticed that throughout grooming conversations there are several stages that can easily be identified by differences in the patterns of behavior of the groomers such as *the friendship-forming, the relationship-forming, the risk assessment, the exclusivity and the sexual stage*. However, it is important to note that not all users will progress through the stages in the conversations sequentially, i.e. some adults will remain in one stage for longer periods than other adults who will skip one or more stages entirely. *The friendship-forming stage* involves the groomer getting to know the child. During this stage, a groomer may ask whether or not the child has a picture of themselves. At this point, the conversation requests are confined to pictures of the child without any reference to the pictures of sexual nature. In the initial friendship-forming stage the adult will suggest moving from the public sphere of the chat room into a private chat room in which an exclusive one-to-one conversation can be conducted. *The relationship-forming stage* is an extension of the friendship-forming stage, and during this stage, the adult may engage with the child in discussing, for example, school and/or home life to create an illusion of being the child's best friend. *The risk assessment stage* refers to the part of the conversation when a groomer will ask the child about, for example, the location of the computer the child is using and the number of other people who use the computer in order to detect and assess the likelihood of child's activities. *The exclusivity stage* typically follows the idea of trust that is often introduced at this point with the adult questioning how much the child trusts them. The interactions take on the characteristics of a strong sense of mutuality, i.e. a mutual respect comprised of remaining a secret from all others. This often provides a useful means to introduce the final stage of the conversation, which focuses on issues of a more intimate and sexual nature. The introduction of *the sexual stage* can appear after the adult has established a deep sense of shared trust with child and often the nature of these conversations is extremely intense. The nature of sexual conversation will vary from mild suggestions to explicit descriptions of sexual activities. This pattern of conversation may progress to a request for a face-to-face meeting (O'Connell, 2003: 8-10).

DIFFERENT APPROACHES TO DEFINING A CHILD

The task of defining a 'child' is complex since national legislations are not synchronized with the international and European framework. On the one hand is the UN Convention on the Rights of the Child which defines a child as a person under the age of 18. This is consistent with the Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and the Council of Europe Convention on the protection of children against

sexual exploitation and sexual abuse which also state that a child is someone under the age of 18 (Davidson, et alia, 2011:14).

On the other hand, the definitions of 'child' are not synchronized across national boundaries, let alone what constitutes online grooming, since there are distinctions associated with rules for the legal age for sexual consent which varies from country to country. For example in Spain, the legal age of consent is 13, in Greece the age of consent is 15, while in Cyprus it is 17 (Davidson, et alia, 2011:14-15). Usually, this age varies greatly from country to country between the age of 13 and 17. Serbian Criminal Code makes a difference between a child, minor and juvenile. According to Serbian Criminal Code article 112 subparagraphs 8, 9, 10 a child is a person under fourteen years of age, while a minor is a person over fourteen years of age but who has not attained eighteen years of age. Finally, a juvenile is a person who has not attained eighteen years of age.[1] A number of difficulties arise between countries due to the differences that exist in national legislation relating to the age of consent below which it is prohibited to engage in sexual activities with a child. For example, online grooming involving a minor aged 17 years might be illegal in one country but legal in others. Without consistency in legislation, it is difficult to arrange extradition and to carry out enforcement activities across borders (Raymond Choo, 2009: 4). For the purpose of legal certainty defining the age below which it is prohibited to engage in sexual activities with a child is required since the solicitation of children for sexual purposes is a criminal offense only in relation to children below that age. (Explanatory report, to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007: 8, 19). Apart from the lack of unique understanding of online grooming and different approaches to defining a child, there are some difficulties in identifying and combating online grooming which will be explained below.

COMBATING GROOMING OF CHILDRENTHROUGH THE INTERNET

Online grooming is an offense whose disclosure and reporting is particularly difficult. Self-reporting is limited because the children are too young, too traumatized or dependant of the perpetrator, which makes them reluctant to disclose. In this regard, the children helplines play an important role by providing assistance adapted to the children's needs and helping children to report the crime. It is also important that national authorities set up effective hotlines to find missing children and increase cooperation for cross-border cases. The identification of children victims of online grooming depends on the law enforcement authorities' investigative capabilities in term of use of new technologies and trained staff. (Bildt, 2017: 5).

On the one hand, when it comes to combating online grooming, the first problem arises by the fact that the identification of sexual grooming is plagued by the difficulty of distinguishing sexually motivated from non-sexually motivated behaviour, because essentially these behaviours can be the same, despite the differing motivation (Craven, Brown, Gilchrist, 2007: 66). In many grooming cases, prosecutors must prove that a defendant, in fact, had a particular state of mind at the time of an alleged offense, and that the content and tone of the communications involved, as well as additional circumstantial evidence, can support an inference of intention or knowledge as charged (Urbas, 2010: 414-415).

1 Criminal code (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016).

In this regard, there is a more fundamental problem in prosecuting child groomers in the covert policing scenario in some jurisdictions—if the supposed child does not really exist and is merely a fictitious identity assumed by a law enforcement officer, then has the offense of child grooming really been committed? This depends critically on the way in which the offense has been defined in legislation (Urbas, 2010: 415). Legislations usually allow undercover operations. In the following cases, and others of a similar nature, police have been able to interact with and identify offenders who are in the process of communicating with a person they believe to be a child. In the case of R vs Kennings, police posed as a 13-year-old girl ('becky_boo 13') in a chat room and received emails from a man wanting to engage the girl in sexual activity. They arrested a 25-year-old man when he appeared at an agreed meeting point to meet the girl, only to find that he had been chatting to police all along. In another, *R* vs *Fuller* case, following several communications, including episodes during which the offender exposed himself via webcam, using a chat and webcam facility to communicate with what offender thought was a 13-year-old girl - in reality, a fictitious identity created by police using a profile photograph of a teenager, he arranged to meet victim and then was discovered and arrested by police (Urbas, 2011:19-20). In this cases, early intervention has been assisted where a law enforcement officer, on discovering that a child is being groomed, has been able to adopt the child's identity and continue interacting with the groomer, using the child's identity to agree to a physical meeting. Clearly, cases such as these have a better outcome since the child groomer is detected and intercepted before any physical contact with the child victim is made (Urbas, 2010: 414).

On the other hand, concerning the issue of combating, since there is the lack of clarity regarding the scope of online grooming, there is an opinion that only sexual grooming that occurs via the Internet will be identified as online sexual grooming, and children will remain at risk from face to face sexual grooming (Craven, Brown, Gilchrist, 2007:66). When legislations regulate online grooming there are two approaches: a) criminalizing online grooming with the intent to meet the child; b) criminalizing online grooming regardless of the intent to meet the child. It seems that it is equally important to criminalize sexual exploitation that occurs only in the online environment. Although some online solicitations are designed to lead to an offline sexual encounter, many offenders obtain sexual gratification only through non-contact offenses without meeting the child in-person (International Centre for Missing & Exploited Children, 2017: 13-14). Therefore, it is noticed that the online grooming of children could be performed for the purpose of online and offline sexual abuse (Whittle, Hamilton-Giachritsis, Beech, 2013: 59). For example, in Australia and Canada, the offense of grooming applies to any adult who establishes online contact with the child for the purpose of committing a sexual offense. On the other hand, under the UK law, criminal liability does not apply until the adult actually embarks upon a journey to meet the child offline. It makes no difference, however, where or by what means the meetings or contacts have taken place. This was deemed necessary, amongst other things, to avoid the inconsistencies that would arise if contacts of this kind that took place via the internet were criminalized, whilst similar contacts established in the context of the family, for example, or youth organizations, remained unaffected by the legislation (Shannon, 2007:21). It shows how blurred the line is between the preparatory stage and the attempt of crime. Criminalising the meeting following grooming online enables the police to charge an individual in circumstances where previously there may have been insufficient evidence to establish that the individual had committed more than preparatory acts to the relevant offense under the existing law (Rutai, 2013: 27-28). In the following lines, a more detailed analysis of chosen European and national legal approaches of online grooming will be provided.

EUROPEAN AND NATIONAL LEGAL FRAMEWORKOF ONLINE GROOMING CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE[2]

The Lanzarote Convention, signed on 25 October 2007 in Lanzarote, Spain, and came into force on 1 July 2010 after being ratified by five states, was the first international instrument to tackle all forms of sexual violence against children. Apart from sexual abuse, child prostitution and pornography and coercing children into participating in pornographic performances, the Lanzarote Convention also criminalizes the solicitation of children for sexual purposes, known as grooming (Rutai, 2013: 11).

Article 23 of Lanzarote Convention criminalises grooming as the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing the offence of sexual abuse or offences concerning child pornography against him or her, where this proposal has been followed by material acts leading to such a meeting. The offences mentioned above need not be actually committed since the aim of Article 23 of Lanzarote Convention is to criminalize the adult's preparation for these offences. Sexual activities are deemed unlawful when practiced by an adult with a child who has not reached the legal age for sexual activities, which is set by national law. Children who solicit other children with sexual intent are not covered by Article 23. The solicitation of children through information and communication technologies does not necessarily result in a meeting in person. However, the negotiators of the Lanzarote Convention agreed that simply sexual chatting with a child, albeit as part of the preparation of a child for sexual abuse, is insufficient in itself to incur criminal responsibility. A further element was needed - the intentional proposal of an adult to meet a child. In addition, the "purpose" of the proposal to meet the child for committing any of the specified offences needs to be established before criminal responsibility is incurred. The offence can only be committed "through the use of information and communication technologies". Other forms of grooming through real contacts or non-electronic communications are outside the scope of the provision. The negotiators wished to focus the provision exclusively on the most dangerous method of grooming children which is through the Internet and by using mobile phones, to which even very young children increasingly now have access. In addition to the elements specified above, the offence is only complete if the proposal to meet "has been followed by material acts leading to such a meeting". This requires concrete actions, such as, for example, the fact of the perpetrator arriving at the meeting place. However, as no static definition of online grooming is possible, Parties should consider extending its criminalisation also to cases when the sexual abuse is not the result of a meeting in person, but is committed online. (Opinion on Article 23 of the Lanzarote Convention and its explanatory note, 2015: 5-9).

2 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.X.2007, Council of Europe Treaty Series - No. 201, hereinafter: the Lanzarote Convention.

DIRECTIVE 2011/93/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011 ON COMBATING THE SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY[3]

The Directive 2011/93/EU is a comprehensive legal instrument, which contains provisions on substantive criminal law and criminal procedure, administrative measures and policy measures. The most important improvement introduced by the Directive 2011/93/EU include the introduction of a new offence grooming (Bildt, 2017:3). According to Article 6 of the Directive 2011/93/EU grooming is defined as the intentional proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the specified offences concerning engaging in sexual activities and production of child pornography, were that proposal was followed by material acts leading to such a meeting. (Rutai, 2013: 14). In the following lines an analysis of how some Member States transposed the Directive 2011/93/EU into national laws will be provided.

Article 377 quarter of the Belgium Penal Code defines the acts constituting online grooming as proposing a meeting with a minor under the age of sixteen years, by a person of full age and through the use of information and communication technology with the intention of committing an sexual offense specified in this article if this proposal has been followed by material acts leading to the said meeting (Code Penal Moniteur Belge, No. 1867060850, de 09 06 1867). However, the law has its limits because of age limitations and the problem of providing material evidence for establishing the meeting proposal. It only refers to the solicitation of minors through the use of information and communication technology and is only applicable when it concerns children under the age of 16, which are clear limitations. The application of this article does not require that the meeting took place. However, there needs to be proof of material acts leading to such a meeting e. g. the determination of the date and place of meeting (De Laet, 2014: 4).

Article 208a of the Austrian Criminal Code defines the acts constituting online grooming as proposing a personal meeting with a minor or agreeing to it and taking concrete preparatory measures toward carrying out the personal meeting with this person by any person and through the way of telecommunications, using a computer system, or in any other way deceiving his intention, with the intention of carrying out an sexual offense specified in this article (Strafgesetzbuch, BGBl. No. 60/1974 vom 23. Jänner 1974)

Article 248e of the Criminal Code of the Netherlands defines the acts constituting online grooming as arranging a meeting with a person by any other person, whom offender knows, or has reasonable cause to suspect, has not yet reached the age of sixteen years, if offender undertakes any action intended to bring about that meeting with the intention of engaging in lewd acts with this person or of creating an image of a sexual act in which this person is involved by means of a computerised device or system or by making use of a communication service (Wetboek van Strafrecht, Staatsblad 1881, 35, Wet van 3 maart 1881)

3 Directive 2011/93/EU Of The European Parliament And Of The Council Of 13 December 2011 On Combating The Sexual Abuse And Sexual Exploitation Of Children And Child Pornography, And Replacing Council Framework Decision 2004/68/JHA, Official Journal Of The European Union l 335/1 (hereinafter: the Directive 2011/93/EU).

Article 183 of the Penal Code of Spain defines the acts constituting online grooming as proposing a meeting with a person under the age of sixteen by any person through the use of the Internet, telephone or any other information and communication technology, in order to commit any of the offences mentioned in this article as long as such a solicitation is accompanied by material acts aimed at such an approach. (Ley Orgánica 10/1995, de 23 de Noviembre, del Código Penal, BOE núm. 281, de 24 de Noviembre de 1995).

CRIMINAL CODE OF THE REPUBLIC OF SERBIA

The Criminal code of the Republic of Serbia (hereinafter: the Criminal Code) contains the provision on the online grooming in Article 185b entitled - Abuse of computer networks and other methods of electronic communication to commit criminal offenses against sexual freedom of minors. Article 185b of the Criminal Code defines the acts constituting online grooming as making an arrangement to meet with a minor and arriving at the prearranged meeting place in order to meet with minor by any person using computer networks or other method of electronic communication with intent to commit an offence referred to in Article 178, paragraph 4, Article 179, paragraph 3, Article 180, paragraphs 1 and 2, Article 181 paragraphs 2 and 3, Article 182, paragraph 1, Article 183, paragraph 2, Article 184, paragraph 3, Article 185, paragraph 2, and Article 185a. If this offense is perpetrated against a child there is aggravated form.

Bearing in mind that this criminal offense consists of two cumulative acts (making an arrangement to meet with a minor or child and arriving at the prearranged meeting place in order to meet with the minor or child), the issue that raises certain doubts concerns the divergence between the attempt and the completion of the offense. In order to complete the offense, the perpetrator should take both acts. Therefore, an attempt exists if the meeting is arranged but the executor did not appear at the agreed venue for a meeting or if the perpetrator appeared at the agreed place without intent to meet with minor or child but for other reasons (Stojanović, 2017: 601). The prearranged meeting place could be identified as the potential scene of the crime, the meeting place where the offense is intended to take place, and where the offender has arrived, or where the offender can observe the potential crime scene from where he is located. It may be at the adult's location, the child's location or another location to which both have to travel. However, there is no requirement that there is an explicit agreement to meet. It is sufficient that the offender has a reasonable expectation to meet the child at a specific location within a specific time frame. It is also irrelevant to identify who initiated the meeting. (Davidson, et alia, 2011: 21).

Observing the provisions of the Lanzarote Convention as well as the Directive 2011/93/EU concerning the criminal offense of solicitation of children for sexual purposes it is noticed that this crime has been inadequately implemented in the Criminal Code in the sense of the age of the perpetrator as well as the victim of crime. Namely, according to the Criminal Code, the perpetrator can be any person both adult and juvenile while the Lanzarote Convention, as well as the Directive 2011/93/EU, prescribe that it can be only an adult. On the other hand, when it comes to the age of the victim of crime, it should be noted that the Lanzarote Convention in Article 18 paragraph 2, as well as the Directive 2011/93/EU in Article 2 paragraph 2, prescribe that the age of sexual consent means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child. In other words, each country shall decide the age below which it is prohibited to engage in sexual activities with a child. The Criminal Code has opted for 14 years as the age below which it is prohibited to engage in sexual activities with a child. In this sense, there is an opinion that this criminal

offense should have been prescribed only in the case when the victim of crime is a person who according to domestic law did not reach the age required to engage in sexual activities - if this offense was perpetrated against a child (Stojanović, 2017: 601). On the other hand, the Criminal Code, contrary to the Convention as the Directive 2011/93/EU, prescribes that a criminal offense exists even when the victim of crime is a minor.

The subjective element of the criminal offense under the Criminal Code and the Lanzarote Convention, as well as the Directive 2011/93/EU, is the intention of an offender to commit the specified criminal offense of sexual abuse against a child or a minor. However, the main problem in practice regarding the intent is the fact that arranging a meeting with a minor or a child, as well as later appearance at the agreed place, does not testify to the existence of an intention to commit a sexual offense against a minor or a child (Stojanović, 2017: 602).

PROTECTION OF THE RIGHTS OF CHILD VICTIMS SUFFERING FROM ONLINE GROOMING

The majority of offenders inquired about the child's location and the living situation almost immediately upon beginning a conversation with the potential child victim. These queries were often about either the exact location of the child or could be more related to the logistics of offending. With most of these questions, it is apparent that the offenders are attempting to determine whether they will have relatively easy access to the child, and how logistically challenging it will be to commit the offense (Black, et alia 2015:146). Children react to the signals of an online conversation often without awareness of the isolated cues which are symbolic of online dangers. To counter risks online and promote cyber safety it is important to empower children with the knowledge and technical expertise to protect themselves for safe navigation. By fostering an awareness of the risk of online grooming children can be better prepared to recognize the threat and avoid it. (Berson, 2003: 16-17). Precisely, children need to be educated with respect to the consequences of their online activities such as making and sending pornographic or otherwise harmful images of themselves over the Internet or mobile phones, posting intimate pictures or personal information on social-networking sites, blogs and other Internet websites and going out on blind dates with 'friends' whom they have only met or known online (Raymond Choo, 2009: 5).

When it comes to European legal framework concerning the issue of protection of child victims suffering from online grooming both Directive 2011/93/EU (Article 19-20) and Convention Article (11-14) contain the provisions on assistance, support and protection measures for child victims**.** In the area of assisting and protecting child victims of online grooming multidisciplinary approach should be provided taking into account the best interests of the child as soon as the competent authorities have reasonable-grounds indication for believing that a child might have been subject to online grooming. These protective measures should benefit also parents and family members, in the broad sense, those who, because of their close relationship with the minor, may be directly affected (e.g. therapeutic assistance, emergency psychological care). On the other hand, when the parents or persons who care about the child are involved in online grooming, in accordance with the best interests of the child, protective measures of child victims include the possibility of removing the alleged perpetrator and the possibility of removing the victim from his or her family environment. It is important to stress that this removal should be envisaged as a protection measure for the child and not as a sanction for the alleged perpetrator (Explanatory report, to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007: 13-15).

In cases where the age of a person subject to online grooming is uncertain and there are reasons to believe that it is a child, that person is presumed to be a child, until their age is verified, in order to receive immediate access to assistance, support and protection before, during and for an appropriate period of time after the conclusion of criminal proceedings. Assistance in their physical (e.g. medical treatment) and psycho-social (e.g. to overcome the trauma) recovery and support for a child victim are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns and are not made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.

In criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a special representative for the child victim where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family. Child victims have, without delay, access to legal counseling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. The number of interviews with the child victim, who may be accompanied by his or her legal representative, is as limited as possible and interviews are carried out only when strictly necessary, for the purpose of criminal investigations and proceedings, take place without unjustified delay and in premises designed or adapted for this purpose, carried out by or through the same professionals trained for this purpose. In criminal court, proceedings relating to online grooming, the hearing takes place without the presence of the public in order to protect the privacy, identity, and image of child victims, and to prevent the public dissemination of any information that could lead to their identification. The child victim shall be heard in the courtroom without being present, all interviews with the child victim may be audio-visually recorded and that such audio-visually recorded interviews may be used as evidence in criminal court proceedings.

CONCLUDING REMARKS

The anonymity of perpetrators creates challenges for law enforcement authorities at the stage of investigation and prosecution. By concealing their real identity through the Internet, groomers easily target the victim, gain the victim's trust, isolate the child and finally, solicit child victim for sexual purposes. At the stage of investigation and prosecution, effective implementation of investigative tools and investigative units or services is required. Investigation and prosecution of online grooming, as well as the course of criminal proceedings, should not depend on a report or accusation of the victim. Since online grooming is an offense whose reporting is particularly difficult because the children are too young, any person who knows about or suspects that the offense has been committed should report this.

On the other hand, bearing in mind that child victims of online grooming are subjected to intimidation, in order to prevent the detection of the crime, the national authorities are obliged to encourage the victim to report cases of sexual abuse via the Internet through the creation of the trust with the child. Assistance and support measures should take into account best interest of the child following an individual assessment of each particular child victim and his or her views, needs and concerns. In the prevention of online grooming, the focus must be on educational content that will raise children's awareness of dangers on the Internet and reduce the risk of becoming victims of sexual abuse.

The Criminal Code is in a partial compliance with adopted European framework on combating online grooming. Namely, when it comes to the essential elements of crime it is noticed that the Criminal Code contains those recognized by the Lanzarote Convention as well as the Directive 2011/93/EU: a) the intentional proposal of meeting with child (making an arrangement); b) the proposal has been followed by material acts leading to such a meeting (arriving at the prearranged meeting place); c) the intent of criminal offence - committing a sexual offence; d) the means of criminal offense - information or communication technology (using computer networks or other methods of electronic communication).

However, the issue of the age of the perpetrator and the victim of this criminal offense is inadequately implemented in the Criminal Code. In this regard, the Criminal Code should be amended. The Lanzarote Convention as well as the Directive 2011/93/EU explicitly provide that a perpetrator of the offense must be an adult, whereas in the Criminal Code it may be any person. Bearing in mind that according to Criminal Code an offender shall not be punished for sexual intercourse with a child if there is no considerable difference between the offender and the child in respect of their mental and physical development, it is considered that the perpetrator could be only an adult, as required by the Lanzarote Convention and the Directive 2011/93/EU.

In terms of the age of the victim, the Criminal Code makes a difference between minor and child as the victim, while only a child who has not reached the age of sexual consent is mentioned in the Lanzarote Convention and the Directive 2011/93/EU. Therefore, the Criminal code should be amended by stipulating that the victim of a criminal offense is only a person under 14 years of age or a child since in accordance with the national law it is prohibited to engage in sexual activities with the person below that age.

Finally, online grooming regardless of the intent to meet the child victim as the preparatory action should be criminalized in the Criminal Code. In favor of this attitude is the fact that the solicitation of children through information and communication technologies, although does not necessarily result in a meeting in person nor in making an arrangement to meet with the child, includes actions of online exchanging of contents of sexual nature, and convincing a child to meet a groomer for this purpose, which can negatively affect the child's psychological development.

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ARTIFICIAL INTELLIGENCE: A CHALLENGE FOR CRIMINAL LAW

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Abstract: A whole series of traffic incidents begun in 2016 and culminated with the famous accident in Arizona US in the second half of March, 2018, reopened a debate that seemed to go into quite closed professional spheres: is Artificial Intelligence (AI) a threat to people? And if so, would there be a possibility of intervention by criminal law means in order to protect the social values that could be harmed by AI actions? What is the legal status of AI – object (*res*), service, abstract entity, legal fiction (*fictio juris*) or person (*persona*)? Could a mechanism of criminal liability be argued if AI system is involved in committing incriminated acts according to the criminal liability model of the legal person? Here are just some of the questions that we propose to answer in this article. The future is here and criminal law has to adapt to new social realities and technological progress. Is AI a new actor on the scene of criminal law?

Criminal liability for crimes involving AI is a topic insufficiently researched by the scholars, even if AI is involved in a wide area of social actions – driving, medicine, engineering, etc., even police activity. A quick search of papers and revealed only few scholars interested in this domain. The idea of criminal liability in the specific context of artificial intelligence is one such challenge that should be widely discussed.

Keywords: *artificial intelligence, criminal liability, criminalizing rule, legal person, natural person, social peril.*

INTRODUCTION

The term "Artificial Intelligence" (AI) was first used in 1956 at a summer conference at Dartmouth College, New Hampshire, by John McCarthy (Solomonoff 1985, p. 149), to define the directions of a new discipline set up around the concept of "thinking machines". AI is a concept very difficult to define, due to its accelerated rate of development and its many forms of existence. According to English Oxford Dictionary AI is "the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages." (https://en.oxforddictionaries.com/definition/artificial_intelligence, accessed 28.05.2018)

The Encyclopedia Britannica defines AI as "the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings" (https://www.britannica.com/technology/artificial-intelligence, accessed 28.05.2018) while intelligent beings are those that can adapt to changing circumstances. AI research follows two distinct, and to some extent competing, methods, the symbolic (or "top-down") approach, and the

connectionist (or "bottom-up") approach. The top-down approach seeks to replicate intelligence by analysing cognition independent of the biological structure of the brain, in terms of the processing of symbols—whence the symbolic label. The bottom-up approach, on the other hand, involves creating artificial neural networks in imitation of the brain's structure—whence the connectionist label.

Employing the methods outlined above, AI research attempts to reach one of three goals: strong AI, applied AI, or cognitive simulation.

a) Strong AI aims to build machines that think. This term was introduced for this category of research in 1980 by the philosopher John Searle of the University of California at Berkeley. The ultimate ambition of strong AI is to produce a machine whose overall intellectual ability is indistinguishable from that of a human being. As is described in the section Early Milestones in AI, this goal generated great interest in the 1950s and '60s, but such optimism has given way to an appreciation of the extreme difficulties involved. To date, progress has been insufficient.

b) Applied AI, also known as advanced information processing, aims to produce commercially viable "smart" systems—for example, "expert" medical diagnosis systems and stock-trading systems. Applied AI has enjoyed considerable success.

c) Cognitive simulation is a tool used by both neuroscience and cognitive psychology. In cognitive simulation, computers are used to test theories about how the human mind works—for example, theories about how people recognize faces or recall memories.

Progress in developing AI is scary, leading scientists to drawing attention to AI dangers. Thus, Stephen Hawking, one of the greatest contemporary cosmologists, whose communication with the others relied solely on computer technology and AI, warned: "The development of artificial intelligence would mean the end of the human race" while Elon Musk has warned that AI is "our biggest existential threat". (http://www.bbc.com/news/technology-30290540, accessed 28.05.2018)

Is it really a "self-thinking" technology so dangerous to people? Some voices claim that it has the potential to change the world altogether and accelerate the fourth industrial revolution. On the other hand, AI can help to simplify everyday life and find solutions to the main problems of humankind, such as pollution, poverty or certain diseases.

It is also a fact that, several years ago, Cleverbot, AI developed by Rollo Carpenter, has passed the Turing test acting in conversation like a human (Love 2014, Bussiness Insider).

So, the bridge between Homo Sapiens and Machina Sapiens has been started to be built. Machina Sapiens is a new species who's birth was proclaimed by futurologists and which will share the human place as intelligent creatures on Earth (Winograd 1991, p. 198).

In the mutual development of humankind and AI, the two entities – Homo Sapiens and AI (machine Sapiens)- will have a common path for a while. Then AI will be able to develop independently of humans, and its growth will be exponential. As a result of exponential growth, the evolution of the machine will be much faster than humans, even if the development of AI and that of Homo Sapiens will be in constant interaction. This interaction is called singularity feedback loop, meaning the growing human intelligence creates more efficient technology, and technology makes people smarter, and so on, until Homo Sapiens becomes one with technology (http://imagazin.ro/evolutia-inteligentei-artificiale/, accessed 29.05.2018).

AI is present and under constantly expanding, no one can challenge that. Recent events have re-posed discussions on the dangers of AI and the need to adapt legislation to new technological and scientific advances. Thus:

a woman in Arizona, United States, died on March 18, 2018, after being hit by a Uber-unmanned vehicle in the first incident of its kind, being the first time a car without a driver hits a pedestrian on public roads. The Uber vehicle was autonomous, but had a driver on board in case of "emergency". The woman struck off the wrong way, according to the Tempe police, the city where the incident occurred. Spokesperson Uber said the company is cooperating fully with local authorities. Uber announced suspending Autonomous Machine Tests in Tempe, Pittsburgh, San Francisco and Toronto http://www.zf.ro/auto/primul-accident-mortal-produs-cu-o-masina-fara-sofer-o-femeie-care-traversa-neregulamentar-a-murit-dupa-ce-a-fost-lovita-de-un-vehicul-autonom-uber-17070679 accessed 29.05.2018.

Robot Sofia was given citizenship in Saudi Arabia in October 2017, this State being the first to give a robot citizenship (Hart, 2018, https://qz.com/1205017/saudi-arabias-robot-citizen-is-eroding-human-rights/ accessed 29.05.2018). Another less known fact is that in November 2017, Tokyo granted a chatbot official residence status in Shibuya ward of the city (Cuthbertsone, 2017, http://www.newsweek.com/tokyo-residency-artificial-intelligence-boy-shibuya-mirai-702382 accessed 29.05.2018). Naming Sophia a citizen creates a huge void in legal systems around the world, damages public understanding of AI, and fundamentally damages the very notion of human rights itself. Sophia's citizenship represents the latest move in the growing trend to personify and anthropomorphize our robotic counterparts—a movement that can have profound consequences for the rest of humanity.

The European Parliament is considering the possibility of declaring some robots "electronic persons." As results from the Report released on 27th of January 2017 (European Parliament, Report 27 January 2017, raporteur Mady Delvaux, par. Z, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0005+0+DOC+XML+V0//EN, accessed 10.06.2018), "thanks to the impressive technological advances of the last decade, not only are today's robots able to perform activities which used to be typically and exclusively human, but the development of certain autonomous and cognitive features – e.g. the ability to learn from experience and take quasi-independent decisions – has made them more and more similar to agents that interact with their environment and are able to alter it significantly; whereas, in such a context, the legal responsibility arising through a robot's harmful action becomes a crucial issue". The report proposes creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently (European Parliament, Report 27 January 2017).

LEGAL STATUS OF AI

1.What is an AI entity?

Is AI an object (*res*), service, abstract entity, legal fiction (*fictio juris*) or person (*persona*)? The logical analysis imposes the necessity of identifying *ab initio* the sphere of the two categories in which AI is susceptible to be categorised: *res* or *persona*.

The term *persona* - person - is synonymous with that of an individual seen as a *rational human being and, as a consequence, capable of self - determination*. The person - as a legal concept - implies the presence of consciousness and free will. Does AI fulfill any of these requirements? The temptation to fit AI into the *res* category is obvious, since we are talking about a machine that is created, assembled and programmed by humans. Moreover, the famous robot

Sofia, in order to move from one state to another at a long distance, by plane, can not occupy a seat for people, it has to be disassembled and stored like ordinary luggage.

In the category of *res* we include the goods, that are, any useful things that can satisfy a people's need (Hamangiu, Rosetti-Bălănescu, Băicoianu 1996, p. 20). In the legal sense, we understand things that are susceptible to being individually or collectively appropriated. Real estate rights are exercised, and in particular the right to property. Goods or things can not become holders of rights and obligations, they do not have the capacity to self-determine themselves. In some forms of AI (eg Sofia), there is a certain self-determination, self-development capacity, and even human-specific features have been discovered - such as *curiosity*. Apparently AI could be considered as belonging to *res category*, but such a categorization in the next 20-30 years will seem outdated.

Services represent the use of someone's own skills for the benefit of others, an action, a performance or a promise that is changed for a material value (benefit) (Lusch, Vargo, 2006). In order to occur, the services need human actors / legal entities - providers and beneficiaries - among which are laid the foundations of a legal bond. The services do not have a material existence because their rendering becomes real when a result is expected by the beneficiary and for which he paid a price. AI can not be classified as a service because it can self-service various services - e.g. transport, computing, marketing, analysis, etc.. Or a service can not provide another service.

On the other hand, not every legal entity is at the same time a human being, as the case, for example, of legal persons, considered legal fictions and endowed with the civil capacity - to exercise rights and to assume obligations. Perhaps the solution of considering AI as a person is not so inapposite since the legal doctrine has recognized the status of *persona* to controversial entities such: embryos – *persons to be* -, unborn child - *anticipated person* - or collective entities with legal personality - *fictional persons*.

Can we admit AI have the status of an electronic person? What would be the logical and legal foundation for such an exercise of imagination?

2. Theories that could explain the legal status of AI

a) The Fiction Theory

The Fiction Theory (Stănilă 2012, pp. 125-154) has been used to justify the enforcement of corporate and collective liability. The Father of Fiction Theory seems to be Pope Innocent IV (1243-1254) who named corporations by the term *persona ficta* (Dewey 1926, p.655). This theory is embraced by numerous scholars - Von Savigny, Coke, Blackstone, Salmond, etc. (Abd Ghadas, 2007, p. 7). According to this theory, the legal personality of a collective entity is the result of a fiction. Since the collective entity is not a living being, the legal person can not in fact be a person nor can have an individual personality.

The Fiction Theory could be extrapolated to electronic entities because, like legal entities, they are "invisible, immortal and can be found only in the interpretation and consideration of the law" (Coke apud. Abd Ghadas 2007, p. 8) . Some scholars are daring to assert that the human is the only natural person while legal persons are any another kind of entity to whom the law attributes personality (Salmond apud. Abd Ghadas 2007, p. 8). States, corporations and institutions can not have the rights of a person, but they are seen as individuals. Therefore, the attribution of the status of *persona* to an electronic AI entity remains strictly at the discretion of the legislator who may or may not recognize the status of a subject of law, including criminal law. The legal personality of such an entity is a fiction, and the author of this fiction is the state.

b) The Concession Theory

The Concession Theory (Stănilă 2012, pp. 125-154) is not, in fact, an independent theory regarding the nature of legal personality, but rather a theory that attempts to explain its source (Dewey 1926, p. 666).

The Concession Theory is based on the philosophical concept of *national sovereignty.* The State may grant or withdraw the legal personality to groups and associations, and even to other types of entities, based on the attributes of its sovereignty. For example, a legal entity is merely a creation or concession of the state, and the legal personality of the collective entity can not exist until it is attributed by law. Therefore, an electronic entity, based on the sovereign power to legislate of the State, may be endowed by the State with legal personality, and thus becoming a person.

c) The Purpose Theory

The Purpose Theory - *Zweckvermogen* - proclaims the human as the only entity which may exercise rights and obligations (Stănilă 2012, pp. 125-154). The other entities are seen as artificial persons and only act as legal instruments for the protection or achieving of real purposes. The Purpose Theory has been used to justify the legal personality attributed to collective entities that are created to achieve a legal purpose. Therefore, if we try to extrapolate this theory to AI electronic entities, AI is created by humans to achieve a purpose - to facilitate the unfolding of human activities, to simplify or expedite procedures - while the object of such an entity is the mathematical algorithm.

d) The Reality Theory

The Reality Theory (Stănilă 2012, pp. 125-154) has also been used to explain the legal personality of a collective entity. We believe that this theory may also be extrapolated to AI-type electronic entities. According to this theory, the reality of an entity has an extra- and pre-legal dimension. The ability to acquire rights and assume obligations belongs not only to human beings, but to any entity possessing its own will and life. For example, the legal entity is a real objective entity and the law only recognizes and assigns the effects of its existence. Similarly, the electronic entity exists beyond doubt, being a human creation, and having the ability to make decisions in its more advanced forms. According to the theory of reality, the law can not create a legal entity but only to recognize it or not as such.

3.The concept of legal personality – virtual personality – artificial personality

a) Legal or juridical personality

The legal personality of a collective entity is an extremely difficult to define concept that gives rise to a series of confusions with the meaning of other philosophical-socio-legal concepts, such as *status*, legal capacity, *ethos* and more recently, culture.

The most used definition of the legal person in international doctrine is the following: „an entity - subject of rights and obligations" (Radin 1932, p. 643). According to one part of the doctrine, the essence of the legal personality consists in the obligations an entity has. If the law imposes legal obligations on an entity, it is logical to recognize that entity as a legal entity because it addresses a command to a legal logical unit. The difficulty comes when someone tries to explain *why* the legislator is doing that. And the most logical answer would be: *because that legal person has free will and its obligations necessarily refer to it* (Machen apud. Allgrove 2004, p. 45).

According to other opinions, the essential characteristic of legal personality is the ability to exercise rights (Allen apud. Allgrove 2004, p. 46).

However, in order to determine whether an entity has legal personality, the ability to have both rights and obligations must be retained. We need to determine whether the law treats

the entity as a separate legal unit. Thus, in the case of a corporation or a minor, the answer is affirmative, while in case of a cat, the answer is obviously negative (Allgrove 2004, p. 47).

Another definition of legal personality has been provided by French case-law which, in a particular case, stated: „Legal personality is not a creation of the law, it belongs in principle to any group having the possibility of legal expression for the defense of legitimate interests , worthy of legal protection „ (Iliescu 2006, p. 487; Streteanu, R.Chiriță 2007, p. 102).

Therefore, the legal personality must not be confused neither with the social or legal status nor with the other elements that define the legal person - the ethos and the corporative culture. As regards legal capacity, the Romanian civil doctrine affirmed that the legal personality would overlap the concept of legal capacity (Boroi 2001, p. 120).

These disputes overlook an important aspect: the semantic difference between the concept of personality from the psychological point of view, used to justify the mental element in the case of legal persons, and the concept of personality from the legal point of view which refers to the rights and obligations assumed and exercised by the legal person on the basis of legal provisions. Hence the differences in the approach of these concepts in the works of different authors.

A point of view was stated in the Romanian doctrine regarding the personality of the legal person, according to which „the personality of the legal person refers to the hierarchical organization, the structuring of the decision-making process and the general climate of observance of the legislation in force" (Timofte, Rus 2005, p. 125). Moreover, the quoted authors assert that „the personality of the legal person is expressed by the aim pursued, the means used in achieving this purpose, means, tacit attitudes, policies, rules and practices within the legal person and which create the overall climate of activity" (Timofte, Rus 2005, p. 125). Therefore, the dissertation of the quoted authors concerns the psychological concept of the personality of the legal person and not the legal personality. In the case of the legal concept, it is the law that confers legal personality to a collective entity, while the elements indicated by the authors refer to the decision-making apparatus and its way of managing the activity.

b) Virtual personality

Virtual personality must not be confused with the concept of legal personality.

In the classical scientific discourse, *virtual* is opposed to *material*. Virtual personality, as opposed to the actual (physical or "traditional"), has no physical, material body and consists entirely of symbols (hieroglyphs) and actions. In a narrow sense, it can be defined as a set of signs, symbols that exist in the online media, which acts as a substrate carrier of these signs (Korkiya, Lipatova, Mamedov 2006, p. 3). As a matter of fact, the concept of virtual personality is necessarily linked to the concept of a virtual community (electronically mediated active social environment). The study of „personality in cyberspace" includes consideration of „stable axes" or structural principles of virtual personality creation. These include, in particular, class, nationality, gender, sexuality and a number of other „axial" structures. Thus, virtual personality can be seen as a virtual alter ego of a real human being.

c)Artificial Personality

This aim is formulated according to the technical capabilities integrated in SAI (artificial intelligence systems) and the SAI's ability to interact independently with other legal subjects. SAI features, such as direct connection with intellectual skills, the ability to understand, learn and make autonomous decisions may cause situations where autonomous systems based on AI will make decisions which will be in the best interests of individuals, even though conflicting with the user's own will.

To consider the possibility of SAI being recognized as possessing legal personality, we analyse the concept and features of SAI and define its operating principles. We give hypothetical examples to demonstrate the necessity of SAIs being recognized as such. The paper

undertakes legal personality analysis of SAI performed: (i) using the philosophical and legal concepts of a subject (person); (ii) discussing artificial (unnatural subjects of law) as an alternative to the recognition of legal personality of SAI; (iii) using elements of legal personality set for natural and legal persons.

The analysis leads to the conclusion that the scope of SAI rights and obligations will not necessarily be the same as the scope of rights and obligations of other subjects of law. Thus, SAI could only have rights and obligations that are strictly defined by legislators (Cerca, Grigiene, Sirbikyte 2017, pp. 685-699).

d) Electronic Person- Electronic Personality

The term electronic person was first coined in a 1967 article for LIFE magazine (Rosen, Nilsson Raphael and others, 1967 LIFE) and was more recently introduced in the Draft Report with Recommendations to the Commission on Civil Law Rules on Robotics of the European Parliament's Committee on Legal Affairs. While the expression does not wish to equate artificial intelligence to humanity, it fulfills its task of drawing attention to the question of whether artificially intelligent agents should possess a legal status (Maia Alexandre 2017, pp. 17-18).

As for artificially intelligent agents, the same rationale may apply: they would be morally entitled to a separate legal status provided they possess the capacities to act autonomously and to have subjective experiences.

"A robot's autonomy can be defined as the ability to take decisions and implement them in the outside world, independently of external control or influence" (Maia Alexandre 2017, p.18).

If society begins perceiving artificially intelligent agents as autonomous actors and counterparties to transactions, as it now perceives corporations as legal entities distinct from their members, "it puts pressure on the law to give legal effect to this social perception" (Allgrove, 2004).

We therefore propose the concept of electronic personality.

MODELS FOR IMPOSING CRIMINAL LIABILITY TO AI

As stated both by Hallevy and Schank (Hallevy 2018, p. 8; Schank 2006, p. 3), an intelligent entity which can be held criminally liable must met five attributes:

- communication (the easier it is to communicate with, the more intelligent the entity seems);
- mental knowledge (an intelligent entity is expected to be self aware)
- external knowledge (an intelligent entity is expected to take actions in order to achieve its goals)
- creativity (an intelligent entity is expected to have some degree of creativity, not to create a novel thing but to take alternate actions when the initial action fails).

AI or SAI in some of their forms simulate real thought processes, being capable of learning and gaining experience.

If we start with the concept of entity and accept the concept of electronic person and electronic personality, the next step is to identify the conditions to be met in order to impose criminal liability to an electronic person: criminal conduct – *actus reus* - and guilty mind – *mens rea*. The *mens rea* element identification is the real challenge in this equation while the actus reus is a little bit easier to demonstrate.

The doctrine (Hallevy 2018, pp. 10-32) has proposed already several models which could be used in order to impose criminal liability to AI/SAI:

- The "perpetration by another" liability model
- The "natural probable consequence" liability model
- The "direct" liability model

a) The "perpetration by another" liability model

According to this model, AI is seen as an innocent agent, which does not possess human attributes. Even if we recognize some capabilities, these are insufficient to accept AI acting as a perpetrator of an offense. In this case, when the offense is committed by an innocent agent, the moral or real perpetrator is the person who uses the innocent as an instrument. The perpetrator's liability is imposed on the basis of the innocent agent's conduct, but using his/hers own state of mind.

In case of AI robots, the perpetrator by another is the programmer of the software or the user who uses AI for his/hers own benefit. The doctrine opines that this is the same scheme like in case of a person who uses a dog or a mentally ill person who sows no discernment. According to this model, *actus reus* requirement is not meet by the human programmer/user, but he/she is seen as the perpetrator, because the act committed by the AI/robot/SAI is considered as if is has been programmer/user's act. *Mens rea* element is already present in the mind of programmer/user because they had criminal intent at the time when they programmed/ordered the commission of the act. In conclusion, no mental capability is attributed to AI.

The flow of the "perpetration by another" liability model is that it does not suit with advanced SAIs which commit the offense based on their own accumulated experience or knowledge, without being programmed/ordered to.

If we extend the model to AIUV (artificial intelligence unmanned vehicles), we observe that it does suit only for the old version of AIUV, when the AIUV is driven in distance by a human. It is very difficult to adapt it to an advanced version of AIUV, "when the software was not designed to commit a specific offense, but was committed by AIUV nonetheless" (Hallevy 2012, p. 4), according to its "decision" (case of the car accident involving the Uber AIUV in Arizona).

b)The "natural probable consequence" liability model

According to this model, the programmer/user are not involved in the commission of the offense, not even at the *mens rea* level. That means, during its activity routine as its software was programmed, the AI robot/system commits the offense. In this case, the programmer/user had no knowledge of the committed offense, nor planned it or intended to. This model proposes the imposition of criminal liability based on the natural and probable consequence of someone's activity and it was successfully used in common law (U.S. vs. Powell, 929 F.2d 724, D.C.Cir. 1991 apud. Hallevy 2018, p. 16) for imposing criminal liability to accomplices in case the perpetrator commits an aggravated form of the offense.

According to this model, the programmer/user must be in a mental state of negligence. If they were more diligent, they would have prevented the offense. A reasonable person could have known about the result of the act, since the specific offense is a natural probable consequence of that person's conduct. A negligent person omits knowledge, not acts, and that is why it should be held criminally liable. According to this model, if the programmer/user does not pass the reasonability test, they will be held criminally liable.

The AIS/AIUV could act as an innocent agent, not knowing about the criminal prohibition. In this case the discussion about its criminal liability has no sense.

If AIS/AIUV has acted based on its own experience, knowledge and decision, than it should be held criminally liable, if we accept its electronic personality.

c)The ”direct” liability model

According to this model there is no connection between programmer/user's acts and SAI/AIUV acts, because the direct liability model focuses on the AI itself as a distinct entity. In order to impose criminal liability to AI according to this model, it should be capable of both *mens rea* and *actus reus*. Any type of hydraulic or electric movement of an element/part of a robot could be considered *actus reus,* even an electric shock. *Actus reus* is even easier to explain in case of an omission, because if a duty to act is imposed upon AI and it fails to do it, then the *actus reus* requirement is met. Mens rea is difficult to demonstrate, ”because most cognitive capabilities developed in AI technology are immaterial to the question of imposition of criminal liability” and ”the sole mental requirements needed in order to impose criminal liability are knowledge, intent, negligence as required in the specific offense under the general theory of criminal law” (Hall 1960, p. 70-211).

An SAI/AIUV could act with intent or specific intent if:

- It was programmed to have an illegal purpose or to take actions in order to achieve that purpose;
- Acts according to its own experience and knowledge and thus breaches a criminal rule.

Nevertheless, doctrine argues that in some cases it would be impossible to impose criminal liability to AI, such as crimes of racism, hate etc., because these are specific offenses requiring specific feelings and mobile. AI has no feelings and it is difficult to imagine the presence of this specific state of mind (Hallevy 2018, p. 26).

In our opinion the direct liability model is incompatible with the psychological theory on guilt but quite easy to prove using the normative theory on guilt developed by the German doctrine. When AI algorithm functions properly, a criminal may be imputed if AI has failed to do what the legislator ordered or has acted when the legislator banned it (case of intentional offenses). Or, in case of negligence, the criminal liability of the AI is imposed every time when AI has failed to take proper actions or measures in order to avoid a potential harmful act.

When the algorithm does not function properly (because of a virus infected the operating system or because of an error), specific issues such as irresponsibility - in this case *malfunction* - could avoid criminal liability to be imposed to AI.

The conclusion is that, according to this model, there is no dependency between criminal liability of AI and criminal liability of the human programmer/user.

Because of their specificity, all three models could be applied in different areas of criminal conduct.

CONCLUDING REMARKS

The introduction of artificial intelligence in industry and society will revolutionize the current social construction and comport several technologic, industrial and regulatory challenges, which legal frameworks are not prepared to give a direct response to. As artificially intelligent agents become more and more autonomous over time, the less they can be considered mere tools (Maia Alexandre 2017, p. 55).

As early as 1983, Willick expressed himself realistically and visionarily at the same time: ”Eventually, an intelligent computer will end up before the courts. Computers will be ac-

knowledged as persons in the interest of maintaining justice in a society of equals under the law. We should not be afraid that that day might come soon" (Willick 1983, p. 14).

The subject of the present study might seem uncomfortable, "unnatural" or even "scandalous" for many of the readers, but it is obvious that progress in AI technology requires an adaptation of criminal law for situations that, at the time the norms were enacted, did not require criminal intervention. The same "natural" reticence was manifested in the doctrine in the case of legal persons, the models of imposing their criminal Liability evolving successively for almost 200 years (Stănilă 2012, pp. 125-154).

AI is a real thing and evolves rapidly. It is clear that in the near future AIS with functional and algorithmic autonomy will play an important role in all areas of social life. It is more useful to take a step forward and to adapt the criminal legislation by allowing criminal liability to be imposed in the case of AI, rather than rejecting a change in legislation whose necessity is undeniable.

We already live in the future, whether we like it or not. It is time to adapt, in an appropriate way, even at the legislative level.

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INFLUENCE OF THE PRISON SENTENCE ON THE HOMEOSTASIS OF THE FAMILY SYSTEM

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Abstract: The family is a specific community in which members meet the most important living needs, form themselves as personalities in the interaction of emotional warmth and attachment. Each family is characterized by a unique life cycle, life cycle phases, and establishment of boundaries, crisis, interaction and dynamics of family functioning. Changes in the life of one family member directly affect the entire family system. In situations where a family member is socially sanctioned to imprisonment, there are direct implications in the form of destabilization of the homeostasis of family, with the possibility of post-implications such as stigmatization by society, job loss, separation from the family, weakening the capacity of his personality, inability to resocialize and socially reintegrate and many others. In today's time which is characterized by economic uncertainty, the absence of one family member (usually a man-father/husband/son) due to certain sanctions leads to the endangerment of his family- wife who has to take care of children on her own, children who do not have a paternal figure whose presence is essential for their growing up and parents who have a feeling of guilt that they have made a mistake in the child's upbringing. As a result, partnerships and parental relationships are disturbed. The family system is vulnerable and subject to change, and any crisis it passes through can leave consequences- especially on children who, according to their maturity, cannot understand and accept the absence of one parent. The role of institutions whose task is to treat the convicted and the members of his family is of particular importance. The content of this paper will not deal with the nature, responsibility, form and justification of punishment, but the context of the phenomenon of family dysfunction as a result of the failure of a member who is serving the prison sentence.

Keywords: *family, judiciary, sanctions, imprisonment, homeostasis, parental and partner relations.*

INTRODUCTORY CONSIDERATIONS

"A man travels the world over in search of what he needs, and returns home to find it."
George Moore

There are numerous attempts to define the family and the family system, from those in which it is defined as the basic cell of society to those who more complexly describe the family as a universal human community made up of adult reproductive partners and their children,

as well as further relatives living with them. In addition to reproductive, the family also has a significant psychological, educational and social role. It is an important primary group and one of the most important socialization agents. Family relationships tend to have homeostasis as a balance, often a self-regulatory return to the condition before there have been some changes in its composition or functioning. Since it is an integral part of the life processes, the homeostasis is trying to establish a distorted harmony by a feedback mechanism, automatically, without intent, by which all major disorders of balance in intra-personal, social or psychic processes are regulated (Vidanović, 2006: 301). The modern family faces many difficulties and problems. Changes in society are large, rapid, and sudden, with unforeseeable outcomes and consequences on a family and its members. The changes that take place in society and the time in which we live, accompanied by numerous changes that endure nature, then social shocks and wars, are a constant threat to the health of the population around the world. All this makes the individual feel threatened, no matter where he lives and puts him in a situation of constant concern for his own health and the health of his family, and in front of the family as a system and all its members they set new demands for adaptation and adequate responses to them. In such conditions, the consequences on the development, role and place of the family in the society are large, endangering and often non-fatal. A functional family has the ability to find ways and solutions to the problems and conflicts it encounters. It has capacities, i.e. appropriate resources and is able to fulfil tasks and meet the development needs of its members. Unlike them, dysfunctional families often delay the resolution problem, i.e. do not fulfil tasks, do not meet the development needs of its members, etc. A dysfunctional family is constantly in crisis, does not recognize the problem all the way through the onset of symptoms in their members or the persistent breakdown of the family system (Kahveci, 2017:173).

People face situations that put various pressure on emotional potentials on a daily basis, but most often do not represent a deterrent factor. These are everyday problems that do not change the person's relation to the environment or to himself. The crisis situation brings these relationships into question and sometimes it takes more time to rebalance. In the process of coping with challenges, there are situations that one family member is being prosecuted for a particular offense and convicted to prison sentence. In this way, there is a direct change in the family's homeostasis, and the power of the family, resources, the interconnection of family members and the adjustment process comes to the fore. Often, crises come together, and they destroy the irreversible family system and its identity. The role of various professionals aimed at providing the necessary support to people in such situations is to act timely, empatically, with a focus on all family members who are directly or indirectly involved in the labyrinth of the crisis. In this context, the need for education for professionals is emphasized, with a focus on access to an oriented individual, as well as the strengthening of preventive mechanisms in order to prevent the emergence of social problems. Before a crisis situation arises, the family is often already in the system of social, family and child protection as a beneficiary of some of the services and is familiar to the professionals of a certain local community, which creates a new dimension to the importance of preventive measures. Furthermore, in practice, there are situations when a parent is convicted of some criminal act and it is a single-parnet family- the child (if minor) in this situation will be sent to foster family or Children Home, which is by itself very traumatic and potentially fatal for personality of a child.

COMPLEXITY OF FAMILY SYSTEM

Compliant families are characterized by parents' maturity and a significant level of understanding among all members of this primary group. Positive emotions, understanding, appreciation and respect, and well-distributed roles in useful activities and activities of mu-

tual importance are essential traits of successful families. In contrast, families in which the relationship is cold, rejecting and avoiding frequent absence from housework, or threatening, hostile and accompanied by conflicts to fights and violence of all forms, are dysfunctional in their existence. In the last decades of transition in society and the rise in violence among people, the role of the state in family protection, especially of children must be taken into account. It is to be expected that the roles of the centers for social work, police, courts, health institutions, educational institutions and non-governmental organizations, the whole network of state security services have been changing (Sedmak, Ćorić, 2018).

A modern family has to adapt to the pace of today's life that takes away a significant portion of free time, and fosters frustration and stress because of the inability to spend sufficient time with family members. It is not only the lack of time for family members, but the general lack of time for oneself. A family faces new challenges on everyday level and nowadays crises that affect people are more complex, joint with other risks and can seriously affect physical and mental health.

The family has a structure, hierarchical organization, roles and subsystems - the parent subsystem and the subsystem of sibling (children). The significance of the family is reflected in its irreplaceableness for the development of the individual because no other system is able to provide the necessary love and warmth that the family can provide. However, family relationships may be unfavourable to optimally satisfy the needs of their members, which affects the course of development (especially children) and leads to the emergence of various symptoms, ill for an individual, family, and even a wider social system. Systemic understanding of the functioning of the family system involves looking at the entire family as a living system that lives, grows, and develops over time and functions in a particular social context. The family as a system represents an organized, permanent, self-renewing entity with changing patterns of behaviour. It is a whole whose parts are interacting. It represents much more than a simple collection of all members. This is a new quality that requires a specific approach in understanding and treatment and helps us to understand that changes in one part of the system shape the whole family system (Latić, Murtić, 2017).

Stress, accumulated problems and cumulative impacts point to the non-functionality of the family that is exposed to occasional crises, the intensification of family or the relationship between individual members, the collapse of family roles or the fragmentation of the family. Since family members are getting more and more difficult to deal with these problems over time, the functioning of individual members or the whole family can be disturbed (Sutherland and Miller 2012). The presence of stress can lead to serious physical and mental disorders after a certain time. The most common consequences or symptoms of stress that can be an alarm and show that something is wrong are:

1. Physical symptoms: changes in body weight, headaches, digestive disorders, psychosomatic diseases - stomach ulcer, increased pressure, cardiac problems, ascites, skin diseases, allergies etc.

2. Changes in behaviour: excessive dependence on others or withdrawal / isolation from social contacts, increased consumption of coffee, alcohol, food, excessive smoking, sleeping problems, lack of appetite.

3. Emotional consequences: anxiety, anger, restlessness, irritability, guilt, sorrow, indifference, sensitivity, sudden mood changes.

4. Cognitive impairment: disturbance of memory and concentration, ambiguity and confusion in thinking, indecisiveness, pronounced changes in attitudes about people, life, future, etc. (Zagreb Society for Psychological Assistance, 1996).

When a person experiences stress, he/she must somehow deal with it. Stress is related

to emotions, interactions are interactive. Emotion is the psychic dimension of stress - if the emotion is stronger, the stress reaction is more intense (Milić, 2004: 36). Throughout their life, people develop natural mechanisms that allow them to deal with difficult situations, and they are perfected by the influence of environment and personal experiences over time.

(DIS) FUNCTIONALITY OF FAMILY – RESISTANCEDURING CRISIS

In scientific and professional literature, different terms are used when it comes to the quality of family relations. The notion of family dysfunction is the continuity of systemic access to the family. According to systemic theorists, family dysfunction involves various and numerous patterns of difficulties and problems that are recognized in the functioning: subsystems within the family (individual, couple), families in totality or family in relation to other social systems to which it is included or to which it belongs. The systemic approach defines (dis)functionality of family through the ability to overcome stress or crisis. The functionality of the family, within this approach, is reflected in the fluctuation between the period of homeostasis and the crisis, while the continued maintenance of the homeostatic condition is seen as a reflection of dysfunctionality. Pathology, therefore, is manifested by the absence of a crisis in the system (Svetozarević and associates:77). The same authors agree with Mitic (2010) who states that a functional family has the ability to find ways and solutions to the problems and conflicts it encounters. It has capacities, i.e. adequate resources and is able to fulfil tasks and respond to the development needs of its members. Unlike them, dysfunctional families often postpone problem solving, i.e. do not fulfil tasks, do not meet the development needs of its members, etc. A dysfunctional family is constantly in crisis, does not recognize the problem until the symptoms occur in their members or the predominant breakdown of the family system. Treatment of a family in crisis is an important area that puts the family as a system in the center of treatment, treating the family as a system, composed of a set of interconnected subsystems. During the crisis, they are intensely searching for new solutions that lead to change. The same author points out that the methods of family treatment can be different: psychodynamically aimed at insight into unconscious factors of earlier conflicts that affect current, systemic family treatment where the goal of pattern changes and loss of symptoms, growth, family development, behavioral model where the goal is the change of problematic behaviour in the family and an experiential-existential model where the goal is to change the way of experiencing and responding to family members. Family resilience refers to the characteristics, dimensions and characteristics of the family that help it adapt to changes caused by stressful or crisis situations.

Theories on family study and child dynamics are based on systemic family theories, and the family is viewed as a living system in change, where the focus of interest is transferred from a member of the family to the family as a whole. The symptomatic behaviour of one member of the postmortem is seen as an expression of disorders in the entire family system. In this way, at the same time each member of the family is acting on the other members, and his behaviour (which is a response to this action) stimulates the behaviour of other family members (Nenadović and associates, 2010: 74). This means that every subsystem within family has its own functioning, vulnerability and strength and can influence positively or negatively on homostasis of a family system.

Caplan (1964:222) defines the crisis as a short mental disorder that happens from time to time for people who are struggling with life's problems that at that moment exceed their capacities. Hoff, Hoff, and Hallesey (2009) define the crisis as an acute emotional disturbance

that arises from situational, developmental and/ or sociocultural sources, and leads to temporary inability to alleviate this state by using individual common ways to solve the problem.

Caplan (1961:187) describes four stages of a crisis reaction:

1. An initial rise in tension occurs in response to an event.
2. Increased tension disrupts daily living.
3. Unresolved tension results in depression.
4. Failure to resolve the crisis may result in a psychological breakdown

There are two basic groups of crises: developmental and accidental. Development crises occur at different ages, and accidents are always the result of unexpected life events from a natural or social environment. By itself, the crisis is not considered a pathological condition, but it can become due to the use of inappropriate mechanisms and forms of behaviour (Vidanović, 2006:223). Families with multiple and complex needs may have numerous, chronic or interrelated problems. These families do not represent a homogeneous group or their current state should be characterized as final. Among these families there are significant differences that point to the complexity and multidimensional character of their problems, as well as the need for an individualized, customized and flexible approach to help (Bromfield and associates, 2012:33).

Assessing whether the family is functional or dysfunctional depends on the goals that the family places on itself, the system of values, the life cycle, and the satisfaction of economic and cultural needs. The primary social task of the family is to ensure the socialization and humanization of a person, i.e. to create the development of those personality traits that will allow for a good adaptability. Parents use authority based on maturity and justice with understanding, respect, co-operation and a warm, friendly relationship. The functional family, among other things, is probably to a great extent determined by the cohesion, common home, communication between family members and interactions between generations. A family in the formal sense may exist without all these determinants, but then loses its psychological meaning. It is the family of communities where there is a sense of belonging and solidarity. Each family will be even more content and functional if there is a willingness of those who enter such a community to fulfil and meet important human needs (proximity, trust, cooperation), and not only to achieve concrete goals (reproduction, economic security or the acquisition of a social position). The term "dysfunctional" refers to something that functions incorrectly or does not function at all. Unlike functionality, it is much easier to understand what the term dysfunction is in a family system. If every change during the life cycle of a family brings stress that is its inevitable companion, then a dysfunctional family represents the "family that is unable to adapt to the newborn conditions of life and cannot confront stress without major consequences "(Pinney and Glipp, 1982:53). There are extremes in the connection of its members in such families, so the boundaries between members are deleted or members are very distant from each other. The boundaries of the "outside world" are also not clearly permeable.

A functional family has the ability to find ways and solutions to the problems and conflicts it encounters.

It has capacities, i.e. adequate resources and is able to fulfil tasks and meet the development needs of its members. Unlike them, dysfunctional families often postpone problem solving, do not fulfil tasks, do not match the development needs of its members, etc. A dysfunctional family is constantly in crisis, does not recognize the problem until the symptoms occur in their members or the predominant breakdown of the family system (Minić, 2010:429). A dysfunctional family is most often isolated from the outside world without a clearly formed family identity with inflexible and rigorous rules, or the boundaries are so open to uncritically

accepting everything that comes from the outside world. Roles in dysfunctional families are not clearly defined, and often children take parental roles. Communication is unclear, confusing and contradictory, messages are not heard or accepted, and there is only minimal verbal exchange with frequent mystification. (Latić, Murtić, 2017).

ABSENCE OF FAMILY MEMBER DUE TOCRIMINAL SANCTION

While going through different cycles, families face different challenges. Each family system tends to maintain the state of homeostasis, i.e. the balance in which the member reduces the potentials at the individual and group level. Family systemic therapy sees the family as a unique system composed of subsystems, which are in interaction with each other and where certain dysfunctions of individual subsystems directly affect the entire family system. In situations where one member of the family is criminally sanctioned, there are changes that affect all members. The type and form of treatment depends on the length of the sentence. The role of professionals is to work with a convicted person, i.e. to carry out a therapeutic treatment during the serving of a sentence in order to be reintegrated into the community after the end of the sanction. They also work with family members in order to face the new situation as painlessly as possible. Children are especially at risk because due to their age and maturity they often cannot understand why a family member is no longer present. In these circumstances, partnership relations are endangered, and parallel work should be done to preserve partner and parental relationships. Family relationships can be disturbed during the duration of a particular crisis, stress or even irreversibly disturbed.

When it comes to the convicted person, the jurisdiction over the treatment is within the institution in which the person is located. Treatment is a procedure for the re-socialization of persons sentenced to imprisonment. The treatment in the execution of sanctions therefore does not take the sentence as the main and basic primacy of the process of solving problems in the society and the sanction of unacceptable behaviour, but it is emphasized that during the stay in prison, the individual prepares for returning to a society in which he will not return to the commission of criminal offenses. Individual treatment is the most important reflection of work with prisoners and is the most important method in work (Šaćirović, 2014:177). The families of offenders are a potential source of support and assistance upon re-entry into the community. It should be acknowledged, however, that a common attribute of persons in conflict with the law is the absence of family support (Griffihs, Dandurand, Murdoch, D, 2007:83).

A family member's going to prison has a significant impact on the family. Family relationships of the convicted are more complex than they seem. The family that cares about the convict can be its primary (parental) or secondary (partner). Neither the convicted person nor members of the family who are caring for children are adequately prepared to respond to the needs of children after a parent has been sentenced to imprisonment. Some children do not know that their parent is in prison because they have been told that they are absent due to military service, school or work. Some parents do not want children to visit them in prison or contact them by telephone because they feel that they will be away for a short time. Often, parents mistakenly believe that they cannot do anything for their children while they are in prison and that they will be able to make up for it after their release. Because of this, the children of the convicted persons are the most vulnerable family members and have at least twice as many chances to have their mental health impaired, to be poor, isolated and stigmatized (Srnić and associates, 2016:47)

A change always means losing one or more relationships in which an individual has lived before and it takes a long time to re-establish balance. Fear appears as the main content of the crisis and is an alarm that indicates that something has been disturbed. The crisis is always a separation from someone or something important, and again arouses fears of separation. The peculiarities of the crisis are the change of one or more aspects of the environmental reality of the individual or himself, the sudden appearance of change, the intrusion of internal control and the strong sense of vulnerability (Everly & Mitchell, 2000:30). Crisis states are very grateful for therapeutic treatment. The basic principles of crisis management are fast, emergency intervention, accessibility of assistance, avoidance of labeling and hospitalization (Roberts, 2000:24). The same author states that Faberow and Gordon (1981) emphasize close and quick help as important emotional role as it provides a sense of social support, which is unusually important for the person in crisis. Because of this, the role of family and friends in providing support is very important. In order to provide psychological assistance, it is of the utmost importance that a helping hand provides a sense of security, an optimistic attitude, open support and empathy. Attention should be focused on the current life situation, and the treatment should be as short as possible

In overcoming crises, those individuals who are physically healthy, energetic, have positive beliefs and optimism are easier to cope with. Additionally, sociocultural factors play an important role, so communicative, social people, those with the support of close people, appropriate material possibilities and knowledge on the essence of the crisis process have a greater chance to successfully cope with the crisis (Vlajković, 1992:17). The crisis does not apply to such occasional situations and the so-called daily problems, it refers to those moments in which the overall functioning of the person's previous functioning is called into question and requires a comprehensive change. The subjective experience of the situation is what makes the situation crisis. According to Lazarus (1984:387), the mechanisms of crisis overcoming are cognitive and behavioral efforts that focus on overcoming, reducing or tolerating adaptation requirements that are posed to the person in a crisis situation. There are two groups of overlapping mechanisms that Lazarus states making direct actions in which there is an attempt to change the situation, while others are made up of palliative prevalent models in which the crisis is only alleviated. Prevalence efficiency is assessed on the basis of how well an unpleasant feeling has been successfully settled, what is the preservation of self-esteem and interpersonal relationships, and how the process of coping with a stressful event is underway. Psychotherapeutic assistance and counseling are two more methods of assistance that are provided mostly in special centers for crisis interventions and are carried out by professionals. Psychosocial support aims to support people until they find themselves in a new situation, and strengthen them in order to find a stronghold and awaken their own stress-bearing potentials (Pregrad, 1996:96). This implies that in the recovery process it is important to rely on other pillars of support, including psychological assistance, and the most important thing is to recognize and acknowledge the change that has taken place.

CONSLUSION

The family can have a twofold effect - it can and should be a source of constant love, but it can also be a source of stress. Each family has a unique way of functioning, a certain boundaries of the family system, the role of each member individually and the dynamics of mutual relations. What constitutes a threat to one family, for another it can be something that is easily solved, and it is precisely in this way that each family is unique. Homeostasis as the natural state of every family system can be disturbed by the effects of various external influences, which can weaken its limits of resistance.

The absence of a family member due to serving a prison sentence is one of the possible examples of weakening the strength of the family, and can lead to a serious crisis of its functioning and survival. In these situations, it is important to work with all members of the family - the competent institution with a convict, and centers for social work and other organizations with his/her family members. Particular attention should be paid to working with children, because absence of a family member can have dangerous influence on their young personality.

Understanding, patience and support are the basis on which work with families with disordered family relationships is based. The strength of the family is reflected in the possibility of getting out of the crisis situation strengthened and ready to accept everything that during its cycles can affect the functioning, development and well-being of all its members.

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PHENOMENOLOGY OF THE PROSTITUTION MISDEMEANOR FROM ARTICLE 16 OF THE LAW OF PUBLIC ORDER AND PEACE IN PRACTICE OF PS SAVSKI VENAC

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Abstract: In the public eye misdemeanors are represented due to conditions, causes, but primarily, modality of their manifestation, which has a great impact on protection of values, more precisely, on public order and peace – one of the central values of the violations. Violation of prostitution, from the Law of Public Order and Peace, is distinguished as one of the special ones, since it has been considered as the oldest craft in the world. For adequate perception of the prostitution, we have to refer to country's largest cities, where this violation is very common. Accordingly, the central city municipality of Belgrade - Savski Venac, is especially relevant for this topic. The results of the research in this paper will contribute to identification of the problem, its intensity and consequences as possible solutions. In order to indicate the solutions, it is an imperative to put events into chronological and rational order. Firstly, definitions of basic concepts are given, without which further comprehension and deeper analysis would not be possible. Secondly, a historical background is covered. Special attention is given to a chapter about causes and conditions under which this violation has been developing. Furthermore, this paper includes violation's development in Serbia, Belgrade, and most importantly, on the territory of Savski Venac. However, the purpose of this paper is to indicate dangers and characteristics of the prostitution by using available data, and to provide a valuable basis for further researches on this topic.

Keywords: *overturn, prostitution, concept, history, causes, forms, Serbia, Savski venac, characteristics.*

INITIAL CONSIDERATIONS

Together with criminal acts, which are considered to be the most dangerous to a society, misdemeanors take the main place among the punishable acts with the highest levels of interest for their manifestation. What keeps them in the spotlight are conditions, causes, but foremost emerging forms and modalities of their manifestations, which touch on the protective values, apropos public order and peace as one of the central values of the misdemeanor.

As a special category of misdemeanor for which there is a great interest of the media, the public as well as the citizens, prostitution misdemeanor truly stands out. This misdemeanor from the Law of public order and peace is distinctive and differs as one of the special ones, as it is known as the "oldest trade in the world". As such, the relationship of people with it has changed throughout history, from different comprehensions, legal regulations, to various

shapes it has endured over time. What certainly should not be overlooked is, I would say, its unbreakable bond with human trafficking. Human trafficking, which in the process of transition and switching into capitalism has lost its original characteristics that initially defined it and basically mostly vanished from the face of the earth, at least in its root form. Unlike human trafficking, "the need" for prostitution still exists, and it still remains appealing to the parties interested in services it provides and to the people looking to profit from its existence alike. Especially interesting for its adequate overview are the larger urban environments where it is most expressed numerically, and the territory of municipality of Savski venac, as one of the central municipalities of the city of Belgrade especially stands out.

This paper is divided into three parts, three pillars that take the problem of prostitution and observe it through the prism of legal regulations, criminological questions and in the end check the scientific claims and indicate its regularities on the territory of PS Savski venac through empirical research. Part one of this study processes basic concepts that enable further understanding and deeper analysis, and that includes the notion of misdemeanor, public order and peace, as well as the laws that regulate them. The second part takes a look at prostitution through history. Then, as particularly interesting, there is a separate chapter about the causality, emerging forms and conditions under which this misdemeanor is developed. The third chapter of this science-research (master) work touches on the evolution of this midemeanor in Serbia, Belgrade, and then an entire portion is dedicated to the prostitution on the territory of Savski venac as the pillar of this work. A separate research has been done on the basis of applying the scientific methods of interviews, analysis of contents of the documentation, but also with the help of the available literature, publications, journals, professional and scientific magazines, internet sources, official records, empirical experiences of police officers of the PS Savski venac, as well as the officers of the Section for suppression of prostitution, gambling, vagrancy and other misdemeanors, Section for public order and peace, Police Administration within the Belgrade Police department. I would like to add that the data needed for empirical research were given by the Section for analytics of the Belgrade Police department, that have also given their contribution in the more adequate overview of the prostitution misdemeanor problematics in the PS Savski venac territory.

This paper analyzes the aforementioned territory within the period of time from 2007 to 2017, based on the data available, as well as misdemeanor reports. It should be noted that, because of unavailability of data, as well as insufficiently precise data up to date and detailed requests from the administration for monitoring of these issues, all the results of targeted research for the period of time from 2007 to 2012 could not have been shown, only some of the originally concieved elements.

Still, the purpose of this paper is to indicate the dangers, characteristics, forms and emerging forms of this misdemeanor through complete analysis of the available data.

LEGAL REGULATION OF THE PROSTITUTION MISDEMEANOR

General concepts

Concept of misdemeanor

Misdemeanors are the lightest kind of punishable acts, and as such they are prescribed in our legal system apart from criminal acts and commercial violations as the other two categories of punishable acts under the law of Republic of Serbia.

Misdemeanors are the lighter category of delicts compared to criminal acts and commercial violations, because they attack the lower value social properties than it is the case with other delicts from the punishable acts group, or the attacks against them are of lower intensity. However, their significance is great, keeping in mind the abundance of prescribed misdemeanors, and the great number of misdemeanors being commited on a daily basis. Consequently, misdemeanors have a significant represive, and then a preventive role in total criminality supression within the society, by which under the term of criminality we imply the totality of all punishable acts in the society. "The term misdemeanor is defined in different ways, whereby there are specifically distinct differences between midemeanors and criminal acts. That distinction is taken as either quantitative (misdemeanors are lighter than criminal acts), or as qualitative (misdemeanors have different features than criminal acts)" (Đorđević, Đ. 2013:28).

Concept of public order and peace

Public order and peace within the Law on public order and peace is defined as "harmonized state of mutual relationships between citizens created by their behaviour in the public place and the operations of bodies and organizations in the public life in order to ensure equal conditions to enjoy human and minority rights and freedoms of the citizens guaranteed by the Constitution" (Law on public order and peace, 2005). This definition of public order and peace from the new Law on public order and peace (OG RS, No. 6/2016) differs from the definition by which public order and peace were determined within the Law on public order and peace (OG RS, No. 51/92, 53/93, 67/93, 48/94. 101/05). According to 1992 Law, public order and peace were defined as "harmonized state of mutual relationships between citizens created by their behaviour in the public place and the operations of bodies and organizations in the public life in order to secure equal conditions to enjoy the rights of citizens for personal and property safety, peace and serenity, private life, freedom of movement, safekeeping of public morale nad human dignity and the rights of minors for protection" (Law on public order and peace, 2005).

Legal definition of misdemeanor

"Misdemeanor is an unlawful act which is specified by law or any other regulation from a supervising body as a misdemeanor and has a prescribed misdemeanor sanction" (Law on misdemeanors, 2016).

The general concept of a misdemeanor got a new formulation within the Law on misdemeanors from 2005, which considerably differs from the ones that were in our misdemeanor legislature up to that point. Understanding the misdemeanor as a violation of the legal order (the 1947 Law), a violation of the legal regulations (the 1951 Law), a violation of public order (amendments to the Law from 1958, federal Law from 1977 and the republic laws from 1973, 1979 and 1989) with appendices of anticipation of misdemeanors with regulations, has been replaced with the new definition according to which a misdemeanor is an "'unlawful wrongfully committed deed that is prescribed via regulation as a misdemeanor by a supervising body'" (Đorđević, Đ. 2013:29).

Aside from this legal definition of a misdemeanor, it is certainly significant to indicate to a doctrine that alongside of the aforementioned elements of a misdemeanor indicates that a misdemeanor is a violation of the public order, and can be committed by an individual, as well by a legal entity.

By analyzing the legal term of a misdemeanor we arrive to the following general characteristics of this punishable act:

- Unlawfulness,
- Act (deed, consequence, causal link),
- Anticipated by law or another regulation from a supervising body (statute, decision from an Autonomous province assembly or a decision from a local government assembly), and
- Prescription of a misdemeanor sanction (Đorović, E. 2015).

Misdemeanors can be prescribed not only by law, but even by a regulation or a decision from an Autonomous province assembly, Municipality assembly, assembly of the city of Belgrade or a town assembly, certainly keeping in line with the limits of jurisdiction needed for passing of these legal acts.

Prostitution misdemeanor in Serbia and around the world

Prostitution within the law of misdemeanors

Prostitution as a misdemeanor is prescribed within the Article 16 of the Law on public order and peace (Official Gazette RS No. 6/2016) that came into power on Februray 05, 2016, and is defined in the foolowing way:

"The person or persons who get into prostitution, use the services of prostitution or accommodate room for prostitution - will be punished with a fine of 50,000 up to 150,000 RSD, or a prison sentence of 30 up to 60 days.

The person or persons who provide space for prostitution to a minor - will be punished with a prison sentence of 30 up to 60 days."

The term prostitution implies a sexual intercourse that is characterised by payment (most often in currency), extreme promiscuity and emotional apathy towards the partner and the sexual act alike. The term prostitution is ordinarily linked to the behaviour of female subjects, but the possibility of male subjects involved in different forms of prostitution is not excluded (homosexuals, transvestites, etc.)

Prostitution within the new Law on POP

Unlike the old Law on public order and peace, the new Law expands the misdemeanor responsibility to the user of the services of prostitution, alongside of the misdemeanor responsibility of the provider of services that was in the old Law. In my opinion this new solution is not going to bring any significant changes to the plan to supress and diminish the number of prostitution misdemeanors for at least two reasons. Firstly, by including the user of the services with the ones that will be responsible of the misdemeanor will do nothing else but make the subject in the world of prostitution more cautious, mindful and by that to remain outside of the grasp of the law. This especially refers to the ones who enter the prostitution exclusively for making profit, not caring about the consequences, who will make an effort to wrap this activity in an even greater veil of secrets. The second reason concerns the prostitutes themselves, and the ones who do not have any other choice. They will continue to receive the support, protection and sanctuary of their "protectors", and continue to see the state as someone who seeks to take their daily bread.

To solve this query and find the best solution greatly significant is the question of free will in prostitution. "There are two possibilities for solving this problem. The first lies in correcting the mistake which this criminally-political conception starts. That means to demistify the belief that there is no free will in prostitution (in case of sexual exploitation) and recognizing the reality in which it exists. The second lies in incriminating the sexual exploitation (ex. Sweden)" (Ristivojević, B. 2015:12).

No more is the object of prosecution only the one who gets into prostitution and accomodates room for prostitution, but also the one who uses the prostitution services. (Pejović, D. 2016:325).

The problem that the new LoPOP brings is exactly its novelty - sanctioning the use of services of prostitution, which is allegedly protecting sexual morality which the criminal law had removed from the circle of protected rights. There is a logical question asked here if it is necessary to enter the clients bedroom to satisfy the purpose of the Law, although they are not disturbing public order and peace, since they are behind private doors (Pejović, D. 2016:325). By doing this, by protecting one's morality as a protective object which is not actually necessary, we would really jeopardize sexual freedom of other people, and that is guaranteed to every citizen of our country by the Constitution of the Republic of Serbia. To duly look at the situation in which the new Law puts us, it is necessary to look at the social surroundings of our country. Based on daily occurences that are being "broadcast" in our country, highlights being the pride parade, but also the reality TV shows that promote a more liberal sexual reasoning, we come to the conclusion that our citizen does not wish to take a step back with this new Law (Pejović, D. 2016:325). Compared to the grotesque moral values being promoted by different show programs, starlets, music performers and reality TV contestants, freely exercised prostitution behind closed doors seems like incomparably smaller social issue. Specifically the citizens' stances towards these social occurences point to the fact that regressing to the more repressing treatment of prostitution is not in keeping with the wishes of the majority of the people who by the way make the state as one of three integral components of any country.

CRIMINOLOGICAL ASPECTS OF PROSTITUTION

Prostitution

Prostitution throughout history

The history of sexology begins in Berlin, at the end of XVIII century. Serious research of sexuality began with Richard Von Kraft-Ebing in the 1880s, when it was realised that history and anthropology are valuable sources of data. "Historically looking, prostitution was not unheard of even in the first stages of societal development, let alone in the slavery period or the middle ages. During its development, following the ban on slave trade, in the XIX century there emerges the so called white slave trade, because in the Americas, Australia and New Zealand there were fewer and fewer Caucasian women." (Bošković, M. 2003:168).

Historical representation and division of prostitution throughout history and the modern age:

- Religious
- Ritual
- Compensational
- Substitutional
- Professional (modern)

Religious prostitution could be comprehended as women performing the service in temples, or other religious establishments - holy harlots. After engaging in prostitution for a certain period of time, women entered marriages, as religious prostitution on its own was not considered sacrilege, nor shameless or disparaging behaviour. Economic factor was certainly inevitable, but not proven. We should also keep in mind the women's legal position at the time, which was almost equal to the rights on objects, i.e. the fate of an unmarried woman was decided by her family, married women by their husbands, and devout priestesses were tied to (married to) the gods. (Kovačević, D. 2016:56-67).

Ritual prostitution is tied to exercising the first sexual relations of married women, in the form of public rituals, in which multiple persons partake. Repulsion that was fostered towards menstrual and hymen blood gave birth to the idea of its toxicity, so there was a fortified attitude that one should seek replacement for the wedding night. The replacement was found either in an object, or within a person that would replace the husband for a single night, and perform the dirty work - performing the act of defloration - aka devirginization. This form certainly represents a product of a time long past, but we should not be exclusive and leave room to the possibility that it is being performed in some remote civilizations to this day. (Kovačević, D. 2016:56-67).

Compensational prostitution occurs as a compensation for the lack of sexual tenderness, feelings and understanding in a marriage. (Kovačević, D. 2016:4).

"'With the development of capitalism as the new socio-economic system came a dramatic change in the position of women within the society. In the classic agrarian feudal economy, where the only capital was the land itself, the traditional involvement of women as makers of the newfound value has gradually faded as feudalism started retreating for capitalism, and agriculture retreated for industrialization. These processes are followed by the men leaving for cities to work in factories. In that manner, we see the classic agrarian family slowly disappear, and the role of the women as one of the creators of income slowly fade away. To survive, they, just like men, leave the villages and join the workforce in the cities, looking for paid jobs. By doing that, they have created the conditions for two important tramsformations of the women's position in society. First, a great number of women lost their influence within the society because they abandoned the traditional role as a protector of agrarian family, which made them more susceptible to the harsher living conditions. Second, to an enormous mass of unemployed women in the cities, unlike at the villages, many jobs were unatainable since the type of industry that flourished at the time only offered hard and dirty (i.e. man's) jobs. In the end, it just so happened that the enormous mass of disenfranchised and simultaneously unemployed workforce was available for perhaps the only job market in the cities that was open for it - sexual favors market" (Ристивојевић, Б. (2015:12).

Although it does not represent a factor of endagerment for social values, prostitution does represent an important basis for making profit as well as the occurence of social poverty of women and it also pulls with it other tightly knit criminal and asocial occurences that leave significant negative consequences (Bošković, M. 2003:169).

Causes, factors and emerging forms of prostitution

Forms of engaging in prostitution

"During the development of scientific knowledge of the causality of prostitution, different standpoints were established. The most accepted was the psychological stanpoint, which explains the prostitution via personality structure, after that was the psychopatological ap-

proach, which finds the causes of prostitution within the mental personality disorders of prostitutes, and finally, the sociological explanations (social causes)" (Špadijer-Džinić, J. 1988:101). "Regardless of all the specificities of prostitution, its causes are contained within the aforementioned causes and conditions of organized and transnational organized criminality, i.e in socio-economic and political changes, in social stratification, but also in some subjective elements, that are actually characteristic of prostitution" (Bošković, M. 2003:170).

Certainly the most significant motive, which also defines a form of prostitution, is *money*. This classic form of prostitution allows for profit without much investment and with no special organization. However, prostitutes often even with no need for intermediaries in prostitution wish to work for someone, who would find them clientele, whether from higher or lower social ranks, as a safe influx of money, who would provide them with protection and who would create conditions to conduct their business easier. As far as the necessary experience that often influences the height of the salary in every job, in prostitution it is not crucial and is often contrary to other commercial activities, less experience is paid more. These days there are brothels, especially in the countries of South America, which is no surprise keeping in mind that one of the most infamous people from that part of the world - Pablo Escobar was one of the biggest advocates of this form of prostitution. There we arrive to the link between prostitution and introduction of children in its flows. Even today, in modern world, younger girls with less experience are paid more, especially if they are virgins.

Today we can often be witnesses to virgin girls offering their bodies online via internet, even partake in public intenet auctions, where they stay competitive with their lack of experience, which gets them enormous offers.

In service of keeping their self esteem, creating an illusion of noncommercial nature of the relationship, these clients can be very generous with *expensive gifts* from their own pocket, although more often the counter favours are enabling their ladies to all sorts of *privileges*, such as awarding them an appartment, *advancement in the workplace* and such. This form of prostitution which is based on manipulation and abuse of social goods as well as use of social power, is indeed socially the most dangerous form of prostitution. Very similar, if not the same is the way of *"admitting"* young and beautiful girls to work, or *passing exams* on universities. (Aćimović, D. 1998:12).

According to modern understanding, prostitution in stricto senso can be determined as a sexual intercourse that is characterized by:

- ✓ Linking any sexual intercourse with money or any other kind of benefit;
- ✓ Extreme promiscuity, or attachment with a great number of different and also unknown partners, and
- ✓ Emotional ambivalence not only towards sexual pleasure, but also towards the partner (Mijalković, S. 2005:676).

Prostitution in Serbia

Factors as prerequisites of expansion of prostitution in Serbia

Traditionally, Serbia represents a crossroads of the international ways of smuggling people, weapons and narcotics. In these conditions, there naturally comes to a connection of internal forms of threats to security with their international dimension. Prognoses of the world's most powerful intelligence services claim that by the year 2015 the territory of Serbia

will represent the hub for international smuggling routes of Southeastern Europe, which is, among other things, used for smuggling the victims of white slave trade, which represents a long-term threat to the safety of the country and its citizens (Mijalković, S. 2005:312).

Prostitution during the period until the beginning of 1990s had all the same forms as in other parts of Europe, and it was mainly manifested in bigger city enviroments of Belgrade, Niš and Kragujevac.

"'Prostitution as a sociopathological occurrence is observed specifically on the level of its influence on the security of Belgrade, which in the last decade of the XX century had many problems and consequences of a dissolvement of a socialist state concentrated within. This socially-deviant phenomenon had to be put on the same plane with a lot of negative circumstances that marked our reality in the last decade of the XX century: crash of socialism, deep economic downfall, secession and dissolvement of the country, war devastation, various social displacements as well as pathology in general" (Spasić, D. 2006:324).

Prostitution in Belgrade

"The first brothels in Belgrade were opened back in 1860. They were banned by law - in 1934" (Aćimović, D. 1998:10). To see the profile of a prostitute in Serbia and Belgrade more clearly today, we will compare them to the data from the surrounding countries, with special attention to the former SFRY states. "Average level of education for prostitutes of Belgrade and Ljubljana, and it is similar to the level of the ones from Zagreb or Sarajevo, is proportionally low. More than a fifth is illiterate, over half of them have only the 8-year education, 9% with incomplete, and only 3% completed high school. In Slovenia 94% of prostitutes are without an occupation, in Croatia it is 90%, and in Belgrade 84%. Only 6% to 9% of them have a permanent employment, and that is only as night club dancers or house cleaners. Another, also numerous category is made of girls from farmers and working class families, and the petty clerks' social layers. They are too of low education, semiqualified, less often qualified (waitresses, typists, night club singers, and sales people). At first, prostitution represents a supplemental, and later the dominant and only occupation. They give out sexual favours in mid-categorized hotels, at a price of 5,00 up to 10,000 RSD. A subgroup of this category is made up of young and beautiful waitresses, who work at private bars and restaurants. Their employers, in favour of keeping the guests drinking and eating at their establishments, tolerate the prostitution" (Aćimović, D. 1998:10).

Since 2000, the following emerging forms of prostitution were registered in the territory of Belgrade:

- Street prostitution
- Agency prostitution
- Hotel prostitution
- Prostitution via the Internet
- "High level" prostitution (Spasić, D. 2006:327).

What is characteristic for XXI century prostitution is the multitude of the new emerging forms of prostitution, diversity of supply, but also the demand for prostitution, criminalizing of "demand" for prostitution (and by that annexation to the prohibicionist model of prostitution), the great dark number, conspiracy on the high level of prostitution and the protection of the special clientele, child prostitution, but also a look at the prostitution as a new level of the sex industry. Ever expanding problem is contributed by the fact that only one organizational unit in Serbia, within Police department of the city of Begrade is dealing with it - Section for public order and peace within Police department, Sector for supressing pros-

titution, gambling, vagrancy and other misdemeanors. Because of the increasing expansion of the problem, it is absolutely insufficient to leave dealing with issues of great significance to only one sector for the territory of the entire Republic of Serbia, especially considering mass migrations that are additionally increasing the supply on the market, and in doing so creating conditions for additional growth of this branch. This impression is strengthened if the lawmakers of Article 16 did indeed take seriously the need for prescribing of this article. If in fact that is not the case, then even this one unit is redundant and unnecessary.

Each of the regions on the city of Belgrade territory belongs to a certain pimp, or a group of pimps of the same ethnicity. According to their verbal unwritten agreement, regions have been divided in the following fashion:

- Romani hold the "Mance" and "Blue Bridge".
- People from Novi Pazar hold the "Lasta" bus station and all other locations alongside the Belgrade-Niš highway.
- Romani, people from Novi Pazar and the Serbs together hold the area around the school of economics.
- The Serbs hold the area around the Šimanovci toll-booth on the Belgrade-Zagreb highway.
- Most of the hotel prostitution and massage parlors are "covered" by Montenegro nationals.

PRACTICAL-EMPIRICAL RESEARCH OF THE PROSTITUTION MISDEMEANOR IN THE PS SAVSKI VENAC REGION

Yearly report of PS Savski venac analysis

Statistical data which refer to the number of misdemeanors, times and places of their commitment, to perpetrators and victims, their sexual and age structure, as well as their educational background, cannot be generalized, but can be a road sign towards identifying the target groups (potential victims and perpetrators). They can also give a rough sketch of the space distribution of the occurrence as well as its connection to different forms of criminal activities. As the object of this research in the region of the Belgrade Police department, the area of PS Savski venac stands out as a particularly interesting area, keeping in mind the central position that it takes within the city territory, taking into consideration the number of residents, people employed, roads, traffic, consular and diplomatic representative offices, as well as numerous public and private companies that are doing their business in the territory covered by this station.

Based on the **yearly report for the year 2016** of PS Savski venac analysis, it can clearly be seen that the police officers of this station and the Sector for supressing prostitution, gambling, vagrancy and other misdemeanors, acting accordin to Article 16 of the Law of POP (engaging in prostitution) spotted, brought in and processed 78 perpetrators during 2016, which is almost double as much as the same time period from 2015, when there were 42, so analyzing the structure of other misdemeanors of the public order and peace, concerning this kind of misdemeanor, it is the most drastic difference compared to the previous year.

STRUCTURE OF MISDEMEANOR	2015	2016
Art. 7, par.1 (quarrel and yelling)	19	14
Art. 9, par.1 (Insulting, commiting violence and threats)	144	137
Involvement in a brawl	36	34
Gambling	0	0
Unauthorized discharge from a firearm	0	0
Unauthorized incineration of a package	1	2
Beggary	56	68
Omission of warning a person breaking the POP	4	2
Indecent, impudent and careless behaviour	123	116
Handing an alcoholic drink to an intoxicated or minor person	3	0
Art. 16 (Engaging in prostitution)	42	78
Other POP	68	86
Total POP misdemeanors	496	537
Total misdemeanors from PS jurisdiction	677	531
Total POP + Jurisdiction of PS	1173	1068

Characteristics of prostitution in the PS Savski venac area

Certainly one of the most important parts of this paper is spotting regularities in performing this misdemeanor: places it is most often excercised, persons that perform it, age of perpetrators, confiscated objects, acts that are most often registered with it. Most useful in this is the factual description of the misdemeanor, as well as the confirmation of confiscated objects.

By examining the misdemeanor – engaging in prostitution, on the territory covered by this PS, we can spot the following:

- Locations that most often appear, and that have the biggest number of perpetrators of this misdemeanor are the streets: Gavrila Principa, Jug Bogdanova, Sarajevska, Admirala Geprata, Balkanska, Lomina, as well as the park at the school of economics.
- Persons that commit misdemeanors from Article 16 from the Law on public order and peace (as well as Article 14 of the old Law on POP) are most often multiple offenders, i.e persons known to police officers of this PS.
- Most common age structure of persons registered in the misdemeanor are 18-30 years of age.
- Among the objects most often confiscated from the persons caught in this misdemeanor are: various brand condoms, foreign and domestic bills, as well as weapons (most often daggers, knives, pepper spray).
- Persons commiting the misdemeanor are registered as perpetrators of other laws (aside from the old and new Law on POP): Law on personal identification papers, Law on permanent and temporary residence, Law on weapons and ammunition.

Overview of misdemeanor per year and municipality of perpetrating the prostitution misdemeanor in the Police department of the city of Belgrade area

	2013	2014	2015	2016 January-August
Palilula	49	18	28	64
Vračar	1	6	0	0
Obranovac	0	1	0	0
Voždovac	147	104	158	72
Barajevo	0	0	0	3
Rakovica	3	1	1	0
Čukarica	21	25	17	44
Lazarevac	17	5	1	1
Stari grad	7	3	4	0
Zemun	33	6	0	3
Zvezdara	22	7	9	27
Sopot	0	0	0	0
New Belgrade	9	19	10	1
Grocka	0	0	0	2
Savski venac	49	54	42	78
Mladenovac	0	1	0	0
Surčin	37	16	4	1
Belgrade	397	266	274	296

*For the PS Savski venac number of 78 misdemeanors refers to the whole 2016 (it was 52 up until the August of the same year)

From the tabular display for the time period from 2013 to 2016 (January-August), we are able to see that the greatest number of prostitution misdemeanors on the territory of the city of Belgrade was commited in 2013 and the number was 397 misdemeanors, and the least was in 2014 and the number was 266 misdemeanors, although the data for 2016 were known only for the period from January to August, the number of misdemeanors in that timeframe was greater than the number of misdemeanors for the entire year of 2014 and is 271 (data showing 296 misdemeanors in the table represtents the number of misdemeanors including the prostitution misdemeanors on the territory of PS Savski venac for the period from August-December of the same year). Of all the municipalities that make the city of Belgrade, by far the greatest number of misdemeanors was recorded on the territory of CM Voždovac, then CM Savski venac (Radosavljević, S. 2016:45).

In the area of PS Savski venac in the *10-year time period* there were 351 prostitution misdemeanors from Article 16 from the Law on POP.

The greatest number of uncovered perpetrators was in 2016, when there was 78 prostitution misdemeanor applications filed. Increasing trend of recording of prostitution misdemeanor is noted from 2013. The reason for the rise of the number of misdemeanor applications filed for the prostitution misdemeanor most likely is enactment of the new Law on public order and peace in February of 2016, which has the user of the prostitution services cited as a perpetrator as well. Now the police officers are submitting the misdemeanor applications against the users of the services as well, alongside the ones against the people that get engaged in prostitution and accomodate room for prostitution, so statistically we can expect a

greater number of filed applications, but basically there will not be any decrease in numbers of prostitutes on the streets, which imposes the question if the new measures in the fight against the prostitution are effective enough.

CONCLUSION

The goal of this paper is the analysis of Article 16 of the new Law on public order and peace that was enacted on February 5, 2016, and its application on the territory of PS Savski venac, one of the central city municipalities of the city of Belgrade. This analysis included a 10-year long time period from 2007, ending with May 2017, according to the records of Analytics Section of the Belgrade PD, as well as an overview of the misdemeanors records of the Savski venac police station. With those exceptions the paper completely responded to the analysis of the 10-year long time period for the prostitution misdemeanor. Within the paper there are carefully and with a special attention separated the personal structures that get engaged in prostitution, persons that accomodate room for the purpose of prostitution, users or prostitution services, i.e the ones that are prosecuted under the new LoPOP, as well as their features and specificities on the city municipality of Savski venac territory.

The paper points out the comparison of the problematics of this PS, with the other stations on the city of Belgrade territory, whose population numbers are also high, so the PS Palilula, PS Zvezdara and PS Čukarica stand out as well for more adequate overview of the research object. Based on analyzed records, we came to certain cognitions, came to certain conclusions, on which the research assignments rest on.

In the chapter pertaining to the research a special place is dedicated to the great number of this occurrence, which indicates a tendency of growth since 2013, as well as almost double the number of this misdemeanor since 2016, whereas the answer to the question "What is the reason for this?", the change of the Law on public order and peace, where we have the sanctions against the users of prostitution services, imposes itself. It should be mentioned that on the territory of the station researched in the first five months of 2017 there were only 9 prostitution misdemeanors sanctioned, which is incomparably fewer number compared to the time period of the entire year 2016, when there were 78 cases of this misdemeanor uncovered. The question that inevitably gets asked is if the police officers of this station, as well as the Sector for supressing the prostitution, gambling, vagrancy and other misdemeanors were able to get in the trail of returning offenders and other perpetrators of this misdemeanor and thus preventively diminish this number, or if there has been an all too known occurrence in the criminality supression called "criminality displacement".

Based on the conversationism interviews and experiences of the staff of the Ministry of internal affairs, it should be noted as a conclusion that for men it is characteristic to emerge as the accomodators of room for prostitution services, as well as the users of said services. What should also be noted is that there is not a great number of underage persons noticed, unlike the underage perpetrators on the territory of the city of Belgrade, who make up to almost 50% of total perpetrators of this misdemeanor. By analysing the misdemeanor applications we reach the conclusion that the perpetrators are multiple offenders well known to the officers of this PS.

As the main conclusion about the street prostitution which is the most obvious on the territory of PS Savski venac, we have as the result repeat offenders who have no intention of stopping these practices, which in informal conversations with state authorities have no objections with legalizing this "trade", all the while looking for better working conditions, bigger pay, also claiming that the main incentive is not the money, but the client's pleasure. As the most vulnerable form of prostitution, they succumb to the brunt of the society's repression by

breaking the norms of the public order and peace. The question is if it it purposeful to punish the ones who survive by doing this on the streets, unlike the ones that have the means to enter the "elite" circles of this work away from the public eye. On the other hand, is it justified to enter the appartments, houses, hotel rooms, thus endagering the sexual freedoms of every person, and also in part the right of inviolability of residence guaranteed by the Constitution, just so we could fill the statistic basis of the state authorities, so we could justify the existence of the units responsible for supression of this kind of misdemeanors? The answer imposes itself in a negative context, but also incites the state authorities, as well as other significant organizations that consider this definition of prostitution to further research and finding the best solution.

Motivated by a critical viewing of prostitution in our society, I hope that I have at least in part stimulated the readers of this paper to think on the complexities of this occurrence and the possibilities and roadways of its development over time. The original goal would certainly be surpassed if it could be used as a constructive basis for writing of the more serious scientific essays.

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Topic II

CRIMINALISTIC AND CRIMINAL JUSTICE ASPECTS IN SOLVING AND PROVING OF CRIMINAL OFFENCES

THE TREATMENT OF GENDER VIOLENCE IN SPAIN: ANALYSIS OF THE CURRENT SITUATION

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Abstract: Gender violence is a universal and structural phenomenon. In Spain, since 2004 we have been implementing a Law that addresses the problem from an integral point of view, distinguishing between gender violence and domestic violence. After a critical analysis of the Law in 2015, numerous reforms are introduced that improve the prevention, assistance and protection of victims. Since 2007, the Security Forces of the VioGen tool have been in place to determine the risk assessment and, since its last reform, the protection measures that, individually, each victim requires. At the end of 2017 a new study of the situation is carried out and the Parliament of Spain approves the State Pact against Gender Violence, but new manifestations of violence against women arise and there is still a lot of work to do and aspects to improve in the matter.

THE CONCEPT OF GENDER VIOLENCE

"…the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[1]

Violence against women is a "*structural and universal phenomenon*", and it appears from various ways of discrimination and exclusion on women, and this is the result of the fact that they are women. They are independent of factors such as cultural norms religious beliefs, the age or social status. It is for all these reasons that this violenceis named gender violence[2].

According to Article 1.1 of Organic Law 1/2004, 28 of December, of Integral Protection against Gender Violence Measures[3], the gender violence is defined as a manifestation of discrimination, inequality situation and power relations of men over the women, who are o have been partner or former partner, however there has not exist coexistence. This kind of violence includes physical and psychological violence, sexual offences, threats, constraints, or liberty privations.

We difference in Spain between que concepts of domestic violence and gender violence, they are using, many times, in an inappropriate way.

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1 General Assembly of the UN. Resolution 48/104, December 20, 1993.Declaration on the Elimination of Violence against Women (1993).
2 http://malostratos.org/violencia-de-genero/tipos-de-violencia-de-genero/ (avialableon 19-06-2018), Comisión para la Investigación de malos tratos a mujeres.
3 BOE núm. 313, de 29/12/2004.

The concept of gender violence is much more concrete[4], it is referred to the violence of the man against the woman only because she is a woman, and it is manifested from a position of machismo superiority which is the fruit of his domination.

Some authors[5], which I agree, says that the term "gender violence" it is not correct, that it is more appropriated to speak about "violence because sexual reason".

However, domestic violence concept include much more people implicated, as victims or as authors, because domestic violence affects to all people who live together or who has been living together inside the family.

Gender violence take place inside the family, his author can be a man or a woman, and the victim any person who lives or is integrity in the core of coexistingwith the author, ascendants, descendants, partners, brothers, sisters, or any person who is integrated in the coexistence core, however this person has not any parental link.

This latest case has generated many critics.

So it will be considered cases of domestic violence, aggressions from fathers or mothers against sons or daughters, the aggressions in the other direction, wife to husband or between former partners, or aggressions between partners of the same sex or, for example, aggressions against a friend of a son who is living with the family for a long time.

THE ORGANIC LAW OF MEASURES OF INTEGRAL PROTECTION AGAINST GENDER VIOLENCE.

The Organic Law of Measures of Integral Protection against Gender Violence[6] qualify the gender violence as the most brutal sign of the inequality in our society, it remembers that our Constitution[7] stablish the right to the life and the moral and physic integrity.

The promulgation of the Integral Law is justified because the Public Powers have the obligation to adopt the measures which they consider necessary to get the absolute effect of the bill of rights that the Constitution recognizes[8].

The Law pretends to give a global, integral and multidisciplinary response to the problem of gender violence. It includes prevention, educative and social aspects, assistance and attendance to the victims and civil regulations of Family Law, because the offences are always produced inside the family.

From the point of view of education, the principal objective is providing an integral formation which allows an adequate valuation of woman, and it is incorporated in the high school curriculum the education on equality and against gender violence[9]. Likewise it is introduced in the Academic Council a person who impulse the equality and the fight against gender violence.

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4 HERRANZ LATORRE, R., *Tratamiento Criminológico de la Violencia de Género*, Universidad Católica de Ávila, 2017.

5 DEL POZO PÉREZ, M.,*Revisión crítica de las recientes reformas de Derecho Procesal para el tratamiento de la violencia de género*. Artículo de Estudios interdisciplinares sobre igualdad y violencia de género, Editorial Comares, Granada, 2008, p. 39 a 42.

6 Statement of reasons for Organic Law of Measures of Integral Protection against Gender Violence.

7 Article 15ft of SpanishConstitution

8 Article 9.2nd of Spanish Constitution

9 I think it could be more interesting that our educational system incorporates not only the education in equality, but also it must go farther and include in the curriculums the bill of rights of our Constitution, or evenall the Constitution.

In the ambit of mass media, the Law establishes the obligation of the respect to an imagen of woman which recognize the equality and dignity principles[10]. It is introduce in the rules of proceedings the possibility that associations or institutions which defend the equality between men and women have the legitimation to impulse the action of cessation or rectification of advertising[11].

It is improve the support to the victims, it is recognized the right to the free legal information and assistance[12], and the fact that the victim has the same lawyer for all the proceedings.

The Law includes the need of an adequate formation for police officers, health staff and judges. It is obligatory to follow the protocols when it takes place a gender violence attack.

It also prevents measures to the early detection of gender violence and an adequate psychological and physical attendance to the victims.

The Law also contemplates an adequate protection for young people, under of eighteens, not only for the guardianship of their rights, but also because the attacks to them generate violence against their mothers.

Referring to the social measures, it is modified The Statute of Workers[13]. The absences of the victims of gender violence are justified, and they have the right to the geographic movement, with the reservation of their position, and also, they can rescind the contract.

These are collected economic aids[14], and it is recognized the legal situation of unemployment when the victim rescinded they contract.

It is created an insertion work program for women which are victims of gender violence and do not have livelihoods, in order to they can get economic independence from their aggressor[15].

These economic measures are totally compatible with another help of the Administration to the victims of other violence offenses[16].

By last, the Integral Law collects criminal and procedural measures, the proceedings turn quicker, like the measurers to protect to women and their sons and daughters, they are stablish urgent cautery measures and, besides, the criminal and family proceedings are combined.

The Law creates the Violence against Women Courts, which process the criminal and family proceedings.

They are include in the Proceeding Law the protect measures, which can be adopted by the Gender Violence Judge at the beginning of the proceeding, and also after the judgment, that permit a complete protection for the victims.

Finally, it is created a special Prosecutor against Violence over Woman, who coordinated to all Prosecutors in gender violence proceedings. It is created a special Prosecutor at every regions and provinces.

This Prosecutor takes part in all the criminal and family proceedings when it is investigation the guardianship of minors or when their mothers have suffered gender violence.

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10 If we read any newspaper, magazine, or TV program, especially of sports, we will find out a lot of sexist images, for example women holding umbrellas to protect the men of the sun.
11 The associations and institutions in defence of women rights have animportant task in this field.
12 The Royal Law-Decree 3/2013, February the 10th, modify the system, before of this reform the assistance was free in some Autonomic Communities but not in others. This Royal Law-Decree modifies the Free Assistance Law, Law 1/1996, on January the 10th.
13 Royal Decree 1/1995, March 24th..
14 Royal Law-Decree 1/1994, June the 20th.
15 We cannot forget that it is the principal obstacle which victims have to overcome. *How can I send to the jail the person who takes care of me?*
16 Law 35/1995, on December 11th of aids and assistance to gender violence and sexual victims.

INTEGRAL LAW 2004 ANALYSIS. THE ORGANIC LAW 1/2015 ON MARCH 31ST

Ten years after the promulgation of the Integral Law, different juridical and social institutions notice that the Law can be improved.

The Protection Order[17]could have the value of condemned judgment, in this way it would be avoid that when the offender conform with the Prosecutor petition at the Judge on Duty and it does not determined any caution and the woman can stay without protection.

On the other hand, the exemption from the obligation to declare of the wife against the husband[18] appears in a very high percentage of proceedings, and the victims in many times say that they have reached an agreement with the aggressor in order to do not testify. It is for that reason that it is asked for a modification of the Criminal Procedural Law in this matter.

It is also object of critics that the majority of the proceedings are follow by the Quickly Judgment, with a very little investigation phase. For this reason it is impossible collect in the proceeding other former gender violence offences, which could show the habitual violence, the authentic problem of the gender violence. The habitual violence is darkness for the speed of the proceedings.

We can critics besides, that cruelty it is not reflected in all the crimes by law, as a specific aggravating circumstance, and it is only of application the generic aggravating of relationship, and however it is the application of the mitigating circumstance of having drink alcohol. In my opinion the alcohol consumption is, clearly an element which is seriously harmful for all the family members.

So, it is necessary to consider the minors as direct victims of the gender violence over their mothers, because they are used as a toll by the aggressor for the developing of the gender violence against their mothers. For that reason the Gender Violence Courts assume the competence over independents offenses against the minors when these offenses are in the pattern of a habitual gender violence environment.

It is necessary the typifying of conducts as the forced marriage[19], the harassment and the stalking[20], unauthorized divulgation of intimate images[21], the manipulation of telematics devices of control[22] and the stablished of the freedom supervised[23].

Likewise, it is solicited the elimination of the criminal mitigations of confession an repair of damage for gender violence offenses, many times these circumstances are more a feeling of boasting or reaffirming reality that a signal of contrition.

The reform introduced by the Organic Law 1/2015, on March 31stand the Victim of the Offense Statute[24] include some of these pretentions.

17 Regulated by the Law of July 31st of 2003.
18 Regulated in the articles 416 and 707 of the Criminal Procedural Law. HERRANZ LATORRE, R., "*The problem of the incrimination evidence in the gender violence pursuit*". Archibald Reiss Days. Criminalistics and Police Studies Academy, Belgrade,2016.
19 The legal good protected would be the right of get married in freedom, which is recognized by the article 16 of the Universal Declaration of Human Rights.
20 These are repeated behaviors which generatedamages for freedom and security of the victim. This are conducts as surveillance, prosecutions, reiterated phone calls or messages, threats of suicide, control actions or furniture breaks.
21 Thisconductisknown as "sexting".
22 We speak about these devices after.
23 All these measures are stablished in the Istanbul Convection, about prevention and fighting against domestic and gender violence
24 Law 4/2015, on April 27th at your disposal on 7-7-2018, at https://www.boe.es

THE SPANISH STATE AGREEMENT AGAINST GENDER VIOLENCE[25]

At the end of 2017, the Spanish Parliament probe the State Agreement against Gender Violence, which studies the current situation and propose more than 200 measures against gender violence.

The Agreement highlight the importance of a new protocol for police risk valuation and management of the security of victims[26], about we speak later, and the European Protection Order, which guaranties to the victims of offenses like violence, harassment, terrorism or human beings trafficking, the same level of protection around the entire EU[27].

Nevertheless, despite legal advances, women continue being controlled, threatened, attacked and killed. And it is too much high the level of mortal victims and women that do not report the offences[28].

It is also very high the level of the silence of relatives, neighbours and friends who know the existence of bad treatments. The reports of health staff, teachers or social services are not very much.

The Technologies allow the aggressors the access to new ways of control, especially among teenagers and young people, where the problem is increasing[29] and they take advantage of the anonymity and "virality" of the Internet and social networks.

The agreement commits more actively to the Town halls, to achieve the earliest detection of cases.It has been detected that, in ten years, Protection Orders have decreased by 20%, many Courts deny, persistently, the concession.

However, there are also encouraging data, information systems, security devices and social benefits have been vital for thousands of women, so the 016 line[30], the ATENPRO service[31] or the system of telematics monitoring of the distance measures increases continually the number of beneficiaries, as well as the police system of comprehensive monitoring of cases of gender violence, Sistema VioGén, which we will study later.

Nearly 7,000 subsidized contracts have been signed for victims of gender violence, 4,500 financial aid, 306,000 Active Insertion Income, or 10,400 authorizations for temporary residence and work due to exceptional circumstances.

At the regional level we have different victim assistance tools, such as emergency centers, shelters, residential centers, comprehensive care centers, apartments and sheltered housing, support centers and comprehensive assistance and women's centers.

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25 Available, on 7-7-2018, at https://www.violenciagenero.msssi.gob.es/pactoEstado/home.htm

26 Instruction 7/2016 of Security StateSecretary, at your disposal on 7-7-2018 in: https://www.poderjudicial.es/cgpj

27 Regulation EU 606/2013 of the European Parliament and of the Council, of June 12, 2013 and Directive 201/29 / EU, of the European Parliament and of the Council, of October 25, 2012.

28 SinceJanuarythe 1st of 2006 untilJuly 19th of 2017, only the 26,4% of mortal victims reported the crimes. Dates of the StateAgreementagainst Gender Violence, p. 222. Congress document.

29 The Big Poll of Violence against Women of 2015 detect that a percentage of 21% of women with partner or former partner have being victims. Available, on 7-7-2108 at https://www.violenciagenero.msssi.gob.es

30 Telephone service and online information and legal advice on gender violence, which leaves no trace on the bill or on the Internet. Sameprevious page.

31 Available, on 8-7-2018, at https://www.cruzroja.es

It provides a mobile phone and telecommunication device, with GPS locator, that allows to contact at any time with a Center staffed by personnel specifically prepared to respond to each situation. It is served by volunteers who, if necessary, put the facts to the attention of the Security Forces.

However, trafficking in human beings for the purpose of sexual exploitation increases and, in Spain, more than a thousand women are raped every year.

Therefore, the Pact proposes a series of recommendations, articulated in the action axis of awareness and prevention, improvement of the institutional response, improvement of assistance, help and protection, assistance and protection of minors, promotion of training of the agents and the visualization and attention of other forms of violence against women.

It is proposed, to create protocols to protect the most vulnerable groups, in refugee camps, to publish resolutions and sanctions for the dissemination of sexist, degrading or discriminatory content, to eliminate from the Network references that promote violence against women, to launch a Non-Sexist Advertising Code or extend sanctions to sports clubs that allow the advocacy of gender violence in sporting events.

In the workplace, it is proposed to disseminate the Mobility Protocol for victim officials, develop Equality Units in Public Administrations, promote teleworking and implement measures and protocols against sexual or gender-based harassment.

Finally, we will refer to the proposals of the Pact on security matters, referring to the increase of human resources[32], advance in the communication of the different databases of the Administrations, especially in VioGén and SIRAJ[33], and among the Forces and Bodies of Security and Penitentiary Institutions[34]. And review the Immigration Law to avoid sanctioning procedures for irregular stay for victims of gender violence.

Regarding Justice, the abolition of the mitigation of confession in the crimes of gender violence, the reparation of the damage, apply an aggravating circumstance in the cases of female sexual mutilation, in the aggressions and sexual abuse for sexist motives, continues to be demanded. Punish as less serious crimes (and not minor), insults and slander through social networks, eliminate the exemption from the obligation to declare when the woman has reported and suppress the regime of visits of the children for the abusive father.

POLICE ACTIONS FOR THE ASSISTANCE AND PROTECTION OF VICTIMS OF GENDER VIOLENCE. THE VIOGÉN SYSTEM.

On June 10, 2004, the Action Protocol of the Security Forces and Coordination with the Judicial Bodies for the Protection of Victims of Domestic and Gender Violence was approved.

Its purpose is to give preferential attention to the assistance and protection of women victims of gender violence and to cushion, as far as possible, the effects of the mistreatment.

As a first step, the presence, in all units of the Security Forces, of officers specializing in the treatment of domestic violence and gender will be enhanced.

32 At present the number of agents assigned to the protection units of women victims of gender violence is insufficient, they have to protect a large number of them. This could be solved with an increase in budget items that would allow this work to be carried out by private security personnel, as in some Autonomous Communities.

33 The SIRAJ is the system of records of the Administration of Justice, of forced consultation by the agents who carry out reports of gender violence. It includes, fundamentally, antecedents, Orders of Protection and breaches of the precautionary measures.

34 There are some problems with regard to the release of prisoners and the new installation of telematics tracking devices, which are carried out by a private security company.

In 2007, it was established in the performance of these specialized units in the treatment of gender-based violence the obligation to carry out the Police Assessment of the Level of Risk, through the Integral Follow-up System in cases of Gender Violence, VioGén System[35].

In 2015[36], the Central Unit for Attention to the Family and Women was created (UFAM), attached to the General Commissioner of the Judicial Police, which assumes the investigation and prosecution of the crimes of gender violence, domestic violence and sexual crimes, as well as the coordination of the protection of its victims.

The UFAM will develop different functions, first of all, to provide a specialized, comprehensive and personalized response that guarantees adequate attention to the victim as well as subsequent preventive, investigative, repressive and assistance actions, with a single police reference.

Secondly, to know about criminal offenses in the area of gender, domestic or family violence and sexual violence, except for those involving the use of ICT, which will be the responsibility of the Technological Research Units.

Thirdly, they will be competent to direct the proceedings in which minors are involved, both in terms of protection and reform, as set out in the Protocol for police action with minors[37].

And, finally, the UFAM staff will be dedicated to the protection of victims, in all its phases, prevention; attention, assistance, information and referral; Research and protection.

Prevention is achieved by carrying out campaigns to raise awareness and respond to domestic, gender and sexual violence, with a double meaning, towards the Security Forces and from the Security Forces to the citizens[38].

The actions of assistance, information and referral to the victim are based on their recognition, protection and support.

Victims are offered the maximum facilities, minimizing unnecessary procedures, providing effective information and guidance, humane treatment and the possibility of being accompanied by the person designated in all procedures, promoting their recovery and empowerment throughout the police process and procedural.

The attention, containment and active listening of the victim allows the restitution of the violated rights, the needs of attention and assistance will vary depending on their personal situation, Statute of the Victim of the Crime requires an individualized evaluation of the victims[39].

The specialized units will adopt a series of general measures aimed at reducing secondary victimization, maximum facilities for the filing of the complaint, which will always be admitted, preferential and respectful treatment, their testimony will never be questioned, with respect to their privacy in privacy, avoiding at all times that victim and victimizer share physical space.

All transfers of the victim, will be made in appropriate vehicles and documented by diligence in the police report, the victim, as already indicated, may be accompanied at all times by a person of their choice.

35It is regulated by Instruction 10/2007 of July 10, 2007, of the Secretary of State for Security, which approves the Protocol for the police assessment of the level of risk of violence against women in the cases of the Organic Law 1 / 2004, of December 28, and its communication to the Judicial Bodies and the Public Prosecutor's Office.
36 Interior Order 28/2013, of January 18.
37 Instruction 11/207, of September 12, of the Secretary of State for Security.
38 For example, with the campaign "Denounce it, if you do it the police can help you as a victim of gender violence."
39 Article 23 of L 4/2015, of April 27.

The needs of children integrated into their family environment will be addressed[40] and permanent communication with the victim will be maintained.

The victim will be informed in a clear, understandable manner, adapted to their needs and without delays, of all their rights related to access to the Administration of Justice, as well as those included in the Statute of the Victim.

Likewise, the victim may request that she be informed of the date, time and place of the trial, of the content of the accusation, that she be notified of the resolutions relating to the non-initiation of the criminal procedure, the sentence, decisions on imprisonment or release, and , where appropriate, escape of the offender, precautionary measures and their modifications. For victims of gender violence, communications regarding release will be mandatory even if they do not request it.

The victim of gender violence will be informed of their right to request an Order of Protection, explaining that it confers a comprehensive protection status, as well as the status of the investigations.

Likewise, the victim of gender violence will be informed of the level of risk and police protection measures that will be studied later.

Finally, immediately, from the beginning of the proceedings, the victim of gender violence will be informed of their right to legal defense, free and specialized, or to appoint a lawyer of their choice.

The UFAM will provide the victims with guides with all emergency resources, from the beginning of the proceedings.

As for the investigation phase, the police action should be aimed at preventing the consummation of the crime, preventing the effects of violence already exercised from increasing and, in case the aggression had already occurred, assisting the victim.

The Protocol of action of the FFCCS and coordination with the Judicial Bodies for the protection of victims of domestic and gender violence establishes the minimum contents of the report.

The police procedures for verification and verification of the complaint shall reflect all the actions of the Scientific Police, the results of their inspection and the review of the sources of evidence collected documented, whenever possible, by technical means.

In case of visible injuries and when it is foreseen that the assistance by the forensic doctor will not be immediate, the victim will be required to give his consent to the realization of a photographic report of his injuries.

In these verification procedures, the information of the different professionals involved in the case will also be relevant and a neighborhood report will also be provided on the background and conduct of the victim and his aggressor, citing the sources, without the need for identification.

In terms of protection for victims of gender-based violence, a specific monitoring and control tool has been developed, the VioGén System, which allows a prediction of the level of risk, police protection measures and agent assignment will be communicated to the victim of the UFAM in charge.

In addition to the mandatory realization of a first assessment of the risk, it will be necessary to update it permanently, as well as to immediately adopt protection measures for the victim prior to the knowledge of the case by the Judicial Authority.

40 Law 4/2015 makes visible as victims the minors who are in the environment of gender violence.

The form of Police Risk Assessment (VPR) will be completed with information obtained from different sources, including non-criminal circumstances, such as drug or alcohol consumption, which can cause a significant change in the intensity of the risk, in which case, as in the breach of sentence or precautionary measure, the police units will perform a new risk assessment.

The cessation of police protection activities will be carried out once the judicial measures or the Protection Order have been completed and there are no objective circumstances of risk.

However, when objective circumstances of risk persist for the victim, police protection will continue for the prevention of new criminal acts, although, in this case, there is no restriction on the rights of the aggressor.

Each time an evolution of the risk is made, a report will be prepared and sent to the Judicial Authority, as well as the resumption of cohabitation, transfer of residence and waiver of the protection status, so that the Judicial Authority can modify the precautionary measures initially adopted.

The monitoring of the evolution of the level of risk will be carried out periodically or whenever there is a significant incident, such as assaults or other events, being called the "periodic" or "with incidence" evolutions.

If there are no incidents, the "periodic" evaluations will be carried out, before 72 hours, 7, 30 or 60 days, depending on the levels, "extreme", "high", "medium" or "low", respectively.

If the risk is "not appreciated", but there is an Order of Protection or Removal, it will be carried out before 60 days.

All these assessments will be made through the forms and will be communicated to the Judicial and Prosecutorial Authority and to the victim, as the case may be.

When the risk is "not appreciated", it will be communicated to the Judicial Authority and the case will be "inactive" in the System.

If in an "inactive" case a complaint is filed against the same aggressor or a new judicial resolution, it will be reactivated, fulfilling a new VPER.

If a complaint is filed against another aggressor, a new victim of VPR will be carried out by a victim who is in the System, activating another case.

THE PROTECTION ORDER[41]. THE TELEMATIC TRACKING SYSTEM.

The Protection Order[42] for victims of domestic violence unifies the different instruments of protection and protection for the victims of these crimes.

Pretend that through a quick and simple judicial procedure, substantiated before the Court of Instruction, or Court of Violence against Women, the victim can obtain a comprehensive protection statute that coordinates in a coordinated way a precautionary action of a civil and criminal nature.

That is, the same judicial resolution that jointly incorporates both the restrictive measures of the freedom of movement of the aggressor to prevent its new approach to the victim, as well as those aimed at providing security, stability and legal protection to the aggrieved per-

41 Law 27/2003, of July 31, regulating the Order for the Protection of victims of domestic violence. Published in the BOE no. 183 of August 01, 2003. Available on 8-7-2018 at https://www.boe.es
42 It is regulated in article 544 ter of the Law of Criminal Procedure.

son and his family, without the need to wait for the formalization of the corresponding civil matrimonial process.

The Judge will issue an Order of Protection for victims of domestic violence in cases in which, when there are well-founded indications of the commission of a crime against life, physical or moral integrity, sexual freedom, freedom or safety, an objective situation of risk for the victim that requires the adoption of any of the regulated protection measures.

The Order of Protection will be agreed by the Judge, ex officio, at the request of the victim, person from the family environment or the Public Prosecutor's Office.

The Order may be requested directly before the Judicial Authority or the Public Prosecutor, or before the Security Forces, the victim assistance offices or the social services or assistance institutions dependent on the Public Administrations. The request must be sent immediately to the competent judge.

Once the application for an Order of Protection has been received, the Judge on duty, or Violence against Women, will summon an urgent hearing to the victim or his legal representative, the applicant and the aggressor, assisted, where appropriate, by a lawyer. The Fiscal Ministry will also be convened.

When exceptionally it was not possible to hold the hearing during the guard service, the judge before whom the request was made will summon it in the shortest possible time, in any case within a maximum period of 72 hours from the presentation of the request.

Once the hearing has been held, the Judge will decide, by order, what is appropriate regarding the request for the Protection Order, as well as the content and validity of the measures.

The Order of Protection will be notified to the parties, and communicated by the Judge immediately, by means of full testimony, to the victim and to the competent Public Administrations for the adoption of protection measures. It will be registered in the Central Registry for the Protection of Victims of Domestic Violence (SIRAJ)[43].

Law 23/2014, of November 20, on the mutual recognition of criminal resolutions within the European Union, incorporates into our legal system the European Protection Order, which allows the protection offered to the victim to continue in any other State member of the EU.

The "Protocol for the action of the monitoring system by telematic means of the measures and penalties of distance in the matter of gender violence[44]" provides for the possibility of requesting the Judicial Authority that compliance with the measures of removal of the Order of Protection be followed by the Telematic System for Monitoring the Distance Measures in Domestic and Gender Violence, managing the tracking system through the Cometa Control Center[45].

The telematic system aims to guarantee the right to safety of the victim, document the breach of the measure and dissuade the aggressor.

The system is based on the establishment of "exclusion zones" of a fixed or mobile nature, determined by the minimum distance established by the Judicial Authority between the investigated or prosecuted and the victim.

The mobile exclusion zone has the victim as center and the distance established by the judge as the radius of the circumference.

43 Available, to 8-7-2018 in: https:////www.mjusticia.gob.es/cs/Satellite/es/1215197983369/Estructura_P/1288781229623/Detalle.html

44 Approved on October 11, 2013, by Agreement between the Ministry of Justice, the Ministry of the Interior, the Ministry of Health, Social Services and Equality, the General Council of the Judiciary and the State Attorney General's Office.

45 This center, called Cometa, is currently carried by the Securitas Direct company, 24 hours a day.

The fixed exclusion zones will be those places with respect to which the author must also respect the established distance. It is therefore very important to communicate the changes of address to the Comet Center.

The installation and removal of the device is carried out by the Cometa Center, which will communicate it by email to the police staff in charge of protection, being also registered in the VioGén system.

The temporary withdrawal of the defendant or defendant will be agreed upon by the Judicial Authority and carried out by Cometa personnel.

The police can only withdraw the devices in cases of urgency, for example, by entering cells or medical issues, immediately communicating it to the Judicial Authority, the Comet Center and the Central UFAM.

The system consists of two devices that will be placed with the author (DLI) and the victim (DLV).

The DLV (victim location device) will be delivered to the victim at his home or police center, with an explanation of its operation and maintenance, leaving a documented record.

The DLI (location of the defendant) will be installed in the aggressor in court.

The system manages two types of warnings, alarms and alerts. The alarm will be issued for three reasons. For any serious technical incident, which affects any of the components of the system and supposes the cessation of its operation, by the entry of the accused or convicted person in the exclusion zone and by approaching the victim and the exclusion zone with loss of coverage of the location system.

The protection police operation will be activated whenever necessary and, in any case, when the armband breaks, the extraction of the same without rupture or the discharge of the DLI battery.

On the other hand, alerts are activated for three reasons. Due to a slight technical incident, which affects any of the components of the system that suppose an abnormal functioning of the system, but not its interruption.

By approximation of the accused to the exclusion zone. The Control Center will communicate with the accused in order to avoid it, and if the entry occurs, it will be classified as "alarm" (entry of the accused in the exclusion zone).

And third, by pressure of the panic button by the victim. The Control Center contacts the victim and notifies the emergency services of the Police if there is no communication or if it is found to be in danger (alarm situation).

The notices are also communicated to the police unit responsible for protection, and the actions carried out in the VioGen system must be recorded.

The Comet Center, when an alarm occurs, will prepare a report that will be sent to the police unit responsible for protection, the Judicial Authority and the PublicProsecutor's Office.

It is necessary to conclude that in Spain no mortal victim has occurred when the protection measures were controlled with this system, unless the victim did not carry the localization device, voluntarily or involuntarily. Therefore, it is very important to seek the collaboration of the victim, we can have many advanced protection systems, a multitude of resources, very involved police, but it is very difficult to protect those who do not want to be protected.

CONCLUSIÓN

Legal regulation remains unclear regarding the definition of the concepts of gender violence and domestic violence, and in addition, the children of the victims must be included as direct victims of gender violence

There are many things left to improve in the educational and social aspect, especially in the mass media, in order to face the problem of gender violence, an adequate education in equality is needed from the first stages of education.

On the other hand, it is absolutely necessary to end sexist messages through the media, which in our opinion, require a prior review by the media responsible for the emissions.

It is also proposed that, in order to support the issuance of messages that respect the equality and image of women, a mechanism of rewards or awards should be established to recognize programming, chains or means that respect these values, being necessary to carry out legal studies on the possibility to investigate, possible responsibilities, administrative or even criminal, for incitement to hatred or discrimination against women.

Although there is still work to be done, there has been much improvement in the training of health, police and legal operators, although there is a need to improve coordination, especially in the health and care field.

There are still many episodes of violence against women, which have received some kind of previous assistance and remain in the shade, so many abusers remain unpunished. The fact that most of the fatalities have not filed a complaint is because these violent episodes are not reported to Judges or Police, which I think should be resolved immediately. Controls of these services are proposed, to verify that in case of detecting episodes of family violence, they are notified to the authorities.

It is necessary to improve the protection of minors, a lot of emphasis is placed on the protection and assistance to women, but I believe that we still forget their children, direct victims of gender violence, so they should be included in all assessments of risk and in the protection measures to be adopted.

There are still procedural aspects to improve, such as the conformities before the Court of guard, if the aggression is processed by the rapid trial procedure, the application of the Order of Protection is prevented, or the persecution of the habitual violence, as well as the reiterating problem of the exemption from the obligation to declare or the existence of certain mitigating factors.

To do so, it is proposed that the order of protection have the value of a sentence, so that its effects will be extended even if there is compliance, and that the waiver is eliminated when the woman has denounced or declared against the abuser, because we understand that she already manifests her wish to declare against it, yes, it should be clear proof that there is prior information on the existence of this right although, in my opinion, if someone denounces it is because they already express their willingness to demand responsibility from the defendant.

On the other hand we understand that the basis and essence of the exemption of the obligation to testify against certain relatives refers to the case that the witness is not the victim, but a direct or reference witness of the alleged perpetrator, to avoid liability if he does not want to declare since the beginning.

In addition, the Procedural Law must be reformed, prohibiting the application of rapid judgment when there are signs of habitual violence, with repeated episodes of violence.

And, likewise, we demand the elimination as mitigating or even exempting from responsibility, at times, the consumption of alcohol or drugs, this undoubtedly increases the climate of violence in the family, so in my opinion, in these cases , should become aggravating.

Of course, we also propose the elimination of confession as a mitigating circumstance because the aggressor at no time demonstrates a desire for collaboration, the basis of the circumstance, if not simply a decrease in punishment, without legal support.

The diligence of the police risk assessment and the personalized protection measures are very positive, although the silence of relatives and other relatives or of the assistance services continues, who often have knowledge of the facts.

For this reason, it is proposed that all these persons, if they have their knowledge of the facts, be heard and taken into account, when carrying out risk assessments in the Police Station.

Regarding the environment of the abuser, we are in favor of creating a new type of incitement or collaboration to abuse, when there is evidence that the family supports the violent acts, there is no doubt that we have to isolate and avoid any help to the prolongation of the situation of abuse, true cancer of the problem.

The aggressor control telematics systems have also been shown to be very effective, but the devices must be improved and, more importantly, the victim must be made aware; there has only been one case of death with a device in Spain lately, but the deceased had forgotten it in his home, with what the abuser could approach her.

It is necessary to improve the awareness of the victims, it is very difficult to protect a person who does not leave, does not want, or does not put interest in complying with the measures for their own protection.

Finally, we must improve the protection of vulnerable groups, such as victims of trafficking and young people, who are victims of new forms of mistreatment through ICT.

To that end, we propose greater control over prostitution and the punishment, at least administrative, if not criminal, of consumers of prostitution; we must not forget that prostitution must also be considered as a form of violence against women, only then will trafficking be eliminated.

And, also, a greater control is proposed, on the part of the institutions of the networks, of the pornography through Internet and of the use of the applications by minors, it would be efficient to send messages or campaigns through the applications to inform and promote the denunciation of all kinds of abusive practices and control over women.

In conclusion, we are working well, we have many means, but we must use them effectively, coordinating all the institutions involved and trying to eradicate, from all angles, any type of violence or practice that promotes or justifies the mistreatment or discrimination against women, we must continue to work on information and awareness of the victims, their environment and society as a whole.

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NEW CRIMINAL OFFENCES IN THE CRIMINAL CODE OF SERBIA AND THE GUARANTEE FUNCTION OF CRIMINAL LAW[1]

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Abstract: When we talk about frequent amendments and additions to criminal legislation, it is important to determine that they are implemented, more or less, in accordance with the main requirements that the principle of legality is based on. To what extent and in which way is it accomplished in criminal legislation and court practice? The principle of legality represents one of the most important achievements of a legal state and it is therefore important that it is observed to the full capacity and in its overall meaning. Taking into account that frequent amendments are primarily the results of harmonization with the obligations that the states undertake when they ratify certain international agreements, but also of harmonization with the EU legal heritage, it is important to determine if the guarantee function of criminal law is achieved when specifying certain behaviours as criminal offences and prescribing penalties or other criminal sanctions. The paper analyses new criminal offences introduced by the Law on Amendments and Additions to the Criminal Code of 2016. It is through the analysis of the specific element of each criminal offence individually that the author tries to determine if the guarantee function of criminal offence has been achieved. The accent here is on new criminal offences classified within the group of offences against life and limb, freedom and rights and gender freedom (harmonized with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence).

Keywords: *Criminal Code, criminal offence, guarantee function, stalking, sexual harassment, female genital mutilation.*

INTRODUCTORY REMARKS

Almost every day we are witnesses to the fact that the principle *nullum crimen nulla poena sine lege* and its segment *lex certa* as well as *ultima ratio* dimension of criminal law are derogated from both at European and national levels. In theory the standpoint is underlined that as far as guarantee function of criminal law is concerned what is guaranteed is not much and

1 The paper is the result of research on the project titled "*Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism under the Conditions of International Integrations*" (No. 179045) and "*Crime in Serbia and the Instruments of State Response*", which carried out by the Academy of Criminalistic and Police Studies.
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it boils down to a negative aspect of criminal law, i.e. that it will not be applied in cases when certain behaviour has not yet become the subject of criminal law provisions. In the field of criminal penalties what is guaranteed by criminal law is even less. However, no matter how small it is very significant (Стојановић, 2016, p.14: d). The standards certainly must be higher when prescribing those behaviours that would represent criminal offences, than in case of criminal penalties and *nulla poena singe lege* principle. Open violation of law in the field of criminal penalties occur rather rarely since there is no need for it, the courts are barely limited by law anyway, i.e. free space for their decision making is rather wide.[3]

The Criminal Code of Serbia has been going through a dynamic stage in the recent period. In the field of substantive criminal law in the Republic of Serbia there was a thorough reform in 2005 and the new Criminal Code was adopted. This Code has been amended and added to for several times so far - twice in the course of 2009, and once in 2012, 2013, 2014 and 2016 respectively.[4]

English lawyer and humanist Charles John Darling observed that "men would be great criminals would they need as many laws as they break".[5] Therefore, right at the beginning we ask the question if the criminal law expansionism and overall hypertrophy of incriminations can solve the problem of crime or on the contrary such occurrences lead to breaking the principle of legality and guarantee function of criminal law.

LAW ON AMENDMENTS AND ADDITIONS TO THE CRIMINAL CODE OF 2016

The amendments set out in the Law on Amendments and Additions to the Criminal Code[6] of 2016, according to the reasons for their adoption, can be classified into several groups. The first group of amendments and additions are the solutions approached because of the need to harmonize them with international obligations that the Serbia undertook by ratifying some international agreements. As a step in that the direction an important novelty includes certain new criminal offences systematized in the group of criminal offences against life and limb, and offences against gender freedom (harmonization with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence[7]). The second group includes amendments and additions which represent the result of the need to harmonize with the common standards in some European countries (for instance economic crimes). The third group includes the solutions which needed to be made precise additionally for their easier application, since there were doubts which led to problems in practice (fine, release on parole). As mentioned earlier, the reasons for the amendments have also included our negative experiences and problems anticipated in practice (violation of prohibitions determined by certain safety measures, the amendments regarding the abuse of office, incriminating traditional insurance frauds). There is a small number of language-related legislation improvements. For instance, in Article 46, paragraph 2, indent 4, the word "unconditional" is erased. Namely, this word was a specific hybrid in the Criminal Code, since release on parole and prison sentence are two kinds of penalties, and it is sufficient to read that the court may release on parole a person convicted more than three times to unconditional prison sentence

3 *Ibidem*.
4 „*Сл. Гласник РС*", бр. 85/2005, 88/2005 – испр. 107/2005 – испр. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014. и 94/16.
5 *Ризница правних изрека*, Београд, 2007, стр. 176.
6 „*Сл. Гласник РС*", бр. 94/16.
7 *Сл. Гласник РС- међународни уговори*, бр. 12/2013.

(optional release on parole, if the requirements specified are met and in these circumstance the court may but is not obliged to release a person on parole).

AMENDMENTS IN THE SPECIAL PART OF THE CRIMINAL CODE

As for the interventions in the Special part of the Law on Amendments and Additions to the Criminal Code, they are characterized by improved criminal-law repression, particularly in the sphere of criminal offences against economy and gender freedom. The focus of this paper is harmonization with the Istanbul Convention, i.e. the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. In the part referring to substantive criminal law it contains mainly unified word combinations according to which Parties "shall take" the necessary legislative or other measures to establish that the conduct of […] is criminalised. For the purpose of legal protection from domestic violence the state organs in Serbia have many "means" available whose application is provided for by the Law on Prevention of Family Violence, [8] the Family Law, [9] the Law on Public Peace and Order, [10] the Law on Police[11] and the Criminal Code[12]. With all the comments that can be made related to criminalisation of family violence in the Criminal Code, even related to certain provisions of the Family Law (the provision of the Family Law is more declaratory in nature, while the Law on Public Peace and Order has sanctioned the application of violence for years...), the most disputable is the Law on prevention of family violence.[13]

Upon ratification of the Istanbul Convention the debates on new criminal offences that should be prescribed by the Criminal Code have become live issue again. Due to these reasons the Law on Amendments and Additions to the Criminal Code prescribes several new criminal offences as follows: female genital mutilation; stalking; sexual harassment and forced marriage. Similarly to domestic violence, where some acts are already included in other instances of criminalisation here also there is a question of legitimacy and the limit of criminal-law protection. But, criminalisation of domestic violence, although it is the behaviour that could be punished otherwise (for instance, endangering safety, abuse of a minor, and in case of serious consequences, serious bodily injury, negligent homicide, etc.) perseveres. As we already know, domestic violence as a separate offence was introduced into criminal legislation of the Republic of Serbia in March 2002. [14] Were the family members unprotected before that time? Of course they were not. There is even now, and there existed then an entire range of offences which "cover" each element of criminalisation of domestic violence. This offence is inexistent in many European countries, such is Germany for instance, which naturally does not mean that there is no domestic violence there, or that violent persons are not punished, or that the victims of such violence are not protected, since domestic violence basically is not a criminal-law concept, it more criminological-phenomenological notion, in the similar way as is the case with other "offences with elements of violence" (Шкулић, 2012, p. 68). The manner in which the offence of domestic violence found its place in the Criminal Code says a lot

8„*Сл. Гласник РС*", бр. 94/16.
9„*Сл. Гласник РС*", бр.18/2005, 72/2011 – др. закон и 6/2015.
10 „*Сл. Гласник РС*", бр. 6/2016.
11„*Сл. Гласник РС*", бр. 6/2016.
12„*Сл. Гласник РС*", бр. 85/2005, 88/2005 – испр. 107/2005 – испр. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014. и 94/2016.
13 О Закону о спречавању насиља у породици види више: Д. Коларић, С. Марковић, Поједине недоумице у примени Закона о спречавању насиља у породици, *Анали Правног факултета у Београду*, бр. 1/2018, стр. 45-72.
14 „*Сл. Гласник РС*", бр. 10/2002.

about the quality of criminalisation and the need of its existence in the Criminal Code. It was introduced by "amendments", and not according to "regular" or "usual" procedure, which as a rule still implies a considerably higher level of quality in formulating a specific criminalisation (Вуковић, 2012, p.128).

Uncritical ratifications of international agreements can lead to problems. As it is pointed out in theory, when ratifying international agreements legislators as a rule do not embark upon their content and there is no debate in the process of their adoption, but the adoption of the confirming law boils down to a mere formality. International agreements increasingly impose on ratifying countries the obligation to prescribe new criminal offences and expand the existing ones. Regarding the criminal-law intervention in the field of sexual relations there is a regression to that effect: while until several decade before in this field liberal attitude was taken, as well as the stand on undesirable influence of sexual moral on criminal law, the things have started to change substantially at the beginning of the 21st century. Although there is tendency to justify the expansion of repression in this field by the protection of individual, particularly children, it seems unconvincing and it seems that to a considerable degree there is penal populism. This at the same time negates the fragmentary character of criminal law since there is tendency towards comprehensive protection which criminal law should not and cannot provide (Стојановић, 2016, p.19:c).

Thus, for instance, concerning rape, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, brings to the forefront the lack of consent during a sexual act, and not coercion, so the question is asked how to implement this harmonization and is it necessary? Even if the new criminal offence is accepted *de lege ferenda* which would criminalise rape and the non-consensual act which is made equal to it and which is committed without the consent of the persons in question, the penalty should be considerably lenient since there is no coercion. But, such and other attempts of criminal-law expansionism directly negate the claim that criminal law is *ultima ratio*. The legislator still decides to exclude rape as summary offence from the Proposal of the Law on Amendments and Additions to the Criminal Code of 2016, although its Draft provided a new paragraph 2 of Article 178 of the Criminal Code which referred to non-consensual sexual act when the features of the basic form of offence of rape have not been fulfilled. The cases of sexual acts committed against the will of a passive subject without the use of coercion are very similar. While some are relatively rare (for instance, use of surprise of a passive subject, then misleading a passive subject or the use of impact of previous coercion on a passive subject's will which is not in causal connection with the sexual act), the others are, on the contrary, very frequent and common that it is for this reason that they deserve to be criminalised, i.e. they are not sufficiently serious to deserve criminal-law response. Even the application of the existing criminal offence of rape is often based only on the statements of the accused and the passive subject. If the use of force would not be required, it would be even harder to prove that the offence had been committed. In any case, the Istanbul Convention represents a radical shift regarding the concept of criminal offence of rape and other related offences.[15]

However, a whole range of objections can be made referring to the newly introduced criminal offences from which it was not given up. In our opinion, new criminal offence of forced marriage, which is introduced to the Law on Amendments and Additions to the Criminal Code and which has its place in Article 187a, is the least disputable and we shall not analyse its specific element (Коларић, 2016, p.665:b).

15 See: Explanation of the Proposal Law on Amendments and Additions to the Criminal Code

Stalking

For the introduction of stalking as a criminal offence which is set out in the Istanbul Convention (Article 34) there are certain criminal-political arguments even if there was not an obligation resulting from the Istanbul Convention. It is the behaviour which may seriously endanger the psychological integrity of a victim, and it is directed towards fundamental rights and freedoms of men. However, this is a complex behaviour which not so often is expressed by psychotic manifestations, which makes its criminal-law suppression even more complex. The main problem is how to cover adequately this phenomenon by legal description. The experiences of the countries which introduced this criminal offence (Germany, Italy, and Austria) are not encouraging. On the one hand, when prescribing a specific element of a criminal offence the principle of precision may be challenged, while on the other hand the protection of a victim is not achieved. This suggests the need for a very serious approach when formulating a legal description of this criminal offence (Стојановић, 2016, p. 27: b). However, in the Law on Amendments and Additions to the Criminal Code the legislator has not managed to escape a wide formulation of this offence and violation of the *lex certa* principle.

The offence is committed by a person who within a certain period of time: 1) unlawfully follows the other person or undertakes other acts to get physically close to that person against his or her will; 2) against the will of another person makes attempts to establish contact directly, through a third person or by means of communications; 3) abuses the information on another person or a person close to him or her for offering goods or services; 4) makes threats against life, limb or freedom of another person or a person close to him or her; 5) undertakes other similar actions in a way that can substantially endanger the personal life of a person against whom these actions are undertaken. This offence is punished by either fine or imprisonment up to three years. Qualified forms exist if: there is danger to life, health or body of a person against whom the action is taken or to a person close to him or her or if there is death of another person or a person close to him or her. In the first instance the penalty includes imprisonment ranging from three months to five years while in the second case the penalty includes one to ten years of imprisonment.

The way in which this criminal offence is prescribed is problematic for several reasons. First there is question of what was our obligation taking into account the Istanbul Convention? Namely, the Convention imposes on ratifying countries to "take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised". It is necessary, therefore, to have repeated threatening to another person which would cause that person to fear for his or her personal safety. This behaviour could obviously be criminalised through a special paragraph of criminal offence of endangerment of safety.

Further, explaining the notion of stalking, in paragraph 1, point 5, of the proposed new Article 138a of the Criminal Code, in addition to listed actions in the first four points, it is said that stalking is represented by "other similar actions as well". This is the biggest objection which can be referred to the legislator.

What can be done when it is the case of some borderline behaviours so that they could be considered positive and socially acceptable? Is criminal-law intervention justified then? This limit is hard to find. In criminal law it should always bring to the forefront its features - that it is subsidiary, accessory and fragmentary in character. If someone gets flowers or SMS messages every day, but does not state clearly that they do not accept such behaviour, it is difficult to say that the criminal offence exists. However, linguistic interpretation of point 1 "who unlawfully follows another person or undertakes other actions in order to get physically close to that person against his or her will" suggests that the criminal offence will exist. There are of

course behaviours which although they are not socially acceptable by their significance and seriousness still do not deserve to be criminal offences (Стојановић, 2017, p.4: a). This is why it should insist upon repeated action and clearly expressed opposition of a passive subject. It is necessary to apply objective criterion to assess if the concrete behaviour can cause a forbidden consequence (Ђорђевић, 2017, p.134).

There are also different opinions which consider that stalking of a victim can be considered a form of abuse, in other words that stalking of a victim can be covered by the current legal formulation of callous violent behaviour within domestic violence, regardless of whether it involves following, harassment by phone calls or sending electronic messages. Such acts really can create feeling of jeopardy and are quite frequent in life. Therefore, according to such opinion, notwithstanding the stalking is not explicitly prescribed as an act in this criminal offence it does not exclude its understanding as a form of callous behaviour (Вуковић, 2012, p.131).

Sexual harassment

The offence is committed by a person sexually harassing another person. The penalty is either fine or imprisonment up to six months. If this offence is committed against a minor, the perpetrator shall be punished by imprisonment from three months to three years.

When talking about sexual harassment, from legally-technical and legislative point of view it is not quite common to give meaning to expressions used in the very article of the law regulating some criminal offence, as it is done in the Law on Amendments and Additions to the Criminal Code. As the legislator says, sexual harassment is any verbal, non-verbal or physical act the intention of which is to offend or which represents the offence of dignity of a person in the field of his/her sexual life, and which causes fear or creates hostile, degrading or offensive environment (paragraph 3, Article 182a).

There are many problems recognized for this criminal offence as well. First, there can exist a serious problem in delimitation with unlawful sexual acts, the criminal offence which is already set out rather wide.

Second, from the standpoint of the topic we elaborate in this paper, we point out that "any verbal, non-verbal or physical act" is quite wide. Observed from the standpoint of guarantee function of criminal law this is the main problem both for stalking and sexual harassment. We agree with the claim that such determination of the act is both logically and linguistically nonsense since any act can be verbal or non-verbal (Ђорђевић, 2017, p.135). It is obvious that the intention was to achieve differentiation between verbal, real and symbolic offence, but it is rather unsuccessful.

Certain exaggerations could be heard in the public concerning this criminalization even from the representatives of the Ministry of Educations as an authorized proposing party of the law. Thus, according to these claims, the persons similar to exhibitionists, who were immortalized in a few domestic movies, would be observed as criminal offenders starting from June 01, 2017.

Is criminal-law protection really justified in this case? Are these actually the assets that each person can protect on their own? The aim of the criminal law is not to protect assets even from the most benign forms of jeopardy and attacks on them, in cases where individuals as a rule are capable of defending them on their own. It should mention that the Law on Public Peace and Order includes a corresponding provision.[16]

16 Члан 8 ЗОЈРМ „*Сл. Гласник РС*", бр. 6/2016.

Female genital mutilation

This offence is committed by a person who mutilates the external genitals of a female person. The punishment is imprisonment from one to eight years. If there are particularly mitigating circumstances under which this offence was committed, the offender shall be punished by imprisonment from three months to three years. Whoever abets or aids a female person to perform such an act shall be punished by imprisonment from six months to five years.

Female genital mutilation, as a newly prescribed criminal offence in the Law on Amendment and Additions to the Criminal Code, can be disputed on many grounds.

First, its aim is to criminalize traditional practice of cutting off certain parts of female genitalia which some communities perform on their female members. As said in the UN report on women (2010),[17] such behaviour is customary in Africa, Indonesia, Malaysia, and it shows slight decrease in practice. Taking into account that social danger of certain behaviour represents at the same time the basis and justification for its prescribing as a criminal offence, the question is then asked if female genital mutilation should be prescribed as an independent criminal offence. Some behaviour can objectively exist in a part of the world, but only through certain social relations, conditions and occasions it can have certain consequences which require response.

Second, it is interesting that this is one of criminal offences which were excluded from the principle of gender neutrality in criminal law which makes part of this Convention. This article contains criminal offence of female genital mutilation, where the victims are essentially women, or girls.

And third, it is clear that in such situations corresponding criminalisation can be applied from the group of criminal offences against life and limb. To be more precise, for special or particularly serious bodily harm there is penalty prescribed from one to eight years. Therefore, this offence should constitute an especially serious bodily harm but according to the punishment it entails this is certainly not the case.

CONCLUDING REMARKS

In criminal-political sense, certain solutions of the Law on Amendments and Additions to the Criminal Code of 2016 lead to weakening of criminal-law repression (out of two conditions that must be fulfilled in order to apply release on parole the one which required the purpose of the punishment to be achieved is erased since it is difficult to determine; a wider application of fine is enabled; abuse of authority in economy is decriminalized, such as issuing checks and use of payment cards without coverage, and so on), while some amendments are on the line to strengthen repression (interventions in a part of small significance, new criminalisation – particularly in the sphere of criminal offences against economy and gender freedom, erasing conditions for some offences to be prosecuted on motion, and so on).

As for frequent amendments and additions to the criminal legislation, it is important to determine if they are carried out, more or less, in accordance with the main requirements on which the principle of legality is based. The most comments can be given on *lex certa* segment (Коларић, 2017, p.50). This is probably because the standards of shaping legal norms in domestic law are considerably higher and should be the same as at European level. However,

17 The Worlds Women 2010, Trends and Statistics, United Nations, New York, 2010, Department of Economic and Social Affairs, стр. 132. http://unstats.un.org/unsd/demographic/products/Worldswomen/ WW2010pub.htm 22.10.2015.

this is not the case. According to the Lisbon Treaty, the main jurisdiction in criminal matters is set out by Article 83, paragraph 1, of the Treaty on the Functioning of the EU and refers to the possibility that "by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis". Therefore the *lex certa* segment should have a more complex character since it is applied in two stages of criminalisation. One is at European and the other is at the national level (Коларић, 2016, p. 11-35:a). The situation in which directives are literally transferred into national law is unacceptable since in this way the coherence of national criminal-law systems is undermined. Also, if every member country would unilaterally, in its own way, adopt the definition of a criminal offence there is a risk of diverging from real EU goals. It is necessary to find balance. The EU makes efforts to determine minimum rules to define a criminal offence and *lex certa* should be obliging for European legislator as well, since otherwise it would be impossible for national legislators to adopt certain instances of criminalisation in their national systems. The majority of provisions to which the remarks can be referred that they are vague are the result of harmonization with the corresponding regulations of the EU and the Council of Europe. The *lex certa* problem is even more pronounced in the field of prescribing criminal penalties where sometimes penalty ranges are set widely but there is also another extreme of absolute prohibition of penalty mitigation. There are two reasons. The first one is that criminal law is used for populist purposes, which is the case when the reality and function of criminal legislation are not taken into account while shaping the legal norm. The public (which is additionally manipulated), and even the great number of members of parliament do not express willingness to have better criminal law, but only to have as much punishing as possible and that the law is as repressive as possible (there are many offences for which prescribed penalties or penal frameworks are amended in a way that the majority of amendments referred to prescribing more strict penalties). The second reasons is again related to the harmonization with the international sources.

As for *lex previa*, *lex stricta* and *lex scripta* segments, we can point out that they are observed in criminal law. The exceptions, if we could mark them as exceptions, refer to situations of application of more lenient law, to the analogy as a way of interpreting according to similarity the Article 7, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[18] Naturally, all these are the topics which can be discussed separately.

18 According to Article 7, paragraph 1 of the Convention, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Also, a heavier penalty cannot be imposed than the one that was applicable at the time the criminal offence was committed. In Article 7, paragraph 2, of the same Convention, it is pointed out that this article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

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JUDICIAL INDEPENDENCE AS A CONDITIONOF A RULE OF LAW

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Abstract: Separation of judicial power as a separate power in relation to the legislative and executive - administrative power, resulted from the tendency to limit the power of the monarch who had brought the laws and applied them. In this way a separate power would be established, which would be independent from the executive - administrative power, whose responsibility would be application of law in specific cases. Therefore, the protection of individual rights of citizens is found in the creation of a separate, judicial power which would be independent from the executive-administrative power.

The forms of judicial independence are: personal independence (which refers to appointment of judges, promotion of judges, their assigning, etc.) real independence, (with special reference to "a duty of reserve"), the internal independence and administrative independence.

True judiciary independence is a condition not only for legality, but also for legitimacy of court decisions, which means that only the state of judiciary independence may ensure that court decisions are of such quality that they are based on the law and also morally justified and in accordance with natural law. The condition of efficient judiciary is not only about independent election of judges (election of judges by judiciary authorities themselves), and prevention of political influence by executive bodies over the decisions of courts, but also in accuracy of the judges' work, their competency, and professional knowledge. The level of judiciary quality, in terms of election of judges, and also in terms of work of judges, can be increased by limiting the influence of political-executive bodies over judiciary institutions and by increasing the level of professionalism and accuracy of work of judges on one side; and with stronger influence of expert public on the other, including both the election of judges and their work.

Keywords: *judicial independence, legal certainty, Constitution.*

INTRODUCTION

At the end of absolutism, because power was centralized in the sense that one subject made laws, governed and ruled (monarch passed laws and administrative acts and judged (Liliж, 2002:13)) and was then able to enforce these laws at his will, at his discretion, the idea of the separation of state powers was created to protect personal rights of citizens against the omnipotence of state power by applying the principle that "power restrains power". The relations are then to be regulated in a way that a government passes laws, but the laws are applied by the other power by already provided rules which are mandatory for all. In this way, this principle for technical reasons turned into a principle of organization of the modern state

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(Daniж,1932:4-5), as a solution to limit the politics, where in the division of powers the judiciary is, by definition, completely separate from politics (Vujadinoviж,1992:404). The reason for creating a judiciary which can respond to its function, modern state finds, firstly, in the relationship between the highest state authorities, and to the separation of administration and judiciary, and after that implies such an organization of the judicial authorities in which they will have to act only in the spirit of law (*Gedanken des Gesetzes*) but not to act on the instructions of the central administration or the government (*Anweisungen Zentralwerwaltung der Regierung*) (Aubin, 1906:8), "...judicial power is not organized on the principle of expediency and opportunism, as it is largely the case with the administrative authority, but on the principle of legality. Judicial authorities are fully subject to the law. Legal nature of the judicial power is composed of the execution of justice " (Daniж, 1932:7). The key difference between legal and political act, among formal differences, is in that the highest legal act contains clear and exactly determined values which are protected, while in political acts the protected values are determined abstractly, in the form of higher interest, state reason, or the principle or the principle of opportunity, and then based on this the concrete goals are determined in each concrete case. Precisely because of this, political decisions can diametrically differ in two cases which are similar or even the same, while legal decision must be the same or similar in cases which are the same or similar (Aksić,2017).

JUDICIAL INDEPENDENCE AS A CONDITION OF SUCCESSFUL PERFORMANCE OF THE JUDICIAL FUNCTION

Ideas of independence of judicial power surfaced in 17th century when the issue of judges' permanent tenure of office was being regulated, as a condition for judicial independence (It is stated that the work of judges in 15th century was like "privileged leisure": judges worked three day per week, in the morning, from 8 am to 11 pm, while the rest of the day was filled with eating, drinking, thinking and reading – Mršević, 1998:7-8). The beginning of struggle for the idea of judicial independence is linked with the name of Lord Edward Coke. Towards the end of 16th century, under the rule of Queen Elisabeth I, Coke advanced to the position of supreme state prosecutor, and prosecuted some of the best known persons from that position (Earl of Essex, Sir Walter Raleigh, Guy Fawkes and Jesuits, Father Garneth). He did not hesitate to participate in the implementation of torture himself, but over time he began to change his principles, and in 1616 during the reign of James I, the successor to Queen Elizabeth, he was fired because of his constant opposition to the king. Then, as already a seventy- year old member of the House of Commons, he led a group that fought against the royal arbitrariness, and began the struggle for judicial independence. The conflict of Bishop Bancroft and barrister Fuller resulted in two principles important for the idea of judicial independence: first, a complaint cannot be filed against any judge for what they have done or said in the performance of their judicial functions, as well as for the decision taken; and second, that the king, just as his vassals, is obliged to respect the law. The king objected to this principle, but the answer of Coke was: *Rex non debet sub homine, sed sub Deo et lege* (the king is not subordinated to people, but to God and the law). From this period dates the view that the king's will is not a source of law.

In such a situation, whose end and resolution was not in sight in 1688, judicial function in fact became permanent in 1700 through the adoption of the Act of Settlement; this right was afforded to them formally through a law (by the law of 1959, the continuity of the judicial function was limited in time, it was anticipated that the judges of the higher courts retire at

age of 75, and the judges of the lower courts at age 72). So the rule was subsequently established that the king could not rotate judges at his will, but only after a joint resolution of both Houses of Parliament. The permanence of judicial functions was an achievement of the struggle for judicial independence in 17th century. However, after a period from the end of 17th and early 18th century, when judicial independence was won, in relation with the Parliament the supremacy of the judiciary has not been achieved. The question of the constitutionality of the decision of the Parliament could not been decided by the court, but the Parliament itself. So, the Parliament, in terms of constitutionality and legality of acts remained outside the influence of the judiciary, and the judiciary was given the right to control over the interpretation and application of law, while the Crown almost completely lost its authority in legislation and in judiciary (Part on the independence of judiciary – Mršević, 1998:17-25).

In the parliamentary system, the judicial power is more dependent on the parliament than in the presidential systems, because in the parliamentary system judges are appointed by the government, which means that the parliament influences the judges through the government (Lukić, 1995:408).

The first country which introduced the achievements of judicial independence outside England was France by adopting the Constitutional Chart of 1814 which provided for judicial independence and the permanent tenure of office for judges (Mršević,1998:26).

Judicial independence, as part of the request for separation of judiciary and administration, and in general as a criterion for the constitutional state, which would be the antithesis to the absolutist state, increased in 19th century, while the way to ensure the independence was through the permanent term of office for judges and also through protection from the discretionary influence of the government (Aubin, 1906:2).

The independence of the judicial power is manifested in functional and personal independence and in that way between the administration and judiciary there can be a relation of total separation, but also of certain interrelation. In the relation of total separation of administration and judiciary, neither the administration is to interfere with the judiciary, nor does the judiciary interfere with the administration. The administration could interfere with the judiciary through appointment of judges, while the judiciary could interfere with the work of administration through administrative courts. Namely, it is possible that the administration itself decides on the legality of the administrative acts and in this case there is no interference of judiciary with the administration; while in the case of judiciary interference with the administration, the legality of administrative acts is not done only by the administration itself but also by the court in the administrative court proceedings. Administrative judiciary, i.e. the judicial control of administrative acts can be organized in two ways: one, the legality of administrative acts is decided by regular courts which adjudicate disputes among individuals; or the legality of administrative acts is decided by special courts which are organized within the administration itself, in other words the administrative courts. The first system (English system) is considered to be better, as the higher efficiency of courts can be ensured if the administrative judiciary is independent from the efficient administration (Lukić, 1995:409-410).

ACTS AND CONTENT OF JUDICIAL INDEPENDENCE

There are certain international acts that protect the independence of judges:

1. The Syracuse Draft of Principles of the Independence of Judiciary, adopted in Syracuse, Sicily in 1981;

2. The Tokyo Principles on Independence of Judiciary in Asian region, adopted in Tokyo, Japan in 1982;

3. The Code of the International Bar Association's Minimum Standards for Judicial Independence, adopted in New Delhi, India, in 1982;

4. Universal Declaration on Independence of Judiciary, adopted in Montreal, Canada, in 1983 (Mršević, 1998:37-38).

In the mentioned Code of the International Bar Association's Minimum Standards for Judicial Independence, it was stated that the judicial independence is comprised of personal and real independence of judges.

Personal independence means that the position of the judge in which he is independent from the interference of executive power, or, it includes the minimum of possibilities of the executive power to influence the work of judges through decisions on existential matters of judges. Personal independence is related to several acts which are connected to the personal position of judges.

*1. Appointment (*Judges can be appointed by the administrative authorities, elected in a general election, or be selected by the judges themselves – Perović, 1998:67).The Codex reads that the participation of legislative or executive power in appointment of judges is against the principle of judicial independence. Appointment and promotion of judges should be delegated to a judicial body or to another body which would be composed of majority of judges or legal professionals.

2. Promotion. In the aforementioned international documents it is stated that the promotion of judges shall be based on objective assessment of their integrity and independence as judges, their professional competency, experience, humanity and readiness to accept the rule of law (or "right to the natural judge"– Perović, 1998:83).

3. Assigning. Assigning of a judge at the specific post at court for which the judge was elected or appointed is the internal administrative function of the court itself.

4. Durability of judicial service. Only if the position of judge is permanent, meaning if the judge does not fear for job and existence, he or she will be able to do the job successfully. A judge should have a guaranteed permanent term of office (Danić, 1932:9) regardless of the fact whether appointed or elected. A judge should stay at the position for life, while the position is terminated by retirement at the age, as stated by the Codex, which was provided by the law in force at the time when the judge was appointed (Perović, 1998:191).

5. Material status. In order to ensure independent judiciary, the aforementioned international documents provide that judges should receive a salary in regular intervals, that their salaries shall not be decreased during their term of office and that the salaries of judges must be determined in accordance with their status, dignity and responsibility of the judges profession and that salaries must be adjusted to rise of living costs (Perović,1998:73-75).

6. Physical security. Also, judges and the members of their families have a right to enjoy full physical security in order to be able to carry out their duties in peace and security. Physical security of judges and members of their families shall be provided by executive power.

7. Immunity of judges. It is envisaged that judges enjoy immunity with regard to civic responsibility for the acts committed within the carrying out their duties, as the existence of the responsibility against someone who feels damaged by a decision of a judge would be contrary to the independence of judiciary (Perović, 1998:77-78).

8. Disciplinary responsibility. In the mentioned acts it is unanimously stated that the disciplinary responsibility must be a consequence of violation of standards of judge conduct provided by law or court rules. A complaint procedure against a judge, on which he had the

right to respond in the early stage, will be confidential, while, however, the decision rendered in the disciplinary procedure will be publicly announced.

9. Disciplinary sanctions. For the aggravated violations of standards for conduct of judges, the mentioned acts provide for disciplinary sanctions ranging from severe reprimand to dismissal (This measure should be distinguished from lustration. As measures of legal responsibility for the work of the past, if it were breaking the law, criminal offenses, misdemeanors or membership in organizations that were important to the former regime, while modern lustration finds basis always in human rights abuses. – Vodinelić 2002:78-79).

10. Transfer. Transfer of a judge from one court to another should be delegated to a judicial authority as a result of regular rotation and with the consent of a judge.

In contrast to personal independence, real independence means the position in which they are not obliged to obey anything but the law, and also to follow their conscience. However, such independence is possible to achieve only once the judge is existentially and professionally protected from the executive power. And, it is also stated that pardons will be given carefully in order to have less interference by legislative power in the work of judiciary and also that the legislative will not give retroactivity to laws aiming to abolish or annulment of court decisions.

Also, in order to preserve judicial independence, it provides for the institute named "duty of reserve". This is an obligation to refrain from non-professional activities, in other words an obligation which judges are obligated to fulfill because they are judges, while they would not be obligated to fulfill this obligation if they were not judges, but rather ordinary citizens. (Perović, 1998:75-77).

Then, it is stated that for the successful independence of judges, *internal independence* is also necessary. It is a form of independence which is more necessary in systems which provide for greater or dominant participation of judges in election of other judges, and it is comprised of independence of judges from their colleague judges, especially judges of higher ranks and their superiors, who based on their superior position may influence other judges and in that way imperil their personal and real independence.

And, finally, there is also administrative or *collective independence*, as a condition of judicial independence, and is comprised of the independence of the judiciary as a whole, and it implies greater participation of courts in the administration of courts, preparation of budgets for courts, etc.(Part on personal, real, internal and administrative independence – Mršević, 1998:50-68; Lukić, 1995:419-422; Lilić, 2002:60-62).

However, all these forms of independence cannot represent a possibility and protection of judges for abuses of judicial authority, incompetence and tardiness in work. Courts which decide on violations of legal norms cannot violate the norms themselves. As rightly noted: ''law is too serious to be left exclusively to judges (Pannick, 1978 –quoted from: Mršević, 1998:70). In that sense, there is legal, public or social and non-formal responsibility.

Legal responsibility implies disciplinary supervision over the work of judges, possibility of revision of their decisions through application of legal remedies (Danić, 1932:21), all form of responsibility for criminal offenses committed in performing judicial function, and also control over the work of judges by the parliament.

Public responsibility implies responsibility of judge before a society, through press and other means of information, through scientific, expert critic, in monographs, articles, and scientific events.

Informal responsibility is also a type of responsibility which takes the form of pressure exerted by informal groups – lobbies, and control within the framework the profession itself, by the colleagues (Mršević, 1998:70-72).

RELATION OF JUDICIAL INDEPENDENCE AND RULE OF LAW

Based on the theory of separation of powers and the idea of the independent judiciary, which was a result of the separation of powers, the concept of state of law had emerged (*Rechtstaat*), meaning the Rule of Law, where the legality is connected to law, or acting under the law. (Lilić, 2002:15). The most important protection of individual rights against the influence of politics, which in absence of political ethics becomes the arbitrariness of power, develops into a concept of the Rule of Law, which in addition to autonomy of the legal system implies also the sufficient functional differentiation of social institutions, strong communication in society, strong inter-dependence in society and psychological stabilization of personality as a result of increased confrontation and conflicts in the society (Vujadinović, 1992:408). Rule of Law can be divided to rule of law in formal terms, in which all are equally bound by law, and rule of law in material terms, which implies a state where the idea of vassals, as subjects of law, had been abandoned to the benefit of the idea of citizen as a subject of freedom, rights and obligations (Mitrović, 2016:146; *Das erste Gebot, dasder Gerechtezuerfülehat, ist das Strebennachvollkommener Unparteilichkeitund Sachlichkeit* – Rümelin, 1928:6). The rule of law is based on the principle that the government should be strictly limited and reduced to relatively narrow frames (we would rather say "necessary" instead of "narrow" frames so that the area of fundamental rights and freedoms remain inviolate) (Čavoški, 2005:127).

In any case, only in the Rule of Law, citizens can enjoy legal security as "public interest to say to citizens with clear and predictable norms that they shall in certain way avoid conflict with legal norms or to predict their chances to win a dispute" (Neuhaus, 1963:795-807 –quoted from: Ćorić, 2011:226), and also a security in personal, material (Humbolt, 1991:104), social and any other sense.

Therefore, in order to talk about the Rule of Law, in which citizens can enjoy legal and any other safety, it is necessary, firstly, to have clear and predictable legal norms, as mechanism to govern the society. Legal norms are adopted with the aim to be as much predictable. However, if legal norms are clear, unambiguous, if there is no legal gaps, if interest of citizens are protected by legal norms and if they are published so that all citizens can get acquainted with them, i.e. if legal norms are accessible to all, than the assumption of existence of legal norms is met, which can be a solid foundation for the realization of the idea of the Rule of Law.

But the existence of the mentioned qualities of legal norms is only the first requirement of the Rule of Law, and whether the legal norms will be actually implemented in the spirit of the law, depends on the state in which the courts are located. Courts will be able to apply legal norms in the spirit of the law only if they are independent in making decisions free from fear that the judgment that render would not be in accordance with the interests of the executive, and will therefore lose their jobs, or will be transferred to lower position in another city, that they will not receive a salary or it will be reduced, and so on. Only if judges are free of fear for their physical, spiritual integrity, for existential, social, professional or any other position, only then will they be able to implement the law in an impartial way, only then will be able to exist, what in the Anglo-Saxon theory is called the "thick" Rule of Law or the Rule of Law, which in addition to legal, contains moral and valuable elements of law (Humbolt, 1991:104).

Thus, only in a situation in which judges are protected from pressures and blackmails, from whatever side pressures and blackmail come, it is possible to expect that judges are true guarantors and protectors of the rule of law, whose ultimate effect will be to preserve and protect rights and freedoms, both individual and collective. But the real judicial independence is a condition, not only for the legality but also for the legitimacy of court decisions, which means that only the state of judicial independence can enable that court decisions are of such quality that they are not only based on the law, but are also justified, i.e. morally justified and in accordance with natural law. The legitimacy of judicial decisions is the quality of the Rule of Law and the last protection against the decisions of authoritarian regimes, when such authoritarian regimes highlight the requirements of legality. Such a non-democratic legality can be overcome only by legitimacy, as a principle, which would be the basis of court rulings (Perović, 1998:97-103,191). This is the case when, as said by Radbruh, legal injustice should be prevailed by supralegal law (Radbruh, 1980:281-293; That is, there must be made a distinction between just and unjust laws, rolled and perverse laws, the law of liberty and oppressive laws – Čavoški,2005:138).

At which level judicial independence will be built and secured in each particular society, and with it the level of the rule of law, is a specific question of each country, which depends on the material, cultural state of the society, the level of legal awareness, theoretical concepts underlying a certain country and many more, but it is in any case the value in the foundation of stability and prosperity of any society. These are not constants to be reached at once, but must always be built, checked and protected, especially today, when changing the traditional concept of governing the society by the state, due to the great possibilities of intervention of political authorities through the system institutions and financial power which today's countries have, the idea that judicial independence must get more importance to be able to effectively be protected from the influence of the politics.

So, given the strengthening of the administration, meaning also the influence of political authority, thus increasing the possibility of these bodies to influence the courts, judicial independence should again be strengthened, so as not to remain inferior to administration and politics, but rather that the judiciary could be able to withstand the influence of administration and the judiciary, and that the administration and the judiciary should be under judicial control. Any strengthening of the influence and power of administration must be followed by an adequate response to strengthen judicial independence (One of the most important of the judiciary's responsibilities is to uphold the rule of law, sine it is the rule of law which prevents the Government of the day from abusing its powers. – Woolf, 2004:6). Therefore, one can speak about the Rule of Law only declaratively unless judicial independence is provided, and thus the idea of judicial independence and the rule of law are directly inter-conditioned. Only the judicial independence can create such a state of society which is not governed by men, but is governed by the law. However, on the other side, the conditions for the rule of law, i.e. the existence of the ambient of the rule of law state, is not only the existence of judicial independence, but also qualitative work of judges, as the work of judges may be independent from executive and politics, but judges may work incompetently, inaccurately, and also make abuses in their work. Therefore, judicial independence is only the first condition of the state of rule of law, but is not the only one, because a judge must meet other conditions too, including competency, which sometimes is just an assumption, and must be accurate, meaning that he or she must accurately do the work they are paid for.

OPPORTUNITIES FOR CREATION OF INDEPENDENTAND EFFICIENT JUDICIARY IN VIEW OF PROPOSED CONSTITUTIONAL AMENDMENTS IN THE REPUBLIC OF SERBIA

There have been several judicial reforms in the Republic of Serbia, in terms of election and re-election of judges, change of organization of courts etc., however, obviously they have not achieved much regarding the independence and efficiency of court, while now there have been attempts to implement judicial reforms through constitutional reforms in order to contribute to better functioning of courts. Constitutional reforms which are related to judiciary are with regard to election of judges, knowing that the proposed amendments the election of judges and prosecutors is transferred to judicial and prosecutorial organs, therefore, without the right of the Parliament to elect the holders of judicial functions for the first time, as has been the case until now. Also, it is proposed that future judges must complete the judicial academy organized with the Ministry of Justice, that disciplinary proceedings are conducted by the Minister instead of the Disciplinary Prosecutor like until now, that judges may be relocated or transferred without their consent etc.

In public discussions opinions were heard that the proposed constitutional amendments maintain the influence of politics over judiciary, that it re-allocate the political power from the Parliament to judicial elective bodies etc. (https://www.glasamerike.net/a/predlozene-promene-ustava-ako-prodju-mogle-bi-da-uniste-pravosudje/4264324.html).

CONCLUSION

What is actually the problem and where is the solution in our opinion in Serbia?

As already noted, the condition of efficient judiciary is not only in independent election of judges (election of judges by judicial bodies), prevention of influence by political executive organs over decision of courts, but also in accuracy of work of judges, their competency or the professional awareness. Thus, the situation of today's judiciary is not only the consequence of the defective process of election of judges or absence of judicial independence, as the inaccuracy in the work of judiciary, rendering of court decisions, sometimes by flagrant violation of law by judges in cases where there is no public interest, we cannot consider as a consequence of political influence over judiciary, but as a consequence of poor work of judges.

Therefore, we are of the opinion that the level of judicial quality, in both aspects, thus, in terms of election of judges, and in terms of work of courts, can be increased by limiting the influence of political-executive organs on judicial organs and by increasing the level of competency and accuracy of judges' work. This cannot be achieved through application of different political mechanisms, knowing that based on so far experience, these mechanisms didn't produce any results; but can be achieved through wider and stronger influence of expert and general public, both in terms of: *1) election of judges* and *2)improvement of their work*.

1) Thus, holders of judicial functions shall not be elected by representative organs, or even less appointed by executive organs, but must be elected by judicial organs as proposed, but in our opinion these organs shall not be entirely composed of judges, but the judges would be in majority, while remaining member would be university professors. The reason for this is to include expert public in election of judges, knowing that judiciary, including the election of judges, is not only the matter of the state but the entire population, who can be partly included

in the process of election of judges through influence of expert public. Judges and professors who would make decisions in the mentioned organ, would be elected by the Parliament but, however, in order to avoid that the Parliament, i.e. the political organs influence the election of judges in this way, it would be necessary that the Parliament can elect only judges proposed by courts and professors proposed by faculties.

For achievement of the principle of judicial independence it is important not only who elects judges, but also that the rules for election of judges are as exact as possible, i.e. as precise as possible, in line with parameters which would be clear and measurable, for example the number of resolved cases, number of confirmed or revoked judgements, etc., all aiming to have less space for subjective evaluations in making a decision on election. In addition, characteristics of all candidates, elected and non-elected shall be publicized.

*2)*Also, in order to increase the current level of quality of work of courts, we believe that it would be useful to form a body which would be composed of university professors, and which would have a consultative role. Citizens could address this body with concrete questions, pertaining to specific judicial proceedings, and the views of this body should be taken into account by the judges either by accepting them or stating the reasons against. In this way, it would be overcome the wide attitude that in European-continental law of written sources of law, judges should be directed only by law in their work, while the science should not have a direct link with practice, due to a rule that "the science is theory, and work of judges is practice"! However, science and in particular legal science in not a group of contemplative ideas, speculative disciplines or petrified scholastics, which operates with abstract notions which has no link to practice. Applicable legal disciplines, and through them theoretical legal science were created based on applicable legal rules applied by courts, only the courts, by applying legal rules in their work, also use dogmatic-legal method, while the science uses logical processes of induction, deduction, analysis and synthesis, generalization and abstraction. The science supersedes the level of description and the level of elementary apprehension of legal terms in line of applicable legal rules and reaches the level of explication of legal terms, as the highest level of legal knowledge. We think that in this way the science would get its place which it used to have in ancient Rome and the place which science nowadays has in some European countries, such as Germany, where legal practice consults science whenever possibilities allow it.

We believe that in this way, only stronger inclusion of expert and general public in the process of election of judges could ensure impartial election of judges in line with objective criteria, their functional and personal independence, as well as increased levels of competency and accuracy of their work.

Besides, we think that the proposed amendments which include possibilities of transfer of judges without their consent, formation of a judicial academy within the Ministry of Justice as a condition for election of judges, and also the proposed amendment that the disciplinary proceeding against judges are carried out by political-executive authorities, represent a step backwards in terms of independent and qualitative judiciary, and also that by this amendments objective criteria for election of judges would be questioned, along with their personal and professional independence.

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BELIEFS OF CONVICTS ON THE VALIDITY OF THE POLYGRAPH

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Abstract: The paper aims to present the results of a research on the beliefs of convicts on the validity of the polygraph. The investigation was conducted in the Serbian penitentiary institutions of Nis, Pozarevac, Padinska skela and Sremska Mitrovica, at the end of 2017, and included 138 prisoners, men, aged 24-77 (*AS* = 38.7), who were serving the sentence of imprisonment for the committed criminal offenses of Murder proscribed in the Art. 113. of the Serbain Criminal Code (CC) (48 convicts), Aggravated Murder proscribed in the Art. 114 CC (66 convicts) and the criminal offense of Rape proscribed in the Art. 178 CC (24 convicted persons) who underwent a polygraph test at the criminal investigation stage.

The results of the survey show that out of the total sample, as many as 45.7% of the convicted persons stated that they were not classified as those who were lying (there was no link between the respondents with a criminal offense). Also we found that 5.1% were classified as those who were lying (the relationship of the respondent with criminal offense), while as many as 49.2% of the prisoners did not answer the question asked. Regarding the question of the validity of the polygraph, the results show that 66.7% of the prisoners stated that the polygraph is not valid, also that 27.5% believe that the polygraph is valid, while 5.8% of the prisoners do not know whether the polygraph is valid or not. Regarding the answer to the question why they believe that the polygraph is not valid, 13.8% mentioned the possibility of using the countermeasures, 9.4% said that the polygraph is not evidence in the court, which is why it is not valid, 5.8% answered that polygraphists can manipulate the questions posed during the examination, 3.6% said that science showed that the polygraph is not valid, and that an error can occur, that is, that the innocent person can be wrongly classified in the category of those who lied and vice versa, 2.2% of the prisoners stated that they "passed" the polygraph testing, although they had committed criminal offenses, etc.

The results of the research suggest that the convicts mention some of the key factors that can affect the validity of polygraph, which are also discussed in the results of numerous research studies, which will be additionally elaborated in the paper.

Keywords: *beliefs about polygraph validity, polygraph validity, convicted population, polygraph cheating, tactics of polygraph*.

INTRODUCTION

For the area of criminalistics, the polygraph was an invention of great importance. For decades, polygraph testing has been used in practice in the law enforcement area in order to check allegations of suspects and to verify suspicions whether a person is the perpetrator of the criminal act. As for the Republic of Serbia, polygraph is often used in police investigations for verification and checking of the suspects' statements, for the purpose of eliminating the possibility of implication of innocent people as suspects.

The use of polygraph testing is based on the assumption that emotional reactivity in lying conditions is most optimally manifested through certain physiological reactions, which polygraph detects as signs of autonomic nervous system excitement (Vrij, 2000). The instrument measures changes in conductivity and skin resistance, blood pressure, heart rate and respiration. It detects even small sensory differences that are distributed on different parts of the body (Ben-Shakhar, 2012; Gamer, 2011; Matte, 1998; Menders, 2009; Vrij, 2008). Each of these physiological reactions, whether they are electrodermal, cardiovascular or respiratory, cannot be measured separately with great confidence in the context of deception, which indicates their individual shortcomings. Namely, blood pressure, pulse and heart rate are not sufficiently discriminatory to distinguish people who lie from those who speak the truth (Podlesny & Raskin, 1977; Feld, Specht, & Gamer, 2010). Breathing is under the influence of the central and autonomic nervous system, which implies that the steady rhythm of breathing can be consciously influenced (Gamer, 2011). Another problem with these reactions is the existence of distinct individual differences individual differences in so-called physiological answers of the respondents (Farrow, Reilly, Rahman, Herford, Woodruff, & Spence, 2003; Mardaga, Laloyaux, & Hansenne, 2006; Ben-Shakhar, 2012). In other word, there are no entirely reliable signs of emotional arousal, nor are there signs that all respondents display (Ekman, 2001). Namely, the persistence of individual differences is related to the level of autonomy. Although there is significant variation in individual responses to most physiological measurements, electrodermal lability may be different, which is of crucial importance for understanding this reaction (Waid & Orne, 1981).

Critics referring to the polygraph use include those aspects of its application which relate to certain polygraph procedures or polygraph techniques that can be divided into two groups (Ben-Shakhar, 2012). The first group represents techniques that are based on the analysis of physiological reactions to direct questions, while the second group represents techniques based on the identification of hidden information or remembrance. The typical method from the first group is Comparison Question Test (CQT), also known as the Control Question Test, while Concealed Information Test (also known as the Guilty Knowledge Test - GKT) is most popular within the second group.

The Concealed Information Test is used in criminal investigations when determining whether a suspect recognizes information related to a criminal offense. Physiological responses to stimuli are measured during testing, and if there is no difference in the responses to the relevant and irrelevant stimulus, then it is concluded that the suspect does not recognize the relevant (critical) stimulus. If there is a difference in reactions, it is concluded that the suspect has recognized a critical stimulus, which may mean that he was involved in the crime, or that he knew the details of the crime (Verschuere & Ben-Shakhar, 2011; Osugi, 2011; Ben-Shakhar, 2012). When summarizing the results of numerous field and laboratory studies of polygraph testing, it can be concluded that most researchers report that the Concealed Information Test meets certain scientific criteria (Ben-Shakhar, 2012; National Research Council, 2003; The British Psychological Society, 1986, 2004; Vrij, 2008; Meijer & Verschuere, 2010; Verschuere & Meijer, 2014), but also indicate that there is a risk that the

so called *false negative mistakes* may occur, meaning that the actual suspects may be mistakenly identified as innocent. On the other hand, the percentage of *false positive mistakes* (innocent suspects identified as guilty) is considerably lower, implying that CIT technique is more reliable for innocent persons, since there is less chance of being mistakenly identified (Elaad, 1990; Elaad, Ginton, & Jungman, 1992).

The CQT is based on the assumption that has no foothold in psychological or psycho-physiological research, that is, that the control questions will generate more arousal than the relevant questions in the innocent suspect, and *vice versa* in the case of actual suspects (relevant questions will generate more arousal than the control questions) (Raskin & Honts, 2002). Therefore, it is difficult to imagine that someone who is innocent will have much stronger reactions to control questions which are not related to the crime in question, than responding to relevant questions (Baić, Deljkić, Ivanović, 2018 accepted). From the scientific perspective, there are many controversies regarding validity as well as the theoretical background of the CQT (Ben - Shakhar, 2002; The British Psychological Society, 2004; Lykken, 1998; National Research Council, 2003; Vrij, 2008). First, the CQT is not standardized and objective, because the questions posed to the examinee depend primarily on the committed crime, as well as on the quality of the examiner's question development and administration of the CQT. Secondly, the examiner intentionally misleads the examinee, because he is convincing him (her) that stronger physiological responses to control questions would mean deception, although the opposite is true. Thirdly, the polygraph examiner tries to persuade the examinee that the polygraph is unmistakable, although the polygraph is far from being an instrument that accurately determines deceptive behavior, especially due to the fact that there is no single physiological parameter indicating deception. (Baić, Deljkić, Ivanović, 2018 accepted). Further, control questions raise another problem, which is the fact that the polygraph examiners are not sure if the answers to the control questions are truly honest (Lykken, 1998).

It is very difficult to answer the question of how accurate the polygraph testing is, since there is very little scientific evidence of its accuracy. Although, much research has been conducted in the field of polygraph testing, the quality of most studies to date is low and does not meet the scientific standards, which implies that there is no solid scientific evidence that confirms the validity of the polygraph testing. According to the study of the American National Research Council of USA, out of 194 polygraph testing, 57 tests (studies) have fulfilled minimum of the scientific requirements, while only 10 tests (studies) had scientific validity (National Research Council, 2003). When going through research reports we can find that polygraph pro party are likely to exaggerate its punctuality, stating that 95% represents precision of the polygraph in finding the truth, pointing out research results that cannot be verified, or are found in non scientifically backed research (Baić, 2018 in press). Polygraph against party of scientists who are the most prevalent among academics, present much lower percentage of punctuality of the polygraph which is 82%, but those researches also are not without any faults. (Ansley, 1990; McLaren, 2001). According to the National Research Council of USA data, punctuality of the polygraph is much greater than coincidentality (50%), but less than 100%, no matter which technique or test is applied (National Research Council, 2003). According to the research results from Serbia, preliminary results show that success rate is between 68% and 75% (Kolarević, Matejić, Kojić & Kojić, 2011).

The aim of this research was to determine what knowledge and beliefs are present among convicts related to the validity of the polygraph, since they have had direct experience from the investigation, considering that they have been submitted to the test.

METHOD

Participants and procedure

The research involved 138 convicted individuals of the male sex, aged 24-77 (*AS* = 38.7), who were serving a sentence of imprisonment for committing the criminal offense of Murder under Art. 113 CC (34.8%), Aggravated Murder under Art. 114 CC (47.8%) and the criminal offense of Rape under Art. 178 CC (17.4%). A detailed description of the sample structured by age and committed criminal offense is shown in the Results section.

The research was conducted in the period from October to December 2017 in the Penitentiary Rehabilitation Institutions in Niš, Pozarevac, Padinska skela and Sremska Mitrovica. Prior to participating in the research, the convicts signed the agreement by which they were informed about the objectives and anonymity of the research with regard to the confidentiality of the data. Participation in the research was voluntary.

INSTRUMENT

The results presented in this research are part of the data gathered within a more widely defined battery test, which was designed to define the psychological, criminal and socio-demographic profile of perpetrators of violent crimes. The test battery was distributed to the respondents in a paper-pen format, and it took about 80 to 110 minutes for them to complete it. For the purposes of this research, within the framework of the aforementioned test battery and the work related to the criminal profile, a set of questions related to the subject of this research was asked.

RESULTS

Sample structure by age

The age of the prisoners ranged from 24 to 77 years. The average age was *AS* = 38.7 years. The age-old decades were not equally represented in the sample. The highest number of convicts were from 31 to 40 years old (38.4%), followed by 41 to 50 years (22.5%), while a slightly lower number of persons up to 30 years were present (21.7%) and ages 51-60 (12.3%). A lower number of convicts were between 61 and 70 years of age (4.3%) or over 71 years of age (0.7%). (Table 1).

Table 1. *Sample age structure*

		Frequency	**Percent**
1.	21-30	30	21.7
2.	31-40	53	38.4
3.	41-50	31	22.5
4.	51-60	17	12.3
5.	61-70	6	4.3
6.	71-80	1	0.7
	Total	138	100

Structure of the sample according to the committed criminal offense

Regarding the structure of the sample according to the committed criminal offense, it was established that the highest percentage of prisoners (more precisely 47.8%) were serving the sentence of imprisonment for the committed criminal offense of Aggravated murder under 114 CC, following 34.8% of those serving the sentence of imprisonment for the committed criminal offense of Murder from Art. 113 CC and, finally, that 17.4% of the convicted persons were serving a prison sentence due to the commission of the criminal offense of Rape referred to in Art. 178 CC (Table 2).

Table 2. *Sample distribution by criminal offence committed*

Criminal act		Frequency	Percent
Murder	Convicts	48	34.8
Aggravated Murder	Convicts	66	47.8
Rape	Convicts	24	17.4
	Total	138	100,0

Frequency analysis of the answers regarding the validity of the polygraph testing

By analyzing the frequency of the answer to the question of whether they failed the polygraph test, i.e. whether they were found to be lying, the results obtained show that 49.2% of the prisoners did not give an answer to the question asked, and that 45.7% of the prisoners stated that they did not fail the polygraph examination, while 5.1% of the respondents gave an affirmative answer (Table 3).

Table 3. *Did you flunk polygraph test?*

	Frequency	Percent
Yes	7	5.1
No	63	45.7
Without answer	68	49.2
Total	138	100

By analyzing the frequency of answers to the question of whether the polygraph is valid or correct, the results show that 5.8% of the convicted respondents answered "I do not know" that 27.5% of the convicts stated that the polygraph was punctual, while 66.7% of the convicted that the polygraph is not accurate (Table 4).

Table 4. *Beliefs of convicts on the validity of the polygraph*

	Frequency	Percent
I don't know	8	5.8
Punctual	38	27.5
Not punctual	92	66.7
Total	138	100

Regarding the answer to the question why they believe that the polygraph is not valid, 13.8% mentioned the possibility of using the countermeasures, 9.4% said that the polygraph

is not evidence in the court, which is why it is not valid, 5.8% answered that polygraphists can manipulate the questions posed during the examination, 3.6% said that science did not prove that the polygraph was valid, and that an error could occur, that is, that the innocent person could wrongly be classified in the category of those who lie and vice versa, 2.2% of the prisoners stated that they had "passed" the polygraph testing, even though they had committed a criminal offense, 1.4% of the prisoners said that it was an outdated method, which is why there is always a possibility of reporting an error, and that people under the influence of narcotics, tranquilizers, alcohol and psychopaths are not eligible for polygraph examination, which can lead to incorrect conclusions. Less frequent responses, which accounted for 0.7%, are shown in the table 5.

Table 5. *Answers of the convicts who consider polygraph as not valid*

Convicts answers	**Frequency**	**Percent**
Can be tricked.	19	13.8
It is not punctual because it cannot be used as evidence.	13	9.4
There is possibility of question manipulation/	8	5.8
Science claims that polygraph is not valid.	5	3.6
There is a possibility of error, e.g. an innocent person can be found guilty.	5	3.6
Polygraphs cannot distinguish among emotions e.g. fear of determining perpetrator and being found guilty without grounds.	4	2.9
Because I have passed the test and I was guilty.	3	2.2
Because a polygraph examiner is a person and he directs testing, therefore there is the possibility of an error.	2	1.4
Person can pass the pest if they are under the influence of narcotics, tranquilizing substances or alcohol.	2	1.4
Psychopaths can trick it.	2	1.4
Because it is an obsolete method.	2	1.4
Polygraph does not register when someone is lying and when someone is telling the truth.	1	0.7
Human feelings are not measurable.	1	0.7
Human psyche and brains are still not researched enough, which polygraph cannot detect.	1	0.7
Polygraph can provide reaction on the feeling which was not instigated by the question which is related to the perpetrated criminal act, but by something else that has influenced interviewees' feelings.	1	0.7
It is not fit for interviewing people with heart insufficiency or heart diseases, and can present innocent persons as lying.	1	0.7
Polygraph can be puzzled when someone is wrought-up, and that can also be one who is innocent.	1	0.7
Someone can be anxious when telling the truth, and others can be very imperturbable even when lying, and polygraph cannot distinguish between those.	1	0.7
I was not the direct perpetrator, but polygraph indicated that I was.	1	0.7
I watched a foreign series where innocent people did not pass the polygraph test.	1	0.7

DISCUSSION AND CONCLUSION

We tried to do the research on the knowledge and beliefs of convicts about the validity of the polygraph. The results of the research suggest that the convicts, as lay persons, mention some of the key factors that can influence the validity of polygraphs, just as they are mentioned in the results of numerous other research studies, which will be explained in this concluding section.

The first in a series of factors referred to by the convicts is the usage of countermeasures or deliberate techniques that respondents can use during testing to prove their innocence and thereby mislead the examiners regarding the final results of the polygraph test (Gudjonsson, 1983; 1988; Verschuere et al., 2011; Ben-Shakhar, 2012).

Gudjonsson (1988) describes that countermeasures can be at the mental level, and they represent attempts of examinee to suppress physiological responses to the relevant questions, through activities such as: relaxation, meditation, self-distraction, recollection of exciting emotional memories, so that the difference in the response between the relevant and control questions is minimal. These mental activities are carried out during the presentation of a neutral, that is, irrelevant or control stimulus. Further, countermeasures can also be attempts to reduce overall anxiety or reactivity, or reduce physiological response, which is particularly related to relevant questions (e.g. using some kind of medication to calm down before testing). Finally, according to Gudjonsson (1988), countermeasures include attempts to increase physiological responses to control or neutral questions, in order to reduce the difference between relevant and control questions. This can be achieved by inflicting physical or mental pain (e.g. tweaking, biting the tongue) or creating a muscle tension when the irrelevant or control stimulus is presented. The use of mental and physical countermeasures can be very effective, because it is simply impossible to prevent them. And while some authors report that the spontaneous use of countermeasures has been found to be ineffective against the CQT (Honts, Raskin, Kircher, & Hodes, 1988; cit. in Honts, Raskin, & Kircher, 1994, p. 252), other research has shown that training in simple physical maneuvers (e.g. biting the tongue or pressing the toes to the floor) can be effective in defeating polygraph tests by enhancing physiological reactions to control questions (Honts et al., 1994, p. 252). Moreover, the results of the study conducted by Honts, Raskin, & Kircher (1994) strongly suggest that control question polygraph tests may be defeated by guilty subjects trained in the use of physical or mental countermeasures. Finally, some authors indicate that mental countermeasures are usually more difficult to detect than physical (Ben-Shakhar & Dolev, 1996; Gronau, Elber, Satran, Breska, & Ben-Shakhar, 2015).

Second in a series of factors referred to by the convicts is that the polygraph is not evidence in the court, but the orientation-elimination indication, which implies that its validity and reliability have not been established, as is the case with the DNA testing.

The third in a series of factors referred to by the convicts is that polygraph examiner can manipulate questions during testing, which is particularly relevant to control issues. For example, if a polygraphist is sure of the innocence of the respondents, he can "exert greater pressure" by asking control questions, thereby increasing the likelihood of his innocence. However, if he is convinced of his guilt, he may not emphasize control questions enough and will increase the likelihood that the respondent "falls" in the test. Control issues raise another problem, and this is the fact that polygraphists are not sure if the answers to control questions are truly honest (Lykken, 1998).

The next thing the prisoners say about polygraph testing is that polygraphists can make a mistake, that is, that the respondents who lied on the test have been misclassified into the category of those who did not lie, which is termed a false negative error. And second, that

those who did not lie during the test have been wrongly put in the category of those who were lying, which is called a false positive error, as we said in the introductory part of the paper. At the same time, the polygraphists can unconsciously influence the results of polygraph testing, first of all by their subjectivity, which can be seen in the uncontrolled introduction of personal subjective states into the testing process (Mijović, 1994; 2002).

Furthermore, one group of factors relates to certain categories of persons who are "unsuitable" for examination, such as persons under the influence of narcotic drugs, tranquilizers, alcohol, persons with heart problems, and psychopaths, which has been elaborated in scientific literature. For example, for psychopaths it is said that compared to the normal population, they are much less burdened with punishment (lack of guilt, guilty conscience) (Lykken, 1998), so there is a high probability of the wrong finding of polygraphists because there is no difference in physiological responses between control and relevant questions (Porter & Woodworth, 2007).

Finally, one of the important factors mentioned by the prisoners regarding the validity of the polygraph is the inability to control the reaction of the respondents in the sense that it can respond to something other than the defined content of the testimony ("Polygraph can react to a feeling that is not caused by the question which refers to the commission of an offense, but to something else that the respondent was exposed to.").

The existing literature also indicates other factors that may affect polygraph validity. One of the most significant is the lack of a reliable physiological parameter that denotes the delusion (Saxe, 1991). Furthermore, the differential validity in polygraph examinations can depend not only on the subjectivity of the polygraphist, his skills and experience, but also on the subject under examination, his gender, intelligence, motivation and autonomous lability. The emotional aspect of the behavior of the examiner (suggestiveness, expectation, suspicion, mood, etc.) can be unconsciously embedded in the current, unrepeatable way of verbal indignation, through more or less subtle intonation, accent, emphasis on individual letters, styles, words or whole parts of the stimulus - questions (Mijović, 1994; 2002). This non-selective and uncontrolled reactivity, in addition to complicating, hampering and sometimes preventing the interpretation of the obtained reactions, leads to the emphasis on the subjective factor in the measurement of reactivity in lying conditions (Mijović, 1994; Vrij, 2000; Ekman, 2001). Therefore, the ultimate conclusion is that the expressed subjective factors simply cannot affect the objectivity of the measurement.

In concluding our considerations regarding the polygraph testing, it is important to note that the opinions of the scientific commissions, whose task was to examine, in detail, all the aspects of polygraphy were very reserved. Thus, a group of American scientists (2003) and a group of British psychologists (2004) provided detailed reports in which the conclusions were reached that errors in determining deception (through polygraphs) can be large, and that there is little space for some important improvements in polygraph tests. However, none of the two commissions recommended the abandonment of the use of this method, for which no appropriate substitute has been found so far (Baić, 2018 in press). As much as people may be critical of the polygraph, it is now used in many countries around the world, because polygraph examiners have no choice but to deceive in this way indirectly, regardless of the fact that there is no pattern of physiological activity, which is directly related to lying (Saxe, 1991). All of the foregoing implies that the result obtained by a polygraph test should be viewed solely as an orientation-elimination indication, but not as a proof of the guilt of the suspect who has failed the polygraph test.

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THE RIGHT TO EXAMINE WITNESSES – CASES VERSUS MACEDONIA IN FRONT OF THE EUROPEAN COURT OF HUMAN RIGHTS

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Abstract: The right to a fair trial, as defined in the Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, encompasses in itself the right of the person charged with a criminal offence to examine or to have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Concerning the application of this right in the Macedonian legal practice, two cases are significant and should be a subject of analyses since the European Court of Human Rights (ECHR), ruled in two different ways. Namely, in the first case - Case of Papadakis v. the Republic of Macedonia, ECHR hold that there has been a violation of the Article 6 Paragraphs 1 and 3 (d) of the Convention, in respect of the applicant's defence rights regarding the examination of the undercover witness heard at the hearing. On the contrary, in the second case, i.e. Dončev and Burgov v. the Republic of Macedonia, ECHR found that there was no violation of the same provisions.

Having in mind the above, the paper shall give an overview of the circumstances of the both cases and shall detect the reasons why ECHR ruled in two different ways. Finally, the paper shall pay special attention to the old Law on Criminal Procedure concerning the examination of the protected witnesses.

Keywords: *fair trial; witness examination; Papadakis, Dončev and Burgov; the Republic of Macedonia.*

INTRODUCTION

One of the basic human rights as defined in the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950) is the right to a fair trial. As noted by Vitkauskas and Dikov (2012, 7), it enshrines the principle of the rule of law upon which a democratic society is built, and the paramount role of the judiciary in the administration of justice, reflecting the common heritage of the Contracting States. The structure of the Article is composed of three paragraphs, among which is the provision

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prescribing the minimum rights of the persons charged with a criminal offence (Paragraph 3). These rights, as explained by Matovski, Lažetik - Bužarovska and Kalajdžiev (2011, 64), are the so-called "minimum rights" because they represent a lower limit or minimum guarantees for protecting the defendant in the dispute with the state, i.e. with the police, prosecutor and court, and this limit must not be reduced, otherwise, there would be no approximately balance between the defendant and the state's repressive machine in the criminal procedure. In essence, one of the minimum rights stipulated by the Paragraph 3 (d) is that everyone charged with a criminal offence has the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. The general principle, according to Mole and Harby (2006, 65), is that the accused persons must be allowed to call and examine any witness whose testimony they consider relevant to their case, and must be able to examine any witness who is called, or whose evidence is relied on, by the prosecutor. In addition, Vitkauskas and Dikov (2012, 94) explained that the Article 6 Paragraph 3 (d) consists of three distinct elements, namely: right to challenge witnesses for the prosecution (or test other evidence submitted by the prosecution in support of their case); right, in certain circumstances, to call a witness of one's choosing to testify at trial, i.e. witnesses for the defence; and right to examine prosecution witnesses on the same conditions as those afforded to the defence witnesses.

In the period 1959-2017, the European Court of Human Rights (ECHR) with 4712 judgments established that there had been a violation of the Article 6 by the 47 Contracting States, implying that 3% (41 judgements) belonged to the Republic of Macedonia (Macedonia). Despite the fact that Macedonia by signing and ratifying the Convention and its Protocols, obliged to act in accordance to the Convention's provisions, so far with 141 judgements violations have been established, or to be more precise, staring from 1997 when the Convention entered into force in Macedonia until 2017, from the total number of 141 judgements, 29% belong to the Article 6 (ECHR, 2018).

MACEDONIAN CASES AND THE ALLEGED VIOLATIONS OF THE CONVENTION

Two judgements stand out concerning Macedonia, because of their similarities about the alleged violations, but also about the different ECHR's ruling. First one is the Judgement concerning ***Papadakis v. Macedonia case*** (ECHR, 2013), in which a violation of the Article 6 Paragraph 3 (d) was found, and the second one is the Judgement concerning ***Dončev and Burgov v. Macedonia case*** (ECHR, 2014), in which no violation was found.

The Papadakis case was initiated by Mr. Lampros Papadakis, a Greek national, who raised several complaints under the Convention's Article 6, among which were:

- His defence rights had been violated regarding the examination of the undercover agent (agent / witness);

- His conviction had been based on inadmissible evidence obtained by the special investigative measures (SIM);

- The witness whose statement had served as main evidence against him had been involved in the operation as an agent provocateur.

The second case was initiated by Macedonian nationals Mr. Dragan Dončev and Mr. Stojan Burgov, alleging violations of the following defence rights:

- The principle of equality of arms and of their defence rights regarding the examination of the undercover agent (agent / driver / witness) had been breached;

- Unlike the prosecutor, they had neither been present when the trial court had examined the witness nor had been given the right to cross-examine him;
- The driver had incited them to commit the crime by acting as an agent provocateur;
- Their conviction had been based on inadmissible evidence obtained by using SIM.

In both cases an attention was given to the provisions of the old Law on Criminal Procedure (LCP, 1997, 2002, 2004), regarding the SIM and the agent's examination, who had been granted a status of protected witness. Namely, secret surveillance, audio-visual recordings and use of undercover agents based on the LCP's Article 142-b could have been ordered when there were reasonable grounds for suspicion that certain criminal acts had been committed by an organised group. When it comes to the witnesses, the prosecutor, investigative judge or trial judge were obliged to take measures to ensure their effective protection if there was a risk that they might be threatened or that their life, health or physical integrity might be endangered (Article 270-a). Consequently, the agents could have been examined as protected witnesses, and their identity to be classified. Additionally, there were special arrangements for the examination of the witnesses and their participation in the procedure (to be examined in the presence of the prosecutor, investigative judge or trial judge, in a location which guaranteed the protection of their identity, unless they had agreed to be examined using special streaming media, for which a court order was needed). An unsigned copy of the witness's statement was forwarded to the accused and his/her lawyer, who could put questions in writing through the court. Moreover, when the protected witness was examined, then his/her identity and face might be concealed (Article 270-b). In addition, based on 2008 novelties (LCP, 2008), the witness could give the statement under a pseudonym with a note that his/her face could be concealed with the use of special streaming media to distort his/her voice and face. Further, the protected witness should be placed in a special room - physically separated from the courtroom in which the investigative or trial judge, as well as other persons attending the examination, would be present. Finally, the judgment could not be based solely on evidence given by a protected witness and obtained by means of witness protection (Article 339 Paragraph 3).

THE CIRCUMSTANCES OF BOTH CASES

According to the circumstances of the Papadakis case, on 10 November 2005 the prosecutor ordered several SIM (secret surveillance, audio-visual recording and use of undercover agents), because the Macedonian Ministry of Internal Affairs (MOI), suspected that nationals of Greece and Macedonia, whose identity was unknown, were involved in drug trafficking, and that the suspects were supposed to meet on 10 November 2005 in Skopje. It was believed that samples of cocaine would be given to the agents so that they could verify its quality. The order allowed agents from Athens Office of the US Drug Enforcement Administration (DEA) to be used in the operation.

Based on the conducted pre-trial procedure, the prosecutor filed an indictment on 16 December 2005 charging Papadakis, D.V., A.T. and B.N. for drug trafficking. Namely, the whole operation lasted for several days in November 2005:

- 10 November - Papadakis, D.V. and B.V., as sellers, met two agents and the buyers in a cafe bar in Skopje in order to discuss the sale of about 10 kg of cocaine;
- 14 November - Papadakis, B.V. and D.V. met one of the agents in Thessaloniki and gave him a sample of the drugs; they agreed that the drugs would be handed over to the

agents on 18 November 2005 in Skopje, while at the same time B.V. would receive money in Thessaloniki;

- 18 November - D.V., B. N. and A.T., using an Opel Astra owned by A.T., travelled to Bulgaria where they bought 10.5 kg of cocaine from an unidentified person;

- 18 November at 9 p.m. - the Macedonian customs officers found the drugs under the rear seat of the car;

- 19 November - the investigative judge of the Skopje Court of First Instance started an investigative procedure concerning Papadakis and the others because of reasonable suspicion for drug trafficking, and took statements from Papadakis (he remained silent) and from the agent (his identity was not disclosed).

During the trial procedure, a copy of the agent's statement was provided to Papadakis, so at a hearing on 10 April 2006, he requested a direct confrontation with the agent since putting questions in writing would prolong the length of the procedure. With the assistance of a Serbian interpreter, Papadakis on 05 May 2006 confirmed that he understood the charges against him, that he had meetings with D.V. and B.N… and also confirmed that he had attended the critical meeting in the cafe bar in Skopje, but denied that he had discussed drug trafficking. At the hearing, the prosecutor informed the court that efforts had been made to secure the attendance of the agent or to enable his questioning for the next hearing, and on 12 May 2006 he requested the trial judge to summon the agents whose identities were unknown to the prosecution. Despite the efforts made to secure the agent's attendance for the hearing scheduled for 29 May 2006 (involving Macedonian Ministry of Justice and Greeks responsible authorities), based on the court record there was no information that the summons had been duly served. On the hearing held on 21 June 2006, an agent was present, but this agent was not the one that gave the statement on 19 November 2005. The agent was placed in a special room secured by the court, and gave an overview of the operation under the LCP's Article 270-a Paragraph 3. When photographs were shown to him of the meeting in the cafe bar in Skopje on 10 November 2005, he recognised Papadakis and some of the other co-accused. The agent was examined in the presence of the president of the panel, prosecutor, authorised court interpreter and court clerk, but Papadakis and his lawyers were not present.

After the agent's examination (from 9.30 a.m. to 12 a.m.) whose identity was protected, the panel gave a transcript of it to the accused and their lawyers, and gave them an hour to read it, to consult their representatives and to prepare questions, which afterwards by the president of the panel, in the presence of the prosecutor, interpreter and minutes-holder, would be communicated to the agent. However, Papadakis's lawyer noted that the witness's statement was new evidence submitted by the prosecution, providing no indication on which circumstances the witness would testify. Furthermore, the lawyer underlined that the one-hour time-limit was too short to analyse the statement and to formulate questions, and since there were no technical conditions in the courtroom for all accused and their lawyers adequately to prepare and ask questions, he requested the court to allow them at least 24 or 48 hours.

The defence also requested a transcript of the agent's statement to be translated into Serbian, which was answered positively by the court. But, the lawyers' requests to be given 24 or 48 hours or 7 days (as requested by other co-accused) for preparing written questions for the agent were dismissed because he had 24 hour-leave to remain in Macedonia. So, at 3.10 p.m. the court decided to give one hour for preparing questions, and explained that the lawyers' requests were not possible to be granted nor there were statutory rules specifying compulsory time-limit to be given to the accused and their lawyers to prepare questions to be put in writing, through the court to the agent. After the time-limit had expired, the accused, including Papadakis, stated that they could not formulate any questions to be put in writing to the agent due to insufficient time.

Although on 10 July 2006 Papadakis submitted five questions to be put in writing to the agent examined on 05 November 2005, the trial court at the hearing on 11July 2006 did not admit those questions because the accused and their lawyers had already been given the opportunity to put questions at the previous hearing when the agent was present. Once again, Papadakis's lawyer insisted that the court should summon both agents in order to examine them directly, since the analysis of their statements revealed inconsistencies, and they were based mainly on presumptions of what had happened. Further, the lawyer said that he had prepared around sixty questions to ask those two witnesses, but he would not ask them because of their absence.

In the period that followed, hearings were scheduled for 04 August 2006 and 01 September 2006 at which the attendance of the agents was not provided. The prosecutor withdrew the agent's statement given on 19 November 2005 (it was not included in the case file and was not taken into consideration by the court), but despite all the protests of the accused, the court read aloud the statement of the other agent given on 21 June 2006. On the basis of the judgement delivered on 14 September 2006, the court found Papadakis guilty and sentenced him to eight years' imprisonment, and also ordered the confiscation of the Opel Astra, several mobile phones and cards. The entire statement of the agent given on 21 June 2006 was transferred in the judgment by the court also noting that full credibility was given to that evidence since it was clear, coherent and was supported by other physical evidence described in the indictment.

The criminal procedure continued in front of the Skopje Appellate Court and Supreme Court. However, at a public hearing held on 16 February 2007 at which authorised interpreter in Serbian was present, the Appellate Court dismissed Papadakis's appeals and upheld the trial court's judgment. Additionally, the court stated that the agent had been examined in accordance with the LCP, which allowed his identity to remain undisclosed; the agent had not incited the commission of the crime, but had acted within the power limits entrusted to him by the competent authorities; and concluded that the Papadakis's request for extension of the time-limit for questioning the agent, who had limited leave to remain in Macedonia, was aimed to prolong the procedure. On 02 April 2007, Papadakis lodged an appeal on points of law to the Supreme Court, but on 25 April 2007 it was dismissed since there was no evidence to cast doubt on the facts as established and the reasons given by the lower courts. Finally, by decisions of 08 July 2008 and 03October 2008 the courts, at two levels of jurisdiction, dismissed the request for reopening the procedure.

Despite the rulings of the Macedonian courts, ECHR concluded that there had been a violation of Article 6 Paragraphs 1 and 3 (d) of the Convention, because there were neither adequate counterbalancing factors nor strong procedural safeguards to permit a fair and proper assessment of the reliability of the evidence produced by the agent, i.e. constraints affecting the applicant's exercise of his defence rights were irreconcilable with the fair trial guarantees. Namely, ECHR focused its examination only on the statement given by the second agent at the trial since the statement given by the first agent during pre-trial procedure was withdrawn by the prosecutor and was not used in court, i.e. the domestic courts did not rely on that evidence in finding the applicant's guilt. ECHR considered that that evidence was decisive for Papadakis's conviction, because in the absence of a soundtrack to accompany the video material, his testimony was the only evidence about the discussions during the critical meeting in the cafe bar in Skopje. There was no other evidence corroborating Papadakis's involvement in the crime and the trial court relied on that evidence in order to refute the evidence of the applicant's co-accused, who had denied that their relationships and meetings with Papadakis had been drugs-related.

ECHR noted that the agent as a witness was examined under LCP's Article 270-a, involving full protection of the witness's anonymity and impossibility of the defence to attend his examination. However, ECHR did not consider that the witness was to be regarded anonymous because he was a sworn police officer whose function was known to the prosecutor, and also Papadakis knew him, if not by his real identity, at least by his physical appearance as a result of having met him at least once at the critical meeting in the cafe bar in Skopje. Further, the agent was examined in the presence of the trial judge and prosecutor, in a special room separated from the courtroom, i.e. Papadakis and his lawyers were not present, and also no attempt was made to allow the defence to view the witness's examination via streaming media. Therefore, the defence could not see and hear the witness giving evidence in court and was not able to observe his demeanour in order to make their own assessment of the veracity of the account being given by him. ECHR stressed that the opinion of the trial judge about the witness's credibility could not be considered a proper substitute for the opportunity for the defence to question the witness in their presence and make their own judgment as to his demeanour and reliability. In addition, they were not allowed at any time during the procedure to confront the witness and question him directly, despite the fact that they undoubtedly desired to do so. Lastly, ECHR paid attention about the opportunity given to Papadakis and his lawyers to submit written questions to the witness indirectly through the trial court immediately after the witness's examination. In essence, ECHR did not consider that the one-hour time-limit set by the court was adequate, or to enable Papadakis to familiarise himself properly with and to assess adequately the evidence produced by the witness and to develop a viable legal strategy for his defence. Consequently, ECHR observed that Papadakis was effectively deprived of a real chance of challenging the reliability of the decisive evidence against him.

Similar to the above, in Dončev and Burgov case under the LCP's Article 42 Paragraph 2 (2) and Article 142-b, the prosecutor ordered several SIM (secret surveillance, audio-visual recording, simulated offer of a bribe and use of undercover agents, with a note that the last two measures were to be applied by six police officers whose identity remained undisclosed in the order) on 03 March 2005, on the request of the MOI's Department for Control and Professional Standards suspecting that traffic police officers had been accepting bribes from traffic offenders. On 08 June 2005, MOI submitted a criminal complaint against Dončev and Burgov for accepting a bribe of 500 MKD from a driver in exchange for not drawing up an official report and pressing charges against him for driving his car more than 30 km/h over the stipulated speed limit. The driver, certain K.N. from Skopje, was an undercover agent and was stopped near Strumica by Dončev and Burgov on 28 April 2005. Dončev and Burgov warned the driver and registered his name and the fact that they had warned him, but they did not draw up an official report, nor press charges against him. In addition, the criminal complaint stated that Dončev had fully admitted the accusations and Burgov had partially done so.

On 12 July 2005, an investigative judge of the Strumica Court of First Instance started an investigative procedure against Dončev and Burgov for accepting a bribe, with a note that during the investigative procedure they remained silent. Later, on 19 September 2005 an indictment was raised by the prosecutor, requesting the trial court to take statements from the accused and admit the evidence obtained as a result of the order of 03 March 2005 (four photographs; audio and video recording of the discussion between the applicants and the driver of 28 April 2005).

The trial court at the hearing held on 28 November 2005 admitted the evidence submitted by the prosecutor, while the applicants still remained silent. Two days later, the court delivered a judgement convicting and sentencing them to a probation-imprisonment of six months. Namely, based on the audio recording of the incident, the court established that the driver had exceeded the speed limit and had offered money to Dončev and Burgov for not pressing

charges against him, which was accepted by them. However, the judgement was appealed by the applicants' lawyers, arguing that there was no evidence to corroborate their guilt. The appeals were accepted by the Štip Appellate Court, noting that the lower court had incorrectly established the facts and had not provided sufficient reasons for its ruling. Therefore, it requested the trial court to re-examine the admitted evidence and to question the driver in order to establish whether he had offered, and Dončev and Burgov had accepted, 500 MKD in exchange for not pressing charges against him. Furthermore, the Appellate Court observed that neither the photographs nor the audio evidence had established that Dončev and Burgov had accepted a bribe from the driver, who had not been examined, and stated that other evidence should be admitted, if necessary, like confrontation between the accused and the driver.

While Dončev and Burgov at the hearing held on 15 May 2007, denied that they had accepted money from the driver; that had been authorised, under the law, to warn him; and that the audio recording had gaps and interruptions in it; their lawyer asked the court to examine the driver, as ordered by the Appellate Court, and to obtain information from MOI whether the money had been marked. So, the trial court asked MOI (21 May 2007) and since there was no answer, it repeated its enquiry (20 June 2007) to provide the name and address of the driver so he could be examined and confronted with the applicants, as well as to inform whether the money allegedly given to the applicants had been marked. MOI informed that the money had not been marked and that the undercover agent could be examined as a protected witness under the Article 147 Paragraph 2 and 3 of the LCP's consolidated version (corresponding to LCP's Article 142-c as amended in 2004).

At the hearing held on 05 October 2007, Dončev and Burgov, objected the court's examination of the driver, because there were three persons with the same initials (K.N.), employed in MOI who could have been the driver. However, the trial court examined the agent on 07 December 2007 as a protected witness under the LCP's Article 293 (corresponding to LCP's Article 270-a as amended in 2004). Since in the court building there was no special room for examination of protected witnesses, Dončev and Burgov and their lawyers, as well as the entire public, were ordered to go into the waiting room, to which they did not object. The agent, whose pseudonym was K.N. (protected witness), gave his testimony in the presence of the judge and prosecutor, and afterwards he was removed from the courtroom. Dončev and Burgov and their lawyers, were asked to return to the courtroom in order a transcript of the statement to be given to them and to put questions to the agent through the court. However, while entering the courtroom, the lawyers requested an exclusion of the adjudicating judge, panel, trial court and Štip Appellate Court, since the judge was conducting the procedure unlawfully and was not following the Appellate Court's instructions. Additionally, they noted that they were removed from the courtroom for 45 minutes instead of being confronted with the agent, and suspected that no one gave a statement because Dončev and Burgov had already met the agent.

The requests for exclusion were rejected by the presidents of the trial court and Appellate Court, so a hearing was held on 01 April 2008 attended by Dončev and Burgov and their lawyer. The agent was absent, and there was no evidence that he had been properly summoned. Dončev and Burgov were given a copy of the court record of 07 February 2007 and the agent's statement, and were told that they could put questions in writing, which would be forwarded by the court.

On the next hearing (09 May 2008), Dončev and Burgov and their lawyer were present, but the agent was not although he had been properly summoned. The lawyer stated that he declined to examine the agent, and objected the court record of 07 December 2007 since it was contradictory and untrue. Another hearing was held on 15 May 2008 at which Dončev and Burgov confirmed that they had received the indictment and that they understood the

charges against them. Moreover, they stated that they maintained at the statement given on 15 May 2007 and had nothing to add. Then the court read aloud the agent's statement of 07 December 2007 and admitted as evidence the prosecutor's order, four photographs, as well as the audio and video recording of the critical event. Although at that moment Dončev and Burgov made no reference as to the agent's examination, in the concluding remarks, their lawyer denied that there was any material evidence that the applicants had committed the crime imputed to them (the video and audio material did not establish that they had received any money from the agent, nor any marked bank notes had been found in their possession), and objected to the use of the term "protected witness" (it was not disputed that the applicants and agent knew one another, they saw one another and it was unreasonable the agent to be seen as a protected witness). Finally, Dončev and Burgov stated that they fully adhered to the concluding remarks of their lawyer, and added that they were not guilty because they did not receive any money.

Once again, Dončev and Burgov were found guilty by the trial court, and by the judgement delivered on 16 May 2008 were sentenced to six months' imprisonment, suspended for two years. They appealed the judgement, but in the public hearing held on 18November 2008, the Štip Appellate Court dismissed their appeal finding no grounds to depart from the established facts and reasons given by the trial court. Furthermore, the Appellate Court found that SIM had been ordered by the prosecutor in accordance with LCP, and that the judgment could be based on that evidence and on the agent's statement as lawfully obtained evidence.

Having in mind the circumstances of the case, ECHR held by six votes to one that there had been no violation of Article 6 Paragraph 1 and 3 (d) of the Convention. ECHR paid attention to the examination of the agent under the special rules regarding protected witnesses and the subsequent use of that evidence against Dončev and Burgov. As observed, the agent was examined under LCP's Article 270-a, which, as in the Papadakis case, involved two restrictive arrangements:

Full protection of the agent's identity - ECHR observed that the trial court, based on the information obtained from MOI, decided to keep as secret the agent's identity. The Štip Appellate Court in its judgment upholding the conviction did not contradict the trial court's findings about the necessity to protect the agent's identity. Given the fact that the driver was an undercover police agent used to track corruption-related offences within MOI, ECHR did not consider unreasonable that the agent's name and function were withheld from the defence and also noted that the police authorities had a legitimate interest to protect his identity so that they could use him again in the future.

Impossibility of the defence to attend the agent's examination - ECHR pointed out that according to the court record of 07 December 2007, before the trial court had taken the agent's statement, the applicants and their lawyers did not object the agent to be examined in their absence. There had been no indication that at that moment they were unaware that their removal from the courtroom implied that the agent would be examined under the special rules for examination of protected witnesses. The Appellate Court also found that the applicants had agreed to the agent's examination under the special rules for protected witnesses.

Compared to the above, the examination of the undercover agent under LCP's Article 270-a in the Papadakis case, whose evidence was decisive for the applicant's conviction could not as such be considered a proper substitute for the opportunity for the defence to question the witness in their presence and make their own judgment as to his demeanour and reliability. So, in the Dončev and Burgov case, the agent was examined only in the presence of the trial judge and prosecutor, and his statement was decisive for the applicants' conviction as supported by the Štip Appellate Court's judgement of 28 June 2006 (confirming that other available evidence had not been sufficient to prove their guilt) and final judgment of 18 No-

vember 2008 (confirming that the agent's statement had supported the audio evidence, and without the statement such material would have no probative value).

Concerning the procedural safeguards to counterbalance the constraints with which Dončev and Burgov were confronted in the exercise of their defence rights in relation to the agent's examination, ECHR noted that after the trial court had given status of a protected witness to the agent and examined him with the applicants' consent and under the special rules regarding such witnesses, it communicated a written transcript of his statement to them and instructed them to put questions in writing through the court. Dončev and Burgov conceded that they had been given such an opportunity, but at the hearing on 09 May 2008, their lawyer stated that he "decline(d) to examine the protected witness K.N.". In ECHR's view, such statement contained an explicit and unqualified declaration by which their lawyer refused to examine K.N, implying that they deprived themselves of the opportunity to verify the efficiency of the procedural safeguards given in LCP's Article 270-a. Namely, ECHR considered that Dončev and Burgov were required to test the system of questioning the agent in writing, which was available to them and which might have permitted a fair and proper assessment of the reliability of the evidence produced by the agent. Given that the agent was not regarded as an anonymous witness, it could not be assumed that the nature and scope of the questions they could have put would have been devoid of purpose. In essence, that was the issue according to ECHR, that distinguished the Dončev and Burgov case from the Papadakis case in which it was found that the insufficient time given to the applicant to question the agent in writing had placed him in a position where he had been effectively deprived of a real chance of challenging the reliability of the decisive evidence against him. By refusing to question the agent in writing, Dončev and Burgov also denied themselves the possibility of remedying the inequality created by the LCP's Article 270-a (only the prosecutor had the right to attend the agent's examination), an issue which they did not raise before the domestic courts.

As mentioned before, ECHR held by six votes to one that there had been no violation of Article 6 Paragraph 1 and 3 (d) of the Convention implying that a separate opinion was given. Namely, the judge Sicilianos noted that crucial issue was whether Dončev and Burgov had really consented to the agent's examination in their absence and in the absence of their lawyers under the special rules for protected witnesses, i.e. whether they validly waived their right under Article 6 Paragraph 3 (d) of the Convention to challenge and question the key witness against them.

CONCLUSION

Harris, O'Boyle and Warbrick (2009, 201) point out that the right to a fair trial has a primary position in the Convention as a result of the importance of the law involved, the enormous number of complaints and the jurisprudence that follows. As ECHR underlined in the Papadakis case, as well as in the Dončev and Burgov case, the admissibility of evidence was primarily a matter for regulation by national law and as a general rule it was on the national courts to assess the evidence before them. Consequently, ECHR's task under the Convention was not to give a ruling as to whether the statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. In addition, all the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. Since the Article 6 Paragraphs 1 and 3 (d) requires that an adequate and proper opportunity should be given to the accused for challenging and questioning the witnesses against him, ECHR recalled that the need for confrontation was all the greater when evidence, which in certain

respects amounts to hearsay, as in the Papadakis case, was decisive against the accused. In ECHR's view, it placed Papadakis in a position where he was effectively deprived of a real chance of challenging the reliability of the decisive evidence against him. Concerning the agent who had limited leave to remain in Macedonia and that any extension of the time for preparing written questions would prolong the procedure, should not justify the serious limitations of the Papadakis' defence rights. On the contrary, Dončev and Burgov by refusing to question the driver in writing denied themselves not only of their rights under the Macedonian LCP, but also under Article 6 of the Convention.

Despite all above, a focus should be given on the separate opinion of the judge Sicilianos about the Dončev and Burgov case, when he mentioned the Judgement concerning Pishchalnikov v. Russia (ECHR, 2009), in which ECHR summarised its case-law about the waiving of entitlement to the guarantees of a fair trial, including the right of the accused to examine or have examined witnesses against him:

…ECHR reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. A waiver of the right, once invoked, must not only be voluntary, but must also constitute a knowing and intelligent relinquishment of a right. Before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be…

At the end, ECHR has reiterated that the Convention is a "living instrument". The rights enshrined in the Convention have to be interpreted in the light of present day conditions so as to be practical and effective. Sociological, technological and scientific changes, evolving standards in the field of human rights and altering views on morals and ethics have to be considered when applying the Convention. Therefore, ECHR has on several occasions modified its views on certain subjects because of scientific developments or changing moral standards (Hembach Legal - The Business of Human Rights, 2018). Consequently, the separate opinion of the judge Sicilianos stressed the similarities of both cases and the different ECHR's ruling, implying that such modifying practice of ECHR shall continue in the future.

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SPECIAL EVIDENTIARY ACTIONS IN CRIMINAL PROCEEDINGS IN THE CONTEXT OF THE ANSWER TO THE MOST DIFFICULT CONTEMPORARY FORMS OF CRIMINAL ACTIVITIES

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Abstract: An efficient response to the most severe forms of crime means the application of adequate methodology and a modern regulatory framework, but also the inclusion of special evidentiary actions, legally regulated in a manner in which they can match the challenges of the most severe, modern (particularly organized) forms of criminal activities. The referential research source in the paper is the current Criminal Procedure Code. By analyzing general legal provisions regarding special evidentiary actions, as well as the basic characteristics and the content of individual, separate evidential actions (secret communication surveillance, secret tracking and recording, simulated affairs, computerized search of data, controlled delivery, undercover agent), by applying the relevant methodology, primarily theoretical content analysis methods with the basic methods of specification and specialization, as well as normative and analytical-deductive data analysis method, the significance of special evidentiary actions in the domain of fighting the most severe forms of crime has been put into focus. A special review of the European standards in the field of detecting and providing proof for the criminal activities has been made.

Keywords: *special evidentiary actions, criminal proceedings, Criminal Procedure Code, organized crime, European standards in providing of criminal activities.*

INTRODUCTION

The nowadays society is faced with ever more dangerous and heavy forms of crime, in the execution of which the latest technical advancements are used.

In the last twenty years, Serbia has undergone a turbulent period, where war, sanctions, and different regimes have impacted economic, social, and cultural life. Such radical changes "which occur even today in transitional Serbia, also have an impact on the everyday life of people by changing their expectations, needs and behavior" (Milivojević, 2011, p.187).

Classic forms of obtaining and securing evidence appear to be insufficient for a successful repression of the heaviest forms of crime. Therefore, modern countries resort to new procedural forms of evidence gathering at the cost of infringing upon the right of privacy and

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other human rights (Group of authors, 2013, p. 123). By changing the material and procedural criminal legislation, as well as certain authorizations of the acting judicial bodies, many countries, a group now including the Republic of Serbia, are continually adapting to the needs for the implementation of new techniques and methods in discovering and providing proof for the most severe forms of crime. So, the Criminal Procedure Code proscribes six special evidentiary actions: secret communication surveillance, secret tracking and recording, simulated affairs, computerized search of data, controlled delivery and undercover agent.

According to Škulić (2007), special evidentiary actions are frequently labeled as special evidentiary, or investigative techniques, and they represent certain ways of obtaining evidence which are in their nature atypical, and are therefore applied only to certain criminal acts, which are very severe on the one hand while on the other hand, the activities which due to some of their phenomenological characteristics and psychological and other trains of their perpetrators are very difficult to discover, resolve and prove by using common, or regular evidentiary methods (p. 307).

The most complex issues in applying special evidentiary actions are primarily in relation to which criminal offenses they can be applied, as well as the conditions of their application. The implementation of special evidentiary actions cannot be overly wide, as it might cause infringement upon human rights and liberties, nor too narrow, as their effect is then lost (Radisavljević, Ćetković, 2014, p. 165). Apart from the constant dilemma on the manner of application of special evidentiary actions, their legislative existence, practical applications and effects in solving the most complex criminal offenses (particularly criminal offenses from the field of organized crime) are not brought into question.

Some of the questions that are the subject of analysis in this paper concern the typical features of the manifested forms of organized crime as particularly severe and highly present forms of criminal activities in modern society, due to which their expansive development at the same time conditions the development, a more content-based legislative treatment and the application of special evidential activities. It also concerns with the manner in which the general issues regarding special evidentiary activities are normatively defined, as well as the specific issues of each special evidentiary action. Finally, of the European standards in the field of obtaining and providing proof of criminal activities are reviewed.

The method of theoretical content analysis with basic methods of specification and specialization has been applied, as well as the analytical-deductive data analysis method has been used in the paper. The referential source upon which the subject data have been analyzed is the current Criminal Procedure Code adopted in Serbia in 2011which began to be fully applied in 2013.

CHARACTERISTICS OF ORGANIZED CRIME ANDITS (MODERN) FORMS

As a specific negative societal phenomenon, crime can be described as an internal, weaponless kind of safety endangerment. One of its most dangerous forms is organized crime (Stajić, 2011, p. 189). Organized crime dictates the existence of an organized criminal organization with more than two members for the purpose of longer-lasting commitment of criminal offenses in order to acquire property goods and corresponding influence, with the fact that such a criminal organization, for the purpose of its survival, must use violence or some other means of intimidation, or to establish a suitable teaming with state, political, economic and financial subjects, whether through corruption, blackmail, extortion or in any other way

(Bošković, 2003, p. 24). United Nations Convention against Transnational Organized Crime (2000) describes organized criminal group as a group consisting of three or more persons who act continuously and in agreement in order to acquire financial or other material gain.

According to Škulić (2003), "organized crime, as a set of criminal offenses committed by a criminal organization, basically commit two types of incriminations: 1) the criminal offense of criminal association, and 2) a set of criminal offenses committed by the members of such an association which are based on the goals for the completion of which the organization was founded. In order for organized crime to exist, the existence of only the first group of criminal offenses is not sufficient (organizing a crime group), but the incriminations from the second group must be realized, the content, the motive of commitment, and the manner of conducting of which precisely constitute its essence, and which also contain *differentia specifica* in relation to other forms of organized manifestation of criminal activities" (p. 123).

An important feature of organized crime is transnationality. Transnational organized crime is organized crime where criminal activity takes place in the area of two or more countries or is connected with more countries on any basis. As Bošković (2003) points out, "taking as the starting point the form of organization (group, gang, organization, association, and similar), internal organization (hierarchy, discipline, code of silence, etc.), set goals (income, continuous financial gain, established profit, political pretentions, etc.), methods of activity (corruption, extortion, intimidation, violence and similar), and the quality of established connections (bodies of power, state bodies, political parties, economic and financial subjects, and other), various forms of organized crime manifestation are possible on the internal and the international plan" (p. 24).

In any case, the specificities of modern forms of organized crime in particular, which imply development, legislative treatment heavier in content, and growing application of special evidentiary actions are of course high degree of societal danger, universality, illegality, phenomenological diversity, organization (particularly taking into consideration the links with government and other institutions of societal impact), prevalence, unpredictability, dynamicity, high profitability, the application of violent and corruptive methods and others.

According to Grubač (2009), societal danger from organized crime is really special and more significant when compared to classic crime, even though that danger cannot be neglected or underestimated. Organized crime as such jeopardizes the foundations of a modern country and negates the basic principles of its democratic and legal organization. It destabilizes governments, undermines parliamentarism, collapses the citizens' trust in state and legal institutions, and negates legality and societal moral. Organized crime brings safety into question, not only of an individual collective but the country's and international as well (p. 705).

Therefore, this is a type of criminal activity characterized by numerous specificities compared to other types of crime. One of those specificities is definitely the difficulty in providing proof that the criminal offenses from the field of organized crime have been committed. The evidential deficit, which is imminent in this type of criminal offenses, precisely represents the *ratio legis* of introducing special evidentiary actions. Removing the option of using special evidentiary actions from the public prosecutor would practically mean that the public prosecutor and the government have "their hands tied" in the fight against organized crime (Radisavljević, Ćetković, 2014, p. 166). Namely, according to Marinković (2010), "without introducing special procedural solutions related to the problem of providing evidence, the police and the prosecution would draw the short end of the stick in the race against organized crime, which is why giving them more leverage has to be done as soon as possible" (p. 240). In conclusion, Bejatović (2014) states that the introduction of special evidentiary actions and creating the possibility of their application for criminal offenses of organized crime, corruption and other extremely severe criminal offenses is conditioned by practical needs that indi-

cate that criminal forms of this severity cannot be efficiently discovered and proved by using means offered by criminal proceedings familiar only with the regular – classical actions of providing proof (p. 342).

Unlike the regular, special evidentiary actions can be applied only under the legally proscribed conditions and only in certain criminal offenses also proscribed by the provisions of Criminal Procedure Code.

GENERAL LEGAL PROVISONS REGARDING SPECIALEVIDENTIARY ACTIONS

Article 161 of the Code proscribes that special evidentiary actions can be ordered against any person for whom there is reasonable doubt that they committed a criminal offense for which these actions can be ordered while evidence for criminal prosecution cannot be obtained in any other way or the obtaining would be made significantly difficult. Special evidentiary actions can be ordered exceptionally against person for whom there is reasonable doubt that they are preparing any of the criminal offenses for which these evidentiary actions can be ordered, and the circumstances of the case indicate that the criminal offense cannot be discovered, prevented or proven in any other way, or that doing so would cause disproportionate difficulties or great danger.

Therefore, the aforementioned conditions of special evidentiary actions consist of the factual basis (necessary degree of doubt) and legal basis (that such evidence cannot be obtained in other way or their obtaining would be made significantly more difficult). The legal provision also contains the possibility of ordering special evidentiary actions in the situation when criminal offenses for which these actions can be ordered are being prepared on condition that the legislator in this case emphasizes the prevention of the act of the criminal offense, and only then the detection and providing proof if the criminal offense is committed.

Finally, through the provision in paragraph 3, Article 161, the Code has determined that in the process of deciding upon the ordering and the duration of special evidential activities, the procedural body shall particularly evaluate if the same result could be achieved in a manner less limiting of the rights of the citizens.

According to Article 162 of the Code, special evidentiary actions can be ordered for the following criminal offenses: for those for which it is legally ordered to be in the competency of the public prosecution of special jurisdiction; for those which are not in the competency of public prosecution of special jurisdiction, and which are itemized in the Criminal Procedure Code (Art. 162, paragraph1, point 1); preventing and obstruction of providing proof (Art 336, paragraph 1) if it has been done in relation to some of the previously listed criminal offenses for which special evidentiary actions can be ordered.

The Code also prescribes the provisions on the procedure with the obtained material by undertaking special evidentiary actions. Namely, if the public prosecutor does not initiate the criminal proceedings within six months from the day of becoming informed with the material obtained by using special evidentiary actions or if they proclaim that the evidence will not be used in the procedure, meaning that there will be no proceedings against the suspect, the preliminary proceedings judge will make a decision on the destruction of the obtained material. Furthermore, if during the implementation of the special evidentiary actions, the provisions of the Criminal Procedure Code or the orders of the procedural body have not been respected, a court decision cannot be based upon the obtained information (Art. 163).

Apart from the aforementioned, the Code also contains the provisions regarding acci-

dental findings and data secrecy. Namely, if by implementing the special evidentiary actions, material concerning a criminal offense or a perpetrator not included in the decision on the special evidentiary action has been obtained, such material can be used in the proceedings only if it is related to the criminal offense for which special evidentiary action can be ordered by law (Art. 164). Data secrecy from Article 165 of the Criminal Procedure Code is related to the proposition for ordering special evidentiary actions and the decisions on the proposal, which are then noted in a special register and are safeguarded together with the material on conducting special evidentiary actions in a special wrapper file titled as "special evidentiary actions" with the label of secrecy, in accordance with the regulations regarding secret data. The data on proposing, deciding and conducting of special evidentiary actions are secret data. As Radisavljević and Ćetković (2014) state, prescribing the secrecy of the results obtained by applying special evidentiary actions is a necessary condition for the application of these measures to be effective (p. 172).

BASIC CHARACTERISTICS ANALYSIS OF INVIDUALSPECIAL EVIDENTIAL ACTIONS

By applying the previously mentioned methodological approach, which primarily encompasses theoretical content analysis with basic concretization and specialization methods, as well as normative and analytical-deductive data analysis method with consultation of the Criminal Procedure Code as the primary referential source by the use of which subject data were analyzed, in the continuation of this paper basic characteristics of each special evidential action shall be presented individually.

The first special evidentiary action is secret communication surveillance and it has been regulated by Articles 166-170 of the Criminal Procedure Code.

By adopting the new Criminal Procedure Code, secret tracking and recording of the suspect has been separated as an independent activity in relation to secret communication surveillance (Bošković, Kesić, 2015, p. 241). However, as Banović and Marinković (2005) point out, there is no doubt that wire-tapping of facilities and persons, meaning the observation of direct verbal communication, is of great importance in combating particularly complex and dangerous forms of criminal manifestation (p. 527).

Articles 166 and 167 of the Criminal Procedure Code determine that the court can, upon a reasoned proposal by the public prosecutor, order communication surveillance and recording done over the phone or other technical means, or surveillance of electronic or other address of the suspect and seizure of letters and other mail if factual and legal conditions for undertaking such special evidentiary actions are met. Special evidentiary action of secret communication surveillance is ordered by the preliminary proceedings judge upon a reasoned proposal.

Secret communication surveillance can last no longer than three months, and due to necessity of further evidence gathering, it can be prolonged for additional three months. If the case relates to criminal offenses under the competency of the public prosecution of special jurisdiction, secret surveillance can be exceptionally prolonged two more times in the duration of three months respectively. Conducting surveillance is discontinued as soon as the reasons for its application cease to exist. The order of secret surveillance of communication is executed by the police, Security Information Agency or Military Security Agency (Articles 167 and 168). As Škulić and Ilić emphasize, "it is the matter of the free assessment of the bodies ordering this special evidentiary action, i.e. the preliminary proceedings judge, upon a reasoned proposal of the public prosecutor, which of these alternatively listed state bodies

is to be entrusted with conducting of secret communication surveillance, but logic states that here the primary competencies of those bodies should be of the utmost importance. So, for example, when it comes to reasonable doubt that a criminal offense belonging to the so-called classic organized crime has been committed, conducting of special evidentiary measure is to be entrusted to the police, while Security Information Agency would execute the order related to the criminal offenses against the state, such as terrorism, attack upon the state and similar, and Military Security Agency would be engaged when it comes to criminal offenses against the military of Serbia. On the other hand, there is no special formal regulation in the Code, so in some situations, this would be a matter of suitable tactical evaluation which of these alternatively listed state bodies shall be entrusted with conducting specific secret communication surveillance" (p. 64).

Article 168 of the Code prescribes that postal, telegraphic and other companies, societies and persons registered to transfer information are obliged to enable conducting of supervision and communication recording to the state body executing this order, and to hand over letters and other mail with receipt confirmation, while Article 170 prescribes that upon the completion of secret communication surveillance, the body that has conducted this special evidentiary action must deliver communication records, letters and other mail, as well as a special report to the preliminary proceedings judge. The preliminary proceedings judge will deliver the material in its entirety to the public prosecutor, who will determine if the recordings gained by using technical means shall be transcribed and described in total or partially.

The second special evidentiary action is secret tracking and recording, and it is regulated by Articles 171-173 of the Criminal Proceedings Code.

If the factual and legal conditions to employ special evidentiary actions are met upon a reasoned proposal by the public prosecutor, the court can order secret tracking and recording of the suspect for the purpose of: 1) revealing contacts or communication of the suspect in public places or places where the access is limited or on premises, except in an apartment; 2) determining the identity of persons or locating persons and things (Article 171). In theory, this supports the stance that places with limited access are those that can be accessed by a limited number of persons according to a specific basis. The same Article of the Code regulates that places or premises, meaning all transportation vehicles of other persons, can be the subject of secret surveillance and recording only if it is probable that the suspect will be present or that they will use precisely those transportation means. This special evidentiary action is ordered by the preliminary proceedings judge by a reasoned order upon a reasoned proposal of the public prosecutor (Article 172).

Secret tracking and recording can last three months, and due to the necessity of further gathering of evidence, it can be prolonged for three additional months. If public prosecution of special jurisdiction is competent for these criminal offenses, secret tracking and recording can be exceptionally prolonged two more times in the duration of three months respectively. Conducting of tracking and recording is discontinued as soon as the reasons for its application cease to exist. The order on secret tracking and recording is executed by the police, Security Information Agency or Military Security Agency (Article 172 and 173).

The third special evidentiary action is regulated by Articles 174-177 of the Criminal Procedure Code and it includes simulated affairs.

If factual and legal conditions for undertaking special evidentiary actions are met upon a reasoned proposal of the public prosecutor, the court can order: 1) simulated purchase, sales or providing of business services; 2) simulated giving or accepting of bribe (Article 174). Special evidentiary action of simulated affairs is ordered by the preliminary proceedings judge by a reasoned order (Article 175).

Conducting of simulated affairs can last for three months, and due to the necessity of further gathering of evidence, it can be prolonged for three additional months. If criminal offenses in the competency of the public prosecution of special jurisdiction are in question, conclusion of simulated affairs can be exceptionally prolonged two additional times in the duration of three months respectively. Conclusion of simulated affairs is discontinued as soon as the reasons for its application cease to exist (Article 175).

The order regarding this special evidential activity is as a rule implemented by an authorized person of the police, Security Information Agency or Military Security Agency, and if special circumstances of the case require so, other authorized person as well. An authorized person that concludes the simulated affair does not commit a criminal offense if the activity is predicted as an activity of the criminal offense according to criminal law. It is forbidden and punishable by law for the person that concludes the simulated affair to incite the other person to commit a criminal offense (Article 176). As in that sense Radisavljević and Ćetković (2014) state, "providing simulated business services and making deals of simulated legal affairs cannot have the feature of provoking of other person into committing the criminal offense. Namely, this activity can necessarily have certain similarities with provocation, but it cannot turn into that "pure" provocation of criminal offense, which would in the judicial sense be incitement. The essence is that the activity of the official person that participates in a certain simulated purchase of items of persons ("buyer") or simulated giving or receiving bribe cannot create the will of the other person to commit a criminal offense" (p.181).

Article 177 of the Code prescribes that upon the conclusion of simulated affairs, the state body executing the order on implementation of this evidentiary activity delivers the complete documentation on the special evidentiary action, optical, tonal or electronic records and other evidence, as well as a special report to the preliminary proceedings judge. The preliminary proceedings judge shall hand over the material and the report to the public prosecutor.

The fourth special evidentiary action is computer search of data and it is regulated by Articles 178-180 of the Criminal Procedure Code.

Namely, Article 178 of the Code states that if all factual and legal conditions for implementing special evidentiary actions are met upon a reasoned proposal of the public prosecutor, the court can order computer search of already processed personal and other data, as well as their comparison with the data related to the suspect and criminal offense.

As Marinković and Đurđević (2010) point out, "considering that this special evidentiary action includes computer search and processing of data, it would be useful to make a terminological difference between the terms data search and data comparison. Data search consists of observing and analyzing the data contained in certain data bases for the purpose of finding information not visible at first glance which are related to a certain person, activity or process. On the other hand, comparison means that there are certain data available beforehand, meaning a feature that is juxtaposed or compared with other data from a certain data base for the purpose of finding common characteristics that connect them and make them similar or the same" (p. 247-248).

Special evidentiary action of computer data search is ordered by the preliminary proceedings judge by a reasoned order (Article 179). Computer data search can last no longer than three months and due to the necessity of further evidence gathering it can be exceptionally prolonged two additional times in the duration of three months respectively. Conducting of computer data search is discontinued as soon as the reasons for implementation cease to exist (Article 179). The order of computer data search is implemented by the police, Security Information Agency or Military Security Agency, customs, revenue or other services or other state bodies, meaning a legal person with public authorization placed upon them by law. Upon the completion of computer data search, the sate body or the legal person delivers a report to the

preliminary proceedings judge. The preliminary proceedings judge then delivers the aforementioned report to the public prosecutor (Article 180).

The fifth special evidentiary action is controlled delivery and it is regulated by Articles 181-182 of the Criminal Proceedings Code.

Namely, if all factual and legal conditions are met for implementing special evidentiary activities, the Republic public prosecutor, or public prosecutor of special jurisdiction can order controlled delivery in order to obtain procedural evidence and discovery of the suspects which allows for the illegal or suspicious deliveries, with the knowledge and under the supervision of authorized bodies, to be: 1) delivered in the territory of the Republic of Serbia; 2) enter, pass through or exit the territory of the Republic of Serbia. In doing so, the public prosecutor issues an order regarding the manner of conducting the controlled delivery (Article 181). Article 182 of the Code regulates that the controlled delivery is conducted by the police and other state bodies determined by the public prosecutor. Controlled delivery includes the entrance, passing through, and exiting of illegal or suspicious shipments, it is conducted with the approval of authorized bodies of the interest countries and upon the basis of mutual agreement in accordance with the ratified international contracts that regulate its contents in more detail.

According to Radisavljević and Ćetković (2014), "controlled delivery is a specific evidentiary action which in fact represents a particular form of international legal aid in criminal affairs, and the realization of formal and factual cooperation of competent bodies of different countries in the field of fighting certain forms of crime characterized by international character, and therefore in practice they are frequently labeled as the so-called trans-border or transnational crime" (p. 185). As the same authors further state, "suspicious shipments can be narcotics, weapons, ammunition, and similar. Any means of transport (ship, truck, plane and other) can be placed under supervision and monitored in any type of traffic (road, air, river, railroad, postal, etc.). The aim of the evidentiary action is to discover the main perpetrators and organizers apart from the already known ones, who are supporting actors (p. 186).

Upon completion of the controlled delivery, the police or other state body deliver a report to the public prosecutor (Article 182).

However, in the context of what has been said, certain actors point out that in practice it is more adequate to determine the application of the special evidentiary action of secret recording and tracking alongside this special evidentiary action which enables a more gradual recording of criminal activity while relevant evidence for the criminal procedure is gathered (Bošković, 2011, p. 235).

The sixth and final special evidentiary action is undercover investigator and it is regulated by articles 183-87 of the Criminal Proceedings Code.

According to certain opinions, "the use of undercover investigator is the most exceptional of all special evidentiary actions, which is dangerous also to the direct participant in its implementation. The exceptionality of this evidentiary activity is two-fold: for it to be ordered not only do the general conditions valid for the application of all special evidentiary actions must be met, but there is an additional condition – that the evidence for criminal prosecution cannot be obtained by any other special evidentiary actions or their gathering would be made significantly more difficult. Special limitation for the application of this evidentiary action is that it can only be ordered for those criminal offenses for which the prosecutor's office of special jurisdiction is competent. As a rule, this special evidentiary action is applied for discovering of criminal offenses of organized crime – by infiltrating a specially trained police official with a fake identity and identification into a criminal organization in order to discover its leaders, members or criminal activity of the organization" (group of authors, 2013, p. 106).

According to the provisions of the Code, if the factual and legal conditions to implement the special evidentiary actions are met, the court can order the use of undercover investigator upon a reasoned proposal of the public prosecutor if the evidence for criminal prosecution cannot be obtained by using any other special evidentiary action or their gathering would be made significantly more difficult. Special evidentiary action of undercover investigator use is ordered by the preliminary proceedings judge by a reasoned order (Articles 183 and 184).

The engagement of an undercover investigator lasts as long as it takes to collect evidence, and for a maximum of a year. On the reasoned proposal of the public prosecutor, the preliminary procedure judge may extend the duration of the special evidence for a maximum of six months. The engagement of an undercover investigator is interrupted as soon as the reasons for its application cease to exist (Article 184).

The use of undercover investigator under a pseudonym or a code is ordered by the Minister of the Internal Affairs, the director of Security Information Agency or the director of Military Security Agency, or a person authorized by them. As a rule, an undercover investigator is an authorized person belonging to the Internal Affairs, Security Information Agency or Military Security Agency, and if special circumstances of the case mandate, other person, even a foreign citizen, can be authorized for this role. In order to protect the identity of the undercover investigator, competent bodies can alter data in data bases and issue personal identification with altered data. These data represent secret data (Article 185). The same article regulates that it is forbidden and punishable by law for the undercover investigator to incite the commission of a criminal offense.

During their engagement, undercover investigators issue periodical reports to their direct superior. Upon the completion of their engagement, the superior delivers the photographs, optical, tonal or electronic records, the gathered documentation and all the evidence obtained as well as a final report to the preliminary proceedings judge. The preliminary proceedings judge shall deliver the aforementioned material and the report to the public prosecutor (Article 186).

Under a code or pseudonym, the undercover investigator can be exceptionally interrogated as a witness in the criminal proceedings but the court decision cannot be based exclusively or significantly upon the testimony of the undercover investigator. The interrogation shall be done in such a manner that the parties and the defense counsel are not revealed the identity of the undercover investigator (Article 187).

EUROPEAN STANDARDS IN THE FIELD OF DETECTION AND PROVING OF CRIMINAL ACTIVITIES

After a more detailed overview of special evidentiary actions applied in the Republic of Serbia, it is necessary to shortly overview the most important European standards in the field of detecting and proving of criminal activities.

The first international document, which for the first time envisages the application of a special evidentiary actions, especially a measure of controlled delivery, is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988, Article 11). A significant step in the application of special evidentiary actions has been made by the United Nations Convention against Transnational Organized Crime (2000), which provides that special evidentiary actions are a set of necessary measures to combat organized crime effectively.

According to the stance of the European Union, the fight against crime must be with no

compromise, but legitimate means must always be used and provisions of the law, democracy and human rights must always be respected bearing in mind the fact that this issue concerns the protection of those values the preservation of which is the basic reason for fighting against crime (Nicević, Manojlović, 2014, p. 5). The same authors further list that "a contrary behavior creates the problem of not respecting the so-called minimal standards of protection of human rights and liberties of the defendants in a criminal proceedings. In order to prevent such actions, the Council of Europe Committee of Ministers adopted the Recommendation no. R(96)8 stating that the answer to crime must rely on the basic principles of democracy and respect of human rights, regardless of the difficult condition in a society (country) in relation to crime and no matter how burdened by crime it is, all methods and criminal justice institutes that are not based on the values of democracy and human rights are impermissible" (p. 5).

In principle, after the XVI congress of the International Association for Criminal Law, when it comes to the application of special evidentiary actions, in Europe prevails the stance that the material obtained by special evidentiary actions in a proceedings can be considered evidence under the condition that all that is prescribed by law is explicitly and fully respected; that severe criminal offenses are in question; that there is a relevant court decision in every specific case of the application of special evidentiary action.

In the frame of detection, gathering and securing of the evidence by applying new criminal procedural and forensic methods and techniques, we must point out the significance of the Recommendation no. R(96)8 of the European Council related to the criminal policy in the time of changes, Recommendation no. R(95)13 related to telecommunication and information systems surveillance, and finally Recommendation no. R(87)19 related to organizing crime prevention and others.

According to Skakavac Z. and Skakavac T., "the Council of Europe encourages states to apply special evidentiary actions within the framework of legal proceedings in order to achieve more effective fight against organized crime, but it is recommended that the real balance in the level of their application be compared to the guarantees of fundamental rights and freedoms of men envisaged in the European Convention on Human Rights and through the practice of the European Court of Human Rights" (Skakavac Z, Skakavac T, 2017, p. 41).

As Ilic and Matic Boskovic point out, two recent decisions of the European Court of Human Rights deal with the search and confiscation of computer data. Namely, in one of the decisions, the Court concludes that the search and review of all electronic data was "more than what was necessary in order to achieve a legitimate aim, which led to the conclusion that in that case Article 8 of the European Convention (European Court of Human Right, Robathin v. Austria – 30457/06, Judgment 3. 7. 2012 [Section I], 28 July 2015) was violated" (Ilić, Matić Bošković, 2015, p. 14). Then, with regard to the engagement of the undercover investigator, but also with regard to the application of other special investigative measures, the same authors highlight in particular the essential standards that must be respected in the application of the measures, which again arises from the practice of the European Court of Human Rights. Namely, "the use of evidence obtained by incitement to the commission of a criminal offense is not acceptable, since "it cannot be justified by the public interest ". Secondly, the authorities should have "concrete and objective evidence indicating that the initial steps have already been taken to carry out acts constituting a criminal offense for which the applicant is subsequently prosecuted". Thirdly, any secret operation must be in line with the requirement that the investigation takes place essentially passively. Fourth, in a situation where "authorities claim to have acted on the basis of information obtained from an individual, the European Court distinguishes between a single complaint and information obtained from a police associate or informant. In the second case, it is crucial to determine whether the crime has already

been under preparation at the moment when the source began to cooperate with the police. Finally, it is necessary that domestic law establish a clear and predictable procedure for issuing the authority to undertake secret operations and to oversee these operations (European Court of Human Right, Veselov and others v. Russia - 23200/10, 24009/07 and 556/10)" (pg. 17-18).

CONCLUSION

An efficient response to the manifested forms of organized crime and other severe forms of crime includes the application of adequate methodology and modern regulatory framework, and is based upon all the elements and legally prescribed opus of evidential means regulated in a manner that can respond to the challenges of the most severe modern (particularly organized) forms of criminal activities. In essence, adequate methodology means the inclusion of not only classical methods for detection and proving of the most severe criminal offenses, but also the application of special evidentiary actions.

The referential research source in the paper upon which the subject data have been analyzed is the current Criminal Proceedings Code. By analyzing general legal provisions on special evidentiary actions, as well as the basic characteristics and the content of special evidential actions and by applying relevant methodology, we have pointed out the significance of special evidentiary actions in the scope of combating the most severe (particularly those modern and organized) forms of crime. Even though there are numerous clashing opinions regarding the suitability and the necessity of the application of special evidentiary actions in criminal proceedings in Serbia, the predominant opinion is that it is necessary to legally prescribe and regulate a set of special evidentiary actions, the application of which will be strictly regulated and placed under restrictive conditions which will be the key in obtaining evidence in proceedings for the most severe criminal offenses, particularly in the field of organized crime.

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ASSET CONFISCATION IN EU CRIMINAL LAW: *STATUS PRAESENS*

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Abstract: Confiscation of proceeds of crime has become of central importance in the EU particularly since the introduction of the Area of Freedom Security and Justice. Finding the right balance between the economic freedoms on the one hand, and the security and justice on the other hand has become an overarching concern for the EU institutions. That is why a series of legislative measures concerning asset recovery were enacted beginning with the Joint Action 98/699/JHA, then the Framework Decisions: 2001/500/JHA, 2003/577/JHA, 2005/2012/JHA and 2006/783/JHA. The focus of this article is on the new Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime and the newly proposed Regulation on mutual recognition on asset freeze and confiscation orders. While the former aims to replace partially the existing regime and to equip the competent authorities with effective means to trace, freeze, manage and confiscate the proceeds of crime, the latter is focused on establishing an effective system for mutual recognition of freezing and confiscation orders throughout the EU.

The new Directive introduces several innovations: the limited form of non-conviction based confiscation, confiscation of assets in possession of third parties, freezing of assets and their management, as well as introducing a number of procedural safeguards for the affected persons. The proposed Regulation sets clear deadlines for the procedure for recognition and enforcement, limited grounds for refusal of recognition, improved rights for the victims, but also for the affected persons. Still, despite the subsequent improvements of the EU legal framework, the statistical data show that the percentage of confiscated property is very small, and the available legal instruments are underused. The aim of this article will be to give critical appraisal of these new legal instruments, and to offer insight into the reasons for the poor results (so far) in asset confiscation in the EU.

Keywords: *asset confiscation, criminal proceedings, the European Union.*

INTRODUCTION

Although the fight against organized crime and corruption was exclusively a domain for the national criminal law in the EU Member States, problems in this field have long ago transcended national borders and needed to be addressed at supranational level (Transparency International, n.d.:3). In 1997 the EU Action Plan on Combatting Organised Crime stressed the importance of the effective asset confiscation in order to tame the organised crime in the EU, particularly present in some Member States. The progress in this crucial area for the rule of law was rather limited at the time and the confiscation regime showed in some cases only little, but in some no improvement at all: for instance, 1) in Austria the extended confiscation regime has been virtually not applied in no single case, and 2) in some Member States low rate and limited success of confiscation orders was common denominator (even in Italy, the Netherlands, or the UK, where the value of confiscated assets has reached the order of 100 million EUR per year) (Fazekas and Nanopoulos, 2016:3).

In 2010, Viviane Reding, then the EU Commissioner for Justice, Fundamental Rights and Citizenship, said that in a time of economic crisis, it is unfortunate that the EU Member States are letting billions of euro worth of convicted criminals' assets through the net. This happens even though "...governments agreed on confiscation measures four years ago" (European Commission: 2010). In this context there exists a need for "…clearer rules, more consistent application and enforcement and - above all - trust between systems" (Ibid.). Proceeds of crime are usually hidden away from the Member State where the criminal offence was committed, and after some time usually reinvested (laundered) in another Member State. In such a way, the cross-border organised crime has detrimental effect on the economy, budget and the overall financial interests of the Member States and the EU itself. A weak institutional and legal framework only benefit the criminal groups and enable them to generate more and more (illegal) profits. That is why it is essential not only to have the effective institutions, legal means and human resources but also a consistent, functioning system for mutual recognition and enforcement of freezing orders for assets located in another Member State (Ioannides, 2014: 27), and preservation of their value as well proper management.

Savona and Riccardi note that illicit markets generate about €109,891 million at the EU level, representing a 0.89% of the EU 27 total GDP in 2010 (Savonna & Riccardi, 2015:34). The global drug trade generated USD 321 billion in 2005 according to the United Nations. Trafficking in human beings is globally worth USD 42.5 billion per year according to the Council of Europe. The global market in counterfeit goods was estimated at up to USD 250 billion per year by the OECD. Corruption in the EU has been estimated to cost as much as 1% of the EU GDP per year. Despite this, the results of confiscation in the EU remain modest (98.9% of the estimated criminal profits are not confiscated). For example, in 2009 confiscated assets amounted to € 185 million in France, £ 154 million in the United Kingdom, € 50 million in the Netherlands and € 281 million in Germany (European Commission, 2012:3).

Similarly, a Europol Report for the period 2010-2014 states that the seizure/freezing and confiscation of assets on the EU level seizure/freezing represents about 2.2% of the estimated proceeds of crime, while confiscation represents about 1.1% (Europol, 2016:16). The Lisbon Treaty and the Stockholm Programme (European Council, 2009) put special focus on the fight against organised crime and corruption, upgrading the achievements of previous Tampere (1999) and Hague (2005) programmes, and these developments will represent the key focus of this article.

LEGAL FRAMEWORK

The timeline of the EU legislative efforts to establish a legal framework on asset freezing and confiscation dates back to the Joint Action 98/699/JHA (Council of EU, 1998), followed by the Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (Council of EU, 2001). A set of mutual recognition measures followed by the Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence (Council of EU, 2003) and the Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders (Council of EU,2006). Harmonisation instruments were embodied in the Framework Decision 2005/2012/JHA on the harmonisation of confiscation laws (Council of EU, 2005), and later the Directive 2014/42/EU. In 2007 the Council adopted the Decision 2007/845/JHA obliging the EU Member States to set up/designate a national Asset Recovery Office, in order to facilitate the tracing and identification of proceeds of crime and other illegally obtained property (Council of EU, 2007).

In 2014 the Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime (EP &Council, 2014) was enacted. Now, Joint Action 98/699/JHA, point (a) of Article 1 and Articles 3 and 4 of Framework Decision 2001/500/JHA, and the first four indents of Article 1 and Article 3 of Framework Decision 2005/212/JHA, are replaced by this Directive for the Member States bound by this Directive (Ibid.: Art.14). This approach that left partially a former third pillar act (for criminal offences punishable by deprivation of liberty for more than one year) is questionable since it has the potential to jeopardize the principle of legal clarity (and legal certainty) in the process of judicial cooperation in criminal matters which may affect fundamental human rights (Arcifa: 2014). Under the Directive, Member States are obliged to take necessary measures to enable the confiscation (in whole or partially) of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, including cases where such final judgments are rendered *in absentia*. Also, in cases where the suspected or accused person is not present at the trial because of illness or absconding, Member States shall take the necessary measures to enable the confiscation when criminal proceedings have been initiated regarding a criminal offence which can result (directly or indirectly) to economic benefit, and a condemning judgment could be rendered if the suspected or accused person had been able to stand trial. More importantly, the Directive provides for extended confiscation, i.e. where a court, on the basis of the circumstances of the case, particularly when the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct (EP & Council: 2014, Art.6). This category of criminal offences is particularly directed at (but not limited to): 1) active and passive corruption in the private sector and corruption involving officials of institutions of the Union or of the Member States; 2) offences relating to participation in a criminal organization; 3) causing or recruiting a child to participate in pornographic performances, distribution, dissemination or transmission of child pornography and offering, supplying or making available child pornography and production of child pornography; 4) illegal system interference and illegal data interference and intentional production, sale, procurement for use, import, distribution or otherwise making available of tools used for committing offences; 5) a criminal offence that is punishable by a custodial sentence of a maximum of at least four years (Ibid.: Art.5(2)).

The extended confiscation applies in all cases where discrepancies exist between the persons' income and the total value of their property. This type of confiscation is available unconditionally for a number of cases described in Article 5 of the new Directive, but it only

applies to the offences listed in Article 3 if they carry a custodial sentence of a maximum of at least four years. Also, the Directive introduces a limited form of non-conviction based confiscation, i.e. where indictments were made, but conviction was not possible due to illness or abscondment of the defendant. This type of confiscation is applied to all offences that are liable to result in economic benefit and is different from civil forfeiture/civil non-conviction regimes existing in some of the Member States [targeting directly the property/not the defendant, that already existed in some Member States, like the UK (Hendry & King, n.d.:2), where different types of evidence are allowed that would not be admissible at a criminal trial, including inferences from silence, previous behaviour, illegally obtained evidence and abuse of process, and hearsay evidence (Simonato, 2017:377). Here the defendant (the 'accused'), is faced with the prospect of being deprived of assets on the belief that they represent proceeds of crime. The burden of proof is on him to prove before the court that they are legally obtained. If he fails to do so, then these assets can be forfeited to the State] (King, 2012:339).

The confiscation could also be directed at the third persons who knowingly (or at least ought to have known) entered in legal transactions with the accused or convicted person in order to transfer property so, the future confiscation or freezing of the property of the accused or convicted person will be impossible. These circumstances would be assessed by the court in every individual case, particularly where the transfer or acquisition of the property was carried free of charge or for a sum significantly lower than the actual market value of that property (EP & Council, 2014: Arts. 6-7). Instead of the property, the Directive foresees confiscation of its value, if the property was transferred in order to avoid confiscation. Interestingly, during the legislative procedure the Parliament proposed an amendment to oblige Member States to prosecute those persons to whom ownership and/or factual possession was fictitiously transferred by the suspected or indicted persons in order to avoid confiscation and/or freezing. Unfortunately, this amendment was not accepted by the Council (Arcifa, 2014:8).

On the other hand, the Directive prescribes a set of procedural rights for persons affected by the confiscation orders, including the third parties in accordance with the Charter of the Fundamental Rights of the European Union, the European Convention of Human Rights and the relevant jurisprudence of the ECtHR, and the new Directive on the right to access to lawyer and the Directive on the right to information in criminal proceedings: as a general rule, they have the right to challenge the orders before the competent courts, a right to access to lawyer and a right to fair trial. The executing Member State in principle is obliged to inform (and also to provide reasoning) the person for the freezing of his property as soon as possible after the assets have been frozen, but such notification could be postponed if the interests of the criminal investigation so require. The frozen assets should be returned to the affected person if the proceedings do not result in criminal conviction. Also, the third persons have a right to claim title of ownership for the property subject to freezing or confiscation orders. Members States should take the appropriate measures that when confiscation order is enforced, the latter does not preclude the victims of crime to seek compensation (EP & Council, 2014: Art. 8).

Another breakthrough was made in December 2016, when the European Commission proposed a Regulation on mutual recognition on freezing and confiscation orders (European Commission, 2016), which is a part of series of other measures directed towards combating financial crime, including the Directive on countering money laundering through criminal law and a proposed revised Regulation on controls on cash entering or leaving the Union. Once it enters into force, it will replace Framework Decisions 2003/577/JHA and 2006/783/JHA, but it will complement the Directive 2014/42/EU. Several Member States criticized the Commission's choice to use Regulation instead of Directive, but the Commission underlined that adopting a Regulation for mutual recognition in criminal matters is in line with Art. 82

(1) TFEU, and that the Regulation will ensure the system of mutual recognition of freezing and confiscations orders to be much more effective, since the exact same rules will apply in all Member States and they cannot be subject to alterations, because regulations do not require transposition like the directives (Council of EU, 2017).

The new legal framework will not allow wide discretion for refusal of orders for extended confiscation. The new procedure foresees a standardised certificate for mutual recognition of confiscation orders and a standard form for freezing orders (both are annexed to the Proposal). All non-conviction based confiscation orders issued by the competent court during criminal proceedings should be recognized by the executing state for all criminal offences (i.e. they are not limited to the so called "Eurocrimes" - terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime).

The time-limits for recognition and execution of the orders are fixed in order to ensure their prompt and effective implementation. This a huge step *vis-à-vis* the 2003 Framework Decision. There is a separate procedure for 1) freezing orders, and 2) confiscation orders. The decision on the freezing orders should be made by the state of execution as soon as possible but in any event within 24 hours from their receipt. If it decides to approve/recognize the order, the latter must be executed within the next 24 hours, and additionally within the following 3 days a report should be forwarded to the issuing authority. For the confiscation orders, the time limits are longer: the decision on confiscating order should be made within 30 days since the receipt and executed in additional 30 days from the day of approval. In an event of inability to meet either of these deadlines, the issuing authority must be informed. Also, the person against whom the order is enforced must be informed: the executing authority must notify its decision to the person against whom the freezing order has been issued and to any interested party taking due account of the confidentiality rules laid down in Article 22. This will allow the persons affected to take legal remedies, without endangering the freezing (European Commission, 2016: Art. 21).

A legal remedy is provided in the executing State against the recognition and execution of a freezing or confiscation order. Any interested party including *bona fide* third parties can bring an action before a court in the executing State to preserve his or her rights in accordance with the law of that State. The action may have suspensive effect under the law of the executing State. However, substantive reasons for issuing the confiscation order in criminal matters cannot be challenged before a court in the executing State (Ibid.: Art. 33).

Where the executing State is responsible under its national law for injury caused to one of the interested parties referred to in Article 33 by the execution of a freezing or confiscation order transmitted to it pursuant to Articles 4 and 14, the issuing State shall reimburse the executing State of any sums paid in damages by virtue of that responsibility to the interested party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State (Ibid.: Art. 34). The victim's right to compensation and restitution shall indeed have priority over the executing and issuing States' interests.

The grounds for refusal of the confiscation and freezing orders are set as *numerus clausus*. The competent authority of the executing state can refuse both confiscation and freezing orders for these reasons: 1) cumulatively: a) the standard form for the orders prescribed by the Regulation is incomplete or manifestly incorrect *and* b) has not been completed following the consultation with the issuing authority; 2) if the execution of the freezing or confiscation order will be in contravention with the *ne bis in idem* principle; (3) if immunities or privileges exist under the law of the executing State that prevents the execution of a domestic freezing order on the property concerned; (d) if the criminal offence was committed outside the terri-

tory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the freezing order is issued is not an offence in the executing State and (e) in a case referred to in Article 3(2), the conduct on which the freezing order is based does not constitute an offence under the law of the executing State. Still, this does not apply in relation to taxes or duties, customs and exchange. Execution of the confiscation/freezing order shall not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State.

However, for confiscation orders there are other additional grounds for refusal: 1) if the rights of any *bona fide* third party make it impossible under the law of the executing State to execute the confiscation, including where that impossibility is a consequence of the application of legal remedies in accordance with Article 31 order, or 2) according to the certificate provided for in Article 7 of the Regulation, the person did not appear in person at the trial resulting in a confiscation order linked to a final conviction. But this latter exception will not apply if: 1) the person against whom the confiscation order is sought in accordance with national procedural law was summoned in due time in person to be present at the trial that resulted in the confiscation order; the same applies if the person was notified by any other means in a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was made aware in due time that such a confiscation order could be rendered if he or she did not appear in court; (2) if the accused person has given a mandate to a legal counsellor, or the latter eventually was appointed by the State, and *de facto* was represented by that counsellor at the trial; or (3) if the person was served with the confiscation order and being expressly informed of the right to a retrial, or an appeal, which can lead to re-examination of the merits of the case, including fresh evidence and to the reversal of the original decision and: a) that person expressly stated will not contest the confiscation order, or b) did not submit application for retrial or an appeal within the time – limits set by national law.

The decision not to recognize or execute a confiscation order should be rendered without any delay, and the issuing authority shall be informed immediately. But, in any event, before deciding not to recognise or not to execute a confiscation or freezing order either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay. The executing authority may decide to suspend the freezing order if it considers that one of the grounds for non-recognition and non-execution emerged.

Another important question governed by the provisions of the new Regulation is the management of the frozen or confiscated property. Namely, the executing state must take appropriate measures in order for the frozen or confiscated property not to depreciate during the course of the proceedings in the issuing state. Regarding the split of the confiscated property, the Regulation combines two regimes: if the confiscation order is not accompanied by a decision to compensate the victim, or unless agreed otherwise by the Member States involved, taking also into account the need to provide assistance for the recovery of tax claims in accordance with Directive 2010/24/EU, money which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows: (a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10,000, the amount shall accrue to the executing State; (b) if the amount obtained from the execution of the confiscation order is more than EUR 10,000, both states split the amount by 50% each. But where the court in the issuing Member State has rendered a decision to compensate or restitute the victim, the corresponding sum, in so far as it is does not exceed the confiscated sum, shall accrue to the issuing State for that aim. If there is any property left, it is to be disposed of accordingly between the issuing and executing Member States depending whether it exceeds

or not the sum of EUR 10,000. The same rule applies if immovable property was confiscated and then sold, so the obtained amount will be disposed between the two states.

PRACTICAL IMPLICATIONS

What are the impediments to effective asset recovery? Certainly, so far the trust between the competent institutions of the Member States was of paramount importance. The lack of trust can cause delays or even refusal to provide legal assistance to the competent authorities of the originating state. This is even more evident in time-sensitive cases where urgent action is needed or where significant differences between the judicial, legal or political systems exist (Stephenson & Grey, 2011:19-20). Another problem is the different approach to financial investigations in different EU Member States: for instance, in some MS financial investigations are not conducted in all cases, in some they are conducted only in relation to certain financial crime offences, while in others they are initiated too late (Simonato & Lassale, 2016:136).

By its nature, the seizure/freezing of assets is a provisional measure aimed at depriving criminals of their profits/benefits. Indeed, the main aim of seizure/freezing is to preserve the property and its value for the purpose of confiscation. According to a recent Europol Report, it is estimated that for the period the average value of €96.3 million were seized/frozen in each respondent country. On the other hand, the value of confiscated assets refers to the pecuniary value of the assets or the money confiscated following the rendering of a final judgment by the court. Since it comes after a criminal or civil proceedings, on average from 3 to 6 years have passed after the initial order for freezing the assets. Confiscated assets amounted on average to €38.8 million each year for each respondent country for the period 2010-2014. That represented on average 0,009 % of the national GDP of each EU Member State (Europol, 2016:11). Of crucial importance for the more systematic gathering of data regarding asset recovery and confiscation is the use of the Europol's SIENA (Secure Information Exchange Network Application), because since 2015 24 Asset Recovery Offices (AROs) were connected with a view to effectively exchange information on assets to be seized, frozen or confiscated in the EU Member States (https://www.europol.europa.eu). According to the Europol 2016-2020 Strategy, the embedment of FIU.net at Europol and the work on asset recovery will aim to increase the use of financial intelligence in all crime areas (Europol, 2016a:). Namely, since January 1, 2016, the decentralized point of the Financial Intelligence Units (FIUs) of the EU Member States was embedded into Europol (known as FIU.net). In this way, the national FIUs can identify the connections between their own financial intelligence with the criminal intelligence data owned by Europol, so suspicious money flows can be further investigated (https://www.europol.europa.eu).

Although statistical data are available, in some Member States inconsistencies exist between competent national organs. For example, in Italy such discrepancies exist between the National Agency and the Ministry of Justice (Fraschini & Putaturo, 2013:25-26). Nevertheless, AROs can play only a limited role in confiscation cases, due to the fact that the most significant part in international cooperation in these cases is taken at judicial level. This is more restricted role than the CARIN network envisages, but Member States can widen the competences of their national AROs, or even designate two separate AROs (Borgers, 2016:37-8).

European Commission noted several deficiencies in the work of the AROs that hinder effective asset recovery: 1) AROs are mostly understaffed; 2) do not have access to all relevant databases; 3) centralised land registers do not exist in all Member States; 4) AROs do not benefit from the support of a fully secure information exchange system; 5) only some AROs are central contact points at national level for the requests of mutual legal assistance related

to asset recovery sent by the authorities of other Member States; 6) only a few AROs are involved in the management of frozen assets; 7) about half of the AROs do not have access to judicial statistics on freezing and confiscation (European Commission, 2011). The fact noted by a recent Europol Report that on the EU level only 50% of all seized assets are confiscated (Europol, 2016), prompts the conclusion that further strengthening of the capacity of the competent national institutions is needed in terms of personnel, IT and other resources, specialisation, improving the access to court decisions and particularly improving the cooperation with the competent EU institutions in order to become seamless.

So far, mutual recognition instruments for freezing/confiscating assets were underused for a number of reasons, *inter alia*: 1) they did not cover all the types of freezing and confiscation orders (particularly the extended confiscation); 2) some MS have explicitly limited the scope of mutual recognition; 3) the grounds for refusal were broad, thereby discouraging requests *ab initio*; 4) the mutual recognition certificates did not contain all necessary fields and were extremely complicated - as a result many Member States preferred traditional mutual legal assistance instruments (Albert, Cutajar & Fargier, 2014:78-79). For a long period a serious problem was the collection of statistical data across EU Member States, but it seems that nowadays the situation has improved including with regards to identifying the main trends and patterns in each MS and Europol. The Directive 2014/42/EU and the said Regulation will significantly contribute these obstacles to be overcome.

Geographically, organized crime groups invested illicit money in almost all Member States, but also in neighbouring countries like Switzerland, Ukraine, Moldova, Albania and Turkey. The business sectors attracting most of the illicit money (proceeds of crime) in the EU include: bars and restaurants, construction, wholesale and retail trade, transportation, real estate companies and hotels, and more recently renewable energy, scrap and waste management, money transfer businesses, VLT, betting, gaming, etc. (Riccardi, Soriani & Standridge, 2015:150,157, 158).

CONCLUSION

The new Directive and the proposed Regulation build upon the previous EU legal framework, which itself mostly implemented the obligations of other international instruments (adopted by UN, CoE). But the new EU instruments tend to devise genuine and comprehensive European approach to asset confiscation and address the specifics on European soil. This brings added value to the whole process. Moreover, these new instruments have an aim to overcome the problem of different national regimes and traditions regarding asset recovery, where in some countries exist *sui generis* concepts that are not present in others (like the anti-mafia preventive confiscation in Italy).

The new framework should establish effective mutual trust and cooperation on confiscation of proceeds of crime via direct confiscation, value confiscation, non-conviction based confiscation and third party confiscation. Particularly the proposed Regulation will deal with cross-border cases and will have extended scope in comparison with the previous third pillar instruments and the Directive 2014/42/EU (it will cover cases of death of a person, immunity, prescription, cases where the perpetrator of an offence cannot be identified, victims' right on compensation will have priority over states interests, etc.), i.e. it will close the previously existing gaps, which were vastly exploited by the criminals.

The final text of the Directive does not reflect the progressive ideas of the EP to address the issue of crafty use of the transfer of goods fictitiously to the spouse just in view of subtracting property from any Court orders, or the more decisive obligation for the MS to re-use of

confiscated assets for social purposes, nor the full regime of NCB confiscation. It is of utmost importance that the said legal instruments now contain significant legal safeguards for the persons affected by the freezing or confiscation orders (in comparison with the situation *ex ante*). This is extremely important since always when a State executes foreign confiscation order with an aim of asset recovery that affects the right to property enshrined in the ECHR and Protocol I (Ivory, 2014:184). However, not only the ECHR, but also the Charter of the Fundamental Rights of EU contains legal safeguards for the accused or convicted person, or even the third parties when their right to property is affected by confiscation measures/orders. The Strasbourg Court so far has dealt with cases involving examples of extended, non-conviction based, and third party confiscation (Simonato, 2017: 377).

Some authors note that in the EU framework there is no possibility for extrajudicial confiscation like the one enshrined in Art. 511c of the Dutch Code on Criminal Procedure, where the prosecutor is entitled to enter into written settlement with the accused person in order for the latter to pay a pecuniary sum or transfer property to the state for the purposes of confiscation of proceeds of crime (Borgers, 2016: 44). The new streamlined legal framework should contribute to the functions of asset recovery, its general and special prevention, fight against terrorism and organised crime and most particularly for the compensation of the victims, developing the legitimate economy or financing different public policies, which is of paramount importance in the period of global financial crisis (Ligeti, Simonato, 2017:1). However, Fazekas and Simonato consider that it will be doubtful whether this new legal reform will make any significant contribution to the percentage of asset recovery, having in mind the EU's overdependence on the effectiveness of national institutions. Nevertheless, on the one hand comprehensive reports on the application of Directive 2014/42/EU do not exist yet, and on the other hand the Regulation on mutual recognition of **freezing and confiscation orders** is in the process of adoption by the Council and EP. But, if adopted in the proposed or similar form in international context it will be state-of-the-art instrument and adequate response to the always inventive modalities devised by the criminals in order to hide their illegally obtained assets.

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THE ROLE OF EUROPEAN ANTI-FRAUD OFFICE IN PREVENTING FINANCIAL CRIMES: A NEW FRAMEWORK[1]

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Abstract: The subject of analysis in this paper is the role of the European Anti-Fraud Office (OLAF) in the fight against financial crimes, primarily in the area of budgetary control. In this regard, the first part of the paper points out the genesis of OLAF, its administrative and operational capacity, mandate and regulatory framework, which are in function of fulfilling financial legitimacy, fiscal transparency and sound financial management. The focus is on OLAF's main activities, due process and a new Regulation proposed by the EU Parliament with the aim of contributing to better governance and accountability of OLAF jurisdiction. Hereinafter, it specifically considers the functional relationship of the European Anti-Fraud Office with other communitarian authorities such as EUROPOL, EUROJUST, European Data Protection Supervisor, on the one hand and national audit institutions, on the other hand in order to establish effective and efficient legal framework (in an economic and normative sense) against financial crimes. Establishment of credible macroeconomic dialogue between OLAF and the European Central Bank and the European Investment Bank as the supreme subjects of the European monetary law is also necessary if European legislator attends to minimise the opportunity for various types of illegal behaviour in the field of monetary policy as part of common economic policy close to core fiscal targets. Strong institutional cooperation between OLAF and the European Court of Auditors, according to the author, is a prerequisite for optimal budget management and reduction rate of financial crimes in the field of fiscal policy.

Keywords: European Anti-Fraud Office, financial crimes, budgetary control, fiscal policy**.**

INTRODUCTION

The recent financial and economic crisis has highlighted the fact that the legal mechanisms of fiscal policy coordination of EU Member States are slow in practice due to the inability to balance the interests of different States, which are not willing to delegate any components of their fiscal and financial sovereignty. A special form of democratic legitimacy that is important for the harmonised management of public finances of the member states is the concept of the so-called systemic legitimacy. This form of legitimacy refers to the effectiveness of rules, structures and processes in the function of accountability, which influences the increase in

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the degree of confidence of citizens in the functioning of political institutions (Laffane, 2003, pp.762-777). The global financial crisis pointed out the lack of full systemic legitimacy in the European Monetary Union (EMU) and required the need for a more rigorous positioning of the European Court of Auditors (ECA) in new models of economic governance (embodied in intergovernmental agreements aimed at preserving monetary stability and achieving fiscal sustainability). A poor systemic legitimacy is a direct consequence of the inadequate fiscal responsibility of the member states in maintaining the fiscal and financial convergence criteria set out in the Maastricht Treaty and the Stability and Growth Pact, which requires the ECA to have jurisdiction to impose legally binding decisions irresponsible to fiscal policy subjects. Only in this way can an optimal legal mechanism for controlling the spending of budget funds in European monetary law be created, which together with the new budgetary jurisdiction of the European Court of Justice and the new role of constitutional courts (which become *ex-ante* guardians of fiscal discipline) will enable the maintenance of the fiscal framework of the Eurozone.

Reviewing of the concept of financial legitimacy in EU law was not greeted with the same enthusiasm by the main institutions. According to some authors, despite the institutional and financial crisis pointing to gaps in the financial management system, the offered legal solutions are not enough to achieve real improvements (with which we can only partially agree). Significant steps on the revitalisation of financial legitimacy were made by the adoption of the so-called financial regulations that today represent the basis for adequate budget implementation in the EU. Financial accountability is an integral element of financial management, which is one of the forms of control over the spending of budget funds (Sanchez Baruesco, 2016, pp. 848-849). The rules of financial management are determined by the provisions of the primary legislation, but the norms of secondary legislation appear to be a much more important source, which is characteristic of a large number of rules of international monetary and financial law. A significant step forward in strengthening financial accountability has been made by the adoption of the EU Council Regulation 966/12, which defines more precisely the responsibility of all actors of financial management in the broadest sense of the word.

Significant changes in the work of the ECA after the adoption of the Lisbon Treaty focused on raising the level of efficiency of supervision and control of spending of the system of state (public) funds. Additionally, the Court has established a practice of five-year planning with a tendency to cover the main points in the process of budget execution. By analysing the ECA report, it can be noticed that a significant number of cases are not adequately processed by the European Parliament and the Commission, which can negatively affect the purpose and the need to perform the very function of the audit in European monetary law. The Court was also given the right to submit a proposal in order to improve the legal framework for budgetary management in the course of ongoing reforms. It remains incomprehensible why the Court has not received such a right earlier since it is the only institution that has the expertise to control the spending of funds from the single budget, rather than the subsidiary that performs its activity as an accessory activity of primary institutions. The Lisbon Treaty, however, did not sufficiently clarify the circumstances in which the ECA's advisory opinion is mandatory since it can also be voluntary (Sanchez Baruesco, 2011, p. 8). It can be somewhat established that the opinion is mandatory in all circumstances concerning the procedural issues of the budgetary regulation, i.e. rules concerning the way of budget execution. Certainly, obtaining the previous opinion of the ECA does not stand in the same level of obligatory nature as obtaining the previous opinion of the European Parliament because the ECA does not have the same form of legitimacy as Parliament, which is why the practice established in the case of *Isoglucose* cannot be applied analogously to the work of the ECA (Case 138/79, SA Roquette v. Council of the European Communities). The lack of a clear criterion for distinguishing the circumstances in which the Court's opinion is compulsory from those in which it does not

ultimately result in non-participation of the court in the adoption of crucial sector rules related to the changes in the agrarian budget items. At this point, we must emphasize the fact that main tasks of audit institutions established by *Lima Declaration* adopted by the international organization of supreme audit institutions at the Congress held in 1977 include: effective and proper use of funds, public funds, the development of a consistent financial management, proper execution of the administrative activities and the exchange of information with other public-legal institutions, as well as timely notification to the public of the results of the audit process (The Lima Declaration, 1977, pp.1-6). Today, the work of Court of Auditor is realized through *long-term planning* that leaves enough room for manoeuvre for the need of harmonization. The meaning of such planning is reflected in the clearer determination of the strategy goals and in modifying their content given the dynamism of the legal-economic relationship that in EMU is often appearance. The annual plan defines the tasks that must be implemented with the fixed period during the exact period of a year. Certainly, during the formation plan of work it is necessary to make a parification of *the specific tasks*, because the funds for tasks realization are assigned according to the degree of prioritization (Dimitrijeviж, 2016, p. 419). How transparency presents an important democratic component and financial legitimacy, the President of the Court has a duty to present the annual program of the Court to the public through the European Parliament's Committee for making the budget supervision.

THE OF PLACE OF OLAF IN THE FINANCIALMANAGEMENT

Since the Court does not have the possibility of issuing legally binding decisions in this sphere, this is in practice replaced by cooperation with OLAF, which has been significantly improved and established on a solid basis over the past several years since the outbreak of the debt crisis. In this sense, by analysing a large number of contractual arrangements on concretising inter-institutional cooperation with other bodies, we can recognise the effort that the court invests as the primary top auditor to protect the Community's budgetary interests (Dimitrijević, 2017, pp. 49-56).

We can also see that the European Court of Auditors constantly evolving its role and jurisdiction in *ratione materiae* in the fight against financial criminality, which is of direct relevance in the early years of its operation, has gained an equally important role as OLAF's position, and their activities in this field cannot be considered separately because they condition their mutual success. We think that in the fight against financial criminality the role of the European Court of Auditors is indispensable, which is why there is a need to derogate the norms of primary and secondary right, thus giving the court the opportunity to issue legally binding judgments, which in the fruitfulness of the work of other bodies involved in the macroeconomic dialogue to achieve over needed general prevention. In order for the ECA to properly perform its tasks, it is necessary that the cooperation with the national audit bodies be conducted in a spirit of mutual trust. A significant limitation in the work of the court is of course a lack of staff, since the number of auditors is limited by the provisions of the primary legislation, while the number of financial frauds cannot be controlled. Accordingly, the established co-operation must be strengthened and consolidated on a firmer basis. In practice, it was most difficult to establish cooperation with the European Investment Bank, which did not want under any circumstances to recognise the jurisdiction of the ECA on its acts, which was somewhat replaced by the Amsterdam Treaty that regulates closer co-operation. It is also necessary to increase the involvement of the Court in tax disputes that have implications on

the international monetary order, especially in the segment which concerns the export of goods and services (Costas, 2014, pp.14-21).

OLAF has the authority to initiate and conduct investigations in the field of financial activities and the imposition of certain financial sanctions.[3] Its origin is from the department of the General Directorate of the European Commission Unity for coordinating anti-fraud Fight (UCLAF), which was established in 1988. In the context of globalised financial flows, it has become clear that national audit courts and supreme audit institutions cannot rely exclusively on the work of national authorities in the fight against financial crime, which is trans-national. Over the years, UCLAF has been given the original authority to initiate a self-initiated investigation in all circumstances when there are indications of some form of financial crime irrespective of the needs of national audit courts, which was primarily motivated by the need to preserve financial stability. OLAF's jurisdiction refers to launching an investigation with regard to the cases involving the unlawful spending of the EU's single budget, acts of corruption and serious abuse of office at the expense of the financial interests of the Union (Commission Decisions of 28 April 1999 establishing Anti-fraud Office). In carrying out its responsibilities, this body may cooperate with the Commission but is primarily in its work subordinate to the Commissioner in charge of a customs union, taxation and audit matters. *Ratio legis* of its action is the protection of the financial interests of the Union through the fight against corruption and financial crime, preserving the reputation of the Union through the application of disciplinary measures to the members of the authorities not respecting the rules of the profession and ignoring communitarian interests as well as providing support to the Commission in detecting and timely prevention of fraudulent actions.

The cooperation of the European Court of Auditors with OLAF has been significantly enhanced by giving concrete recommendations in the field of financial crime fighting, which in a more consistent way shapes the cooperation of these bodies with a clear anti-fraudulent instrument. On this occasion, the Court took the view that it was necessary to make certain changes in OLAF's work by increasing the number of persons involved in the investigations in order to shorten their duration, increase the level of efficiency in the context of planning and overseeing investigations including themselves, consolidating anti-fraudulent legislation, and the need to adopt specific reports on the effectiveness of OLAF's work (European Court of Auditors, 2011). Today, OLAF has administrative, operational and financial autonomy in carrying out these mentioned tasks. In carrying out its duties, it can conduct internal and external investigations. The subjects of internal investigation may be all communitarian authorities, while in the conduct of an external investigation OLAF acts as an extended arm of the auditor in all matters concerning the EU budget and can then cooperate with the competent authorities of the Member States. By performing these tasks, valuable coordination mechanisms are established that contribute to the exchange of information, the dissemination of good practice, as well as learning from their own mistakes, i.e. creating an optimal instrument in the fight against financial crime. At the same time, an element of criminological support is being realised from the situations where the competent authorities in the Member States in criminal proceedings can count on the professional, logistical and operational assistance of this supranational authority.

It is interesting that the ECA has adopted two significant OLAF work reports. The first report was adopted in 1995 and contained numerous criticisms of the work of this body, which concerned their internal structures and positions within the Commission (White & Xanthaki, 2011, p. 158). This report has had a major impact on the final shaping of today's

3 It is important to emphasize that the European Anti-fraud Office is not only competent to investigate matters relating to financial fraud, corruption and other offences affecting EU expenditure, but also relating to some areas of common revenue such as customs duties.

status of OLAF. The second report was adopted in 2005 and was less critical to its work, which was highlighted in the part concerning the time lag in undertaking investigative actions, inexplicable reports and results that cannot be accurately measured in practice. Furthermore, the ECA gave suggestions aimed at the lack of independence in work that should be more reliably ensured, as well as insufficient protection of personality rights in clarifying the legal-economic factual situation. However, the Court emphasised that the advantage of the hybrid nature of the OLAF status position (simultaneous independence in initiating investigations and adherence to the Commission because it is an integral part of it) is very useful because it implements the logistical and operational support of the Commission, which is also conceiving the anti-fraudulent policy very useful. The reason for the inadequate firm correlation between the ERS and OLAF is that, from a purely political point of view, the formalisation of their dialogue on a more solid basis would enable the ECA to function as an "all-seeing-eye", which would jeopardise the existing institutional balance enabling the Court to perform tasks that it had not been able to do at the time (or at least not to that extent). Nevertheless, the question is whether such a function is necessary in order to establish a fiscal discipline in circumstances where the existing institutional structure has shown its weaknesses, lack of democratic deficit and the inadequacy of the solutions offered. We believe that a more solid positioning of the ECA in the existing institutional structure is necessary and desirable since it is obvious that the current balance cannot be followed by a discourse of primary and secondary legislation in the sphere of international monetary relations and the preservation of monetary stability.

The fact that OLAF's actual contribution to the optimal financial management system is best illustrated by the fact that over 1600 investigations were concluded during 2010-2016, it proposed a return of more than 3.6 billions of Euros to the EU budget and issued over 2000 different judicial, administrative and financial recommendations to the relevant EU bodies.[4] As a result of OLAF's investigative work, sums of unduly spent money were gradually returned to the EU budget, criminals faced prosecution before national courts and better anti-fraud safeguards were put in place throughout Europe. This has ensured its strong position in the inter-ethnic dialogue, which is of great importance in timely observation of various financial irregularities, which represents a forum for exchanging opinions, attitudes, recommendations and dissemination of good practice between European (European Central Bank, European Investment Bank, European Parliament and European Commission) and international institutions (IMF and World Bank) on important issues related to overall economic policy. OLAF confirms its contribution to the fight against financial crime by the ambitious 2016 programme, which included the opening of 219 new investigations in which it seeks to apply the principle of economy, efficiency and effectiveness to the highest possible level. For example, the average duration of concluded and on-going investigations in 2016 was 18.9 months. The average duration of the selection phase, in which OLAF assessed the incoming information and decided whether to open an investigation, was 1.7 months, whilst it had 344 on-going investigations at the end of 2016.

In addition, the great contribution was made by the bone of the initiative related to the implementation of the so-called Hercules III Programme (2014-2020) inviting interested parties to participate in the technical support, legal training and organisation of conferences with the aim of disseminating knowledge necessary for successful prevention of financial irregularities. In order to minimise opportunities for financial crimes in the EU member countries, OLAF helps the authorities responsible for managing EU funds (both inside and outside the EU) to understand nature and structure of fraud types, trends, threats and risks. OLAF gathers data from its own operations and many other sources. These include Commission audits, Court of Auditors' reports, national partner authorities and open sources, such as the

4 OLAF's budget for 2016 was € 58.9 million

internet, press articles and public registers and commercial sources. OLAF shares some of this information through the Irregularity Management System (IMS) which contains details of fraud and irregularities in the use of funds managed by the Commission and the national authorities, e.g. in agricultural policy funding, structural and cohesion funds and funds to help countries prepare for EU membership (pre-accession funds).

Main uses of the IMS are: analysis and reporting (e.g. the annex to the Commission for annual fraud report), preparing for audits and deciding whether to sign off the accounts for previous operational programmes. OLAF's investigation is very complex and wide in EU public finances. It includes EU expenditure, EU revenue (investigative mandate covers some areas of EU revenue, mainly customs duties), EU staff (investigating serious misconduct by staff members of EU institutions and bodies), Digital Forensics (OLAF's digital evidence specialists provide practical support for digital forensics). Investigation support (analysts, IT and technical staff and computer forensic examiners) provide analytical support to OLAF's casework. OLAF Strategy as a key operative act for organising phase, activities and tasks in process of protecting EU financial legitimacy is based on improving and updating fraud prevention, detection and investigation techniques in order to recover a higher proportion of funds lost due to fraud. At the same time, doing that it deters future fraud through appropriate penalties. In its combat against financial crimes, OLAF uses methods which include: introducing of anti-fraud strategies per sector in the Commission, clarifying and enforcing the different responsibilities of the various stakeholders and ensuring that these strategies cover the whole expenditure cycle. In this process it is particularly important to ensure that anti-fraud measures are proportionate and cost-effective in the wider sense of the word.

THE FUTURE CHALLENGES IN OLAF'S WORK

The global economic and financial crisis has highlighted the weaknesses of traditional financial management mechanisms in the Eurozone. These weaknesses are not only reflected in inadequate normative solutions for the management of budgetary funds and public funds, but also in the inadequate suppression of financial criminality. Great challenges in establishing a financial management system that would be sustainable over a long period of time is the fight against financial crime in all kinds of forms. Reducing opportunities for financial criminality is an important determinant of general economic stability, which requires the legislator to pay attention to this issue. *Ratio legis* of new models of financial management relies on the concept of an open method of coordination of all EU institutions that participate in the creation of public policies. This method in the field of financial management can be seen as a form of economic forum for the exchange of opinions, attitudes and dissemination of good practices in order to achieve the desired macroeconomic results. In this process, the establishment of effective cooperation between the European Court of Auditors, the European Court of Justice and the specialized bodies of the European Commission plays a key role. In the EU's communal law, OLAF can provide a major contribution to such a fight, bearing in mind its competence, expertise and results achieved so far. In this light, OLAF appears as a direct importer of anti-terrorist measures and instruments.

In the implementation of a successful anti-fraudulent policy, it is important to create conditions that constitute a good division of labour between OLAF and EUROPOL, which was somewhat done by the 2009 Council Decision and the Agreement on Administrative Cooperation between these entities (2004) in the field of the exchanging strategic and technical information, human resources and technical support, reports and mutual consultations on risk assessment, the formation of mixed teams, as well as professional training. Although OLAF

and EUROPOL have the similar tasks in the implementation of anti-fraudulent policies, the cooperation so far has not been particularly developed. The most common explanations of its lack of presence or complete absence are reflected in their different direction in the implementation of such a policy, and whereas OLAF in its work is concentrated on protecting the financial interests of the Union through the investigation of organised crime and criminal groups, it often involves the sale of drugs and other psychotropic substances bringing it closer to the field of EUROPOL. In that sense, Art. 22 of the Directive (2009) explicitly provides for compulsory cooperation between the said authorities. Of course, it is essential that this article is implemented in a way that it strengthens the fight against financial criminality. It is interesting that OLAF seeks to establish well-developed formal relations with all EU entities, which is not uncommon because usually due to the nature of the work (control) performed by such cooperation in most cases it has not been not established. We believe that such a transparent relationship of simultaneous extensive co-operation on the one hand and the implementation of the control system, on the other hand, does not necessarily have to be a slow down factor, but rather it is in the function of supporting credible anti-fraudulent policy.

When it comes to the cooperation with EUROJUST, it is necessary to emphasise that until the Memorandum of Cooperation was signed (2003), it had been set at a relative level. The cooperation was further strengthened by the adoption of the 2004 Practical Agreement of Cooperation between EUROJUST and OLAF (Practical Agreement on Arrangements of Cooperation between EUROJUST and OLAF, 2008). This document is composed of 18 very detailed pages that clearly emphasise that combinations cannot be the subject of free interpretation of the mentioned bodies. In this context, in 2008 OLAF and EUROJUST organised the first joint conference devoted to the international dimension of fraud and corruption, after which OLAF was granted the status of a permanent observer on the meetings of the European Judicial Network.

By adopting the Lisbon Treaty, article 69 emphasised that OLAF is expected to finally get the status of the European public prosecutor in the future, with a strong influence in combating all forms of financial crimes. In this respect, a major contribution has been made by adopting the EU Council Directive on implementing enhanced cooperation on the establishment of the European Public Prosecutors, which shall be competent in respect of the criminal offences in affecting the financial interests of the Union that are provided in Directive (EU) 2017/1371, as implemented by national law, irrespective of whether the same criminal conduct could be classified as another type of offence under national law. As regards offences referred to in point (d) of Article 3(2) of Directive (EU) 2017/1371, as implemented by national law, the EPPO shall only be competent when the intentional acts or omissions defined in that provision are connected with the territory of two or more Member States and involve a total damage of at least EUR 10 million (Council Regulation (EU) 2017/1939).

Furthermore, it is of particular importance that OLAF intensifies its cooperation with the European Central Bank (ECB) and the European Invention Bank (EIB), which the European Court of Auditors has not adequately provided. Regarding the control that the ECA exercises over the work of the European Investment Bank (EIB) and the European Central Bank (ECB), it is necessary to point out certain correlations that exist between the ECB and the EIB and are reflected in the following: the independence of the ECB established by the founding acts, the independence of the EIB derived from jurisprudence; The EIB acts on behalf of the EU when it approves loans or provides guarantees for certain projects, which means that the EIB is an unambiguous body of the community, while the ECB is the supreme monetary institution; the main bodies of the EIB composed of representatives of the Member States, which confirms the thesis on far stronger ties with the Community compared to the ECB, where the *de lege artis* principle in monetary law is primarily taken into account, and the EU Treaty explicitly lists

the EIB as an institutional body, whereas in the case of the ECB there is no such categorisation (Duzler, 2001, pp. 4-5). For this reason, some theoreticians of monetary law represent the thesis on the independence of the ECB outside the framework of the Communities, stating that it creates its own right and explaining that the member states transferred their monetary sovereignty directly to the ECB rather than to the EU by joining the ECB. In this regard, it will be particularly interesting to see the ESP on such perceptions, since in future monetary disputes will have a significant task to confirm the ECB's material (not formal) relationship with the European Community (Ziloly & Selmayr, 2001, pp. 200-210).

Some authors emphasise that it is very important that in the future work of OLAF concrete steps are taken to codify the decision-making process, more specifically define the concept of independence in work, the inter-institutional aspects of work that imply the adoption of amendments to the existing acts that regulate the field of the work of OLAF. The derogations of the norms governing its competence are inevitable in the context of the globalisation of international economic and financial flows, the development of electronic commerce and the emergence of new forms of financial crimes that take place in a virtual space. In addition, the establishment of credible macroeconomic dialogue between European Anti-fraud Office and other communitarian institutions and national auditor institutions is a prerequisite for efficient management of public funds and curtailment of real opportunity to exercise the financial crimes.

CONCLUSION

The European Anti-fraud Office has an important position in the financial management system, which implies a special form of global management for the development of international monetary and financial relations. Financial management includes a large number of countries, transnational organizations and private sector entities, where the features of financial stability are very important when states access certain international organizations. OLAF takes a significant place in the financial system of the EU, as its competence appears as a guarantor of sound public finance management. OLAF is not only an extended arm of the European Court of Auditors, which cannot impose a legally binding judgment on spending budget funds but also a representative of taxpayers whose assets may not be subject of criminal financial activities. As such, OLAF together with the European Court of Auditors preserves the financial legitimacy of the Union, which in the conditions of the global financial crisis is rather shaken, and its erosion cannot be tolerated because it is lawful management of spending. Disposal of budget funds and public funds is *conditio sine qua non* for sustainability of the fiscal framework of the Eurozone.

The European Anti-fraud Office reform must be implemented in a way that creates the conditions for its wider participation in macroeconomic dialogue as a form of *ex ante* coordinated national fiscal policies, which is in the function of balancing the certain irregularities before they are given the character and form of financial crimes. It is also important to create conditions in which the meaning and significance of its work to approach the citizens becomes more transparent, more understandable and more purposeful, which requires certain propaganda actions that demystify the field of its competences. In particular, the efforts must be made to strengthen cooperation with the European Central Bank and the European Investment Bank, which unlike all other forms of cooperation with other bodies, has been developed to a minimum bearing in mind the specific position of the European Central Bank in European Monetary Law.

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INCRIMINATIONS AGAINST SECURITY OF COMPUTERDATA –EFFECTIVENESS OF CRIMINAL JUSTICEMECHANISM DIRECTED ON CYBER CRIME

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Abstract: Contemporary typologies of criminality are unimaginable without the existence of cybercrime, a newer and particular form of criminal behavior. The phenomenon and occurrence of cybercrime represent the consequence of the use and abuse of computers, computer data, computer systems and networks. The utilization of computers in all spheres of modern life, process of digitalization and application of information technologies in a large number of social activities and interactions, despite undisputed significant advantages, pointed out to social and personal vulnerability to certain forms of illicit behavior and threats to some basic values, but also to the need for criminal law protection against such behaviors and treats. The Criminal Code of the Republic of Serbia contains the chapter on the criminal offences against the security of computer data, providing criminal justice protection to computer data and programs, by prohibiting unauthorized use of computers and computer networks, computer sabotage and fraud, creation of computer viruses, unauthorized access to computer networks and electronic data processing, as well as the creation, purchase and delivery of the instruments for execution criminal offences against the security of computer data. Bearing in mind that in addition to the aforementioned crimes, the other "traditional" crimes may be committed by using computers or computer networks, this paper is dedicated to determining the effectiveness of criminal justice mechanisms directed against cybercrime, both in the normative domain and in the practice of the criminal justice authorities.

Keywords: cybercrime, incriminations against security of computer data, criminal justice mechanisms

INTRODUCTION AND DEFINITION OF THECONCEPT OF CYBERCRIME

Systematic research of cybercrime involves the exploration of concepts, forms, volumes, structure and dynamics, dark figures, typology of perpetrators, etiological and victimological discourses, but also, the methods of criminal law reaction to this specific form of criminal behavior. Observed through a time dimension, cybercrime represents a recent form of crime

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("the latest", Đorđević, 2011, 177; "most dangerous" Bejatović, 2012, 18), which, through various forms of abuses, accompanies the development of computer technology. Massive use of computers, computer systems and networks (local, regional or global - the Internet) in all aspects of social life, in addition to the undisputably significant advantages, has led to the appearance of "unauthorized behaviors that, because of being seriously threatening to the certain values, deserve to be declared as criminal offences" (Stojanović, 2016, 906). The incrimination of unauthorized behaviors in the field of computer technologies presents the basis for defining the concept of cybercrime.

In the elementary typologies of criminality this form of criminal behavior has traditionally been considered as part of the property criminality or "white collar crime", primarily because the first computer abuses, or abuses of specific knowledge related to computer technologies, were directed towards acquiring illegal material gain or causing material damage to another person (in domestic literature: Đurđević, Jovašević, 2010, 176). However, the contemporary phenomenology of cybercrime is characteristic of the variety of forms of appearance, i.e. various types of crime can be commited by using computers, computer systems or networks, either as an instrument or object of execution, and that is why scientific studying of cybercrime requires access to this form of criminality as an independent, autonomous model of criminal behavior. Thus, researching cybercrime only within the frameworks or as a part of property criminality is an anachronistic approach that prevents realistic perception and comprehension of the essence of this phenomenon.

As it is pointed out in the literature, criminal offences against the security of computer data "protect the use of information technology for permitted purposes, i.e. provide the protection for the functioning of information technology itself", and the criminal law has "here as well as in others areas, subsidiary character, while,first and foremost,there are various technical-preventive measures that are being developed within the framework of the information technology itself"(Stojanović, 2016, 906). Incriminations related to the security of computer data represent only a part of cybercrime, i.e. they are part of the phenomenon which prevents the use and functioning of computer technology for inadequate purposes or in a manner prohibited by legal norms.

Perceiving the possibility that other crimes can be commited by using computers,which is not subject to incrimination against the security of computer data, the Serbian legislator adopted the Law on the Organization and Competence of State Authorities for Combating High-Tech Crime,[2] and in addition to this, provided for the establishment, organization and work of the Special Department for Combating High-Tech Crime at the Prosecutor's Office and Special Office of the Ministry of Internal Affairs envisaging their jurisdiction for detecting and commiting other crimes as a part of cybercrime ("high-tech crime"): criminal offences against intellectual property, against property, against economic interests and against legal traffic, for which computers, computer systems, computer networks and computer data, as well as their products in material or electronic form,[3] occur as an object or instrument of crimes, but also the criminal offences against the freedom and rights of a man and citizen, sexual offences, criminal offences against public order and peace, against constitutional order and security of the Republic of Serbia, which, due to the manner of commiting or instruments being used, can be considered as part of cybercrime.[4]

2 *Službeni glasnik Republike Srbije* no. 61/2005 i 104/2009.

3 If the number of copies exceeds two thousand or if material damage exceeds the amount of one million dinars.

4 The term high-tech crime that is used both in the title and in the provisions of this law is not completely acceptable. Namely, the Law refers to the detection and prevention of cybercrime, and not high-tech criminality, since this term may also be used to denote other forms of criminality involving high technology (food production, genetic engineering, etc.) that are not part of cybercrime. The use of the

In relation to the aforementioned law, referring to the relevant provisions of the Criminal Code of the Republic of Serbia (CC),[5] cybercrime ("high-tech crime") represents the commission of criminal offences in which computers, computer systems, computer networks or computer data are the object or instruments of execution.

There is no unique definition of cybercrime in domestic law literature (Petrović, 2004, 61), but among many, the most precise and comprehensive ones are those which indicate that this form of criminality implies "all delinquent behaviors in which electronic data processing devices are used as a means to achieve punishable actions or as a direct target of a punishable act" (Bošković, 1995, 164; Konstantinović-Vilić, et all. 2010, 181), or, that it is a "special type of incriminated behavior in which the computer system (understood as unity of physical units - hardware - and programs - software) appears either as a means of execution or as an object of a criminal offence, if in another way or with another object it could not have been performed at all or would have significantly different characteristics"(Ignjatović, 2018, 122; 1991, 142).

In addition to the difficulties in conceptual definition, due to the various forms of manifestation, cybercrime is also characterized by other specificities that distinguish it from other forms of criminal behavior, such as: dynamic phenomenological development, erosion of spatial and temporal dimensions of the commission of a criminal offence, a depersonalized relationship between the perpetrator and the victim of the crime, a specific profile of the perpetrators, a large number of unreported crimes, difficulties in detecting the evidence and proving it, a large "dark figure"(Dimovski, 2010, 205) and the mass exposure to victimization (which is proportional to the mass use of computers, computer systems and networks).

Having in mind the complexity of exploring the phenomenon of cybercrime, the authors devoted their work to the analysis of incriminations against the security of computer data from the Criminal Code and to the review of the effectiveness of criminal law mechanisms in protection against this part of cybercrime through the activities of the criminal justice authorities.

INCRIMINATIONS AGAINST SECURITY OFCOMPUTER DATA

Criminal offences against the security of computer data were, for the first time, prescribed in the criminal legislation of the Republic of Serbia with the amendments and additions to the Criminal Code in 2003,[6] two years after the adoption of the most important European legal source in this area - the Council of Europe Convention on Cybercrime (Budapest Convention).[7] The 2006 Criminal Code of the Republic of Serbia devotes a chapter to the criminal offences against the security of computer data, and it was supplemented in 2009 and 2016 with one incrimination which pertains to creating, procuring, and giving the means or instru-

term "crime" instead "criminality" was previously criticized (Ignjatović, 2010) in the national literature.
5 *Službeni glasnik Republike Srbije* no.85/2005, 88/2005 - correct., 107/2005 - correct., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.
6 *Službeni glasnik Republike Srbije* no. 67/2003;
7 Convention on Cybercrime, Council of Europe, ETC No. 185, https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680081561.Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems was adopted in 2003, Council of Europe Treaty No. 189, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/189; access: may 1st 2018.Part of the legal system of the Republic of Serbia The Budapest Convention became by adoption the Law on Confirmation Convention on Cybercrime *Službeni glasnik Republike Srbije – Međunarodni ugovori* no. 19/2009.

ments to others for the commission of crimes against the security of computer data, this being a result of the harmonization of the CC with Article 6 of the Budapest Convention.

Damaging computer data and programs (Article 298 CC) is the first incrimination in the chapter of criminal offences against the security of computer data. The act of this crime consists of: a. deleting, b. changing, c. damaging, d. concealing or e. otherwise making unusable computer data or programs (as they are defined in the Article 112, Paragraph 17 and 19 CC).The act must be committed without authorization, i.e. by an unauthorized person or by a person who has no authority, or is not permitted by legal norms to undertake a particular act. The "deleting" is the removal from a computer, a computer system or a network the data or program which is the object of protection of this incrimination. The "changing" represents the act of partial altering of computer data or a program, which has a temporary or permanent character. The "damaging" is an act that partially disables the use of computer data or programs. The "concealing" is an act by which the computer data or program is moved to another, hidden location in the computer system. If none of the above has been undertaken, any other act, resulting in temporary or permanent inapplicability of computer data or programs shall be deemed as the act of perpetration. As it was emphasized in the literature, it is irrelevant which manner has been applied in the execution of such acts, whether – as is the case most frequently - by using a computer or in any other way, e.g. by physical or chemical action. It is important that by these acts computer data or programs are disabled to serve their purpose (Stojanović, 2016, 907).A criminal offence is deemed to have been committed by any of the alternatively listed acts, and in the case of the commission of several acts, only one crime is considered to have been commited, and not joint offences.[8] The consequence of a criminal offence is the unusability of computer data or a computer program, or the inability to access or use computer data or programs on the part of an authorized user. The perpetrator can be any person, while the act can be done only intentionally. For the basic form of the criminal offence, a fine or a prison sentence of up to one year is prescribed. The criminal offence is prescribed with two severe forms. First, if the material damage is caused in an amount exceeding four hundred and fifty thousand dinars (paragraph 2), then a prison sentence ranging from three months to three years is prescribed. Second, if the material damage is caused in an amount exceeding one million and five hundred thousand dinars (paragraph 3), then a sentence ranging from three months to five years of imprisonment is prescribed. Paragraph 4 imposes the obligatory seizure of equipment and devices used in the perpetration of the offence, if they are the property of the perpetrator.

Computer sabotage (Article 299 CC) is an incrimination in which the acts of execution encompass: a. entering, b. destroying, c. deleting, d. changing, e. damaging, f. concealing or g. otherwise making computer data or program unusable, or: a. damaging and b. destroying a computer or other device for electronic processing or data transmission undertaken with the intent to disable or significantly interfere with the electronic processing and transmission of data that are relevant to government authorities, public services, institutions, enterprises or other subjects. The "entering" is a process of inputting a new data or program into computer system, while "destroying "represents making computer data and programs completely and permanently unusable. Other acts of execution were explained in the previous incrimination from Article 298 CC and they have the same meaning. Another potential act of perpetrating is damaging or destroying a computer or other device for electronic processing and data transmission in order to disable or hinder the processing and transmission of data with specific relevance to the state authorities and public institutions. The object of the act includes computer data or programs, or a computer or other device for electronic processing and data transfer. A criminal offence is considered to have been committed by any act, and in the case of multiple

8 This also refers to all incriminations from this Chapter.

actions, there is only one offence. A criminal offence can be committed by any person. Premeditation is necessary, but also the intention to disable or hinder electronic processing and transfer of data of importance to state authorities and public institutions. A prison sentence of six months to five years is prescribed.

Creating and inserting computer viruses (Article 300 CC) constitutes a criminal offence which has two forms of execution acts. The first form of act is the creation of a computer virus (as it is defined in the Article 112, paragraph 20 CC) in order to insert it in a computer or a computer network, while the other act is inserting a computer virus on a computer or a computer network (it is not important whether the perpetrator made a computer virus or procured it in some other way Stojanović, 2016, 910; but there are opinions that the first form is a preparatory act for the execution of second form of the criminal offence, Đorđević, 2011, 179). The "creating" is the making of a computer virus, malicious software - computer program or a set of commands that temporarily or permanently damages or destroys certain data or a program, or temporarily or permanently disables the use of data or the functioning of a computer program, a computer system, or a computer network. The "inserting" is the process of inputting and self-installing a computer virus on a computer or a computer network through computer components (peripherals), or by using other computer, computer systems or networks. The perpetrator of the criminal offence can be any person, although a special knowledge and skills of the perpetrators are considered necessary to perform the act. In addition to premeditation, as a subjective element of the criminal offence, an intention to place a computer virus on a computer or a computer network is necessary. The consequence of the offence is the caused damage, and it does not have to be material damage (it is sufficient that entering of a computer virus had the adverse effects on the operating and functioning of the computer, Stojanović, 2016, 910). For the creation as an act of committing a crime, a fine or a sentence of imprisonment of up to six months is prescribed, while for inserting as act, a fine or prison sentence of up to two years. Paragraph 3 of this article stipulates that the equipment and devices used for committing the offence shall be seized.

Computer fraud (Article 301 CC) is an incrimination pertaining to the acts that include: a. entering the incorrect data, b. failing to enter the correct data, or c. concealing or d. otherwise falsely representing data and thereby affecting to result of electronic processing and transfer of data, with the intent of illegal acquiring of material gain for the perpetrator or some other person, thus causing material damage to another person. One of the four alternatively set acts of the basic form of this criminal offence, entering incorrect data, failing to enter the correct data, or otherwise concealing or falsely representing data has to be taken, in order to influence the result of the electronic processing or data transfer, at the same time having an intention to acquire illegal material gain for the perpetrator or another person, thus causing damage to another person. For the existence of this form of criminal offence it is not necessary for the perpetrator to achieve the intention and obtain illegal material gain for himself or another person, but it is necessary to cause material damage to another person. The perpetrator may be any person. In terms of subjective characteristics, in addition to premeditation, the intention to obtain illegal material gain for perpetrator or other person and to cause material damage to another person is required. For the basic form of this criminal offence a fine or imprisonment of up to three years is prescribed. Except the basic form, there are three more forms. Paragraphs 2 and 3provide for two more serious forms, when the amount of illegal property gain that is obtained exceeds the amount of four hundred fifty thousand, or, one million and five hundred thousand dinars. For the first serious form of offence, a prison sentence from one to eight years is prescribed, and for the second one from two to ten years of imprisonment. The easiest form is provided in paragraph 4. Namely, if the intention of the perpetrator was only to cause material damage to another person without the intention to

acquire illegal material gain for himself or another person, a fine or imprisonment of up to six months is prescribed.

This crime constitutes a particular form of criminal offence of fraud (Article 208 CC), but differs from it, first of all, since in this case there is no misleading of another person or keeping someone misled, and therefore the cases of computer fraud cannot be considered as a general criminal offence of fraud. The act of the criminal offense of fraud, which protects the property as a whole, consists in deceiving a person to do something (or not) to the detriment of his or someone else's property, which means that the act of execution does not cause direct damage to the property, but the passive subject is guided to do so (Stojanović, 2016, 911), in contrast to the criminal offence of computer fraud whose action involves entering incorrect data or failing to enter the correct data, that is, concealing or falsely displaying data in another way which may affect the result of electronic processing or data transfer. Regarding the way in which the criminal offense from Article 208 CC is defined, two possibilities of acts are foreseen: false presentation or concealment of facts or maintaining such deception about the facts (Đokić, 2017). For both criminal offenses there is an intention to obtain unlawful material gain and cause damage to another, the lighter and more severe forms are prescribed in a similar way, but the fundamental difference is in the way in which the act of execution is prescribed and this does not allow them to be covered by a single incrimination.

Unauthorized access to a protected computer, computer network and electronic data processing (Article 302 CC) is a criminal offence whose basic form implies acts of: a. unauthorized access to a protected computer or a computer network, or b. unauthorized access to electronic data processing. Thus, access to a computer or electronic data processing involves unauthorized access to a protected computer, i.e. acts that imply violation of existing security measures that are preventing access to a computer, computer system or network. Although the perpetrator can be any person, it is necessary for the offender to have special knowledge and skills in order to violate established measures of protection of the computer, computer system or network. For this basic form, a fine or imprisonment of up to six months is prescribed. The first severe form, provided for in paragraph 2, exists if the access to a protected computer or computer network, or unauthorized access to electronic data processing is taken with the aim to record and use certain data stored in a protected computer, computer system or network. Recording data from a protected computer after unauthorized access implies duplicating or transferring the computer data to a computer peripheral, or other computer or network. Using the computer data means utilization of data from a protected computer, computer system or network. For the existence of the crime, the modality of using the data is irrelevant (although this may be of relevance when imposing a sentence, Stojanović, 2016, 913). For the first severe form a fine or imprisonment of up to two years is prescribed. The second severe form, provided for in paragraph 3, refers to the occurrence of a hold-up or a serious disturbance in the functioning of electronic processing or transmission of data, or network, or the occurrence of other serious consequences due to the execution of the acts provided for in paragraph 1 of this Article. A hold-up involves a disruption in electronic processing or transmission of data, or a malfunction of a computer network of a short duration, and a serious functional disturbance implies the occurrence of consequences over a longer period, while the appearance of other serious consequences implies not only the consequences on the computer, computer system or network, but also all the potential consequences which are the result of unauthorized access to a computer, unauthorized access to electronic data processing, recording or using data obtained in an unauthorized manner. For this severe form a prison sentence of up to three years is prescribed.

Preventing and restricting access to the public computer network (Article 303 CC) is an incrimination that protects the freedom of communication and the right to be informed

through computers, computer systems and a public computer network (as it is defined in the Article 112, paragraph 18 of the CC). The acts of the basic form consist of: a. preventing or b. restricting access to the public computer network. Prevention means any act that over a shorter or longer period of time makes it impossible for a particular person to access the public computer network, i.e. to use a computer within public computer network. Restriction means any act that complicates or limits the access to the public computer network, via a computer or computer system. The perpetrator may be any person, and in terms of guilt, premeditation is necessary. For the basic form a fine or imprisonment of up to one year is prescribed. A more severe form is provided for in paragraph 2, if the prevention or restriction of access to the public computer network is carried out by an official in the discharge of his duty. For this form, a prison sentence of up to three years is prescribed.

Unauthorized use of a computer or computer network (Article 304 CC) is the least serious criminal offence in the chapter of criminal offences against the security of computer data. Prosecution for the offence shall be instigated by private action. The incriminated act consists of the unauthorized use of computers, computer systems or computer networks in order to acquire illegal material gain for the perpetrator or for others. The most common case in practice is "stealing the Internet time"- using the Internet without paying fees to an authorized provider (Stojanović, 2016, 914), or unauthorized use of a computer or a computer network of another person. The perpetrator may be any person, and the subjective plan requires premeditation and the intention to acquire illegal material gain, while for the existence of a criminal offence it is irrelevant whether the intention has been accomplished. The legislator prescribes a fine or a prison sentence of up to three months for this offence.

Creating, procuring and distributing equipment and devices for committing criminal offences against the security of computer data (Article 304a CC) is an incrimination, at first prescribed by the amendments and additions to the Criminal Code from 2009, aiming to criminalize a whole series of acts related to the production, procurement and distribution of equipment and devices, computer programs, computer codes or other computer data suitable for the commission of offences under this chapter. The act of this offence is set out alternatively and refers to: a. creating, b. purchasing, c. procuring for the use, d. importing, e. distributing or f. otherwise making available equipment, devices and computer programs designed for committing or at least primarily for the purpose of committing one of the criminal offences prescribed in to Articles 298 to 303 of the CC. In the second part of this paragraph, the legislator incriminates the same acts (creating, purchasing, procuring, importing, distributing or otherwise making available) for the computer codes or similar computer data through which it is possible to access the computer system or some of its parts with the intention to commit the above mentioned criminal offences. The perpetrator can be any person, and, in terms of guilt, premeditation is necessary. The subjective element also includes the intention to act for the purpose of committing criminal offences against the security of computer data. A prison sentence of six months to three years is prescribed. The less serious form is provided for in paragraph 2 and the fine or imprisonment of up to one year is prescribed, for the possession of the equipment, devices, computer programs, computer codes or similar data with the intention to be used for the commission of criminal offences under Articles 298 to 303 of the CC. Paragraph 3 imposes the mandatory seizure of items from paragraphs 1 and 2.

EFFECTIVENESS OF CRIMINAL JUSTICE MECHANISM DIRECTED ON CYBERCRIME

In the previous part all incriminations from the chapter of criminal offences against security of computer data were presented and analyzed, and, as we stated, they represent only one part of the phenomenon of cybercrime. These incriminations provide protection of the functioning of information technologies and enable users to use computers, computer systems and networks for permitted purposes. Criminal law, therefore, as ultimate ratio, prohibits behaviors that endanger the basics for the functioning of computer technology and protects the established rights of computer users.

Although, as already stated, cybercrime also includes other criminal offences, we have attempted to analyze the effectiveness of criminal justice mechanisms aimed at combating this part of cybercrime through the analysis of official data for criminal offences against the security of computer data. Such an analysis is necessary because this form of criminality is considered to be "new" and one of the "most dangerous forms of criminality", which is, in literature, characterized by a dynamic increase. Also, massive use of computers, access to the global network (Internet)[9] and the high degree of risk of victimization of computer users, makes the analysis of available data an indicator of the entire phenomenon of cybercrime and the effectiveness of mechanisms provided by criminal law.

However, according to the official data of the Statistical Office of the Republic of Serbia, in the ten-year period, only 202 crime reports were filed for the criminal offences against the security of computer data.[10] In the same period, a total number of 944,813 crimes reports was filed. This means that this part of cybercrime represents 0.000021% in the structure of criminality in the Republic of Serbia. The lowest number of reports was recorded in 2007 (8) and the highest in 2009 (45). The medium is 20.2 per year (Table 1, Figure 1).

Table 1. *Criminal offences against security of computer data: Crime Reports 2007-2016*
Source: Statistical Office of the Republic of Serbia (in all tables and figures)

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	**Total**
Number	8	25	45	20	22	15	28	9	14	16	**202**

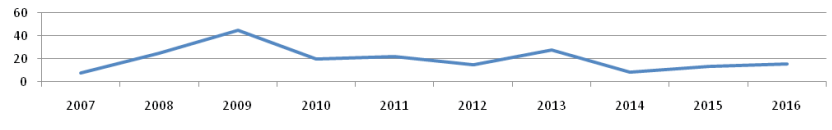

Figure 1. *Crime Reports 2007-2016*

In the structure of individual incriminations, most of crime reports were filed for two criminal offences: computer fraud (58) and unauthorized access to a protected computer, computer network and electronic data processing (54). They also records highest number in 2012 (21), i.e. 2009 (25). Some of other incriminations recorded can be defined only as "symbolic" (Table 2, Figure 2).

9 Study of usage of information and communicarion technology in 2017 in Serbia shows that 68.1% households own a computer, 68% have an Internet connection, http://publikacije.stat.gov.rs/G2017/PdfE/G20176006.pdf, Access: May 1st 2018.

10 Republički zavod za statistiku, Bilteni 629, 613, 603, 588, 576, 558, 546, 529, 514, 502, Punoletni učinioci krivičnih dela u Republici Srbiji, 2016 – prijave, optuženja i osude, Beograd, 2008 - 2017;

Table 2. *Criminal offences against security of computer data: Individual incriminations reported*

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	**Total**
Criminal offences/total	8	25	45	20	22	15	28	9	14	16	202
298 CC	4	4	4	-	3	2	4	4	2	2	29
299 CC	1	5	6	2	5	3	1	2	1	5	31
300 CC	-	-	-	4	-	-	-	1	2	-	7
301 CC	1	5	7	5	7	5	21	1	5	1	58
302 CC	2	6	25	6	-	5	2	1	3	4	54
303 CC	-	3	-	1	-	-	-	-	-	3	7
304 CC	-	2	3	2	6	-	-	-	-	-	13
305 CC	-	-	-	-	1	-	-	-	1	1	3

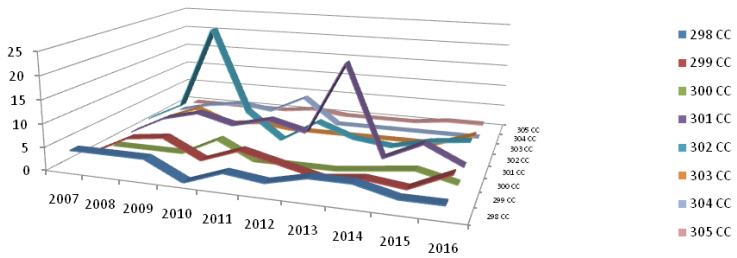

Figure 2. *Individual incriminations reported*

The number of accused persons shows that only 34.65% criminal offences recorded were prosecuted. The total number of 70 persons were accused of this form of cybercrime. The highest number (10) of accusations was recorded in 2008, 2011 and 2014, the smallest (3) in 2007 and 2015 (Table 3, Figure 3). All other crime reports were rejected, accusations were discharged or perpetrators remained unknown.

Table 3. *Criminal offences against security of computer data: Number of accused persons 2007-2016*

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	**Total**
Number	3	10	6	4	10	6	6	10	3	12	**70**

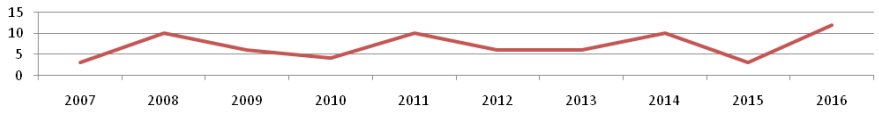

Figure 3. *Accused persons 2007-2016*

The total number of sentenced persons was forty five in the observed ten-year period. Excluding eleven persons sentenced to imprisonment and three to paying a fine (up to 100,000 dinars), all other persons were sentenced to suspended sentences (Table 4, Figure 4). The

highest number of sentenced persons (8) was recorded in 2014, the smallest (2) in 2007 and 2015. The medium is 4.5, as it was recorded in most of the observed years (4 or 5). Even in the year of 2009 when the number of crime records was the highest (45), the number of accused persons was small (6) and, consequently, the number of sentenced persons was only 4.

Table 4. *Criminal offences against security of computer data: Sentenced persons 2007-2016*

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	**Total**
Number	2	5	4	4	4	5	4	8	2	7	**45**

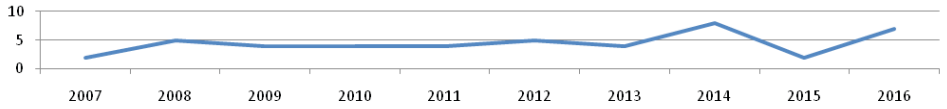

Figure 4. *Sentenced persons 2007-2016*

In the observed period only eleven sentences of imprisonment were pronounced, which renders the medium of 1.1 per year (Table 5, Figure 5). The highest number of imposed imprisonment sentences (4) was in 2012 and the minimal (1) in 2007, 2011, 2013, 2014 and 2016. In three years no imprisonment sentence was pronounced: 2009, 2010 and 2015. Among the imposed imprisonment sentences, six last up to one year, three sentences up to three months. Only three sentences of imprisonment last up to two or three years.

Table 5. *Criminal offences against security of computer data: Sentenced to imprisonment 2007-2016*

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	**Total**
Number	1	2	-	-	1	4	1	1	-	1	**11**

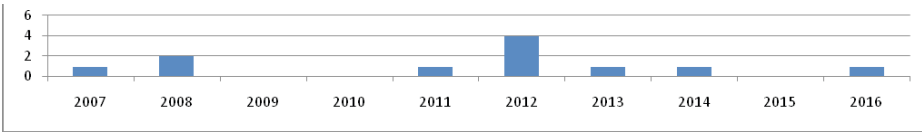

Figure 5. *Number of persons sentenced to imprisonment*

A short analysis of presented official data points to the conclusion that incriminations against security of computer data in overall criminality rate in the Republic of Serbia, in the observed ten-year period, do not confirm the general attitude in the literature that cybercrime represents "the most dangerous" criminality or criminality with a "dynamic growth". Total number of two hundred and two criminal offences reported, seventy persons accused, and forty-five persons sentenced (Figure 6): eleven to imprisonment, three to pay a fine and all others conditionally sentenced cannot confirm such an opinion. At the same time, the presented data are basic if we are to raise questions about effectiveness of criminal justice mechanism against cybercrime and to review the overall activities of the criminal justice authorities directed towards combating cybercrime.

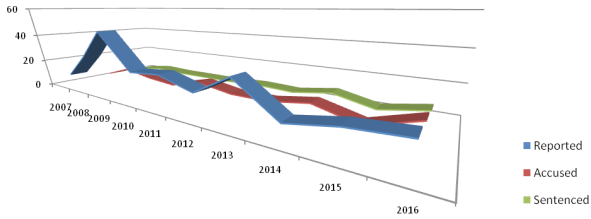

Figure 6. *Number of crime reports, accused persons and sentenced persons 2007-2016*

CONCLUDING REMARKS

Since 2003, when the Criminal Code was amended, the criminal legislation in the Republic of Serbia has contained incriminations against security of computer data. The 2006 Criminal Code contained a special chapter with criminal offences against security of computer data and additions were made twice: in 2009 and 2016. These incriminations "protect the use of information technology for permitted purposes, i.e. provide the protection for the functioning of information technology itself". The notion of cybercrime, as a wider term, besides these incriminations, also implies other criminal offences in which computers, computer systems, computer networks or computer data are the object or instruments of execution (acts).

The criminal law framework, which we have presented in the first part of the paper, represents a solid basis for opposing this part of the cybercrime. The system of incrimination is, to a large extent, aligned with the Budapest Convention against Cybercrime. General criticism can be addressed to the legislator with regard to the prescribed criminal sanctions (the question is: are they severe enough to deter potential perpetrators) but also to the practice of criminal justice mechanisms against the perpetrators of cybercrime.

The adoption of a special law, establishing special units within the Ministry of Internal Affairs, the Prosecutor's Office and the Court, determining the competencies of these bodies in case of criminal offences in which computer technology is used, harmonization of the normative sphere with the most important international acts in this field, represent positive aspects of activities aimed at confronting cybercrime.

However, there is no doubt that the organizational, personnel and technical capacities of the criminal justice authorities are inadequate to confront this form of criminal behavior.

The presented data on the number of reports, charges and types of court decisions, in the observed ten-year period in the Republic of Serbia, indicate that the criminal offences against the security of computer data are minimally represented in the structure of criminality, despite the attitude in the literature on the dynamic increase in the area of cybercrime. The symbolic number of charges, accusations and sentences can by no means indicate the effectiveness of criminal justice mechanisms for protection against cybercrime. On the contrary, it can open a whole series of questions about how to react to this form of criminal behavior.

In any case, a small number of filed criminal reports, unreported crimes, difficulties in detection, a large number of unknown perpetrators, a variety of manifestations, a high dark figure, lack of special knowledge and the need for permanent acquisition of new knowledge and skills for persons involved in detecting, proving and adjudicating of these crimes, the mild criminal policy of the legislature and the courts, all present the contemporary challenges that criminal justice mechanisms and authorities have to encounter in future.

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CRIMINAL PROTECTION AGAINST DOMESTIC VIOLENCE (pre crime concept and the doctrine of the European Court of Human Rights)

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Abstract: The process of harmonization of the national legal framework of the Republic of Serbia with ratified international documents necessarily results in the reform of the criminal legislation of the Republic of Serbia, through the modification of existing and the adoption of new legal texts. Compliance with international standards entails interventions in the field of substantive and procedural criminal law. Despite the efforts to fulfill certain international legal obligations, amending the normative framework must remain within the limits of basic criminal law principles, which implies both the appropriate quality of legal norms and their consistent integration into existing initial solutions. One of the many set criminal-political tasks is to provide more effective criminal protection against domestic violence, which is also confirmed by the adoption of the Law on the Prevention of Domestic Violence, in order to achieve better cooperation between the police and the public prosecutor as an extremely important factor of the efficiency of the criminal procedure and the realization of preventive aspect of criminal policy. However, the solutions of this law are largely distanced from a unique democratic criminal law and generally accepted national and international standards.

The legal aspect of incrimination of domestic violence, as well as the efficiency of criminal proceedings related to this criminal offence, requires a deeper theoretical analysis and critical review, especially when it comes to the provisions of the Law on Prevention of Domestic Violence and the model of the pre crime concept. The relevant issues can best be observed from the legal-dogmatic analysis of the criminal offense of domestic violence, then, the consideration of the newly introduced pre crime concept and the practice of the European Court of Human Rights, and finally, by pointing out the statistical indicators of the filed criminal charges, the number of victims and perpetrators of the criminal offence of domestic violence.

Keywords: family, violence, criminal offence and pre crime concept, efficiency of criminal proceeding.

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"Laws are worth to the extent
to which people
who are called to apply them
are worth",
Enrico Ferri

INTRODUCTION

The international aspect of human rights regulation represents the reflection of the Member States' comprehensive efforts regarding the regional aspect of human rights improvement to achieve, within a certain time limit, a high degree of harmonization of various national legislations with relevant international documents. The Republic of Serbia is one of them. When it comes to the international aspects which have a regional character, the proclaimed human rights do not stand for the mere "catalog" of the human rights of a country. Moreover, a unique "catalog" which contains the aspect of European legal order (as opposed to the legal order of a single country) is being created by achieving greater degree of harmonization with other countries. In line with the above, the path towards a unified, universal segment of human rights (Hammarberg, 2011; Hoffmann, 2009) has already been largely implemented. It will increase the level of its improvement through further active work of competent authorities. Also, the increased level of human rights improvement is manifested in achieving the ideal of equity as one of the most important international standards, especially in the process of reforming the criminal procedural legislation of the Republic of Serbia in general, but also in proceedings of violent crime, including domestic violence. From the point of view of universal, international aspect, the genesis of human rights development aims at achieving a unique human rights "catalog" that will be equal to everyone and that will be applicable worldwide, regardless of faith, skin color, gender, in other words, respecting the rights which prohibit discrimination on any ground.

The aforementioned ideology, for now, represents only the basic hypothesis, which has already laid the solid foundations of modern democracy through many international documents. They should be the basis of future unity and equality in the area of human rights. The mentioned hypothesis is also the starting point for the realization of protection against domestic violence. It is making its first international steps in the framework of protection of basic freedoms and rights such as the right to life, prohibition of torture, the right to equal legal protection, prohibition of discrimination, etc. It does not deal solely with domestic violence. Namely, the modern tendencies of criminal protection against domestic violence, as the ultima ratio of the normative mechanism for the protection of social values, and thus the protection against domestic violence, are using modern mechanisms of protection, both through the improvement of the post-crime concept and the pre-crime concept, which represents a novelty in the criminal legislation of the Republic of Serbia. Namely, effective criminal protection against domestic violence requires the realization of several factors, which, through levels of implementation and improvement, should provide adequate answers in the field of the fight against violent crime, or crime per se, especially in the preventive aspect of criminal policy.

The processes of improvement of the normative framework of the Republic of Serbia pose a serious issue of justification of the adoption of new legal solutions, and more importantly, of the realization of the effectiveness of the fight against violent crime.

In support of the aforementioned ascertainment there are the statistical indicators of filed criminal charges in the cases of domestic violence, as seen from the aspect of the efficiency of the criminal procedure (Skulić, 2014; Bejatovic, 2017), or the pre-investigative procedure, as well as from the aspect of the efficiency of the pre-crime concept, which should have the realization of the preventive aspect of criminal policy as its ratio legis. The correlation between the mentioned determinants is significant to a great extent, since it represents the indicators of the adequacy of the legal framework, efficient cooperation between the competent entities in the application of legal norms and the effectiveness in the field of combating violent crime.

CRIMINAL LEGAL ASPECTS OF DOMESTIC VIOLENCE

In the Republic of Serbia, criminal legal protection against domestic violence is achieved primarily through the criminalization referred to in Article 194 of the Criminal Code which defines the criminal offense of domestic violence. This criminal offense directly affects a family member who is the victim of another family member, but it attacks the family as such, thus destroying certain established family values that are of great social importance (Škulić 2012: 71). In addition to the protection provided by this criminalization, Serbia has recently adopted the Law on the Prevention of Domestic Violence, which, in order to enhance protection, deviates significantly from some important criminal principles and the framework of a democratic criminal law, based on the rule of law.

Domestic violence is a serious problem in modern societies. Therefore, there is an increasing number of national legislations that recognize this criminal offense, although criminal behavior can mainly be covered by existing criminalization (Stojanović, 2017: 618). The criminal offense of domestic violence was introduced in the legislation of Serbia in 2002. (Delić, 2012: 108). Before that, the cases of domestic violence in the field of criminal law were dealt with in the area of other criminal offenses, primarily violent behavior, light and serious bodily injuries, murder, endangerment of safety, etc. (Vukovic, 2012: 126). It is in a group of criminal offenses against marriage and family, and apart from the basic form, the criminal offense has one special and three heavier forms.

The basic form (Paragraph 1) exists when a person endangers the serenity, physical integrity or mental state of a member of his/her family using violence, threatening to attack life or body, or by impertinent or ruthless behavior. The prohibited action is alternatively set up and may consist of different activities. The application of violence should be understood as for other criminal offences that can be carried out in this way, which implies the use of physical force that results in the consequence of this crime. In the case of injuries to bodily integrity in the basic form, only the application of light bodily injury (for instance, slapping) is considered (Stojanović & Delić, 2017: 101). The threat as a form of psychological coercion is qualified here, in other words, a person threatens to attack one's life or body. It exists when a victim is being informed about a precisely determined offence, murder, or bodily injury. The threat should be serious, realistic and possible to be achieved from the position of the one who is being threatened. Impertinent behavior is the behavior that violates the generally accepted rules of cultural and customary behavior, when the other person insults or ignores, while the reckless behavior is the manifestation of the utter disrespect of another person (his psychological or physical abuse[3]) (Stojanović & Delić, 2017: 101-102).

3 The defendant, with his careless behavior, jeopardized the tranquility of his unmarried wife by grabbing the victim with hand for a nose and pulling it, then cutting off her hair with scissors. Judgment of the Higher Court in Belgrade Kž1. 138/14 and the judgment of the Third Basic Court in Belgrade K. 7817/13. Referenced by: A. Trešnjev, Collection of court decisions from criminal law, book 10, Belgrade 2016, 62-63.

Apart from the action, the appropriate consequence is necessary, that is, jeopardizing the tranquility, physical integrity or mental state of another person. It is a consequence that poses a particular danger, and since it has been recognized as the criminal offense, it must be determined in each particular case. What causes doubt here are certain notions. While the notion of physical integrity is not disputable, certain dilemmas can be caused by the interpretations of serenity, and especially the mental state. Serenity signifies the feeling of physical and psychological security, while the mental state could be considered as the absence of fear, excitement, and the like (Lazarević, 2006: 550). In the court practice, the view is that it is not necessary for the victim to feel vulnerable, but this endangerment is assessed objectively with regard to the taken action (Stojanović, 2017: 619-620).

Both in theory and in the court practice, it is considered that, given the nature of this criminalization, the action is essentially a whole series of related acts, but in some cases, it could be only one action if it can cause that effect. However, whether taking one action in any case will suffice to cause the effect depends on what form of enforcement action is concerned (Delic, 2012: 111). While in the use of gross violence and the use of a qualified threat in some cases it is sufficient that the action is taken once and in order to endanger the tranquility, physical integrity or mental state of the victim, impertinent and ruthless behavior can, as a rule, cause that endangerment only when it is repeated several times (Stojanović, 2017: 619). In the court practice, it is accepted that the successive undertaking of several acts of execution in relation to the same family member entails responsibility for only one criminal offense of domestic violence (Tresnjev, 2013: 89-90).

The victim is a member of the family, and when it comes to the basic form, the member of the family must be adult[4]. Also, the perpetrator can only be a member of the family, while when it comes to the mens rea, the existence of intent is necessary. For the basic form, imprisonment is set in the range of three months to three years.

A severe form exists when, during the execution of the basic form, a person used a weapon, a dangerous tool or other means suitable to severely injure one's body or jeopardize one's health. A prison sentence of six months to five years is prescribed.

Another severe form exists if severe bodily injury has occurred due to the primary or first severe form (it must be included in the offender's negligence) or severe health hazards[5], or the crime was done to a minor (a person under the age of eighteen). Imprisonment of two to ten years is prescribed for this severe form.

Finally, Paragraph 5 also provides for the special form of criminal offense consisting in violating the measure of protection against domestic violence determined by the court on the basis of the law governing family relations, i.e. Family Law. This law itself determines the concept of domestic violence and provides for a series of measures of protection against domestic violence, for example, restraining order for a member of the family, prohibition of further harassment of family members, eviction from family apartment or home, etc. This form is punishable by imprisonment of three months to three years and a fine.

In addition to the aforementioned criminalization, the protection from domestic violence is ensured, at least normatively, by the Law on the Prevention of Domestic Violence adopted by the National Assembly at the end of 2016. The aim of this law is to regulate the organiza-

4 The notion of the family member is defined in Article 112, Paragraph 28 of the Criminal Code, as well as Article 197 of the Family Law. In particular, the concept of a family member is broadly and imprecisely determined by the Family Law, as it also includes those who have been, or are still, in an emotional or sexual relationship.

5 Severe bodily injuries as severe consequences will exist even when the injured person is injured during escape in order to avoid conflict with her husband. Judgment of the District Court in Belgrade Kž. 2978/06 and the judgment of the Basic Court in Mladenovac K. 225/06. Referenced by: I. Simic, A. Tresnjev, Collection of court decisions from criminal law, book 8, Belgrade 2008, 124-125.

tion and treatment of national authorities and institutions in a general and unified manner and thereby enable effective prevention of domestic violence and urgent, timely and effective protection and support to victims of domestic violence (Article 2). However, the way in which the law provides protection against domestic violence, by foreseeing certain measures to detect whether there is the *direct threat* of domestic violence as well as the set of measures that are applied when direct danger is detected and which can be applied in relation to a *possible perpetrator* of the domestic violence, by the introduction of categories of direct danger of domestic violence, as well as the possible perpetrator, constitute a serious violation of some of the most important standards of contemporary criminal law (Ristivojević, 2017: 16-17). In addition, the question is to what extent this new law, as an expression of the specialization of criminal law (Kolarić & Marković: 54), which also allows appropriate pre-crime measures, contributed to the suppression of the commission of this criminal offense. There will be more words about this in the continuation of the paper.

PRE CRIME CONCEPT AND THE DOCTRINE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The improvement of the normative framework of the Republic of Serbia regarding the protection of women from violence in partner relations and family resulted from the process of the accession of the Republic of Serbia to the European Union, as well as from the harmonization of Chapter 23 with the European acquis (Skulic, 2017, Kolaric, 2017, Kolakovic-Bojovic, 2017). One of the mentioned measures is the implementation of a range of activities to protect gender equality and to prevent gender-based violence. Accordingly, the international framework has not explicitly foreseen protection against domestic violence from the beginning, but the protection through proclamations of fundamental freedoms and rights. Namely, the protection of fundamental freedoms and rights sets its foundations in the Universal Declaration of Human Rights[6], which protects the basic values of society through the right to life, the prohibition of torture, the right to privacy, subliming family relations as well, with the intention of achieving a comprehensive peace and as pointed out in the introductory part of the Universal Declaration: "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." These rights also manifest themselves through binding international documents, the International Covenant on Civil and Political Rights[7] being one of them. The UN's Convention on Elimination of all forms of Discrimination against Women (CEDAW) manifests itself as the stepping stone of recognizing violence against women and later domestic violence and stands as one of the first international document that proclaims prohibition of discrimination against women. Namely, the prohibition of discrimination against women, or the realization of the human right to prohibit discrimination on the basis of gender, constitutes the international basis for recognizing discrimination against women, which will later be explicitly identified as gender-based violence in the so-called Istanbul Convention, which was ratified by the Republic of Serbia as well. Accordingly, the Convention (CEDAW) established a Committee to monitor the implementation of the Convention, which adopted the General Recommendation No. 19 in 1992, according to which violence against women constitutes a form of discrimination in the sense of Article 1 of the Convention and the elimination of all forms of discrimination against women. The significance of the General Recom-

6 Adopted and proclaimed by the Resolution of General Assembly of the United Nations No. 217 A (III) of 10th December 1948

7 Adopted on 16th December 1966, and entered into force on 23rd March 1976Official Gazette of SFRJ - international contracts No 7/71)

mendation No. 19 is a formal legal justification of the state's positive obligations in combating gender-based and domestic violence, the successful path of which the Republic of Serbia has started, firstly by ratifying the so-called Istanbul Convention, and later by the harmonization of the normative framework of the Republic of Serbia with the ratified international document. Namely, the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence[8] - the Istanbul Convention has explicitly foreseen the prohibition of all forms of violence against women and domestic violence as well as the proclamation of equality between women and men as one of the key elements of the preventive criminal policy of violence against women. The preventive aspects of the criminal policy of violent crime are also proclaimed by the Recommendation of the Council of Europe Rec (2002) 5, according to which it is required from the states to work on the prevention, investigation and punishment of violence, regardless of whether those offences were committed by a state or a private person, and to work on the protection of the victim (Article II). In accordance with the requirements of the Istanbul Convention, the Republic of Serbia brought the Law on the Prevention of Domestic Violence, which manifests its key determinants within the framework of preventive criminal policy, in accordance with international standards in the fight against violent crime. However, it should be noted that the adoption of the Istanbul Convention was preceded by the long-standing practice of the European Court of Human Rights, the recognition of increasing violence against women and domestic violence, and the necessity of normative intervention at the international and national levels with the aim of fighting against the prevention of violent crime, which altogether resulted in adopting the Istanbul Convention. However, a critical overview of the Law on the Prevention of Domestic Violence through the pre-crime concept and the exercise of the fundamental freedoms and rights set in the European Convention for the Protection of Basic Freedoms and Rights[9] raises many questions of justification, the effectiveness of the legal text, especially in the light of the primary protection of victims of domestic violence and relations with the realization of basic rights provided for by the European Convention. The determinant of the harmonization of the Law on the Prevention of Domestic Violence with the standards of the European Convention, as well as the issue of the effectiveness of the implementation of the legal norm in the pre-crime concept as an instrument for the realization of the preventive aspect of criminal policy can also be seen in relation to the number of criminal charges which were subsequently filed in the pre investigative phase for the criminal offences of domestic violence, through a critical review, and firstly through challenging the starting hypothesis of the ratio legis of the Law on the Prevention of Domestic Violence as an adequate normative framework of the realization of preventive aspects of domestic violence. Namely, the issue of harmonization of the Law on the Prevention of Domestic Violence with the explicit of the European Convention can be determined through the standards of the right to a fair trial and the right to liberty and security of a person. European standards for the protection of fundamental freedoms and rights manifest the sensitive sphere of conflict and the restriction of fundamental freedoms and rights of individuals, which, as the ratio legis, provide protection of basic social values both through normative proclamations, and through the effective functioning of competent entities in case of violation of fundamental freedoms and rights, especially in the segment of preventive action of the state, which is especially significant in cases of violent behavior. Namely, the European Convention established a dualist concept of obligations that the state is obliged to fulfill in order to protect fundamental freedoms and rights through the negative and positive obligations of the state. Negative obligations are manifested in the need to refrain

8 Signed in Istanbul on 11th May 2011. The Republic of Serbia ratified it by Confirmation Law adopted on 31st October 2013.

9 The law was published in the Official Gazette of Serbia and Montenegro ()- International Contracts, No. 9/2003, 5/2005, 7/2005- Corrigendum, Official Gazette – International contracts No. 12/2010

from interfering with the exercise of rights, which is particularly evident in the sphere of family relations and the right to privacy. Positive obligations are manifested in the necessity of undertaking measures with the aim of preventive action in cases of violent behavior as well as taking measures by the state when a certain right was violated. The preventive aspect of the positive obligations of the Republic of Serbia in accordance with the European Convention was fulfilled through the ratification of the Istanbul Convention, respectively through the adoption of the Law on the Prevention of Domestic Violence, while the post-crime concept was improved by the adoption of the Code of Criminal Procedure in 2011, which even today follows the tendencies of improvement in the field of fight against crime (Skulić, 2013; Bejatovic, 2014) in general, including violent crime.

Accordingly, the European Court of Human Rights (Cvorovic, 2016; Schabas, 2015; Wolfrum and Deutsch, 2007) did not recognize the responsibility for violating human rights in the form of family violence, but as a violation of fundamental freedoms and rights such as the right to life, prohibition of torture, etc. In case of the court's decision in the case Opuz v, Turkey (2009) the court, for the first time recognized domestic violence, that is, violence against women as a violation of Article 14 of the European convention, or the discrimination based on gender and the state's obligations through protection (preventive aspect), prosecution, effective investigation (Bejatovic, 2008) and ultimately punishment for domestic violence, which is sublimated in the pre-crime and post-crime concept of improvement of the normative framework of the Republic of Serbia. We may conclude that the abovementioned court decision is a kind of a turning point in the practice of this court and that it opened numerous issues and cases of domestic violence in which women are victims and that they should no longer close their eyes in these cases, but in accordance with the positive obligations of the states, we should improve our normative framework both in the preventive and repressive aspect of the criminal policy of domestic violence; since, otherwise, the state's restraint from reactions in case of domestic violence will be considered as a violation of the right to respect private and family life (Article 8 of the EC). We may conclude that the doctrine of the European Court of Human Rights has greatly contributed to the shift of borders when it comes to recognizing domestic violence and the later protection. The improvement of the normative framework through the Istanbul Convention, and a critical review when it comes to the proclamations of the Law on the Prevention of Domestic Violence manifest themselves as a consequence. Namely, the proclamations of domestic violence as a pre-crime concept enable a critical review, great illogicality from the standpoint of European standards, as well as the effectiveness of the legal text when it comes to the preventive aspect of criminal policy. A critical review of the proclamations of the Law on the Prevention of Domestic Violence is manifested mostly in the segment of conceptual determinations of direct danger and risk assessment, the possible perpetrator and the retention of a possible perpetrator in a competent organizational unit with a special emphasis on European standards. Namely, the pre-crime concept as it arises from its conceptual determination is based on the preventive aspect of criminal policy and, as such, relies more on assumptions, on possibilities than on the facts, so the logical aspects would be more applied to the possibility of the commission of a criminal offense, to a possible the perpetrator as such, and to the existence of direct danger and risk assessment that can lead to the commission of a criminal offense. Accordingly, we may conclude that the premise of reaching preventive conclusions in the pre crime concept leaves space for different reflections, which precisely through the segment of indeterminacy pose a danger of making an adequate conclusion which would correspond to the realization of the preventive aspect of the criminal policy of domestic violence. The aspect of indeterminacy is manifested in the risk assessment of the direct danger and in the conceptual determination of a possible perpetrator. The Law on the Prevention of Domestic Violence states that the direct danger of domestic violence occurs when the behavior of a possible perpetrator and other

circumstances lead to the conclusion that in the impending time, he is ready to commit for the first time or to repeat domestic violence (Article 3, Paragraph 2 of the Law on Prevention of Domestic Violence). Accordingly, the competent police officer shall assess the risk of direct danger based on the available information and in accordance with the imprecise term as soon as possible (Article 16, Paragraph 1 of the LPDV). However, the legislator does not specify what information is being processed, but in the following paragraph he outlines the circumstances that the competent police officer takes into account when assessing the risk of direct danger[10]. We believe that the existence of nothing but notifications and circumstances that are to be taken into account when assessing the risk of direct danger without the existence of a certain degree of suspicion as well as the facts on the basis of which an adequate conclusion could be drawn on the existence of direct danger are considered to be imprecise. Such a legal proclamation leads to the conclusion of the possible existence, but also of the absence of the risk of direct danger, which in most cases leads to a positive answer, which is confirmed by the statistical indicators of the imposed emergency measures since the beginning of the application of the LPDV. In addition to the illogicalities that the legislator anticipates when assessing risks, there are doubts when it comes to the possible perpetrator, which is introduced for the first time in our legislation. The possible perpetrator and the suspect are not equal, and the procedural provisions of the Code of Criminal Procedure in the case of conceptual determination cannot be applied, which makes it difficult to specify the notion of a possible perpetrator. Correlation can only exist in relation to the legal proclamation of the existence of direct danger of domestic violence (Article 3, Paragraph 2 of the LPDV) for which there must be a possible perpetrator, but it is extremely illogical to determine an unknown term with an also unknown term such as direct danger. Accordingly, a logical conclusion about a possible perpetrator and the assessment of the direct risk of danger that must first be carried out by a competent police officer, and then, on the basis of his assessment, it is also evaluated by a public prosecutor who can file a motion to the court to extend the emergency measure (Article 18 Paragraph 2 of the LPDV), without precise determinations, may mean that any person may be regarded as a possible perpetrator or not, as has been said for determining the existence of the direct threat of violence. Also, in addition to the notion of a possible perpetrator, the legislator also proclaims the perpetrator who is brought to the competent organizational unit of the police and to whom the authorized police officer issues an order imposing an emergency measure (Article 17 of the LPDV) (Kolarić & Marković, 2017: 58) so such a casuistic approach, without the existence of any degree of doubt in the conceptual definition, is deemed extremely illogical and legally unsafe.

Also, a significant issue when it comes to the adoption of the Law on the Prevention of Domestic Violence is its compliance with the European standards for the protection of fundamental freedoms and rights, especially in the segment of respecting the right to liberty and security of a person as an international standard, in case of keeping persons in the competent organizational unit for the maximum of eight hours (Article 14, Paragraph 2 of the LPDV) and the issue of the defense counsel as an explicit for a fair trial. Namely, the European Convention proclaims the right to liberty and security of a person (Article 5 of the EC) and through the doctrinal foundations defines the key criteria for the distinction of deprivation and restrictions of liberty of movement, as well as the conceptual notion of deprivation of

10 When assessing risks, particular consideration is given to whether a potential perpetrator has, earlier or immediately before assessing risks, committed domestic violence and whether he is ready to repeat it, whether he threatened with murder or suicide, whether he has a weapon, whether he is mentally ill or uses psychoactive substances, whether there is a conflict over custody of the child or the manner of maintaining personal relationships between the child and the parent who is the possible perpetrator, whether the possible perpetrator is pronounced an urgent measure or a certain measure of protection against domestic violence, whether the victim feelsfear and how the victim assesses the risk of violence (Article 16 Paragraph 2 of the LPDV).

liberty. Namely, according to the doctrine of the European Court, the deprivation of liberty is considered a measure of a public authority by which the individual is held in a limited place for a certain period of time, contrary or without his free will. As criteria for the distinction between deprivation and restrictions on the liberty of movement, the European Court notes that they are different only in degree and intensity, and not by nature and essence, and are regulated by different articles of the EC, the deprivation of liberty by Article 5 of the EC, while the restriction of liberty of movement is related to Article 2 of the Fourth Additional Protocol of the EC. The criteria that must be considered when deciding on a distinct definition of deprivation or restriction of liberty[11] are the manner, duration and effect of measures taken by the public authority. In the case of deprivation of liberty, the European Court of Human Rights has ruled that when it comes to the first criterion as a mode of territorial restraint, the determination of the institution, or the space in which the person is physically restricted, is taken into account. The determination involves a closed area, such as a prison, a detention center, a police room, vehicles, or any enclosed space, in which a person is physically restricted to move in accordance with a police order (Banović, 2013) or another authority. In accordance with the above criteria, especially taking into account retention against one's will and the closed space, the consequences of the measure taken by the public authorities, it is undeniable that, in case of holding up to eight hours according to LPDV, this is a deprivation of liberty under the European Convention[12]. Accordingly, in the case of deprivation of liberty, it is necessary to provide to the person guarantees which are specified in the Article 5 of the EC, such as informing him of his right regarding the reasons for the deprivation of liberty, the right to notify the person of his choice, the exercise of the rights in the habeas corpus procedure, the rights relating to the defense counsel, while the legislator only foresees that the potential perpetrator must be instructed to be able to contact him and use the services of defense counsel and legal assistance in accordance with the Constitution and laws of the Republic of Serbia (Article 14, Paragraph 3 of the LPDV). However, although it is undisputed that it is a matter of deprivation of liberty, the question is which rights should be presented to him, given that he is not in a position of a suspect, but a possible perpetrator, and we do not have a criminal offense, but a preventive aspect or a prevented offence and how to exercise certain rights considering that the legislator does not prescribe an act determining retention, which would be subject to an appeal in the habeas corpus procedure. These determinants certainly imply the need for further reform when it comes to the Law on the Prevention of Domestic Violence.

The Law on the Prevention of Domestic Violence is a lex specialis in relation to the Criminal Code, the Code of Criminal Procedure, the Civil Procedure Code, the Family Law and the Police Act (Article 5 of the LPDV). The correlation between the LPDV and the Code of Criminal Procedure is significant from several aspects, especially the segment of the realization of the preventive aspect of criminal policy and the realization of efficiency both in the pre-crime and post-crime concept. Namely, a justified question arises as to whether the adoption of the LPDV has reduced the number of criminal charges for domestic violence offenses, which should be achieved by passing a legal text and introducing a pre-crime concept. Also, the efficiency of state bodies acting under the LPDV and the Code of Criminal Procedure (Bejatovic, 2015) require a rapid, effective, coordinated action by state authorities (Sokovic, Cvorovic, & Turanjanin, 2017) both in pre-crime and post-crime concepts (Bejatovic, 2010),

11 LPDV in its special provisions of criminal procedure provides for urgency in deciding on measures to secure the presence of the defendant (Article 23 of LPDV), so in accordance with the distinctive definition of the European Court, the measure of restraining order, meeting or communicating with a particular person and visiting certain places and measures of the prohibitions of leaving the place of residence are considered restrictions of freedom of movement, while the measure of banning the abandonment of the apartment would be considered a measure of deprivation of liberty.

12 In the case of pronouncing emergency measures according to LPDV, it is a limitation of the freedom of movement (Cvorovic, 2017)

in a word, the realization of efficiency as an international standard. However, the reform of the criminal procedural legislation of the Republic of Serbia (Bejatovic, 2014) brought a great number of novelties, increasing the powers of both public prosecutors and the police (Cvorovic, 2013), and one of the arguments of insufficient efficiency of the LPDV could be the fact that state bodies the Prosecutor's Office and the police in the aforementioned legal texts have too many cases to deal with. In other words, there is the question whether public prosecutors have the capacity to fulfill their tasks and implement an international standard. Accordingly, better protection of victims of violence and even domestic violence can best be achieved by better rules of criminal procedure, i.e. better rules in the pre-crime concept and more adequate practice of officials involved of this procedure (Škulić, 2014: 50). Also, numerous factors influence the efficiency of the procedure. These are: legal norm, organization of the judiciary, mutual relations and cooperation of criminal procedural subjects. In order to achieve the desired efficiency in the pre-crime concept and in the post-crime concept, the legal norm is one of the key factors of realization. In other words, the quality of the legal norm, its adequate application in law practice, the degree of abuse of rights, as well as the organization and functioning of judicial institutions that implement the legal norm determine the efficiency of the state in the fight against crime in general, including the crime of domestic violence (Bejatović, 2014: 20).

Statistical indicators in 2017, and in previous years, indicate an increase in the perpetration of criminal acts of domestic violence, a greater number of criminal reports for the criminal offense of domestic violence in previous years by more than 140% (Kolaric & Markovic, 2018: 63) as well as the application of measures of deprivation of liberty, such as police arrest, which is very important when it comes to the implementation of the preventive aspect of the criminal policy of domestic violence. Accordingly, it is justified to raise the question of the effectiveness of the legal text, that is, whether the LPDV achieved the expected results or the critical tone of the argumentation of the above proclamations indicates the necessity of their further study, not only through the doctrinal foundation, but also through the normative elaboration.

CONCLUSION

In spite of the efforts to provide increased protection from this negative social phenomenon, even in addition to the special criminalization of domestic violence, by the adoption of the new Law on the Prevention of Domestic Violence, statistical data show that even with the implementation of newly introduced urgent pre-crime measures, the situation has not changed in practice. On the contrary, by introducing certain categories, such as a possible perpetrator or the direct danger of domestic violence, which were inspired by more effective protection of victims of domestic violence, serious steps have been taken towards an undemocratic and even totalitarian criminal law aimed at protecting each individual at any price and regardless of the standards reached in the substantive and procedural criminal law. Therefore, it can be expected that this new law will cause more damage to the legal position of citizens, endangering the relevant international standards than it will bring benefits that only in principle provide victims of domestic violence. A legal-state criminal law, as well as a rational criminal policy, should be protected from such excesses that seriously undermine the level reached in respecting the fundamental human freedoms and rights.

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VIOLENT BEHAVIOUR AT SPORTS EVENTS – LEGAL THEORY AND PRACTICAL ASPECTS[1]

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Abstract: The paper analyses the implementation of legal provisions pertaining to perpetrators of offences against public order at sports events. Conceived in such a way, the research uses methodologically appropriate procedures in order to identify and scientifically describe crucial problems in the actions of state authorities responsible for preventing and combating violence in sports events. The paper also analyses the actions of state authorities which pronounce, implement and supervise the implementation of the protective measures prohibiting attendance at certain sports events for those who commit criminal offences of this nature. The paper applies the method of content analysis, statistical method, comparative and formal-logical analyses, in order to analyze a number of examples from the practice of courts, the public prosecutor's office and the Ministry of the Interior, offering at the same time an analysis of the findings of current theoretical research and relevant legal acts and regulations. The following problems have been identified as crucial in exerting control over the abovementioned measures, and these have been noted to occur in the procedures of: pronouncing and determining prescribed sanctions and measures, their implementation and control over their implementation. The conclusions drawn from these findings have confirmed that the main causes of the described problems include: a) discrepancy and frequent modifications of legal regulations, 2) frequent use of the principle of opportunity and lenient sanctioning policy of the courts, 3) poor coordination among state authorities which participate in suppressing this phenomenon, and 4) complicated procedures for sanctioning the persons who violate the protective measure. The consequence of the noted problems is a low level of achieving the goals of general and special prevention, and therefore absence of efficiency and effectiveness in the prevention and suppression of this phenomenon.

Keywords: violence, sports events, public gathering, criminal offence, protective measure.

INTRODUCTION

The Council of Europe (hereinafter: CoE) adopted the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches (hereinafter: the Convention) in Strasbourg as far back as 1985. The Convention represented a response of European states to the tragedy which had taken place at the Belgian stadium Heysel on 29

1 The paper resulted from research within the project «Criminality in Serbia and Instruments of Government Reaction» implemented by the Academy of Criminalistic and Police Studies in Belgrade, 2015-2019 scientific research cycle.
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May 1985.[3] The adoption of the Convention was preceded by several significant documents of CoE, among which the most prominent place belongs to the Recommendation of the Parliamentary Assembly of 983. It especially emphasizes the significance of prevention through a range of educational and cultural measures aimed at reducing violence in the society.

The main objective of the Convention was to encourage all member states of the CoE and other states-signatories to the Convention to take appropriate measures and, in accordance with their constitutional powers, include provisions which could prevent unlawful conduct at sports events in their respective legislation (С. Марковић, 2015:603-620).

The Convention pertains to three main areas: prevention, cooperation and judicial actions. Preventive measures encompass cooperation between police and sports clubs in the preparatory stages of international matches, organizing consultations between interested parties two weeks prior to a scheduled game at the latest, measures of physical separation of supporters of different teams, control of access to the stadium and prohibition of alcohol and potentially hazardous things. The Convention also stresses the need to ensure that the design and physical features of the stadia provide for the safety of the visitors; it envisages constructing barriers or fences and facilitating actions of law enforcement forces. As for cooperation, it envisages that relevant security authorities should establish contacts before international matches in order to identify and prevent possible dangers and minimize possible risks. As far as judicial measures are concerned, it envisages cooperation among judicial authorities, i.e. ensuring the insight in court records of persons against whom procedures for violence have been initiated (С. Марковић, 2016:135).

The Socialist Federative Republic of Yugoslavia ratified the Convention in 1990. [4] It was a basis for passing the 2003 Act on Prevention of Violence and Misbehaviour at Sport Events (hereinafter: APV) which was subject to multiple amendments and additions due to its (in) efficient implementation (2005, 2007, 2009 and 2013). It was, at the same time, the first act of this kind in Serbia. It adopted certain solutions suggested in the Convention and other documents adopted by the European Union.

Upon the adoption of the Law on Amendments and Additions to the Criminal Code (hereinafter: LAACC) in September 2009, Article 20 of the APV ceased to apply and, at the same time, an incrimination was introduced for the criminal offence of violent behavior during sports events in Article 344a CC. The extent to which the modifications and amendments of 2009 were inappropriate (Д. Коларић, 2015:12-13) and populist was soon indicated by new amendments and additions to the CC[5] in December 2009 when the title of the offence was changed to '*violent behavior at sporting event or public gathering*'. The basic form pertains to all public gatherings and not only sport manifestations. According to some authors, this amendment was fully justified because such conduct, although now present at sports events, is likely to occur and has already occurred at other public gatherings (political and other rallies, concerts, manifestations), and it would be completely illogical to treat the same conduct at sports events and at other public gatherings with the same or similar possible outcome differently and to stipulate different kinds of liability and different sanctions (Ђ. Ђорђевић, 2010:35).

3 The final match of the 1985 European Cup was played in Heysel Stadium, Brussels, between Liverpool and Juventus. Supporters of Liverpool provoked disorder at the spectator stands in the stadium and the incident claimed the lives of 39 Juventus fans and injured around 800.

4 Закон о ратификацији Европске конвенције о насиљу и недоличном понашању гледалаца на спортским приредбама, посебно на фудбалским утакмицама, *Службени лист СФРЈ - Међународни уговори, по*. 9/1990.

5 *Службени гласник РС* no. 111/09

THE NOTION OF A SPORTS EVENT AND PUBLIC GATHERING

The Act on Sport defines the notion of sports event as a specific, planned, prepared and undertaken sport event limited in time for which there is public interest and in which several athletes participate.[6] Sports events are organized in the form of sport manifestations (festivals, conventions, reviews, games, etc.) and sports competitions.[7] The sports events as defined in the APV also include sports competitions and sporting manifestations. As we shall see later, it can be inferred from existing court decisions that friendly games without spectators or training matches are not deemed to be sporting events.

At the moment when the amendments and additions to the 2009 CC expanded the definition of this criminal offence, the notion of 'public assembly' was defined in the Public Assembly Act.[8] A public assembly was deemed to encompass "organizing and holding a meeting or other type of gathering in a location adequate for the purpose". However, the Constitutional Court passed a ruling ИУз-204/2013 on 9 April 2015 which established that the Act was not in keeping with the Constitution. The Act ceased to be valid on 23 October 2015, on the date of publication of the decision in Official Gazette of the RS. Attention should be drawn to the fact that the Act continued to be implemented for more than six months after its unconstitutional nature had been established, and that no law applied to or regulated this area within the legal framework of Serbia for more than three months after the decision had been published Official Gazette of the RS. A new Act on Public Assembly[9] came into force on 5 February 2016. It does not define the notion of public assembly but rather the notion of public gathering. However, sections 11, 13 and 15 refer to the term 'assembly'. Regardless of the interpretations of the provisions of the new act from which it can be deduced that the legislator deems an assembly to denote gathering of citizens, we find it necessary to harmonize the concept with the criminal offence from Article 344a CC. Discrepancies in legal provisions and terminology lead to major problems in practice. We shall here mention, e.g., acquittals resulting from the fact that violence occurred during a friendly game of football without spectators, that is, a public assembly. A crucial question that the court had to decide on was whether the friendly game is a form of sports event or a public assembly. Namely, the authorities in charge of criminal proceedings in each case have to establish whether the action of criminal offence was perpetrated at a sports event or a public assembly because it is a mandatory element in defining the criminal offence. This leads to different interpretations of the provisions of the Public Assembly Act. Public assembly, in terms of the Act, is considered to be the gathering of more than 20 persons for the purpose of expressing, achieving and promoting state, political, social, and national beliefs and objectives, other freedoms and rights in a democratic society, as well as other forms of gathering the purpose of which is to further religious, cultural, humanitarian, sport, entertainment and other interests.

6 Закон о спорту (Sports Act), *Службени гласник РС,* no. 10/2016, Article 3.
7 *Ibid*, Article 156.
8 *Службени гласник РС*, nos. 51/92, 53/93, 67/93, 17/99, 33/99, 48/94, *Службени лист СРЈ*, no. 21/2001 - Одлука Савезног уставног суда, *Службени гласник РС*, nos. 29/2001, 101/2005, 88/2015 - Одлука Уставног суда.
9 *Службени гласник РС,* no. *6/2016*

THE CRIMINAL OFFENCE OF 'VIOLENT BEHAVIOUR AT SPORTING EVENTS OR PUBLIC GATHERINGS'

The basic form of the criminal offence defined in paragraph one of Article 344a CC stipulates that whoever physically assaults or engages in an affray participants in a sporting event or public gathering perpetrates violence or causes damage to property of substantial value when arriving to or departing from a sports event or a public gathering; brings into a sports facility or throws onto the sports grounds, among spectators or participants in a public gathering objects, pyrotechnical articles or other explosive, inflammable or harmful substances that may cause bodily injury or jeopardize the participants in a sports event or a public assembly; make an unauthorized entry to the sports grounds or a section of the stadium intended for supporters of the opposing team and provokes violence, damages the sports facility, its equipment, devices and installations; behaves in a way or uses slogans at a sporting event or a public gathering to provoke national, racial, religious or some other type of hatred or intolerance based on some other ground for discrimination which results in violence or a physical altercation with participants.

The protected object of the criminal offence of violent behavior at sporting events or public gatherings are not the lives and bodies of the individuals who attend a sporting event or a public gathering, but the safety and security of all participants in the sporting event and protection against violence which could endanger all the participants in the sporting event or the public gathering, which distinguishes this criminal offence from criminal offences against life and body.

The act of perpetration consists of the following activities: 1) physical assault or physical fight with participants in a sports event or public gathering, 2) committing violence, 3) damage to property of substantial value when arriving to or departing from the sports event or public gathering, 4) bringing to a sports facility and throwing among viewers of objects, pyrotechnic articles or other explosive, inflammable or harmful substances which can cause bodily injury or endanger the health of participants in a sporting event or a public gathering, 5) unauthorized entry into the sports field and a part of the theater intended for opposing fans and provoking violence, 6) damage to a sports facility, its equipment, devices and installations, and 7) certain behaviour or use of slogans at a sporting event or a public gathering provoking national, racial, religious or other hatred or intolerance based on a discriminatory criterion resulting in violence or physical confrontation among the participants.

The perpetrator can be any other person, which means even a participant in a sporting event or a public assembly. The relevant form of liability is mens rea, direct or possible. For the perpetration of the basic form of the criminal offence the law stipulates the sentence of six months' to five years' imprisonment and a fine. Thus in the court decision *Кж.* 1-5836/10 of 27th January 2011, the Appellate Court in Kragujevac expressed the view that if a participant in a sporting event (in the specific case, the coach of a football club) commits the criminal offence in question, it shall represent an aggravating circumstance. Namely, after the injured party, referee D. M., had signalled the end of the game, he stood at the centre of the pitch, waiting for the players to leave for the changing rooms; the defendant approached him, addressing him with multiple insults, swore, grabbed his face and the neck and caused him light bodily injuries in the form of lacerations under the eyelid and on the right side of the mandible, and then slapped him in the face three times. The court of the first instance pronounced a suspended sentence. The Appellate Court in Kragujevac changed this decision granting the appeal of the prosecutor and sentenced the defendant to imprisonment. The rationale of the decision stated that "the court of the first instance failed to give adequate significance to the circumstances which to a certain extent aggravate the criminal offence of which the defen-

dant had been convicted as compared to other criminal offences of this kind. The Court did not sufficiently acknowledge the gravity of the perpetrated act, the persistence and insolence shown by the offender, the fact that the defendant is a coach and that he was obliged to pay special attention to his behaviour since in this capacity he is responsible for upbringing of footballers and is obliged to critically evaluate their possible bad conduct. The defendant neglected this obligation of his and instead of acting in an exemplary way, he attacked the injured party in his capacity as a football referee without any cause or reason." [10]

For the existence of this criminal offence it is necessary that the defendant undertakes the incriminating action at a sports event or a public gathering, but not in a situation when no viewers, i.e. no spectators, are present at a friendly football match.[11] The same view was taken in the ruling of the Appellate Court in Belgrade. In this case, the first-instance decision of the Higher Court in Valjevo imposed a suspended sentence and a fine on the defendant. However, acting upon an appeal, the Appellate Court took a different view. A friendly football match played on an auxiliary pitch were only members of the two football clubs were present, which was not announced to the sports association and had no referees delegated by the sports association for this game, where no delegates were present at the match and no minutes were taken could not be regarded as a sports event or a public gathering in terms of Article 2 paragraph 1 of the APV nor could the defendant and the damaged be treated as participants in the sporting event in terms of section 2 paragraph 4 of the mentioned law.[12]

The legal description of the criminal offence in Article 344a para.1 CC implies that criminal offence is perpetrated also by a person who among other things commits violence or damages property of greater value when arriving to or leaving a sports event or a public gathering, hence the observed criminal offence exists regardless of whether the action was undertaken in the stadium or outside it. In the specific case, it was a unique situation and the indictment submitted by the public prosecutor charged the defendants stating that it was actually upon departing from the event that they committed the criminal offence in question, which implies that the actions of the criminal offence could have been taken both in the stadium and in its vicinity, or upon leaving the stadium where the sports event had taken place. Thus the Appellate Court in Nis has taken a view contrary to the view of the first-degree court which had acquitted the defendants because they had perpetrated the act outside the stadium where the sports event had taken place. The decision stated that "… the view of the first-instance court is completely unacceptable, as well as the related vague reasons pertaining to crucial facts which were subject to proving, that the charges against the defendant S. were rejected because throwing a rock in the direction of a police officer was undertaken outside the stadium, therefore there was no evidence that he had committed the criminal offence of violent conduct at a sports event as per Article 344a paragraph 1 CC." [13]

10 The ruling of the High Court in Kraljevo (Пресуда Вишег суда у Краљеву) 2К. 186/10 dtd 27/9/2010 and the ruling of the Appellate Court in Kragujevac (пресуда Апелационог суда у Крагујевцу) Кж. 1-5836/10 dtd 27/1/2011 - *Bulletin of the High Court in Kraljevo* (Билтен Вишег суда у Краљеву), no. 1/2011, Интермех, The author of the sentence: Milan Davidovic, judge of the High Court in Kraljevo.

11 The ruling of the Appellate Court in Novi Sad (Пресуда Апелационог суда у Новом Саду) КЖ. 1 552/15 dtd 2 October 2015 confirming the ruling of the High Court in Novi Sad (пресуда Вишег суда у Новом Саду) К 124/13 dtd 19 March 2015 – *Bulletin of the High Court in Novi Sad* (Билтен Вишег суда у Новом Саду), no. 6/2015, Интермех, Београд. The author of the sentence: Biljana Delic, judge of the High Court in Novi Sad.

12 The ruling of the Appellate Court in Belgrade (Пресуда Апелационог суда у Београду) Кж1-221/13 dtd 05 February 2013 – The ruling of the High Court in Valjevo (Пресуда Вишег суда у Ваљеву) К.бр.81/12 dtd 12 December 2012 – *Bulletin of the Appellate Court in Belgrade* (Билтен Апелационог суда у Београду) no. 5/2013, Интермех, Београд. The author of the sentence: Nebojsa Pavlovic, senior court associate of the Appellate Court in Belgrade.

13 The decision of the Appellate Court in Nis (Решење Апелационог суда у Нишу), Кж. 54/14 dtd 2 July 2014.

Article 344a paragraph 2 provides for the first aggravated form of the criminal offence of violent behaviour at a sports event or a public assembly which exists whenever the offence is committed in a group. This aggravated form of the offence is punishable by one to eight years of imprisonment. The aggravating circumstance is acting in a group and this circumstance must be encompassed by the mens rea of the perpetrator. The group comprises at least three persons who have joined together to commit criminal offences either continuously or occasionally and which does not have to have predefined roles of its members, continuity of membership or a complex structure (Article 112 para. 22 CC RS).

Paragraph 3 of this section stipulates the second aggravated form the criminal offence of violent behaviour at a sporting event or a public gathering. It is the situation in which an individual commits the said offence as a ringleader of a group which perpetrates the criminal offence of violent behaviour of at a sporting event or a public gathering. The punishment prescribed for the ringleader (the person who leads the group in actions) is imprisonment of three to twelve years. In order to establish liability for this form of criminal offence, it is necessary for the perpetrator of the criminal offence at the time of perpetration to be aware that he/she is the ringleader of the group and that he/she wants to act as the ringleader. The necessary prerequisite of the mens rea includes this circumstance (as a qualifying circumstance).

Article 344a para. 4 CC also envisages the third aggravated form of the criminal offence of violent behaviour at a sporting event or a public gathering which exists if the perpetration of the basic form of the criminal offence of violent behaviour at a sporting event or public gathering has led to riots during which any person sustains grave bodily injury or any property of substantial value is damaged. The law prescribes that the offender in such cases shall be punished with imprisonment of two to ten years. Grave bodily harm may be inflicted either to the person against whom violence at a sports event is directed or to another person who may be a participant in the sports event, but also to an accidental passer-by. With respect to causing grave bodily harm, for establishing the guilt of the perpetrator, it is necessary to prove negligence (З. Стојановић, Н. Делић, 2013:303).[14] As regards damage to property of a substantial value, in order to establish liability of the perpetrator it is necessary that at the moment of perpetration there is negligence on the part of the perpetrator regarding the damage to property resulting from violence at a sports event.

We find that if grave bodily injury is inflicted with premeditation but during riots resulting from the perpetration of the basic form of the criminal offence from section 344a, there is a joinder of two criminal offences, grave bodily injury and the basic form of violent behaviour at a sports event or a public gathering. Such view was also taken by the High Court of Cassation. When grave bodily injury results from the actions of the defendant, with direct intent to inflict injury to the injured party, who is a participant in a sports event and during the event, and without causing disorder then the defendant has committed the criminal offence of violent behaviour at a sports event or public gathering under Article 344a para. 1 CC and the criminal offence of causing grave bodily injury under Article 121 para. 1 CC in a joinder. [15] However, there are instances of different court decisions. Thus, in another case, the Appellate Court in Nis in a similar situation, when the defendant inflicted grave bodily injury with premeditation at a sports event and was convicted in the first instance for the commitment of the criminal act from Article 344a para. 4 in relation to para. 1 CC, changed the decision and convicted the defendant only of perpetrating the criminal offence from Article 121 CC, justifying the decision by stating that in order to establish the existence of the aggravated form of the

14 For further reading on grave bodily harm aggravated by death see: Д. Коларић; Кривично дело убиства, Службени гласник, Београд, 2008, pp. 174-188.

15 The ruling of the Supreme Court of Cassation (Пресуда Врховног касационог суда) Кзз 1123/2014 dtd 20 November 2014, verified at the session of the Criminal Division of the Supreme Court of Cassation of 6 June 2016.

criminal offence of violent behaviour at a sports event as per Article 344a para 4 in relation to para. 1 CC a necessary prerequisite was the that there was a consequence reflected in causing riots and that the grave bodily injury was inflicted on another person as result of causing riots at the sports event. Since invoking riots was absent from the actions of the defendant who had caused grave bodily injury to another person, only legal features of the criminal offence of grave bodily injury under Article 121 para. 1 CC were present. [16]

Paragraph 5 of Article 344a CC envisages a special form of the criminal offence of violent behaviour at a sporting event or a public gathering which exists if an officer or a liable person, upon organizing the sports event or public gathering, fails to implement appropriate security measures in order to prevent or stop riots, and therefore endangers the life and limb of people or property of substantial value. The law provides that the perpetrator of this special form of criminal offence shall be punishable by imprisonment from three months to three years and a fine.

PROTECTIVE MEASURE OF 'BAN ON ATTENDINGCERTAIN SPORTING EVENTS'

A perpetrator of the criminal offence committed at a sports event faces a mandatory measure which means imposing a 'ban on attending certain sporting events'. It is the criminal sanction introduced by the Law on Amendments and Additions to the Criminal Code in September 2009 in order to prevent violence at sporting events (Д. Коларић, 2014:491).

It is implemented in such a way that the perpetrator of the criminal offence is obliged to personally report to an official in the local police service prior to the beginning of certain sporting events, or in a police station in the area where the perpetrator finds himself and to stay on their premises for the duration of the sporting event. In relation to this, question arises concerning the principal, organizational and technical nature. Firstly, this actually represents a kind of preventive police detention. 'To stay' actually in this case means to be deprived of liberty. Secondly, the accommodation facilities in police departments or stations are limited, and the presence of other persons on the premises may interfere with their normal operation (З. Стојановић, 2013:367). A special problem may arise from making a register of the implementation of this measure given the possibility to report to any local police department (station) in the country (in the area where a person finds himself) (Ђ. Ђорђевић, 2011:162).

The court determines the duration of the measure, which cannot be shorter than one or longer than five years, effective two days after the decision's coming into force, but not including the time spent in prison. [17] The latest amendments to the CC in 2016 in Article 340a CC incriminated the violation of or failure to enforce a final court decision of the ban as a preventive measure, prescribing a fine or punishment of imprisonment of up to six months. This criminal offence was introduced because of our negative experience and problems anticipated in practice (Д. Коларић, 2017:27) but the dilemma remains whether we have achieved the objective with it.

In the justification of incriminating this criminal offence in the Bill AACC it was stated "… that the objective is to ensure sanctioning of the violation of the ban which certain protective measures contain. According to the existing law, there are no sanctions for violating certain prohibitions deriving from some protective measures. For violating other prohibitions, a cer-

16 The ruling of the Appellate Court of Nis (Пресуда Апелационог суда у Нишу) Кж бр. 1041/14 dtd 23 October 2014 – *Bulletin* of the High Court in Nis (Билтен Вишег суда у Нишу), no. 33/2015, Интермех, Београд
17 CC, Article 89.b

tain type of sanctioning is reflected in the fact that the court - upon imposing a suspended sentence - may rule that it will be revoked if the convict violates the ban implied in the protective measure (Articles 85 and 86 CC). However, there is the need to incriminate such a criminal offence in cases where the courts do not impose suspended sentences." [18]

Namely, as far as the protective measure of "a mandatory ban on attending certain sporting events" is concerned, whenever the court pronounces a suspended sentence, it is obliged to rule that the sentence shall be revoked if the perpetrator violates the prohibition on attending certain sporting events, or if he fails to fulfill his duty to report to the probation officer in the local police department or a police station.[19] However, in practice, the procedure for revoking suspended sentences is very rarely initiated regardless of numerous violations of the protective measure, probably because it is complicated. [20] The police, who are in charge, based on the court decision, to supervise the execution of the protective measure, when they establish that the defendant has failed to report to the police station at the appointed time or if they establish that the defendant has violated the protective measure and attended a sporting event at the time of the prohibition, should notify the relevant court and the responsible public prosecutor's office about it. The public prosecutor's office may address the court of the first instance with a request to initiate revocation. The court, after holding a session, may decline the prosecutor's request if it finds that there are no grounds for revoking the suspended sentence and in doing so it may in its official capacity warn the defendant who does not fulfill the obligations of protective supervision or extends the duration of protective supervision or replace previous obligations with others. This means that the court can decline the request in case when it establishes that the convicted person does not comply with obligations from the court ruling. Thus on 2 October 2016, during a football match, the injured party – a player who got the yellow card for foul play was physically attacked by the defendant – the player of the opposing team who had approached him from behind and hit him with closed fist in the face, resulting in grave bodily injuries including "a fractured nose bone with dislocation and scratching, with a bruise in the inner corner of the eye and in the region of the left cheekbone". The Higher Court in Valjevo in its decision К.бр.31/17 of 13 September 2017 convicted R. J. from Valjevo because of committing the criminal offence under Article 344a paragraph 1 CC and sentenced him to a six months' imprisonment suspended for two years and a fine in daily amounts (30 daily amounts – the amount being 500 dinars) and the protective measure of "a ban on attending certain sporting events, that is, football matches of the FC M. for the duration of one year". After pronouncing the sentence the parties waived the right to appeal so that the decision became effective on the same day. The decision was forwarded to the Police Department in Valjevo on 9 October 2017 for the purpose of implementing the security measure. A police officer interviewed the convict on 19 October 2017 and warned him about the prohibition and duties arising from the decision. On 5 November 2017 the convict failed to report to the Police Department of Valjevo before and during the game played by the football club M from Valjevo. The responsible public prosecutor's office and the court were duly notified about it. The Higher Public Prosecutor's office filed a request for the revocation of the suspended sentence. The Higher Court in Valjevo, although it established that the convict R. J. had not fulfilled the duty envisaged in the abovementioned decision, declined the request and extended the duration of the security measure for additional six months. [21]

18 *Предлог закона о измени и допунама КЗ* (The Bill on Amending the Criminal Code), adopted at the 17th session of the Republic of Serbia Government, on 9 November 2016
19 CC, Article 89.b
20 See: CPC, Articles 545-551.
21 The ruling of the High Court of Valjevo (Пресуда Вишег суда у Ваљеву), К.бр.5/18 dtd 26 March 2018.

It is obvious from the above example that the convict had perpetrated the criminal offence of violent behaviour at a sporting event or a public gathering under Article 344a paragraph 1 CC and the criminal offence of causing grave bodily injury as stipulated in Article 121 paragraph 1 CC in a joinder. However, the views that are indisputable in legal theory, but also taken by the decisions of appellate courts, are not always implemented in practice of higher courts and public prosecutors' offices.

The court can also adopt the request to initiate revocation of the suspended sentence and enforce the punishment determined upon conviction. Thus the suspended sentence pronounced to the defendant T. M., convicted by the decision of the Higher Court in Valjevo К.бр.29/15 of 12 November 2015 of the criminal offence under Article 344a para. 1 CC because of the failure to fulfill obligations from Article 545 para. 1 item 1 of the CPC in relation to Article 89b para 4 in relation to para 2 CC, was revoked, imposing at the same time the sentence of six months' imprisonment which the defendant was to serve upon effectiveness of the decision.[22] Namely, the Police Department of Valjevo in its written communication 05-88/16-5 of 24 October 2016 notified the Higher Public Prosecutor's Office in Valjevo that the defendant T. M. had violated the protective measure by failing to report in the police station on 23 October 2016 before the beginning of the football match which he was not allowed to attend and committed the offence from the Act on Public Order by insulting the players. In this way he failed to fulfill the duty arising from the pronounced protective measure and violated the ban. The Higher Public Prosecutor's office filed a request for revoking the suspended punishment which was ruled by the court.

In the period of two years (2015-2016) 273 reports were submitted for the perpetration of the criminal offence under Article 344a CC. Out of this number, 23 were filed against unknown perpetrators, and 24 persons were under age at the time of perpetration. The public prosecutor decided to dismiss 94 complaints, 56 out of which based on the principle of opportunity. In the same period, taking into account the criminal reports from the earlier period, 338 persons were charged and 252 convicted. The overall number of 250 men and 2 women were convicted. There were 37 or 15% of imprisonment sentences (out of which 30 sentences to imprisonment of up to 6 months), house arrest for 21 persons or 8%, 165 or 65% suspended sentences, 28 or 11% fines, and one person was sentenced to community work. [23] Regardless of the fact that the trial for this criminal offence is actually within the jurisdiction of the higher court, we see that the punitive policy is overtly lenient. Almost 2/3 of convictions are to probation, and ¾ of prison sentences are to up to 6 months. Can such sanctioning policy have effect on the prevention of violence at sports events? If we add that one in five criminal reports is dismissed based on the principle of opportunity, and that one in seven is dismissed for other reasons, we believe it cannot.

The criminal offence of *violating prohibition imposed by protective measure* will hardly give positive effects. Firstly, the prescribed punishment is lenient, so that the effect of general prevention will not occur. Secondly, the criminal offence pertains to the violation of ban deriving from the protective measure. In this case, it is the prohibition of attending certain sports events. What happens when the convict does not violate the prohibition but fails to fulfill the duty imposed on him by the protective measure i.e. when he fails to report immediately before the beginning of a sporting event to a police officer and stay on the police premises for the duration of the sporting event? We find that in such cases there is no criminal offence because the criminal offence relates only to the violation of the ban imposed by the protective measure. Thirdly, what is the probability that the police will find out about every person who

22 The ruling of the High Court of Valjevo (Пресуда Вишег суда у Ваљеву), К.бр.44/16 dtd 22 December 2016 and the ruling of the Appellate Court in Belgrade Кж1 65/2017 dtd 13 February 2017.
23 Data provided by the Statistical Office of the Republic of Serbia.

fails to fulfill the duty envisaged in this protective measure and gather sufficient evidence to prove that they have violated the prohibition. Fourthly, practice shows that even criminal procedures for criminal offences punishable by strict punishments last long. What will the effect of punishment (either a fine or a suspended sentence, as it is clear that the punishment of deprivation of liberty will be pronounced only rarely) on the perpetrator be if it is pronounced several years after the breach of protective measure? Does not the existing practice show that in such cases the procedure for misdemeanor is significantly more efficient? Within the first 6 months of the implementation of the APV, there were 772 requests for initiating misdemeanor proceedings for violation of urgent measures or for committing the violation from section 36 para 1 APV, out of which 624 persons were convicted, 586 sentenced to imprisonment,[24] 34 to fines and 4 persons were warned, although the law does not envisage a warning for this type of violation, whereas 32 persons were acquitted of misdemeanor charges.[25] An analysis of sentencing policy in respect of other criminal offences indicates that such efficiency cannot be expected in criminal proceedings, especially when the prescribed punishments are primarily fines and imprisonment sentences of up to six months.

It should also be pointed out that for the violation under Article 23 of the APV the sanction includes a mandatory protective security measure of banning attendance to certain sporting events. This protective measure is prescribed in Article 52 paragraph 1 item 9 of the Misdemeanour Law (Д. Коларић, С. Марковић, 2018:57) and Article 63 of the same act envisages that the prohibition of attending certain sporting events encompasses the obligation of the offender to immediately before the beginning of certain sports events personally report to an official in the local police department or a police station in the area in which the offender finds himself and to stay on the premises for the duration of the sporting event. The protective measure may be pronounced for one to eight years and the convicted person who fails to fulfill this obligation shall be punished by thirty to sixty days' imprisonment.

CLOSING CONSIDERATIONS

Several conclusions can be drawn from the considered subject matter.

First, it is necessary to harmonize the terms used in the Criminal Code, which refer to "violent behaviour at sporting events or public gatherings" with the terms used in the Law on Public Assembly which does not define the notion of 'public assembly' and represents lex specialis for this subject matter. It defines the notion of a public gathering which is in keeping with the Constitution of the Republic of Serbia, and which guarantees freedom of gathering as one of the basic human rights. Mutual discrepancy of the two acts may result in the already mentioned problems in proving the existence of the criminal offence.

Second, it should be clearly pointed out that this criminal offence does not apply to friendly matches played without audience. This view was taken by appellate courts, yet some first-instance courts insist on criminal prosecution of the persons who commit violence even

24 Within the first six months of the implementation of the Law on Prevention of Violence (LPV) the total number of 586 persons were sentenced to 13863 days of imprisonment for committing misdemeanour from section 36 para. 1, averaging at 23.6 days of prison per defendant. The sentence of 20 days' imprisonment was pronounced in 332 cases, from 21 to 40 in 176 cases and from 41 to 60 days in 78 cases. It is interesting that the Court for Misdemeanors in Belgrade in two cases sentenced the defendants to the highest legally envisaged punishments of 90 days (60+30) due to joinder with misdemeanour from section 9 para. 1 of the Act on Public Order (APO) (the decisions Прн. 39/17 of 25/11/2017 and Прн 738/17 of 28/7/2017).

25 Data obtained from the RS MI at the request for free access to information of public interest, document no. 037-50/17 of 14/12/2017.

in such events. Also, if grave bodily injury is inflicted with premeditation but not during riots caused by perpetration of the basic form of the criminal offence under Article 344a, there are two criminal offences in a joinder, grave bodily injury as per Article 121 CC and the basic form of violent behaviour at sporting event or public gathering. It can be concluded from numerous examples that lower-instance courts pass different rulings, that is, that they recognize only the criminal offence from Article 344a. This means that it is necessary to ensure continued professional development of public prosecutors and judges.

Third, the procedure for revocation of suspended sentences in cases of violation of the protective measure of "a ban on attending certain sporting events" is complicated. It calls for a high level of coordination between the police, public prosecutor and courts, and then conducting new court proceedings, whereupon the court does not have to revoke the suspended sentence even if it establishes that there has been a breach of protective measure.

Four, we find that the new criminal offence that has recently been introduced in our criminal law and pertains to violation of the ban imposed as part of the protective measure will not bring significant improvement in complying with protective measures because lenient sanctions are frequently imposed (fines or imprisonment sentences of up to six months), and the conducted research indicated that even for the criminal offence under Article 344a where the basic form is punishable by a significantly stricter punishment, the punishment of imprisonment of six months to five years and a fine, the courts have passed suspended sentences in more than 65% of the cases and that the public prosecutors beforehand dismiss 20% of criminal complaints by applying the principle of opportunity. We can assume what the penal statistics will be like as regards this new criminal offence.

We are of an opinion that the state must find a much more efficient, effective and economical way to prevent and suppress violence at sporting events and public gatherings. We have seen that the Act on the Prevention of Domestic Violence efficiently resolved the problem of violating urgent measures through misdemeanor proceedings. Perhaps it is a good way to sanction the perpetrators who violate protective measures. An argument for a possible objection that in this way in our legal system misdemeanor norms would be used to sanction violations of measures arising from criminal law would be that criminal sanctions are used against the persons who violate measures pronounced in civil lawsuits.

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THE NEW DEAL OF FENTANYL: A COMPARISON BETWEEN THE U.S AND THE EUROPEAN CRIMINAL MARKETS

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Abstract: Fentanyl is a Schedule I synthetic opioid used in medicine. In the U.S., illegally produced fentanyl, along with fentanyl analogues, New Psychoactive Substances (NPS) - newly available drugs whose chemical composition is being altered to skirt the law - are used by traffickers to adulterate mainly heroin, but also other illegal drugs contributing to the current "opioid epidemic". Fentanyl is purchased mainly via online (surface web and Darknet crypto-markets) from China - exploiting the discrepancies among laws between China and the U.S. and shipped via postal mail or private courier. Detection is made difficult due to the increased traffic volume in the mail system after the growing of e-commerce at a global level. Traffickers are exploiting the mail system vulnerability in detection. Traditional organized crime, mostly Mexican Drug Trafficking Organizations (DTO) and other actors, what U.S. authorities label as "non-cartel affiliated individuals", are involved in fentanyl and fentanyl analogues trafficking. In Europe, traffickers use fentanyl to replace heroin mainly through clandestine production and illegal diversion from legitimate supply chains. Recent studies provide evidence of fentanyl being sold through crypto-markets in Europe, proceeding from European vendors. Nevertheless, in Europe, the identity of the actors involved in the online business and their possible connection to organized criminal groups is unclear. This paper studies fentanyl criminal markets in the United States and in Europe to delineate future scenarios.

Keywords: Fentanyl, Fentanyl analogues, New Psychoactive Substances (NPS), Internet, Darknet, Crypto-markets.

INTRODUCTION & METHODOLOGY

This paper presents preliminary results from research carried out by RISSC within the Narcomap Project and other on-going projects. The projects seek to improve the capacity to generate operational knowledge regarding criminal markets involving NPS and plant-based drugs. Their intent is deepening the possible existing interconnections and distances between online and offline, trafficking routes, supply chain, human criminal factor involved and modus operandi.

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This paper reviews the current status of fentanyl criminal markets in the United States and in the European Union with the objective of delineating future scenarios within the illicit opioids supply chains by defragmenting and mining publicly available intelligence (EMCDDA, DEA, UNODC, INCB, among others). By triangulating statistical and qualitative data from official sources, the paper describes:

- Fentanyl detection and use: when, where, how, has fentanyl entered illegal criminal markets;
- The impact of fentanyl in terms of consumption and fatalities;
- Origin, transportation, distribution, human criminal factor involved and the role of the Internet.

The paper is divided up in the following sections:

- The U.S.:
    - Fentanyl and fentanyl analogues: detection and use in U.S. markets;
    - The human toll: fentanyl related deaths in the U.S.;
    - Origin, transportation, distribution and human criminal factor involved in the U.S.;
    - The role of the Internet.
- The European Union:
    - Fentanyl and fentanyl analogues: detection and use in European markets;
    - The human toll: fentanyl related deaths in Europe;
    - Origin, transportation, distribution and human criminal factor involved: Europe;
    - The role of the Internet.
- Conclusions and discussion;
- References.

THE U.S.FENTANYL AND FENTANYL ANALOGUES: DETECTION AND USE IN U.S. MARKETS

In the United States, since the late 1990's, the use/abuse of opioids and consequent overdose deaths have been on the rise resulting in a public health crisis of historic proportions: the so called "opioid epidemic" (National Institute on Drug Abuse, NIDA, 2018; Humphreys et.al, 2018). Opioids, as a category of drugs include regulated and controlled opiates such as opium, morphine, heroin, prescription analgesics and synthetic drugs, mainly fentanyl and methadone. Opioids attach to the human body's "opioid receptors" - mainly in the brain but also in other parts of the body - contributing to alleviate pain or delivering a euphoric effect. Opioids have different effects on users depending on the medical or addictive consumption involved (Voung et al., 2009; Chou et al., 2009; Marshall et al., 2017; Rich, 2018).[2] According

2 Opioids are characterized by two psychological properties that distinguish them from other addictive substances: tolerance and withdrawal. Opioids regular consumption can make tolerance and withdrawal manifest within days or weeks. Tolerance refers to the need to constantly increase the dose of the substance in order to get the same effect. Withdrawal is "the extremely uncomfortable feeling" resulting once a user who has developed tolerance ceases to assume the substance, abruptly. Users can be driven to do extreme actions to avoid or overcome withdrawal (Rich, 2018).

to the U.S. Centers for Disease Control and Prevention (Centers for Disease Control and Prevention, CDC, Heroin Overdose Data, 2018) this public health crisis started in the late 1990s and more than 350,000 people have died from an overdose involving an opioid between 1999 to 2016. Both, legitimate and criminal actors got involved in the marketing of opioids contributing to this crisis:

- Physicians started increasingly to prescribe opioid analgesics (i.e. Oxycontin) because they are effective in reducing pain, low cost and whose effects are long lasting (Voung et al., 2009)[3]. Some pharmaceutical companies -based on questionable studies- were involved in assuring the physicians' community that patients would not have turned addicted to prescription analgesics as long as their pain was relieved (Quinones, 2015, pp. 92, 93). The lack of risk of addiction eventually proved to be questionable, but over-prescription, diversion and misuse of prescription analgesics became widespread (Quinones, 2015, p. 267; NIDA, 2018).

- In early 2000s approximately, the U.S. illegal heroin market experienced a "historic shift" with Mexican black tar heroin supply reaching the East Coast under the control of Mexican Drug Trafficking Organization (Mexican DTOs). This represented "re-drawing the basic structure of the heroin market that existed in the prior decades" in the East Coast traditionally dominated by Colombian DTOs (Diaz-Briseno, 2010). Heroin availability increased resulting in competitive prices, enhanced purity, growing abuse and overdose cases (Diaz-Briseno, 2010). Heroin overdose deaths started to peak since 2010 onwards maintaining an increasing trend.

At some point in time a "synergy between (prescription) pills and heroin happened" and rural, remote and suburban areas of the country were reached and "flooded" with heroin supply turning heroin addiction "mainstream" like never before (Quinones, 2015, pp.193, 195). According to CDC data, heroin related overdose deaths increased fivefold between 2010 and 2016. Meanwhile, prescription-opioids overdose deaths reached 200,000 in 2016, five times the number than in 1999 (CDC, 2018). To put in context, this represents approximately five times the entire population of The Liechtenstein (38.155, medium variant, UNdata, 2018).

THE HUMAN TOLL: FENTANYL RELATED DEATHS IN THE U.S.

Since 2013, the "opioid epidemic" has been exacerbated by the introduction and mixing of fentanyl and fentanyl analogues with heroin and other drugs (Drug Enforcement Administration, DEA, 2017; CDC, 2018). Of the total 63,632 people who died in the U.S. from drug overdose in 2016 - including illicit drugs such as heroin and prescription opioids - 19,413 these fatalities (30,5% of the total) were attributed to synthetic opioids other than methadone, mainly fentanyl (CDC, 2017).

Fentanyl is a Schedule I synthetic opioid used in medicine as an analgesic[4]. Fentanyl analogues are often newly available substances that can be classified under a group known in academic literature as New Psychoactive Substances (NPS). NPS as a term reunites a wide range of different chemical compound families like synthetic cannabinoids, synthetic cathinones

3 U.S. Senator Claire MacCaskill in an interview reported by G. Garrison on Polifact Missouri on the 10 May, 2017, compared the U.S. prescribed opioid analgesics consumption to the global one: the U.S. has approximately 4.4% of the global population and in 2015 consumed 173,332 kilograms of prescribed opioid analgesics, of the global total of 574,693 kilograms, representing the 30.2% of global consumption.
4 Fentanyl was first synthesized in1959, and was placed under international control as a Schedule 1substance in 1964 under the Single Convention on Narcotic Drugs of 1961.

and synthetic opioids among others. These newly available chemical compounds derive usually from the alteration of patent chemicals which have either never been tested on human beings or are used in veterinary pharmacy (Favretto et al., 2012; UNODC, 2013; Fabregat-Safont et al., 2017). They are recognized to be "non-illegal" and are labeled under street names such as " Smart Drugs" or "Legal Highs" for their ability to circumvent the law while delivering "important psychoactive effects" mimicking the effects of traditional drugs (United Nations Office on Drugs and Crime, UNODC, 2013; Favretto et al., 2012). According to the DEA, clandestine chemists dealing with NPS are providing retailers with products designed to skirt laws and regulations, so that when an action is taken by DEA to schedule a substance, retailers are provided with new, products containing unregulated compounds. The NPS market is quick to adapt and resilient. The market of fentanyl analogues is no exception to this trend. As an example, shortly after the DEA in November 2016 decided to schedule furanyl-fentanyl and the synthetic opioid U-47700 due to its popularity and dangerous potency a different synthetic opioid (U-51754) resurfaced on the market.[5] Furthermore, another synthetic opioid (U-49900) has surfaced to replace U-47700 and which may trace back to the same chemical family of the other two, both Upjohn patented substances. Still, U-49900 is "a completely novel substance that has not been described in literature until now" (Fabregat-Safont et.al, 2017).

Since their emergence, NPS -including fentanyl analogues and synthetic opioids- have been considered mainly a matter of public health concern needing solely of monitoring (UNODC, 2013). However, NPS have demonstrated to be a "nationwide threat in the U.S. with overdoses and deaths continuing to occur" (DEA agent Scheligh, 2017). Fentanyl, and fentanyl analogues in particular, can be up to 100 times more potent than morphine as an analgesic, and their high potency means that a minimal quantity such as less than 2 mg (two grains of salt) can be lethal, so either the manufacturer and the user could be at risk handling it (Fabregat-Safont et al., 2017; DEA, 2017; Marshall et al., 2017). Even more, fentanyl physical appearance makes it difficult to be distinguished from other drugs (Marshall et al., 2017). Fentanyl and fentanyl analogues are increasingly being used to lace heroin, cocaine, methamphetamine and marijuana or pressed into pills and sold as painkillers in the black market, often without the users' awareness (DEA, 2017; Agent Schleig testimony DEA, 2017).

According to law enforcement in Ohio (one of the five U.S. states with the highest opioid overdose rates[6]) fentanyl is being mixed with "just about anything now", increasing the risk of overdose deaths and introducing also unaware users to opioid consumption and exposing them to the dangers of opioid addiction (Ohio Surveillance Abuse Monitoring Network, OSAM, 2017; Marshall et al., 2017; DEA, 2017). In Ohio, fentanyl has been identified as top agent for cutting heroin and consumers having developed tolerance seem to be seeking heroin being laced with fentanyl or carfentanyl for their potency, since they deliver "a better high"[7]. Moreover, Ohio consumers seem to consider heroin mixed with fentanyl and carfentanyl a "better dope", and the number of overdose deaths related to it an indicator of good, or better, quality of the product (OSAM, 2017a). A participant in the Ohio Surveillance Abuse Monitoring Network (June 2016 - January 2017) commented: "*It's really good, too good. Hell, we have lost 12 friends just this year [to overdose]*". In the survey conducted six months later (January 2017 - June 2017) a participant stated " *Fentanyl is heroin to this nation*". Ohio law enforcement has detected a scarcity of heroin availability which reflects what they are report-

5 U-47700 is synthetic opioid developed by Upjohn in 1978 with a theorized potency 7.5 times that of morphine. U-51754 was also developed by Upjohn (Fabregat-Safont et.al. 2017).
6 Ohio's opioids overdose death rate in 2016 was 32.9 per 100,000 more than double of the national rate of 13.3 deaths per 100,000 (NIDA, 2018).
7 Carfentanyl is a synthetic opioid, Schedule I and Schedule IV of the Single Convention on Narcotic Drugs, 1961. Carfentanyl is a fentanyl related analogue considered to be 10,000 times more potent than morphine and it is not approved for use in humans (UNODC, 2017).

ing: that fentanyl has replaced much of the heroin in the region (OSAM, 2017b). This could be happening in other regions of the U.S. as well.

ORIGIN, TRANSPORTATION, DISTRIBUTION AND HUMAN CRIMINAL FACTOR INVOLVED IN THE U.S.

Fentanyl and fentanyl-analogues trafficked in the U.S. can be traced to two main origins according to the available data:

- First, U.S. law enforcement argues that illicit manufactured fentanyl and its analogues mainly originate in China, and likely Mexico, and then smuggled in the U.S. and distributed at the retail level. According to investigations and seizure operations conducted by the DEA, all fentanyl detected was in powder form indicating illicitly produced fentanyl (DEA, 2017). Fentanyl is illicitly produced in clandestine laboratories and usually distributed in white powder form to be mixed with heroin or other drugs or pressed into pills.

- Second, diversion of licit fentanyl products within the U.S. is also happening through theft, fraudulent prescriptions, illicit distribution, by patients, physicians and pharmacists. Nevertheless, according to the DEA illicit manufactured fentanyl is to be considered "chiefly responsible for the current crisis" (DEA, 2017). Overall, considering the outset of the current "opioid epidemic" illicit fentanyl and fentanyl analogues entered the U.S. drug market through heroin. Initially to adulterate heroin, eventually as a substitute to it (DEA, 2017).

Fentanyl and its analogues - both controlled and not yet controlled - can be transported into the U.S. via two main ways: One, via parcel packages arriving directly from China, or via indirect routes from China through Mexico or from China through Canada, exploiting the existing discrepancies in laws between China and other countries. Packages can be shipped via regular mail, commercial courier's services and through freight forwarding services. This can involve a chain of multiple transfers, making tracing more difficult. According to law enforcement data, seizures of parcels arriving in the mail directly from China can have purities over 90 per cent. Second, fentanyl smuggled from Mexico across the U.S. - Mexico border is frequently smuggled in cars hidden compartments "following traditional drug smuggling techniques" (DEA, 2017). According to U.S. law enforcement its purity is very low compared to that arriving from China: 7 percent. Pills containing fentanyl are also illicitly manufactured directly in the U.S. or trafficked overland via Mexico and Canada to the U.S. (DEA agent Scheligh, 2017). There is no further information on how fentanyl is smuggled via the U.S. - Canada border.

Two main criminal actors are involved in the fentanyl trafficking in the U.S. that can be grouped as traditional criminal actors and new criminal actors:

Traditional criminal actors such as, Drug Trafficking Organizations and street gangs[8]: Mexican DTOs are involved in fentanyl trafficking lacing heroin with fentanyl and running fentanyl mills in private buildings in the U.S. for further distribution (DEA, 2017). Mexican DTOs are considered currently by the DEA "the greatest criminal drug threat to the U.S.", maintaining territorial influence over regions in Mexico used for cultivation, production, importation and transportation of illicit drugs (heroin, marijuana, methamphetamine production and cocaine transportation). Dominican organized criminal groups are also involved in

8 The National Gang Intelligence Center (NGIC, 2016) defines street gangs as: criminal organizations that from on the streets and operate in the U.S., having the objective of generating money, gaining power and controlling territories. These goals are achieved mainly with intimidation and violence. The major source of revenues of street gangs is drug trafficking although other avenues of criminal activity.

fentanyl trafficking, having shipments arriving in New York City, and then broken down into smaller units for regional distribution and throughout the East Coast. Street gangs, particularly in the East Coast are also involved in illicit fentanyl trafficking among other drugs, often distribution free samples to attract new buyers (DEA, 2017).

- New criminal actors identified as "Non-cartel affiliated individuals" (Individuals)[9]: Individuals have stepped in the fentanyl trafficking, according to the DEA (DEA agent Schelling, 2017). In 2018, an investigation by the U.S. Senate's Permanent Subcommittee on Investigations –devoted to understanding fentanyl trafficking via the U.S. postal service- focused in understanding the motivations of several individuals throughout the country that were linked to online sellers activities or websites offering fentanyl or other opioids for sale. The report identified at least 18 individuals from 11 different states of the U.S. who appeared to have sent money to online sellers' accounts that were eventually arrested or convicted for serious drug related offenses. Two U.S. individuals were identified and considered likely to be involved in mass distribution of synthetic opioids. Two individuals residing in the U.S. were considered suspects of transshipping purchases made through an online seller located in China. Purchases also involved chemical bonding agents to make pills, empty pill casings and pill coloring agents, products commonly used in the mass production of narcotics for distribution.

THE ROLE OF THE INTERNET

The role of the Internet in the trafficking of fentanyl and fentanyl analogues and distribution seems to be of central relevance for its increasing availability in the U.S. Like it happened with other substances before, fentanyl and fentanyl analogues are available for distributors and consumers via crypto-markets in the Darknet, the occult dimension of the internet accessible using The Onion Router (TOR) device and crypto currencies (i.e. Bit coin) as exchange currencies. However, the rise of fentanyl and fentanyl analogues can also be attributed to how easy it is for distributors and consumers to order via the surface-web. In their most recent report, U.S. legislative investigators demonstrated how by doing a simple search via Google of the phrase "buy fentanyl online" they were able to pinpoint at least 6 sites of sale. The report also demonstrates also how the increased volume of international mail due to the rise of legal e-commerce is representing an opportunity for traffickers to abuse the system. Fentanyl traffickers can also rely on relatively inexpensive tools sourced online from China, India and Germany to manufacture clandestine pills containing fentanyl.

Besides the ease to supply fentanyl through the Internet and having consignments home delivered, abusing the international mail system increased volume; traffickers in the U.S. can be attracted to the fentanyl business considering the revenues it provides. An undercover operation in the U.S., reported by *Bloomberg News* on May 22, 2018, allowed agents to buy a kilogram of fentanyl from China for $3,800, which, when turned into tablet form, could produce revenues once sold on the street up to $30 million. Comparing that with a kilo of heroin, which wholesales for about $50,000 in a regional market and generates a profit of just $200,000, fentanyl can be considered a more profitable business deal. One key development for the future of drug markets in the U.S. is that the increasing availability of fentanyl seems to be pushing down the price of opium resin, the raw material to produce heroin. According to a report appeared on 28 April 2018 in the Mexican magazine *Proceso*, growers in the State of Guerrero -one of the key areas of heroin production in Mexico- report that opium resin

9 "Mexican TCOs and non-cartel affiliated individuals have seized upon this business [fentanyl] opportunity because of the profit potential of synthetic opioids." (DEA, Agent Schleigh, 2017).

prices have fallen by 80% in less than a year. It would seem that Mexican growers are not able to compete with synthetic opioids and that can be sold at competitive prices.

THE EUROPEAN UNIONFENTANYL AND FENTANYL ANALOGUES: DETECTION AND USE IN EUROPEAN MARKETS

The first reports concerning the presence of fentanyl in the illicit drug markets in Europe date back to the mid-1990s. During these years, authorities in Germany, the Netherlands France seized tablets, capsules and powders of Para-fluorofentanyl- in Germany seizures also included precursors used to produce fentanyl. At the same time, the first lethal evidence of non-medical use of fentanyl was reported in Italy in 1992 where a fentanyl-cocaine overdose ended up in one fatality. According to reports, 8 other fatalities linked to linked to fentanyl -sold as heroin or amphetamine- occurred in Sweden between 1994 and 1995 (EMCCDA, 2012). Meanwhile, the first seizure of a fentanyl analogue in the European Union –TMF- occurred in Finland in 2001. Since 2009 however, the trend has accelerated with 18 fentanyl-related substances detected in the European drug markets, 8 of which were first reported in 2016 (EMCCDA, 2017a)[10].

Since the early 2000's however, the most established illegal market for fentanyl in Europe has been Estonia. With a population of 1.3 million at the time of its accession to the EU in 2004, Estonia saw fentanyl invading the scene of the drug consumption mainly through injection. Different to other countries where fentanyl is on the rise, the heroin market in Estonia seems to be scarcely developed (Mounteney et al., 2015). According to some experts, the tight controls on opioid production by the Taliban -pre-2001- led to "irrevocable market changes" in Estonia (Mounteney et al., 2015). Other analysts consider that other factors at work in the "crash" of the Estonian heroin market include the long drought in Afghanistan, the U.S. military invasion and the "scrupulous work" of Estonian law enforcement (Sárosi, 2017). All this may have facilitated the emergence of suppliers of illicit synthetic opioids in that small Baltic Sea country. Estonia's drug overdose crisis reached its peak year in 2012 with a record of 170 drug-induced deaths with the majority attributed to fentanyl and 3-methylfentanyl (EMCCDA, Estonia Country Drug report, 2017). Since then, overdose deaths have fallen to 88 and despite no details being available; most of these deaths can still be linked 'opioids' according to European authorities. Moreover, Estonia has reported seizures of other precursors of synthetic opioids, reflecting its long-standing problem with abuse and overdose involving such drugs, including, more recently, non-scheduled fentanyl analogues (International Narcotic Control Boards, INCB, 2018). In 2016, as an example of this, Estonia reported 9 seizures of acryloylfentanyl (Schedule I in the U.S.) mainly purchased via the Internet coming from China and routed through other countries like Latvia in amounts ranging from 14 to 24.89 grams (EMCCDA, Estonia Country Drug report, 2017; EMCCDA, Latvia Country Drug Report, 2017). According to EMCDDA, Estonian law enforcement activities in 2015 have been focalized on the availability of illicit fentanyl reduction, mainly among street vendors (EMCCDA, Estonia Country Drug report, 2017).

10 According to European authorities, fentanyl and fentanyl analogues (acryloylfentanyl and furanylfentanyl) were found in seizures of liquids and sprays in 2015 (EMCCDA, 2017a).

THE HUMAN TOLL: FENTANYL RELATED DEATHS IN EUROPE

The absolute number of drug-induced deaths within the European Union continues to be much lower when than the total number of overdose deaths in U.S. Still, according to the most recent European Drug Report deaths involving drugs peaked to a new record in 2015 with a total of 8,441 deaths (including the non-member countries of Norway and Turkey) representing a 6% increase from 2014 (EMCDDA, 2017a). Most relevant for this report is that opioids -both legal and illegal- are involved in at least 79% of total drug induced deaths (EMCCDA, 2017a). The United Kingdom and Germany represent almost half of the total deaths with at least 46% (EMCDDA, 2017a). Even when European authorities call to be cautious regarding cumulative data -due to underreporting and reporting delays by member countries- it is safe to say that opioids abuse is fueling total overdose deaths.[11] Due to the absence of reliable aggregate data at the European level, it is hard to say with certainty how many of these opioids-related deaths involved fentanyl or its analogues. However, national and anecdotal reporting show that fentanyl and illicit analogues are increasingly present.

One initial factor to consider is that since at least 2005, several European countries have reported an increase in the legal consumption of fentanyl mostly related to pain management with Germany at the top in per capita rates.[12] Some authors -who intersected per capita consumption and law enforcement and forensic reports- argue that there is reason to believe that illicit fentanyl use is directly linked to availability in its legal market (Mounteney et al., 2015). According to them illicit consumption of fentanyl in countries with a large licit production of fentanyl -like Germany and Sweden- could be linked to diverted pharmaceuticals. Meanwhile, countries with low rates of legal fentanyl production -like Estonia- the phenomenon of illicit fentanyl consumption could be more related to illicit production.

A second factor is the rise of fentanyl in the established illegal markets. Since 2012, European authorities reported that countries affected by heroin shortages -like Germany, and the United Kingdom- have seen the rise of fentanyl and its analogues marketed as a replacement and sold as either 'fentanyl', 'China white', 'white heroin' or 'heroin' (EMCDDA, 2012). At the same time, the United Kingdom has seen a gradual increase in heroin availability that has resulted in an increase in deaths related to heroin consumption particularly after 2015. Results from toxicology samples and heroin tested from street seizures in the United Kingdom have confirmed the presence of fentanyl in heroin (National Crime Agency, 2017). Most recently, the United Kingdom has reported that fentanyl was present in 60 overdose deaths between November 2016 and August 2017 (National Crime Agency, 2017). However, the reasons why fentanyl is being introduced as an additive to heroin in United Kingdom are still unclear. Also, it is unclear to what extent users are aware of consuming heroin laced with fentanyl or whether there is an enhanced and specific demand for fentanyl-laced heroin. At the same time, authorities in Ireland reported in 2016 five deaths linked to Fluorofentanyl and Ocfentanyl that were as heroin mixed with Caffeine/Paracetamol to mimic its effect. There is some evidence that in other countries - like Sweden and Finland - the heroin market seems to to

11 Total population of the 28 member countries in the EU plus Norway and Turkey added a total of 593 million inhabitants in 2015 (World Bank, 2015).
12 International Narcotic Control Boards (INCB) data as reported in Mounteney et al., 2015.

have been replaced by other synthetic opioids. [13] Just in 2016, Sweden reported 20 deaths related to acrylfentanyl[14].

The European NPS market has also proven to be adaptable and resilient. The market of fentanyl analogues has been no exception and the European Union has been forced to put them under control. As has been said before, official data shows that 25 new synthetic opioids have appeared in the Europe Union between 2009 and 2016 of which 18 of these were fentanyl analogues. After several reports in the European Union's Early Warning System (EWS) the EU decided to subject to control measures the synthetic opioid acryloylfentanyl in September 2017 (EMCCDA, 2017b). Following the U.S. in November 2016, the EU also decided to subject the new synthetic opioid furanyl-fentanyl to control measures in November 2017.[15] Along acryloylfentanyl and furanyl-fentanyl other 3 fentanyl analogues - 4F-iBF, carfentanil and THF-F - have been subject of risk assessments by European authorities.

ORIGIN, TRANSPORTATION, DISTRIBUTION AND HUMAN CRIMINAL FACTOR INVOLVED: EUROPE

Fentanyl and fentanyl-analogues trafficked in Europe can be traced to two main origins according to available data:

- Illicit fentanyl available in Europe is believed to originate mainly from China and shipped via postal or courier service. There have been reports about seizures of "powders" originating in Belgium and destined for individuals in Finland, France and Germany but which main origin was China.[16] Finland reported three minor postal seizures in 2014 of which two of them had China as the reported country of origin and a third one had Belgium. Acetylfentanyl was destined for Finland in 4 cases, for Germany in 2 cases, and for France in 1 case. In 2016, Estonia reported 2 seizures totaling more than 10 kg of fentanyl precursors -NPP and ANPP- that had been ordered from China and shipped via courier service.[17] Some previous analysis have found that fentanyl and 3-methylfentanyl (TMF) (see Appendix 1) have been illicitly produced in countries like Russia, Belarus and Ukraine and trafficked to other European countries including Estonia (Mounteney et al., 2015). As reported by the European Commission (EC) in February 2018, the information on illegal fentanyl and fentanyl analogues production in the EU is "very scarce". Using information from the United Nations Office on Drugs and Crime (UNODC), the European Commission only cites two cases of laboratories producing fentanyl being dismantled in the EU: one laboratory in Slovakia in

13 While between 2006 and 2016, Sweden and Finland reported low levels of synthetic opioids in 2015, Sweden seized 8 kg and Finland 1 kg. Also, heroin has the highest range of price compared to other illicit drugs (EMCCDA, Finland Country Drug Report, 2017; EMCCDA, Sweden Country Drug Report, 2017).

14 Other European countries affected by acryloylfentanyl market include Denmark (1 seizure), Finland (1), and Latvia (2). The seizures mainly included powders, liquid and tablets (EMCCDA&EUROPOL, 2017).

15 Following publication of the decision in the Official Journal of the European Union, Member States will have one year to introduce the controls into national legislation (EMCCDA, 2017c).

16 It is not clear if these substances were ordered online, even if a structured research carried out by the EMCDDA and reported in the Europol, EMCDDA joint report on Acetylfentanyl underlines that of online vendors (30) of acetylfentanyl active on the surface web (31) reveals that of 8 vendors identified on the surface web 5 of them appeared to be based in China (EMCCDA&EUROPOL, 2016).

17 9 The final destination of the larger consignment was an Estonian company that had previously been involved in drug-related criminal activities, the involvement of other criminal actors is unclear, yet (INCB, 2017).

2011 and one laboratory in Germany in 2015 (EC, 2018). Nevertheless, there is not available information on trafficking and distribution methods in the EU.

- - Another source of fentanyl trafficked within Europe is related to the illegal diversion of fentanyl-containing medicines from legitimate supply, mainly involving fentanyl transdermal patches, but also, pills, sublingual tablets, and solutions of fentanyl intended for infusion. Fentanyl transdermal patches can be misused by extracting fentanyl into a liquid and injected or inhaled and smoked. Several schemes are included in the illegal diversion of fentanyl containing medicines: inappropriate or over-prescription by clinicians; fraudulent and multiple prescriptions through the consultation of several clinicians; robberies and thefts from pharmacies, manufacturers, distributors, and institutional drug supplies. Fentanyl, diverted from pharmaceutical products appear to be the main pattern non-medical fentanyl use in and Germany (UNODC, 2017).

THE ROLE OF THE INTERNET

As is the case in the U.S., the role of the Internet is highly relevant in the trafficking and distribution of fentanyl and fentanyl analogues within European Union. According to authorities, the role of the Internet in the European drug supply scene is of particular relevance in countries where -both on the surface and on the Darknet - is most developed. According to Europol and EMCDDA, the most important countries for EU-based Darknet drug supply, including synthetic opioids are the United Kingdom, Germany and the Netherlands (EMCCDA&EUROPOL, 2016a). This does not mean that other countries do not see evidence of supply, distribution and trafficking via the Internet. According the Oxford Internet Institute's Darknet Mapping Project, the United Kingdom and Germany would host 9% and 5% of fentanyl sales in the Darknet during 2017 just behind the U.S., Australia and Canada[18]. One market to watch due to a high number of people reporting high Darknet purchases of drugs is Finland. According to the most recent Global Drug Survey, 45% of respondents in Finland reported making Darknet purchases without singling out fentanyl or other opioids. One potential key development is that for the first time since 2015 fentanyl has been found to be increasingly present in heroin samples available from European-based Darknet vendors (mostly Belgium and France).[19] Despite anecdotal evidence of parcels arriving in Europe -or through third countries- there is not enough systematic evidence to support how much of the surface-web and Darknet fentanyl trafficking/distribution arrives directly from China.

CONCLUSIONS AND DISCUSSION

There is evidence to argue that fentanyl and fentanyl analogues can the synthetic opioids of choice that in the future scenario may progressively substitute plant based heroin in the U.S. drug criminal market. Following this pattern, fentanyl and fentanyl analogues have the potential of playing a similar role in the European Union drug criminal markets considering the following:

18 Absolute numbers of sales in the Darknet were not available. According to an article appeared on the British newspaper *The Guardian* on 16 October 2017, in the U.K. trades would be "around 1,000".
19 Energy Control International, an NGO based in Spain devoted to test the quality of drugs available in the Darknet, says that from 67 samples labeled as heroin, 11 of them included fentanyl or a fentanyl analogue. From those 10 of them were from European based vendors. The samples analyzed as heroin ECI were available since 2015. The NGO cautions that their sampling is not necessarily representative of cryptomarkets as a whole (Energy Control International, 2018).

1. ***Versatility of the product*** Clandestine chemists dealing with NPS may be able to recur to patented and newly formulated chemical designs of fentanyl analogues to skirt the law following a dynamic and resilient trend that can create new synthetic products to fit the demand of potent, deadly substances for increasingly tolerant opioid abusers.

2. ***Involvement of "non-cartel affiliated individuals"*** As it is demonstrated in the U.S., the relative ease to enter the fentanyl distribution business has paved the way to "new criminal actors" operating mainly online and in a different track to traditional criminal organizations doing physical retail sales (like Mexican DTOs in the U.S.). Relying on online purchasing, home mail delivery and, the synthetic nature of fentanyl and its analogues these individuals in the U.S. are already cutting supply costs and profit from the current demand for opioids fostering the existing epidemic. Considering the global dimension of online purchasing this business model pattern could be adopted potentially everywhere as long there is an Internet connection, a postal service and a demand for drugs. These "new actors" could step in the fentanyl business in some countries of the European Union as well, where the online market (both on the surface and on Darknet) is most developed both in terms of supply and demand.

3. ***Competitive price and low dosage range:*** These new non-affiliated individuals together with traditional criminal organizations are investing in the fentanyl business opportunity profiting from its low dosage range, high potency and its competitive price. In the case of the U.S. market there are already early indications that Mexican poppy farmers may not be able to compete with the low price of fentanyl and its analogues coming from China. This may potentially alter the whole illegal U.S. opioid market which could be increasingly supplied with fentanyl and fentanyl analogues, profiting from discrepancies in controls and regulations. This initial signs of a potential substitution of Mexican heroin by fentanyl in the U.S. ought to be of particular interest for Europe. This, despite it is still unclear whether the appearance of fentanyl in European markets will eventually have the effect to create a new source of opium supply separate from its current main source: Afghanistan's poppy agriculture for heroin production.

4. ***High potency, overdose risk as factors appealing for consumers:*** Consumers that have developed tolerance to high potency opioids are seeking even more potent drugs. As it is happening already in Ohio, overdose-death risk and high-potency rate of illicit opioids seem to have become key drivers for consumers. For this reason, traffickers may be motivated to enhance even more the potency of illicit opioids as a marketing tool to expand their volume business. Although there is no evidence yet in publicly available reports, this is something that could happen in the E.U. as well.

5. ***Contamination of other illicit drugs with fentanyl to gain consumers' loyalty:*** Lacing illicit drugs (other than opioids, i.e. cocaine) with fentanyl or its analogues could also be a key new factor responsible of increasing the number of new opioid abusers. People exposed to opioids consumption can develop "opioid use disorder" involving constant use and progressively increasing dose to avoid withdrawal, "despite adverse consequences" (Rich, 2018). While in the U.S. the contamination of fentanyl with other illicit drugs is becoming a pattern for traffickers, more detailed data and information -from toxicology analysis and seizures- is still needed to prove that within the European Union fentanyl is methodically being used to lace cocaine and other illicit drugs.

The Internet based supply of fentanyl and fentanyl analogues -either on the surface web and the Darknet- could potentially contribute to aggravate the "opioid epidemic" in the U.S. and to initiate an opioid epidemic in Europe, if not at a global level. Tackling the current illicit fentanyl supply sources -mostly China but also India- could not necessarily be an effective strategy to stop the recurrence to fentanyl and other synthetic opioids in the U.S. and Europe. Due to the synthetic nature of fentanyl -and the easy development of its analogues- renowned trafficking expert Vanda Felbab-Brown -a senior scholar at the Brookings Institution- has

warned that other countries such as Nigeria, South Africa and Indonesia have a potential of becoming suppliers of synthetic opioids. For this reason, persuading people from using drugs and implementing public policies toward this goal could be a better way to stop the "opioid epidemic" in the U.S. and prevent it to reach a global level.

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STATE OF CRIME AS A SECURITY ASSESSMENT COMPONENT

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Abstract: Timely identification of destructive phenomena, of their intensity and the way in which they try to destabilize man and his environment, exerting sometimes crucial influence on his development and survival, is a basic precondition for the successful future development, as well as for taking adequate measures of protection. In a wide spectrum of destructive phenomena, the phenomenon of crime is particularly prevalent. Identification of such phenomena, analysis of their influence, strengths and means they use to obtain their destructive character, is a basis for examining the state of crime within a specific time and spatial framework. On the other hand, such an analysis (among other elements) is one of the components of the security assessment, the document on which the security system's reaction to the various forms of threat is planned.

The paper points out to the influence of criminal acts on the state of security, or their character of security threat. The general concept of security assessment is considered in particular in the light of the various elements necessary for its definition as a mechanism for determining the facts necessary for making a decision on how to act against destructive phenomena. In this context, special attention is paid to the analysis of the state of crime, as one segment in the process of security assessment making.

Key words: crime, threats, security, security assessment.

INTRODUCTION

Everyday life of a person involves certain activities that are focused on monitoring the phenomena in different spheres of interest, in order to examine their impact on the quality of life. This means a detailed analysis and perception of elements that, potentially, by their way of manifestation, strength and intensity of action can negatively affect individuals themselves or the community in which they live. Dealing with a certain degree of risk for one's own development and survival, but also the development and survival of the community in which one lives, requires a person's engagement in the search for an adequate way of reacting. Certainly, timely detection, i.e. identification of the phenomena which, by the intensity, time and manner of manifesting their destructive character affect the person's environment is a basic prerequisite for an adequate (personal but also general, social) reaction to such phenomena.

On the other hand, the identification of destructive phenomena itself is not sufficient. The identification, further, must be followed by an appropriate process that is reflected in the following:

- collecting data on the identified phenomena;
- "turning" a large amount of data into quality information;
- analytical processing of information, including state assessment;
- predicting (assessing) the development of the observed (threatening) phenomena in the future;
- planning of measures and activities in relation to the future (destructive) development of the phenomenon and
- immediate (active) reaction of the security system in the event of a threatening manifestation of a particular phenomenon.

The basic, crucial point of the previous process is the assessment of the development of destructive phenomena in the future. The quality of such an assessment depends primarily on the quality of the collected material (data and information) or the quality of their analysis. The quality of the conclusions reached, as well as the decisions based on them, depends on this. The decision precedes the undertaking of certain measures and actions which seek to prevent or minimize the threatening effect of a particular phenomenon. Therefore, the importance of a quality security assessment, or the process of its making, is incomparable.

The process of creating (making) a security assessment, involves the collection of data on all threatening phenomena which can cause some damage. However, all phenomena that are in some way threatening do not necessarily involve commission of crime. Criminal phenomena essentially have a more direct and "longer" effect and, in the long run, can have more severe consequences for both individuals and the society as a whole. Therefore, the assessment of the state of crime represents one of the most important elements in the process of making a security assessment.

CRIME AS SECURITY THREAT

Historically, crime has always been one of the greatest threats to both person and society as a whole, regardless of how it has been manifested. As a phenomenon, it has always tried to successfully adapt to the level of development of human society, in an effort to be as concealed as possible and difficult to be perceived. It is a complex social phenomenon, whose manifestation aggravates the overall social conditions, while the extent and intensity of its manifestation are influenced by various factors. Therefore, crime has always been a special field of interest of society, primarily the identification of criminal acts in order to adequately respond to their destructive character.

Criminal acts, in fact, are acts of violence. Violence and violent behavior are manifestations of criminal behavior. Every violent act is, regardless of whether it is lawfully incriminated, in fact a criminal act. This is the behaviour of a person or groups that is disapproved by other members of the community to whom a person or a group belongs. It disrupts the basic values of the community, and it is thus being considered as socially dangerous, destructive, asocial (Horvatić, 1994:4). Violence is, in terms of terminology, linked to aggression and in that sense it is understood as the manifestation of attacking behaviour (Cannavicci, 1999), even though in some cases certain behaviors cannot be defined as violence, because there is usually the issue of "quantity" of violence, since a certain act for some represents brutal violence and for others justified use of legitimate force (Wood, 2006).

However, any act that has a mark of violence in itself causes a certain reaction. This reaction, quite naturally, is not the same with the immediate victim of a violent act and those who

are not affected by direct violence. Nevertheless, the frequency of violent acts quite justifiably causes fear among citizens. The frequent clashes of fan groups at sports events or juveniles at music events lead, quite surely, to the citizens avoiding such gatherings, for fear of becoming victims of these conflicts. This fear of violence can be defined as the perception of an individual or a group that represents beliefs, perceptions or emotions in relation to some violent (criminal) act that has a negative impact on their feelings, thoughts, behavior or quality of their lives (Glasnović Gjoni, 2006).

Criminal acts represent acts of great social dangers. Their manifestation in various ways endangers a person`s physical, economic, social, cultural and any other integrity. In such circumstances, it is quite impossible to develop and protect certain values (personal and values of communities in which people live) considered as an ideal feature of certain objects (items, acts, content of consciousness) that people attach to them, which actually makes them desirable for people, people use them to alleviate the quality of life, that is, people enjoy them (Lukić, 1982). In this sense, phenomena that threaten certain values represent destructive phenomena or threats. Since threats are direct forms of endangering countries and societies which have clear, predictable and defined types of endangering (war, economic sanctions, terrorist acts) and are negative for the survival of countries and societies (Orlić, 2004:92) - i.e. the phenomena where the concrete carrier of safety endangerment attacks the values of a concrete object of endangerment (Mijalković, 2009:127) – in the same way the crime, or criminal acts (and in modern conditions, their exceptional cruelty) represent a security threat.

On the other hand, the obligation of a society is to eliminate any threat or the effect of any destructive phenomena. This implies a reaction prior to the concretization of the threat, or prior to manifestation of a destructive phenomenon. In order for the society to adequately respond to a threat, reduce or eliminate the negative effects of certain phenomena, it is necessary to have a timely identification of the threat, the analysis of the force and means that this threat manifests and, most importantly, the correct assessment of the development of certain phenomena (threats) in the future, in order for the next reaction of security system towards the destructive character of the phenomenon to be adequate. In this sense, a timely and high–quality security assessment is of paramount importance.

GENERAL CONCEPT OF SECURITY ASSESSMENT

Security assessment is a special way of explaining a security phenomenon in which, besides explaining the cause-and-effect relations within a phenomenon and the relations that the phenomenon has with the world, it also tries to explain other internal and external relations of a certain phenomenon, but also the relationship and strength of those relations and relations that direct the phenomenon in a certain direction and affect its character, manifestation forms and consequences it causes (Marković, 1988). Its main purpose is timely identification of endangering phenomena, determination of intensity, strength and means by which the destructive character is expressed, i.e. the assessment of the development of such phenomena in the future in order to take measures adequate to the strength and intensity of their manifestation, in order to eliminate or minimize the negative effect.

The main problem in making a security assessment, on the one hand, is the operation of various security challenges, risks and threats (factors of endangering the security), i.e. the way their identification is carried out and the intensity, strengths and means of manifestation are determined. Bearing in mind that the security assessment should represent an imaginary picture of the development of a certain phenomenon in the future, in order for the country to prepare an adequate response in protecting its interests, it additionally complicates its making.

Because of that, the assessment methodology should include four different but integrated steps. The first step is to identify the issues which will most likely have a significant impact on national security. The second step is to predict the impact that each issue will have on vital security interests of a country, using alternative scenarios on the basis of which the duration and intensity of their impact can be assessed. These individual assessments will provide a basis for assessing the effects of all issues, or clarify which issues represent the greatest risk to national security. The third step is to determine the readiness of the country to solve specific vulnerabilities, or to assess its ability to prevent, mitigate or resolve the predicted security risks to national security. The final step is to develop national security priorities and their treatment as mutually interconnected, as a whole (Dupont, 2012).

The security assessment in the first place as a doctrinal document must include the political, military, economic, geographical position of the country and that is how it differs from all other types of (security) assessments. This general concept of security assessment can include political, economic or geographical elements also in a micro-plan (by line) only in a part that directly influences the assessment of the situation, the assessment of the development of security phenomena and the planning of the work of security structures. Security phenomena that need to be "treated" in the general concept of security assessment are different, but their assessment should go in the following order (Nincic, 2017: 391b): activity of foreign intelligence services; terrorism and extremism; internal extremism; state of crime; state of law and order; state of security of the state border; stay and movement of foreigners; organization, competence, training and equipment of security authorities and security services; cooperation between authorities and security services. Finally, a conclusion is drawn resulting in an assessment of the situation where, from all the above elements, it is necessary to draw short conclusions with the assessed state of the area and an assessment of the possible development of security phenomena. Making a conclusion with an assessment of the state of security represents a synthesis of all security problems and the definition of security indicators, but it also evaluates the work of parts or the overall security system.

When making a security assessment (in order for it to respond to demands) it is necessary to avoid all stereotypes, to free it from excessive details, general and known facts, or everything that makes the security assessment unnecessarily extensive (Marrin, 2002:7).

ANALYSIS OF THE CRIMINALITY SITUATION IN THE FUNCTION OF MAKING A SECURITY ASSESSMENT

Criminality and social reaction to criminal acts is an important phenomenon, both globally and locally (nationally). The interest and obligation of each country is to create conditions at the national level which provide a low level of tolerance towards criminality. In order to achieve this, it is necessary to find the most effective ways of confronting any criminal activity. On the other hand, the assessment of the criminality situation is the starting point for defining a national crime combating policy, but also one of the basic elements of security assessment as a doctrinal document, on which the reaction of the security authorities and security services (security system) to the destructive phenomena, including criminality, is based.

In general terms, the *situation* is the position in which someone or something is found in, or a certain status. On the other hand, under the concept of security situation, it is necessary to understand: *the usual situation*; *the situation that does not have the characteristic of "usual"* and as such represents something that is special, specific, unusual; *the occurrence or the existence of such circumstances* (causes or possible causes) which pose a real danger that a common and desirable or acceptable condition may in the real world be distorted and change

from one to another, special state. Accordingly, security situations can be divided into two parts (Kostić, 1977: 191):

- *general or usual* security situation, which can be more closely defined as: the continued existence of identical or approximately identical security problems and, therefore, security tasks that arise from them and which are as such performed in established permanent forms and in conditions of common security violations or possible violations; regular, rhythmic repetition of identical security issues in approximately determined times (of the week, month, season); regular repetition of problems in a certain territory or areas of line of work; stability of conditions and circumstances that can actually represent a potential and latent danger in causing a change in the usual security situation
- *special or specific* security situation, as the result of actions of certain causes and circumstances which do not have the characteristic of continuity or determined cyclic regularity in their origin and in the forms in which they manifest themselves in the real world.

Successful monitoring of security situations and its own security organization condition and operation means that responsibilities for this situation are realizing three main goals (Stajic, 1999:124):

- *first*, to take the security situation and their own organization under control and to govern the security situation and its own organization;
- *second,* to successfully predict (assess) possible development of security situation and situation of its own organization in the future;
- *third,* to make the best choice when deciding on the basis of considered threats, opportunities, needs and possibilities.

Security assessment represents an analysis of the security situation, with consideration of all potential challenges, risks and threats, but also defining the "establishing" of the protection system against such endangering forms. It should define (Nincic, 2017:45a):

- potential challenges, risks and threats;
- basic characteristics and kinds of their manifestation in the valued timeframe;
- main subjects of security challenges, risks and threats;
- the size of adverse consequences that may arise from their realization;
- available capacities for resistance against security challenges, risks and threats;
- the time required for the rehabilitation of the protection system, in case of disruption with adverse events.

Based on these needs, through a clearly regulated system of data and information collection and by their further proper analytical processing, conditions are created for proper conclusion and assessment, i.e. for the possibility of making a realistic assessment of the security situation on the basis of which quality decisions can be adopted (to protect the vital values of society).

THE ESSENCE OF DATA COLLECTION

Data collection is as old as the history of human society. Certain circles of people (primarily people in power) always wanted to be well informed, to collect certain data that will allow them a more favorable position in relation to the activities of their opponents and the security risk they carry. The "Advantage" gained that way allowed for the timely decision-making and

gaining a decisive advantage over the negative effect of phenomena that they regarded as threatening.

The importance of information collecting was pointed out by the Byzantine emperor, Nicifor II Foka (ruled from 963 to 969) in his treatise on military issues, where he says: "Don't ever chase away a free man or a slave who claims that he has something important to tell you, no matter whether it is day or night, whether are you sleeping, eating or bathing" (Dvornik, 1974: 53).

However, both at the national level as well as in international-scientific circles, there is a certain inconsistency in defining certain terms to mark the continuity of "cognition" we get from the starting level, or from data as the basis of the cognition development pyramid. The clarification of such a dilemma, caused by the true "confusion" of terms founded in literature, is especially important in order to present the path of certain cognition development in a proper way, from data to quality information which is the basis of the security assessment and planning activity of security system. For this reason, it is especially important to make terminological clarification of terms which are incorrectly used in literature as synonyms, as well as "new" terms which enter into professional literature insufficiently clarified, making additional confusion. That is also important in terms of simpler understanding of terms *data* and *information* in its general sense, in order to "catch" the thread in the development of cognition.

The data is a factual statement, expressed and presented in the way that this fact is understood or presented by the data source. Intelligence data is the information something is added to (the result of the analysis, i.e. the explanation of the information meaning). That is the resulting product of criminalistics – intelligence techniques. Intelligence data can be *general*, directed towards a wider phenomena from the environment (criminal activities), and *special*, which means directed towards a specific type of criminal activity, such as terrorism, frauds, organized criminal activity (Manojlovic, 2005: 116). In fact, data is a set of objective facts which are related to an event or phenomenon and is a "raw material" for information. That is a fact related to a certain phenomenon, its actors, its nature and possible influence on security of the organization. (Dragisic, 2007).

On the other hand, information is the meaning given to data, using the rules for their interpretation, such as verification, assessment, classification and indexing (Brincka and Raguz, 2010: 41). In its substance, the information means news, a notice, a statement or a written report that has the nature of news, or in the situation of a criminal event - a trace, or the subject of a criminal offense. Timely, complete and accurate information can only be obtained if it is handled in accordance with the principle of timeliness, speed and operability (Žarković et al., 1999:306). Criminalistic information represents a change which is the result of the commission of a criminal offense, which was discovered and interpreted by the use of criminalistic methods and directs the criminalist towards the discovery, solving and proving of the criminal offense and the perpetrator (Simonović, 2012:79).

Information can vary in sensitivity levels, or criticality of assessing. That is the reason why it is necessary to classify information and retain the certain level of protection of information in relation to their importance. That classification may be according to the needs, to the priorities, or to the confidentiality, which is expected in their use. Depending on their sensitivity, particular information may require a special way of use and protection.

Information collection means respecting three basic rules: proactivity, offensiveness and secrecy (conspiracy). Proactivity in collecting information is the activity of an official, which takes place in a criminal environment, in an effort to be present in the field and well informed about all security threats in a certain environment, in order to prevent criminal activities. Offensiveness is the absence of passivity, implying that it should not be allowed that information is collected sporadically or passively wait for it. Secrecy (conspiracy) implies activities in

information collecting from all sources characterized by the takeover secrecy (Marinkovic, 2010: 268).

Data collection is done from different sources. Their classification is different. Thus, American theory and practice, knows the division of information sources into (Laqueur, 1993:43): *Signals Intelligence* - SIGINT; *Imagery Intelligence* - IMINT; *Human Intelligence* - HUMINT; *Measurements and Signatures Intelligence* - MASINT; *Open Source Intelligence* - OSINT; *Specialized Technical Collection Intelligence* - STCINT. Also, there is a division into internal (*Internal Information Source*) and external (*External information sources)* information sources (Gottlieb et al., 1998). However, the most common is the division into open, closed and covert sources of information.

The oldest, but still very actual data collection methods are informers and spies, secret surveillance and the collection of secret plans and other documents. According to historical notes, such methods were used by the police of the ancient Rome, where the *frumentarii* were crime investigators in the era of Emperor Trajan. The first modern secret police – Security Bureau in Paris, established 1667, in the era of Louis XIV, had detail information on behavior and dangerous intentions of individuals, collected through agents and informers. Sartine, one of the police chiefs during the reign of Louis XV said: "Sir, when three people are talking on the street, one of them is my man" and that sentence shows the prevailing method of data collection at that time (Milosavljevic, 2008).

The data collection process should result in the achievement of its primary goal – the identification of security risk that a certain phenomenon carries with itself. After their analytical processing, appropriate conclusions are drawn which should result in a correct decision, on which society's reaction to destructive phenomena and success in removing or minimizing their negative effects depends.

The essence of analytical work is to analyze the collected information in order to gain a certain meaning and develop one or more theories about current happenings or what can happen in the future. This analytical process consists of several phases (UNODC, 2011: 66):

- *integration of information* means combining information collected from different sources, as preparation for formulating the conclusion. Integration of information means combining different types of information from different sources, where weaknesses are spotted, which ensures the continuation of the information collection process even in the earliest phase of the analysis. Also, this process allows the development of a hypothesis based on limited knowledge;

- *interpreting information* means the process of interpreting information, which can be defined as giving meaning to information, or a step further from available information*;*

- *developing a hypothesis* means continuous monitoring of the process and supporting or denying the hypothesis. In this phase, it is not important whether the initial idea was wrong, but it is important to identify it as incorrect. As the research continues, the degree of idea correctness becomes higher, which develops greater confidence in the hypothesis, so the hypothesis provides support for further information collection.

BASIC ELEMENTS OF CRIMINALITY SITUATION ANALYSIS

The criminality situation, in the general concept of security assessment, must include an analysis which relates to criminal offenses and perpetrators of these offenses that directly affect the disturbance of citizens and, therefore, the security situation, whether it is a matter of acts with serious consequences or acts that by the manner of their commission influence the

negative perception of citizens about their own and the safety of the community in which they live. In this regard, the analysis in principle should include the following elements:

1) General criminality

- the number and type of criminal offenses
- forms of manifestation, spatial and temporal dimensions
- characteristic criminal offenses, the most common areas in which they are committed, the dynamics of manifestation
- specificity in terms of motive, mode of commission and perpetrators
- interconnection of perpetrators, crossing and linking of criminal forms
- representation of the most serious criminal offenses in relations between criminal groups (murders, aggravated murders...), manner of commission and possible "patterns"
- the most common categories of persons affected by criminal offenses of general criminality and possible reasons
- criminal offenses of general criminality committed against particularly vulnerable categories of persons (minors, women, elderly persons...) and their specificities
- analysis of "dark" numbers in the field of general criminality, with particular reference to certain acts that are common and repeated but rarely reported (domestic violence ...)
- elements of organization in the commission of criminal offenses of general criminality.

2) Organized crime

- operation of organized criminal groups (in spatial and temporal contexts)
- basic characteristics of organized criminal groups:
  - level of organization and hierarchical connectedness
  - age structure and manner of "recruiting" members
  - "specialties" in the commission of criminal offenses
  - "quantity" of violence as a method of action (violence during the commission of criminal acts, violence within the organization, violence against other criminal organizations ...)
  - dominant members of the group and their criminal past
  - engaging persons who do not have a criminal past (or persons of certain specialties), as logistical support
- dominant criminal activities (areas of criminal interest) and modalities of operation
- degree of flexibility and connectivity – "points" of cooperation with other criminal groups ("domestic" and foreign)
- connectedness of organized criminal groups with legal business, as a cover for criminal activity
- possible connectedness with representatives of state authorities
- opposing criminal organizations and "critical points" (spatial and temporal) of possible conflicts
- level of existence of self-protection measures (Kranc, 2006) from the prosecution authorities but also from other criminal groups:
  - offensive procedures (active tracking of state authority employees, pressure on members of their families with blackmail, threats and other forms of violence; infiltration into agencies and law enforcement bodies...)

- defensive actions (forging documents, buying information, using nicknames, counter-monitoring, listening in on state authorities ...)

3) Violent criminality

- number and structure of criminal offenses and misdemeanors with elements of violence
- structure and common characteristics of perpetrators
- specificity of manifestation of violent criminality in terms of motives, manner of manifestation and perpetrators
- categories of persons, victims of violent criminality with particular reference to vulnerable groups (minors, LGBT persons, marginalized groups, etc.)
- areas and "critical points" where the commission of criminal offenses and misdemeanors with elements of violence is expressed
- level of organization in committing criminal offenses and misdemeanors with elements of violence

4) Drug crime

- number and structure of criminal offenses
- age structure, gender and common characteristics of perpetrators
- age structure, gender and common characteristics of victims of drug crime criminal offenses
- spatial (night clubs, restaurants, certain public gatherings, etc.) and temporal (day, night) dimensions of committing criminal offenses
- modalities and specificities of committing certain criminal offenses
- use of minors for distribution of narcotics
- areas and infrastructure suitable for the existence of secret laboratories for the production of synthetic drugs and precursors
- critical areas for distribution of psychoactive substances
- smuggling of narcotics for distribution purposes in the territory of the country, with "critical points" and directions of smuggling (distribution)
- smuggling of narcotics for distribution outside the territory of the country, with directions of smuggling (distribution)
- dominant border areas as "critical points" of narcotics smuggling
- participation of "domestic" organized criminal groups in the unlawful production and circulation of narcotics and smuggling for distribution purposes in the territory and outside the territory of the country
- connections of "domestic" with foreign criminal groups and ways of cooperation in the production and distribution of narcotics
- legal affairs or infiltration into legal affairs as "mask" for narcotics smuggling
- level of organization in committing criminal offenses in the field of drug crime

5) Action of minors and re-offenders in the commission of criminal offenses and misdemeanors

- number and structure of criminal offenses and misdemeanors where perpetrators are minors
- age structure and common characteristics of minor perpetrators

- specificities in the commission of criminal offenses
- specific areas where criminal offenses are committed (school yards, streets, districts, etc.)
- elements of organization and existence of ethnic, racial and social factors in the organization of minors for the commission of criminal offenses and misdemeanors
- number, structure and motives of re-offenders in the commission of criminal offenses and misdemeanors
- strength of connections with former "collaborators" and possibility of intercrossing and linking criminal forms with other groups
- the existence of conditions for action of re-offenders in commission of more complex criminal offenses

6) Economic criminality

- number and structure of criminal offenses
- areas of commission of criminal offenses of economic criminality (domestic and foreign trade and services, ownership transformation, industry, construction, banking and foreign exchange operations...)
- the share of individual criminal offenses in the total number of criminal offenses of economic crime and reasons for such ratio
- conditions for smuggling, illegal production and trade in excise goods
- manifestation forms, intensity, material and other consequences of criminal offenses of economic criminality:
    - whether they are committed in a covert manner and in what covert modalities
    - modalities of commission of criminal offenses
    - business through "phantom" companies in the country and abroad
    - "withdrawing" money into accounts in other countries, so-called "tax havens"
    - Is there often a change in manifestation forms
    - false presentation of the value of goods as a way of avoiding payment of tax liabilities
    - the possibility of organized establishing and purchasing of business entities with the aim of related activities and transferring of tax obligations from regular to "phantom" companies
    - whether there is a tendency to direct economic business into illegal flows
    - is there visible specialization in performing actions or are they performed "chaotically"
    - possible relation between the form of ownership, the position of the business entity or the manner of doing business with the commission of criminal offenses
    - the possibility of proving and problems in proving criminal offenses
    - the scope of "gray" economy in the economic business
- possibility of frequent change in the status of a business entity as a way of complicating the control of public revenues and avoiding criminal liability
- existence and level of corruptive relations in the area of economic criminality
- analysis of "dark figures" in the field of economic criminality

7) Corruption

- number and structure of criminal offenses with elements of corruption
- modalities of commission of criminal offenses and their specificities
- possible causes of corruption in certain (economic and non-commercial) activities
- "the most vulnerable" areas of social life and work as a basis for manifestation of corruption (trade, industry, privatization, public services, health, police, judiciary ...)
- the existence (formation) of criminal structures in the structure of state enterprises, financial and banking institutions
- corruptive connections in investing revenues from criminal activities into legal flows
- the most vulnerable segments in the structure of public authorities at central, regional and local level
- level of corruptive influence of criminal groups on representatives of public authorities
- analysis of "dark figures" in the area of corruption

8) Cross-border crime

- forms of cross-border crime (smuggling of narcotics, weapons, excise goods...)
- number, structure and modalities of commission of criminal offenses
- "critical points" of committing criminal offenses (official border and administrative crossings, points of illegal crossing along the border and administrative line, directions in the "depth" of the territory...)
- human trafficking:
  - the most common forms (types) of exploitation
  - structure, age and common characteristics of victims of trafficking
  - level and relation of internal and transnational human trafficking
  - directions and "critical points" of trafficking
  - ways of "recruiting" victims
  - elements of organized human trafficking in national, regional and transnational context
- smuggling of people:
  - directions and "critical points" of smuggling
  - structure of victims of smuggling in national, age, spatial context
  - ways of communication between smugglers and victims of trafficking and problems in monitoring this communication (signals, language barriers ...)
  - impact of smuggling of people on the rise in the number of other criminal offenses
- smuggling of people in the light of migratory flows:
  - entry points, transit routes, possible "exit" directions, the most common mode of transport, size and structure of the group...
  - modalities of participation of interconnected individuals or groups
  - level of threats from members of terrorist organizations "blending" into migratory flows
  - structure of criminal offenses committed at the expense of migrants or by migrants
  - elements of organized smuggling of people in national, regional and transnational context

- the impact of irregular migration to internal security (use and trafficking of narcotics in reception and asylum centers, increased number of criminal offenses and misdemeanors...)
- influence of smuggling of people on the increase in the number of other criminal offenses (criminal offenses against property, life and body, sexual freedom...)
- level and elements of organization in the commission of criminal offenses of cross-border crime
- personnel and technical capacities in controlling and countering cross-border crime

9) High–tech crime

- forms of criminal activities via the Internet (fraud via the Internet, activities in the function of terrorism and violent extremism, endangering Internet security by attacks on electronic networks and systems...)
- number and structure of criminal offenses
- age structure and common characteristics of perpetrators of criminal offenses
- age structure and common characteristics of victims of crime
- the most vulnerable categories of persons for certain criminal offenses
- the most common factors which affect the increased degree (primary and secondary) of victimization of Internet users
- criminal offenses against particularly sensitive categories of persons (sexual exploitation of children and minors for pornographic purposes, smuggling and human trafficking ...)
- the influence of certain criminal offenses (Internet fraud, online business...) on citizens and businesses entities
- elements of organized commission of criminal offenses in national, regional and transnational context
- personnel and technical capacities in controlling and countering high-tech crime

In the further process, based on the collected data and analysis of the abovementioned elements, appropriate conclusions should be made. Conclusion must be a product of correctly carried out previous phases, from the process of data collection to their quality analytical processing. Certainly, the quality of the collected data is the basis for all subsequent activities. Conclusion with the assessment of the current situation is in fact a new "initial state" in the process of making a security assessment. This indicates the current "status" of certain phenomena and shows the trend of their future development, which allows the planning of certain measures and actions, that is, the adequate reaction of the security system to manifested destructive effect.

CONCLUSION

The basic prerequisite of security of a society is the suppression of all forms of endangerment, including the phenomena which can be designated as criminal. In every society, the state of criminality reflects overall social relations, regardless of its trends at local, regional or national levels. Because of that, it is necessary to constantly monitor the directions of its development in the future, in order to take timely action which will enable suppression or minimization of its negative consequences.

In this sense, the assessment of the state of criminality must include all elements which, from the aspect of destructiveness, represent a certain security risk or threat. The assessment

of security threats, in the general context, is one of the factors for preserving internal security, the rule of law, the development of democracy and democratic institutions in a society. Bearing in mind that it is an inalienable right, but also the duty of each country to find a mechanism that will enable adequate protection of its proclaimed (vital) values, it is necessary to timely identify all the phenomena that can be sources of endangerment. It is quite certain that phenomena which carry a criminal sign are the phenomena which by their intensity, force and manner of manifestation represent a security threat. Therefore, it is necessary, through the strengthening of institutional capacities and the development of appropriate operational procedures, to create such a system that will enable timely identification of criminal phenomena, collection of valid data and information and a quality system of their analytical processing. This allows for making proper conclusions and predictions of the future development of these phenomena and opens the possibility for decision-makers to direct the security system in a way which will enable neutralizing of their negative consequences. The key activity in this process is the creation of a quality security assessment.

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CRIMINAL LEGAL PROTECTION OF FOETUS IN THE CASE OF CRIMINAL OFFENSE OF MEDICAL MALPRACTICE

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Abstract: In all jurisdictions, both domestic and international, legal issues relating to the rights of foetus are often considered controversial and are subject to intensive media reporting as well as to the legal amendments. The most controversial is the question of the legal subjectivity of the foetus, that is, if and from which moment the foetus is considered a living human being and whether it can be the subject of judicial protection. This paper analyses the judicial practice of the Republic of Serbia, then the case law and the stance of the European Court of Human Rights as well as the comparative case law of other European countries on the legal status of the foetus. There is also a review of the United States laws "born alive" and the Unborn Victims of Violence Act that consider the foetus ("child in utero") as a legal victim if the foetus is killed or injured. These are laws that extend the protection of the rights of foetus against various crimes such as murder, acts of violence, and so on, in order to provide criminal legal protection for unlawful death or harm to the gestated foetus.

Keywords: death of foetus, medical malpractice, foetal rights, criminal law.

INTRODUCTION

In the jurisprudence of the Republic of Serbia a controversial issue has been arisen: is the death of a gestated foetus developed to such a level that is capable for extra uterine life, caused by medical malpractice (a criminal offence prescribed by Article 251 of the Criminal Code of the Republic of Serbia ("Official Gazette of the Republic of Serbia" no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 - hereinafter: CC), the effect of the grave criminal offence against public health prescribed by Article 259 paragraph 2 or paragraph 4 CC?

A number of criminal cases were brought before the courts of general jurisdiction on the indictments of public prosecutors charging doctors for committing grave criminal offence against health, prescribed by Article 259 paragraph 2 (or paragraph 4) with reference to Article 251 paragraph 1 (or paragraph 3) of CC. According to the charges the accused doctors had obviously not provided adequate medical care and acted negligently (by performing one or some of the actions determined as negligent medical care in Article 251 of CC) which resulted in a grievous consequence: the death of the foetus (the consequence for which a more severe sentence is prescribed).

Therefore, the attitude of the prosecution was that the death of the foetus was a grievous consequence which constitutes a grave criminal offense against health in Article 259 of CC.

Mostly it was the case when the death of the foetus occurred while the pregnant woman was under medical supervision usually in hospital where she was admitted to for delivery.

Particularly, the question arises in case when it was found that the death of a foetus capable of extra uterine life was due to malpractice of a doctor or health care worker, i.e. by performing some of the actions of the criminal offense determined in Article 251 paragraph 1 or paragraph 2 of CC which represent obvious negligent provision of medical care (e.g. foetal death as the result of failure to induce labour, improper provision of adequate medical assistance, etc.), would it be regarded as a grave criminal offence against public health determined by Article 259 paragraph 2 or paragraph 4 of CC where the grievous consequence is the death of the foetus (i.e. if the foetus can be recognized as a "legal subject" in the aforementioned criminal offence).

This question was taken into consideration by the criminal courts of all four Appellate Courts in Serbia, in Niš, Belgrade, Novi Sad and Kragujevac, but the agreement on this issue was not reached. It was also discussed at a joint meeting of the representatives of appellate courts and the Supreme Court of Cassation, on September 29, 2017, in Niš, Serbia, however, no consent was reached at that time either. Consequently, the issue was dealt with by the Criminal Department of the Supreme Court of the Republic of Serbia.

The issue of criminal protection of the foetus is a cause of numerous legal controversies, not only in Serbia but also before the European Court of Human Rights, as well as in international jurisdictions (Bassiouni, 1993). The European Court of Human Rights raised the issue of protecting the life of foetus in relation to the right to life under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("The Official Gazette of Serbia and Montenegro" no. 5/05). The European Court of Human Rights is very sensitive on the issue of acknowledging "legal subjectivity" to a foetus so as not to call into question the hard-won right to abortion.

However, according to the significant number of authors the issue of criminal protection of the foetus (in terms of the issues discussed in this paper) and the issue of the right to abortion are not comparable. Even though both issues are dealing with the same subject of protection – the foetus, they are referring to completely different actions that jeopardize the life of foetus. Namely, the abortion (Mujović-Zornić, 2009: 50) is not a medical error and the exact legally determined conditions must be fulfilled so that the doctor, within the framework of his/her medical duty, has the right to perform an abortion, including the right of a woman to decide on abortion. On the other hand, when wrongful death of a foetus capable for extra uterine life occurs, due to medical malpractice and without consent of the mother, it is a completely different kind of doctor's responsibility when both the mother and the foetus practically have the status of a victim.

Similarly, different legislations are dealing with this issue and there are different attitudes of case law in both Anglo-Saxon (USA, Australia, UK) and Central European systems (Germany, France, Austria). Legislations and judicial attitudes are polarized, from the point of view that the foetus does not enjoy criminal legal protection to the legislations providing for specific criminal offenses and special criminal responsibility for those who cause the wrongful death of foetus (e.g. Unborn Victims of Violence Act 2004 in the United States).

Further on, this paper in its first part, analyses the opposing arguments and attitudes of court practice in the Republic of Serbia in relation to the raised issue in domestic case-law. In the second part of the paper, an analysis of the case-law of the European Court of Human Rights is made including a comparative overview of the legislations of other states as well as some of their legal solutions with the examples of foreign case-law.

The aim of the analysis and research of this issue, through different legal regulations and judicial practice, is to point out: firstly, the exceptional social significance of this issue addressed by all jurisdictions, including the European Court of Human Rights. Specifically, it refers to cases and events (particularly those when the foetal death occurs on late terms of pregnancy, when the foetus is fully developed, in hospital conditions due to medical malpractice) which cause strong public reaction and attract the attention of the media, consequently raising the question whether the right to life has been violated.

Secondly, the aim of the work is to draw attention to the fact that this issue is not legally "covered" by the criminal law of the Republic of Serbia, particularly by the Criminal Code of the Republic of Serbia, causing considerable problems in judicial practice. Medical knowledge, legal logic, inner sense of justice and wider interpretation of legal provisions, support the hypothesis that a developed foetus capable of extra uterine life is a living human being and enjoys criminal protection. On the other hand, there is not a clear legal provision in the Criminal Code of the Republic of Serbia to direct the courts in Serbia how to act and treat the foetus in the aforementioned cases. In particular, the Criminal Code of the Republic of Serbia does not contain a legal provision that would provide direct criminal protection to the foetus in case of criminal offences: negligent provision of medical assistance and grave offence against human health. Our Criminal Code provides indirect protection to the foetus in relation to the criminal act unconscientious medical assistance if the health of a person, of the mother in particular, is endangered.

ANALYSIS OF THE STANCE OF JUDICIAL PRACTICE IN SERBIA THAT FOETUS ENJOYS CRIMINAL PROTECTION

Judicial practice in the Republic of Serbia does not have a unique approach to the raised issue. The Criminal Department of the Appellate Courts in Niš and Novi Sad have interpreted and analysed the existing legal provisions of the Criminal Code and have taken a unique stance that the foetus enjoys criminal protection from criminal offense of unconscientious provision of medical assistance.

Therefore, the position of the above-mentioned courts is that a foetus capable of extra uterine life is considered a living being and enjoys criminal protection. Therefore, the foetus, in that case, may be a subject to the criminal offence of unconscientious provision of medical assistance referred to in Article 251 of CC. In addition, the stance is that foetal death may be referred to as a lethal effect in relation to the criminal offence of grave offence against human health referred to in Article 259 paragraph 2 or paragraph 4 of CC.

In the analysis that supports the above-mentioned views, it follows that such a conclusion arises from the answers to the following questions:

- When does the foetus become the subject of criminal law protection as a living human being?
- May the foetus be the subject to the commission of a criminal offence of negligent provision of medical care, referred to in Article 251 of CC, and thus the subject to lethal consequences of the criminal offense of grave offence against health prescribed by Article 259 paragraph 2 or paragraph 4 of CC?
- Is the subject of the commission of the aforementioned criminal offence only the pregnant woman or the foetus as well?

1. In order to discuss the lethal consequence of foetal death at all, it is, first of all, necessary to consider the moment from which the criminal protection of human life begins in domestic criminal law.

Observing criminal offences: murder, referred to in Article 113 of CC, aggravated murder from Article 114 paragraph 1 point 8 of CC stating: "Whoever causes death of a child or a pregnant woman" or a criminal offence of murder of a child at childbirth referred to in Article 116 of CC (as well as other offences from the group of criminal offenses against life and limb), it is undisputed that the subject of these criminal offences and of the criminal law protection at the same time is a living human being (Kolarić, 2015:146). Of particular importance is the determination of the time point when the foetus of a pregnant woman can be, as a living being, the subject of the murder, that is, the subject of the lethal consequence relating to the criminal offence of grave offence against health Article 259, paragraph 2 or paragraph 4 of CC.

The provision of Article 116 of CC, which criminalises the murder of a child at birth, suggests that the murder can be committed already during childbirth.

Criminal law protection of life begins from the moment when the alive foetus reaches such a level of development that is capable of extra uterine life and it is not necessary that the foetus is separated from the mother's body at the very moment of birth (Lazarević, 2006:111). According to the accepted court practice, beginning of delivery is time delimitation when the foetus becomes a subject of murder (Đorđević, 1995:45).

The beginning of birth, according to the accepted case-law, as mentioned above, does not necessarily imply that the foetus is separated from the mother's body.

Accordingly, the conclusion, which is largely accepted in domestic jurisprudence, is that the foetus begins to enjoy criminal legal protection from the moment when the alive foetus is developed enough to be capable of extra uterine life. The moment of birth does not necessarily imply that the foetus is separated from the mother's body, it could be inside mother's body as well. Consequently, the moment of birth depends on the particular case.

2. May the foetus be the subject to the commission of a criminal offence of negligent provision of medical care, referred to in Article 251 of CC, and thus the subject to lethal consequences of the criminal offense of grave offence against health prescribed by Article 259 paragraph 2 or paragraph 4 of CC and from which moment?

Therefore, the subject of the consideration is the criminal law protection of the foetus' right to life in reference to the criminal offense of negligent provision of medical assistance prescribed by Article 251 of CC with lethal consequence (stillbirth) which may possibly follow (grave criminal offence against health referred to in Article 259 paragraph 2 or paragraph 4 of CC).

The above mentioned circumstances distinguish the discussed criminal offence from other offences which, due to an action of the perpetrator, may have a lethal consequence, i.e. stillbirth in the particular case. Concerning criminal offences, grave offences against health referred to in Article 259 paragraph 2 in relation to Article 251 paragraph 1 and paragraph 2 of CC (imply intent regarding the act) or the offence referred to in Article 259 paragraph 4 in relation to Article 251 paragraph 3 of CC (imply negligence regarding the act), the act of the basic criminal offence of negligent provision of medical assistance referred to in Article 251 paragraph 1 of CC is performed by a doctor who, while providing medical assistance, uses an evidently inadequate means or an evidently unsuitable treatment or fails to observe appropriate hygiene standards or evidently proceeds unconscientiously and thereby causes deterioration of a person's health (Stojanović, 2009:663).

In the case law it has been accepted that the term "means" covers all "substances that are introduced into the body or placed on the body for diagnosis or treatment, or for preventative

reasons". "Treatment" is the method used in diagnosis and treatment. The term "use of an evidently inadequate means" or "evidently inadequate treatment" is understood as everything in the physician's activity that obviously or to a great extent deviates from the valid, generally accepted principles of medical science and practice, i.e. represents a noticeable failure that is not medically tolerable. Term "medically tolerable" covers medical understanding of the notion of a medical error, which is a factual question and is determined in each particular case (Savić, 2010:55).

Grave consequences of the grave offence against health referred to in Article 259 of CC, whether it is a serious bodily injury or death, always implies negligence.

Provision of Article 27 of CC determines when the liability for serious consequence is constituted. When a serious consequence derives from the offence for which a more severe punishment is prescribed by law, that punishment may be imposed if the perpetrator acted with negligence in relation to that consequence and with the intent, if it does not make qualification of another criminal offence (Lazarević, 2006:93).

To be eligible for a criminal offense with qualified serious consequence, two conditions have to be fulfilled. Firstly, that there is a causal link between the committed criminal offence and the occurrence of the more severe consequences. Secondly, that the consequence can be "attributed" to the act of a perpetrator and that he acted negligently in relation to that consequence (Stojanović, 2013).

Concerning the subject of the criminal offense of negligent provision of medical services referred to in Article 251 of CC and thus the lethal consequence of the criminal offence of grave offence against health determined by Article 259 paragraph 2 or paragraph 4 of CC, it is necessary to consider whether the object of the basic offence, in this case provision of medical assistance to a pregnant woman, is only a pregnant woman or it could be her foetus, as well.

Criminal offence of negligent provision of medical assistance referred to in Article 251 paragraph 1 and paragraph 2 of CC, in both its forms, is terminated when the deterioration of health of a person is caused by a negligent provision of medical assistance by a doctor or by negligent treatment of another healthcare professional.

Since the subject of the action is a person, i.e. a living being, the notion of a foetus as a living being and an object upon which the act of a criminal offense of negligent provision of medical assistance can be undertaken is understood in the foregoing manner. In other words, it is accepted, according to the previous conclusion (under 1), that the foetus enjoys criminal legal protection from the moment when the alive foetus is capable of extra uterine life and from that moment it can be the subject to the criminal offence negligent provision of medical assistance. It follows that both a pregnant woman and the foetus are subjects to criminal legal protection in this case.

In addition, medicine clearly identifies the foetus as an independent patient, not only in terms of diagnoses but also in terms of foetal therapy. The foetus can be observed very precisely while it is in the womb and cardiac action and other vital functions are clearly noticeable. So, foetus is considered to be a patient in this regard whereby the doctor performs diagnostics and monitors its development. In some cases, doctors use some foetal therapies for medical treatment and proper development of the foetus. Development and progress in medicine, including ultrasound diagnostics, monitoring the heart rate, etc. enable doctors to determine whether the child is alive and viable within the mother's body. In most cases, the doctor would be able, taking into account his medical knowledge and experience, to predict the possible course of the development of foetus and childbirth and, consequently, to intervene in a timely manner, which depends on each particular case and would be the subject of a special determination by the court.

According to the above mentioned and to the stance of the Appellate Courts in Niš and Novi Sad, the foetus capable of extra uterine life may be a subject to the criminal offence of negligent provision of medical assistance referred to in Article 251 of CC, and consequently the subject to the grave criminal offence against health referred to in Article 259 of CC.

The degree of development of the foetus, its capacity of extra uterine life and the beginning of birth are factual questions that will be determined in each particular case.

We believe that this stance is in the spirit of contemporary movements and viewpoints in comparative criminal law. It is the result of the court's need to keep up not only with the social life but also with the development of medicine and science and the apprehension of general public in accordance with both the interpretation of the existing legal norms and case law applied in similar situations so far.

ANALYSIS OF JUDICIAL PRACTICE IN SERBIA THAT DENIES THE LEGALSUBJECTIVITY TO FOETUS

The Criminal Offices of the Appellate Court in Belgrade and the Appellate Court in Kragujevac have taken the opposite stance from the Appellate Court in Niš and Novi Sad. These criminal divisions took the view that regardless of the fact that it is established by an expert's opinion (finding and expert opinion) that a foetus has reached such a level of development that it is capable of extra uterine life, it cannot be referred to as "a person" in relation to the criminal offence of negligent medical assistance according to Article 251 of CC. Foetal death cannot be the circumstance to make the basic form of the criminal offence of negligent medical assistance according to Article 251 of CC, and the grave criminal offence against health as in Article 259 of CC. This circumstance can be significant only in the decision on a criminal sanction (Minutes from the joint session of the representatives of the Criminal Departments of the Appellate Courts and the Supreme Court of Cassation on harmonization of the case law, held in Niš, on September 29, 2017).

The Criminal Departments of the Appellate Court in Belgrade and the Appellate Court in Kragujevac base their viewpoint on the fact that this controversial issue cannot be concerned out of the context of other criminal offences from the Criminal Code of the Republic of Serbia.

In other words, the death effect, in this case foetal death, cannot be considered only in relation to the criminal offence of negligent provision of medical assistance (i.e., grave offence against health), since the stance on this issue influences other crimes. For example, the offence of threat to public traffic, where the unsafe driving may cause foetal death if there was a pregnant woman in the vehicle, the question would be whether it is a threat to traffic with a death effect or a less serious form of offence.

In this concern, the death effect of a criminal offense of grave offence against health according to Article 259 CC in relation to foetal death is associated with the offence of aggravated murder according to Article 114 paragraph 1 point 1 of CC (deprivation of life of a pregnant woman). In the attitude of the Criminal Division of the Appellate Court in Kragujevac it is particularly pointed out that the criminal offence of the aggravated murder of pregnant woman can be constituted at any stage of pregnancy (of course, an intent of the defendant to deprive a pregnant woman of life must exist) and the phase of gestation at the moment of life deprivation is of no importance. As a matter of fact, the aforementioned stance is based on the fact that does not set the condition of the "foetal development and its capability of extra

uterine life" (Conclusion from the session of the Appellate Court in Kragujevac, held on September 6, 2017).

However, it is considered that this stance does not fully recognize the "death of the foetus" as a result of the criminal offence. The Supreme Court of Cassation of the Republic of Serbia accepted the conclusion of the Criminal Offices of the Appellate Court in Belgrade and the Appellate Court in Kragujevac, and held that foetal death cannot be the circumstance that would constitute the basic form of the criminal offence referred to in Article 251 of CC an aggravated offence from Article 259 of CC (Minutes from the joint session of the representatives of the Criminal Departments of the Appellate Courts and the Supreme Court of Cassation on harmonization of the case law, held in Novi Sad on March 30, 2018).

According to the stance of the Supreme Court of Cassation of the Republic of Serbia, the Criminal Code of the Republic of Serbia does not provide direct protection to the foetus in relation to the raised issue. The Criminal Code of the Republic of Serbia provides indirect protection to the foetus in the criminal offence of negligent provision of medical assistance - if the health of a person, in this specific case of a mother, is endangered.

The consequence of a criminal offence of negligent provision of medical assistance under Article 251 CC is when the life of a person, in this case of the mother but not of the foetus, is in immediate danger or when there is deterioration of health due to unconscious medical treatment. In addition, according to the Supreme Court of Cassation, the aforementioned offence cannot be interpreted separately from relation to other criminal offences under the Criminal Code.

The Supreme Court of Cassation points to a legal solution in the criminal legislation of Croatia. In the Republic of Croatia, it was concluded that their legislation does not provide for the criminal protection of the foetus in the aforementioned situations so the Criminal Code has been amended by incorporating into the Criminal Code, in addition to the basic one the grave criminal offense of medical malpractice stating: "If as a result of the criminal offence referred to in paragraph 1 of this Article another person suffers a particularly serious bodily injury or a person's pregnancy is terminated", providing in this way criminal protection to the foetus through the mother (Criminal Code, Republic of Croatia, "Official Gazette 125/11, 144/12, 56/15, 61/15 - Correction and 101/17", Criminal Offense - Medical Malpractice, Article 181, Paragraph 3).

On the other hand, the Supreme Court of Cassation emphasized that the Supreme Court supports the stance of other Appellate Courts (Niš and Novi Sad), that the foetus at that stage of development is a living being, although it is opposed to the stance of the Supreme Court. In the opinion of the Supreme Court of Cassation, the best way to solve this problem would be to do the same as the Republic of Croatia did, to amend the Criminal Code of the Republic of Serbia by adding a provision referring specifically to this situation. It does not have to be a new criminal offence, but it can be proscribed as a qualified (grave) form of the existing criminal offense referred to in Articles 251 and 259 CC.

Summarizing the opposed attitudes towards this issue, it can be concluded that the attitude of the Supreme Court of Cassation and the Appellate Courts in Kragujevac and Belgrade is based on the fact that the controversial situation regarding the foetal death and the legal subjectivity of foetus is not prescribed by the Criminal Code. It is also believed that the broad interpretation of the legal provisions, extended to the criminal protection of foetus, would violate the balance with other legal provisions and that the interpretation of other legal provisions would be called into question. Fundamentally, the Supreme Court of Cassation does not deny the stance of the criminal departments of the Appellate Court in Niš and Novi Sad, stating that the foetus should be treated as a "living being" (under the aforementioned con-

ditions), but holds that such a consequence of the criminal offence must be prescribed by the criminal law for particular criminal offenses.

PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The right to life is the foundation of any system for the protection of human rights. Article 2 is one of the basic provisions of the European Convention on Human Rights ("the Convention") (Bassiouni, 1994). The basic purpose of Article 2 is to protect individuals from unlawful deprivation of life (Mc Bride, 2009). It originates from the jurisprudence of the European Court of Human Rights (the Court) that the duty of a state to protect the right to life, prescribed by paragraph 1 consists of three main aspects:

- The duty to conduct its servicemen to restrain from unlawful deprivation of life (so-called negative obligation);
- The duty to investigate suspicious deaths (so-called procedural obligation), and
- The duty to take steps to protect life, and in particular to prevent avoidable loss of life (so-called positive obligations).

Despite the importance of the rights under Article 2, its scope is still largely unclear. For example, the Convention does not determine when life begins or ends. These are important issues in relation to the rights of foetuses and pregnant women.

The question of whether the right to life, referred to in Article 2 of the Convention, extends to the life of the foetus (White and Ovey, 2010) was mainly raised in cases related to the laws on the legitimate termination of pregnancy. The European Court of Human Rights did not directly answer the question whether Article 2 of the European Convention applies to the foetus and from which moment. Therefore, it seems that the issues relating to the possibility of legitimate abortion with respect to the right to life of the foetus remain within the framework of the state's assessment of circumstances in which the laws establish a "fair balance between the need to ensure the protection of the foetus and the interests of women", as the Court considered in the case *Boso v. Italy* (2002) [paragraph 1].

In the case, *X v. UK* (November 5, 1981, no. 7215/75, § 19*)*, the Commission of the European Court in its decision dismissed (in paragraph 19) the claim that the foetus has the absolute right to life under Article 2.

In the case of *RH v. Norway* (May 19, 1992, no. 17004/90, § 1), the Commission found that in certain circumstances Article 2 could be applied to the foetus. However, the Court has not yet made clear what the circumstances might be.

In the case *VO v. FRANCE* (July 8, 2004, no. 53924/00, § 12), the Court selectively dealt with the question of the extent to which Article 2 of the Convention includes the foetus (See: Human Rights in Europe, Legal Bulletin No. 56, 2004). This case relates to an application filed by a French citizen, Ms. *Thi-Nho Vo*, born in 1967 and resident in France. On November 27, 1991, she arrived at the General Hospital for a medical examination scheduled for the sixth month of pregnancy. On the same day, the other woman was supposed to be undergoing spiral removal. Due to the confusion that arose from the fact that both women had the same surname, the doctor, examining the applicant, penetrated the placenta so it was necessary to perform an abortion.

The applicant and her husband filed a criminal complaint in 1991, and the doctor was charged with the unintentional imposition of the injury, and then the charge was converted

to murder without premeditation. On June 3, 1996, the Criminal Court of France acquitted him of the charges. The applicant complained, and on March 13, 1997, the Court of Appeal sentenced the doctor for murder without premeditation and awarded him a six-month parole and a fine of 10,000 French francs. On June 30, 1999, the Court of Cassation annulled the judgment of the Appellate Court, considering that the facts of the case did not indicate the criminal offense of homicide without premeditation; it therefore refused to consider the foetus a human being entitled to the protection of the criminal law. Recalling the Article 2 of the European Convention before the European Court of Human Rights, the applicant complained of the refusal by the authorities to qualify the unintentional murder of her unborn child as a murder without premeditation. She argued that France was obliged to pass a law that would regard such acts as criminal offences.

The Court held that the issue of the right to life should be resolved at the domestic level; taking into consideration the above mentioned case, the Court considered that it was not necessary to examine whether the abrupt termination of the applicant's pregnancy is within the scope of Article 2, bearing in mind that, even assuming that this provision was applicable, there was no failure of France to comply with the proposition regarding the preservation of life in the field of public health. The unborn child is not deprived of all protections under the French law. In addition to the criminal proceedings initiated by the applicant against the doctor for the unintentional imposition of injury, she could have applied for compensation for damage in administrative proceedings that would have good prospects for success. Such a request would allow her to prove the negligence of the doctor and to get a full compensation for the resulting damage. Therefore, there was no need to initiate criminal proceeding. Accordingly, the Court found that, even assuming that Article 2 of the Convention was applicable to this case, there was no violation of that provision.

Only seven out of seventeen judges, who were included in this case, agreed with the statement of the "majority", although the fourteen agreed with the conclusion that there was no violation. By the decision of the majority of the Grand Chamber, deciding on the raised sensitive question, which as the Chamber acknowledged was "essential" in the case (paragraph 74) it was avoided whether the foetus was entitled to protection under Article 2 of the Convention. The Court noted that there was no European consensus in this respect, although it considered that the provisions of the European Convention on Human Rights and Bioethics protect the conceived human life. The issue was circumvented by the conclusion that, "even assuming" that the foetus had the right to such a protection, securing a legal remedy in criminal proceedings when destruction was unintentional is not default of the positive obligations of the state.

The five judges jointly held that it was not logical to say that they were not obliged to decide whether the Article 2 of the Convention applies to the foetus concluding that if applicable it would not be violated. The judges of the contrary opinion argued that a full punishment or at least serious disciplinary punishment (which was not awarded) against the negligent doctor could have been demanded. Four of them considered that the life of the six-month foetus in this case falls within the scope of the Article 2 of the Convention.

The above judgment has caused numerous controversies, criticism and discussions, it is believed that it was made probably to preserve the neutral position of the Court expected in relation to the foetus and Article 2 of the Convention, but by doing so it supported the approach taken by the French courts (supported by the majority of the European Court) leaving the mother - whose loss is the result of a serious medical negligence - without any remedy or just compensation for her loss. Observing the case *VO against France* in the context of the controversial issue in domestic case-law, it can be observed that in the case *VO against France*, the failure of a doctor, which led to the necessity of the abortion (the woman in the case was

in the sixth month of pregnancy), was considered, so this case is practically solved from the aspect of abortion and not from the aspect of the failure of a doctor during childbirth or after receiving a pregnant woman in the hospital for childbirth, which is the subject of a raised issue in domestic case-law. In addition, in the said decision, the Court has not specifically considered whether Article 2 of the European Convention extends to the foetus, however, the Court held that the issue of the moment when the foetus begins to enjoy the right to life should be resolved at the domestic level. Bearing in mind the above-mentioned facts, we consider that the case of *VO v. France* is not fully applicable to the particular controversial issue that is the subject of the consideration.

COMPARATIVE LEGAL VIEWPOINTS ON THE STATUS OF FOETUS IN CRIMINAL LAW

In all jurisdictions, both domestic and international, the legal issues relating to foetal rights are viewed as controversial and are often the subject of intense media reporting and proposed legislative amendments. The most important issues are: the right to abortion and foetal rights and wrongful death of foetus caused by the negligent medical acting, negligent care of the unborn child and the consent of the pregnant woman to miscarriage (Wallace, 2004).

The most arguable issue is of "legal subjectivity" of the foetus, i.e. whether and from which moment a foetus is considered a living being and if it can be the subject to legal protection. Historically, a foetus was viewed under the law as an inseparable part of a pregnant woman, with no independent legal rights (Reith Schroedel, et al, 2000).

Embryos are "…generally speaking, neither 'person' nor 'property', but represent something in between". The Federal Constitutional Court of Germany has held that the guaranteed constitutional right to life is applied to the child in utero as well, so the state is obliged to provide efficient protection. The stance of this Court is that the life of the foetus begins 14 days after fertilization, i.e. with nidation, meaning the final embedment of the embryo in the womb. From that moment until the foetus is fully developed, termination of pregnancy is generally forbidden and regarded as a criminal offence. This proscription refers to the pregnant woman, a third party as well as to a doctor (Petersen, 2005:452). Albeit, the German Criminal Code also allows for exceptions to this rule, similar to other European countries (§ § 218 of the revised and amended text of the Criminal Code of Germany). According to the German law, the German Criminal Code does not recognize the foetus any special rights to birth. However, the German Civil Code protects the integrity of the foetus in the same way as the integrity of a pregnant woman. This protection applies to any medical intervention, both prenatal and during birth, and remits the obligation to compensate.

In some jurisdictions, legislation sometimes determines the right to life of the foetus from the moment of fertilization. Such legislations regard the foetus as a live person whose legal status is equal to that of any other member of the human race (Eser, 1992).

The 1978 American Convention on Human Rights (OAS – "Pact of San Jose", Costa Rica, 22 November 1969) in Article 41 states that "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception". Of the 35 member nations of the Organisation of American who ratified the convention, it is binding for only 24 of those member states.

In the USA in 2004, the Congress enacted the Unborn Victims of Violence Act 2004 which recognizes a "child in utero" as a legal victim if it is killed or injured during the performance of any of the 68 existing federal crimes of violence. The Act defines "child in utero" as "a member of the species Homo Sapiens, at any stage of development, who is not born yet and is carried in the womb" (Duncan, 2013). There are 35 states in the US that recognize foetal homicide, 25 of them apply this principle throughout the period of pre-natal development while 10 states establish protection at a later stage, which varies from state to state (National Right to Life, Key Facts on the Unborn Victims of Violence Act, The National Right to Life Committee, 2004). For example, it is a determination of the California Supreme Court to treat the killing of a foetus as homicide, but the Court does not treat the killing of an embryo (prior to approximately eight weeks) as homicide (Meredith, 2005:182). The perception of foetus differs in situations when the right to pregnancy termination is gained and the conditions for the legitimate termination of pregnancy are fulfilled, as well as in situations where the mother (e.g. by taking drugs or otherwise) endangers the life of the foetus (Stone-Manista, 2009:824). The issue whether the foetus has the right to life regarding termination of pregnancy is considered in a different way than in the case when an illegitimate act of violation or a negligent medical practice are the cause of stillbirth (Johnsen, 1986:566). The starting point is the fact that while the foetus does not live independently of the mother's body, it is not regarded as a person.

On the other hand, the intentional killing of a foetus "killing unborn child" is an offence which is covered in Western Australia. This offence carries a maximum penalty of life imprisonment for preventing a child being born alive (Criminal Code of the Northern Territory of Australia, section 170 - Killing unborn child - Criminal Code Act - NT).

In the UK child destruction is determined by the Crimes Act 1958 (UK): "Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act unlawfully causes such child to die before it has an existence independent of its mother shall be guilty of the indictable offence of child destruction. Evidence that a woman had at any material time been pregnant for a period of 28 weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born."

In the United States, the "born alive" rule was a legal principle on which legal provisions base relating to homicide and assault, applied only to a child that was "born alive". Recent advances in the state of medical science have led to court decisions that have overturned this rule. The advances in the development of medical science, including ultrasonography, foetal heart monitoring, and foetoscopy, have subsequently made it possible to determine that a child is alive and viable within the womb, and as such many jurisdictions, in particular in the United States of America, have taken steps to supplant or abolish this common law principle.

At the end of 2002, there were 23 states in the USA which to a lesser or greater extent still employed the "born alive" rule. Over time the rule has been gradually in a lesser usage and its application has been omitted case by case. One such landmark case in the United States with respect to the omission of the rule was *Commonwealth vs. Cass* in the State of Massachusetts (392 Mass. 799 October 5, 1983 - August 16, 1984), where the court held that the stillbirth of an eight-month-old foetus, whose mother had been injured by a motorist, constituted vehicular homicide. By a majority decision, the Supreme Court of Massachusetts held that the foetus constituted a "person" in terms of legal provision relating to vehicular homicide.

It has to be mentioned that throughout the United States several courts have held that it is not within their charter to revise legislation by abolishing the born alive rule "that a child is born alive", and have concluded that such changes in the law should come from the legislature. So, in 1970 in *Keeler v. Superior Court of Amador County*, the California Supreme Court dismissed a murder indictment against a man who had caused the stillbirth of the child of his pregnant

wife, stating that: "The courts cannot go so far as to create an offence by enlarging a statute, by inserting or deleting words, or by giving the terms used false or unusual meanings…".

"Born alive" laws in the United States are foetal rights laws which extend various criminal laws, such as homicide and assault, to cover unlawful death or other harm done to a foetus in utero (unborn child). Legal grounds for such laws stems from advances in medical science and social perception which allow a foetus to be seen and medically treated as an individual in the womb and perceived socially as a person, from a certain moment of pregnancy or all of the pregnancy. Such laws overturn the common law legal principle that until physically born, a foetus or unborn child does not have independent legal existence and therefore cannot be the victim of a crime. They often provide for transferred intent (sometimes called "transferred malice") so that an unlawful act which happens to affect a pregnant woman and thus harm her foetus can be charged as a crime with the foetus as a victim, in addition to crimes against any other person.

The act explicitly provides that it does not permit the prosecution of any person in relation to consensual abortion, medical treatment of a mother or her foetus and it does not influence the attitude of any woman with regard to her own foetus.

Over the last few decades, foetal homicide laws have become the topic of fierce debate. Some argue they are necessary to protect pregnant women from violence and provide for restitution in cases of assault that result in the loss of the foetus. On the other hand, they are perceived as simply another means to grant the personhood status to the foetus and thus erode abortion rights.

CONCLUSION

The raised question is undoubtedly very complicated not only from the legal but also from the ethical and sociological point of view. Although the stance of the criminal departments of the Appellate Courts in Serbia and the Supreme Court of Cassation oppose to our points of view, we consider that this is not a matter of essential differences of opinion but rather of a formal legal understanding.

Observing the practice of the European Court of Human Rights, it is concluded that neither the European Court of Human Rights gives a direct answer to the question when the human life begins. Legal understandings and legal regulations in foreign jurisdictions are consider that anyone who attacks or causes stillbirth of a foetus should be punished for foetal destruction in the same way as anyone who attacks a person and causes their death.

Looking at domestic case law and legal regulations, we can say that it is quite certain that at some point of the society development, life exceeds the legal norm. Courts sometimes give wider interpretations of legal norms and strive to monitor the course of life. Although, in Serbia, there are opposed opinions regarding the legal status of the foetus (which are, above all, primarily of a normative nature, which is not in itself negative because it points to the need to improve the law), we believe that the standpoint, regarding foetus as a "living being" and that it must be treated like that, has to be accepted. This attitude is supported by the contemporary advancement of medicine, which practically treats the foetus as a "living human being" and an independent patient from the very conception and monitors its development and life, even performing surgical procedures on the foetus itself.

Whether such an understanding of the foetus will be applied to criminal law and judicial practice through amendments of legal provisions or through broad interpretation of the existing legal provisions, is not of primary importance. The essence is that it is clear that,

by its nature, its development, the advancement of medical science, the developed foetus in terminal phase of gestation is a living human being who has the right to life and the law must protect it as such.

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REAL POSSIBILITIES OF PRISON INSTITUTIONS IN RESOCIALISATIONOF DELINQUENTS AND PREVENTION OF CRIMINALITY

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Abstract: Ever since the verdict of imprisonment was introduced a question that has permanently been posed is –what are real possibilities of imprisonment in prevention of criminality? In addition, another question which is always present is what are possibilities of prison in changing the pattern of criminal behaviour of offender? Effects of penitentiary institutions on prevention of crime depends on a number of factors (offender's age, kind of misdeed, length of punishment, personality of offender, treatment programme, etc.), each of them individually affecting delinquent's resocialisation. Research shows that the rate of recidivism considerably declines with aging of offenders, that there is no significant correlation between length of punishment and recidivism and that the effects of long punishment are quite moderate, except for the fact that the effects of long punishments are displayed in disabling the offender to commit new criminal offences during his/her stay in prison. Classical mechanisms of penal and legal reaction fail to give expected results and have no effect on descreasing criminal behaviour. Over a long period of time the concept of resocialisation of offender has been considered as an ideal solution for fighting crime but the evaluation of the results of this concept shows a number of weak points along with small effects in preventing criminal behaviour. As a result of modest, or better, small effects of resocialisation, the intensifying of punishment policy, regeneration of prison punishment, politicising of penal mechanism and affirmation of penal and legal mechanisms in fighting crime are more and more present. Apart from making the punishment policy more severe and using a repressive concept, the effects on crime prevention are unsatisfactory. The rate of criminality is constantly high, recidivism is very high, new forms of criminal behaviour, very dangerous for society, are emerging (cyber crime, corporate, organised and other forms of crime), and prison population increases dramatically, up to a point of endangering the prison system on a global scale. In such circumstances the effects of criminal sanctions of institutional character are smaller and smaller in sector of rehabilitation, so only the offender's isolation from the society kept its function.

Sanctions of institutional character have significant effects if they are definite and conducted shortly after committed criminal offence. Both the goal and purpose of penal sanctions and their execution may decrease significantly if legal process is long and if a long time elapses from offence committed to the execution of sanctions.

Keywords: prison institutions, prevention of crime, resocialisation, penal sanctions, recidivism, prison punishment.

INTRODUCTION

A general purpose of instituting and pronouncing penal sanctions is to suppress the activities which can damage or endanger the values protected by penal laws (Article 4, paragraph 2.the Criminal Code of the Republic of Serbia, Official Gazette no.85/2005, 88/2005-am end.107/2005,72/2009,111/2009,121/2012,104/2013,108/2014 and 94/2016.). Within the frame of this general purpose, the goals of penalties are the following: (1) to prevent offender to commit criminal misdeeds and to exert an influence over him/her not to commit them in the future (individual prevention); (2) to exert influence over others not to commit criminal offences (general prevention); and (3) to express social condemnation for criminal offence, to strengthen morale and to enforce the obligation of respecting the law (educational function), (Article 42, point 1,2 and 3 KZ RS). *Individual prevention* has two aspects: disabling and resocialisation. With prison punishment, disabling is only partial: while in the institution - prison, the offender is not in a position to commit certain criminal offences. Resocialisation means to change those offender's habits and values considered to have led him/her to commit criminal offence and to prepare him/her for socially acceptable way of life.

General prevention lies in assumed frightening effect of punishment. In order to be afraid of it the punishment must represent evil, at least from the standpoint of potential offenders. The evil embodied in prison punishment can and must only consist of depraving of freedom; no other deprivations are allowed. It is assumed that a potential offender decides rationally whether to commit misdeed or he decides not to do it. In reality, of course, it is not always the case. For example, many crimes are committed out of passion, under the influence of strong emotions which allow no rational resolution and for many professional and organised criminals the punishment represents a professional risk. For this reason instituting more and more severe punishments, what seems to be a constant demand of all populistic politicians, cannot alone act preventively (Stevanović, Z. 2012. , p.202-203.).

If we have a purpose to institute and execute assigned criminal sanctions, the question arises as to how and in what degree that purpose is being realised. The question on what degree a freedom depriving punishment and its execution in prison institutions accomplish the purpose of punishment is of essential importance. Over a few recent decades the opinion that prison punishment and institutional rehabilitation exerts no expected influence over the change of offenders' pattern of behaviour and that they very quickly return to criminal pattern of behaviour, very often committing much more brutal criminal offences is more and more prevailing. Such a state can be explained by unsuccessful resocialisation, more dominant influence of negative informal structure of prison, by a consequence of prison deprivation, inadequate treatment in prison and similar, i.e. insufficient influence of prison institution on the change of offenders' pattern of criminal behaviour.

The question: *What has happened with the prison punishment and its execution?* is often posed. In order to understand the current discussions about the purpose of punishment it is necessary to bring to mind how different ideas developed in the past. The main question to answer is – what do we want to achieve, what is the aim of punishing criminals? The essential idea of different theories which explain the purpose of punishment can be reduced to three theoretical concepts, in literature known as absolute, relative and mixed theories. *Absolute theories* see the purpose of punishment in the revenge of one who is punishing and in suffering of the one who is being punished. By punishment the evil which has been inflicted by criminal offence is being paid back. Purpose of punishment is exhausting itself by focusing on the past (*punitur quia peccatum est*). Punishment is the goal in itself regardless of whether it is applied on the grounds of divine, moral or legal justice. *Relative theories* fall into period of social speculations on suppressing criminality by leaving the idea of revenge while recognising

the punishment as a means to protect society against criminality. Those theories are directed towards future – punishments are carried out in order to prevent offences in the future. Therefore, it is clear that theories of prevention - special and general ones, are in question.

Within these groups there are a number of theories that will be briefly mentioned here. The group of theories of special prevention includes: (a) theory of frightening by executing the punishment, (b) theory of guardianship, (c) theory of improving and (d) theory of resocialisation. The group of theories of general prevention includes: (a) theory of general frightening by predicting punishment, (b) theory of general frightening by executing punishment and (c) theory of warning. *Mixed theories* try to find a compromise between these two conflicting groups of theories, a basic starting point of these groups of theories being that punishment, not only can, but also must have more goals. A historical review of the development of theories about the purpose of punishment starts from a classical school according to which punishment in Europe in 18th century was arbitrary and very retributive, characterised by severe and corporal punishments. Punitive and legal systems allowed judges great discretionary power that enabled "culprits" to go unpunished and innocent people to be convicted (Cavadino, M., Dignan, J.1992) Representatives of classical school evaluate such system as inhuman and unjust and as an irrational and inefficient way of controlling criminality. Representatives of this school make effort to reform the system of punishment and start from the hypothesis that it is necessary that criminal should be legally defined, punishment adequate for the offence committed, a man commits criminal offence by his own will and punishment norms should suppress or prevent criminal. Cesare Beccaria, as the most important representative of classical school says that the "purpose of punishments is neither to torment nor distress a human being, nor to smooth out already committed crime as if it was not committed. Therefore, the only purpose of punishment is to prevent the culprit from causing new damages to his fellow citizens and to restrain the others from doing similar misdeeds. Therefore, those punishments and the way of their execution that will take care to be proportionate to crime committed making the strongest possible impression on human soul and inflicting the smallest possible corporal pain to a culprit should be given a preference to ."(Stevanović, Z. ,2012. p.208.)

Positivists reject concept of free will interceded by classical school and in focus of their interest they place criminal offender who is thought not absolutely free from external influences in his behaviour. Positivism is particularly significant for development of criminology as a science because it represents the first efforts for scientific explanation of criminality, development of "positive" factual knowledge on doers of criminal misdeeds grounded on observations, measurements and inductive method, rejecting speculations about human character which were present in a previous corrective and legal practice. Central question referred to discovering differences between delinquents and prosocial citizens. Positivism, therefore, represents early development of rehabilitational ideal which prevailed in criminological speculations and rhetoric around the middle of XX century.

CURRENT STATE IN PRISON SYSTEMS AND EFFECTS IN REHABILITATION OF OFFENDERS AND PREVENTION OF CRIMINALITY

A high rate of repeated crime, inefficient resocialisation and unsuccessful reintegration of prisoners lead to increasingly expressed disagreement towards measures undertaken by a society in prevention of criminality. An ambivalent standpoint that "criminal is an unavoidable

phenomenon in modern society – you should get used to it, be realistic, protect yourself and survive" s more and more present today while the others regard criminal as "a catastrophe for society in which somebody should be responsible for such a state because criminal degenerates the society and it is the sign that it is high time people returned to traditional values and discipline." (Stevanović, Z., 2012.p.207.). These views are a consequence of insufficient efficacy of prison punishments and prison institutions in accomplishing the purpose and goals of punishment inducing also theoretical speculations about the purpose of punishment.

Conception of resocialisation started from the idea of possible elimination of established factors of delinquent behaviour using very differential individualistic models of institutional treatment. This period is called the period of "*rehabilitational optimism*". This idealism was based on the idea of "treatment" of doer of criminal offence for his/her delinquent tendencies and this "treatment" involved the change of the personality and his/her qualities, appearance, habits or possibility of committing criminal offence. The idea of rehabilitation developed under the motto "of helping" delinquent assuming that he wants that help. Answorth rightly suggests that the others – the citizens for whom the risk of victimisation decreased in that way had more benefit of that help (Ainsworth, P.,2000., p. . 112).

Rehabilitation as a purpose of punishment went through numerous criticisms. Development of rehabilitational models and the way of their application led to another extreme. As Brody says: "... rehabilitation came to a point where it represents not only an unreal and unfeasible goal but a threat to principles of prisoner's rights and humane treatment and can be harmful to convict's chances to become pro-social"(Garland, D. 1997. Law Review 1(2): 1-20). Martinson, in his investigations, questioned efficacy of prison punishment and treatment, as well as conception of resocialisation, because investigations produced very poor results. After he had investigated the effects of treatment, there followed thorough research of the effects of various treatment models. The results, generally, indicated a poor effect of treatments and a conception of rehabilitation of offenders. However, a compromise solution has been found indicating that it is true that poor results have been realised in application of conception of resocialisation of convicted persons, but they point out the legitimacy of the treatment which, if adequately applied, can achieve much better results than previously. In fact, the problem of insufficiently qualified personnel for executing the prison punishment and application of treatment and inadequate choice of adequate model of treatment for some categories of convicts has been pointed out. Supporters of the conception of resocialisation, Rex and others, emphasize the elements which indicate a possible success of treatment and rehabilitation of delinquent. According to the results of the investigation about the success of executing the prison punishment and resocialisation, positive effects are displayed in decreasing impulsiveness, enforcing the interrelatedness in community, modelling pro-social behaviour of delinquents and in a greater chance that stay in prison should accomplish the purpose of punishment (Stevanović, Z.,2012.,p.207-210).

During nineties of the last century, Canadian researchers discovered that significant effects in the work with prisoners can only be achieved if attention is being paid to "criminogenic needs" of prisoners. It means that treatment is focused on the field of offender's criminal thinking. In a study about the effects of treatment on the change in the pattern of prisoners behaviour it was established that programmes of cognitive treatment, with respecting professional standards, can decrease recidivism from 25-30 % .Such and similar investigations give hope that the change of the viewpoint of prisoners towards criminal offence is possible, with professional approach and adequate treatment in the prison. A tendency of punishment policy to frequent arresting and severe punishing has no significant effect on criminal prevention and provokes resistance, revenge, stubbornness and other forms of resistance towards society in delinquents. Therefore it is necessary to build trust with delinquent and, respecting his/

her personality and dignity, to offer him/her a possibility of his/her change: possibility to change and take active part in a society, to accept necessity of respecting legal norms and to respect his/her abilities and his/her own choices in life. In realisation of cognitive treatment it is emphasised that every offender will decide whether to use the opportunity to change his/her behaviour or to keep on violating the law. Delinquents should know that they always have a capacity to think freely, to choose their own way of life. By admitting their freedom we offer them something that they already have. We simply respect them as human beings. As Viktor Frankl said in Man's Search for Meaning: "Everything can be taken from man except one thing: human freedom – freedom to choose his own view in any given situation, to choose his own way of life".[1]

In the context of discussion about the crisis of effects of prison system on rehabilitation of prisoners, i.e. on the change of pattern of criminal behaviour, literature reports many kinds of prison crisis. The crisis of prison system is one of dominant factors of rehabilitation that failed in high percent of prisoners. Literature reports more kinds of crisis such as: *crisis of content* – relating to the content of living and work in prison, way of organisation and making sense of regime of the life of prisoners. The crisis of content in prison is caused by overcrowded prisons and inefficient organisation of living regime[2]. In addition, there is a *crisis of conditions* in prison. This refers to conditions of life and everything connected with it.

A particular emphasis is placed on the *crisis of authority* in prison as well. Crisis of authority is a consequence of status of prison administration, particularly guards and tutors and social pedagogues. Lately, the participants in treatment have had a limited authority which was more and more emphasized due to respecting the rights of prisoners although the prison administration experienced this as violating its own personal and professional authority. In such circumstances they lose motivation and most often do nothing to change the situation, what is reflected on their authority on convicts. Literature states also the *crisis of publicity* – which refers to traditional conservatism and reserved attitude of prison system towards public. In majority of cases there is a mistery about what is going on in prison and even the prisons themselves contribute to that. In modern time of developed communications it is not possible to hide the events in prison. Prisoners in various ways place information about events in prison and even the state itself more and more tries to make this segment of society public. There is a *crisis of legitimacy*- which is the most distinct in British prison system and which refers to a "call for suspension of punishment of depraving of freedom". This crisis is being experienced as morally justifiable.

The fact that crisis of prison has become a serious problem was indicated by numerous reports at the First Congress of the European Society of Criminology which was devoted to problems of depriving of freedom and prison. The most frequent problems are seen in a lack of adequate programmes for work with prisoners, bad and very bad conditions in prison, insufficiently developed system of protection of rights of prisoners, overcrowding in prisons, growing number of drug addicts in prison, growing number of psychiatric disorders in convicts, strong non-formal system of prisoners – up to the level of mafia[3], bad financial status both of prisons and the employed and so on. In such an ambient it is very hard to achieve

1 https://www.ncbi.nlm.nih.gov/pmc/articles/ 5.3.2018.

2 According to the reports of competent ministry for prison system in England and Wales the prisons are overcrowded by almost one fourth of their designed capacities accounting for 20 995 prisoners. Out of total of 117 prisons in England, 76 prisons are overcrowded and function with difficulty-http://www.prisonreformtrust.org.uk/portals

3 According to the data of the Ministry of Justice of USA, there are 11 very well organised mafia-like groups in prisons in America which operate both in prison and outside. They mostly distribute and control drugs, commit robberies, murders, thefts, etc. Each of these mobs has its own activities, for example, one of them controls gambling and prostitution in the prison system and outside it. Majority of prison mafias are connected with Mexican and other cartels.

more significant results in rehabilitation and reintegration of prisoners, so a great majority of them returns to criminality (Stevanović, Z. , 2012.,p.213). In theoretical discussions on the influence of prison on prevention of criminality there are different speculations and theoretical assumptions. It is possible to define all those speculations in three schools of thinking about prison possibilities of preventing criminal. *First* school of thinking expresses the opinion that prisons definitively suppress criminal behaviour.

According to this school of thinking prisons act as means of averting and influence the offender to reduce or to give up his/her criminal activities. Economists support this opinion because arresting imposes direct and indirect expenditures of prisoners (for example, loss of income, stigmatisation). Thus, confronted with a possibility of going to prison or after having experienced a life in prison, a rational individual will not indulge into further criminal activities. The *Second* school of thinking supports a view that prison is a "school of criminal" and that prisons not only do not prevent criminality but that they influence increase in criminality. Representatives of this school of thinking suggest that prisoner, who had spent a long time in prison conditions, has enforced his/her tendencies towards criminal and therefore it is more probable that he/she will commit offence again compared to a prisoner who spent less time in prison. Many criminologists are of opinion that prison conditions produce highly negative consequences for offender what can most probably increase criminality. *Third* school (minimalistic school) of opinion supports more moderate standpoints about the effects of prison on prevention of criminality suggesting that the effects of prison on delinquents, with certain exceptions, are minimal, so they have no significant effect neither on the change of criminal pattern of behaviour nor on return as well. Representatives of this theory think that effects of prison are minimal on recidivism as well but also on the process of rehabilitation of prisoners and process of community integration. Certainly there are many factors that influence human behaviour particularly in the conditions of physical isolation.

Most criminologists and penologists agree that the prison punishment and prison institutions are in serious crisis because the fighting criminal failed and major aims of punishment in society have not been accomplished. It is certain that multilayer reasons exist for it at all levels of society. When by the end of eighties of XX century it was realised that prison was in serious crisis and that punishment did not accomplish proclaimed goals, they traditionally reached for repressive concept of punishment. This is present even today in practice in majority of developed countries whose model and concept accept most other countries in the world. Application of stricter concept of reaction to criminality did not significantly change the trend of increase of criminality, on the contrary, such approach increased the number of prisoners to unbearable limits for prison systems what leads to serious crisis on all levels. With the phenomenon of globalism and neoliberal capitalism the problem of punishment and execution of prison punishment becomes more and more expressed while arresting becomes a "recipe" of massive settlement with criminals.

Starting from the effects accomplished by pronouncing the prison sentence, particularly a long prison punishments, and consequences produced by staying in prison, advocating limited pronouncement of prison punishments and avoiding prison is more and more heard, since shortcomings are very serious and reflected both on the personality of prisoner and on society. Therefore, prison punishment did not completely fulfil expectations and did not in a significant degree fulfil its function and philosophy for which it was originally introduced into the system of punishment. Even greater disappointment is felt in prison as an institution, which does not succeed to change the behaviour of criminals, so previous comparison with school – the more schools the more educated and well bred people in a society, and the more prisons the less criminal, did not prove its justification. A great number of prisons does not mean greater security and healthier society. Certainly, these speculations does not exclude

the prison punishment as a sanction but provoke the question of measure of using prison punishment, its length, purpose and searching for modern sanctions adequate to state-of-the-art conditions that would have greater effects on prevention of criminality. Theorists and practitioners more and more often pose question: how much did we really move away from previous examples in the history of punishment and did we, really, become more humane in our relationship towards convicts or do we take a hypocritical position of supporting the human rights of convicted ones only talking about it or when great powers "discipline" small nations and their leaders? Unfortunately, in recent past we have seen such practice.

Today some authors often speak about so called "*penal populism*" by which they describe tendency of current policy to promote policy of punishment on the basis of anticipated popularity, regardless of its penology value. Garland , (2001, Law Review 1(2): 1-20.), speaking about "re- birth of prison", states that "in difference to conventional wisdom of previous times, current supposition is that - prison functions not only as a mechanism of reform or rehabilitation but as a means of arresting and punishing which satisfies popular political demands for general safety and more severe retribution". The same author speaks about major characteristics of mass arresting in America. He states striking figures about the number of imprisoned in America, since mass arresting implies the rate of arresting and rate of prison population which is significantly above any historical and comparative norm for society of that type. American prison system, according to Garland, satisfies that criterion. The another significant characteristic is social concentration of imprisonment effect so he suggests that mass arresting means arresting individual offenders and becomes a systemic arresting of whole groups of population. In the case of America it is the question of young black people in great urban centres. In this way imprisonment becomes one of social institutions which significantly structures the experience of groups, i.e. becomes the part of process of socialisation (Stevanović,Z. & Igrački, J.,2011.,p.409).

A similar situation can be observed in European countries as well, which Schwind describes as pesimistic. He speaks about the state in Germany in the 1980's (Stevanović, Z. & Igrački, J.,2011., p.410) where, regardless of newly built prisons, increased number of treatment personnel and opening of social and therapeutic institutions, as a model of rehabilitational approach to delinquents, the effects of prison punishment and stay in prison were very modest and the rate of recidivism high. Poor effects of arresting and treatments, as well as inadequate changes in prisoners' behaviour, according to him, are the result of weakening of rehabilitation idea, financial problems due to economic recession and overcrowding in prisons as a consequence of increased rate of criminality. Stern analyses consequences of overcrowded prisons and concludes that they lead to increased tensions, objectively decreased quality programme of education of prisoners, restricting the advantages, increasing risk situations which cause incidents, violence and alike. Stern, rightly, poses a question – is arresting an answer to increased social and economic problems?

Policy on severe punishment of offenders by prison punishment did not significantly affect prevention of criminality. Statistical data about the rate of arresting of offenders in the United States of America in period 1980 to 2007 which accounts for 264% [4] is interesting. In England and Wales the rate of pronouncing prison punishments increased by 61% , in Australia by 73%, in Sweden by 36%. On the contrary, some nations had stable levels of imprisonment , while in a number of countries the rate of imprisonment decreased. The rate of arresting in Germany remained relatively stable (3%) while the rate of arresting in Finland dropped by 19%[5]. Differences in rate of pronouncing prison punishment in America and

4 The rate of imprisonment in America, before 1980 was about 100 prisoners in 100 000 inhabitants. Today it is about 730 prisoners in 100 000 inhabitants.
5 International Centre for prison studies, 2008.(http://vvv.kcl.ac.uk/schools/lav/research/icps)

other countries are certainly a consequence of policy of punishment and the obvious fact that America significantly relies on prison punishment as a sanction in prevention of criminality. The general principle of penal policy in Finland and Germany, as well as in other European countries, is that the prison punishment should be avoided as much as possible and should be used only as a last resort. In principal, European Western democracies show tendency to use fine more often than prison punishment as opposed to England which pronounced fine sentence in only 17% of cases.[6]

As a rule, the prisons are full of a huge number of young people who spend their best years there instead of devoting that time to acquiring knowledge and skills necessary for life. Modest effects of prison punishment on prevention of criminality encouraged discovering some other options of punishment recognized in the idea of alternative sanctions (sanction in community). Alternative sanctions can be defined as an option of punishment which is placed on the continuum between traditional probation and traditional punishment. Following terms are commonly used for them: alternative to arresting, external institutional measures, programmes in community, and sometimes they are associated with wider penal strategies which are called: dissuading or diversion, deinstitutionalism, decarceration or penal reductionism. In 1986 the European Union submitted report in which measures alternative to prison punishment were described and used in member countries. Thus there are *modified institutional sanctions* that include: semi-imprisonment, advising on work, imprisonment during weekends, house arrest, serving a sentence in another institution (hospital, addiction treatment centres). Another group of alternative sanctions consists of *extra institutional sanctions* which include: fines, sanctions which limit or deprive of some right (taking away the driving licence, confiscation, restitution, placing a ban to perform vocation), educational measures, moral sanctions (court warning, special obligations), supervision. A separate group of alternative sanctions include: *measures of probation*, as well as *unpaid work in community*. The measures which relate to delaying of punishment execution include: delaying the execution of institutional punishment, postponing the pronouncing the sentence and non-pronouncing the sanctions.

In certain countries alternative sanctions such as: *mediation*, i.e. reconciliation of the victim and perpetrator of a crime are often used, often followed by restitution, then, *restitution or compensation* - which is manifested through paying the damage, repairing of a destroyed structure, work for the victim as a kind of improvement. There are also other modalities of alternative sanctions such as: daily fines, work in community (non-paid work in community as reparation to the victim or community, expressed in hours of work in a determined period), sending to daily centers and increase of supervision, electronic supervision (electronic bracelet or phone calls), intensive programmes of supervision, military camps *(boot camps),* designed for younger adult first-time sentenced delinquents of criminal misdeeds -"shock-therapy" with military strict regime (Stevanović,Z. & Igrački, J.,2011).

Besides discovering new extra institutional sanctions and measures against criminal offenders, in majority of countries the reform of prison system has lasted for a considerable period of time, beginning from organisation, kind of management, application of specialised treatments for certain categories of delinquents, prison architecture, to employing specialist professions for working with convicts. Government of England and Wales in 2012 organised discussion on the theme: "The role of prison in rehabilitation of delinquents" n order to overcome or alleviate problems faced by prisons. It was concluded that problems are complex, not only criminologically, i.e. criminally and legally, but there are the issues of mental health, misuse of substances, homelessness, family diseases and other social issues. The question as to whether this is possible is often posed among the experts. Communications at this scientific

6 Refers to 2016

gathering showed that innovative prisons in private and public sector are in the phase of developing stronger partnership with local organisations and additionally accomplish positive effect on rehabilitation of delinquents and on decreasing the recidivism. The idea is that in the process of re-education of delinquents, the focus should be on delinquents, not services. In such circumstances the focus on rehabilitation is of vital importance[7].

CONCLUSION

As a reaction to moderate effects in the prevention of criminality, over recent decades, we took up a traditional way of fighting crime - by intensifying punishment policy and by applying the repressive conception of punishment. Unfortunately, results of such an approach do not give expected results in the prevention of criminality, on the contrary, criminality in most various shapes is more and more present, prison population has increased to the limits when prisons are not able to fully control prison population, institutional treatment does not affect the change of pattern of behaviour in delinquents, and therefore, the results of prevention are quite moderate. Prison punishment is the hardest punishment which in significant degree limits human rights and which results in a wide scope of negative consequences for delinquent. Efficacy of prison punishment is being more and more intensively re-examined because results show that the purpose of punishment is not accomplished to the expected extent. If we regard efficacy of prison punishment via recidivism of convict, we can conclude that efficacy of prison punishment is questionable. Namely, the rate of recidivism of convicted population, on a global scale, accounts for even up to 70%. Therefore, institutional prevention showed modest results. When we speak about aspects of efficacy of individual prevention, we can conclude that prison punishment partly disables delinquent to repeat criminal offence – in the greatest number of cases the highest percent of disabling is in the period when convict is in prison. As regards resocialisation whose aim is to change those convicts' habits and values which are thought to have led them to commit criminal offence and to qualify them for socially acceptable way of life, the state is undefined. Namely, over recent decades they gave up the concept of resocialisation (rehabilitation) and treatment, because they did not give expected results, so the vacuum was created, which, as a rule, shifts the whole concept of punishment into a field of retributive approach to punishment, as indicated by modern punishment policy.

Critics of the concept of resocialisation point out that resocialisation not only represents unreal and unfeasible aim, but also represents a threat to the principles of convicts' rights and humane treatment and it can have harmful effect on formation of pro-social personality in consequence. Consequences of depriving of freedom are multiple and lead to disturbing privacy, deprivation, hypersensitivity of the convict's personality, provokes suspicion in his/her own capabilities and convicts retreat into themselves, manifesting neurosis, and in more severe cases depression as well. Studies show that convicts that have contact with the outside world, who are in contact with others via work or some other activities, manifest considerably more stable behaviour and are emotionally more balanced. It seems that modern tendencies towards discovering new measures of crime prevention, conducting extra institutional treatments and introducing alternative penal sanctions are at the same time the right way towards more serious resistance to criminality and to individualisation of penal sanctions up to a degree of real expectation of better results in an entire prevention of criminality.

7 http://www.reform.uk/reformer/the-role-of-prisons-in-offender-rehabilitation/ 6.4.2018.

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IMPLEMENTATION OF THE LAW ON E-GOVERNMENT GOVERNED BY THE SERBIAN MINISTRY OF INTERIOR

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Abstract: This document analyzes the provisions of the Law on Electronic Government, which in a new manner regulates general administrative procedure, through applying information and communication technologies. The essential purpose is to achieve better reliability of administration and to achieve satisfaction of citizens and other users of public services.

Simplified administrative procedures will reduce the burden of administration for citizens and other clients, increase the efficiency through the application of new technologies as well as national and cross-border interoperability (especially with the EU countries), enhance transparency and responsibility of public servants, strengthen the participation of citizens in democratic decision making with respect to gender equality, protection of personal data and a high level of data security within the system.

Practical aspects of the introduction of information technology within the jurisdiction of the Ministry of Interior are also debated. The document restricts itself to the services of the portal E-government which the Ministry of the Interior provides for citizens and the economy. The author points out the importance of these services, as well as the importance of database. One of the most important is centralized E-evidence of citizens of the Republic of Serbia, which will be used to connect the other databases, and for the creation of the Single register of citizens. It will be re-arranged, through applying information technology in accordance with the Law on General Administrative Procedure.

Keywords: E-government, E-government portal, identification certificate, issuing of documents, centralized citizenship database of Republic of Serbia, connecting of databases.

INTRODUCTION

Administrative burdens in the Republic of Serbia, in terms of unnecessary and very complicated procedures, is one of the major problems of our society. The problem that the citizens of the Republic of Serbia and other users are faced with on a daily basis, is that administration requires that, when applying to exercise their rights citizens are also requested to submit certificates and confirmations on the facts contained in the official records. The applicants often "wander" from counter to counter almost as a "mailman", which for the purposes of Administration conveys certain data from institution to the other.

The modern way of life involves the use of the Internet and necessitates the creation of a modern public administration, with the aim of, with the use of new technologies, improving of the efficiency, effectiveness, transparency and accountability of public administration. E-Government is one of the ways to achieve this goal, in a way that, in addition to the simplification of administrative procedures for the industry and for exercising citizens' rights, it enables access to information and services of public importance in a more convenient way, through better savings of time and resources (Musa, 2006).

THE CONCEPT AND IMPORTANCE OF ELECTRONIC GOVERNMENT

There are different definitions of electronic government (E- government), one of the most common is that E-government is using information-communication technologies that provide opportunity for citizens and other users to communicate and work closely with the public administration, by using the electronic media (internet, a mobile phone, smart card, kiosks, etc.). It entails also applying communications-information technologies (ICT) in the performing of public administration and it is of the importance for various dimensions of public administration. First, it is to establish and operate the databases, increase the reliability and accuracy of data, interconnections and exchange of data, which is crucial for strategic planning, the design of public policies and monitoring their implementation, easier way to determine facts, tracking the cases and records of the decisions and administrative proceedings and the process of inspection, monitoring, administrative and administrative-judiciary practices. In addition, E- government is important for keeping records of the services and organizations within the public administration, public servants (with information about public invitations, procedures for admission into the service, competencies, knowledge and skills, professional improvement, promotions within the institution, termination of employment status), which unmistakably improves the functioning of public servant system of the Republic of Serbia.

The development of electronic government affects the development of the information society in the areas of public administration, health, education, justice, social policies, public procurement, participation in decision making, data security and electronic transactions, security, availability and accessibility of data about individuals, as well as on the development and reuse of the open data owned by a public authority, and which were created throughout their work or in connection with their work.

E-government in the Republic of Serbia is in a process of dynamic development through interactive relations with a view to enable communication between citizens and other users with the services of the public administration through the portal E- government. The services on the internet portal within competence of the Ministry of the Interior are in the form of advertising space, or partial provision of services, as well as the possibility of applying electronically.

The biometric ID card with chip is used as a tool for proving virtual identity, which in a form of the smart card provides the possibility for citizens to be represented in the different systems, without necessity to present documents and without the need to go to the counters and queue in the lines. By the prospect of proving the identity of a legitimate owner of the identity cards and digital signature keys contained on the chip, it provides access to E-government services, but also increases its functional value in terms of features and use for other purposes, such as a replacement for medical ID, etc.

NOVELTIES/SOLUTIONS IN THE LAW OF ELECTRONIC GOVERNMENT

The law regulates performing of public administration tasks, state agencies and organizations, authorities and organizations of provincial autonomy, local government units, public institutions, businesses, special bodies through which the regulatory function is achieved and legal and natural persons who are entrusted with public powers by using information and communication technologies (ICT), or the conditions for the establishment, maintenance and use of the interoperability information and communication technology authority. The provisions of this Act shall accordingly apply to other affairs of State bodies when they act in electronic form, whether they act in administrative matters or not.

This law in a completely new way regulates an area that was not regulated in our legal system. In introductory provisions the meaning of the expressions and the basic principles is given, namely the principle of the effectiveness of the equipment management, safety of electronic administration and restrictions of discrimination.

The law[1]contains provisions on infrastructure, or unique information-communication network of electronic administration, electronic management of administrative registers and records in electronic form, on using data and the registered records in electronic form, data protection and documents at their acquisition and transfer, internet Portal E- government, provision of safe access to electronic administration and of supervision over implementation of the law.

Strategy for public administration reform in the Republic of Serbia[2] in section III. 4. DEVELOPMENT of e-Government underlines the need of using ICT in the system of public administration in order to increase the effectiveness, efficiency and economy internally, as well as the need to focus on the provision of public services to citizens and legal entities which is one of the reasons for the adoption of the law.

The new Law on General Administrative Procedure[3] through numerous provisions "imposed" legislation that regulates the procedures of public administration bodies to be performed electronically with the use of information technologies. E.g. the Law requires that the "decision on setting up a temporary representative of the party whose residence or domicile are unknown, shall be published on the Web page and the official billboard", which led to the regulation on creation and maintenance of Web presentations of the state institutions, enabling of the contents of the presentations to be also available on mobile devices and to be accessible to everyone, particularly persons with disabilities, the Web presentation of the institutions to be created under the prescribed domain of ".RS" and "RSB", the Web publishing presentations, regular updating, accuracy and completeness of the published content, responsible executive bodies, there is an obligation to appoint an administrator Web presentation that is required to regularly update the content and appearance of the Web presentation, and if an authority terminates its work, to submit its work and content of the Web presentation before the termination day to the authority which takes over its power, and if such an authority does not exist, to archive the presentation.

Also, the Law regulates how the application forms may be submitted electronically and that the authority is obliged to register them immediately, in the same way that they are sent (electronically). The law on electronic government prescribes the duties of authorities during

1Law on electronic government ("Official Gazette of R Serbia" number 27/18).
2 Strategy for public administration reform in the Republic of Serbia ("Official Gazette of R Serbia", no. 9/14, 42/14).
3 Law on general administrative procedure ("Official Gazette of R Serbia" number 18/16).

the communication with the user of electronic administration services by stipulating that the authority is obliged to publish on its Web page, e-Government Portal and/or another Web site a list of administrative procedures that can be implemented by electronic means, as a way of keeping "electronic" administrative procedures and limiting during "electronic" administrative proceedings. The authority is obliged to prepare electronic forms for applying and electronic submissions, which must be distinct, easy to read and prepared in a way that allows the registration of all data necessary for the efficient and effective operation of the proceedings. If the submission is obligatory, electronic submission is signed by the registered scheme for electronic identification of higher level of reliability; the Authority also undertakes to enable the electronic submission through e-Government Portal, other electronic single administrative way or a different way of delivery between authorities and users, in accordance with the law regulating the electronic document and services of reliability in electronic business. Electronic submission keeps track of the electronic registry. Receipt of an electronic communication is sent to the applicant immediately, in the same way that the application form was sent. Certificate shall contain a notice of receipt of an electronic communication, the date and time received, and advanced electronic stamp. Time received an electronic communication is the time determined by a qualified electronic time stamp. This sets out the provisions of the law on general administrative procedure, when an authority acts in electronic form.

Electronic submission is also regulated by the Law on Electronic Government by stipulating that the authority is required to submit a brief, decision, resolution, conclusion, or another electronic document and/or information under their jurisdiction to the user electronically. Electronic submission of an electronic document shall be performed in a unique electronic mailbox of electronic administration or in other electronic manner in accordance with the law regulating the electronic document and reliability of services in electronic operations.

An electronic document is considered to be personally downloaded when the user authority acknowledges it by opening an electronic reply receipt that is automatically created upon receipt of a document into one electronic mailbox. If after an electronic delivery, the law stipulates, the Authority does not receive electronic delivery receipt as requested, the electronic document will be repeated. Electronic document and/or information is considered personally downloaded when authorities' advanced electronic stamp acknowledges the electronic reply. If after repeated electronic delivery, the law stipulates, the Authority does not receive an electronic reply, a notification on failed electronic delivery is automatically created. An electronic delivery is considered to be completed on the day it was taken over by the user in the prescribed manner, or within 15 days after delivery of the notification. Certificate of electronic delivery contains the personal name and the address of the user to be processed for the purpose of verifying the identity of person to whom the electronic document has been delivered.

SERVICES ON THE E- GOVERNMENT PORTAL WITHIN THE JURISDICTION OF THE MINISTRY OF INTERNAL AFFAIRS

The E-governance within the jurisdiction of the Ministry of Internal Affairs implements the following services for citizens and the industry: scheduling appointments for obtaining of ID cards and passports for citizens and for requesting registration, for the issuing of certificates for electronic signature on personal identity cards with a chip, requesting the issuing of certificates of residence, renewal of vehicles' registration at authorized technical inspections

(services for physical and legal entities), replacement of old driving licenses with the new ones, reports on missing persons (FLOODING in May 2014), traffic accidents for the territory of the city of Belgrade (citizens) for the year 2015., informing citizens about the expiry date of identification documents.

Portal E-government was established before the adoption of the Law on Electronic Government. For the purpose of regulation and use of the portal, establishing of services on the portal have been regulated, operations of the authority on the portal, as well as the administrator of the portal which, among other things required enabling of the service, as well as authorized access to the data. Through the Portal various forms and requests can be submitted, also payment of administrative taxes and fees can be made, and it is possible to communicate with the administration and receive notifications. On the Portal there are users records, as well as access to the system when one uses the services. The portal also functions as a unique administrative place, where citizens, without waiting at the counters, can be informed, submit requests, apply, receive information and exercise their rights or express interests, as well as fulfill their duties.

IMPROVING THE DATABASES FROM THE JURISDICTION OF THE MINISTRY OF INTERNAL AFFAIRS

The Law on Records and Data Processing in the field of Ministry of Internal Affairs[4] for the first time regulates databases, records, applications, purpose of their making, rights of the persons whose data are processed, manner of collection, processing and exchange of information (domestic and international), data processing systems, technical security and communication systems, as well as content, or information contained in them.

Although this Law regulates keeping of personal data of the citizens, the Ministry had kept databases in accordance with previous laws from different areas. One of the most important, the creation of which started back in 1980, is the database of residence, domicile, as well as going abroad and checking out for foreign countries that is now keeping centralized, in electronic form, on the basis of the Law on Domicile and Residence of Citizens[5].

It is regulated, inter alia, that at the request of the Court, authorities of State administration, other authorities and organizations, as well as legal and other persons who have a legitimate interest, the competent authority is required to deliver requested information from residence and domicile records of citizens. This is in accordance with the Law on Protection of Personal Data[6] on condition that these subjects are authorized by law to seek and receive information, necessary to perform their competences and if protection of the privacy of individuals is enabled.

This provision enables a legitimate data exchange that contributes to the efficient operation of the public administration, but also helps individuals apply for personal identification and introduces discipline in the area of data protection of individuals.

The police may also use data from records of residence and domicile in exercising of the police duties established by the law, and data can also be used for statistical, scientific, research and other purposes, without showing the identity of the persons to which the data refer. These data can be used and the person to whom data refers is entitled to receive information on data processed about him, information on who handles them, for what purpose, on what grounds

4 Law on records and data processing in the field of Internal Affairs ("Official Gazette of R Serbia", no. 24).
5 Law on domicile and residence of citizens („Official Gazette of R Serbia" no 87/2011).
6 Law on Protection of Personal Data («Official Gazette of R Serbia», no. 97/2008,104/2009,68/2012).

and who are the users of personal data related to it, as well as to seek corrections of incorrect and outdated data.

In accordance with the Law on Citizenship of the Republic of Serbia[7]records of the citizens of the Republic of Serbia, which is under the jurisdiction of the Ministry of the Interior, are being kept by local self-government authorities as entrusted bodies. Central application that will keep data on citizens of the Republic of Serbia is not established. This is because local self-government does not keep neither centralized register of citizen births, nor the centralized citizen register which is kept in the printed form or in their local applications. The development of application where information on the Serbian citizens is kept centralized in electronic form is being prepared now. These data will be merged with records from the register of Yugoslav citizens who are kept in the Ministry of internal affairs according to the Law on Yugoslav Citizenship[8]. The legal basis for keeping database of citizens of the Republic of Serbia centralized was created by adopting the Law on Amendments to the Law on Citizenship of the Republic of Serbia of 26.3.2018., which regulates that the data from the register of citizens is kept in a single record, in electronic form by means of automatic data processing.

There is a huge space for simplifications and improvements in the electronic administrative procedures that does not require considerable financial resources, but the introduction of logic in processes and functioning of the system. By creating a unique electronic records on nationals of Serbia, it will be allowed to get information about nationals at more purposeful way and centralized. Due to the lack of central register of citizens of the Republic of Serbia several administrative procedures and functionalities relevant for electronic governance cannot be fully implemented, because data on citizenship, as the basic information relevant to the conduct of others records cannot be electronically processed.

Through the functionality of the electronic governance that is the precondition for the establishment of a database, the citizens shall not be under obligation to submit statements, certificates and other documents in order to exercise their rights and interests, because checking of their data will be performed only through the records and this will enable citizens to exercise their rights on a faster, easier and more reliable way.

It is important to emphasize that this significant for full implementation of the project "Baby, welcome to the world" which allows that in the hospital, after birth of a child parents can register their child electronically in the database of births and obtain the unique identification citizen number, as well as register the residence. On this basis a medical ID can be delivered on the home address of a child, so parents don't have to come personally to the Police Department offices, Home Offices or the Republic Fund for Health Care[9].

Also, after the adoption of the Law on General Administrative Procedure[10], and then Regulation on obtaining data and transfer of information for which official records are kept[11],

7 Law on citizenship of the Republic of Serbia ("Official Gazette of R Serbia" number 135/04,90/07,24/18).
8 Law on Yugoslav citizenship ("Official Gazette of the FRY", no. 33/96, 9/2001).
9According to the Team for the implementation of the strategic projects of the Government of the Republic of Serbia through the project "Baby welcomed into the world" from April 21. 2016. until 1. of June 2018. there were 103 309 submits the requests for the newborn children. The 88 928 newborns is enrolled in the birth register, 88 417 newborns have registered in the residence register and 80 464 newborns have got the health care. If we take into account that two parents should have gone to apply for register to birth of a child, for register into the residents register and for healthcare, it is concluded that the goal of this project as creation of effective and low-cost administration achieved. That means big importance for parents that the most important and happiest event in their life parents can be with their newborn child, not queuing in the institutions.
10 Law on general administrative procedure ("Official Gazette of R Serbia" no. 18/16).
11 Regulation on obtaining data and transfer of information for which official records are kept ("Official Gazette of RS", no. 56/2017).

Web services are provided to other governments' agencies and organizations to obtain data in an electronic way.

Although the Law on Amendments to the Law on Citizenship of the Republic of Serbia provides legal basis for keeping centralized electronic records on citizens, as well as the basis for the electronic exchange of data, it should be noted that the Law on Identification Cards from 2011. year paved "the way" for the exchange of data by stipulating that, when receiving a request to determine the identity of the applicant, a public officer may require from the applicant a public document issued on the basis of the records only if he, the competent authority, cannot ex-officio access the data in the central system, or obtain it by examining the records of citizenship, the home book of births, deaths and marriage registries or other established facts about their compliance with the conditions for the issuing of identity cards.

CHALLENGES FOR IMPLEMENTATION OF THE LAW ON ELECTRONIC GOVERNMENT IN PRACTICE

Strategy for public administration reform in the Republic of Serbia foresees modernization through the development of electronic services that will enable citizens to faster and easier exercise the rights guaranteed by the Constitution, but also by improving its effectiveness.

By using of technological possibilities personal data of citizens is protected, the legal safety of citizens when submitting requests and exercising rights is increased and possibility of abuse is prevented.

In this field breakthrough of automatic data processing is evident. It's strongest in the area of administration. The Law on Domicile and Residence of Citizens, Law on Unique Identification Number and other laws from the domain have created, "a starting point" for storing and processing data. The amount of information based on which administrative acts are being made significantly increases and databases provide opportunities for much faster issuing of certifications and documents. The processing have been accelerated, become formalized, relatively more simplified, and accurate, the possibility of errors is decreased. Besides the great benefits provided by automatic data processing, harmful consequences that could appear should be prevented. The danger arises because information about an individual is collected in one place and such a system could place individuals in the center of power, and even entire government authorities by gaining power by obtaining information about citizens. Not without reason a power is sometimes defined by the range of possibilities of using the information. "Manual" keeping of register gives possibilities only for "Manual" slow use, incomplete and with fewer possibilities for misuse.

Many authors have point out benefits of centralized keeping data, but also danger of their misuse. They consider that one of the major achievements of the modern age which began from the French Revolution was protection of citizens ' rights to their own "intimate sphere", on their personality (Kavran, 1979). There is data which is of paramount important and with high value for the individual if the others don't see it. This author talks about the situation when data can be widely used and can be a link between the individual and society, a form of socialization. It can only be used by authorized persons for the purposes important for the individual and for the community, and when they are such that they might inflict harm or pain to the individual, they belong to the intimate sphere of life and fall into the category of "personal rights" (Kavran, 1979:6).

This issue becomes important and because there is a possibility of introducing "the citizens information banks" which was first introduced in Belgrade in 1980, and then and in Za-

greb and Osijek, in the former Yugoslavia. It served, and today is used, as a source of data for decision-making for various declarative and constitutive administrative acts which decided about a series of rights and law-protected interests of individuals.

In addition to this challenge, it is important to note the creation of a modern administration where employees possess adequate education, knowledge and skills, adapted to the public administration, as a public service. The administration must respond to the demands of citizens and the economy and to be responsible government with trained personnel, relevant knowledge and competence in accordance the requirements of the users of electronic administration, because of dynamic changes in the sphere of application of communication-information technology, which is in the scope of the reform process (Vukaљinoviж Radojicic, 2017: 27-42).

CONCLUSION

After adoption of the new Law on General Administrative Procedure and having in mind that in Serbia there was no legislation regulating the field of use of information and communication technologies in the operation of the administrative authority, the need for the adoption of the Law on electronic government has arisen. That was the first time a huge area of the administrative acts in electronic form was regulated. It`s adoption has enabled as the exercising and protection of the constitutionally guaranteed rights of citizens, also the level of efficiency and uniform treatment in practice, saving time for citizens and human resources for authorities of public administration which acts and is in the function of strengthening integrity, transparency, efficiency and accountability of public authorities, by building public confidence, strengthening the participation of citizens in the management of public affairs, access to information, the use of new technology and effective work of public authority.

The possibilities of using information technologies are great and should be used in particular in the area of administrative procedures. Although computers cannot replace persons, in some administrative affairs, with the use of modern technologies the application and exercise of rights and interests can be facilitated. Also obligations of citizens and business can be performed in an easier way as administrative duties of receiving, processing and decision making.

It is extremely important to establish E-Government Portal, that aims to perform all procedures related to a person or legal situation (the birth of the child, change of residence, registration of economic entities, paying taxes, etc) at once and in one place, so you don't have to go to a number of institutions, fill out multiple forms, and often with the same data and the same certificates for several times.

In theory, development of E-governance is defined through four stages: stage of advertising space (the billboard stage) in which Web pages are treated as spaces for advertising, where citizens are only observers, and where there is no two-way communication; the partial phase of the providing of services (the partial-service-delivery stage) in which citizens can get part of services over the Internet, but in a limited range and sporadically; phase of the portal (the portal stage) which includes a one-stop shop portal with integrated services that are characterized by ease of use, privacy protection and data security and phase of interactive democracy (interactive democracy) which is characterized by providing services and a number of measures aimed at strengthening accountability where the web pages are used for systemic political transformation, and when visitors to the site can personalize the page, get the answer, to give suggestions and use sophisticated mechanisms for fostering democratic accountability.

But, the simplification of procedures and the ability to use e-services is not possible if there are no databases that allow you to check electronically relevant information of importance to the administrative procedure. Some of the most important bases and records are within the competence of the Ministry of internal affairs such as records of residence and domicile that exist since 1980. Unique records on citizens of the Republic of Serbia in electronic form does not exist but a number of activities has been carried out, ranging from adoption of the regulations, making applications, organization and others in order to establish this records.

The establishment of databases, as well as the exchange of information are extremely significant for the project "Welcome Baby to the world", which is a pioneer effort of related bodies and institutions of the Government of the Republic of Serbia to use the easiest way, the unique administrative place used as administrative service to exercise the rights in connection with the registers – registration in the births registrar, the Ministry of interior– registration in the records of the citizens of the Republic of Serbia, register a unique number and the residence, and the Department of health and The Republican Fund for Health Insurance-publishing of health identification cards, as well as other organizations within public administration.

The possibilities of modern technology are a huge potential for public administration, but with dangers are that reflected in the possibility of misuse of data due to centralization data in electronic form. Also present are the challenges of providing trained personnel, who, in the mainstream of daily challenge and introduction of the new technology must accept modern trends and respond to the needs of citizens.

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REQUEST FOR THE PROTECTION OF LEGALITY AT CRIMINAL ACTS OF ORGANIZED CRIME

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Abstract:Request for the Protection of Legality, as extraordinary legal remedy about whom decides Supreme Court of Cassation, in our legislature for criminal proceedings and in legal theory is seen as a mechanism of protection and achievement of the rule of law. The possibility of applying this extraordinary legal remedy, which is frequently seen as the last legal mean of protection in criminal proceedings and as a mean in which achievement of guaranteed rights is in advantage comparing to the rule of *res judicator* and *ne bis in idem* is based on the importance of achievement and protection of human rights and the efficiency of use of court decisions. Having in mind, the great changes of legislature that followed passing the Code of Criminal Procedure in 2014, in reference to this legal remedy it's of great importance to analyses the practice of Supreme Court of Cassation. The subject of this paper relates to the analysis of the Request for the Protection of Legality, as an extraordinary legal remedy as well as specifics that surround the criminal acts of organized crime and the analysis of the practice of the Supreme Court of Cassation in proceedings in which in 1st degree a Special department of Higher Court in Belgrade in period between 15 January 2012 until 31 December 2017.

One hundred and nine cases where analyzed in which, as the 1st degree, Special department for criminal acts of organized crime of Higher Court in Belgrade was jubilating. By analyzing the practice of the Supreme Court of Cassation, certain legal points of the EuropeanCourt of Human Rights and few corporative law solutions and conclusions are drawn in sight of possible changes and advancement of this extraordinary legal remedy.

Keywords: Request for the Protection of Legality, extraordinary legal remedy, criminal acts of organized crime, Supreme Court of Cassation, Criminal proceedings.

INTRODUCTION

Request for the Protection of Legalityrepresents an important extraordinary legal remedy, especially because the principle of rule of law is being aloud with request for the Protection of Legality as well as limitation the power that's guaranteed by Constitute and Law (Škulić, Bugarski, 2015: 526). Request for The Protection of Legality is an instrument frequently analyzed in domestic literature but in a different way without deeper analyzes of problematic surrounding this extraordinary legal remedy. Subject analysis includes Request for The Protection of Legality in term of criminal acts of organized crime reason being that we are dealing with the ultimate mean of defends related to the most serious criminal act. What makes this

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matter important is that Republic of Serbia has ratified European Convention on Human Rights and Fundamental Freedoms (ECHR) whit ratification of European Convention on Human Rights and Fundamental Freedoms Law in 2003, and one of the reasons for submitment of the request is violation or deprivation of rights guaranteed by ECHR, and because when Republic of Serbia has ratified ECHR she has taken a commitment to respect decisions made by European Court for human rights (ratification of European Convention on Human Rights and Fundamental Freedoms Law, Article 45).AnalyzingthepracticeofSupremeCourtofCassationinprocedureswherein thethe firstdegreeSpecialdepartmentforcriminalactsoforganizedcrimeofHighercourtinBelgradehasacted, andanalyzingsomeapplicationswhereEuropeanCourtofHumanRights (ECtHR) are the mien reasons that justify the need of harmonization of domestic legislature, meaning it has pointed to the need for improving and change of the Request for The Protection of Legality.

REQUEST FOR THE PROTECTION OF LEGALITY

Request for the Protection of Legality is extraordinary legal remedy, with characteristics of devolutivity, independency, unsunspensivity, incompleteness and time limit. The sole characteristic of this extraordinary legal remedy is the ability to be used against final decisions of the Public attorney or court as well as in case of violation of procedure that preceded the decision (Bejatović, Škulić, Iliić, 2013:381). Court decisions can be appealed, regardless on which stance of procedure they were made, including judgments, solutions, orders against which regular legal remedy wouldn't be allowed otherwise, or in case they were made during criminal procedure or investigation (Brkić, 2016: 200). Request for the Protection of Legality isn't allowed only in case if a decision was brought by Supreme Court of Cassation (Code of Criminal Procedure Article 482 paragraph 2). The right of using a legal remedy, after decision being made final, is going against principles *res judicata* and *ne bis in idem*, but it's based upon the right for achievement of human rights and the ability of revision of unlawful decisions made by court and on the right to efficient use of court decisions (Bugarski, 2016:89). The request for the Protection of Legality is a last stance in defense of legality and constitutional acting of government in acting and deciding (Škulić, Bugarski, 2015:526).

Persons authorized to submit the request for the Protection of Legality are Republic public attorney, defended and defend end's legal counselor. When submitting the request each side needs to specify the reason for submitting such request. The Code of Criminal Procedure (CCP)foreseesfollowing reasons for submitting the request: violation of the law, if a norm of Code of Criminal Procedure is being violated or in case that law is wrongly used on the factual situation; use of law which is marked as unconstitutional or is against international law or international contracts; in case the human rights and liberties of defendant are abridged or violated, same being for any other participant of criminal proceedings that is being granted by Constitution or The European Convention on Human Rights and Fundamental Freedomsand additional Protocols on Convention. When talking about violation of the law, term law should be interpreted more widely rather than narrow, meaning that it includes the violation of both material and procedural laws as well as secondary legislation and other laws and codes that should be or are being used in particular procedure (Ilić, Majić, Beljanski, Trešnjev, 2014:1083). There are some opinions that this term should relate to other regulations which use, from the stand point of material and procedural law in particular case is considered as necessary (Vasiljević, Grubač, 2010:888).

Even though there are opinions that Republic public attorney and defense are equal in their position and rights, there is an impression that law maker, knowingly has stripped off

certain rights from the defendant on the ground that request for the Protection of Legality is a legal remedy that protects the public order. That may be, but there is also a sense of doubt that request for the Protection of Legality doesn`t turn slowly into a regular legal remedy (Grubšina, 1987:400).

The time limit for submitting the request for the Protection of Legality is partially restricted and in case of violation of CCP, that were made in 1st or 2nd degree of criminal procedure, defended is in position, though his attorney and legal counselor, to submit the request in a time limit of 30 day from the day since final decision was delivered, in case that right for a regular legal remedy was previously used, while Republic public attorney isn`t restricted with such limitations(Ilić, 2014:33).The time limit for submitting the request for the Protection of Legality is time limited in case of applying the law which was found to be unconstitutional during the constitutional review, or in case if a decision of Constitutional court or European court of human rights (ECtHR) on violation of the guaranteed rights exists or was brought three months after delivering of the decision. It is of great importance, in case of violation of the right, that when a party submits the request for the Protection of Legality that it also submits the decision of Constitutional court or ECtHM. The authority that decides on the request is the Supreme Court of Cassation and when deciding it can either dismiss the request (from the reasons of the request being untimely, request being prohibited or in case of unproven content of the request), reject the request (in case there are no arguments on which the applicant is relying on) or grant the request. In case that Supreme Court of Cassation grants the request for the Protection of Legality, it can, with its verdicts either revoke in whole or partially the decision and to bring back the case on re-decision, or it can alter the decision in a whole or partially, or it can just determine the violation of the law. What is interesting is that one of the most recognized qualities of the request for the Protection of Legality is it's unsuspensivity, which is a rule, in general, with two exceptions in case when Supreme Court of Cassation decides to bring back the case for re-decision and when Public attorney requests the delay or to cease the execution of the decision, when an extraordinary legal remedy was applied (Law on public prosecutor's office, Article 27). Important characteristic of this extraordinary legal remedy is expressed with its nature and with an option that a defendant may submit a legal remedy without a worry of repercussions(Bošković, Kesić, 2015:392), because he's position is backed with a rule *reformation in peius*(Milovanović, 2016:20).

In relation to the question of parties that are authorized to submit the request for the Protection of Legality, as it was told before, the CCP gives such authorization to Republic public attorney, which can submit it in favor andagainst the defended, as well as defendant and a legal counselorof the defendant too. Although the CCP gives right to defend to submit the request, he cannot do it on his own, he needs to submit it through defense legal counselor. *Ratio legis* of this solution is based on a need to professional and expert legal representation, in front of the court which is deciding on violation of the law and violation of the rights of the offender (Ilić et al, 2014:1081). Having in mind that we are dealing with a legal remedy that is being used after the criminal procedure is completed and decision was made final, when we talk about the legal representative of the offender we are talking about his chosen legal counselor, not his *ex officio*defendant, because Code of Criminal Procedure prohibits the appointment of the *ex officio*defendant in cases which decisions are made legally final. Besides that, the defense is not allowed to submit the Request for the Protection of Legality in its full range, like Republic public attorney is allowed to do, which represents another inequality in rights, meaning his right is limited just to significant violations of the criminal proceedings from reasons of obsolescence, amnesty, pardon, in case if the case was decided and decision was made legally binding, or in case that there are some circumstances that are prohibiting the criminal prosecution; if on public hearing a judge or judge-jury who took place in deciding had to be excused or expelled; if the court has violated the norms of the criminal procedure

in case of indictment or permission of the competent authority for criminal procedure to take place; in case that judgment didn't solve the case in complete, in case of the exceeding the indictment; in case of the violation of the right *reformation in peius*; if the verdict is based on the evidence which is not allowed, unless that regardless of those evidence the same verdict would be made; if the deed for which person is being held responsible isn't a criminal act; if law is violated when decision was made on the sanction, confiscation of unlawful material gain or in case of revocation of conditional release; if law was violated when deciding on property legal request, confiscation of unlawful material gain, decision on the costs of the proceedings or if the accused was exempt from payment of expenses (Code of Criminal Procedure Article 485 paragraph 4).

Request for The Protection of Legality certainly is a legal remedy that is a subject of interest for the great number of authors, but we get the impression that the focus is being oriented to the question of the norm itself and its use but not to critical analysis of this meter. Alongside unequal position of Republic public attorney and legal counselor of the defendant in rights that is justified with an opinion that the prime purpose of this institute is the protection of general interest, question is raised weather rule of law principle can be achieved if position and rights of public attorney and legal counselor of the defendant are not equal. Having in mind that this is an institute that is treated as a mechanism of fruition of rule of law principle, we get the opinion that these solutions are not in course with procedural equality of party's principle. Even if we can criticize the Request for The Protection of Legality and procedural equality of party's principle reason in that we are dealing with finally decided procedures, but we must not ignore the fact that this is an extraordinary legal remedy that can be submitted just in case of the most harshest violations of the law. Alongside this question it is of great importance to note the fact that in equality exist in terms of reasons for submitment of the request, leading to a further question why has the law maker limited the defense in terms of aloud reasons for submitment of the request. The reason of restricting legal counselor of the defendant in terms of valid reasons for submitment of request can be justified on assumption that a right of Republic public attorney to submit the request for the Protection of Legality in its full range is his duty in any case, meaning that he must submit the request for the Protection of Legality in any case where a violation was made (Škulić, Ilić, 2012:148). Even though this can seem just used, in reality it is difficult to achieve.

CRIMINAL ACTS OF ORGANIZED CRIME

Considering that the subject of this paper is the request for the Protection of Legality, as an extraordinary legal remedy in criminal proceedings that deal with criminal acts of organized crime, we need to pay more attention to criminal acts of organized crime, as well as the term organized crime itself.

Organized crime can be seen as unique and most dangerous method to achieve a criminal act, seen that it is an aftermath of more people being organized around a purpose to achieve and put in motion different criminal acts with a goal of gaining profit and power (Bugarski, 2008:41). The term of organized crime was used at the first to signify a public concern for formation of the black market, as well as concern for rise in number of criminal doers, that were acting transnationaly (Paoli, Fijnaut, 2003:1). On the other hand, organized crime can be viewed as particular phenomenon that consist of doing criminal acts by the hand of organized criminal group, with a mutual goal, which achievement is the sole purpose why those groups exists, with an effort, in longer period of time, to secure existence of the group (Škulić, 2003:44). Organized crime can also be defined as unideological affiliation of people with ex-

pressive social interactions that has a hierarchy, a mutual goal of making profit or achieving power, all by illegal and legal activities (Abadinsky, 1990:5).

As can be seen from arguments before, domestic and foreign authors are using terms criminal and criminality, which have different meanings, but having in mind that there is not a unilaterally accepted definition of organized crime, or organized criminality, as well as that domestic law maker is using the term organized crime, for the purpose of this paper we won't deal with normative and theoretical analysis of such terms, but we would use the term organized crime, which Criminal code sees as execution of criminal acts from the hand of criminal group or its representatives. Criminal code sees organized criminal group is a group of 3 or more people, which exists for some time, that is operating with a goal to execute single or multiple criminal acts, for which is foreseen punishment of 4 years of imprisonment or more, with a purpose to achieve financial or other gain, either directly or indirectly.

Under the term organized criminal group we consider persons that are connected with mutual characteristics or goals, as well as activity, interest or business (Bugarski, 2008:36). Some authors consider that group, besides mutual goals are also characterized with the thought of affiliation to the group by a member (Manojlovic, 2005:69). Also, a significant characteristic of a criminal group is a continuality in operating, meaning that they operate in a longer time period, with clear signs of operation being planned, made in secret, professionally, with deep inner connections, hierarchy and division of tasks between members (Bugarski, 2008:37). Main purpose and goal of criminal group is gain of financial or other benefit (Ignjatovic, 1998:28). Alongside the characteristics we talked about earlier, criminal groups are characterized with the ability to adapt to social and economical conditions, which is expressed though successful search of area that's fruitful for criminal actions, regardless of current conditions, frequent use of force and brutality and connection with authority (Mršević, 1993:87), secrecy in organization, existence of strict ground rules within the group, flexible "criminal technology"[2] tendencies to a monopoly behavior (on a certain area, in a certain financial area) (Dorn, Oette, White, 1998:537). Organized crime has changed with transnacionalty as a newly founded attribute, since couple of authors look at an organized criminal group, as a group that has a hierarchy as a root for organization, which works transnational, just like one big business corporation that has a spread range of different criminal actions and activities, which generate considerable profit and which handles a considerable capital, with money and power of bigger proportions (Bugarski, 2008:49). Another characteristic of modern organized crime is a wide range of criminal acts being done by a group.

Criminal acts of organized crime in criminally procedure have few specifics and traits, which make them diverse from the point of view of law procedure (Brkić, 2004:186). The distinct can be find in principle of specialization of state authority during Pre-investigation procedure as well as sole criminal procedure itself, principle of assembly and professionalization of the court, principle of urgency and publicity (Brkić, 2016:200) as well as special evidence proving procedure that characterizes this sort of criminal acts. Special evidence proving procedure that would be used are, secret surveillance of communication, secret tracking and filming, simulated deals, computer research of data, control of orders and hidden investigator (Code of Criminal Procedure, Article 166-187). Special investigating actions are not that different when we take a look at comparative law, difference being that, in some comparative law examples, position of authority has wider range of competence and authorization when taking such actions[3].

2 Organized crime is often characterized with deep connections between legal and illegal side, though the activity of organized criminal groups, as well as using of most modern technology in its activities which are often consisted from optical and acoustical tracing of police officers, public attorneys and judges.

3 Requirements for the applications of special evidential procedure are differently regulated in

Having in mind that one of basic principles of specialization of the authority in criminal procedure which is grounded on specialization for work in criminal matter of organized crime, according to the Act of organization and authority in dealing with organized crime, terrorism and corruption, in 1st degree of procedure High court in Belgrade, for territory of Republic of Serbia would serve, while in 2nd degree Court of Appellation in Belgrade, for territory of Republic of Serbia. In High court in Belgrade, a Special department for dealing with criminal matter of organized crime is formed. In period between 2012 until 2016 it had dealt with 1523 cases, and number of cases each year has risen, from 105 in 2012 up to 469 in 2017 (Annual report of High court in Belgrade, 2012-2017).

REQUEST FOR THE PROTECTION OF LEGALITY IN CRIMINAL PROCERUDRE OF ACTS OF ORGANIZED CRIME

In the first and second part of the paper most basic characteristic of request for the Protection of Legality and criminal acts of organized crime are presented, while next part of the paper would deal with cases of Supreme Court of Cassation, and decisions made by the court.

Supreme Court of Cassation has decided in 152 cases since 2012, in procedures when in 1st degree Special department of High court in Belgrade was deciding, since the beginning of use of the new Code of Criminal Procedure from 15 January 2012. During the 2012 fifteen requests were submitted, and number of them has risen by 2016, up to forty two. Taking a closer look, we can see that requests were more frequently rejected than taken into merit consideration at all.

Analyzing 109 decisions brought by the Supreme Court of Cassation since CCP was passed until 31 December 2017 Supreme Court of Cassation has reached only 8 verdicts that have granted the request for the Protection of Legality. In cases Kzz OK 22/16 and KZZ OK 5/16 Supreme Court of Cassation has granted the request submitted by the legal counselor of the defendant and has abolished final verdicts and has pushed the case back for it to be re-decided in 1st degree. In case KZZ OK 22/16 Supreme Court of Cassation has proven the violation of the CCP taking a stand that legal counselor of the defendant has had a right for compensation of expenses for submissions made during the procedure, regardless if those submissions where explained or not, as well as compensation of expenses for pleads and submissions of urgency with a procedural value. In particular issue, CCP was violated by not using the law in a correct way, in particular expenses of a legal counselor were determined in a lower value, compared to the amount they would have by law or the tariff that was passed by the Bar of lawyers. In case KZZ OK 5/16, court in 1st degree has not accepted the request for expenses that legal counselor made, during the acts that were taking place during the procedure with police, or hearing of witness in Agency for suppression of organized crime, with

comparative legislation that is in majority of cases the existence of the list probability is required. Contrary to what is stated in the USA the secret surveillance of communication requires the existence sufficient suspicion that the commission of a criminal act is due, while in Italy it is sufficient to assume that subjects under surveillance are members of an organzed criminal group (Bugarski, 2008:148). Regarding the manner of approving the measure or the specific evidence, the comparative law is quite different and it depends on weather the evidence procedure is being taken for preventive or repressive purposes, as well as who has the right to approve a certain evidence action, and this right may belonge to the ministery of interior affairs, president of the court or special services. Theduration of the measure is also different, bouth in ost cases it lasts from 30 days to 3 months, whit the possibility of prolongation. The question of implementation of measures is very similary regulated in comparative legislation an in most cases is entrusted to the police (Bugarski, 2014:39-45).

which Supreme Court of Cassation was violated as well. In cases that dealt with vital expenses, Supreme Court of Cassation took a stand where it has accepted all the costs previously made, and a argument was made weather request for the Protection of Legality should be granted, since it was only focusing on expenses, and knowing that a legal counselor may only submit the request if it would go in favor of the defendant, or not, since the part of decision was misused in matter of criminal procedure, doesn't have a goal of regulating the question of vital expenses. To be precise, we are talking about cases where vital expenses, valued around 20.000 rsd were rejected, while on the other hand expenses that rose up to millions of rsd where accepted. Question is raised should Supreme Court of Cassation deters the violation, when expenses of legal counselor were not allowed in full ratio, or should Supreme Court of Cassation deters the violation, when violation relates to costs of criminal procedure (all costs, obligation of requital and reward, and necessary expenses).

Exactly the point of regulation that deals with costs and expenses made during the procedure, when in case KZZ OK 4/2015 where Supreme Court of Cassation has granted the request for the Protection of Legality and has altered the previous verdict. Violation was found in case that when a plea agreement was made, it was decided that costs would be paid from a state budget. Verdict that accepted the plea agreement, has found that a special Solution would be brought later on, and that it would deal with expenses, leaving a window open to decide on the amount of costs that were accepted later on, but not leaving the option that defendant would had to take the costs on himself. Furthermore, a violation of CCP was made when, completely against the passed plea agreement a defended was made to pay expenses, meaning the request for the Protection of Legality was found based and grounded, leading to altering of a verdict.

In case KZZ OK 13/2016, a request for the Protection of Legality submitted by a Republic public attorney was granted and violation of the law, in favor of defended, was found. Special department of Court of Appellation in Belgrade, has confirmed the decision of the Special department of High court in Belgrade, and when reasoning the decision it was noted that a verdict cannot be grounded on evidences and documentation passed in a photocopy, even though that in time passed and the source of acquiring the documentation, an original documentation couldn't not be found, as well as the ground that **evidence** can even be given in original copy or in certified copy. Supreme Court of Cassation has determined a violation of the procedure, and explained that it's not valid to conclude that a certified copy would be considered as evidence exclusively, but that a copy can be seen as a **evidence** if there is no doubt in it identity, alikeness, and credibility, all in context of illegal **evidence**.

In case KZZ OK 5/2015 a request for the Protection of Legality was granted, and final verdict was annulled and case was brought back to 1st degree to be decided again. In that case in particular, the defended was on the run, on a territory of Republic of Bulgaria, and a procedure of extradition was carried away, procedure which was started by a plea of Special department of High court in Belgrade, so that court can conclude the criminal procedure which initiated earlier. When the court decided in 1st degree, it has pronounced a single punishment which included a criminal act that was not a subject of a plea for extradition. Using the European Convention on Extradition in part that dealt with the matter of incarceration court has decided that violation was made.

In case KZZ OK 3/2014 request for the Protection of Legality was granted and case was brought back to a Special department of the Court of Appellation in Belgrade to decide again, because of a serious violation of the criminal procedure, reason being that judge, that has resided in the 1st degree, was a part of a council of judges in 2nd degree, which isn't allowed and that is an argument for a withdrawal of a judge.

In case KZZ OK 14/2013 request for the Protection of Legality was granted and 1st degree solution was revoked, and case was brought back before a 2nd degree court to be decided again. In explanation of the verdict, court has determined that legal reasons for applying the legal remedy isn't explicitly described and it can be concluded that Law on confiscation of property resulting from a criminal offense wasn't used in a correct matter. Instead of the Law on confiscation of property resulting from a criminal offense, from 2013, which use has started then, Court of Appellation in Belgrade has used a prior law, from 2008, which is violation of a criminal procedure, since wrong law was used when deciding in case.

In case KZZ OK 5/2012 a request for the Protection of Legality, submitted by Republic public attorney was granted, and a violation of criminal procedure was determined, reason being that decision regarding guarantees was brought by a president of a council of judges instead of it being passed by a council all together all in phase after main trial was concluded.

If we analyze verdicts that have granted the request mentioned in this paper, we can conclude that in all cases where violation of the law was determined, violation was made from a wrong use of the law itself and in no case mentioned has the court determined a violation of the law, or incompatibility between the law in particular and a constitution, or generally accepted rules of international law, or international treaties, or that rights guaranteed by decisions made by EHtCH or Constitutional Court were violated. We can also conclude that in most of the cases Supreme Court of Cassation, when he did grant the request, he would push a case back to be decided again.

Supreme Court of Cassation in cases where request wasn't found to be grounded, would decide with Solution rejecting the request, reasons being that time limit for submitting the request has passed, or ordinary legal remedies weren't used previously, or in case that a party didn't include a decision of a Constitutional court of ECtHR, if a party has grounded the request on that decision.

Explaining the Solution KZZ OK 22/2017 Supreme Court of Cassation has pointed out that "court wasn't in position to determine state of affairs before order for detention was passed, as well as there are no precise argument validly or injustice of absence of defended on a main trial" meaning that if the court has not determined a single violation, a request would not be granted.

Solution KZZ 15/2016 Supreme Court of Cassation has rejected a request for the Protection of Legality which was based on a decision of Constitutional court Už 7145/2013, dated 04 February 2016, which has granted the constitutional appeal of the defended, reason being a violation of the right that guarantees a time limited detention after which a Special department of High Court in Belgrade has switched a security measure of providing the presence of offender to an easier one, but not appealing to the Solution with which a measure was switched in a the first place, procedure was violated since a ordinary legal remedy wasn't used previously. Besides not using the legal remedy in the the first place, Constitutional appeal has already influenced on a procedure, that after passing of a named decision, same was changed in 1st degree in favor of defended.

Solution KZZ OK 18/2014 Supreme Court of Cassation has rejected the request of the Protection of Legality and has taken a stand that decision on confiscation of property, can be a part of a request, in case that a law and Criminal code were violated with such decision, and it implies that decision on confiscation of property was passed earlier. Having in mind that this is a security measure and not a final decision, court has found that there was no place for a party to submit a request against that decision.

In examples where a request for the Protection of Legality was rejected, cases were found where a request was based on arguing the correct value of evidence, as well as submitting a

personal analysis of evidences, which is not a ground for submitting the mentioned request. In verdict KZZ OK 28/2016 request for the Protection of Legality was rejected as being invalid, with request being grounded on a reason that court and judge was unbiased. More than often request is rejected in cases where it is grounded on violation of procedure with evidences, especially emphasizing a surveillance of communication, hidden tracking and recording. Every request that was related to a violation of the law that was concerning evidences was rejected.

Analyzing practice of Supreme Court of Cassation in matter of criminal acts of organized crime we can draw a conclusion that practice is mostly unified, and what makes this procedure unique was never a determined as a violation, and reasons for rejections and dismissal of a request are mostly the same, and referee to evidences and comments on the same, as well as not having authorization for submitting the request for the Protection of Legality and calling upon arguments that are not valid in this case.

CONCLUSION

Analyzing the practice of Supreme Court of Cassation, in number of cases where a Special department of High court in Belgrade was residing in the 1st degree of procedure, ratio between cases in 1st degree and later request for the Protection of Legality is 10 to 1. That implies that on 10 submitted cases there was 1 request for the Protection of Legality later, which taking in count the nature of this legal remedy is not a small number. It is important to note that a large number of those requests were rejected by a Solution, which raises a question why is that number so vast. One of reasons is that, when a party that is acting without a legal counselor, submits the Request for the Protection of Legality, it can be justified with party's legal ignorance or with not having enough resources to hire a legal counselor. As it was pointed out earlier, an institute of mandatory legal counselor cannot be used in relation to this extraordinary legal remedy, but having in mind how serious and having in mind harsh possible punishment for these criminal acts, where a detention usually starts even before investigation takes place, defended usually does not have the financial resources to hire a legal counselor. In those cases where a law was actually violated, where one of reasons for submitting the request is existence of a decision of ECtHR that would go in favor of a defended, that procedure also implies a significant financial expense for party, another issue that is being brought up whether the legal norms that relate to mandatory legal counsel should be interpreted in contest of no one innocent should be condemned, or that criminal sanction should be pronounced on terms determined by law, on the grounds of legal and justified procedure. It's important to note that some comparative law practices are predicting a mandatory legal counsel in procedures started by extraordinary legal remedies as well. For instance, Code of Criminal procedure of Portugal (Code of Criminal procedure, art.64) and Czech Republic (Code of Criminal procedure, section 36) are declaring that legal counselor should be mandatory in procedures started with extraordinary legal remedies as well, Code of criminal procedure of Croatia (Code of criminal procedure, art. 66) foresees a mandatory legal counsel for defense in case of harsh criminal acts as well as in procedure led by extraordinary legal remedy.

On the other hand, question is raised weather a denial to a defended to solemnly and independently submit a request for the Protection of Legality can be treated as denial of a right for effective access to the court. Even though there are opinions that, in front of the highest court that decides on violation of the law, or denial and violation of the rights of defended, defended should be represented by a professional legal counsel, with a purpose of unhindered doing of judicial duty, since unhindered judicial duty can never be seen as a higher right than a right of a party to access the court in the the first place, as well as it being one of basic elements of a

right to a fair trial. Another issue that may be pressed is existence of a fear that an option for submitting of this legal remedy by a defended independently would in large numbers multiply the number of request submitted each year leading to making a burden to the court. Be that as it may, even if we take in sight *ratio legis* of this solution, it's doubtless that law needs to be changed on this issue. We must not forget that a vast number of requests were rejected in the the first place when they were submitted by a legal counsel of the defended, a party authorized by law still to submit this request.

When mentioning a need for change of existing legislature and law, most of all the issue should an institute of mandatory defense be spread to submitment of extraordinary legal remedies, by which domestic legislature would be instantaneously be harmonized with standards and stands of ECtHM. Practice of ECtHM is aware of few cases where a stand was made that mandatory legal council must be provided to a defended in all phases of criminal procedure, as well as procedure around extraordinary legal remedies,[4] with having in count a criminal act that a defended is being counter for, and possible punishment for him as well. Furthermore ECtHR has in some cases taken a stand that it's unacceptable that a guaranteed right of a fair trial to be stretched out to the moment of criminal procedure being done, and decision being made final[5]. Having practice of ECtHR in mind, as well as domestic legislature, it is without doubt the existence of need for harmonization of domestic law with stands of ECtHR, especially having in mind that a country can be bound to pay a significant fine.

As it was pointed out earlier, besides the fact that request for the Protection of Legality must be submitted by a legal counsel, question of is raised on a significant number of rejected requests submitted by professionals. Answer can be find in norm of law, that is nor precise nor clear on matter of a reason for submitment of a request for the Protection of Legality, nor are clear time limits in which those requests can be submitted. Even with this problem, of legal norm not the being clearest on terms for a legal request, all these issues can be passed if a long practice of Supreme Court of Cassation was followed diligently and carefully by defended of accused in procedure.

When analyzing the decisions of Supreme Court of Cassation, we can also draw a conclusion that one of main reasons for granting the request for the Protection of Legality is a violation of the law, or if violation of the law was determined earlier by a Constitutional court or ECtHR, with verdict not being delivered later on, which led to rejection of a later request. If we analyze the practice of ECtHR deeper, we can conclude that in case where a procedure is taking place by this court requests would be granted, considering in what cases did ECtHR determine a violation of the law or of the right.

It is interesting to point out that analyses has proven that specialty of procedure, that characterize criminal acts of organized crime was never a reason that would led to a violation of the law. Practice of Supreme Court of Cassation in this matter and in other cases is unified and harmonized, and reasons for reactions or denials are mostly the same and relate to analysis of evidences, or lack of authorization to submit the request for the Protection of Legality or calling upon the reasons which are not allowed in the the first place.

Conclusion that can be drawn is that we need to consider a question of spreading the institute of mandatory defense and legal counsel on to procedures with extraordinary legal remedy as well, which would present a harmonization of domestic law with stands and practice of ECtHR, or making an option for accused to solemnly and independently submit a request

4 Case of Zahirović v. Croatia (Application no. 58590/11), 25 April 2013, Case Croissant v. Germany, app 131611/88, 25 September 1992, Case Quaranta v. Switzerland, app. 12744/84, 24 May 1991, Case Twalib v. Greece, app. 24295/94, 9 June 1998.
5 Case Naumeister v. Austria, app. 1936/63, 27 June 1968, Case Matznetter v. Austria, app. 2178/64, 10 November 1979.

for the Protection of Legality, which is the case with Code of criminal procedure of Slovenia (Code of Criminal procedure, Article 421), Code of criminal procedure of Republika Srpska (Code of Criminal procedure Article 350). On the other hand a practice of Supreme Court of Cassation would be changed the most if a party submits, alongside the request, an application to ECtHR, or starting a procedure with a Constitutional court, in context of guaranteed human rights and freedoms of accused that are violated or denied.

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THE APPLICATION OF SPECIFIC EVIDENTIAL ACTIONS IN THE PREVENTION OF ASSASSINATION ATTEMPTS –CASE STUDY „BARON“

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Abstract: According to the effective criminal Code of the Republic of Serbia (*„Official Gazette of the RS", no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009 ,121/2012, 104/2013, 108/2014)* in article 310. The criminal acti «Murder of representatives of the highest state authorities» is stipulated. This crime is part of crimes that contains a high degree of social danger, and in their execution there is daring. In this and some related criminal offenses, penalties for preparatory actions are also stipulated, which instrucs the authorities responsible for security. In this and in other related criminal offenses, penalties for preparatory actions are also stipulated, which instruct the authorities responsible for security protection to direct their activities on timely detection (gathering, comparing, evaluating and analyzing security-relevant data on activities aimed at endangering the safety of certain persons) of preparing these crimes, as well as their perpetrators while still in the process of preparation, which leads to the prevention of the execution of the murder (assassination). Based on these experiences, the research whose results were presented in the work was focused on the preparatory actions of the perpetrator of the threat and operational significance of these actions, because it provides the possibility of collecting various indicative facts, and the operational activity should be directed in that direction. Given that the gathering of evidence is often impossible or, at the very least, accompanied by a series of difficulties with regard to the activities of the threat of endangerment at the preparation stage, the application of special evidence often indicates its necessity.

The results of the directed research were presented in the work through diagrams: 1) connections of persons in the group in the pyramidal hierarchy 2) frequencies of telephone communications 3) flow of heroin and weapons smuggling 4) movement and stay of members of an organized criminal group in the vicinity of a certain person, also descriptions of specific evidential actions (computer data retrieval, secret surveillance of telephone conversations and secret surveillance of persons, modern IT tools in the function of analysis) as well as common trends in terrorist activities in organized crime groups straight and execution killings (assassinations) of a specific person.

Keywords: security protection, prevention, endeagerment, assacination, attack, analysis.

INTRODUCTION

Every society inevitably monitors the occurrence of threats, and hence the threat to certain individuals. Historical events prove that certain persons, whether kings, queens, presidents, prime ministers, ministers or political and religious dignitaries, have always been exposed to various types of threats. The response to these threats is to create an appropriate protection system – a system of security protection. This process monitors the adoption of numerous normative measures in national frameworks in which the tasks, the formulated competencies and the manner of operation of the bodies responsible for security protection are defined. To this end, the Government engages its security services, which independently and harmoniously undertake various measures and activities in order to obtain data on possible threats to certain individuals. These data, information and assessments are passed on to the specialized services on the basis of which concrete security measures are taken. The goal of the measure is to provide more objective monitoring and feedback, which would be the basis for identifying possible forms and sources of threats to certain individuals and taking the necessary security measures.

Endangering the safety of certain individuals represents every kind of violation of physical and psychological integrity. The threat to certain individuals by assassination is as a rule organized and conspiratory, that is, secretive and concealed. Carriers can be: terrorist organizations, groups, criminal groups, security services, military, paramilitary formations, extremely motivated individuals, fanatics, and psychologically unstable personalities. The analytical conclusions of the analyzed attacks on certain individuals confirm the common trends in the activities of terrorist and organized criminal groups in the preparation and execution of assaults on certain persons (Belić,2016:31-47). As a rule, attacks are well-prepared and thoroughly planned. Terrorist and organized criminal groups in the activities focus on the weakness of the protection system of a particular person in order to use as few people as possible and the most effective means of execution in the attack. In preparing the attack, information is collected, analyzed by the strong and weak sides of the protection system, determined by the established habits and movement of certain persons. The information obtained by observing the basics is for planning the attack. The situations in which there will be potential attacks on a particular person, how they will do so, at what time and which funds will be used, is difficult to estimate. It is this fact that imposes the need to collect, compare, evaluate and analyze security relevant data on activities aimed at endangering the safety of certain individuals. From the criminal aspect, Article 310 of the Criminal Code of the Republic of Serbia (*Criminal Code of the Republic of Serbia "Official Gazette of the Republic of Serbia",* No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009) provides for a criminal offense "Murder of representatives of the highest state authorities". This crime is a part of crimes that contain a high degree of social danger, and in their execution there is ruthlessness and daring. In this and some related criminal offenses, penalties for preparatory actions are also foreseen, which instructs the authorities in charge of security protection to direct activities towards the timely detection of the preparation of these crimes and their perpetrators at the stage of preparation, which leads to the prevention of assassination. The period of preparatory actions has a special operative significance as it provides the possibility of collecting various indicative facts, so the operational activity should be lead in that direction.

Theoretical and practical experiences in opposing forms of endangering certain persons show that the use of special evidence is one of the essential methods whose application, while respecting the positive regulations that define this area, can direct the investigation in a good direction and determine further police actions. Given that the gathering of evidence, in rela-

tion to the activities of the perpetrator of the threat, is often impossible or at least accompanied by a series of difficulties, the use of special evidence often indicates its necessity.

Preventive and safety treatment within the overall security measures cannot be linked only to the direct, immediate prevention of an attack on a particular person, but needs to be seen through a wide range of activities of the perpetrator of the threat and all acts preceding the conduct of attacks within which the use of special evidence enables timely identification and undertaking of necessary measures, actions and procedures to prevent the threats to certain persons.

Considering that in the Baron case, the perpetrators of the threat were classified as a criminal group, conditions for the use of special exhibits were acquired such as: computer search of data, secret surveillance of telephone conversations and secret surveillance of persons in order to collect the material evidence necessary for processing of those persons, since they cannot otherwise be collected or gathered, this evidence would be significantly more difficult.

CASE STUDY "BARON"

On the day of 01/01/2018 it is to Mr M.M., a representative of the state jurisdiction, that on the basis of the police director's order as well as on the recommendation of the Bureau for the Coordination of Security Services, the measures of security protection were defined. As part of the implementation of the measures, the dynamics of the necessary measures are defined and a General Safety Plan has been developed.

Following the establishment of direct physical protection measures with the particular individual M.M was interviewed and educated about the measures and actions that must be taken for the purpose of his safety and with the aim of developing his awareness of the necessity of personal protection through the function at that moment, as well as his attitude towards the police officers involved in the affairs of his personal security. On that occasion, the information about a particular person and persons close to him was collected to comprehensively observe important facts that could influence the application of security measures. The information obtained during the interview and filling out the questionnaire helped to create a protective profile of the particular person that is M.M.

In the period between 15 January to 30 January, 2018, during the performance of tasks of direct physical security and the implementation of preventive safety as well as tactical measures and actions (in accordance with the General Safety Plan), the counter escorts, during the movement of the individual M.M, pedestrian and motor vehicles, members of the specialized unit for direct physical security in the immediate vicinity of the place of work and place of residence and on the part of the route of movement (from the place of residence to the place of work) of the individual M.M., the movement and presence of the passenger vehicle Mercedes 200 D, black color, vehicle registration plates BG 1234 XX. By checking through the Operational Records, it was established that the owner of the vehicle I.I. from Belgrade was not convicted, and that the said motor vehicle had been sold to K.K with a residency in Novi Sad two months ago. By checking the operational records it was established that K.K . had been convicted of a criminal act in relation to drugs, weapons and association for the commission of crimes referred to in Art. 346 of the Criminal Code of the Republic of Serbia, in order to obtain unlawful material gain.

When showing the photograph of K.K, members of the immediate physical security of M.M. stated that the person from the photo was often seen in the catering facility "Zora" where occasionally M.M. goes for lunch.

For a more detailed examination, identification and assessment of threats, analyses of predominant activities (indicators) on the course of movement and the environment of the places of residence and work are recommended for members of physical protection during the collection of data, information on possible carriers of threats, their characteristics, position, movements, the movements, the environment of the workplace and the place of residence and other indicators indicating the potential threat to the individual M. M.

As part of the prevention, the disinformation about the movement of M.M. was thought of, planned and organized (legends of the trip, the presence of ceremonial lunches in certain restaurants and a certain area) in order to mislead the potential carrier of the threat and thereby lead to the wrong moves to be identified.

To effectively prevent endangerment, the operational part of the planning and assessment of the individual threat is crucial. In order to assess the threat of M.M. it was necessary to first check, in cooperation with other competent security services (bodies in charge of security protection) and other relevant bodies and institutions, the data for all persons who gravitated or stayed in the immediate vicinity and in the facilities which are legendary as the place of visit of a certain person, as well as the checking of persons who have their criminal networks on the territory of the country and in the surrounding area, which are the subject of the work of a certain person as the holder of a judicial function.

In accordance with the Decree on determining the security of certain persons and facilities ("*Official Gazette of the Republic of Serbia*" No. 72/10, 64/13) and the Instructions on the manner of performing security protection of certain persons and objects (DT 01 number: 15015 /10-3 dated January 26, 2011), based on the observation of police officers, the analysis of police reports, records from a device that ensures physical and technical supervision on the part of the route of movement and the immediate surroundings of the "Zora" restaurant, searching the MIA's database and publicly available sources, in the period between 01 February and 10 Februay, 2018, K.K. from Novi Sad and two other NN persons with a Mercedes 200 D passenger car, black color, registration plates BG 1234 XX, went on several occasions and stayed in the immediate vicinity of the aforementioned facility.

Considering that it was checked through the operational records for K.K. it was found to be a person convicted of serious criminal offenses, based on relevant indicators, the Information on observations was forwarded to competent authorities for security protection and competent organizational units of the MIA for further jurisdiction.

The Criminal Police Directorate of the Ministry of the Interior of the Republic of Serbia, through several contacts with the informers in Novi Sad, has come to the conclusion that K.K is a member of a criminal group that directed its criminal activities to the commission of criminal offenses related to drugs and weapons smuggling. They also came to the knowledge that the group numbered more members, that there was a longer period of time, that the illegally acquired money was introduced into legal flows through investments in the construction and furnishing of real estate and purchase of companies. The informers who provided notifications were assessed as reliable and the information was accurate.

After collecting the initial data from police officers of the Criminal Police Directorate, they were followed by checks of the same in the field of police jurisdiction, by checking open and closed sources of information, with the aim of identifying other members of this criminal group and identifying other persons involved in preparatory actions, identifying vehicles used for surveillance and tracking the movement of a particular person as well as for smuggling narcotic drugs of heroin and weapons smuggling, locations where heroin and weapons were stored, as well as places and facilities where often others stayed, as well.

After collecting, integrating, verifying, evaluating and analyzing data, in the joint work with the operational analyst and the operational staff of the Criminal Police Directorate, it became known that the person A.A. leader of the criminal group from Novi Sad who appeared as the main organizer of the mentioned smuggling. Other members of the criminal group who were collaborating with A.A , B.B. and V.V. both from Novi Sad, G.G. from Belgrade, O.O. from Indjija, one NN person from the area of Ruma and one NN from the territory of BiH.

In diagram 1, which follows, the links of the persons from this criminal group and their roles in the group are shown in the pyramidal hierarchy, starting with the group leader A.A. to other members of the group.

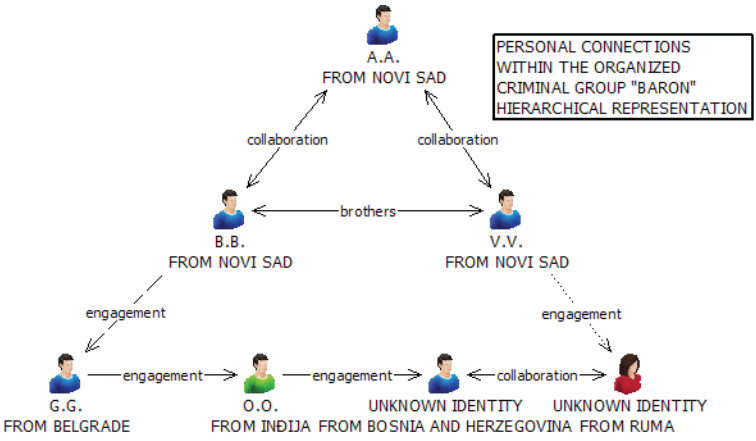


Diagram 1. – *Personal connections*

By analyzing the collected data, it came to our knowledge that this criminal group had all the elements of an organization: the group had three or more persons, existed for a certain period of time and acted consensually in order to commit one or more criminal offenses for which a four year imprisonment is prescribed or more severe penalties, for the purpose of gaining direct or indirect financial or other benefits, each member of the group had a predetermined role and task, unlawfully acquired profit is used, the group had a high corrupt influence, high financial power, membership of members, etc. Apart from the elements of organization, the group had been assigned a classification of the national level, since it performed criminal acts at the national or international level and therefore represented the greatest form of threats to the security of the Republic of Serbia.

Application of special evidence actions

Since the group was classified as organized, conditions were created for the use of special exhibits: computerized data search, secret surveillance of telephone conversations and secret surveillance of persons, all with the aim of collecting material evidence necessary for the prosecution of those persons, since otherwise they could not be collected or the gathering of evidence would be significantly more difficult.

An initiation proposal for the use of special evidence actions

In accordance with the applicable Criminal Procedure Code ("*Official Gazette of the Republic of Serbia*" No. 55/2014), police officers of the Criminal Police Directorate, in consultation with the relevant Prosecutor's Office, submitted a written and reasoned proposal to

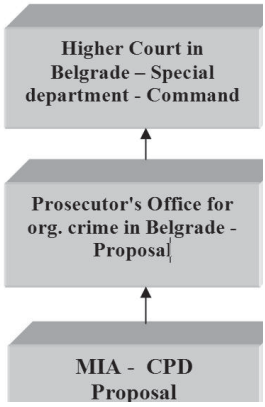
the Prosecutor's Office for Organized Crime (Prosecutor's Office) against suspects, to carry out secret surveillance and recording of communications, as well as secret surveillance and recording of suspects.

On the basis of the proposal of the Criminal Police Directorate, the Prosecutor's Office submitted a written and reasoned proposal to the High Court in Belgrade, Special Department for the Fight against Organized Crime (Special Department), to order the suspects to undercover and record communications as well as secret surveillance and shooting of suspects, in the open space and public places in the territory of certain cities, and because of the existence of grounds for suspicion of carrying out the aforementioned criminal offenses, with elements of organized crime.

Order for the use of special evidence

Considering the proposal of the Criminal Police Directorate and the motion of the Prosecutor's Office, the preliminary procedure judge of the Special Department, issued an order to carry out secret surveillance and recording of telephone communications (Article 167 of the Code of Criminal Procedure) against the suspects, which they perform over certain telephone numbers secret surveillance and recording (Article 172 of the Code of Criminal Procedure) against suspected persons were carried out in order to detect contacts and communications of suspects, in the open space and public places in the area of certain cities, Bearing in mind that the use of this special evidence was necessary for the purpose of revealing the contact or communication of the suspect in public places, establishing the identity of the person and locating persons and things. Otherwise the evidence for prosecution could not be collected or the collection would be significantly impeded and because the circumstances of the case indicated that otherwise the criminal offense could not be detected, prevented or proven or would cause disproportionate difficulties or great danger, nor would the same results be achieved otherwise they violate the rights of citizens.

The order clearly identified the telephone numbers in relation to which this special exhibit was applied, the persons in relation to which this measure was applied, the cities and places where persons were moving and where secret surveillance could be used, the state bodies that implement this special evidence, duration, manner and time period of reporting on special extraordinary actions taken.



Scheme - *The jurisdiction of state authorities for the application of special evidence*

After the order was determined, the use of special evidence was applied by the specialized services of the Criminal Police Directorate. The use of special exhibits lasted for three months.

The Special Prosecution Office and the Special Department were informed of the special special actions taken, as specified in the order.

In the scheme which follows, the competencies of state authorities were related to the use of special evidence actions.

The results of the application of special evidence actions

The use of special evidences, involving a large number of specialized police officers of the Criminal Police Directorate, as well as a greater number of officials from other state bodies, resulted in a number of new findings as well as confirmation of already existing knowledge about the presence of members of the criminal group and their assistants in the surroundings of objects and places where a particular person is staying occasionally, as well as presence on the fixed paths of movement by a motor vehicle of a particular person. They also collected information on the production, distribution and trafficking of narcotic drugs and weapons, the movements and habits of persons from this organized criminal group, their gathering places, the exact location of heroin and weapons, border crossings through which heroin and weapons were transited, knowledge in links of other vehicles that used persons from this organized criminal group as well as information about other persons (active and passive aides) involved in their illegal activities.

Along with the use of special evidence, the police acted tactically in tactical manner on which the evaluation and compilation of data obtained through the use of special evidence and the data obtained by operational tactical treatment were constantly carried out. Among other things, it was confirmed that the hierarchical-subordination discipline was weak within the organized criminal group, that is, the leader A.A. had great autonomy in the planning and execution of all criminal activities, and that he was personally motivated, that he himself says "excuses" (slang in criminal structures that signifies physical liquidation) a certain person M.M.

The use of special exhibits confirmed that A.A. from Novi Sad, who led this organized criminal group, funds acquired through the commission of the above criminal acts introduces into legal flows by buying vehicles and real estate. A.A. has a pronounced financial power, is the owner of several companies, real estate and other goods in Belgrade and Novi Sad.

In diagram 2. below, there is available information on the financial power of the leader of the organized criminal group A.A.

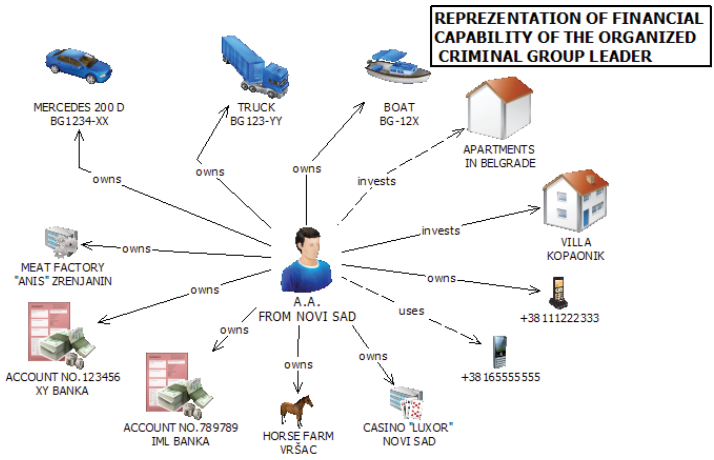


Diagram 2. – *Reprezentation of financial capability of the organized criminal group leader*

A large number of information obtained through operational work in the field and the use of special evidence were combined, analyzed and formulated in an analytical product which enabled the timely direction of police activities and the taking of necessary measures and actions to prevent the threatening of the detained person M. M.

In diagram 3. which follows, only the frequency of telephone communications was achieved through telephone numbers owned by the persons over whom a special display action of the secret control of telephone conversations was applied was presented.

The diagram was created in the IBM i2 Analyst's Notebook / ANB, a program that uses operational analytics as an ancillary tool in the analysis.

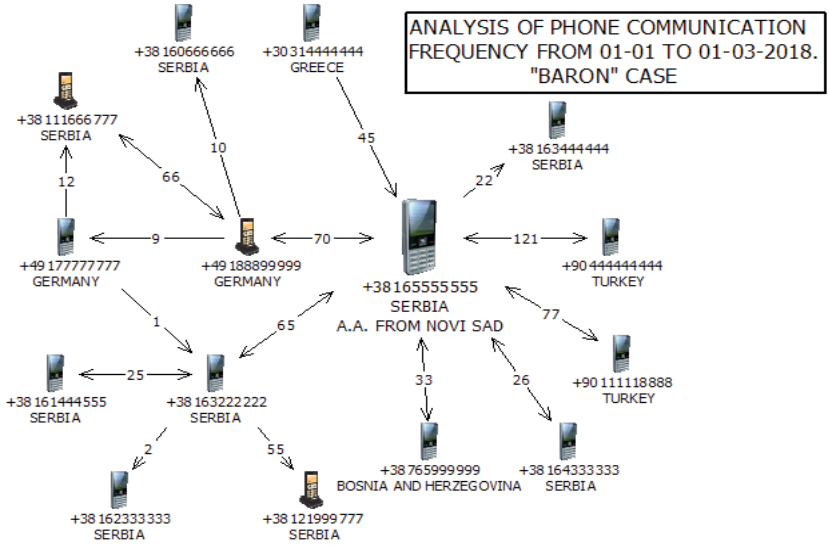


Diagram 3 – *Reprezentation of phone communication frequency*

Modern IT tools in the function of analysis

Operational analysts and other police officers who were engaged in the Baron case met in their everyday work on this case with a large number of information and data resulting from operational work and the use of special exhibits. Without the adopted methodology and observance of legal frameworks, it was difficult to deal with this challenge and adequately respond to the set tasks.

On that occasion, specialized operational analysts used modern IT tools that were used to analyze the huge amount of data they had:

Microsoft Excel *- Microsoft Excel was mainly used to solve mathematical type problems using tables and fields that can be associated with different formulas. It also served to create simpler databases. On the basis of the entered data, charts and diagrams were easily realized from the table.*

Geographic information system *- GIS was used for analysis of georeferenced data. The operational analysts engaged in the "Baron" case mapped the direction of movement of members of the criminal group using GIS, which enabled a clearer insight into the movement of members of this organized criminal group.*

Google maps *- Google Maps as Google's free digital network cards has made it much easier for operational analysts to browse satellite imagery, plan the route, locate the required sites, and*

so on. Simple implementation on different websites and combined with other applications. Google Earth, the virtual globe and Google Maps were also used as a support to review the situation at the site of a specific event and help in setting the relevant hypothesis in the Baron case. The "street view" option gave an operational analyst a live display of objects.

***IBM i2 Analyst's Notebook / ANB** - IBM i2 Analyst's Notebook / ANB is software that has enabled operational analysts to quickly and easily analyze the available data, in most cases obtained through the use of a special proof of secret control of telephone conversations, using visual techniques to integrate data. The software has made it possible to point out the links between members of the criminal group and other persons from a large quantity, sometimes unconnected, and thus help in defining the conclusions. Using the IBM i2 Analyst's Notebook / ANB, the time needed to discover key information in complex data has been reduced.*

Information on the criminal group, their organization, as well as the biographical information about members of the criminal group and their previous activities were merged into the Baron database, which was regularly updated with new data and thus improved the timeliness of data distribution to specific levels of management.

The conclusion is that potential sources of threats to a particular person are capable and have the capacity to attack a particular person M.M., that in the past period they have been planning attacks. Peripheral members of the criminal group collected data on a particular person, assessed the immediate physical protection, the weaknesses of the system of direct physical protection, the established habits of members of direct physical protection and a certain person. They conducted a continuous monitoring of the movement of the individual M. M. This information was processed daily, after which they prepared an attack plan. Also, cooperation was established with engaged associates in the territory of Belgrade who should provide support, training members of the criminal group who will carry out the attack, provided funds (weapons) for carrying out attacks, the method of attack was determined, members of the criminal group who will be the direct perpetrator of the attack (a person from Bosnia and Herzegovina), as well as alternative directions for escape and hiding after the attack, money and logistical support were provided (rented safe house on the territory of Novi Sad, two apartments: one in Belgrade and one in Novi Sad whos owners are marked below, provided two motor vehicles "Punto" and "Peugeot 308" with fake documents).

Using the measure of secret surveillance and recording of telephone communications, it was learnt that on 05 May, 2018 as part of the route of movement near the place of residence of the individual M.M., a person from this organized criminal group was to simulate the attack itself in order to check the attack plan and the location of the members of the criminal group at the location (observation points) selected for the attack. The presence of members of the criminal group at the site will be marked with the loading and unloading of goods from the truck. By using the measure of secret surveillance and recording of telephone communications, it was learnt that during the simulation of the attack they would not carry weapons with them.

The data collected in the above manner were processed and analyzed in order to determine their accuracy, reliability of data source, completeness and timeliness. The database of the Baron object next to the central database is located in the personal computer due to the timely access to data and data distribution.

Considering that a recognized threat to the security of the individual M.M. was found, it was estimated that the said criminal group had had the possibility and capacity to attack. Intensified measures of direct physical protection of a particular person were proposed and necessary security measures taken with a special emphasis on:

- search for the course of movement, assessment and analysis of the direction and area of movement of a particular person with a motor vehicle (stable movements from home to place of work) and alternative destinations,

- determining alternative paths of movement and all locations and facilities that may be alternative destinations in the event of an attack,

- introducing all members of direct physical protection with critical points on the course of movement, securing a motor vehicle with a higher degree of protection for a particular person, in order to reduce the advantage that the carriers of the threat would have in the event of an attack (surprise and control over the time and place of attack),

- identifying critical points (places that can not be avoided),

- operational "coverage" of the critical point on fixed paths of movement at irregular time intervals. Special attention should be paid to hidden places in abandoned areas,

- an overview of electrical and telephone cables at critical points of fixed paths of movement,

- the presence of observers that is necessary to collect information about the movement of a particular person (no attack can be carried out without observation and monitoring).

Operational tactical treatment details the direction of movement of members of the criminal group as well as the smuggling of heroin and weapons. They used data that members of a criminal group after the delivery of weapons from BiH, through the border crossing Batrovci on the territory of the Republic of Serbia, continued to transport weapons to Belgrade. Transport was carried out by passenger and freight motor vehicles with specially built bunkers for this purpose.

In diagram 4, the direction of the movement of heroin and weapons by members of OKG Baron is presented. The graph was created in IBM i2 Analyst's Notebook / ANB.

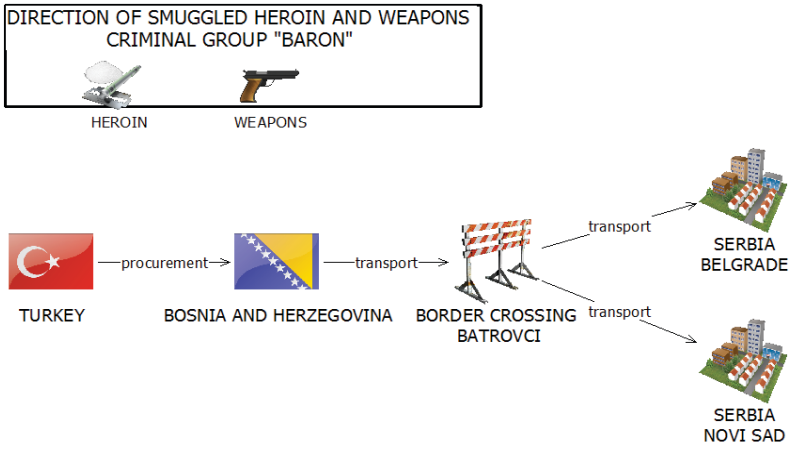


Diagram 4 – *Direction of smuggled heroin and weapons criminal group „Baron"*

By analyzing the collected electronic communications data (direct communication and data that are significant but not directly related to their immediate communication, voice messages that they transmit to phones, mobile phones, radio devices, the Internet, text messages, SMS, e-mail, fax, ... , video materials) received information about the members of this OCG and their characteristics, movement, position, activity in time and space, the user of the signal, etc. By comparing their movements with the schedule of the movement of a certain

person, the course of the movement and the environment on which the route is located, two locations are marked on the territory of the city of Belgrade, which, by their characteristics, create preconditions for the attack to be carried out.

Diagram 5 shows the positions and activities of the OCG members on the movement of a particular person

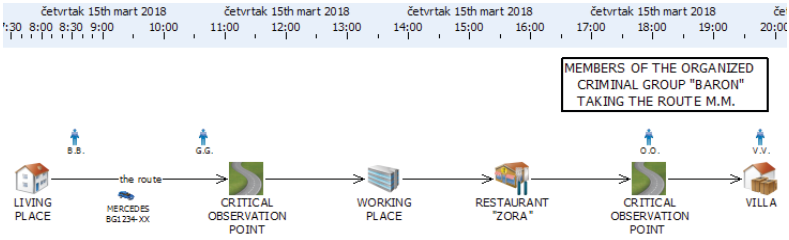


Diagram 5 – *Timeline of position and activities regarding places*

Cutting activity – arrest

After collecting evidence both on operational field work and on the use of special evidence, and in consultation with the Special Prosecutor's Office, a decision was made to abolish the aforementioned preparatory actions for endangering certain persons and at the same time to cut the smuggling chain through synchronized police action with the engagement of special units for arrest because of the action in which it is assumed that individuals will be actively resisting.

A synchronized action by the criminal police and special arrest units conducted a search of apartments, vehicles and shops at several locations in Belgrade and Novi Sad where people from this organized criminal group were moving and staying. On that occasion, the leader of A.A. and another 7 members of the group, a total of 10 kg of heroin was found, 3 automatic rifles of the CZ M70AB2, 7.62 mm caliber, 9 cartridges for 30 rounds of automatic rifles, 270 bullets 7.62 mm, 10 pistols CZ 99, 9 mm PARA caliber, 10 ammunition boxes 15 bullets, 150 bullets 9 mm PARA, 350,000 euros and 2 forged passports on behalf of the group leader A.A.

In one apartment in Belgrade, they found folders with drawn lines of movement of a particular person M. M. with the distribution of members of the criminal group at the observation points on the course of the movement, as well as the Tormentum sniper rifle, 375 CHAY TAC caliber, two frames with a capacity of 7 bullets (14 bullets), intended for precision firing at extreme distances (up to 2 km) with complete equipment.

CONCLUSION

Preventing assassinations on certain individuals requires a clearly defined security system with precise procedures. In modern conditions, specialized security services must reveal the threat of assassination during the preparation of the attack, and the most effective way is to penetrate the criminal and terrorist organizations and thus find out about association, working methods, plans of movement and planning of an attack on a particular person in other criminal activities.

Experience shows that no body in charge of security protection is autonomous and sufficient in preventing the threats to certain individuals; none can achieve their expected role if they do not harmonize, align and implement appropriate protection measures with other

bodies in charge of security protection in a timely manner. All planned measures must be implemented timely, comprehensively, conscientiously, responsibly and disciplined whether it is about individual actions or joint affairs and activities in order to prevent an assassination of a particular person (Belić, 2017: 192, 193). Well-planned preventive - security, operational and tactical and operational-technical measures and actions are the basic factor for effective prevention of threats to certain persons, the rational use of resources by all state authorities responsible for the implementation of these measures and actions. Preventing endangerment and the suppression of organized crime in general, in addition to undertaking preventive - security, operational and tactical (demanding) measures and actions, there is often need for investigative (evidence) actions, "given the fact that the excellent difference between the two is in the fact that the first comes up indications (basis of suspicion) and others to evidence as legally relevant facts "(Marinković, 2010). In order to directly prevent the physical threats of certain individuals, it is necessary to consider a wide range of activities of the perpetrator of the threat, within which the use of specific evidence enables timely identification and undertaking of certain measures and actions to prevent physical harm. In the above case, the competent state authorities involved in the Baron case acted in accordance with the applicable Criminal Procedure Code ("Official Gazette of the Republic of Serbia", No. 55/2014), which specifies the application of special evidence actions that were applied in relation to the persons referred to in this organized criminal groups. The application of special evidence actions, in relation to persons and objects from that organized criminal group, is precisely underlined under legal norms, in accordance with the principles of legality, subsidiarity (in some other way it was impossible to reach evidence), proportionality (the alleged crimes belong to the criminal acts prescribed by law) and judicial supervision (the police is obliged to report to the court on certain measures and actions on the basis of a court order at certain intervals).

In accordance with the above, it can be concluded that the continuous and timely exchange of operational information and knowledge, planning, as well as undertaking joint measures and activities of the bodies responsible for security protection with other security entities is necessary in order to prevent the threat of certain persons being assassinated, occasional joint information meetings and lectures. It is also important to continuously share operational data and information between competent state structures at the international level with the permanent education of police officers through courses, seminars and exchange of experience with specialized police units of other countries.

Bearing in mind the justification of the presence of special evidence actions in the prevention of assassinations, the necessary measures of protection or necessary activities of the bodies responsible for security protection have been identified, forms of acting of police officers, which contributes to comprehensiveness in the application of protective measures and prevents improvisation:

- continuous and timely exchange of operational information and knowledge related to the security of a particular person,
- undertaking joint measures and activities of the bodies responsible for security protection with other security entities,
- developing a proactive model of police work, which would be based on criminal intelligence,
- representation of analytical work, operational analysis and threat assessment,
- modification of the forms of police officers handling, with a focus on preventive and proactive work,
- monitoring the effects of the envisaged protection measures and the measures taken.

All of forementioned should accompany the improvement of the way to collect, store and access information of significance for the security of a particular person as well as adequately equip all levels of organization with appropriate information and communication equipment.

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EFFECTIVENESS AND IMPORTANCE OF THE DEFENDANT'S PRIVILEGE IN CRIMINAL PROCEEDINGS - *NE BIS IN IDEM, BAN REFORMATIO IN PEIUS, BENEFICIUM COHAESIONIS*

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Abstract: Contemporary systems of municipal criminal law and criminal proceedings doctrine, standardized the norm of subject position in criminal proceedings, predominately the defendant, as a starting legal fundamental sets human rights and freedom of speech (proclaimed by the international and domestic legal acts). Observing criminal proceedings as an entirety of mutually conditioned, defined by law actions, undertaken by the subjects as a carrier of legal rights, it is noticed that the position of the defendant, as dominant subject in criminal proceedings is being highlighted.

One of the crucial questions in criminal (process and material) law is securing efficient criminal law protection of social values by simultaneously respecting basic human rights of the participant in the legal process, primarily of those against whom all the institutionalized state coercion instruments are being directed to.

By respecting existing standards of human rights and freedom protection, the effort is made to create a better position of the defendant as additional benefit holder in a legal proceeding. Using that as a guideline, the effort is made to achieve equal rights of all parties involved in the criminal process, likewise removing the causes of the defendant's inferior position during the legal process. On the other hand, as a legal consequence, there is a question of collision between protection and fulfillment of basic human rights and freedoms of all participants in the legal process, efficiency and effectiveness of criminal proceeding, and the level of societies' satisfaction with the un/successful fight of the institutions, preventive and repressive activity organizations, against crime.

The process of state legislation harmonization imposes as an imperative a detailed analysis of the Institute for Criminal Process Law, which are being identified as "favor defencionis". Those are the following benefits which guarantee justice and legal security during criminal proceeding: ne bis in idem, ban reformatio in peius, beneficium cohaesionis.

Keywords: *defendant, ne bis in idem, ban reformatio in peius, beneficium cohaesionis, International Legal Regulations, European Court of Human Rights*

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NE BIS IN IDEM PRINCIPLE

Taking a historical point of view (inquisitorial, accusatory, mixed criminal proceedings), the evolution of the defendant's procedural position ranged from a total disregard to the attempt to establish the equality between criminal parties and to remove the cause of inferiority of the procedural position of this criminal process party.

Today, thanks to the wide range of rights it disposes, the defendant has been given a more active role in the proceedings (Brkić, 2004). Above all, it is about the rights that are standardized by the Code of Criminal Proceedings of the Republic of Serbia (hereinafter: the Code) and which represent the minimum standard of protection of the proclaimed rights. In addition to the procedural guarantees of fair trial, the presumption of innocence, the right to a legitimate and fair trial, the right to defense, the criminal procedural institute *ne bis in idem* is of crucial importance for the standardization of the position of the defendant in the criminal proceedings.

The prohibition of a retrial in one and the same matter, that is, the prohibition of prosecution and legal punishment for the same act as the basic principle of the criminal legislation of the Republic of Serbia constitutes an absolute and inviolable right to legal security guaranteed both by the domestic and international legally binding norms. However, the previous judicial practice has shown some "deviations" from that principle, primarily because of the different interpretation and application of the norms of national and international law. The mechanism of the defendant's protection established in such way primarily has the role to protect the defendant from the arbitrary action of the body of the proceedings.

The possibility of different treatment by the competent authorities in a particular matter is caused primarily by the way in which the *non bis in idem* principle is being prescribed in domestic and international legal regulations. Namely, Article 34, paragraph 4 of the Constitution of the Republic of Serbia prescribes the prohibition of prosecution and punishment in the same matter, citing the following specific cases: that a person has been acquitted or sentenced by a final verdict that the charge has been dismissed legally or the proceedings have been terminated legally. Furthermore, in the above-mentioned article, *in fine*, respecting of this institute for some other punishable act has been prescribed as well. Therefore, the aforementioned provision of the Constitution does not refer only to a criminal offense, as unlawful conduct with the highest degree of social danger. However, while prescribing this institute, the Article 4 of the Code does not provide for its validity for any other punishable offense.

However, despite the prohibition of "multilevel punishability" for similar criminal offenses, and in case of violation of the prohibition in question, where the procedural principle *ne bis in idem,* which primarily has a protective role in relation to the defendant may be violated, the Constitution of the Republic of Serbia and The Code still predict certain deviations from this principle. Namely, this is about the establishment of procedural equality between the principle of truth and the principle of fairness in criminal proceedings. As defined by the Constitution in Art. 34, para. 5, in exceptional cases it is permissible to repeat the proceedings in accordance with the criminal regulations if the evidence of new facts is revealed, facts which if they had been known at the time of the trial, could have had a significant impact on its outcome, or if in the previous procedure there had been an important violation that could have influenced its outcome.

By conducting the linguistic and logical method of interpreting terminology, we can see that the constitution maker, using the expressions "exceptionally" and "essentially", has left the legal possibility of discretionary decision-making of the procedural bodies in each particular case, all of this in order to improve the procedural position of the defendant, legal security, predictability and equality in the eyes of the law.

The importance of the procedural position of the defendant in the criminal proceedings is also indicated by the international legal acts proclaiming the legal protection of a person who inflicts the acting of the competent state authorities by his behavior. Above all, this refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention), the International Covenant on Civil and Political Rights, the Charter of Fundamental Rights of the European Union, the Statute of the International Criminal Court, the American Convention on Human Rights. It is interesting to note that such an institute did not contain the European Convention in its original text, but it has been standardized by the Protocol no. 7 of the European Convention.[2]

The proclaimed criminal procedural principle, however, gives a certain possibility to the authorities in proceedings to "violate" the defendant's rights and bring him in the position of a double threat, without any deliberate and obvious violation of the domestic and international legal regulations. The main reason for this in the criminal proceedings system of the Republic of Serbia, which is identified in the judicial practice, is the un/specified nature of various types of socially dangerous behavior, primarily misdemeanors and criminal offences.

The protection against double incrimination is of particular importance in dual systems that combine a branch of the criminal justice system dealing with misdemeanors and another one engaged in criminal offenses in a narrower sense. When deciding on sanction cases in relation to both branches of such a dual system, the European Human Rights Council has adopted a liberal attitude towards whom, whenever there are two convicting verdicts that are based on the same facts, this does not necessarily violate Protocol No. 7, if both verdicts deal with clearly different normative aspects of the same incriminating conduct, which constitutes one act which represents two different misdemeanors (Lukić, 2011).

Since by prescribing criminal offenses and misdemeanors, even when they have some common features, different protective objects are being guarded, doctrinal rules would imply that in the competition of a similar offense and criminal act priority should be given to the criminal law norm if it seeks to protect the particularly important legal property (Mrvić Petrović , 2014: 29).

Namely, from the point of view of the rule of law, there is no sense in initiating a procedure for a criminal offense for which there already exists one pending proceedings. From the standpoint of the defendant, the parallelism of the procedure, the concrete opening of the new procedure, although for the same act, represents a double endangerment and stepping into the bis in idem zone (Josipović & Novak Hrgović, 2016).

In that sense, the correct application of the principles requires a detailed analysis of the elements of the specific principle that applies, especially if different theoretical definitions are taken into account. Therefore, it is necessary to determine the purpose of a concrete principle with the analysis of judicial practice of either national or international courts (Nenadić, 2014). In that sense, in the practice of domestic courts, prosecution and punishment for a criminal offense were permitted even in the case of individuals who were previously legally convicted of an offense from the same event. It was the court's duty to include the imposed misdemean-

2 Bearing in mind the provisions of the domestic and international law, the conclusion can be drawn that the national law, in terms of exercising the right to legal security and the position of the defendant, is more favorable and above the standard established by the norm of the international law. However, it is not in complete collision with it. For example, Article 4 of the Protocol 7 together with the European Convention proclaims the prohibition of a double trial in the same case in the following manner: no one can be tried nor re-punished in criminal proceedings under the jurisdiction of the same State, for an act for which he has already been convicted or exempted of by the law in accordance with the law and the criminal record of that State. However, the Protocol 7 in the next paragraph of the same article provides for deviations from this provision, in the event that there is evidence of new or newly discovered facts, or if during the previous procedure a violation occurred that could have affected its outcome.

or sentence in the conviction (Janković, 2014). However, the practice has been changed after the adoption of certain verdicts of the European Court of Human Rights (hereinafter: the ECHR). The mentioned practice of the ECHR is of great importance and influence on our country, especially when it comes to decisions against the countries of the former Yugoslavia taking into account the similarity or identity of criminal procedural solutions. It is important to point out the decisions in the case of Maresti vs. Croatia, Milenkovic vs. Serbia and Musli against Bosnia and Herzegovina.

Namely, from the aspect of the protection of basic human rights and freedoms, it is unacceptable that "the same person for the same act" is punished twice. In this respect, the international community's efforts to consistently respect the ban on "double trials" are evident in the same thing.

According to the findings of the ECHR in concrete decisions, and with regard to the departure from the principle of "procedural security" of the defendant, it is essential to distinguish both factual and legal state of matter. These are the cases where there is the intention to eliminate the problem of the legal qualification of the act, which is overly present in the practice of the domestic judiciary. Therefore, it is necessary to determine the object of protection in a punishable act in each concrete case, since in the case of the identity of the offender, the act and the case, different lawfully protected social values may be endangered.

Having in mind the principle of *ne bis in idem*, in order to protect the procedural advantages of the defendant in the proceedings, the analysis of the consequence as the essential element of the specific punishable act is imposed as an imperative. As concluded by the ECHR, certain offenses do have a criminal connotation after all, but are "irrelevant" so as to be regulated by the criminal law and procedure, since any reference to the "lighter nature" of the act does not exclude its qualification as "criminal" in the autonomous meaning of the European Convention.

Furthermore, relying of the domestic courts on the defined sanction as one of the reasons for the possibility of a "retrial" for the same act, the ECHR still considers that in the case of a fine imposed in a misdemeanor proceeding, the punishment does not have the character of material compensation for damages, but that the primary goal is punishment for the performed act and prevention of repetitive action, as recognized properties of criminal penalties.

The principle *ne bis in idem* must be interpreted in the light of concrete, existing conditions, in accordance with the principle of effectiveness, and the ECHR considers that Article 4 of Protocol no. 7 must be understood as a prohibition of criminal prosecution or trial for another "act" to the extent to which it stems from identical facts or facts which are essentially the same, since the guarantee provided for in Article 4 of Protocol no. 7 becomes relevant at the beginning of a new criminal prosecution, where the previous acquittal or conviction has already received the force of *res judicata.*

The best indicator of the level of achievement of the proclaimed privilege of the defendant in a criminal proceedings is its very realization in the real life, given the fact that many institutions of positive law remain a dead letter if the practice of the competent authorities deviates from the normative rules.

Thus, respecting the practice of the European Court of Human Rights, the Constitutional Court points out that in Decision Už-1285/2012 of 26 March 2014, it sets the criteria on the basis of which it assesses whether a breach of the principle *ne bis in idem* has occurred, referring to the following: 1) whether both proceedings that are conducted against the applicant can be taken for an act that by its nature constitutes a punishable offense, or whether the first punishment can be considered in its nature a criminal act punishable by law; 2) whether the acts for which the applicant is being prosecuted for are the same (idem); 3) whether there is

a duplicate of the procedure (bis). In the identical process connotation, there is the decision number: Už - 1207/2011 from 2014. The Constitutional Court points out that in addition to the established factual identity of the act in each concrete case, two additional, i.e. corrective criteria must be considered: 1) the identity of the protected good and the severity of the consequences of the act; 2) the identity of the sanction (in order to answer the question of whether the acts for which the applicant of a constitutional complaint is persecuted for or convicted of in various proceedings are the same- idem).

When making decisions in order to harmonize the practice and fair treatment, the Constitutional Court acting on a constitutional complaint is guided by the so-called "Engel rules" (named after Engel and Others vs. the Netherlands). Such rules relate to: rule number one- the legal classification of an act under national law; rule number two relates to the very nature of the act, and the third rule relates to the severity of the punishment to which an individual is exposed.

The first rule that relates to the qualification of an act in the domestic law (and which plays a crucial role), as the starting point, takes into account whether any offense (act) in domestic law is qualified as a criminal, disciplinary or misdemeanor. In that sense, a clear qualification of the act in domestic law, stands for a material precondition for an adequate protection of the procedural position of the defendant, and the imposition of proclaimed rights, first of all the right to a fair trial as the postulate of the modern criminal procedure doctrine.

The second and third rule are of an alternative nature, however cumulation is not ruled out when a separate analysis of each rule does not make it possible to reach a clear conclusion as to the existence of a charge for a criminal offense.

Referring to the principle *ne bis in idem*, the domestic judicial practice indicates numerous solutions where in the proceedings in front of the second instance court this principle has been taken as a reason for the refusal of the appeal by the appellate court while acting on an extraordinary legal remedy (the request for protection of legality) the Supreme Court of Cassation recognizes it, and makes a decision determining the existence of a violation of the criminal law and substantial violations of the provisions of the criminal procedure. So, it is about the same factual legal basis on which different decisions have been made, in front of the second instance court - the grounds for rejecting the charges and in front of the Supreme Court of Cassation - the basis for the confirmation and acceptance of an extraordinary legal remedy.

The Constitutional Court, through its practice, indicates that the misdemeanor courts must limit themselves to the determination of the facts which constitute the essence of the offense, and that it should be left to the criminal courts to establish the facts relevant to the existence of a criminal offense. In particular, one essentially unique event, which for example begins with a disturbance of public order and peace and ends with a violation of physical integrity, can be deemed to have been composed of two entities, that is, two different events, one misdemeanor and one criminal offense. In this way, the perpetrator will not be charged with the same facts, and there will be no violation of the principle *ne bis in idem* (Kolarić & Marković, 2017).

In addition to the aforementioned contentious issue, that is, a conviction for the same act as for two criminal offenses - misdemeanor and criminal offense (especially those behaviors that are punishable as misdemeanors by the Law on Public Order and Peace, and those punishable by the Criminal Code as criminal offenses), an imminent problem when submitting the Request for the protection of legality as an extraordinary remedy is referring of the competent authority to the violation of the criminal law and the essential provisions of the

criminal procedure in case the decision to suspend the procedure cannot be considered as the type of decision which represents *res iudicata.*

Therefore, only the decision on the merits of the prosecution's case can be taken into consideration (and this cannot be an act of suspension in misdemeanor proceedings). In this way, the provisions of Article 4 of Protocol 7 to the European Convention and Article 6 of the Convention are confirmed in terms of the type of decision that constitutes the "adjudicated matter" and the type of procedure in which such a decision can be made. However, the constitutional guarantee of the right to legal certainty in a criminal proceedings does not refer exclusively to the unrepeatability of the procedure for a "criminal offense", but for any "punishable act", so for the assessment of the adjudicated matter, it is relevant to terminate the proceedings legally in front of any authority that declares punishments by the law, and not just in front of the court (Bulletin of the Supreme Court of Cassation, 2015: 199).

In this context, the question of the position of the defendant in the so-called preliminary proceedings arises, primarily during the investigation stage (the so-called prosecution concept of the investigation) in relation to the institute for the prohibition of "double punishability". Namely, the rule *ne bis in idem* is not applicable during the investigation stage (Ilic et al., 2013), which means that if the public prosecutor has ordered the suspension of the investigation that has not reached its end (say, if there is not enough evidence for the charge), the investigation against the same person will not be re-opened for the same criminal offense, or in this case, the objection cannot be raised. (Bošković & Pavlović, 2016).

However, taking into account our country's hierarchical (pyramidal) system of legal acts, and the fact that all legal acts must be in accordance with the Constitution as the highest legal act[3], which is at the top of such a pyramidally established system, the standpoint of the legislator is justified given the standardization of this institute by the Constitution (Article 34, paragraphs 4 and 5), since it is all about its validity in relation to "the final decisions of the court".

Since the Constitution provides such protection in relation to the final court decisions which, evidently do not exist in the preliminary proceeding, the conclusion is drawn that the principle of legal certainty in the criminal procedure is inevitably disrupted, that is, that this principle is not sufficiently provided (Bošković & Pavlović, 2016).

At the end of the day, one way of overcoming the problem of the procedural doctrine of a "double trial in the same matter" may be to clarify the distinction between criminal offenses and misdemeanors through a more intensive and improved cooperation between the competent state authorities. Namely, the issue of the identity of criminal offenses is one of the most difficult questions when it comes to the application of the principle *ne bis in idem*, especially where misdemeanors and criminal offenses are "overlapping" and when in both cases the predicted punishment can be related to imprisonment (Kolarić & Marković, 2017).

Despite the efforts made to improve the defendant's procedural position and the harmonization of domestic law, there is, however, a violation of this procedural institute as clearly demonstrated by the practice of both domestic courts and the European Court of

3 Compliance with the fundamental principle of the constitutional hierarchy of the legal system was not implemented by the legislator equally at all stages of the criminal procedure. Thus, at this point, certain provisions of the Code which can be said to be unconstitutional should be mentioned. Namely, in the current prosecution concept of the investigation, the public prosecutor as a prosecution authority has the dominant role in the pre-investigative and investigative phase of the proceedings (and the role of the judicial authority competent at this stage of the proceedings – the preliminary proceedings judge is reduced to a minimum and is primarily reflected in the protection of the rights and basic freedoms of the defendant) in accordance with his leadership role issues an order to conduct an investigation to which the defendant has no right neither to invest the legal remedy, nor there is another form of judicial control. The unconstitutionality of this provision is reflected in the non-compliance with the Art. 32, para. 1 and Art. 36, para. 2 of the Constitution.

Human Rights, and so it is *de lege ferenda* necessary to base the normative and legal regulation on the results of previous judicial practice with the aim of raising the level of mutual respect for court decisions and the unique application and interpretation of domestic legislation.

PRIVILEGES OF THE DEFENDANT IN THE LEGAL REMEDIES PROCEDURES – REFORMATIO IN PEIUS AND BENEFICIUM COHAESIONIS BAN

In order to achieve a comprehensive insight into the procedural position of the defendant during the criminal proceedings, it is necessary to consider the importance of those *favor defensis* that apply in the proceedings carried out according to the legal remedies. Their importance is reflected primarily in the defendant's ability to file certain remedies (that is, freely dispose of them) to the decisions of judicial authorities, not fearing that this could jeopardize his position.

If we take a historical point of view, the proof that the position of the defendant in the criminal proceedings has changed can be found in one of the principles of the German criminal proceedings theory (Kulaš, 1939), where we have a categorically represented viewpoint that it is essential to abolish the application of legal remedies in the criminal proceedings and to carry out the criminal proceedings only once and before one legal authority, where there would be no space for legal remedies. From this standpoint, it is clear how unequal the procedural position of the defendant is, and how the possibility for an appropriate defense is being excluded.

However, the principle of fair trial and the principle of legality require the judicial authorities to conduct the criminal proceedings lawfully and correctly, and that the decisions they make are also legitimate and correct (Škulić & Bugarski, 2015). In the contemporary criminal proceedings doctrine, it is inconceivable that the accused is deprived of the rights which primarily have the function of defense against the charges, as well as the advantages that guarantee the fair trial and legal certainty of the procedural parties.

The prohibition *reformatio in peius* is valid only in the case of an appeal filed in favor of the accused, regardless of who filed the complaint. However, if in addition to the appeal filed in favor of the accused, an appeal was filed against him as well (for example, by the competent public prosecutor), the court will not be bound by this prohibition, and in that case it may also make a decision that will not be in favor of the accused (Bošković & Kesić, 2015).

Without this procedural postulate, the defendant would be in a position to choose between two equally unpleasant situations: to file a legal remedy, with the risk that his own remedy might aggravate his position or not to file a remedy, even if his remedy was justified, counting that the other party would not file a legal remedy and that the court decision would at least not become worse (Grubač, 2008).

The establishment of the *reformatio in peius* postulates aims to strengthen the procedural position of the defendant, whereby the defendant is given the opportunity to file legal remedies against the decisions of the competent authorities, thus providing a procedural guarantee that the use of a remedy will not aggravate his position. In the domestic law, the aforementioned procedural postulate is supported by the Constitution (Article 34, paragraph 4 which determines the prohibition of amending the court decision to the detriment of the defendant in the extra-judicial proceedings supported by the legal remedies, not specifying such a prohibition in the proceedings under a regular remedy) and the Code, where the Art. 453 stipulates that in the case of an appeal that goes only in favor of the accused, the court decision must not

be altered to his detriment in terms of the legal qualification of the offense and the criminal sanction.

However, in the practice of domestic courts, there is a violation of the constitutional principle of legal certainty in criminal law, the exceeding of the boundaries of the direction and the part of the adjudication of the judgment that are listed in the remedy. Such a violation is caused by the existence of a declared legal remedy that goes both in favor of and against the defendant at the same time.

The success of an appeal to the detriment of the defendant can prevent only to a limited extent the prohibition of an alteration of the court's decision to the worse. The starting point of this view is that the judgment of the remedy is related to what the appellant has requested (Knežević, 2006), that is, that the judgment of the legal remedy is related to the part of the verdict that is being impugned, to the basis and direction of the impugnment contained in the legal remedy. For example, if the defendant declares an appeal on the legal qualification of an act, and the public prosecutor on the decision on the sentence, and the court of the legal remedy determines that the punishment in respect of the qualification of the work in the first instance judgment is properly assessed, but that the qualification of the criminal offense itself is weak, then on the basis of a more rigorous qualification, it imposes a more severe punishment. So the part of the verdict that the prosecutor did not require would be changed. In this way, we come to the paradox that the main cause of reaching a judgment to the detriment of the defendant is the very appeal invested in his favor, with the help of the appeal filed to his detriment. This example illustrates the consequence of the decision of the court of a remedy over the limits set by the subject of the appeal to the detriment of the defendant.

Furthermore, by equating the procedural positions of the criminal parties, regulating the provisions relating to extraordinary remedies (request for the reopening of criminal proceedings, the request for protection of legality) the legislator establishes the possibility of a declaration of a request for the protection of legality both in favor of and against the defendant (contrary of the request for repetition of the criminal proceedings, where this remedy can only be invested for the benefit of the defendant). However, the court's decision on the said remedy is of a declaratory character, that is, the legal situation of the defendant does not change, and the decision is fortifying.

Of course, this procedural postulate is not unconditionally and completely accepted, because in such a case, the use of a legal remedy to the detriment of the accused would make no sense, which would further lead to unnecessary delays in the procedure and "examination of non-fulfillment of material conditions" without the possibility of eliminating "errors".

One of the problems that might arise is the insufficient individualization of criminal sanctions imposed on the defendant, especially when deciding on the adequacy of regular and extraordinary remedies. Taking the principle of justice and humanity as the starting point, the relationship of criminal sanctions against the defendant, i.e. his personal, family conditions and circumstances, is inevitably imposed. In regards to this, fines and imprisonment do not affect different categories of the accused persons in the same way.[4]

Namely, the Code does not contain any criteria that we can rely on when assessing the (un) favorability of the declared criminal sanction for the accused. Therefore, this question is left to the court in each particular case (Brkic, 2016: 158). In the era of humanization of criminal sanctions and improvement of the position of the accused person during the crimi-

4 It is true that certain criminal sanctions do not affect equally all categories of individuals, which is conditioned by different socio-economic and natural-social factors, but nevertheless, as the "principle of greater importance", the very principle of humanization is taken, which (as fundamental, at the international level proclaimed) proceeds from the fact that measures that limit the rights and freedoms of the accused person (such as deprivation of liberty) are applied as measures ultima ratio.

nal proceedings, the position of our court practice is that the new decision should not be less favorable for the accused in no single case related to the criminal sanction, neither in terms of the type, nor in terms of penalties, as well as the length of the verification period for paroles.

In that sense, the legal view taken by the Supreme Court of Cassation, with regard to the categorization and individualization of criminal sanctions, is that the second instance court violates the prohibition of the alteration to the worse from Article 382 of the Criminal Procedure Code deciding upon an appeal going against the defendant where the defendant, instead of a parole as a milder criminal sanction, was imposed a fine in a certain amount (Bulletin of the Supreme Court of Cassation, 2014: 74).

It is worth mentioning that when it comes to regular legal remedies and the application of this postulate, the possibility of its application is omitted when it comes to appealing against a decision which is justified because otherwise the treatment and decision-making of the competent authorities would become meaningless, and the procedure itself would go on for too long with the possibility of greater abuse of the claimed rights. It is also important to point out that the prohibition of deteriorating the defendant's legal position does not apply, for example to seizure of property benefits, property claim, costs of criminal proceedings, etc.

Finally, we can say that the convenience of association as an institute of criminal procedural law legalizes the protection of the rights of the defendants / co-accused persons, because if it is convenient for them, the provisions of the Criminal Procedure Code in the specific case will be applied to them as well.

Therefore, the privilege of association leads as well to the extension of the benefits from the invested remedy to the co-defendant, who does not reject the court decision at all or does not try to impugn it in the proper direction, which is defined as the extensive fact (*effetto estensivo*) of the legal remedy in one part of the process theory (Milovanović, 2016).

Beneficium cohaesionis is applied both in the procedure of regular and extra-judicial legal remedies. Namely, in our positive procedural law, it has application in the appeal proceedings against the first instance verdict (Article 454), upon appeal to the judgment of the second instance court (Article 464, paragraph 2), on appeal against the decision (Article 468), upon request for repetition of criminal proceedings (Article 477, paragraph 3) and on request for the protection of legality (Article 489, paragraph 2 of the Code).

Ratio legis of this institution, in case of a procedure conducted according to legal remedies, lies in the attempt to prevent unequal treatment of the defendants in the same procedure for the same legal matter and which are covered by the same court decision, and are in the same legal situation (Grubač, 2008). Due to the standardization of this process postulate in the process theory, this property of the legal remedy is called an extensive property.

An appeal against which the court decides does not have to be made solely by the accused or in his favor. Additionally, it is irrelevant on the basis of what the complaint has been filed as well. In order to apply this postulate, it is necessary to conduct a single criminal procedure against several persons, i.e. that there has been a merger of several criminal matters into one proceeding, which further indicates that the privilege of association cannot relate to other persons who are tried in separate criminal proceedings (Boskovic & Kesić, 2015).

Under the "co-accused who has not submitted an extraordinary legal remedy", there should be implied both the defendant whose extraordinary remedy has been dismissed, and the co-accused who has given up the same remedy as well (Ilic i co., 2015: 1049).

Taking into account this procedural principle, the court of a legal remedy is allowed to cut into the unimpugned part of the judgment, thereby breaching the relative validity of the judgment, which is contrary to the rule that the higher court is bound both to the impugned part of the judgment and to the grounds on which it is being impugned upon as well. The

justification for this lies in the request to achieve the material justice, that is, in an attempt to prevent unequal treatment of the defendants who have been tried in the same procedure and which is covered by the same verdict (Ilić, 2009).

Therefore, we note that in such cases the court of legal remedies removes or alters the parts of the judgment that have already become final, since no appeal has been lodged to such a verdict by one or more co-accused persons. Such a possibility of deviation from a verdict's legality is caused by the interrelated nature of impugned and unimpugned parts of the judgment.

However, as the procedural institute *beneficium cohaesionis* applying it to cases in the procedure for regular and extraordinary remedies, although by automatism leads to the inclusion of those persons who did not invest remedies, attention should be paid to the process rule of individualization of sentences (for example, in the case of a legal remedy), because for any person who participate in the criminal matter, the conditions for possible mitigation of the sentence must be examined.

The standards set up in such way, provided that the competent state authorities respect them in practice and that they are complying with the principles of the Criminal Procedure Code and the protection of the rights and fundamental freedoms of its participants, greatly contribute to the improvement of the position of the defendant as the dominant criminal procedural party. However, despite the legislator's intention to provide a normative legal framework that will enable the realization of all guaranteed rights (envisaged at the international level), which is a postulate of modern democratic states, certain "breaches" and "non-compliance" occur due to the different interpretation and application of the above norms, as well as the mutual disregard of decisions made by the judicial authorities. The possibility of abuse of the rights by the defendant must also be taken into consideration, which can again lead to the prolongation of the criminal proceedings. In which way the criminal proceedings doctrine will reconcile these contradictory, yet equally important values of the state and society, remains the task of both science and practice, all bearing in mind that the criminal proceedings system and the criminal procedure itself is a "living organism", and all factors of influence on it cannot always be completely foreseen.

CONCLUSION

By standardizing the rights of the accused person, there is an attempt to raise the level of legal certainty and respect of fundamental human rights and freedoms, on the one hand, and on the other hand, there are attempts to eliminate the cause of delaying the procedure and misuse of the proclaimed rights.

Striving to establish the equalities between the fundamental and again diametrically set principles leads to a variety within the court practice and difficulties in the uniform application and interpretation of legal norms. Additionally, contemporary criminal procedural doctrine gives advantage to the principle of fairness compared to the principle of truth-seeking.

However, it seems that the trend of harmonization and harmonization of the norms of national law with the norms of international law in certain cases has even led to the opposite effects, since the "Serbian criminal procedural ground" is still unfavorable for the implementation of certain procedural institutes. The reason for this is primarily the "spirit of retaliation" and the dissatisfaction of society with privilege and "insufficient, unscrupulous" punishment of offenders.

The principle of fairness and legal certainty as a match to the prohibition of reducing the level of already achieved, legally standardized rights and freedoms, represents the basis for a

guarantee of the democratic system of modern society. Taking into account the above, the acting state authorities must also take into account the principle of individualization and respect for the practice of higher instances in order to avoid different treatment in similar legal situations thereby reducing the number of cases that are being conducted before the European Court of Human Rights against the Republic of Serbia.

Therefore, the aforementioned advantages in the criminal procedure, as *favor defensionis*, are in direct relation with the defendant's procedural position, and are applicable whenever the law permits. Namely, the standardized privileges of the defendant - the prohibition of the repetitive trial in the same matter, the prohibition of alteration of the judgment to the worse, the convenience of combining during the criminal proceedings as a whole, achieve the postulate of the accuracy and legal certainty of the accused viewed from the formal point of view. However, in the case of uneven application of the legal provisions, *de lege lata*, different practices of competent state authorities (primarily courts) appear, and in relation to this possible violation of the rights of the accused person might occur, as well as the creation of uncertainty of citizens in the state and its power of institutionalized fight against crime. Therefore, *de lege ferenda* it is necessary to adapt the legal remedies to the previous process experiences and to reduce the possibility of abuse of rights and procedural institutes, as well as "wandering of the judicial practice".

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THE FACTORS OF "GREEN" CRIME

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Abstract: "Green" crime can simply and comprehensively be defined as any harm or crime which affects great number of victims related to ecology or environment. Thus, the term embodies not only official environmental criminal offences, but also any non-incriminated harm/injury in relation to the environment, that can de facto qualify as criminal. The criminology branch that investigates "green" crime is called "green" criminology. As a part of "green" criminology, we can differentiate "green" victimology as well. "Green criminology" acts as an important tool in dealing with and preventing "green" crime, as one of the most wide-spread types of crime in the world. Since the etiological background of the "green crime" is highly complex and often invisible, it represents one of the biggest challenges to "green" criminology. In this paper, we will approach this challenge, particularly in regard to the ways in which the most dominant factors of "green" crime can be diminished or neutralized.

Key words: "green" crime, "green" criminology, factors, environment, prevention.

INTRODUCTION

Green criminology and, as its part, green victimology are much specific areas, particularly due to the subject matter, theoretical framework, and fundamental concepts. Regarding environmental issues, previous criminological/victimological studies did not employ terminology and conceptualizations specific to green criminology (White, 2013, 18). These specific perspectives emerged from radical/critical criminology, which studies criminal/harmful activities of the powerful, with the special focus to power inequality and unjust distribution of wealth (Hall, 2014, 97; Sollund, 2015, 2). Therefore, "green criminology is a natural and necessary prolongation and expansion of critical criminology" (Sollund, 2015, 4), and the same applies to the victimology as well.

Regarding the subject matter, green crime is usually defined as illegal activities against the environment, and also legal but "socially and ecologically harmful" activities (White, 2013, 22). Furthermore, those harmful activities in most cases are not criminalized at all (Hall, 2014, 97, 98). Therefore, within green criminology, the most common term - environmental crime - is altered into the wider term "green crime", which is the sociological rather than legal notion of crime.

In respect to offenders, they are mostly defined as per the harmful and criminal activities of powerful collectives – namely, corporations and states (Hall, 2014, 97, 98; Higgins et al, 2013). However, many other powerful collectives are as well seen as green crime offenders, mostly military and paramilitary organizations, and, of course, organized crime groups, as it will be addressed in the paper. Similarly, victims in green victimology are as well defined as collectives – collectives of people, but ecosystem and species as well (Hall, 2014, 99). Since green crime victims have long been neglected in traditional criminology/victimology studies (so as the victims of state, corporate and "white collar" crimes), critical approach led the way

to green victimology and its defining of the green crime victims (Hall, 2011, 373, 374; Lynch & Stretesky, 2014, 81, 100). In that manner, the essential issue about green crime victims is non-recognition of harmful activities against them as criminal ones (Hall, 2013, 222).

The very framework of green criminology/victimology may be said to be a wide concept, which embodies many theories, but mostly environmental justice, ecological justice, and species justice (White, 2013, 20). Environmental justice is mainly focused on social justice and intergenerational responsibility in the field of environmental protection, whereas ecological justice/species justice are constructed on the notions of holistic justice, where every ecosystem, its components, and specie have their intrinsic values, since people are not the only part of the complex ecosystem (Sollund, 2013, 85; White, 2008a, 15; White, 2013, 20). Although environmental justice is mostly anthropocentric in nature since it mainly embodies the interests of the human race, all the three orientations together provide a better approach to the holistic environmental protection, where all the living beings are interconnected and all have specific intrinsic values. This paper will, thus, put stress on the most dominant factors of green crimes, focusing on the implications of these three perspectives, which are generally named eco-justice.

THE FACTORS OF GREEN CRIME

In general, studies have shown that, in spite of great variability of the etiological roots of green crime, its most crucial factors are mainly reflected in **law risk** and **high profitability**, which are, in turn, the results of: weak governance, spread corruption, minimal budgeting of the police and judicial bodies, inadequate institutional support, political influences, low morality of the employees whose task is to combat these phenomena, as well as the growing demand for the products which originate from ecologically harmful activities (Nellemann et al, 2016, 9). This is particularly obvious when organized crime groups come to the focus, especially those operating in illegal trade in wildlife, since their main motivation is financial gain and the opportunity, combined with very little or no state control, or even with corruption of the officials (Green at el, 2007, 96, 98; Haenlein & Smith, 2016, 1, 8; UNODC, 2016, 13).

More generally, **neoliberalism** and **capitalism** are distinguished as one of the main roots of green crime within green criminology. Namely, the era of neoliberalism generates the greed which is reflected on the global political level, due to the fact that states seek to gain and maintain property and power over natural resources unscrupulously and fast (Brisman et al, 2015, 6). However, this is not only the case with the states, but with powerful corporations as well. According to the rational choice theory, it is noted that the criminal corporative nature is in fact the rationalistic nature oriented towards financial gain as the highest priority (Bisschop, 2010, 352). Within green criminology, the critique of capitalist production is highly present, representing one of the strongest arguments in explaining green crime.

In the global capitalism, regulation of activities depends on the choices of a state, and these choices mainly depend on the class interests of the politically powerful ones (White & South, 2013, 30). Thus, multinational corporations are able to adapt their interests to the protection and support that comes from a state (White & South, 2013, 30). This corporate/state synergy is reflected in tax profiting, media support, political donations, and so forth, which in turn affects the very foundations of democracy, having an impact on collective decision-making in regard to the public interest (White & South, 2013, 30). This represents the root of the complex state-corporate green crime (Kramer, 2014, 25), which has many consequences reflected in health, security, but also in the loss of trust in governments and corporations (Bisschop,

2010, 351). Within green criminology, these activities, and the passive attitude of a state to act according to the principles of eco-justice, are considered as acts criminal in nature.

In the light of these arguments, it is a common and obvious issue that states lack ability and will to affect the capitalist economy, although it is a state that carries the responsibility for the final phase of the production, when the harm is already done (Ruggiero, 2015, 91). Brisman and South note that, in this neoliberal sphere, states are governed either by the principle "it is for the greater good" or by the principle that there is no obvious harm sustained (Brisman & South, 2015, 31).

On the other hand, Lynch and Stretesky apply Durkheim's theory of anomy to the relationship between values i.e. goals which are promoted by the society, and the capability of the ecosystem to provide the resources needed to meet them (Lynch & Stretesky, 2014, 21). As the values in the contemporary global society are the financial prosperity and accumulation of wealth, and as the economy does not take into account the fact that raw materials i.e. natural resources are limited, in this case we come to the matter of ecological anomy (Lynch & Stretesky, 2014, 21). The **ecological anomy** is, namely, the state where the values are not compatible with the capacities of the nature, without limiting the ability of the nature to function in a way which would support both accumulation of wealth and life within ecosystems (Lynch & Stretesky, 2014, 21). Not only that this disbalance creates ecological anomy, but it also creates **ecological disorganization**, which is defined as the exceeding waste production which alters the nature by the harmful polluting activities (Lynch & Stretesky, 2014, 21). The criminal offences of ecological disorganization are in fact the ecologically harmful activities which result from the capitalist mode of production, particularly from the exploitation and pollution of the nature and natural resources (Lynch at el, 2013, 998). Some "green" criminologists even state that this system of production is "the crime against nature" (Lynch at el, 2013, 998).

Capitalism, namely, destroys the nature in its progress since it cannot exist beyond the exploitative human relation towards the nature (Lynch at el, 2013, 998, 1001, 1002; Lynch et al, 2015, 153). This is especially the case with the critique towards American capitalism, for which it is said to be forcing Europe to abandon its social and ecological criteria (Schnaiberg at el, 2002, 18). The contemporary capitalist system is strongly, therefore, connected to the green crime, for it is founded on the exploitation of nature, i.e. natural resources, animals, and people (White & Heckenberg, 2014, 22). Furthermore, in the global world without borders and with the mixture of different cultures, the anomy has even more serious implications than before, since the contemporary global consumers' culture leads a way to its self-destruction, for it "consumes" the very world of the nature (Lynch & Stretesky, 2014, 21).

One of the factors of green crime that originates from the current economic model is **globalization** as well. Furthermore, exploitative capitalistic globalization is often referred to as "corporate violence" (Eaton & Lorentzen, 2003, 4). There is also a strong link between globalization, and, on the other hand, the issue of power, capitalist institutions, and the powerful **technological domination** over nature (Cudworth, 2005, 33). Namely, the global ecological crisis has escalated with the globalization of capitalism (Merchant, 2005, 30). Globalization is as well strongly linked to the problems of industrialization and modernization in the **risk society**: through the risks of modernization (particularly those related to economic exploitation), the capitalist society transforms into the risk society itself (Beck, 1992, 22-24).

Besides the two previously mentioned factors of high profit and law risk, one of the dominant factors of green crime is denial as well – the denial of harm, the denial of the criminal nature of harmful activities, the denial that non-human species feel pain and suffer or that the nature has intrinsic values other than instrumental ones (Nurse, 2013, 129). In criminology, these forms of denial are known as the **techniques of neutralization** (White & South, 2013, 29). This is especially the case with the activities related to wildlife, such as poaching and ille-

gal trade in species (Nurse, 2013, 129). The most dominant factors of this type of green crime are financial gain, excitement, fun and sport, antipathy, hostile attitude towards governmental and judicial bodies, as well as cultural and traditional factors (Nurse, 2013, 130).

Similarly, one of the techniques of the large corporations that is a strong contributor to green crime is so-called "**greenwashing**" – a marketing strategy through which the corporations send environmentally positive information to the consumers, whereas those messages do not reflect the true state of affairs in the area of environmental issues (Bowen, 2014, 3). Thus, these actions manipulatively cause the raising demand for the products which actually damage the environment, non-human animals and people.

In the majority of the cases of green crime, **environmental racism** is the generating factor as well. This is not only the case with the exploitation of natural resources and wildlife crimes, but as well with illegal (and legal but harmful) waste (especially toxic waste) management (Wyatt et al, 2014, 3). Namely, these activities are mainly distributed in the developing, Third World countries by the powerful Western corporations, with the main factors being: the lack of the adequate legislation and corruption of governments, as well as the higher profitability achieved by the corporations in comparison to the waste disposal activities in the developed countries (White, 2008b, 5).

Globally distributed green crime factor is **militarism** as well. Violence that follows from military activities affects the nature too – one fifth of the global environmental degradation is caused by the military and military related activities (Hartmann, 1999, 9, according to Brisman et al, 2015, 12). It is even found that the militarization of some countries is encouraged and enlarged in order to provide greater corporative power (Eaton, 2003, 27).

Here, we will also mention the most dominant factors of one of the most serious forms of green crime, namely – global warming and climate change, the phenomena highly linked to **anthropocentrism**. Global warming and the consequent climate changes are seen as the results of various activities that are defined as green crime. It is also observed that there is a strong interaction and connection between global warming and (in)activities of states and corporations (White & South, 2013, 29). Governments' subventions to the industries which use coal burning as an energy source, as well as governments' approval of dam constructions (which destroy huge areas of rain forests), within green criminology are seen as the fundamental crimes against nature (White & South, 2013, 29). Even further, it is stated that, besides nuclear war, there is no other form of environmental crime that brings more victims than the anthropocentric global warming and, as its consequence, the climate change (Kramer, 2014, 23). The largest contributors to these meteorological phenomena are deforestation, coal burning, and agriculture, particularly animal agriculture.

One of the largest contributing factors to the global warming is **deforestation**, both illegal and legal, which is an issue of global concern (Banks et al, 2008, 3; Higgins et al, 2013). Deforestation is also linked to environmental racism, since the richest forest resources are located in the areas of the Global South. Again, deforestation is in turn determined by the conditions that exist within the global economy, which is lead by the politics of profit accumulation.

Coal burning, on the other hand, within the large industries, is as well the cause of global warming, and therefore, climate change, as the greenhouse gases damage the ozone layer in the atmosphere (Davies, 2014, 7). The ozone layer depletion has both short-term and long-term consequences for the health of humans, non-human animals, and ecosystems, however, activities that lead to the depletion are not considered criminal in nature and, thus, not sanctioned as such.

Agriculture also represents one of the largest factors of global warming and climate change, due to the high food demand, which implicates exploitation of and the use of invasive

technologies in the environment (Brisman et al, 2014, 489). In agriculture, meat consumption plays a special role, since globally 15% of the greenhouse gas emissions originate from the farming sector, which represents an equivalent to the emissions of all the transportation vehicles in the world (Wellesley et al, 2015). Namely, production of the food of animal origin requires more resources and has greater impact on the environment in comparison to the production of plant-based food - for example, beef production requires the 20 times bigger land area and results in the 20 times larger greenhouse gas emission, measured by a protein unit, in comparison to the production of a plant protein (Ranganathan & Waite, 2016). In addition, the production of beef requires the great quantity of water as well (one third of the global water footprint), although the lack of water is itself one of the most serious global environmental and human rights issues (Ranganathan & Waite, 2016). In the background of these issues is the oppressive attitude of the humans towards the animals, who are seen as commodities with the sole purpose to be served and used, and it reflects the indifference to the animal suffering in the name of competition and profit making.

GENERAL ACTION TOWARDS SURRPRESSION AND ELIMINATION OF THE FACTORS OF GREEN CRIME

Since the paper deals exclusively with the factors, and not with the distribution of the green crime in and of itself, we will address here only the issues relevant for the eliminating or diminishing the very roots and factors of these harmful (illegal or legal) activities.

First of all, the legislative and political issue related to the ecological harms must be primarily considered. The very issue of defining what constitutes crime and why it represents one of the most challenging problems within green criminology. Within the perspective of eco-justice, the relation towards nature in general must be seen as respectful, considerate, and based on the principles of the intrinsic values of all the living beings. Failing to incorporate such a perspective within political will and legislation imposes one of the crucial problems when defining green crime i.e. whose interests are to be protected and by what means. This is not only the issue of (non)criminalization, but it is also an issue of unification and harmonization of the legislation within the regions and the world, keeping in mind that green crime has transboundary implications and consequences. Therefore, strict and comprehensive cooperation between states and organizations, particularly between the developed and the developing states, becomes the priority. In that sense, it is observed that lately the greater legislative and judicial attention is given to the rights of the nature itself and certain natural species (White, 2013, 21). Although so far a countless number of environmental provisions has been enacted at the international and regional levels, most of them are insufficient since they do not provide the adequate sanctions, for the harmful activities that they embody are still largely not considered criminal. Hence, although administrative, civil, and alternative criminal sanctions may have a positive impact on the combat of environmentally harmful activities, it is the stance of green criminology that their criminalization would contribute to their recognition and more effective prevention.

Fight against corruption is as well one of the most important issues to be addressed in combating the factors of green crime. This is of particular importance when it comes to the corporate corruption, aimed at preventing the environmental regulation enforcement or pro-ecological campaigns and activists' protests (Potter, 2014, 10, 11). A very serious issue is the corruption in the field of science, whose initiators and actors are powerful corporations (Kramer, 2014, 32). Thus, corruption has its implications not only within the market advertising, political campaigns, and legislative and legal actions in general, but as well within science,

the area that is supposed to be completely objective and indifferent to various interests of the powerful collectives (White, 2008a). Their aim is to lower the ecological standards in order to secure their financial interests in the global market (Brisman & South, 2013, 57).

Regarding the problem of the capitalist production, there have been some attempts to diminish its negative impacts on the environment. One of those is the introduction of so-called natural capitalism, as a form of "new industrial revolution" (Howken et al, 1999, 10). This concept is based upon the strategies which would provide that states, corporations, and communities act as if all the forms of capital are valued (Howken et al, 1999, 10). These strategies embody: radical increase of resources' productivity, recycling, changing the relationship between producers and consumers into the one that values the "services" of the ecosystem, as well as investing into natural capital (Howken et al, 1999, 10, 11). Although this perspective does bring the premise of the commodification of nature, it is more sustained in terms of diminishing the factors of green crime related to the global economic system, than the mainstream capitalist system is (Howken et al, 1999, 10, 11). Similarly, the concept of green public procurements is as well focused on the suppression of the green crime factors. This reformative concept is being implemented in the Republic of Serbia as well, and it is defined as ordering and purchasing of goods, services i.e. labour which have the minimal negative effect on the environment (Uprava za javne nabavke RS, 2015, 5).

On the more pragmatic level, one of the most powerful future actions towards suppression and elimination of the roots of ecologically harmful activities that constitute green crime are the new non-invasive technologies, mainly those in the fields of food production and energetics. Investing in the power of non-oppressive knowledge seems like one of the most optimal ways to deal with the roots of green crime. Although non-aggressive and sustainable technological development is of the primary and utmost importance to the environment itself, it would also be of the particular interest to the multinational corporations, which could still be able to maintain and achieve their financial goals and strategies.

In the end, political activism and the pressure (particularly media and educational pressure) directed towards the change of the attitudes, values and habits of the larger masses in the global society have to be taken into account when diminishing the roots of green crime, especially those related to the global trends in the consumers' society. The oppression against nature and non-human animals is rooted in the very foundations of the society, particularly the Western society. It is reflected in the demand, mass production, consumerism and advertising strategies. The action of the civil sector towards consciousness raising about these issues is therefore of the utmost concern in diminishing the green crime factors. The very same applies to the investment in empirical research in various scientific areas, which would contribute to the new and alternative ways in which to combat the factors of one of the most serious harms of today's society.

CONCLUSION

Green crime is a highly complex phenomenon, primarily due to the fact that the majority of the activities that it consists of are not recognized as criminal ones. On the other hand, addressing those activities as criminal in nature would contribute to the visibility of their factors, and therefore, to their neutralization i.e. suppression.

Within the previous lines, it can be observed that the main, and at first sight hidden or invisible, roots of green crime can in fact be found in the anthropocentric economical model dominant in the today's world. Every other factor of the ecologically harmful activities may be traced via this system. However, this explanation is not as nearly simple as it seems. An-

thropocentric greed has its origins in the very relation of the human civilization towards the nature, which has long been seen as the entity of an instrumental value, serving the humanity. Therefore, this complex etiological background must even further be searched for within anthropology, philosophy, and the history of the human civilization. This oppressive relation is exactly the issue which eco-justice fights against.

On the other hand, the radical change of this relation must gradually come from the small steps taken within various social systems, particularly scientific, economic, political, and legal ones. Some of the changes are already occurring on many different levels, since the global society is becoming more aware of the ecological issues around the world. However, since the current state of affairs regarding the environmental problems will not be sustainable in long terms, the more radical perspective is necessary in order to accelerate the much-needed change, with green criminology being the cornerstone of the future ecological revolution, i.e. reform.

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EXECUTION OF JUDGMENTS OF THE ECHR - A CRITERION FOR THE EFFECTIVENESS OF THE SLOVENIAN JUDICIAL SYSTEM

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Abstract: Since 1996 the European Convention on Human Rights has been part of the Slovenian legal order. This is why Slovenia is obliged to respect the final judgments of the European Court of Human Rights (hereinafter: the ECHR) in each case in which it acts as a party. Respect for human rights and the rule of law are among the main priorities of the Ministry of Justice and the Government of the Republic of Slovenia. Therefore since 2014 several measures have been taken regarding the amendment or adoption of new sectoral legislation and hence the enforcement of judgments of international courts, also the ECHR. In 2016 an Interdepartmental Working Group for Coordination of Execution of Judgments of the ECHR was established, consisting of representatives of several ministries, the State Attorney's Office, the Supreme Court of the Republic of Slovenia and the Ombudsman. The statistics on the execution of judgments of the ECHR and the annual reports of the Committee of Ministers of the Council of Europe about supervision of the execution of judgments of the ECHR show that at the end of 2014 there were 302 pending cases in Slovenia, at the end of 2015 309 pending cases and at the end of 2016 49 pending cases. This is a significant improvement in the enforcement of ECHR judgments which undoubtedly represents progress in the efficiency of the Slovenian judicial system. As is evident from the statistics of the European Court of Human Rights, there has also been a significant reduction in the number of complaints against Slovenia which await the decision of the ECHR.

Key words: legislation, European Court of Human Rights, human rights, judicial system

INTRODUCTION

By becoming a member of the European Union, Slovenia has also implemented the European legislation, including the European Convention on Human Rights (1994), which has been part of the Slovenian legal system since 1994. Due to the enactment of the convention, Slovenia is obliged to respect the final judgments of the European Court of Human Rights (hereinafter: the European Court of Human Rights) in every case in which it acts as a party. Respect for human rights and ensuring the rule of law is one of the top priorities of the Ministry of Justice as well as the Government of the Republic of Slovenia. This also involves more efficient and faster enforcement of ECHR judgments. The execution of judgments of the European Court of Human Rights is monitored by the Committee of Ministers of the Council of Europe, before it is dealt with by the Council of Europe Section for the enforcement of judgments of the European Court of Human Rights. The procedure for monitoring the enforcement of the judgment of the European Court of Human Rights begins with the finality of the ECHR judgment and ends with the final resolution adopted by the Committee of

Ministers of the Council of Europe at meetings which are held four times a year for the review of the execution of judgments (Ministry of Justice4, 2018). The State party to the European Convention on Human Rights, however, is obliged to define and implement the necessary individual and general measures.

ACTIVITIES / MEASURES OF SLOVENIA IN THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Since 2014, Slovenia has adopted several systemic and legislative measures in the field of effective enforcement of judgments of the European Court of Human Rights. Subsequently, they are essential (Ministry of Justice1, n.d.; Ministry of Justice2, n.d.):

1. Implementation of the Act amending and supplementing the State Administration Act [SAA-1l] (2015), which added "the direction of ministries in the execution of judgments of international courts" as the responsibility of the Ministry of Justice. That significantly relates to the enforcement of judgments of the ECHR. A special effect in this area was also given by the so called Brussels Declaration (Council of Europe, 2015) adopted at the Brussels Conference in 2015 reaffirming the firm determination of the States Parties to fulfil, in accordance with the subsidiarity principle at national level, the fundamental obligation to ensure the full protection of rights and freedoms set out in the European Convention on Human Rights and its protocols, including the more effective enforcement of judgments of the European Court of Human Rights. With the amending act, for the first time in Slovenia, an authority was established specifically to promote and coordinate the enforcement of judgments of international courts. In 2016 an Interdepartmental Working Group for Coordination of Execution of Judgments of the European Court of Human Rights was established, consisting of representatives of several ministries, the State Attorney's Office, the Supreme Court of the Republic of Slovenia and the Ombudsman. Within the Ministry of Justice, a project group was set up to prepare and coordinate the preparation of action Plans and reports for the execution of judgments of the ECHR.

2. At the end of 2015, the Government of the Republic of Slovenia adopted a conclusion establishing an Interdepartmental Working Group for the Coordination of the Execution of Judgments of the European Court of Human Rights and recommending the Ministry of Justice to develop an internal specialization in the field of human rights and the enforcement of judgments of the European Court of Human Rights and the Ministry of Justice (Ministry Of Justice5, n.d.). In cooperation with the Ombudsman, the amendment was prepared for the Human Rights Ombudsman Act in such a way as to enable the institution to acquire Status A under the Paris Principles on the Status of State Institutions for Human Rights. The Government decided that the expert tasks with the government decision (Ministry of Justice3, 2018; Ministry Of Justice5, n.d.) are as follow:

- Examining and coordinating the procedure for the enforcement of judgments of the European Court of Human Rights against the Republic of Slovenia, which are substantively related to the field of several ministries or other state bodies, and performing other related tasks;

- Cooperating with competent ministries and other bodies in the preparation of action plans, action reports and an annual report on the situation before the ECHR against the Republic of Slovenia;

- Preparing analyses and proposals of individual and general measures, including legislative changes and legislative proposals, necessary for the enforcement of judgments of the ECHR against the Republic of Slovenia;

- Preparing analyses and proposals for general measures, including legislative changes and legislative proposals, which are necessary in consideration of key judgments of the ECHR.

The main purpose of the working group is to strengthen the systemic functioning of the Republic of Slovenia in the field of the enforcement of judgments of the European Court of Human Rights as well as, indirectly, respecting the rights and freedoms of the European Convention on Human Rights. With the help of an Interdepartmental working group, the participation of representatives of various bodies in the enforcement of judgments of the ECHR is ensured, as some judgments relate to the competence of several departments.

3. In October 2016, the Task Force for the Coordination of the Execution of Judgments of the ECHR was established by the Minister of Justice, and it carries out the following tasks (Ministry Of Justice5, n.d.):

- Dealing with the judgments of the ECHR against the Republic of Slovenia (hereinafter: the RS), which are received with the report from the State Attorney's Office of the Republic of Slovenia (hereinafter: SAO);

- Conducting, adjusting and coordinating the enforcement of judgments of the ECHR, as well as leading and coordinating the preparation of an action plan or report and monitoring its implementation when the judgment concerns the jurisdiction of the Ministry of Justice;

- Coordinating the preparation of an action plan or report and providing expert assistance to the competent department that is responsible for preparing a draft action plan or report when the judgment relates to the competence of other ministries;

- When preparing or supplementing the action plan or report, it shall cooperate with the State Attorney's Office, the Permanent Representation of the Republic of Slovenia to the Council of Europe, the courts and competent internal organizational units of the Ministry of Justice and other competent ministries and bodies when the judgment concerns their jurisdiction:

- SAO may also participate in the preparation of a response to the ECHR or settlement; cooperates with the competent Section for the enforcement of judgments of the Council of Europe and the ECHR;

- Carrying out the tasks of the contact point with the Section for the Enforcement of Judgments of the Council of Europe in relation to the action plan or report;

- Ensuring the participation in meetings of the Committee of Ministers of the Council of Europe on Human Rights (hereinafter CMCE HR) in handling the execution of judgments of the European Court of Human Rights;

- Presenting the views on the cases in question against the Republic of Slovenia or in other cases if applicable;

- Participating in the preparation of amendments to the legislation or other measures relating to the execution of ECHR judgments if required;

- Informing, in cooperation with the management of the Ministry of Justice, the judiciary, the Ombudsman and other competent departments as well as expert and interested public about the judgments of the ECHR and the measures taken;

- Participating in training and promoting the respect for human rights, in particular on the basis of judgments of the European Court of Human Rights in Slovenia and abroad;

- Providing expert and technical support for the functioning of the Interdepartmental Working Group for the Coordination of Execution of Judgments of the European Court of Human Rights (IMF) and for the preparation of the annual report being dealt with by the IMF. The IMF Director may be informed of the situation of affairs, the expected major and

received ECHR judgments, the action plans and reports prepared or being in the process of preparation or have been addressed at CMCE HR and on proposed or foreseen systemic measures, amending legislation or other measures with financial consequences. If necessary, the Head of the IMF shall be presented with the proposal of outstanding issues, related to the preparation of action plans or reports (Project Team), being addressed at IMF.

4. For the implementation of pilot judgments in the cases of Kuriж (European Court of Human Rights1, 2012) and Aliљiж (European Court of Human Rights2, 2014), a special Interdepartmental working group was established, and representatives of the Ministry of Justice were included in their work.

The Kurič case (European Court of Human Rights1, 2012) covers the problem of the erased from 1991, when Slovenia became an independent state. At that time, in Slovenia, in contrast to some other republics of the former Socialist Federal Republic of Yugoslavia (hereinafter SFRY), the population was relatively homogeneous, with about 90% of the two million inhabitants being Slovenian citizens. Approximately 200,000 inhabitants of Slovenia (or 10% of the population), including complainants, were citizens of other republics of the former SFRY. This share also roughly shows the national origin of the Slovene population at the time. According to the Declaration of Good Intentions (1991), it was stipulated that citizens of other Republics of the former SFRY who registered permanent residence in the Republic of Slovenia on December 23, 1990, i.e. the day of the plebiscite on the independence of Slovenia, and have actually lived there, have the same rights and obligations as citizens of the Republic of Slovenia with the exception of the acquisition of immovable property until they acquire the citizenship of the Republic of Slovenia. According to official data, 171,132 citizens of the republics of the former SFRY who lived in Slovenia applied for the new state's citizenship under Article 40 of the Citizenship Act and obtained it. It is envisaged that additional 11,000 people emigrated from Slovenia. According to the second paragraph of Article 81 of the Foreigners Act, citizens of the republics of the former SFRY who did not apply for Slovenian citizenship within the prescribed deadline or whose applications were rejected became foreigners. The provisions of the Foreigners Act began to apply to citizens of the former SFRY two months after the expiry of the deadline (that is, on 26 February 1992) or two months after the decision to reject the application for citizenship was made final in the administrative procedure. Following the proclamation of independence, the Ministry of the Interior (hereinafter: the Ministry) sent municipal unregistered authorities with several unpublished internal instructions related to the implementation of the independence legislation, in particular the Foreigners Act, which stated that citizens of other SFRY republics living in Slovenia are considered foreigners in all administrative procedures from then on, and that, in accordance with Article 13 of the Constitutional Law of 1991, they have the same rights and obligations as citizens of the Republic of Slovenia until the expiration of the corresponding deadlines. It also provided technical instructions for passports and foreigners. On 30 July 1991, the Ministry informed the municipal administrative authorities that on the basis of the Brioni Declaration between the Ministerial Troika of the European Community and representatives of Slovenia, Croatia, Serbia and Yugoslavia, the enforcement of the independence legislation in the field of internal affairs would be suspended for three months. During this period, citizens of other republics of the SFRY will not be treated as foreigners. On 27 February 1992, the Ministry stated in its instructions to the municipal administrative authorities that the legal status of these persons should be regulated. In addition, it warned that the documents of these persons, although issued by the Slovenian authorities and formally valid, will in fact become invalid due to the change in the status of persons under the law (ex lege). The complainants stated that the persons whose names were deleted from the register did not receive a notification. They emphasized that no specific procedure was envisaged for this purpose and that no official documents were issued. To become foreigners, they only met when, for example, they attempted to extend their iden-

tity documents (identity card, passport, driving license). Consequently, the erased became foreigners or stateless persons who resided illegally in Slovenia. In general, they had problems with retaining employment, driving licenses, and obtaining pensions. They were also unable to leave the country as they could not re-enter it without valid documents. In the following years, numerous non-governmental organizations, including Amnesty International and the Helsinki Monitor and the Slovenian Ombudsman, issued reports in which they pointed out the situation of the erased people. The case also took place in front of the Slovenian courts. Finally, the ECHR ruled that the violation found on the basis of the conduct of the Slovenian legislative and administrative authorities clearly indicated the need to introduce appropriate general and individual measures in the Slovenian legal order. This concerns the adoption of appropriate legislation and the regulation of the situation of individual complainants by issuing permanent residence permits with retroactive effect. In 2016, the Government of the Republic of Slovenia implemented a pilot judgment in the Kurić case.

The case of Ališić (European Court of Human Rights2, 2014) covers the problem of foreign currency deposits of NLB Bank after the dissolution of the SFRY. Namely, before the economic reforms that were carried out in the SFRY in 1989 and 1990, the commercial banking system was composed of core and merged banks. Core banks had separate legal personality, but were included in the organizational structure of one of the nine merged banks. As a rule, basic banks were founded and controlled by socially-owned enterprises with their headquarters in the same territorial unit (i.e. in one of the republics - Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia - or in autonomous provinces - in Kosovo and Vojvodina). The publicly-owned enterprises were the main characteristic of the Yugoslav model of self-management; they were neither privately owned nor state-owned, but social property managed by employees on the basis of a communist vision of industrial relations. At least two core banks may have formed a merged bank. Ljubljanska Bank Ljubljana, one of these merged banks, consisted of Ljubljanska Bank Sarajevo, in which two of the applicants opened accounts and Ljubljanska banka Zagreb. Similarly, Investbank, in which one of the complainants opened an account, together with some other core banks formed a merged bank called the Belgrade Association of Bankers. Since the SFRY lacked convertible foreign currencies, it created attractive conditions for its citizens and other citizens under which its foreign currency assets could be invested in its banks. The state guarantee is expected to be triggered by the Bank's bankruptcy or "obvious insolvency" upon request of the bank. The savers could not demand the activation of a guarantee of their own will, but they had the right, at any time, to raise their savings together with accrued interest in accordance with the Obligations Act of 1978. In 1991, Slovenia took over from the SFRY a legal guarantee for "old" foreign currency deposits in domestic branches of all banks regardless of the citizenship of individual savers and converted the liabilities of banks to investors in public debt. Slovenia has therefore undertaken to repay the original deposits and interest. The latter was also confirmed by the ECHR. The judgment in the Ališič case is thus enforced.

In the Kurič case (the judgment has already been executed) and Ališič (the judgment is being enforced), the judgments refer to the situations related to the disintegration of the former SFRY and Slovenian independence, both of which also required the adoption of a special law and also had concrete financial consequences for state budget.

5. The State Attorney's Act ([SAA], 2017) now regulates in detail the field of representation of the Republic of Slovenia before international courts and international arbitrations, in the third section of the second chapter (Article 20-23). The law within the State Attorney's Office determines the functioning of the international department, and the unity of representation of the Republic of Slovenia before international courts and international arbitrations will be handled by the head of the international department. The Act also specifies that Slovenia

can only be represented in the international courts by a citizen of the Republic of Slovenia. Slovenia's co-opposition to the ECHR, enforcement of financial obligations related to settlement procedures before the ECHR and participation in the procedures for the enforcement of judgments of the ECHR is also new (Rep, 2017).

A great deal of attention was also focused on informing the public about the execution of judgments of the ECHR, therefore a special web-page - Enforcement of judgments of the European Court of Human Rights began to appear on the website of the Ministry of Justice. The purpose of this website is to inform the public about the judgments of the European Court of Human Rights, where at least one violation of the European Convention on Human Rights and the enforcement of these judgments has been found.

SLOVENIA AND ECHR

The parties that, after a constitutional complaint, (still) consider that their human rights have been violated as stipulated by the European Convention on Human Rights, also have the possibility to initiate proceedings against the state at the ECHR. The following table shows the number of complaints and judgments since 1999 (Rep, 2018).

Year	Nr. of complaints	Nr. of judgments
1999	86	0
2000	55	2
2001	206	1
2002	270	1
2003	251	0
2004	271	8
2005	3471	1
2006	1340	189
2007	1012	15
2008	1353	9
2009	598	8
2010	837	6
2011	426	12
2012	433	22
2013	495	25
2014	325	31
2015	212	14
2016	239	2

Table: Number of complaints and judgments against the Republic of Slovenia before the ECHR (The Supreme Court of the Republic of Slovenia, 2017; Council of Europe, 2017).

The largest share of infringements of cases is from the period between 2006 and 2008 and is related to the violation of the right to a trial within a reasonable time. (The Supreme Court of the Republic of Slovenia, 2017; Council of Europe, 2017).

REVIEW OF EXECUTED JUDGMENTS OF THE ECHR

Among the judgments of the ECHR, for which the final resolution was adopted, there are some particular examples, namely the example of Lukenda (264 cases) in 2016 and the Mandič and Jovič group (17 cases) in 2018, which required a number of systemic measures carried out through several years. According to the Country Fact Sheet statistics (Department for the Execution of Judgments of the European Court of Human Right*,* 2018*)*, 309 judgments were not yet executed at the end of 2015, while 30 judgments have not yet been executed, with the ECHR finding 2 infringements in 2016 and 10 violations of the ECHR in 2017. Prior to the establishment of the IMF, the European Court of Human Rights and Parliament assembly of the ECHR Slovenia had only adopted two final resolutions (the Rehbock case and the case of Kurić). In December 2016, a final resolution was adopted in the Lukenda case, which concluded the supervision over the execution of the group of 264 ESČP judgments relating to access to trial within a reasonable time. By adopting the aforementioned legislative, organizational, information and other measures, Slovenia has succeeded in eliminating the backlog of cases, thus ensuring that the European Convention on Human Rights is respected, as provided for in the Convention. In the year 2017, seven final resolutions were adopted in the Mladina dd case concerning the violation of freedom of expression, the Zavodnik case, where there was a lengthy trial in bankruptcy proceedings and an inappropriate method of service, the Korošec case with a violation of the principle of equality of weapons and the bias of the expert, the case of Aždajić with inappropriate service and a default judgment, the Eberhard and M. case, relating to the failure to fulfil the father's right to contact with the child, Case K, with the violation of the right of the father to contact with the child and the excessive length of civil and criminal proceedings and in the Tence case, where insufficient access to the court was found. In 2018, 21 final resolutions were adopted. In addition to the final resolution in the Ališič pilot case (old foreign currency deposits with the Ljubljana Bank), final resolutions were also adopted at 16 so called clone issues of the leading issues Mandić and Jović (2011 judgment, final 2012). The judgments of the ECHR concern the violation of the prohibition of inhuman and degrading treatment under Article 3 of the Convention because of overcrowding and inadequate conditions in the Ljubljana Criminal Code and violation of the right to an effective remedy under Article 13 of the Convention due to the ineffectiveness of legal remedies, mainly in the period from 2008 to 2012. After resolving the prepared action reports, final resolutions were also adopted in the cases of Peruš, which refers to the bias of the court, the trial of the same judge at both stages in the labour dispute, L.M., referring to detention in the closed section of the Psychiatric Clinics Ljubljana and Idrija, and patient care in the open departments of psychiatric clinics, Perak, where there was also a violation of the procedure due to an unwarranted request for protection legality, BKM Tasimacilik Ticaret Limited Sirketi, a Lojistik, was involved in the unauthorized removal of a truck to an undertaking in the drug trafficking case. In 2017, 6 action reports and 3 action plans (Vaskršič, Cerovšek, Božičnik and Poropat cases) were prepared for which the process of assessment of the Secretariat of the Council of Europe is still ongoing. (Council of Europe, Committee of Ministers*, 2017;* Council of Europe, Committee of Ministers*,* 2018*;* Ministry of Justice 4, 2018).

CONCLUSION

From the statistical data on the enforcement of judgments of the ECHR, it is evident that at the end of 2014, there were 302 pending cases, at the end of 2015, there were 309 of them and at the end of 2016, 49 pending cases (Council of Europe, Committee of Ministers*,* 2017). This undoubtedly represents progress in the efficiency of the Slovenian judicial system. At the

same time, they also reduced the number of complaints against Slovenia, which are awaiting the decision of the court. With the establishment of an Interdepartmental Working Group for the Coordination of Execution of Judgments of the European Court of Human Rights by the Ministry of Justice, the number of non-executed judgments in Slovenia has significantly decreased. On 26 March 2018, according to the available information from the Ministry of Justice, 30 judgments remain unsettled. This is most likely due to the intensive efforts of Slovenia to enforce judgments of the European Court of Human Rights, including through the amendment of sectoral legislation, and intensive cooperation with the Council of Europe Secretariat. The interdepartmental working group for coordinating enforcement of judgments of the European Court of Human Rights will most likely continue to work for the execution of all other judgments of the European Court of Human Rights. At the same time, the Ministry is also investing its energy in education regarding the case law of the European Court of Human Rights in order to reduce the number of complaints to the ECHR. The Committee of Ministers of the Council of Europe thus acknowledges the progress in this area of enforcement of judgments, as it stated in its Tenth Monitoring Report on the Execution of Judgments of the ECHR for 2016 (Department for the Execution of Judgments of the European Court of Human Rights, 2017) that the statistics of enforced judgments of the ECHR are improving substantially in all member states of the Council of Europe. The Republic of Slovenia contributed a lot to the more favourable statistics, with the number of executed judgments for the same year, which was also emphasized by the Secretary General of the Council of Europe, Thorbjørn Jagland, and the then Director-General of the Council of Europe's Human Rights and Rule of Law Phillip Boillat, Slovenia was explicitly emphasized as an example to other Member States in enforcing judgments of the European Court of Human Rights and the importance of political will, which is necessary and important in the execution of complex judgments of the European Court of Human Rights. The same positive opinion was also expressed by Commissioner for Human Rights Nils Muižnieks and President of the European Court of Human Rights Guido Raimondi during the visit of Minister Klemenčič in July 2017 in Strasbourg with the statement "Slovenia is a perfect example for the exemplary execution of ECHR judgments".

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CYBERSTALKING - EFFICIENCY OF THE CURRENT LEGISLATION

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Abstract: Over the past few years, cyber security has outgrown the level of a technical issue and has become a strategic issue that forces countries to re-examine their own goals and opportunities by engaging experts in information technology, politicians, diplomats, military commanders and intelligence agencies to counteract current and future security challenges. Thus, the understanding of cyber security has overcome the technical security framework of information technology and spread to other areas of human knowledge and action. Neither this transition was easy, nor the implementation of cooperation was simple, but the growing concern about intensified intensity and frequency of threats forced all interested parties to cooperate. All the research so far suggests that, thanks to the undefined architecture of the Internet and the organization of information society, no country or an international organization are in a position to independently build and implement an individual approach to cyber security. Because of the variety and the number of threats and possible targets, as well as the broad spectrum of motivations for cyber attacks and their consequences, there is a need for a global, comprehensive approach to cyber security which implements all resources, experiences, knowledge and capabilities of a complete information society. The development of information technology has allowed the issue of legal legislation for stopping and sanctioning computer crime to gain global significance. In addition to countries that have recognized computer crime in their own national legislation, numerous international organizations and countries, such as Interpol, the United Nations through the United Nations Office on Drugs and Crime, the Organization for Asia-Pacific Economic Cooperation, Organization for Economic Co-operation and Development of the countries of Commonwealth and European Union have been involved through their working bodies in combating computer crime to take measures to ensure the harmonization of legislation in this field.

Keywords: cyberstalking, criminal legislation, national approach.

INTRODUCTION

Cyberstalking is a type of computer crime that involves the use of the Internet or other electronic means to stalk others. Cyberstalker monitors the online activities of the victims to collect information or send threats most often in the form of intimidation. Anonymity of online interaction reduces the chance of identification and makes online stalking more frequent than physical. Although cyberstalking may seem relatively harmless, it might have serious

consequences, not only in terms of mental trauma, but also in terms of serious physical endangering as the ultimate outcome.

Cyberstalkers find or harass their victims through web sites, chat rooms, forums, blogs, and e-mails. The availability as well as the anonymity provided by chat rooms and forums have contributed to the spread of cyberstalking to such an extent that the cyberstalking has become as easy as a google search for someone's nickname, real name, or e-mail address.

Little research has been carried out on cyberstalking and there is a lack of the most basic information regarding this phenomenon. For example, there are no reliable data on the annual number of incidents and until now there was no logical definition of the term itself. However, many authors recognize the undeniable fact that new technology offers new powerful tools to potential stalkers, while at the same time reduces the risk of detection. Insufficient number of researchers, as well as insufficient number of research participants, leads to the uncertainty of the obtained results as well as disagreement among those results. For this reason, it is very important to increase the effort to study this phenomenon.

Poor awareness also means insufficient understanding of the victim's victimisation, as well as the insufficient desire to minimize it. Cyberstalking can involve behaviours that vary from sending offensive messages to victims to physical assaults.

Although there are no precise statistics based on the ratio of stalkers compared to the total population, it is estimated that 63 000 cyberstalkers can be expected among 79 million of the estimated population around the globe on the Internet at any time who stalk about 47 400 victims. As the use of the Internet continues to expand, the problem of cyberstalking is becoming more and more serious and it is starting to be a serious social threat. Due to the integration of the Internet into almost every part of human life, the idea of turning off computers is not a solution. The Internet users need to learn how to protect themselves against dangers and this rule applies to all users because it is quite clear that every internet user can at one time become a victim of cyberstalking. In addition, it is imperative that countries and their legal, judicial and police systems, take all available actions against cyberstalking, recognizing it as a public concern that deserves their full attention.

THE CONCEPT OF CYBERSTALKING

Behaviours such as stalking and sexual harassment in real life are linked solely to the immediate physical contact of the offenders and victims: the victim is stalked "from proximity", and "the stalkers want the victim to see them and be aware of their presence" (Gilbert, 1996, p. 126). However, the concept of proximity gains a new dimension on the Internet since in virtual space users have the illusion of proximity even though they are physically separated from each other.

The feeling of the real, physical proximity of the offender and the victim is also created due to the fact that the profiles of users of social networks usually contain information about their location, schedule of activities and location of the last user logging, which can help the potential stalker to discover the physical location of the user. Stalking and sexual harassment over the Internet is a major problem, which is still not legally regulated in Serbia, while making the issue of proximity completely relative.

The term "cyberstalking" is still not fully defined and harmonized through theoretical and research papers. Broader definitions of cyberstalking mostly deal with stalking through all available means of information and communication technology. Stalking is undesirable and malicious communication, damage to someone else's property and physical or sexual

assault on someone, the assault being intense and unwanted and causing fear (Women's Aid Federation of England, 2014).

In addition, when defining the term of the Internet stalking, there are a number of different opinions trying to define the difference between classical stalking and cyberstalking. There is a large number of similarities and differences between the Internet stalkers and the "real" stalkers. Like the real stalkers, the cyberstalkers try to track the activities of their victims, gather as much information as possible about them, to contact the persons who are in close contact with the victim, to read the victim's mail illegally and to monitor their online activities. The victim is thus led into a state of insecurity, fear, and intimidation, and they are unable to see the way to stop the harassment and stalking. As in the case of actual physical stalking, the stalking over the Internet may often be an introduction to the aggressive behaviour that leads to physical violence (Benschop, 2003).

Perhaps the most apparent similarity between these two types of offenders is their desire to possess power, control, and influence over the victim. Stalking in the virtual world is often considered relatively harmless, but if such behaviour goes without attention and if it is not reported to the authorities, there is a risk of physical contact between the offender and the victim (Drakulic et al., 2014).

Stalking over the Internet is characterized by "persistent and targeted abuse of the individual through electronic means of communication" (Yar, 2006, p. 122) or as the "use of new technologies with the goal of stalking a person" (Clough, 2010, p. 366). Such behaviour can be only "virtual" and limited only to online communication, but it can be transferred from "virtual" to "real" life and then it is the most dangerous form of victimization. Petherick (2011) believes that cyberstalking is actually a continuation of physical stalking. During the eighties of the twentieth century the term "stalking" was used to characterize a more permanent form of abuse against the same person by imposing communication or contact that this person did not want (Yar, 2006). In this definition, stalking implies repetition of certain acts over a longer period of time "such as: frequent phone calls directed to victims, sending letters or gifts of different contents to victims, monitoring and observing the victim, moving and staying in the space owned by the victim, contacting the victim's family, friends or associates" (McGuire & Wraith, 2000, p. 317).

Stalking is a repeated way of behaviour that causes one person to impose unwanted communication or encounters to another, which has the consequence of showing the victim's fear of being unsafe, or repeatedly using the Internet, electronic mail or some other electronic means of communication in order to annoy, intimidate, threaten or abuse a person (D'Ovidio & Doyle, 2003:). Pittaro (2007) brings cyberstalking in connection with the emergence of psychological consequences in victim. In these definitions, it is apostrophized that the use of the Internet, electronic mail, or any other form of electronic communication can lead to intimidation, abuse and fear in one or more victims and to shift from seemingly harmless to potentially very dangerous messages.

Paul Bocij (2004) created one of the oldest and broadest definitions of online stalking, claiming that cyberstalking is a set of behaviours in which an individual, a group of people or an organization use information and communication technology to abuse another individual, group of people or organization. Such behaviour may imply, inter alia, threats and false accusations, identity theft, data theft, data and equipment damage, unauthorized use of video surveillance and control, form of aggression, the use of certain information, etc., which impacts emotional pain and insecurity on a certain person.

According to another definition the "term cyberstalking is mostly related to the use of the Internet, electronic mail, or any form of electronic communication that creates a criminal level of intimidation, abuse and fear in one or more victims" (Bocij, 2004, p. 10). This type

of behaviour may vary from harmless but annoying messages to potentially dangerous and deadly encounters of stalkers and victims.

When it comes to defining the term cyberstalking, the authors pay particular attention to the manner and means by which abuse of a person is performed, while the motives are not contained in the definitions. The reason for such an approach is certainly to be found in the multitude and variety of motives of cyberstalking. Cyberstalking is not necessarily motivated by sexual obsession with the victim. It can be motivated by existence of intolerance between the stalker and the victim, or by aggression that has arisen as a consequence of inequality of power and reputation in society, more often than material gains or sexual obsessions (Pittaro, 2007). Cyberstalking is, like any stalking in general, induced by feelings of anger, power, control, which have been initiated by actions or inactions of victims.

STALKING - COMPARATIVE LEGAL OVERVIEW

The legal definition of stalking in America is very different from state to state. Although most states define stalking as "willing, malicious, repeated monitoring and disturbing of a person, some laws include actions such as waiting in ambush, surveillance, communicating against the will of the other person, phone disturbance and vandalism" (Tjaden & Thoennes, 1998, p. 52). Additionally, some of the laws insist on the fact that it is not an isolated case of harassment, but that it is the way the perpetrator behaves, while others prescribe exactly how many times the act must be repeated to determine that it is stalking, and it is usually two or more times.

In most laws, one of the conditions is that the perpetrator must threaten the victim by using violence, and that the threat is serious. Bearing in mind that the Criminal Code of California was the first to criminalize stalking (Article 646.9 (a)), the legal description from that law is presented below: "Any person who, willingly, maliciously and repeatedly monitors or deliberately and maliciously disturbs another person and makes that person fear for their safety or safety of their close family, is guilty of the criminal offence of stalking". An imprisonment of up to one year or fine is prescribed.

In Canada, stalking began to attract attention in early 1993, when three murders took place in Vinipeg during just one week. The perpetrators of these murders had already been under a restraining order against the victims. This caused great media attention, and the political response was instant. Actually, a law was considered that would allow better protection for women, most importantly from stalking. Thus, the Parliament introduced Act C-126, which is an initiative to amend the Criminal Code of Canada to criminalize stalking.

Under Article 264 of the Criminal Code of Canada, stalking is defined in the following way: *No one is allowed, without a legal authority and knowing that another person is harassed or regardless of whether another person is harassed, to: 1. repeatedly follow another person from one place to another, or anyone familiar to this person; 2. communicate on a number of occasions, indirectly or directly, with another person, or anyone familiar to this person; 3. persecute or observe the place of residence, or place where another person, or anyone else familiar to this person, lives, works, or stays in a given time; 4. threaten directly to another person or a member of their family.*

These actions are punishable if they cause another person in these circumstances to fear for their own safety or safety of any person they know. Up to ten years of imprisonment is prescribed. Hence, "there is a need to prove two levels of intent, first the prosecutor must prove the basic intention of the defendant to engage in certain behaviour which is criminalized, and

then they must prove that the defendant was aware that such conduct was harassing, as well as the effect of such behaviour" (Cairns Way, 1993, p. 388).

In the Criminal Code of Austria, the criminal offences against freedom contain criminal offence of stalking as a persistent stalking (Article 107). This act has been criminalized since 2006 and it implies persistent stalking of a person by another person over a longer period of time, which causes a stalked person to feel that someone is seriously disturbing their privacy and endangering their personal life. Stalking can be done in various ways: permanent following, by telephone calls, by sending e-mails, by finding and using information about the victim, by making contact through third parties. The stalked person can go to the police who can impose a restraining order. Furthermore, a request may be made to the court to impose one of the following measures: banning personal contact and following; banning written, telephone and similar types of contact; banning the stay on certain places; banning giving and publication of personal information and photographs; banning ordering goods and services on behalf of the affected party; banning contact through a third party.

In Slovenian criminal law, stalking is regulated within the scope of the criminal offence of domestic violence (Article 191). The perpetrator of this criminal offence is a member of a family who treats another member of the family poorly, beats them, or treats them in any other painful or degrading manner, threatens to directly endanger their life or part of the body, to kick them out of the common place of residence, or in any other way restrict their freedom or movement, stalk them, compel them to work or to leave work, or in any other aggressive manner restrict their equal rights and thus place them to subordinate position.

Penalty is also prescribed if this offence is committed in any other permanent community of life or to the person with whom the perpetrator lived in a family or other permanent community that has ceased to exist. Thus, according to this solution, stalking is a criminal offence of domestic violence, and can only be carried out towards a member of the family or a person with whom the perpetrator lived in another permanent community.

There is no criminalization of stalking a person with whom the perpetrator had not previously been in a relationship. Although practice has shown that stalking is most commonly done with respect to former partners, we believe that a better solution is the definition of stalking as a separate criminal offence, rather than within the criminal offence of domestic violence, because numerous other categories of persons may also become a victim, not just family members.

By adopting the new Criminal Code that entered into force on 1 January 2013, the Republic of Croatia introduced a new criminal offence of intrusive behaviour within the group of criminal offences against personal freedom (Article 140). This criminal offence is committed by someone who persistently and for a long period of time follows or spies on another person or attempts to establish an unwanted contact or otherwise intimidates them, thereby causing anxiety or fear for their or the safety of the persons close to them. Up to one year of imprisonment is prescribed. There is a more serious form if a criminal offence is committed towards a current or former spouse or de-facto partner or same-sex partner, towards a person with whom the perpetrator was in intimate relationship or towards a child, and the prescribed penalty is imprisonment for up to three years. This group of criminal offences also involves the unlawful deprivation of freedom, abduction, coercion and threat.

Stalking is not fully covered by the existing criminal offences in the Criminal Code of the Republic of Serbia. A criminal offence of stalking would be a criminal offence of endangering safety, which involves the use of threat to the life or body of a person or a person close to them, thereby endangering the safety of that person. However, the use of a threat is not the only behaviour that can cause anxiety or fear in another person, i.e. stalking should include some other actions that can produce this consequence. The most significant difference between

these two criminalizations would be the fact that stalking is performed systematically, i.e. it is characterized by repetition of acts that intimidate and disturb another person and they are repeated on a number of occasions and over a longer period of time.

Given that actions taken in the process of stalking of a person often lead to violations of fundamental human rights and freedoms guaranteed by the Constitution of the Republic of Serbia, stalking as a criminal offence should be regulated within the group of criminal offences against freedoms and human and civil rights.

As mentioned, stalking usually consists of unwanted, disturbing attention directed to the victim which is reflected in an effort to make contact with them or to intimidate the victim, making the victim fear for their own and safety of persons close to them, thus threatening physical and mental integrity of the victim, restriction of their freedom of movement, the victim feels insecure and unsafe in their apartment and at work. Therefore, all of this is a violation of the inviolability of the physical and psychological integrity (Article 25 of the Constitution of the Republic of Serbia), the right to freedom and security (Article 27 of the Constitution of the Republic of Serbia) and freedom of movement (Article 39 of the Constitution of the Republic of Serbia).

REVIEW OF CRIMINAL LEGISLATION OF CYBERSTALKING

Cyberstalking is causing increasing attention in recent years because global society has been increasingly considering and creating mechanisms for solving problems of different types of abuse and victimization in general. Although some theories claim that cyberstalking should be distinguished from "real" stalking, most countries only recognize the criminal offence of stalking.

Despite the public opinion that online victimization poses a serious and growing threat to society today, this problem is still not seen as a crime and criminal act, but as a kind of social construct. Numerous analyses show that the criminal offence of internet stalking is becoming more serious and frequent threat to the safety of the Internet users with growing number of tragic consequences to the victims. The Internet offenders abuse new technologies to establish new contacts and social relationships and thus cross all boundaries of culture and ethics of decent communication. A small number of countries in the world have legally regulated stalking over the Internet as a criminal offence, and most of these countries have Anglo-Saxon law.

In the United States, cyberstalking was first regulated by national laws in California (1999), Texas (2001), and Florida (2003). Today in the United States, a number of states have a legally regulated stalking over the Internet through "the ban of abuse by using electronic, computer or e-mail communication" (Alabama, Arizona, Connecticut, Hawaii, Illinois, New York ...). Some states have defined online stalking as a criminal offence (Alaska, Florida, Oklahoma, Wyoming, California). A law that sanctioned stalking through electronic means of communication was passed in Texas in 2001, and in 2012, under the special chapter of the Criminal Code, abuse and stalking over the Internet were defined as a criminal offence (WHOA – Working to Halt Online Abuse). In the USA, in addition to a number of national laws pertaining to the legal regulation of cyberstalking, the amendments to the federal law of 2000 pertaining to violence against women also prescribed penalization of the Internet stalking (Sacco, 2012).

The Criminal Code of Australia which was passed in 1999 was amended by an act prohibiting stalking over the Internet. In 1988, Great Britain issued a Malicious Communications Act, which was amended in 2003 and defined stalking over the Internet as a criminal offence (Article 127).

In Europe, several countries have prescribed and penalized cyberstalking as a criminal offence. In 2011, Poland amended the 1997 Criminal Code (Article 190a) and defined the criminal offence of stalking over the Internet. Cyberstalking is defined as the prohibition of persistent and continuous harassment of a person over the Internet or telephone connections making harassed persons to feel insecure and vulnerable. The penalty prescribed for the basic form of this criminal offence is imprisonment of up to three years, and if the offence results in suicide of the harassed person, the penalty is imprisonment of up to ten years. Under the provisions of the law, this criminal offence is not prosecuted ex officio, but at the request of the damaged party.

The Criminal Code of the Kingdom of Spain of 1995, as amended in 2011 (Article 183), defines and penalizes only the harassment of persons under the age of thirteen as a criminal offence. Criminal offence exists when a person, through the Internet, phone, or by using information and communication technologies, contacts a person under the age of thirteen and offers them to meet in person, and then commits a criminal offence from the group of offences against sex freedom.

The Criminal Code of the Republic of Serbia does not treat acts of stalking and stalking over the Internet as separate criminal offences. If these criminal behaviours happen, it is possible to classify them within existing criminal offences of classical crime such as threats to the safety (Article 138) if the safety of a person is compromised by the threat of endangering the life or body of that person or persons close to them. However, the largest number of online stalking cases is committed by persistent sending of messages with disturbing content which do not have to contain a direct threat, which is why they cannot be characterized as a criminal offence of threats to the safety. Given the prevalence of this phenomenon and the insufficient legislation, it is necessary to amend the Criminal Code to define the stalking over the Internet as a separate criminal offence with precise definition of the acts and penalties for such behaviour.

NATIONAL APPROACH TO CYBER SECURITY IN THE REPUBLIC OF SERBIA

When it comes to Serbia, unfortunately it must be said that there is practically no comprehensive national approach to cyber security. In spite of lagging behind in adopting and widespread implementation of information and communication technologies caused by socio-political circumstances during the last decade of the previous century during which the information and communication technologies expansion took place in the rest of the world, Serbia has finally stepped into integration with the cyber space. This integration referred only to the use of information and communication technologies, and not the acceptance of trends when it comes to understanding the cyber security.

Officially, cyber security in Serbia is identified as cyber crime, i.e. high-tech crime, as it is called in Serbian official acts. Accordingly, the 2003 amendments to the Criminal Code of the Republic of Serbia criminalized the damage to computer data and programs, computer sabotage, creation and introduction of computer viruses, computer fraud, unauthorized access to a protected computer, computer network and electronic data processing, preventing and limiting access to a public computer network and unauthorized use of a computer or a computer network.

In addition to high-tech crime, the implementation of the Law on Organization and Jurisdiction of State Authorities for Combating High-Tech Crime included criminal offences

against intellectual property, property, economy and legal transactions in which the computer or computer systems, computer networks and computer data were used as means or object of execution, as well as the criminal offences against freedom and human and civil rights, sexual freedom, public order and peace and constitutional order and security, which can be considered as high-tech criminal offences due to the manner and means of execution.

For the purpose of conducting criminal proceedings defined by this law, the Public Prosecutor's Office in Belgrade holds competence, or its special department known as the Special Prosecutor's Office for High-Tech Crime, which cooperates closely with the police officers of the Department for combating high-tech crime within the Service for combating organized crime. In the meantime, Serbia has signed and ratified the Convention on Cybercrime of the Council of Europe.

Although the combat against cybercrime gives some results in terms of the number of cases passed to the prosecutor's office, it cannot be called access to cyber security because it does not include all but just one of the areas that need to be treated. If we take into account other experiences in the world, where the combat against cybercrime represented the developmental core segment of cyber security which these countries faced, it was expected that the next step for Serbia would be to implement cyber security into the National Security Strategy and the National Defence Strategy. However, these documents only superficially mention the problem of cyber security.

The National Security Strategy of the Republic of Serbia states that the tendency of increased use of information and communication technologies is accompanied by a constant increase in the risk of high-tech crime and threat to information and telecommunication systems. The risk in this regard is due to external threats, but also due to the possibility of abusing the information on citizens and legal entities, and the Defence Strategy of the Republic of Serbia states that the development of modern information technologies, which are an essential part of system organization and the realization of state functions, creates new circumstances for acting of different groups and non-government participants in achieving their goals. This may endanger the functioning of the essential elements of the defence system through cyber threats. For this reason, it is necessary to continuously develop the technological and procedural protection of the defence system elements at all levels of organization, and this is all that is said in these documents about the cyber security.

The first official document that offered some innovation that could be called a draft of the national cybersecurity approach was the Information Society Development Strategy in the Republic of Serbia by 2020. Although only as a segment of the information society development strategy in Serbia, and not as an independent document, for the first time an official document has clearly defined recommendations which are the basis of a comprehensive cybersecurity approach.

Cybersecurity, i.e. the information security as it is called in this strategy, was listed as one of priorities in the development of the information society, and defined as a protection of system, data and infrastructure in order to preserve the confidentiality, integrity and availability of information. The following goals of information security development were emphasised: the implementation of users' trust in the safe functioning of information systems and the trust of citizens in the protection of personal data in information systems, the awareness of the necessity to implement information security measures, data protection, information and telecommunication systems security, electronic transaction security and establishment of efficient protection mechanisms and realization of rights in electronic commerce and electronic data exchange. The Strategy also defines the priorities in developing information security: improving the legal and institutional framework for information security, critical infrastruc-

ture protection, combating high-tech crime, scientific research and development in the field of information security.

Information Society Development Strategy in the Republic of Serbia by 2020 was a good foundation, which unfortunately has not been upgraded. In part dealing with information security, the goals are to improve the legal and strategic framework in the area of information security and to increase capacity in the area of information security.

Although the goals are quite correctly defined for a beginning, the problem lies in the activities planned within these goals. First of all, in addition to creating a cyber defence strategy, a national cyber security strategy had to be made, while other activities that were planned within the first goal should have been planned in one of the next steps and they should have been more precisely defined. Next, the activities planned under the second goal are not entirely logical and even less precise.

There is no mention of establishing an independent state body that would be in charge of cybersecurity and that would hold competence in coordinating the work of state bodies in cyber space, as well as coordinating and cooperating with the private sector and civil society organizations, which is the most effective approach according to existing knowledge and experiences. Instead of national CSIRT (Computer Security Incident Response Team), it is planned to form CSIRT of the Republic bodies, and instead of creating public-private partnership, only one activity in this area is to be set up, opening a contact centre within the Safer Internet program. Simply, instead of the comprehensive system approach that is perceived in the strategy, the action plan treats certain parts in a logically unconnected order.

These steps have not been taken so far, and there is no plan to take them. We can only hope that decision-makers will understand the importance of this issue in a timely manner and start working on it appropriately and that adequate decisions will not be waited for too long given that we are already lagging behind.

CONCLUSION

The development of information technology has allowed the issue of legal legislation for stopping and sanctioning computer crime to gain global significance. The Council of Europe was one of the first international organizations to initiate the process of creating the legal prerequisites necessary for combating computer crime through combined efforts of several countries: over twenty conventions were held and more than eighty recommendations were adopted in the field of criminal law. The European regulatory framework is the foundation for all national laws of the EU member states. A large number of international organizations used the provisions of the 2001 Council of Europe Convention on Cybercrime and passed a number of recommendations regarding the desirable changes to national criminal legislation in the field of computer crime prevention.

Within the legislation framework of the Republic of Serbia, several regulations have been passed since April 2005 in order to implement the provisions of the Convention within our legal system. The most significant regulations that were harmonized with the provisions of the Convention are: the Law on Organization and Jurisdiction of State Authorities for Combating High-Tech Crime, the Criminal Code of the Republic of Serbia, the Law on Liability of Legal Entities for Criminal Offences, the Criminal Procedure Code of the Republic of Serbia, Special Measures to Prevent Criminal Offences against Sexual Freedoms of Children, the Law on Confiscation of Assets derived by Criminal Offence, the Law on Electronic Signature, the Law on Personal Data Protection and theLaw on Special Powers for the Purpose of Efficient Protection of Intellectual Property Rights.

Pursuant to the applicable legal regulations, violence on the Internet and social networks in the Republic of Serbia can be reported to the police, as well as to the Higher Public Prosecutor's Office in Belgrade within which the Special department for combating high-tech crime has been formed. It is run by the Special Prosecutor for high-tech crime, appointed by the Republic Public Prosecutor from among its deputies. In the Higher Court in Belgrade, the Council has been formed to combat high-tech crime, composed of judges of this court possessing special knowledge in the field of information technology.

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STRATEGIC APPROACH OF THE MINISTRY OF INTERIOR OF THE REPUBLIC OF SERBIA TO COMBATING ORGANIZED CRIME

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Abstract: Strategic goal of the Ministry of Interior of the Republic of Serbia is development of modern, efficient, functional and highly professional police that will enjoy high level of trust of the citizens. The Republic of Serbia has significantly improved its legislative and institutional framework and through implementation of the 2009-2014 National Strategy for Combating Organized Crime it defined the need for development of a proactive approach to combating organized crime. The majority of the investigations that were carried out over the last five years was led proactively and was focused on the organized criminal groups that had been active in the Republic of Serbia, the region, i.e. the countries comprising Western Europe. Therefore, the General Police Directorate, Ministry of Interior, has developed and published the Strategic Assessment of the Public Security, Strategic Police Plan (2017 – 2021) and National Serious Organized Crime Threat Assessment (SOCTA, 2015-2019) that, in compliance with the principles and standards of the intelligence-led policing (Article 34 of the Law on Police), in an efficient, effective and economical manner, provide guidelines to police work in combating the most serious security problems underlining the importance of the proactive performance. A precondition for an integrated, proactive approach is identification of the security related problems, factors relevant for crime and their spatial distribution. Without their assessment, the selection of strategic priorities in work is impossible.

Keywords: organized crime, Strategic assessment of the public security, Strategic Police Plan, Serious Organized Crime Threat Assessment (SOCTA), Intelligence-led policing.

INTRODUCTION

Contemporary forms of organized crime that we are facing nowadays are complex and unpredictable, given the fact that they have been constantly changing their manifestations, skilfully adapting themselves to current situations in all social areas, changes of the conditions in which they occur and measures taken by the organized community. They are characterized

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by strong transnational interrelationship and owing to progressive development in the IT field, they are becoming increasingly sophisticated.[3]

The goals of the Ministry of Interior are focused on suppression of the most serious security problems, in cooperation with other state authorities and civil stakeholders. They contribute to the rule of law and aim to ensure equal protection of security, respect of rights and freedoms guaranteed by the Constitution and legislation of the Republic of Serbia to every citizen of the Republic of Serbia. Strategic approach to the MOI development has been recognized as one of the key priorities within the overall reform of the state administration and one of the key elements of the EU integration of the Republic of Serbia.[4] A need for introduction of the contemporary methods of the strategic management, the definition of the strategic priorities and the development strategies in key areas have been determined.

The key challenges that the Ministry of Interior has been facing with in combating organized crime[5] have been observed on several levels:

- On the regional level, in relation to improving strategic thinking skills, and in compliance with the national commitment to the EU accession, the widest context for consideration of the strategic framework and determination of the future directions is based on the Europe 2020 strategy,[6] Digital Agenda for Europe[7] and European Agenda on Security.[8]
- On the national level, the strategic framework and priorities of the development of the Republic of Serbia are presented as recommendations set out in the Programme of the Government of the Republic of Serbia (2017)[9], Action Plan pertaining to the Chapter 24 and priorities contained in the sectoral strategies in which the Ministry of Interior is the main actor that carries out certain measures/ activities or a partner in their implementation.
- On the level of the Ministry of Interior, strategic framework illustrates the main strategic areas of the MoI performance using contemporary models of work, such as: intelligence-led policing and criminal-intelligence system.

FACTORS INFLUENCING THE DEVELOPMENT OF CONTEMPORARY FORMSOF ORGANIZED CRIME IN THE REPUBLIC OF SERBIA

Sophisticated manifestation of the organized crime in the Republic of Serbia is a consequence of the abuse of modern technologies which make it more covert than it has ever been and, therefore, more difficult to detect and disclose. Huge profit that motivates and encourages organized crime perpetrators in the Republic of Serbia imposes increasingly unscrupulous and violent forms of actions, on the one side, and the use of legal business structures to conceal the sources of profit, on the other side. Profit strengthens the power of the organized criminal groups and is a threat to security and the economic and financial system of a country

3 European Police Office, The EU Serious and Organised Crime Threat Assessment (SOCTA), the Hague, 2017
4 MOI R Serbia: Development Strategy of the Ministry of Interior of the Republic of Serbia 2011- 2016
5 MOI R Serbia: Proposal Development Strategy of the Ministry of Interior of the Republic of Serbia 2018- 2021
6 Europe: A strategy for smart, sustainable and inclusive growth, COM 2020, Brussels, 2010
7 EPAS - European Strategy and Policy Analysis System, 2015
8 European Commission, The European Agenda on Security Strasbourg, 28.4.2015, COM(2015) 185 final, p. 3-4
9 More details on www.media.srbija.gov.rs/medsrp/dokumenti/ekspoze-mandatarke

in which it occurs (Albanese, 2000, p. 213). Organized crime, in addition to terrorism, poses the largest security threat in these times to the Republic of Serbia, as well as other countries (Škulić, 2008).

Prominent international character of this form of crime makes it particularly complex and highly risky. On the global level, organized crime is not manifested in the same forms and with the same intensity but according to the existing social circumstances and occasions in certain states and, thus, its suppression on the international level is aggravated. It exploits its power from the ability to adapt to any change of the conditions in which it occurs, as well as to any change of the legislation and the repressive measures taken by the law enforcement.[10]

In suppression of organized crime, significant impact would be made with the increase of the penalties; however, it does not constitute a universal solution since it is also necessary to undertake numerous preventive activities, particularly through inclusion of other stakeholders, both governmental and nongovernmental. Very often, organized crime is related to social environment and any change of fundamental social conditions and factors would disable its further growth. It looks like a difficult and impossible mission but thanks to analysis and forecasts, that is prevention and measures being in the jurisdiction of the social policy, it is possible to make a huge step ahead that should reflect in simultaneous improvement of prevention of both corruption related criminal offences and money laundering (Vuković, Radović, 2012, p. 98).

Aspects of organized crime have become global and it is no longer a threat that jeopardizes security of countries but also affects other areas, primarily safety of people, society, politics, and economy and dismantles stability and development on all levels - local, national and international (Bošković, 2014). The policy aimed at suppression of organized crime in the Republic of Serbia is focused on development of a legal, institutional and strategic framework. Bad economic situation, unemployment of population make some of the important factors associated with the threat from organized crime. On the other hand, social consequences of the organized crime affect the field of social and healthcare policy - for instance, they are reflected in the increased costs of the treatment of the drug addicts, costs of rehabilitation of the victims of the human trafficking, etc. (Đurđević, Radović, 2015).

The fact is that by understanding the influence of organized crime, its identification and introduction of the strategies, their scope of criminal activities and range of negative consequences might be decreased. Due to covert operations, dynamics and flexibility of actions carried out by organized criminal groups, it is often difficult to understand how organized crime actually functions (Bošković, 1998).

The geographical position of the Republic of Serbia contributes to the growth of organized crime, since it might be primarily considered transit area but also a final destination and origin of organized crime related activities. Long lasting process of transition and social-economic renewal as well as the heritage of the circumstances that were present during the conflicts on the territories of the former Yugoslavia have had an impact on the development of certain forms of organized criminal activities and strengthening of their relationships in the Balkans.[11]

Organized crime in the Republic of Serbia has been permanently developing new forms of manifestation and continuously adapting to emerging social conditions and circumstances. Modalities of certain forms of organized crime have become more complex as a consequence of a more prominent interrelationship between organized criminal groups on regional and

10 European Commission, Special Eurobarometer 432 "Europeans' attitudes towards security", European Union, 2015

11 MoI of R Serbia, Serious and Organized Crime Threat Assessment (Serb. *Procena pretnje od teškog i organizovanog kriminala*), 2015

international level and they have been increasingly characterized by heterogeneous structure and high level of flexibility.

National strategy for combating organized crime, for period 2009- 2014, defines as one of its goals the need to develop a proactive approach to the fight against organized crime and it is further elaborated through individual actions set out in the Action Plan for implementation of the Strategy. The majority of the investigations recorded in the last five years was led proactively and was focused on registered organized criminal groups[12] that had been active in the Republic of Serbia, the region, i.e. the countries comprising Western Europe.

STRATEGIC MODEL OF WORK IN THE MINISTRY OF INTERIOR OF THE REPUBLIC OF SERBIA IN COMBATING ORGANIZED CRIME

Traditional reactive model of policing has proved to be insufficiently efficient in combating organized crime and protection of fundamental rights and freedoms of the citizens (Ratcliffe, 2008). Lower crime rate, more efficient policing, and increased feelings of safety and rational use of resources called for application of a new model of proactive work. Therefore, we have developed a model called *Intelligence-Led Policing* (hereinafter referred to as the Intelligence- Led Policing).[13] The essence of the model is to ensure that groups responsible for leadership and management on strategic level (central) and operational level (regional), on the grounds of the collected, processed and analysed criminal intelligence, render decisions pertaining to performance of operational-police activities and thus contribute to more efficient, effective and economical policing. Intelligence-led policing has been applied for more than a decade, in different forms, in the developed countries (the USA, Great Britain, Germany, Sweden, Canada, Australia, etc.) (Šebek, 2014). Bearing in mind that this is a new model of work, which is being introduced into policing in Serbia, there are not many papers pertaining to this model in domestic scientific and professional literature (Đurđević, Leštanin, 2017).

The Ministry of Interior of the Republic of Serbia is in the process of establishing of the intelligence–led policing model as a contemporary method that aims to ensure management of policing based on criminal intelligence.[14] Establishment of the intelligence-led policing is the first strategic priority of the Ministry of Interior for the period 2015-2018 which is also stipulated in Article 34 of the Law on Police.[15] Within the Development and Cooperation Programme, the Ministry of Interior and Swedish Police Directorate have been implementing the "intelligence-led policing model in the Ministry of Interior of the Republic of Serbia".

Establishment of the intelligence-led policing model pertains to different segments of management in policing, through development of information and communication technologies (development of programme systems "Strategic Police Plan" and "Records of Police Reports"), strengthening of human resources through specialized trainings, promotion by police officers - ILP contact points.[16]

12 In the Republic of Serbia 58 organized criminal groups were recorded in 2015. For more details, visit www.mup.gov.rs

13 In the Ministry of Interior of the Republic of Serbia the term ILP is translated POM which stands for *Policijsko obaveštajni model.*

14 Criminal intelligence is a set of collected, assessed, processed and analysed data, which constitutes a basis for decision making process in relation to performance of police activities (Article 34 of the Law on Police)

15 Law on Police, Official Gazette of the Republic of Serbia, No. 6/2016 and 24/18

16 During the public presentation of the Intelligence-Led Policing Handbook and Strategic Assessment of the Public Security, which took part on 14 September 2017 in the Palace of Serbia in Belgrade, the

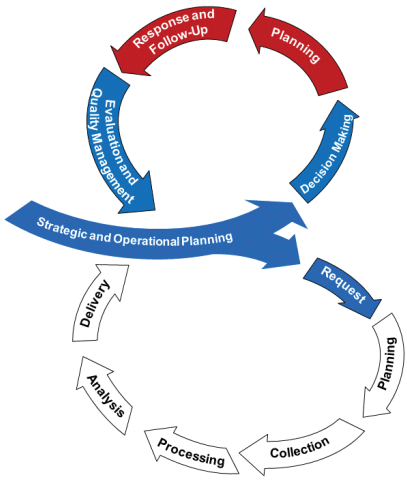

Figure 1: *Criminal intelligence process of the intelligence-led policing in the Ministry of Interior of the Republic of Serbia.*

Kostadinović and Klisarić have developed a handbook on "Intelligence Led Policing Model", which constitutes an instructive document of the Ministry of Interior. The handbook comprises presentation of the intelligence-led policing model in all important segments including: structure of the intelligence-led policing model, management and leadership related activities, criminal intelligence led policing, planned operational-police activities, security aspect of the intelligence-led policing model, personnel of the organizational units responsible for criminal intelligence-led policing and information communication system of intelligence-led policing model (Kostadinović, Klisarić, 2017).

In order to ensure planning, collection, assessment, processing and analysis of data and information, the Ministry of Interior is in the process of establishing a contemporary model of work called Criminal-Intelligence System as stipulated in Article 34a of the Law on Police.[17] Criminal intelligence system of the Republic of Serbia constitutes an automatic exchange of data amongst different state authorities and institutions through a single platform.[18] Criminal intelligence system will enable consolidation of statistics on the national level and exchange of e-messages amongst the state authorities via a protected system.

Implementation of the criminal-intelligence system will significantly contribute to improvement of freedom, justice and security of all citizens through provision of support to more effective, efficient, economical and better coordinated process of protection and suppression of organized and other serious forms of crime. Key stakeholders and state authorities that will exchange data via criminal-intelligence system are the following: the Ministry of Interior, the Republic Public Prosecutor's Office, the Prosecutor's Office for Organized Crime, the Ministry of Justice, the Security Information Agency, the Military Security Agency, the Tax Administration Office, the Administration for the Prevention of Money Laundering, the Republic Customs Administration, the Prison Administration, etc. In addition, the stake-

Minister of Interior of the Republic of Serbia Nebojša Stefanović, PhD, presented the results that had been achieved up to that time in relation to the implementation of the Intelligence-Led policing model. For more details, visit www.moismeu.rs

17 Law on Police, Official Gazette of the Republic of Serbia No. 6/2016 and 24/18

18 For more details, visit the MoI website: www.mup.gov.rs

holders that will assign their data to the foregoing state authorities for their use, without any possibility for interchange, given that they have no competencies in combating organized crime, are: the Business Registers Agency, the Republic Geodetic Authority, the Parking Service, etc.

STRATEGIC MANAGEMENT OF THE GENERAL POLICE DIRECTORATE OF THE MINISTRY OF INTERIOR OF THE REPUBLIC OF SERBIA IN COMBATING ORGANIZED CRIME

Strategic management process in the General Police Directorate of the Ministry of Interior of the Republic of Serbia is carried out through implementation of the basic criminal intelligence results, intelligence-led policing, which are used to monitor the current situation in all areas of public security, give forecasts of future trends and define security related priorities. On the national level, these include: the National Serious and Organized Crime Threat Assessment – SOCTA, the Strategic Assessment of the Public Security and Strategic Police Plan.[19] On the regional level, they include: operational assessments of the public security and operational police plans that are developed by regional police directorates (Article 25, point 1 and 2 of the Law on Police).[20]

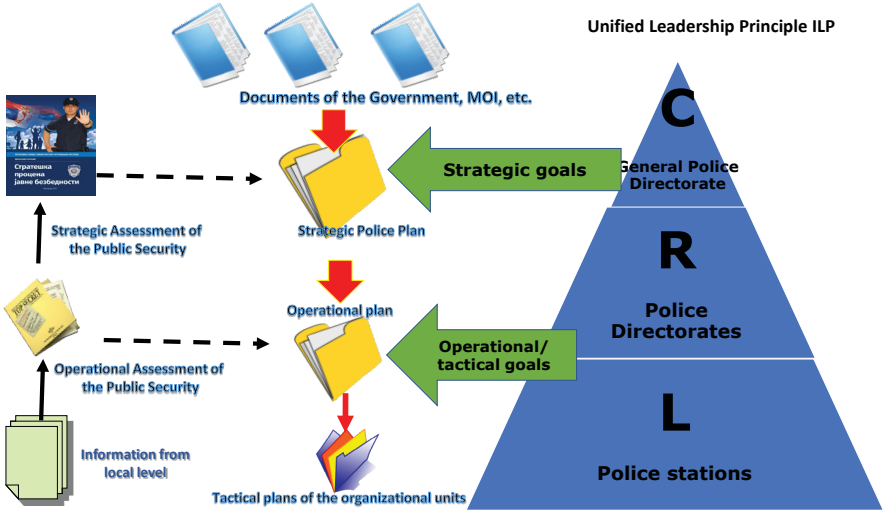

Figure 2: *Strategic management of the General Police Directorate*

Planning process in the General Police Directorate (GPD) is carried out through established steering groups responsible for leadership and management on strategic and regional level and according to the methodology of the Intelligence-Led Policing model. On the strategic level, there is established a GPD Strategic group for leadership and management (Kostadinović, Klisarić, 2016).

The task of all members of the GPD Strategic group is to provide directions and coordinate the entire criminal intelligence process in performance of the activities envisaged by

19 *Ibid*
20 Law on Police, Official Gazette of the Republic of Serbia No. 6/2016 and 24/18

the Strategic Police Plan, to coordinate and undertake joint actions and activities with other state and international authorities and bodies in implementation of the activities defined in the Plan that are necessary for efficient work in combating selected security related priorities (Kostadinović, Klisarić, 2016).

In the organizational units of the Criminal Police Directorate, the Police Directorate, the Traffic Police Directorate and the Border Police Directorate there have been established operational groups for leadership and management with a task to provide directions, coordinate and undertake the activities that are foreseen by the Strategic Police Plan and according to the selected priorities.

On the regional level, in 28 regional police directorates there have been established operational groups for leadership and managements with a task to provide directions, coordinate and undertake activities that are foreseen by the Strategic Police Plan and operational plans of the regional police directorates and according to the defined priorities set in the Strategic assessment of the public security and operational assessments of the public security.

Monitoring and reporting on implementation of the activities in compliance with the defined priorities of the Strategic Police Plan and operational police plans are under the responsibility of the chief coordinators of the organizational units in the GPD Headquarters and coordinators of the regional police directorates who are assigned a task to report to the Strategic group for leadership and management on conducted activities via e- application "Strategic Police Plan", that has been created for that purpose.

STRATEGIC DOCUMENTS OF THE GENERAL POLICE DIRECTORATE OF THE MINISTRY OF INTERIOR OF THE REPUBLIC OF SERBIA RELATED TO COMBATING ORGANIZED CRIME

In September 2017, the General Police Directorate of the Ministry of Interior of the Republic of Serbia developed and published the Strategic Assessment of the Public Security, as set forth in Article 24, paragraph 1, point 1 of the Law on Police, in order to identify key security threats and risks, determine strategic priorities in police work for period 2017–2021, with a particular emphasis on proactive policing. The goal that the General Police Directorate intended to achieve with this documents was to focus its work on the most serious security problems, in cooperation with other state authorities and social stakeholders. The Strategic Assessment of the Public Security identifies eight priorities: organized crime[21]; suppression of production and smuggling of drugs, with a focus on marijuana and synthetic drugs; suppression of corruption; fight against abuse of information-communication technologies on the territory of the Republic of Serbia; fight against terrorism and violent extremism leading to terrorism; promoting public peace and order when confronting violence, with a particular emphasis on the violence at sporting events, in schools and public places; promotion of traffic security on the state roads including the sections of the state roads passing through settlements; irregular migration and smuggling of human beings. Each of the priorities was considered through a brief description, forecast of future trends and recommendations.

In the course of the development of the Strategic Assessment of the Public Security, apart from the priorities set out by the Government, the Ministry and other internal strategic documents, there were also considered priorities of the European Union as referred to in the European Agenda on Security and the SOCTA document (2017) and it could be conclud-

21 For more details, look for the National Serious and Organized Crime Threat Assessment (SOCTA) for period 2015-2019 on the MoI website (www.mup.gov.rs).

ed that the majority of the priorities fully or partly corresponds to the priorities set out by the European Union and its member states, particularly in the areas pertaining to organized crime, fight against drugs, cybercrime, terrorism, trafficking in human beings and irregular migration.

In compliance with the competencies, position and role of police in the society, mission and vision of the Ministry of Interior, in conformity with the Strategic Assessment of the Public Security, the General Police Directorate of the Ministry of Interior of the Republic of Serbia adopted the Strategic Police Plan - both classified and public version (as referred to in Article 24 of the Law on Police).[22] The Strategic Police Plan comprises a set of activities which, in compliance with the principles and standards of the intelligence- led policing (ILP, Article 34 of the Law on Police), in an efficient manner provide directions related to policing in combating the most serious security problems, in conformity with the recommendations set out in the Strategic Assessment of the Public Security.

In accordance with Article 25, paragraph 2 and 3 of the Law on Police, regional police directorates have developed their operational assessments of the public security and operational plans of the regional police directorates respectively in which they identify risks and threats and define security priorities on their territories, in consideration of eight strategic priorities.

CONCLUSION

Even though it is recognized as a modern social phenomenon, organized crime is in essence a universal and historical phenomenon. Namely, various forms of organization of the perpetration of criminal acts, which were perceived as a professional and profitable model of an activity with the aim to ensure political influence and other forms of power in a society, were known in early 18th century. In essence, organized crime constitutes a specific form of modern types of professional crime that due to many characteristics differs both from traditional forms of criminal association and from classic forms of crime on national and international level.

For that reason, the Ministry of Interior, including the General Police Directorate as an organizational unit which is the key player in combating organized crime, has recently directed its activity to strategic approach to problem solving which implies a new strategic planning process. Having developed strategic documents, the Ministry of Interior adopted key directions that are focused on suppression of organized crime and could be broken apart into the following activities:[23]

- Better exchange of data;
- Promotion of operational cooperation, and
- Creation of joint investigation teams (legal framework for the work of the joint investigation teams).

The implementation of new models of work and development of strategic documents define recommendations and determine strategic directions of the Ministry of Interior of the Ministry of Interior of the Republic of Serbia which are focused on combating organized crime, as a precondition for active participation of all security services and state authorities.

22 Strategic Assessment of the Public Security and Strategic Police Plan, public versions in Serbian and English are published at www.mup.gov.rs

23 European Commission, The European Agenda on Security, Strasbourg, 28 April 2015, COM(2015), 185 final, p. 3-4

With the aim to improve policing, there has been defined a set of recommendations that define strategic direction and these are grouped as follows:

- Improvement of the normative framework and practical work;
- Strengthening of the institutional and professional capacities;
- Development of the operational procedures;
- Promotion of prevention, and
- Promotion of cooperation on the national, regional and international level.

Within the group of recommendations pertaining to improvement of the normative framework and practical work there are both strategic and normative framework considered that is necessary for improvement of the considered area, the implementation of the EU acquis into the national legislation and participation in national, regional and international working groups and sectoral bodies.

Strengthening of the institutional and professional capacities is primarily related to admission, employment, professional training and development of human resources, improvement of material resources and technical capacities, as well as creation of new specialized organizational units or adjustments of the existing units.

Development of the operational procedures comprises improved practice and methodology of work in the considered strategic area and improvement and development of operational plans.

Within the group of recommendations related to promotion of prevention establishment is considered of an efficient mechanism for information exchange, organization of promotional activities and proactive information of the citizens, cooperation with stakeholders, development of community policing, improvement of the integrity plans and development of the projects for preventive actions in the considered areas.

Improvement of cooperation on national, regional and international levels pertains to participation of the employees in national, regional and international seminars and conferences related to public security, participation in relevant European and international bodies and organizations, improvement of bilateral and multilateral cooperation in the considered strategic area and exchange of experience and participation in joint operational activities on regional and international level.

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Topic VII

FORENSIC LINGUISTICS AND LANGUAGE FOR SPECIFIC PURPOSES

STRESS AND EMOTIONS IN VOICE AND SPEECH: A FORENSIC VIEW

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Abstract: In this paper, the authors discuss the influence of stress and emotions on acoustic features in voice and speech. Stress and emotions bring into these features the whole spectrum of variations. Different scientific disciplines are involved in their interpretations. It is possible and significant to identify different consequences of stress in the voice of: a pilot and an astronaut in some catastrophic situations, potential terrorists before the attack, criminals during examinations, professional singers because of the excitement, persons in psychotherapy and other kinds of treatment. These data indicate the wideness of the stress concept and a variety of stress definitions. The authors discuss a stress model that includes psychological and somatic consequences. Emotions, as the psychological consequences of stress, could be important in speech technologies and in forensic identification of a person's identity. In the spontaneous speech communication, such as recordings in forensic speaker recognition, emotions are, inevitably, present. Since stress could be positive (eustress) and negative (distress), the emotions that had emerged as a consequence of stress, could be positive (e.g. joy, excitement) and negative (anger, rage), too. Their intensity could be weak (when a person is resigned or just awakened), strong (expressed through yelling, quarrelling) or expressed in a spectrum that exists between these two extremes. The biggest variations of acoustic features in the speech signal could be perceived in the auditive (subjectively) and objective (by the computer) way in the basic voice frequency (F0), voice quality, intensity and time parameters. The authors also present several cases from forensic practice, connected with voice recognition when the person is exposed to stress and different emotional states. They discuss variation fields of the acoustic features in speech recordings in mentioned situations and forensic interpretations of the same recordings during the process of forensic expertise.

Keywords: psychological stress, emotions, speech, acoustic features, forensic speaker recognition

INTRODUCTION

Stress could be perceived as a reaction to the stressor that puts an organism out of its homeostatic balance. The homeostatic balance is a "stress-free" state. A stressor could be any kind of stimulus that causes stress. The response of human organism is an attempt to restore the homeostatic balance (Murray et al., 1996). This vague definition of stress could be found in many disciplines, from physics to biology. When biology is concerned, stress is seen as an unfavorable phenomenon that generates negative physiological, emotional, cognitive and

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behavioral consequences. This interpretation of stress indicates extremely complex reactions of the human organism, since stress can occur in the most diverse forms and circumstances (Giddens et al., 2013). Since speech could be seen as one of the manifestations of the human organism, stress affects the characteristics of speech too.

The biological basis of speech, in the widest sense, consists of the: central nervous system (CNS), receptors, efferent and afferent pathways and peripheral speech mechanisms. In order to achieve speech communication, first the idea connected with a certain issues must be created in the head of a speaker, at the highest cognitive level. This idea is then being coded by a certain linguistic code, converted to nerve impulses that control the speech mechanism. They ultimately generate sounds, in this case voices, which, sequentially connected on the basis of linguistic rules, make voice information (Jovičić, 1999). A speech mechanism consists of: respiratory organs, phonatory system and articulation organs. Production and perception of speech that use a hearing mechanism are complex functions of the human organism and are inevitably affected by stress.

In the following text a brief overview could be seen, connected with the impact of stress on human organism. A special emphasis is placed on the effects of stress on voice and speech during the production stage. The psychological and physical effects of emotions on voice and speech characteristics, as the inevitable effects of stressful events, have been analyzed. In the last part of the text, the examples from forensic practice could be seen, connected with the variations of voice and speech features under the influence of stress and emotions.

PSYCHOLOGICAL CONSEQUENCES OF STRESS

During life, we encounter an enormous amount of stressors and find ourselves in a variety of stressful situations. How a certain person will react, depends on a lot of different reasons. Someone`s resilience, support or the absence of support of the family and/or friends, the intensity of stress, the period and the continuity of the exposure to stressors, misuse of psychoactive substances and alcohol, coping techniques, etc. – all contribute to the quality and the intensity of the possible reactions of a person.

Whether a person faces a positive (eustress) or a negative stress (distress), consequences could appear (Kaličanin and Lečić-Toševski, 1994; Čabarkapa, 2006). The authors will focus on the negative aspects of stress. Besides various physiological reactions, a whole spectrum of psychological effects could be registered – insomnia, anxiety, depression, aggression, acting out, psychotic decompensations, somatizations (headaches, stomachaches...), posttraumatic stress disorders, etc. (Schneiderman et al., 2005).

Several examples from the clinical practice will be presented as illustrations of the mentioned situations. Patient Z. just got a new job to do. He was satisfied, because he got it, but on the other side, he was also stressed. He was feeling a pressure, because he got a group of subordinates who were quite young and inexperienced, and part of his work depended on their ability to finish their job. Besides that, he had a tight schedule without the possibility of change. The whole situation was quite stressful for him and he started waking up every morning at 4 since he was very anxious and worried about finishing the job successfully and on time.

Patient S. was in a situation of continuous stress. She was taking care of her two little daughters, without much help from her husband (who was a professor at the University) and her parents. She was often very tired, anxious and nervous. Besides that, the additional stress was put onto her, because she was under the pressure of finishing her PhD thesis when she did not have the energy and the time to do that. Her husband, as well as her mother, were

continuously telling her that she was very demanding, although she was doing all the work in the house and taking care of the children. Gradually, she became quite insecure of herself, very anxious and depressed. Soon the opportunity arouse for her to participate in some professional gathering. Being in a group of people that were engaged in the same profession, that were very active in it and looked very secure, was the additional source of stress for S. When she got up to ask a question, she realized that her voice was giving up on her. She could hardly speak, her voice was shaking as well as her hands, she was extremely anxious with a thought that everybody was noticing her problem. Every time she was supposed to tell anything in public, the same situation would appear. That would make her even more insecure which in turn made her even more anxious and depressed and the vicious circle was closed. Soon, she realized that she could not resolve this situation by herself and she came first to the psychiatrist who recommended the analysis.

For patient B., an introverted young man, every social situation was a source of great distress. Although he was convincing himself that there was nothing to worry about, he would start to stutter while being in social situations. His insecurities would make him devaluate himself and that would be expressed through stuttering.

Another patient, A. was so stressed because he, like an introvert, was not widely accepted by his peer group and could not find enough friends who would be there for him when he needed them, so he started to drink. While being under the influence of alcohol, his extraverted side would "come out" – he would make jokes, be in the center of attention, lots of people with similar addiction would always make him company, girls would be around him, etc. He was, during the moments of drunkenness, relieved from being stressed, he was "anesthetized". But, he did not realize that he got a serious problem with addiction.

There are so many examples of the people with similar or different reactions to stressful situation, but now, the authors will focus their attention onto speech under the influence of stress.

SPEECH UNDER THE INFLUENCE OF STRESS

The term "speech under stress" means that a person speaks under a certain pressure which causes a change in the speech production process. If this pressure (stress) does not exist, someone's speech could be seen as the "speech under neutral conditions". When we talk about speech, stress is mostly manifested as a psychological state caused by a stressor. As psychological consequences of stress, different emotions could appear (e.g., anger, fear, concern, joy, etc.). Variations in speech under stress, comparing to neutral speech, introduce changes in the voice (e.g., height of voice, voice quality), speech style (e.g., faster/slower, expressive), use of language elements (e.g., word selection, structure of sentence), etc. A lot of stressful situations could change mental and physical condition of the speaker. That could be seen in: emergency, fire, police and army services, where people respond to emergency situations or in the airplane traffic control where people communicate through voice in time-sensitive stressful situations. Stress could be induced by some psychological tension, high cognitive load, emotions such as fear, frustration due to contradictory information, deprivation of sleep and similar conditions. In these situations, a person reacts consciously or unconsciously, very often against his (her) will. These reactions are being perceived through acoustic characteristics` variations in the voice signal.

Figure 1 shows a speech production model with the indication of the impact of four-level stressors in certain stages of production. The production of speech begins with abstract mental processes: a desire for communication and the idea that is intended to be transmitted to the interlocutor. Then the appropriate linguistic units are being selected from the memory to

form sentences based on grammatical rules for the given language. An abstract word sequence is the basis for the selection and generation of a sequence of articulation goals. It follows the generation of a motor program for neuromuscular commands and the management of articulation goals. The starting points for this program are linguistic context and paralinguistic information. The result of this program is a series of nerve impulses that are transmitted to the muscles that control the operation of the respiratory system and the vocal tract. The final step in the production of speech is purely physical - acoustic energy is generated; its spectrum and time characteristics are formed and radiated through the speaker's mouth.

Generally speaking, stress can occur at any stage in the production of speech from the cognitive to the physical level.

Zero-order. At this level, physical stressors act directly on the elements of the vocal tract, causing their additional movements and, therefore, the changes in speech (e.g., the effect of vibration or G-force).

First-order. At this level unconscious reactions to stressors in the physiological domain occur (e.g., changes in breathing speed, muscle tension).

Second-order. At this level, the stressor is interpreted consciously, and an appropriate response is defined (for example, increasing the height of the voice in the noisy ambient, the so-called Lombard effect).

Third-order. At this level, a psychological process of internal feedback by which stress is reinterpreted, i.e. intensified could be seen (e.g., a panic could appear when a suspect who is lying while being interrogated and who is under stress; that stress could reveal his guilt and for this reason the stress could be even more intensified. This positive feedback could make the situation even worse).

The authors will mention more examples of the speech production systems` reaction to various stressors.

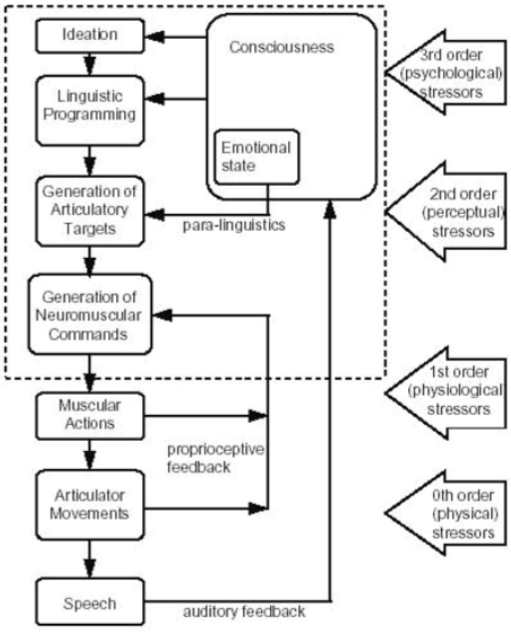


Figure 1. *Effect of stressors on the speech production process [Hansen, Patil, 2007]*

Physiological reactions to stress directly affect the verbal markers. A good example of this is breathing. In a stressful situation, a breathing rate is rising, resulting in the most frequent increase in the subglottal pressure during speech, and as a result, an increase in the fundamental frequency (Fo or pitch) occurs during the pronunciation of voiced sounds. In addition, increasing breathing speed reduces the duration of speech segments, which contributes to the increase in articulation speed and, consequently, to the tempo of speech. It is known that an increase in heart rate and bronchodilation causes an increase in pitch, subglottal pressure, jitter, shimmer, maximum airflow declination rate, voice onset time (VOT), vocal intensity, and speaking rate (Giddens et al., 2013).

On the other hand, the activity of the larynx muscles and vocal cord control the velocity of the air flow through glottis, which directly affects the pitch of the voice. In some stressful situations (e.g., fear, anger) there is dryness of the mouth that has an effect on the functioning of the muscles that control the articulation organs. The activity of these muscles, which controls, for example, a tongue, lips or a jaw, forms the resonant cavities of the vocal tract, which does not directly affect the basic frequency of the voice, but contributes to changes in the spectral characteristics of voices.

It is known that in the noisy environment a speaker changes characteristics of his speech, above all the intensity, in order to preserve the comprehensibility in verbal communication (e.g., the Lombard effect). Therefore, it is a question of changing the intensity of speech under the influence of stress (Hansen and Patil, 2007). On the other hand, in a situation where the speed of execution of the task is critical (e.g., pilot in the airplane or air traffic controller), the length of sentences is shortened.

The above mentioned examples of the speech production systems` reaction to various stressors and/or stressful situations show that many acoustic features in the voice signal are subjected to change under the influence of stress. It should be emphasized that these changes could be quite different among individuals and are very dependent on the person's sensitivity to a particular stressful situation. Figure 2 lists the most often analyzed changes in certain features in the voice/speech under the influence of stress. It could be seen that changes in features are much higher with an increase in the level of stress than with a decrease in relation to the normal. This shows that fundamental frequency (Fo or SFF on figure) has the biggest changes with increasing stress, as well as the number of nonfluencies (NF). Vocal intensity (VI) and speaking rate (Rate) increase a little and a stressed person tends to speak in longer, but fewer speech bursts (SB).

This model is general and it shows trends in correlates of the stress in voice and speech. There are certain deviations from these general trends for each of the subjects. Figure 2 gives shifts of features from a "neutral" state of speech; for the forensic, it is of the utmost importance if the values of these features could be compared with a reference speech profile based on the normal speech of a given person.

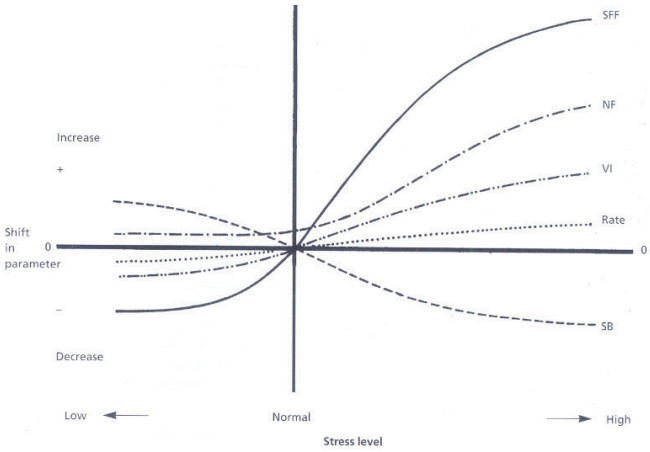


Figure 2. *Model of the most common shifts in the voice as a function of increasing psychological stress (SFF - speaking fundamental frequency, NF are non-fluencies, VI is vocal intensity, and SB is the number of speech bursts per unit of time [Hollien, 2002]*

EMOTIONS IN THE SPEECH

Emotions inevitably accompany stress. Moreover, they are present in voice and speech during speech communication even without stress. There is no communication between people or communicative situation in which emotions are not manifested, in verbal and/or non-verbal way of expression, at least the minimal positive or negative emotional attitude towards the speaker, interlocutor or communication topics. Today, it is generally accepted that emotions are "the interface of a human organism with the outside world" (Scherer, 1981) and that emotions, in that sense:

- reflect the assessment of the importance of a particular stimulus in the function of the needs, plans or preferences of the organism,
- physiologically and psychologically prepare the organism for appropriate behavioral action or reaction and
- formulate a form of communication between the organism and the external environment.
- Obviously, the emotional reaction of the organism is very complex manifestation in various dimensions such as: cognitive, physiological, neurological, motor, behavioral, linguistic and sensual.

Speech expression of emotions is one of the basic forms of emotional manifestation. It is known that aspects of a person's physical and emotional state, including age, sex, performance, intelligence, personality, etc., could be identified only through voice. Besides, it is shown that emotions could be recognized in speech segments of 60 ms (Polak et al., 1960), as well as in speech without linguistic content - a speech that carries paralinguistic information (Mozziconacci, 1998). Previous research has distinguished the prosody and voice quality as the primary carrier of speech expression of emotions (Zetterholm, 1998). Both attributes are extremely complex and their role in expressing different emotions is still not clearly defined.

The main carriers of the expression of emotions in speech are the variations of the speech features that are manifested in three levels: *suprasegmental*, or prosody (specific variations

of frequency, intensity, duration and pause), *segmental* (articulation quality changes) and *intra-segmental* (general quality of voice and speech) (Kašić, 2000). All features participate in the speech manifestation of individual emotions, but in different degrees and combinations. The thought about an emotion in the mind, first, most often generates "strong" emotions such as joy, anger or fear.

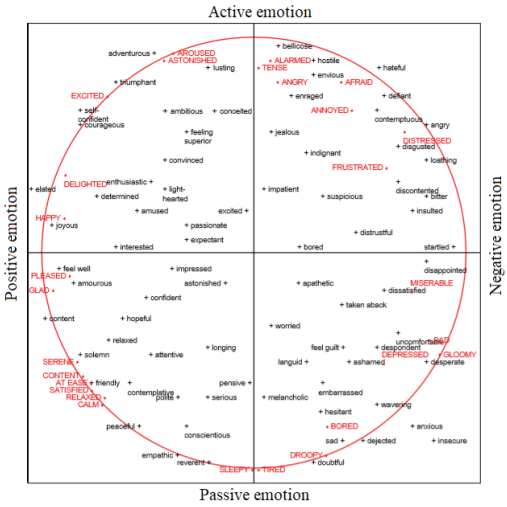


Figure 3. *Plutchik's wheel of emotions (Scherer, 2000)*

However, there is a whole spectrum of subtle emotions caused by a particular life situation, a relationship between man and his environment or a psychological state. Psychologists have been trying to make the classification of emotions for decades, but there were doubts at the very beginning about the formulation of the basic criteria according to which the classification could be made. Over time, three basic dimensions have been crystallized, defining a three-dimensional space in which the greatest number of emotions can be easily distributed (Pluchik, 1994). These dimensions are:

(i) intensity - corresponds to emotions related to repulsion-attention (e.g., from contempt to fear and surprise),

(ii) valence - corresponds to the opposite emotions (positive-negative or pleasant-unpleasant),

(iii) activity - corresponds to active-passive emotions (ranging from sleepiness to tension).

Obviously, emotions are a complex concept and there is no clear psychological model of emotional processes or defined interrelations between emotions. Most researchers accepted, so-called Plutchik's wheel, in which emotions were distributed. Figure 3 shows Plutchik's wheel with dimensions of active-passive and positive-negative emotions, with over 100 entrances of emotions (Scherer, 2000).

Prosody features represent the experience of hearing, connected with the variation of acoustic features in speech expression, that is, the auditory experience of variation in duration, intensity, frequency, changes in the pattern of voiced segments and pauses, changes in the pattern of accented and non-accented syllables, i.e. audible perception of tempo, volume, intonation and rhythm (Kašić, 1997). Variations of tempo, volume, intonation and rhythm, individually and in mutual combinations, in relation to neutral speech, contribute to the manifestation of emotions in speech expression. The tempo of speech is fast or slow motion of

speech in time, that is, acceleration or deceleration during the speech process. Speech volume is the degree of audible perception on the basis of which the speech can be determined on a scale from quiet through moderately loud, loud and shouting. Intonation (speech melody) is the variation in the pitch during speech. The rhythm in the broadest sense implies organized shuffle of sound segments and breaks in the voice stream. Emphasis involves particular highlighting of certain segments in the voice stream.

Figure 4 shows wavelengths of one speech statement, expressed in a neutral voice, with emotions of worry and sadness (Zetterholm, 1998). In the picture of worry, the elements of voice quality are clearly visible: breathlessness and significant irregularities as a result of sighing, while all the elements of creaky voice are recognizable in the recording of sadness.

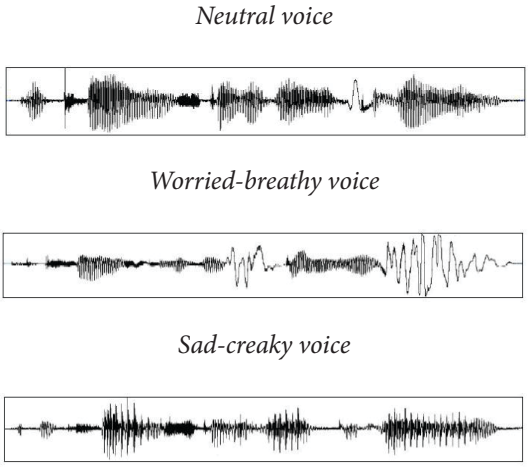


Figure 4. *Waveforms of the same sentence expressed in different emotions*

The quality of articulation and voice quality play a significant role in modeling emotions. Lower or higher muscle tension of the articulator during speech production determines the articulation quality. So, it could be conditionally referred to as "solid" (tense), normal and "loose" (relaxed, unspoken) articulation. For example, verbal statements with an imperative semantic feature and threatening statements are characterized by an extremely tense-solid articulation. Strong articulation is characterized by speech expression of anger, while relaxed-loose articulation is one of the most important indicators of the expression of sadness, etc. The quality of articulation could be spoken of as an individual characteristic of a speaker that reflects temperament or habits.

Voice quality is an individual characteristic of a person and as a specific color of voice is a distinctive feature in continuous speech. The subjective impression of the quality of voice is colored by the features generated by phonetic system, phonetic habits, as well as by social and regional context and situation. Voice quality could be voluntarily controlled to be used as linguistic and most often as paralinguistic speech medium in communication, but it could also be subject to changes in certain emotional and health conditions. Obviously, the voice quality is a multidimensional feature that could be viewed from various aspects - as the constantly present fundamental characteristic of speech that identifies speakers as individuals and as a variable category during the speech process. Figure 5 shows waveforms of the same speech statement with different pronunciation qualities (Zetterholm, 1998).

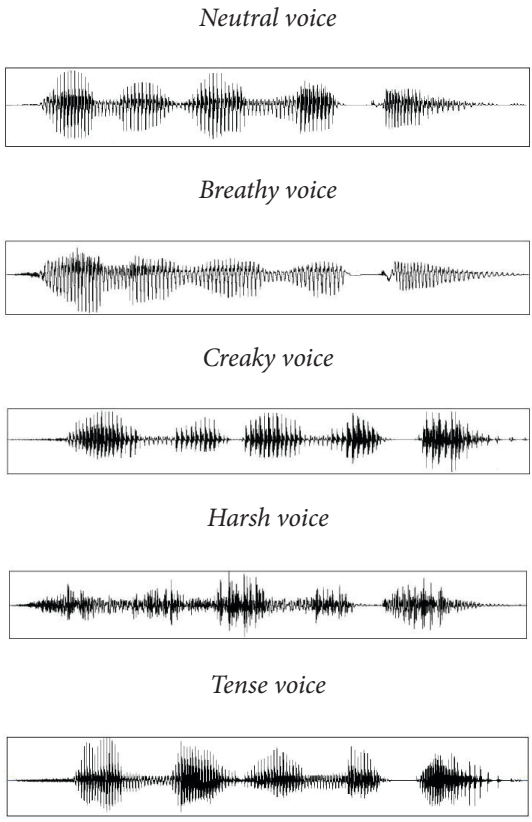


Figure 5. *Waveforms of the same sentence with different quality in pronunciation*

FORENSIC IMPLICATION

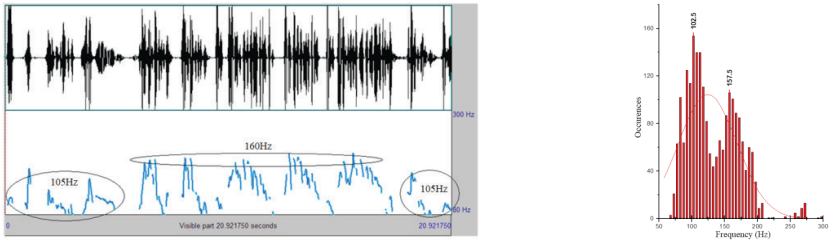
Voice or speech directed towards the ear of the listener or towards the microphone in the phone, arrives as an acoustic signal. Acoustic features of this signal are direct correlates of the information that voice and/or speech transmits from a speaker to a listener. This information could be linguistic, paralinguistic or extralinguistic. All three forms of this information are present in voice communication and they contribute to forensic identification of speakers. It is known that a speaker could never repeat one speech phrase in the same way (Rose, 2002). This is due to the variation of acoustic features that exist in the speech expression in natural communication between humans. These variations are desirable (and normal), because voice communication not only transmits linguistic messages (as in the communication of robots), but also transmits information about the speaker, as the source of acoustic signal - about his gender, his state of health, psychological, emotional state, etc. Variations in the voice of the same person are called *intraspeakers*' variations and in the voices of different persons of the *interspeakers*' variations.

In the text above, it could be seen that the variation of acoustic features is influenced by different circumstances that follow a speaker`s speech, such as: ambient conditions, stress and emotions. Variations in the acoustic features caused by these circumstances are undesirable from the aspect of forensic identification of speakers, since they lead to deviations in comparison to the value of the same features in the voice of a perpetrator (in the questioned

speech sample) and in the voice of a suspected person (in a suspected speech sample). Ideally, identification would be most reliable if the questioned and suspected recordings could be obtained under the same conditions (the same recording conditions, the same speech material, the same technical conditions etc.). In practice, this is unfeasible, so it is therefore necessary for the forensic scientist to have insight, knowledge and practice in comparing different recordings of the same and/or different persons.

The following few examples will demonstrate the behavior of the pitch (F0) under stress, emotions and the circumstances of conversations. This feature of the voice is chosen, because it is the most indicative and most sensitive to the effects that influence the height of the voice.

Figure 6 shows the waveform of a single voice record with the intonation contour of the pitch (A) and the related histogram (B). Speech segments are marked on the intonation contour at the beginning and at the end of the conversation, where the speaker talks with his neutral voice of about 105Hz. The central part of the intonation contour contains a very upset and irritated type of speech with a mean value of about 160Hz. Histogram (B) shows the distribution of the pitch on the entire speech record. The histogram is bimodal, with a clear distinction between neutral and stressed voice. Thus, the example shows that stress can cause almost complete dislocation of a histogram and that it significantly affects the voice organs which generate voice in voiced sounds. This phenomenon can be so intense that the feature F0 could be unusable for comparing voice recordings. For example, this could be seen in the neutral voice in the suspected speech and when it is completely under stress in the questioned speech.



A) *B)*

Figure 6. *A) Waveform and intonation contour of fundamental frequency (F0), andB) histogram of F0.*

A) *B)*

Figure 7. *The same person, A) histogram F0 of suspected speech sample, andB) histogram F0 of questioned speech sample.*

The following example is shown in Figure 7. The histogram (A) shows the distribution of the pitch of the suspected person in the courtroom at the hearing. He is excited because of the

environment and situation, with a noticeable dose of fear and frequent devoicing of the voice (transition to whisper). Because of that, the histogram is very narrow, indicating that it is a monotone speech in a given psycho-emotional state. The same person behaves quite differently in the questioned recording. He speaks very expressively against a noisy background, where two effects can be identified: strong emotions and Lombard effect. Therefore, the histogram is significantly extended to higher frequencies with an irregular shape of a multimodal character. The matching of these two histograms is minimal since the histogram (A) is located on the left side edge of the histogram (B). In this case, we see the integral effect of two effects of stress: psychological, i.e. emotions and the impact of ambient noise through the Lombard effect.

Similarly to the previous example, Figure 8 shows the case a questioned person who is awakened by a phone call, his voice is different, with a strong adhesion of creaky voice; he is not ready for communication (histogram A). He speaks monotonously; therefore the component of the histogram at 105Hz is very distinct and obviously represents the lower physiological limit of the height of his voice. Below 100Hz there are components that belong to a creaky voice. On the other hand, the same person in the other questioned recording speaks in different style - from a neutral to a wide range of expressive/emotional variations (histogram B). As a result, the histogram has a square shape that is significantly extended towards higher frequencies. However, it could be noted that both histograms have segments between 100Hz and 150Hz that belong to neutral speech.

A) *B)*

Figure 8. *The same person, A) histogram F0 of suspected speech sample, and B) histogram F0 of questioned speech sample*

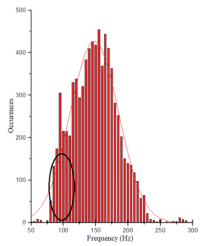


Figure 9. *A histogram of a person with a health problem in a voice, that speaks in music environment.*

Finally, Figure 9 shows a histogram of a person who has a cold, coughs and expresses a nasal speech. For this reason, with background music and communicative content, the questioned person speaks with great variations in pitch - from a natural (100Hz) to a very high (over 200Hz).

CONCLUSION

This paper studies the influence of stress on verbal communication. It was concluded that stress is a very complex phenomenon that puts a human organism out of homeostatic balance. Besides that, the effect of stress could be positive, although it is often negative. A person could experience stress because of the high cognitive load, psychological tension or some physiological changes. With these effects, stress could have negative influence onto the psycho-physical state of a person.

Since speech is one of the manifestations of the human organism, stress also affects the characteristics of speech. In this text, the focus is on the variations in the characteristics of voice and speech that were created under the influence of stress. Emotions, as one of the psychological consequences of stress that inevitably occurs in normal verbal communication, are especially emphasized. These effects of stress are of particular importance in forensics - for determining the identity of a person based on the voice and speech expression.

The forensic expert is in the position to analyze and compare the questioned and suspected recordings, where voices were recorded under various stressful psychological circumstances. These circumstances have influence on the variation of features in voice and speech that can significantly affect individual forensic markers. The examples presented in the previous section show the amount of changes in just one feature, pitch (F0), caused by stress in various emotional states of the speakers and in different circumstances. It should be kept in mind that not all features of voice and/or speech are subject to stress in the same way and that different people react differently.

Variations in voice and/or speech require from a forensic expert to carefully approach the analysis of voice recordings and interpret isolated forensic markers. While doing that, knowledge and experience are required. When stress is in question, it is necessary to carefully separate speech segments from the questioned and suspected recordings that belong to the same emotional category and to analyze and compare certain features. Of course, this approach is possible if there is sufficient voice material (sufficient length of recordings) and if the same emotional segments could be located in the recordings. In practice, there are cases where speakers in questioned and suspected recordings speak in quite different styles under the influence of stress, ambient circumstances or the content of a conversation. In such cases, the expert must assess which markers could be used for the speakers' identification process.

Acknowledgements: This study was supported by grants OI178027 from the Ministry of Education, Science and Technological Development of the Republic of Serbia.

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ANALYSING MACEDONIAN TRANSLATIONS OF ENGLISH TERMS RELATED TO SOCIAL PATHOLOGY

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Abstract: The paper deals with the analysis of Macedonian translations of several English words/expressions in the field of social pathology. The authors designed a questionnaire containing English words/expressions related to social pathology and distributed them to a group of students of the Faculty of Security in Skopje who had attended lectures in both English and Social Pathology. The students had the task to translate the given English words/expressions into Macedonian. The collected data was statistically processed and analyzed and the results were presented and discussed. The acquired results would help the authors determine students' knowledge of the meanings of the selected English words/expressions related to social pathology and their ability to accurately translate them into Macedonian. The results would also provide an insight into the effectiveness of the current syllabi in English and Social Pathology at the Faculty of Security in Skopje related to the students' acquisition of vocabulary in the respective field as one of their goals.

Keywords: English, Macedonian, translation, social pathology, language

INTRODUCTION: DRUG ADDICTION, SUICIDE AND GAMBLING AS SOCIOPATHOLOGICAL PHENOMENA

We are living in the world which witnesses pretty dynamic societal changes. Some of them differ so much from the established societal order that they put the societal norms and values into question. Sadly, socio-pathological phenomena as a very specific kind of deviant and destructive phenomena, are in constant rise and create real concerns for the societal order. Amongst the most dangerous, widely present and detrimental socio-pathoogical phenomena are drug addiction, suicide and gambling. In the paragraphs that follow we will give a short overview of the definition and characteristics of these socio-pathological phenomena.

Drug addiction is a socio-pathological phenomenon that is defined as any drug abuse or abuse of other narcotic drugs and substances, whether of natural or artificial origin, which create addiction to the person and lead to a number of harmful consequences for him and the environment (Спасески, Аслимоски, Герасимоски, 2009: 99; Milosavljević, 2003: 169; Сулејманов и Стојановски, 2002: 327). We are talking about one of the most dangerous so-

cio-pathological phenomena, which often results in serious health, psychological, economic and social consequences for the person who is a drug user and his social environment, while the additional burden of the phenomenon is the long-standing and often uncertain outcome of the re-socialization and rehabilitation. In fact, from the very practice of treatment and social inclusion, it is known that they are most difficult to achieve amongst those persons who have tried to kill themselves and those who were drug users, i.e., drug addicts. Hence, due to the increasing incidence of this extremely negative deviant social phenomenon in society, the increasing number of young people who are grabbed by the 'claws' of drugs, as well as the ever more dangerous and more severe types of drugs that appear, the society must think in the direction which is as much all-encompassing as it is possible, early and timely detection, prevention and control of the occurrence, especially in the part of the primary and positive prevention that are achieved through the primary socialization of the individual.

Drug addiction is considered a socio-pathological phenomenon because the factors that lead to its occurrence are most often found in disrupted and contradictory social relations, such as social disorganization at various levels, disrupted relationships with the environment, disrupted family relations, poor material status and living conditions, hopelessness, youth misunderstanding in the search for their identity, difficult periods in the life of the individual, the inability to adapt to new environments, and so on (Николић, 2007: 237; Parrillo, 2008: 20-22). Among the reasons and direct motives for taking drugs, we can enumerate the easy-mindedness, the desire to try something new, the need to be part of a social group and the identification with it, and the desire to express oneself in the group. These are usually reasons and motives that can be found in adolescents, that is, children and young people, which shows that they are at the same time the most vulnerable social group, that is, the social group that is most vulnerable to drug addiction.

Of all socio-pathological phenomena, suicide is by far the most dangerous and harmful. At the same time, it is also the most puzzling socio-pathological phenomenon, to which people have been trying to give answers since the beginnings of human history. It is said that a person is considered ill, in terms of social pathology, when it starts doubting the sense of his/her own life (Тарник Митрева, Арнаудовски, Спасески, 1983: 197). The biggest mystery about suicide consists in finding the underlying reasons and motives that have inspired the persons who have attempted to commit suicide or have committed suicide while responding to another essential question: How can the idea of suicide overcome the drive for life, if we know that the drive for life and self-preservation is the strongest instinct in man? Winning over this life-sustaining drive with the thought that life is not worth living is actually the mystery that has constantly tormented people, especially scientists, in an attempt to learn more about this phenomenon. The tragic aspect of the act of suicide is not reflected only in its pathological side as a conscious contradiction of the drive and will to live, but also on the very direct consequence it provokes, which is the irreversible loss of the highest human value - human life. Suicide is the only socio-pathological phenomenon in which once harmful (suicidal) behavior occurs, it can result in a loss of human life, that is, the damage that has occurred as a consequence of that suicidal behavior cannot be corrected or compensated for because the individual is dead and lost for the society. Therefore, suicide is the most severe and most frightening kind of human pathology, a total negation of life and every hope in better future for the man.

Suicide is defined as a sociopathic phenomenon, which consists in conscious self-destructive behavior of the person, followed by a clear intention of destroying one's own life and with a clear awareness of the consequences of self-destructive behavior (Спасески, Аслимоски, Герасимоски, 2009: 126). In fact, suicide refers to directing of aggression towards oneself, that is, an act of conscious self-aggression. Awareness is the key element in defining suicide as

a socio-pathological phenomenon, because the unconscious phenomena of taking away one's own life committed by persons with a significantly reduced awareness, most often mentally ill or mentally disabled, are not considered suicide. In the person who wants to commit a suicide, there is a clearly expressed consciousness and critical thinking, so that the existence of the moment of consciousness in carrying out the act of suicide is what separates suicide or attempted suicide from unfortunate cases in which persons with diminished capacity and reasoning ability have lost their lives. Although there are different approaches towards suicide in different cultures and amongst scientists, the convincing majority of them still consider suicide to be an entirely inappropriate human act and form of socio-pathological behavior, with only briefly mentioning and even sporadically expressing approval of the so called altruistic suicide (Кралев, 2003; Кралев 2000).

Gambling is a socio-pathological phenomenon in which the game is replaced or dominated by the economic benefits that the participants in the game receive. In some ways, gambling becomes a social deviation when the participants in the game commercialize it, that is, they insert elements that are not in the original definition of the game as a free, singled out and unproductive activity, in which, by default, the underlying causes and motives are tied with fulfillment of the leisure time, entertainment, joy and socialization of the participants in the game (Špadijer Džinić, 1988). Hence, we can see that gambling is in fact a kind of alienation of the game and its replacement or subjugation to some commercial (economic and financial) rules that the original game does not have.

In gambling, basically, it is not easy to define to what extent all gambling games are socially deviant, that is, when defining the gambling games, we must differentiate more precisely which games we are talking about. If it is undisputed that the gambling encompasses games that are considered to constitute socio-pathological behavior and socio-pathological phenomena, then we cannot say the same about betting (Сулејманов и Стојановски, 2002: 249-254). Regarding betting, the dilemma is posed, whether and to what extent it is a social deviation, that is, gambling, especially if it is practiced occasionally. Again, there are various moral dilemmas and the question of consistency in the definition of some gambling games also emerges. Thus, some gambling games are defined as socially unapproved and deviant and other gambling games (games of chance like lotto, bingo, betting, etc.) are defined as approved and normal. It should be noted that all gambling games satisfy the basic elements of the definition of gambling games, i.e., those are the games that are defined as a kind of social activity in which players voluntarily participate in the mutual transfer (loss and gain) of money or some other value items, which are dependent on a future uncertain event which players cannot influence. Such gambling games may also include the games of chance such as lotto, bingo, etc., which are allegedly games of pure luck, in which no knowledge or skill of the participants in the game is needed for success. It is of crucial importance to know that regularity of gambling on a daily basis is in fact what defines a gambler. Someone who gambles regularly, in other words, acts consistently with the social role of a gambler (Clinard & Meier, 2011: 29).

Taking into consideration the semantic features related to these three socio-pathological phenomena, it is of utmost importance that scholars and experts in social pathology and other related fields are able to differentiate between them and to use the terminology related to these phenomena appropriately. Knowledge of the vocabulary that lexicalizes these phenomena is also an imperative for translators dealing with terminology related to social pathology, and for the students whose field of study encompasses socio-pathological phenomena.

RESEARCH METHODOLOGY

In order to determine the extent to which students from the Faculty of Security in Skopje are familiar with the semantic specificities of drug addiction, suicide and gambling as three separate socio-pathological phenomena, we carried out a research based on a questionnaire. The questionnaire was distributed to a group of 48 students from the Faculty of Security Skopje who have attended lectures in Social Pathology and English Language as two separate subjects taught at the Faculty. The questionnaire consisted of several sentences written in English, containing the terms ***drug addiction***, ***suicide*** and ***gambling***. The sentences were translated into Macedonian, and the students were asked to provide the Macedonian lexical equivalents only for these three terms, based on the context in which they were used.

The following are the sentences written in English:

1.Her boyfriend was really hoping that her stay in the rehabilitation centre would help her deal with her ***drug addiction****.*

2. My neighbor Amanda was found dead in the bathroom, with a gun in her right hand. Although all the evidence suggests that she was murdered, her death still remains listed as a ***suicide****.*

3. There are countries without any casinos because their religious laws strictly prohibit ***gambling****.*

The students' task was to insert the Macedonian translational equivalents of the bold and underlined terms in the following sentences:

1.Nejzinoto momče navistina se nadevaše deka prestojot vo centarot za rehabilitacija kje i pomogne da se spravi so nejzinata _____ .

2.Mojata sosetka Amanda beše najdena mrtva vo banjata, so pištol vo desnata raka. Iako site dokazi upatuvaat na toa deka taa bila ubiena, nejzinata smrt sè ušte se vodi kako _____ .

3.Postojat državi kade [to nema nitu edno kazino, bidejkji nivnite religiski zakoni strogo zabranuvaat _____ .

Our starting hypothesis was that the students will show high level of familiarity with the semantic specificities of these three concepts and will provide accurate translational equivalents into Macedonian. Our hypothesis was based on the fact that the students who participated in the research had attended lectures in English and Social Pathology that both address these issues in the respective syllabi. The data collected from the questionnaire was statistically processed and the analysis and discussion will be presented in the sections that follow.

RESULTS AND DISCUSSION
DRUG ADDICTION

The term ***drug addiction*** is composed of the nouns ***drug*** and ***addiction***. The noun ***drug*** is etymologically rooted in the Middle English word "drogge", "drugge" and the French "drogue", meaning "dry casks" i.e. "goods in packing cases" (Klein, 1966: 484), while **addiction** is derived from the Latin word "addiction", gen. "-onis", meaning "an awarding, devoting" (ibid: 22). According to the online Oxford Dictionary, the noun ***drug*** refers to "a medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body"[1]. This practically means that in its broader sense, the noun ***drug*** encompasses any medicine that a per-

1 https://en.oxforddictionaries.com/definition/drug

son takes (often for curing some disease) which may have physiological effects of various kinds. However, within the context of social pathology, the noun ***drug*** is used with its narrower, more specific meaning of "a substance taken for its narcotic or stimulant effects, often illegally."[2] While with its broader meaning the English ***drug*** can be translated into Macedonian as ***lek*** (***drug, medication***) which is usually prescribed by a doctor, with its more specific meaning the noun ***drug*** is translated as ***droga***, i.e. "a substance that has a narcotic effect on the nervous system and leads to addiction with most severe consequences".[3] As far as the noun ***addiction*** is concerned, it is used for denoting "the fact or condition of being addicted to a particular substance or activity"[4], while a person who is ***addicted*** is "physically and mentally dependent on a particular substance"[5]. The Macedonian equivalent of ***addiction*** is ***zavisnost***, which refers to "a state of an addicted person"[6], which means that the whole collocation drug addiction is normally translated into Macedonian as ***zavisnost od droga***, where the English *noun + noun* combination is translated with *noun + preposition + noun*, due to the specificities of the Macedonian language.

Bearing this in mind, when analyzing students' answers regarding drug addiction as a sociopathological phenomenon, we accepted only ***zavisnost od droga*** as an accurate translational equivalent. The results showed that a vast majority of 39 students provided this lexical solution, which amounts to 81.3% of the total score. In this group we also added the answer ***zavisnost od drogi*** where the noun ***droga*** is used in its plural form, which is actually the lexical solution that can be found in Macedonian legislative acts as well. This is the case, for instance, with the Macedonian Law on Control of Narcotic Drugs and Psychotropic Substances (*Закон за контрола на опојни дроги и психотропни супстанции*, Сл. Весник на РМ, 2008). Yet, in spite of the large number of students who answered ***zavisnost od droga***, we were surprised by the fact that none of them chose the term ***narkomanija*** as a Macedonian lexical solution, taking into consideration the fact that ***narkomanija*** is a scientifically and professionally accepted and lexicalized notion, in Macedonian and in other languages. We suppose that they were directly influenced by the English term **drug addiction** and translated it literally, which is used synonymously by Macedonian speakers.

With this answer included, the total percentage of acceptable translational equivalents rose to 83.4%.

The various students' answers are given in the table below:

Table 1. *Distribution of students' translational equivalents of* ***drug addiction*** *(all acceptable answers are written in bold and italics)*

Translational equivalent	Number of answers	Percentage
zavisnost od droga	39	81.3%
zavisnost od drogi	1	2.1%
zavisnici od droga	3	6.3%
drogirana sostojba	1	2.1%
zavisnost	1	2.1%
zavist od droga	1	2.1%
koristenje na droga	1	2.1%
navika	1	2.1%

2 ibid
3 http://www.makedonski.info/show/дрога/ж
4 https://en.oxforddictionaries.com/definition/addiction
5 https://en.oxforddictionaries.com/definition/addicted
6 http://www.makedonski.info/search/зависност

In spite of the high percentage of students providing accurate translational equivalents, we can see from the table that there are still some students who are unable to make a distinction between ***zavisnik*** and ***zavisnost***. While ***zavisnost*** refers to a state as an abstract notion, the noun ***zavisnik*** refers to a person that is addicted to something, and these two notions cannot be used interchangeably. ***Zavisnik*** is the counterpart of the English noun ***addict***.

Another interesting answer is the term ***koristenje na droga***, which was also given as a possible lexical solution in Macedonian. ***Koristenje*** refers to using something, and in this case ***koristenje na droga*** actually means ***using drugs***. Using drugs may lead to drug addiction, but it does not necessarily mean that the person is addicted to drug and that he/she is a socio-pathological case.

As far as the other unacceptable answers are concerned, the term ***drogirana sostojba*** denotes a state of being under the influence of drugs/ being drugged, while ***navika*** refers to a habit, which again does not coincide with addiction.

Finally, we noticed a very interesting lexical solution that was provided by one of the students. That was the term ***zavist od droga***. What makes this example interesting for analysis is the phonetic and orthographic similarity between the Macedonian nouns ***zavist*** and ***zavisnost*** which lexicalize two completely different notions. Namely, the noun ***zavist*** is the equivalent to the English noun ***envy*** and cannot be used as a Macedonian translation equivalent of ***addiction***. Obviously, the student confused these two terms, choosing a totally unacceptable answer.

SUICIDE

Within the context of social pathology, the English noun ***suicide*** is used for denoting an "act of killing oneself intentionally" (Martin, 2003: 484), which is the opposite of ***homicide*** referring to "the act of killing a human being" (ibid: 232). Etymologically speaking, ***suicide*** is rooted in the Latin words "sui", meaning "of oneself" and "-cidium", which refers to "killing" (Klein, 1966: 1540). With this meaning, the noun ***suicide*** is translated into Macedonian as ***samoubistvo***. According to the Interpretative Dictionary of Contemporary Macedonian Language, the noun ***samoubistvo*** is primarily defined as "deliberately taking one's own life" (Мурoски, 2011: 1162) which corresponds to the semantic content carried by its respective English counterpart.

Taking into consideration the semantic specificities of ***suicide*** and its Macedonian equivalent elaborated on in the paragraph above, when analyzing the students' answers, the only translational equivalent that was counted as acceptable was ***samoubistvo***. This lexical solution was chosen by 44 students which amounts to 91.7% of the total number of students who participated in the research. This high percentage confirmed our initial hypothesis even beyond our expectations. Namely, we assumed that some of the students might be misled by the English form ***suicide*** with the Latin root and the use of ***suicid*** in professional literature in Macedonian, and particularly the use of the adjectival form ***suiciden*** which is quite common among Macedonian speakers and occurs in some collocations, the most frequent one being ***suicidni misli*** (suicidal thoughts). Even though this foreignism may be accepted as a translational equivalent, we were positively surprised by the fact that the students relied on the original Macedonian word with Slavic etymology.

However, despite the high number of students who translated the term ***suicide*** accurately, there were also some students whose answers were different from the one that we deemed acceptable.

The distribution of the students' answers related to this socio-pathological phenomenon is presented in the table below:

Table 2. *Distribution of students' translational equivalents of* ***suicide*** *(all acceptable answers are written in bold and italics)*

Translational equivalent	Number of answers	Percentage
samoubistvo	44	91.7%
ubistvo	2	4.2%
nesrekjen slučaj	1	2.1%
obid za samoubistvo	1	2.1%

As we can see from the table, there are still some students who use the words ***samoubistvo*** (suicide) and ***ubistvo*** (homicide) interchangeably, even though the given context makes it clear that the girl killed herself, i.e. that she was not murdered. In this case, we might assume that the students were not even familiar with the verb ***murder***, which was juxtaposed to the noun ***suicide***, whose meaning could also be inferred from the other words. The girl was found dead with a gun in her right hand, and the author doubts its classification as a murder/homicide.

There is also a student who is not able to distinguish between **suicide** and **attempted suicide**, so instead of answering with ***samoubistvo***, he/she answered with ***obid za samoubistvo***, which is absolutely unacceptable in the given context. In cases of attempted suicide, the person tries to commit suicide, but remains alive.

Another interesting answer is the term ***nesrekjen slučaj***. In English it is usually translated as ***accident***, and it basically refers to "an unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury"[7]. The key semantic element here is the lack of intention, which is how accidents usually occur. Suicides, on the other hand, are deliberate acts, which means that the person has decided to take his/her life. In accidents, the person does not choose the action, but only suffers its consequences that may be fatal/lethal.

GAMBLING

The English noun ***gambling*** is derived from the verb ***gamble***. In terms of its etymology, ***gamble*** is derived from the dialectical Middle English verb "gammlen, gamblen", from the Middle English verb "gamenen" and from Old English "gamenian", meaning "to play" (Klein, 1966: 638). Within contemporary context, the verb ***gamble*** is generally used with the meaning of "play games of chance for money; bet"[8]. In Macedonian, the verb ***gamble*** is usually translated with the reflexive verb ***se kocka,*** rooted in the noun ***kocka*** (***dice***). According to the definition provided in the Interpretative Dictionary of Macedonian Language, ***se kocka*** means "to play for money" (Конески et al., 2005: 619), which more or less corresponds to the definition of its English counterpart.

Bearing this in mind, there were no doubts that in analyzing the students' answers we would count ***kockanje*** (the gerund form of ***se kocka***) as the most acceptable and most accurate one, which was offered as a lexical solution by 45 students (93.8%).

7 https://en.oxforddictionaries.com/definition/accident
8 https://en.oxforddictionaries.com/definition/gamble

However, beside ***kockanje***, we came across other answers, which also deserved our further elaboration.

All students' answers collected within the research are given in the table below:

Translational equivalent	Number of answers	Percentage
коckanje	45	93.8%
igri na srekja	1	2.1%
kockanje (igri na srekja)	1	2.1%
kockanje/ igri na srekja	1	2.1%

Table 3. *Distribution of students' translational equivalents of* ***gambling*** *(all acceptable answers are written in bold and italics)*

As we can see from the table, 2 students (4.2%) chose ***kockanje*** and ***igri na srekja*** as two possible translational equivalents of ***gambling***, while 1 student chose ***igri na srekja*** as a sole answer. According to the Interpretative Dictionary cited above, ***igra na srekja*** is "participation in something that offers possibility for some success (most commonly some amount of money), based on probability, luck" (Конески et al., 2005: 242). ***Igra na srekja*** is actually the Macedonian counterpart of the English term ***game of chance***, which is contained in the definition of ***gambling*** cited above, as its key semantic feature. According to the Macedonian Law on Games of Chance and Entertainment Games, the games played in casinos are classified as "casino-played games of chance" which are defined as "games of chance in which the participants in the games of chance play against the casino or against each other in compliance with international rules on the gaming tables with balls, dice and cards" (*Закон за игрите на среќа и за забавните игри*, 2011). These casino games among the many types of games of chance defined by this law, which practically means that ***game of chance*** can be considered as a hypernym of gambling. Consequently, it could be accepted as an acceptable translational equivalent, as a generic term. However, it is interesting to observe that none of the students chose the term ***komar*** as a translational equivalent of ***gambling***, although it is a colloquial synonym for ***kockanje*** which is very frequently used especially by older speakers of Macedonian. ***Komar*** encompasses "various types of hazardous games, games for money; gambling" (Конески et al. 2005: 567) and although it is mainly used colloquially, it can also be encountered in professional literature in the field of social pathology.

If we add the other three answers presented in the table above, we can say that practically all students managed to transfer the semantic content of gambling to a satisfactory degree, and to provide the appropriate Macedonian lexical solutions. One possible hypothesis for this score of the students might be the increased popularity of casinos and betting shops in Macedonia in recent years. However, it will be necessary to carry out further research that will address the reasons for their high level of familiarity with this concept.

CONCLUSION

The research results presented in the paper confirmed our starting hypothesis. Namely, the students who have attended lectures in English and Social Pathology showed high degrees of knowledge of the semantic specificities of the terms **drug addiction**, **suicide** and **gambling** in Macedonian.

We may consider the high percentage of acceptable translational equivalents as an indicator of the effectiveness of the syllabi in both subjects that address the issues of these three

socio-pathological phenomena from different aspects, particularly the syllabi in Social Pathology that scrutinizes them in greater detail.

However, there might also be some other factors that contribute to students' high level of familiarity with these concepts, and this paper may serve as the basis for researching these other factors profoundly in the future.

The list of possible factors might include: the influence of the mass media on the adoption and use of some terms, the wide-spread presence of some socio-pathological phenomena (such as gambling) among young people in Macedonia, the influence of English as a *lingua franca* which is particularly evident in the translation of drug addiction, the influence of terms already adopted in science and in professional literature, etc. This may be achieved by carrying out qualitative research based on in-depth non-structured interviews with the students who already participated in the research presented in this paper.

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TEACHING MODAL VERBS IN ENGLISH AS THE LSP STUDIED AT THE ACADEMY OF CRIMINALISTIC AND POLICE STUDIES[1]

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Abstract: Teaching English as the LSP is different than teaching general purpose English in that the curriculum is made to fit the needs of a particular target group (a specific profession). The emphasis is on acquiring technical lexis and grammatical structures of formal nature and restricted register. Students at the Academy of Criminalistic and Police Studies also study LSP. An interesting fact is that most of the students have not dealt with the LSP vocabulary in their previous schooling and, more importantly, only a limited number of students did any translating at their English classes from the English language to their mother tongue, in this case Serbian. We will try to analyse the challenges and potential problems related to one grammatical unit of the English language as the LSP that the students of criminology at the Academy of Criminalistic and Police Studies study at the second year of their academic studies – modal verbs for expressing obligation, necessity, possibility and deduction in the English language, along with some theoretical basis. The aim of this paper is to observe some of the translation techniques the students usually opt for when translating the above mentioned modal verbs in English on a corpus of ESP technical texts, with their specific meanings and usage, from their target ESP vocabulary to Serbian and vice versa. Also special emphasis will be put on the trouble areas students experience with learning modal verbs of the mentioned four meanings. In addition, we would also like to give our contribution to the methodology of teaching English as the LSP.

Keywords: modal verbs in English and Serbian expressing obligation, necessity, possibility and deduction; English for specific purposes (ESP) at the Academy for Criminalistic and Police studies; translating; translation equivalents

INTRODUCTION

This paper consists of a theoretical part and a case study part. In the theoretical part we gave some basic theoretical concepts of teaching LSP (Language for Specific Purposes), more precisely, ESP (English for Specific Purposes). There will also be some discussion as to why ESP is important for future police and law enforcement officers in their everyday professional activities. Afterwards, we will give some grammatical views on modal verbs expressing obligation, necessity, possibility and deduction, both in English and in Serbian. There are more than 30 examples following the classification of the aforementioned modal verbs with special emphasis on the differences in English and Serbian in expressing the concept of necessity,

1 The paper is the result of research on the project titled "Crime in Serbia and the Instruments of State Response", which is financed and carried out by the Academy of Criminalistic and Police Studies, research cycle 2015-2019.

obligation, possibility and deduction with the modal verbs. The case study part is the author's endeavour to show how students studying ESP at the Police Academy in Belgrade grasp the usage and the many meanings of the English modal verbs. Special emphasis will be put on how certain modal verbs could be translated from English to Serbian and vice versa on a corpus of ESP technical texts as well as what the trouble areas are in the process of learning the English modal verbs. We will also try to give some insight into the students' background knowledge of the modal verbs, that is, what their experience is with the modal verbs before enrolling in the Police Academy (the English lessons dedicated to the modal verbs in their respective high-schools).

The aim of this paper is to analyse some of the students' attempts to translate certain English modal verbs to Serbian and certain Serbian modal verbs to English as well as to offer our contribution to the translation and methodological practice.

TEACHING LSP

Before we go any further with the discussion, we should say something on the LSP (language for specific purposes). What is LSP and what makes it different from a foreign language for general purposes? Put simply, a foreign language for general purposes, as implied by the name itself, encompasses a foreign language in its everyday ("ordinary") dimension where the aim is to gain knowledge for "general purpose" (Janković, 2011, p. 69). However, with LSP we no longer refer to a foreign language in its everyday usage, but rather try to address a specific group of learners, who need to have the knowledge of the "lexis typical of that profession and grammatical forms and structures of a rather formal type and restricted scope" because "the focal point is not the linguistic nature of the language but its pragmatic use in specific context" (Janković, 2011, p. 69). Because of the subject matter of our paper, we will focus on ESP (English for Specific Purposes) studies.

In terms of the nomenclature of teaching ESP, Janković brought up in her paper an interesting observation. Namely, the sheer phrase *English for Specific Purposes* is not clear enough as to what exactly a foreign language instructor is supposed to teach, what kind of area of work it should cover, and what exactly *specific purposes* refers to. However, with the Serbian expression *jezik struke* it should be clear enough that the term itself refers to the language of "occupational matters". In practice, on the other hand, some people believe the term *jezik struke* actually refers rather to the instructor's professional qualifications than to the students' linguistic needs and still find it hard to tell apart teaching GE (General Purpose English) and ESP (Janković, 2011, p. 72). Janković argues that the English term "specific purposes" is more suitable to denote the concept of LSP because it is about teaching the "language appropriate to the activities in terms of grammar, lexis, register, study skills, discourse and genre" (of a particular profession) (Janković, 2011, p. 72). Another difference between GE and ESP lies is that though both imply teaching a foreign language, LSP belongs to a specific target group with "tailor-made" characteristics in the realm of applied linguistics (Janković, 2011, p. 72).

Janković also mentions key function in teaching LSP. The first one is the ***pedagogical function*** in which she stresses the importance of the experience a language instructor needs to have in their field of profession (teaching LSP) which should reflect the design of the curriculum of LSP" (Janković, 2011, p. 77). Throughout the course of an individual's career, they will no doubt have to work on their vocational training and continuously upgrade their professional skills and know-how. Such upgrading is achieved by means of any kind of technical conference, seminar etc. where more than often people from different professional, ethnic and cultural backgrounds are pooled. Needless to say, a form of human interaction is inevi-

table, and in such a setting using a foreign language only comes naturally. This represents the ***developmental function*** of LSP. The use of technical vocabulary and implicit discourse heard and used on such events (conferences and seminars) represents the ***vocational function*** of LSP. Furthermore, for some of the attendees of such conferences or seminars the working language (for example English) may still be something they do not know well and the technical vocabulary may be difficult to grasp (depending on the level of their language competence). That is when language experts such as interpreters and translators are necessary to make the correspondence, both written and oral, feasible. This is the ***interpretive function*** of LSP (Janković, 2011, pgs. 77 and 78). The following figure illustrates how interpreting the technical vocabulary is realised in such cases:

Figure 1. LSP Interpreting

(Janković, 2011, p. 79)

The interpreters are "fed" the technical vocabulary of the source language (L1) which is then converted into the target language technical vocabulary (L2), while at the same time the interpreter minds the LSP discourse (the register used in such a situation) (Janković, 2011, p. 79).

Finally we come to the ***communicative function*** of LSP. Janković argues that this function is reflected for example in the technical manuals such as dictionaries where there is "a certain degree of incidental LSP usage even in our ordinary communication". Such examples include Wikipedia's *Free Online Dictionary of Computing*, *Dictionary of Occupational Titles*, etc. (Janković, 2011, p. 79).

Now that we have covered some of the basic concepts of teaching LSP, we will focus on teaching ESP to the students of police and criminalistics studies.

TEACHING ESP TO POLICE AND LAW ENFORCEMENT OFFICERS

A future police or law enforcement officer's job is **versatile** in many ways, covering, but not exclusively, the field of criminology. In order to perform their job successfully police officers need to be familiar with various laws and legal codes and to be able to classify crimes. In addition, a police officer's job is also connected with the forensic science (e.g. evidence tracing) and also with psychology. Namely, knowing what the relationship was between a criminal and a victim prior to the commission of the criminal act could help speed up the process of crime solving (Pavlović and Mićović, 2015, p. 199). Furthermore, the psychological aspect of the police profession is extended to psychological disorders threatening police officers themselves in their day-to-day work. One example is *burnout* (Mićović and Stojov, 2011, p. 417). Then there is the vocabulary related to the technical equipment and weapons, etc.

The above paragraph partly describes **why** a student studying at the police academy should know ESP. In the perspective, on graduation and after having started to work in their profession, the knowledge of ESP should enable a police officer to:

1. read ESP texts in journals;
2. make use of the internet for particular information;
3. do written correspondence (both in informal and formal register);
4. give instructions and information to foreign visitors as well as helping in emergency situations; crime reporting, etc.

5. make official contact with foreigners, dealing with registrations, licences etc.;

6. perform customs officer's duties (inspecting passengers at airports, checking identity at border crossings, etc.);

7. execute international co-operation with relevant law-enforcement agencies, such as Interpol, Europol, and be present at international conferences, professional development courses abroad.

(Mićović and Stojov, 2011, p. 418)

TEACHING ESP AT THE ACADEMY OF CRIMINALISTIC AND POLICE STUDIES

ESP at the Academy of Police and Criminalistic Studies is divided into two English language courses: English Language 1 and English Language 2. The textbook[2] used during both of the courses is designed to help students grasp the key technical vocabulary related to the police profession from a variety of technical texts and excerpts from the relevant police and crime investigation literature. It is divided into five parts. The first four parts cover a variety of technical reading material. The fifth part of the book focuses on the basic grammar units to be covered during the course of the lessons. In the English Language 2 course students study the English syntax and clauses relations (the passive voice, the indirect speech, the conditional sentences, the subjunctive mood and the imperative mood). One of the grammatical units that is covered throughout the course of the lessons are the English modal verbs expressing obligation, necessity, possibility and deduction. The author of this paper has noticed that the students have particularly problems with this grammatical unit due to the specificities of the modal verbs (morphologically different as opposed to full or lexical verbs, and the context specific determined interpretations of each of the modal verbs, etc.). We will try to see what in particular poses a problem to the students based on the statistical analysis we have carried out with them. But before that, there should be some word on the modal verbs themselves. The following part of the paper will be dedicated to the above mentioned four meanings of the English modal verbs. This paper is by no means a comprehensive study of the English modal verbs and does not cover their every possible use. For the needs of this paper, the author has decided to focus this time only on the four mentioned uses as taught to the students during the course of English Language 2. Further discussion on this topic could be saved for another scientific paper of this kind.

ENGLISH MODAL VERBS EXPRESSING OBLIGATION AND NECESSITY IN THE PRESENT

a) Obligation and logical necessity

The message of obligation and logical necessity is expressed by the English modal verb *should*:

1) You *should do* as he says. (Quirk *et al.*, 1985, p. 55)

2) You *should send in* accurate income tax returns. (Thomson and Martinet, 1992, p. 138)

In the above examples, *should* can be replaced by *ought to*.

2 Pavlović, I. and Mićović, D. (2015). *Engleski jezik za osnovne akademske studije*. Beograd: Kriminalističko-policijska akademija.

The Serbian equivalent for the modal verbs *should* in this case is the verb *trebati* used in standard

Serbian in the third person singular of the Serbian simple present tense (*treba* + *da…*):

3) Mislim da *treba* da se izvinite. (= I think you *should* apologize.)

4) *Treba* da budemo pažljiviji. (= We ought to be more careful.) [3]

Obligation and compulsion

An inescapable obligation or a rule are expressed by *must* and *have to* respectively:

Observe the following conversation between a piano teacher and two students:

5) PIANIST TO PUPIL: You *must* practise at least an hour a day.

PUPIL TO MUSICAL FRIEND: I *have to* practise an hour a day!

MUSICAL FRIEND: You *should/ought to* practise for more than an hour. (Thomson and Martinet, 1992, p. 138)

The verb *must* here yields the message of the order to practise coming from the speaker, the authority (the piano teacher). Then when a student retells to their friend what the orders is, he or she uses *have to* to emphasise that it is not the student who imposes this obligation on themselves but a third party. The student's friend then wishes to advise them what the best thing to do is and hence uses *should/ought to*[4].

In Serbian, the two verbs that express necessity and obligation are *morati* and *trebati*. In terms of the verb *morati* there is no morphological difference when it is used to express the obligation coming from the speaker (as is the case with *must* in English) and when the obligation comes from an external factor (as is the case with *have to* in English)[5].

ENGLISH MODAL VERBS EXPRESSING OBLIGATION AND NECESSITY IN THE PAST

In this sense the construction *should/ought to* + *perfect infinitive* is used to express the unfulfillment of an obligation (sometimes with a tone of criticism):

6) You *should have turned* his omelette; he likes it turned. (= you didn't do and it was necessary to do it) (Thomson and Martinet, 1992, p. 139)

7) He *should/ought to have asked* me before he took my bike. (= I am annoyed by this.) (Hewings, 1999, p. 34)

In Serbian this is expressed again with the verb *trebati*, but unlike when used to expressed obligation and necessity in the present (*treba da…*) the correct construction is *trebalo je da…* (third person singular of neuter gender):

8) *Nije trebalo* tamo da ide. (= He *shouldn't have gone* there.)

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3 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, p. 147). In the meaning of logical necessity *should* can be replaced by the modal verb *ought to*.

4 Here we cannot be speaking of the logical necessity or an obligation. This is the use of the modal verb *should* to give advice or what is a good thing to do ("good sense", Thomson and Martinet, 1992, p. 141).

5 Still, according to Mrazović, there is a difference on the pragmatic level, as explained in the following two examples:

Morala sam sve po planu obaviti. (= I had to do everything according to the plan (perhaps it was someone else's plan)).

Morala sam iz sveg glasa vikati/da vičem. (= I had to yell at the top of my voice (because I thought it was necessary to do so)). (as translated by the author of this paper) (Mrazović, 2009, p. 183)

9) *Trebalo je da* budete ovde na vreme. Zašto ste zadocnili? (= You *should have been* here on time. Why are you late?) [6]

ENGLISH MODAL VERBS EXPRESSING A POSSIBILITY IN THE PRESENT

In this context either *may, might, could* and *can* could be used:

10) The road *may/might/can/could* be blocked.[7]

11) We *might* go to the concert. (Quirk *et al.*, 1985, p. 52)

In Serbian the possibility in present could be expressed either by a construction such as *možda + the Serbian present tense* or *može biti da…*:

12) *Možda je* to tačno. (= It *may be* true.)[8]

13) *Može biti da* je kamion pretovaren. (= The lorry *may be* overloaded.)[9]

ENGLISH MODAL VERBS EXPRESSING A POSSIBILITY IN THE PAST

In this sense the *could + perfect infinitive* construction is used in English when:

- a past ability was not performed, but it was possible for it to happen.

14) I *could have lent* you the money. Why didn't you ask me?

In this sense, *might/may + perfect infinitive* are also an option.

15) Those rocks are very dangerous. You *might have been killed*. (= I'm relieved you weren't) (Close, 1973, p. 275)

16) The plan *might/could* easily *have gone* wrong, but in fact it was a great success. (Hewings, 1999, p. 42)

- it is not known whether the action was performed or not:

17) The money has disappeared! Who *could have taken* it?

- there is a tone of irritation or reproach in the speaker's voice for the non-performance of the action:

18) You *could have told* me. (= I am disappointed that you didn't tell me) (Thomson and Martinet, 1992, p. 138)

The verb *moći* in the Serbian past tense is used when we want to say that it was possible for an action to happen, but it did not occur or when we want to express dissatisfaction about the outcome of the non-performance of the action:

19) *Mogao sam* doći da ste me obavestili. (= I *could have come*, if you had informed me. = You did not inform me and I wasn't able to come.)

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6 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, p. 153)
7 Though in all three cases the message is that "it is possible to block the road", the difference lies in the fact that with *may* it is a factual possibility, and with *can* only theoretical possibility, whereas with *might* and *could* it is implied that it is either a factual or theoretical possibility (Quirk *et al.*, 1985, pgs. 53-54).
8 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, p. 145).
9 As translated by the author Hlebec (Hlebec, 1999, p. 25).

20) Zar *niste mogli* juče da počnete? (= *Couldn't* you *have begun* it yesterday?[10] = I find it hard to believe you weren't able to begin yesterday.)

ENGLISH MODAL VERBS EXPRESSING A DEDUCTION IN THE PRESENT

When expressing deduction in the present on account of the state of fact or some evidence present at the moment of speaking, *must* or *can/could* are used depending on the negative or positive conclusion.

a) deduction in the present (negative conclusion)

21) ANN (looking through binoculars): An aeroplane is pulling up people from the boat!

TOM: It *can't/couldn't be* an aeroplane. It *must* be a helicopter. (= Surely, it is some other aircraft pulling up the people.) (Thomson and Martinet, 1992, p. 148)

22) That *can't be* George. (= Surely, it is someone else, and not George) (Close, 1973, p. 274)

When the conclusion is negative, either *can't be* or *couldn't be* are an option in English depending on how certain things are according to the speaker.

In Serbian it is possible to use the expressions *nije moguće da …* (*nemoguće da…*) or *neće biti da…*

23) *Nije moguće da* ona sada kuva. (= She *can't be cooking* now[11]. = I find it hard to believe that she is cooking now.)

b) deduction in the present (positive conclusion)

The modal verb *must* can be used when expressing a positive conclusion, or a certainty based on some evidence or an experience we've just had. [12]

24) (*in front of a door*) "This *must be* the key." (= Perhaps we have tried the others from the set, and no other choice remains.) (Thomson and Martinet, 1992, p. 147)

In Serbian the equivalent for this modal meaning of the English verb *must* is the Serbian modal verb *morati* used in impersonal constructions (*mora (biti) da…*):

25) *Mora da* je sad kod kuće. (= He *must be* at home now.)[13]

26) *Mora da* se izgubio u šumi. (= He *must be* lost in the forest.)[14]

ENGLISH MODAL VERBS EXPRESSING A DEDUCTION IN THE PAST

When expressing deduction in the past (or a personal opinion, belief on a matter that happened in the past), it is usual to see either the *couldn't + perfect infinitive* or the *must + perfect infinitive* construction. The difference is that *must + perfect infinitive* is not usually used in the negative sentence. (Thomson and Martinet, 1992, p. 147)

10 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, p. 152)
11 As translated by the author Hlebec (Hlebec, 1999, p. 25)
12 Some authors mention the alternative form *have (got) to* as in *You want to borrow some money from me? You've got to be joking!* This expression belongs to the informal register (Hewings, 1999, p. 46).
13 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, p. 148).
14 As translated by the author Hlebec (Hlebec, 1999, p. 26)

a) deduction in the past (negative conclusion)

27) He wasn't there at the time. It *couldn't have been* his fault. (Hewings, 1999, p. 46)

28) Ann *couldn't have seen* Tom yesterday. (= perhaps the two of them were in different towns) (Thomson and Martinet, 1992, p. 133)

Sometimes *can't + perfect infinitive* can be used in the negative sentences just as well with no difference in meaning:

29) He *can't have done* such a silly thing. (Trbojević-Milošević, 2004, p. 78)

In Serbian, the modal verb *moći* in the past tense can be used to express deduction in the past.

30) To *nije moglo da se prevede* tako brzo! (= It *couldn't have been translated* so quickly!) [15]

b) deduction in the past (positive conclusion):

31) It was a head-on collision, but the drivers weren't hurt. They *must have been wearing* their seat belts.

32) You *must have been* upset when you heard the news. [16] (Hewings, 1999, p. 46)

In Serbian the equivalent of the English *must + perfect infinitive* construction is the *mora (biti) da…* (= *sigurno da…*) construction followed by the Serbian past tense.

33) *Mora da* su vas pogrešno razumeli. (= They *must have misunderstood* you.)[17]

CASE STUDY ON THE CORRECT MEANINGS OF MODAL VERBS

During the course of the summer semester of 2018, two study groups of students from the department of criminology attending the second year at the time this paper was written were given a questionnaire in a form of a test to see how well they had mastered the modal verbs with special attention given to the modal verbs expressing necessity, obligation, possibility and deduction. A total of 38 students took part in this research, 24 students from the study group L2 and 14 students from the study group L4. The test encompassed a set 23 of multiple-choice questions of the modal verbs expressing necessity, obligation, possibility and deduction. The first part focused on the expressions translated from English into Serbian and the second part focused on the Serbian expressions and their English translation equivalents. The expressions were taken out of the technical texts and literature from the course textbook. The students were asked to choose the expressions which, according to them, were the best translation into English or Serbian.

Due to the paper's length, the following represents only some of the findings and conclusions we have come to on inspecting the students' answers, leaving further discussion for another type of research in this area.

In terms of modal verbs expressing **possibility**, both groups showed that most of them have mastered the correct usage:

15 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, pgs.158 and 239).
16 Again, some authors mention the non-standard forms, such as *had to be* as in *I wonder who took the money. – It had to be Tom. He's the only one who was there*. This construction is mostly heard in the American English (Thomson and Martinet, 1992, p. 148).
17 As translated by the authors Popović and Mirić (Popović and Mirić, 1996, p. 153)

Question No. 8	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
…paedophiles may already be using some of the techniques […] such as steganography.	*a. pedofili možda već smeju da koriste neke od tehnika….*	*1*	*4%*	*0*	*0.0%*
	b. …pedofili možda već umeju da koriste neke od tehnika….	*0*	*0%*	*2*	*14%*
	c. …pedofili možda već koriste neke od tehnika…	**21**	**88%**	**10**	**71%**
	d. …pedofili su možda već mogli da koriste neke od tehnika….	*2*	*8%*	*2*	*14%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*20*		*10*	

The use of modal verbs to express necessity coming from the authority does not seem to be something too difficult for the students to cope with:

Question No. 2	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
Organisations that intend to survive must demonstrate performance and value for money…	*a. Organizacije koje nameravaju da se održe bi morale da se dobro pokažu kao i da cene novac…*	*0*	*0%*	*0*	*0%*
	b. Organizacije koje nameravaju da se održe moraju da se dobro pokažu kao i da cene novac…	**24**	*100%*	**13**	**93%**
	c. Organizacije koje nameravaju da se održe bi morale da se dobro pokažu kao i da cene novac…	*0*	*0%*	*1*	*7%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*24*		*13*	

However, the same usage of the modal verb *must* in passive voice seemed to be difficult to recognise by some students in both groups:

Question No. 5	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
When pressures undermine police officers and hurt their families, they must be given the means to counter these bad effects…	*a. …morala bi im se dati sredstva za borbu protiv ovih loših uticaja…*	*6*	*25%*	*6*	*43%*
	b. …treba da im se daju sredstva za borbu protiv ovih loših uticaja…	*1*	*4%*	*4*	*28.5%*
	c. …mora da im se daju sredstva za borbu protiv ovih loših uticaja…	**12**	**50%**	**4**	**28.5%**
	d. …morala su da im se daju sredstva za borbu protiv ovih loših uticaja…	*5*	*20%*	*0*	*0%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*12*		*4*	

It appears that many of them interpreted *must be given* in Serbian as *morala su da im se daju* (*had to be given to them*) and as *morala bi da im se daju* (*would have to be given to them*).

In terms of the modal verb *should* expressing advice or a logical thing to do in the present and expressing the necessity and obligation in the past, there were not any major issues in the interpretation in both of the groups, although the students in the study group L4 did these questions slightly better:

Question No. 3	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
The officers should be questioned to gain an understanding of what has gone awry (no easy task).	**a. Policajce bi trebalo ispitivati da bismo shvatili šta je pošlo naopako (nije lak zadatak).**	**17**	**71%**	**14**	**100%**
	b. Policajci bi se mogli ispitivati da bismo shvatili šta je pošlo naopako (nije lak zadatak).	*2*	*8%*	*0*	*0%*
	c. Policajci su se trebali ispitivati da bismo shvatili šta je pošlo naopako (nije lak zadatak).	*5*	*21%*	*0*	*0%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*17*		*14*	

Question No. 19	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
Žao mi je, zakasnili ste. Trebalo je da dođete ranije.	*a. You should come earlier.*	*7*	*29%*	*4*	*29%*
	b. You should have come earlier.	**15**	**63%**	**9**	**64%**
	c. You need have come earlier. X	*1*	*4%*	*1*	*7%*
	d. You need to come earlier.	*1*	*4%*	*0*	*0%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*15*		*9*	

What we can conclude from this group of questions is that some of the students cannot tell the difference between *should* used for an obligation in the present (in Serbian *treba da…*) and *should* used for the unfulfillment of an obligation in the past (in Serbian *trebalo je da…*).

Let us observe now the following question related to the use of modal verb *could* to express an unfulfilled possibility in the past:

Question No. 20	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
Mogao si da slomiš ruku kad si se penjao na drvo.	*a. You could break your arm…*	*8*	*33%*	*4*	*29%*
	b. You could have broken your arm…	**11**	**46%**	**8**	**57%**
	c. You might break your am…	*4*	*17%*	*1*	*7%*
	d. You should have broken your arm….	*1*	*4%*	*1*	*7%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*11*		*8*	

A certain percentage of the students in both groups confused the usage of the modal verb *could* for a unfulfilled possibility in the past (*You could have broken your arm… > Mogao si da slomiš ruku.*) with a potential action (a possibility in the present) (*You could break your arm…> Mogao bi da slomiš ruku…*).

Lastly let us see how students coped with the modal verbs for expressing deduction in the past:

Question No. 15	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
Virginia Pilgrim must have recommended me.	*a. Virdžinija Pilgrim je morala da me preporuči.*	*11*	*46%*	*2*	*14%*
	b. Virdžinija Pilgrim bi morala da me preporuči.	*1*	*4%*	*1*	*7%*
	c. Virdžinija Pilgrim me je sigurno preporučila.	**12**	**50%**	**11**	**79%**
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*12*		*11*	

Question No. 18	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
It can't have been him who did it. He was here with me all the time.	*a. Nemoguće da on to radi...*	*1*	*4%*	*0*	*0%*
	b. Nemoguće da bi on to smeo da uradi...	*1*	*4%*	*0*	*0%*
	c. Nemoguće da je on to uradio...	**21**	**88%**	**12**	**86%**
	d. Nemoguće da bi on to uradio...	*1*	*4%*	*2*	*14%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*21*		*12*	

As we can see the students from the study group L4 show no problems in interpreting the negative deduction in the past. However, many of the students from the study group L2 tended to confuse the negative deduction in the past with the necessity in the past in question 15: *Virdžinija je morala da me preporuči* (= *Virginia had to recommend me.*).

Let us observe now how a Serbian sentence expressing a deduction in the past is translated into English.

Question No. 23	*Multiple choice answers*	*Study group L2*		*Study group L4*	
		No. of selected answers	*Approx. percentage of the answers given*	*No. of selected answers*	*Approx. percentage of the answers given*
Nemoguće da si bio na bazenu juče, pošto je bio zatvoren ceo dan.	*a. You couldn't be at the swimming pool yesterday…*	*12*	*50%*	*9*	*64%*
	b. You can't have been at the swimming pool yesterday…	**11**	**46%**	**2**	**14%**
	c. You shouldn't be at the swimming pool yesterday…	*1*	*4%*	*1*	*7%*
	d. You shouldn't have been at the swimming pool yesterday…	*0*	*0%*	*2*	*14%*
Total number students doing the questionnaire		*24*		*14*	
Total number of correct answers		*11*		*2*	

The students seem to have completely disregarded the use of the modal expression *can't + perfect infinitive.* Most of them opted for *You couldn't be at the swimming pool yesterday* (*Nisi mogao da budeš na bazenu juče…*). However, when translating from English to Serbian (question 18) the results appeared to be a lot better.

A POSSIBLE CAUSE FOR THE STUDENTS' OVERALL PERFORMANCE

Statistically, the students from the study group L2 did their questionnaire 65% correctly, and the students from the study group L4 did it 70% correctly. But what could have caused the inconsistencies (for example, questions 2 and 5 in the questionnaire) when applying a certain grammatical rule/knowledge? Ellis makes a clear distinction between an error and a mistake in the language acquisition process. An error "takes place when the deviation arises as a result of the lack of knowledge. It represents a lack of competence" (Ellis, 2000, p. 51) A mistake is a "milder" form of an error in that it is "a non-standard rule that they [the learners] find easier to access" because "the learner may not have learnt all the contexts in which the form in question can be use" (Ellis, 2000, p. 51). In our case the majority of the students did recognise the correct answer in one context (questions 2), only to disregard it in a different example (questions 5) and in a different grammatical construction. By analogy we could classify their failure as a learner's mistake. Now the only question to answer is what caused these mistakes.

As a follow-up the students were asked to say how often they translated technical text during their English classes in high school. Here are the results for both of the study groups:

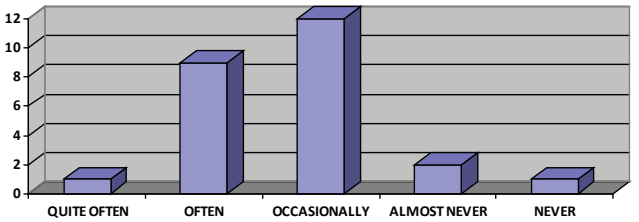

Chart 1. *Study group L2: frequency of translating technical texts*

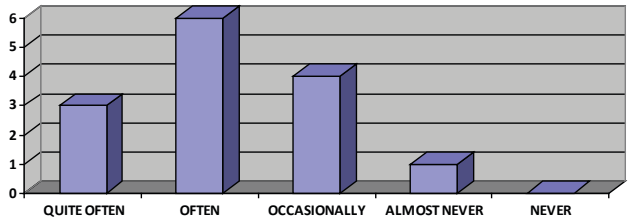

Chart 2. *Study group L4: frequency of translating technical texts*

As we can see in the chart, it appears that the majority of the students from the study group L2 translated technical texts occasionally. Of the 24 students surveyed only one student had this opportunity quite often, nine said they did this often and 12 occasionally. Two students of this study group translated technical texts almost never and one student never had this kind of a lesson. This may have caused the results of the study group L2 to be poorer with respect to the results of study group L4. Of the 14 students surveyed three had translation lessons with technical texts quite often, six did this often and four occasionally. One student said they had almost never translated technical texts during their English lessons. Though statistically students of both groups did have some kind of translating experience, the frequency of translation lessons was inconsistent between the two groups. The students in the study group L2 did this type of activity occasionally rather than often, as opposed to the students in the study group L4 who did this type of activity often. Such an approach to teaching GE could leave repercussions in the later stages of studying English, especially ESP. Translating should be an unavoidable part of language acquisition from the earliest occurrence of the English language in the educational system. By doing so, the students will later on - at the university level - be able to master the technical vocabulary of the scientific field they are studying, which is the point of teaching LSP and ESP for that matter (Nikolendžić-Anđelić and Stojov, 2006, p. 287). The need to put more emphasis on translation is evidenced by the discrepancies in interpreting the negative deduction in the past in English and in Serbian (examples 18 and 23 from the questionnaire).

The students were also asked to say how much attention was paid to the differences in the meanings of modal verbs during their English lessons at high school. Here are the results for both of the study groups:

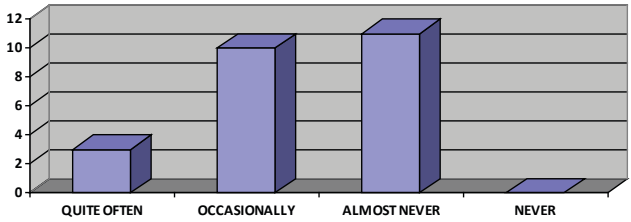

Chart 3. *Study group L2: frequency of analysing the meanings of modal verbs*

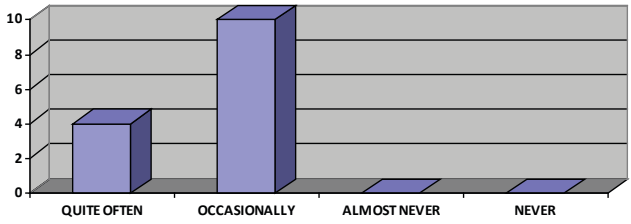

Chart 4. *Study group L4: frequency of analysing the meanings of modal verbs*

Statistically, three of the 24 students surveyed of the study group L2 said that the differences in the meanings of modal verbs were mentioned quite often. Ten of them said that the differences were mentioned occasionally. Surprisingly, eleven of them said that during their English lessons the differences in the meanings of modals were almost never explained (!). As for the study group L4, the results are a bit less discouraging. Four out of 14 students said these differences in the meaning of modals verbs were mentioned quite often, followed by 10 of them who said they did mention these differences occasionally.

CONCLUSION

Teaching LSP as opposed to teaching GE differs in that the former represents the "tailor-made" English, satisfying the needs of a specific profession, as opposed to the general purpose English (the English used in everyday situations). In this paper we have focused on teaching ESP to police and law enforcement officers. There are many reasons why they need to study ESP. In their future career, they will most likely: read ESP texts in journals; do written correspondence in a foreign language; give instructions and information to foreign visitors; perform customs officer's duties, and so on. The students at the Academy of Criminalistic and Police Studies also study ESP during their course of studies.

One of the grammatical units taught at the English course are the English modal verbs. We have mentioned in this paper the *modal verbs expressing obligation in the present* (*You should do as he says.*), in Serbian translated with the construction *treba da…* (*Mislim da treba da se izvinite.*) and obligation and compulsion (*You must practise at least an hour a day*) in Serbian translated with the verb *morati* (*Morala sam sve po planu obaviti.*). Then we mentioned the modal verbs expressing *the obligation and necessity in the past* (*You should have turned his omelette; he likes it turned.*) which in Serbian is translated with the expression *trebalo je da…*

(*Trebalo je da budete ovde na vreme. Zašto ste zadocnili?*). Next there was some discussion on the *modal verbs expressing a possibility in the present*. Such a message is conveyed with the English verbs *may, might, could* or *can*, depending on the level of possibility (theoretical or factual) (*The road may/might/can/could be blocked.*). In Serbian the correct translation equivalent is either *možda + the Serbian present tense* (*Možda je to tačno.*) or the *može biti da…* construction (*Može biti da je kamion pretovaren.*). There were also some examples with the *modal verbs* in English *expressing a possibility in the past*. Some of the constructions mentioned were the *could/may/might + prefect infinitive* (*I could have lent you the money. Why didn't you ask me?*). In Serbian the correct translation equivalent is the verb *moći* in the Serbian simple past tense (*Mogao sam doći da ste me obavestili.*). Finally, we mentioned the English *modal verbs expressing deduction in the present* with a negative conclusion, expressed with either *can't* or *couldn't* (*That can't be George*); and *with a positive conclusion*, expressed with *must* (*This must be the key*). In Serbian the equivalents for the deduction in the present (negative conclusion) are the expressions: *nije moguće da…; nemoguće da…* and *neće biti da…* (*Nije moguće da ona sada kuva.*, etc.) and *mora (biti) da…* for the deduction in the present (positive conclusion) (*Mora da je sad kod kuće.*). For expressing *a deduction in the past*, there are two constructions available with modal verbs in English, again, depending on whether a conclusion is negative (*couldn't/can't + perfect infinitive*: *He wasn't there at the time. It couldn't have been his fault.*; *He can't have done such a silly thing.*) or positive (*must + perfect infinitive: You must have been upset when you heard the news.*). In Serbian we use the verb *moći* in the Serbian past tense, with the negative conclusion (*To nije moglo da se prevede tako brzo!*) and the verb *mora da + the Serbian past tense* for the positive conclusion (*Mora da su vas pogrešno razumeli.*).

To check the students' understanding on how to use certain modal verbs in English, we prepared a questionnaire in a form of 23 multiple-choice questions, where students were asked to select the correct translation for some English and some Serbian modal verbs expressing obligation, necessity, possibility and deduction. The results of our questionnaire carried out on a sample of 34 students of the second academic year at the Academy of Criminalistic and Police Studies showed that the students' overall success was good. What caught our attention after having inspected the result of the questionnaire is that there were some inconsistencies in the students' ability to apply a grammatical rule: mistakes were made, even though the test result showed that students did recognise the correct translation. A potential cause could have been the fact that translating lessons in English classes in high-schools is still something that is not uniform: some students did this regularly as opposed to those who did this only occasionally. Even more alarming is the fact that in some schools a large number of students were almost never explained the differences in the meaning and contexts in which modal verbs can appear during their regular English classes. Bearing all this in mind, there should be no surprise why students' knowledge with certain modal verb constructions is not better. This research is a good indicator on what aspects of teaching ESP – modal verbs need more attention in the future endeavours to present this grammar unit to the students.

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CIP – Каталогизација у публикацији
Народна библиотека Србије, Београд

343.85:343.9.02(082)(0.034.2)

INTERNATIONAL scientific conference "Archibald Reiss days" (2018 ; Belgrade)
Thematic conference proceedings of international significance [Elektronski izvor]. Vol. 1 / International scientific conference "Archibald Reiss Days", Belgrade, 2-3 October 2018 ; [editor-in-chief Darko Simović]. - Belgrade : Academy of Criminalistic and Police Studies, 2018 (Belgrade : Službeni glasnik). - 1 elektronski optički disk (CD-ROM) : ilustr. ; 12 cm

Sistemski zahtevi: Nisu navedeni. - Nasl. sa naslovne strane dokumenta. - Tiraž 200. - Bibliografija uz svaki rad. - Abstracts.

ISBN 978-86-7020-404-1
ISBN 978-86-7020-190-3 (niz)

a) Криминалитет - Зборници - Сузбијање
COBISS.SR-ID 268232204