MEĐUNARODNI NAUČNI SKUP „DANI ARČIBALDA RAJSA“
TEMATSKI ZBORNIK RADOVA MEĐUNARODNOG ZNAČAJA

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

MEĐUNARODNI NAUČNI SKUP
INTERNATIONAL SCIENTIFIC CONFERENCE

# „DANI ARČIBALDA RAJSA“

# “ARCHIBALD REISS DAYS”

*Beograd, 7-9. novembar 2017.*
*Belgrade, 7-9 November 2017*

**TEMATSKI ZBORNIK RADOVA MEĐUNARODNOG ZNAČAJA**

**THEMATIC CONFERENCE PROCEEDINGS OF INTERNATIONAL SIGNIFICANCE**

**TOM I**
**VOLUME I**

Kriminalističko-policijska akademija
Beograd, 2017
Academy of Criminalistic and Police Studies
Belgrade, 2017

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

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Impression
200 copies

Print
Univerzal, Čačak

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



ISBN 978-86-7020-378-5
ISBN 978-86-7020-190-3

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ISBN 978-86-7020-378-5
ISBN 978-86-7020-190-3

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# PREFACE

*Dear readers,*

In front of you is the Thematic Collection of Papers presented at the International Scientific Conference "Archibald Reiss Days", which was organized by the Academy of Criminalistic and Police Studies in Belgrade, in cooperation with the Ministry of Interior and the Ministry of Education, Science and Technological Development of the Republic of Serbia, School of Criminal Justice, Michigan State University in USA, School of Criminal Justice University of Laussane in Switzerland, National Police Academy in Spain, Police Academy Szczytno in Poland, National Police University of China, Lviv State University of Internal Affairs, Volgograd Academy of the Russian Internal Affairs Ministry, Faculty of Security in Skopje, Faculty of Criminal Justice and Security in Ljubljana, Police Academy "Alexandru Ioan Cuza" in Bucharest, Academy of Police Force in Bratislava, Faculty of Security Science University of Banja Luka, Faculty for Criminal Justice, Criminology and Security Studies University of Sarajevo, Faculty of Law in Montenegro, Police Academy in Montenegro and held at the Academy of Criminalistic and Police Studies, on 7, 8 and 9 November 2017.

The International Scientific Conference "Archibald Reiss Days" is organized for the seventh time in a row, in memory of the founder and director of the first modern higher police school in Serbia, Rodolphe Archibald Reiss, after whom the Conference was named. The Thematic Collection of Papers contains 131 papers written by eminent scholars in the field of law, security, criminalistics, police studies, forensics, informatics, as well as by members of national security system participating in education of the police, army and other security services from Belarus, Bosnia and Herzegovina, Bulgaria, Bangladesh, Abu Dhabi, Greece, Hungary, Macedonia, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Czech Republic, Switzerland, Turkey, Ukraine, Italy, Australia and United Kingdom. Each paper has been double-blind peer reviewed by two reviewers, international experts competent for the field to which the paper is related, and the Thematic Conference Proceedings in whole has been reviewed by five competent international reviewers.

The papers published in the Thematic Collection of Papers provide us with the analysis of the criminalistic and criminal justice aspects in solving and proving of criminal offences, police organization, contemporary security studies, social, economic and political flows of crime, forensic linguistics, cybercrime, and forensic engineering. The Collection of Papers represents a significant contribution to the existing fund of scientific and expert knowledge in the field of criminalistic, security, penal and legal theory and practice. Publication of this Collection contributes to improving of mutual cooperation between educational, scientific and expert institutions at national, regional and international level.

The Thematic Collection of Papers "Archibald Reiss Days", according to the Rules of procedure and way of evaluation and quantitative expression of scientific results of researchers, passed by the National Council for Scientific and Technological Development of the Republic of Serbia, as scientific publication, meets the criteria for obtaining the status of thematic collection of papers of international importance.

Finally, we wish to extend our gratitude to all the authors and participants in the Conference, as well as to all those who contributed to or supported the Conference and publishing of this Collection, especially to the Ministry of Interior and the Ministry of Education, Science and Technological Development of the Republic of Serbia.

Belgrade, October 2017 *Programme and Organizing Committees*

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# Topic I

# CRIMINALISTIC AND CRIMINAL JUSTICE ASPECTS OF CLARYFYING AND PROVING OF CRIMINAL OFFENCES

# DISCUSSION BETWEEN FORENSIC AND EVIDENCE LAW PRACTITIONERS ABOUT THE RELEVANCY CONCEPT

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**Abstract:** Frequently used, but not clearly defined in the fields of criminal sciences, the relevancy concept is a leitmotiv for the forensic science practitioners and a condition to admit evidence at court for the lawyers.

Manifold concept, the perception of relevancy relies on conventional, cultural and individual values. The assessment of relevant trace at a crime scene and of relevant evidence at court will change depending on the person who searches and uses the information. The scientific piece of evidence firstly depends on the work achieved by a forensic science practitioner at the crime scene and in the laboratory. In the second phase the instructive magistrate plays, within the European criminal justice system, a major role regarding the evaluation of the forensic data used as evidence at the end of the investigation process. She is a key member of the enquiry, working with forensic and police staff.

The investigation scene is the starting point of the analytical chain of evidence. There is a major interest to focus on the first stages of the inquiry, where data is collected and assessed by forensic units, law enforcement and judicial authorities. Assuming that the investigation stakeholders perceive differently what is relevant for the case, the various perceptions could be used as a key point to exchange and widen the approach of the criminal case.

The goals of the current article are to introduce the relevancy concept from a forensic standpoint and to emphasize how important it is for forensic and evidence law practitioners to discuss, from the initial stages of investigation process, this dimension. The aim of such attempt is to ultimately strengthen the whole chain of evidence and ensure fair criminal justice.

**Keywords:** relevant trace, chain of evidence, forensic science, evidence law, criminal investigation.

## INTRODUCTION

If the relevancy concept appears to be a dimension frequently used among the field of criminal sciences, it is at the same time one of the least well defined one. For forensic science practitioners, this is a leitmotiv associated with the decision to search, collect and analyse physical traces in criminal investigation. For the legal partners, this is a condition for evidence admissibility in court. Relevancy concept appears to be a necessary condition to consider any

item of information with a potential to solve the problem at hand, the criminal case in this case.

From a semiotic perspective, relevancy is a manifold concept whose perception relies on conventional, cultural and individual values. Such assessment changes depending on the users of the information. Taking into account the diversity of judicial stakeholders within the framework of the investigation process, a multiplicity of relevancy assessment is then expected.

In the European criminal system, the instructive magistrate plays a major role in the evaluation of the forensic data used as scientific evidence. Focusing on the interaction played between the investigative magistrate and the forensic investigator, the following article introduces the relevancy dimension as a vector of communication between the forensic and legal worlds to strengthen the enquiry process, and ultimately the chain of evidence. Firstly, the attention is given to criminal investigation, and more specifically to the work achieved at the scene. The early stages of the enquiry are the starting point of the analytical chain of evidence and the roles played by the various stakeholders are of importance regarding the quality of the information management. From the scene to the court, it appears that the relevancy dimension is part of the investigation process and at the core of critical choices. Brief definitions of relevancy concept are then given from general, legal and forensic points of view. The study of the relevancy in the investigation context emphasizes the importance of using the dimension as a tool of communication between magistrates, law enforcement and forensic science practitioners. Such an approach should widen the treatment of the criminal case through a critical and successful exchange between the investigation stakeholders, and ultimately contribute to ensure an equality of arms [1].

## AT AN INVESTIGATION SCENE RELEVANT MATTERS ARE THE ONLY FOCAL POINT

*"Information is transformed into evidence by an assessment of its relevancy to a particular investigation. Similarly the degree of relevancy of evidence is established by assessment. The whole process can be visualised as a continuous range or spectrum extending from total irrelevancy to total proof. Thus, in a sense, assessment is the entire investigation*" [2].

Within the context of a criminal enquiry, the whole process of information begins at the scene, more specifically at the investigation scene. This is the starting point of the analytical chain of evidence and a cycle of iterative assessment. The mission of the investigation stakeholders is to decipher places, persons, and physical traces in order to understand, reconstruct and resolve a criminal case. Roles and positions in the chain of evidence of the judiciary actors vary and involve a specific approach and assessment of what could be relevant from their standpoints. The law enforcement consists of the first responders (police officers) ensuring the integrity of the scene, and of detectives who search for information from persons (victims, witnesses, suspects) and from the media other than the physical traces. The latter are the province of the forensic units. Forensic investigators look for the vestiges of the criminal activity, or the relevant physical traces, through the study of the scene and objects, when forensic doctors focus on bodies to find the cause of death and injuries.

The sources of information will change but the logic is the same for the detectives and the forensic science practitioners: the information comes from traces (physical, digital, oral), and the best *"cause-explication"* [3] have to be provided to the legal actors for the court. The cause-explication is to be understood as the most probable sequence for the criminal activity and its participants' actions. More specifically, the forensic science practitioners read the

scene as a book. In this situation, the case is the title of the story, the scene is the context of the action, and the physical traces are the words waiting to be read and signified as relevant information or clue. The forensic officers need to recognize the "right" words to associate them together and to provide pieces of evidence that will contribute to reconstruct some part of the story of the criminal event, if not the whole story. Finally, the judicial authority comes into action, mainly through the investigative magistrate who leads the investigation up to the court and decides which relevant information will be brought as evidence at the tribunal, and finally will prove the incriminated facts. The instructive magistrate orientates the course of the investigation and the way the story will be told in the end.

From the scene to the tribunal, the criminal investigation is characterised by the transformation of the data into information all along a chain, called the analytical chain of evidence [4].[1] Three main stages are defined: the physical trace, the clue and the evidence. The first dimension, the physical trace, is introduced as a *"vestige or marks remaining and indicating the former presence, existence or action of something"*[2]. It is the primitive source of information and a complex sign for the forensic investigator. It exists without a given meaning and will be used provided it is discovered and interpreted as being relevant [4]. The physical trace has to be distinguished from the clue and from the evidence. The clue is a signified trace whose meaning was given by the forensic investigator who recognized a valuable information content within a given context [4]. Defined as *"an apparent sign that indicates something with probability"*[3], the clue provides directions to follow to find the solution to the case at hand. Indeed, *"a discovered trace, perceived as being relevant in a given context, is a clue that provides information relevant to the case"* [4]. It participates to the elaboration and elimination of alternative causes or possible case's scenarios as the investigation progresses. Moving forward, clues are gathered and become structured information or pieces of evidence - these are the province of the magistrate. Evidence is understood as the information used by a court to *"raise or lower the probability of a proposition"*[4], supporting the tribunal in the decision process to elect the more probable cause between a set of alternative scenarios, namely the parties' positions.

Interestingly, from the selection of the physical traces at a scene to the admissibility of the evidence in court, the relevancy assessment is at the core of the critical choices. But this dimension is a many-sided concept, implicit in many stages of the investigation (scene, laboratory, court), not clearly expressed and understood among the investigation stakeholders. The relevancy dimension is a key concept for the legal and forensic sides, and their underlying perceptions are not that different: they both need to work with relevant traces and evidence [1].

There is a strong interest to define the relevancy and to determine what pertains to this dimension, in order to provide constructive options to improve the truth seeking mechanisms.

## THE DEFINITIONS OF THE RELEVANCY DIMENSION

From a general point of view, the relevancy is a "*logical and adapted connection between the qualified object and a question of interest within a given context"* [5]. It has to be empha-

1 Some passages in this proceeding paper are based on a previous publication, J Forensic Sci Med 2016;2:208-12. The Relevant Physical Trace in Criminal Investigation.
2 "trace, n1". The Oxford English Dictionary. 2nd edition 1989. OED Online. Oxford University Press. Université de Lausanne. 28 Aug. 2009. http://dictionary.oed.com/cgi/entry/50255568.
3 "indice" Freely translated from « signe apparent qui indique quelque chose avec probabilité ». Alain Rey (Sous la direction de), 2010. Dictionnaire historique de la langue française. Le Robert.
4 "evidence". The Oxford Dictionary of Philosophy. Simon Blackburn. Oxford University Press, 2008. Oxford Reference Online. Oxford University Press. Université de Lausanne. 30 March. 2015 http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t98.e1165.

sized that the fact of being adapted generates a fragment of answer, if not the answer to the question asked. What is relevant brings necessarily information; this is a contribution to an overall knowledge. More importantly, the relevancy is not an intrinsic quality of an object, this is always considered within a definite context and in relation to a specific matter.

From a legal perspective, the relevancy dimension is presented as an *"adequacy between the fact that it is a matter of proving and the evidence adduced or between an allegation and the rule of law to be applied"*[5]. Depending on the criminal law systems, specific guidelines exist, like the American rules 401, 402 and 403 from the FRE,[6] where jurists/lawyers enacted elementary rules to support the reasoning process surrounding the relevancy assessment of the proposed pieces of evidence.

On the opposite side, within the European continental system, there are no specific rules of law. The principle of the freedom of the evidence is a leading principle. In the Swiss criminal procedure law, for instance, relevancy tenet is not explained but appears as a critical matter to respect. The authorities have the mission to search any relevant facts allowing the qualification of the criminal act and ultimately the judgement of the defendant,[7] without explaining the nature of the characteristics of relevant facts. The judge knows and defines by herself what is relevant or not. However, the two criminal law systems meet on one aspect: the relevancy is part of a mechanism of exclusion [6]. The authorities provide negative rules [7] or work with exclusive conditions (like the USA) where irrelevant material is explained. Thus, the dimension is more explicitly defined through its contrary; it is easier to decide what is irrelevant.

As explained by Twining [8], *"relevance is one of the least explored and most frequently abused concepts in the law of evidence"*. To this regard, the note for the FRE rule 401 provides additional information helping to understand the value of such concept and the complexity that pertains to its assessment: *"relevancy is not an inherent characteristic of any item of evidence but exists only as a relation between an item of evidence and a matter properly provable in the case. Whether the relationship exists depend upon principles evolved by experience or science, applied logically to the situation at hand"* [9].

The relevancy assessment depends on the ability to infer logical relations between the evidence and the matter to prove. It consists of a set of diverse types of inferences other than the only deduction operation [10, 11], so often attributed to the legal thinking. It is a fact that the reasoning process underlying this assessment and the body of knowledge (experience and science) used to conduct such evaluations are not yet clearly formalised. By doing so, this would improve elementary actions that pertain to the questioned dimension, with the ultimate aim to strengthen the whole judiciary process related to the admissibility of the evidence.

For the field of forensic science, in the literature, authors approach the question of relevancy from various standpoints [6]. This is clearly understood as a multi-faceted notion used both to define a valuable physical trace and the scientific operating processes (collection, analysis, evaluation) of the questioned trace. The relevancy assessment of a physical trace is not straightforward. At the investigation scene, for instance, finding blood fingermarks on a knife does not confirm the relevancy of such discovery. The context of the case and the data gathered in the preliminary stages of the enquiry set up a specific reasoning framework,

5 Translated from Le Grand Larousse Universel, 1995, Paris, Larousse. « *adéquation entre le fait qu'il s'agit de prouver et la preuve apportée ou entre une allégation et la règle de droit à appliquer* ».

6 "*Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.*" (FRE, rule 401)

7 *Art.6, code de procédure pénale suisse. Maxime de l'instruction : 1) Les autorités pénales recherchent d'office tous les faits pertinents pour la qualification de l'acte et le jugement du prévenu* ». (Code de procédure pénale suisse, 05.10.2007)

where logical connections are inferred between the matter to solve and the detected physical traces to qualify.

As for a specific comprehension among the forensic science field, the current notion is often mentioned, such as Locard [12] who presented relevancy as being " *the most serious and the most common defects*"[8]. Whenever the relevancy dimension was cited, forensic scientists associated sound experience and knowledge as necessary conditions to assess (or: evaluate?) relevancy [4].

In the research conducted by the author [6], dedicated to the study of the relevancy principle in forensic science, reference was made to semiotic sources, with their theory of sign and signification, to investigate the concept. A more complete definition of the relevancy tenet was then provided, leading to discuss the nature of the critical factors influencing the evaluation of relevant physical traces within the framework of the investigation scene.[9] From a semiotic point of view, relevancy is all about the perception of trace-objects in a specific context. It is conditioned by the ability of the forensic science practitioner to recognize specific features from physical traces found at the scene of investigation [4]. Such a recognition process is part of the signification stage, where the status of the trace changes into a scientific and technical clue. At this stage, many parameters (situational, such as the nature of the case; structural, such as the available resources given to the forensic officer; individual, such as the knowledge and experience of the forensic officer) will impact the recognition process and the relevancy assessment. Ultimately, based on these specific parameters, two persons on the same scene will tend to assess the value of the data differently and will decide to collect and analyse different types of traces.

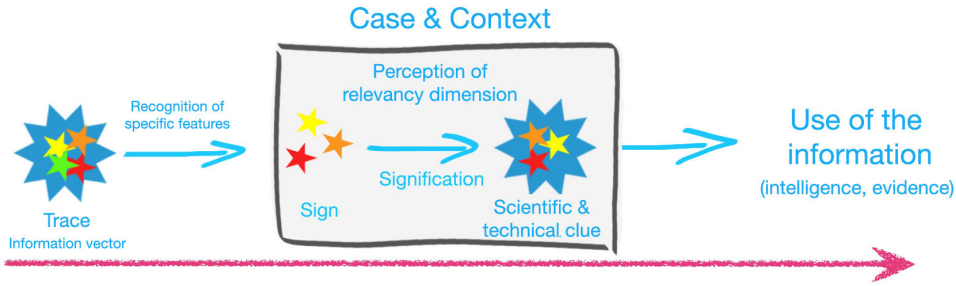


***Figure 1:*** *Assessment of the relevant physical trace according to the semiotic view* [5, 6]. *While moving forward in the investigation process, this figure also shows the growing belief in the probative value of the information perceived as being relevant and collected during the whole enquiry (crime scene, laboratory).*

As Schambers, (cited by Howard [13]) said: *"Relevance is a multidimensional cognitive concept whose meaning is largely dependent on users' perceptions of information and their own information need situations"*. It is a conventional and personal concept assessed by the forensic science practitioner. Then, the probability of having different points of view among the forensic, police and legal actors is extremely high regarding the relevancy of multiple actions such as the nature of the data collection, the choice of analysis, the decision to use the information as intelligence and evidence and the way the evidence is used at court to support the prosecution's strategy. These differences require comprehensive and efficient exchanges between investigators around this concept to fully understand each other's motivation.

8 Free translation of « le plus rare et le plus ordinaire des défauts ».
9 For a complete presentation of the factors, see the research of Hazar (2014, 2016).

# THE RELEVANCY FROM THE STANDPOINT OF THE FORENSIC SCIENCE PRACTITIONER AND THE INVESTIGATIVE MAGISTRATE

As explained previously, relevancy is a conventional dimension depending upon the practice and culture of a specific group of persons, but also depending upon the context within which the reasoning takes place [6]. The recognition and the perception processes of relevant matters are person and environment dependant. With the multiple actors of the criminal justice system who take part in an inquiry, there is a large variety of interactions between individuals with different knowledge and professional cultures.

From a forensic standpoint, a dynamic communication is vital between stakeholders to ensure good conditions to search, detect, recognize and collect relevant physical traces. Indeed, Kind [2] emphasises how important it is for investigators and scientists to collaborate because of their complementary perceptions of an inquiry; but there is also a strong interest to focus on the collaboration between the forensic and legal actors. Thus, the attention is given to the duo played by the investigative magistrate and the forensic science practitioner.

In the European inquisitorial system, the instructive magistrate plays a major role regarding the evaluation of the forensic clue admitted as scientific evidence in court. The magistrate leads the investigation and is in charge of gathering any relevant information that might help her to charge or exonerate any suspected person. Her mission is to find the truth. She works with relevant facts. She has a complete overview of the case by being the interface with law enforcement, scientific experts but also victims and suspects. More specifically in the Swiss criminal law procedure, the investigative magistrate also supports the prosecution during the judgment phase. The magistrate assumes two different missions: the investigation and the prosecution.

*"Investigator: at some point, that's why it gets interesting to have the prosecutor in theses large cases. Because you start to discuss about your relevancy, we will say scientific, and then, she will bring a relevancy I'll call legal [...]".* Extract of an interview conducted by the author for her research [6].

The Swiss forensic investigator was explaining the difficulty he faced when it came to relevancy assessment in complex criminal cases and the importance of taking into account the perspective of the instructive magistrate to strengthen the investigation process. He distinguished a forensic and a legal relevancy, showing different, but at the same time complementary perceptions of the same dimension that could be useful to conduct a criminal case.

One of the examples provided during this interview by the forensic officer was about the relevancy of carrying out the collection and analysis of gunshot residue (GSR). For the case, one of the concerns was to determine the position of the protagonists during the shooting while the victim was driving his car, with the front side window opened. Based on the analysis of the GSR, the forensic investigator knew he would not be able to infer if the shot was fired from the outside of the car or at the edge of the window car driver. He firstly decided that the GSR analysis was not relevant and decided not to collect the physical traces for the analysis. But, the investigative magistrate asked him to do it. From a legal perspective, the collection of the traces was relevant to him later on. Regardless of the outcomes of the analysis, the leading magistrate would be able to answer the Defense's question, proving that they considered every option at the crime scene, even if the analysis was expected to provide unsignificant results due to strong scientific limits caused by case's conditions. By doing so, the prosecutor overcomes the concern posed by the doubt principle, that could weaken her position and benefit to the accused.

Discussing their complementary perceptions of the case and expectations from the forensic outcomes could be a strong asset for the investigation to carry on. For this purpose, the relevancy dimension appears to be a vector of communication to crystallise such exchanges from the starting point of the investigation. There are several situations where the relevancy dimension could be discussed to strengthen the investigation phase and to help prevent bias.

Going back to the previous figure showing basic stages of the relevancy assessment of a physical trace, there is a strong interest to discuss the nature of the clue from a legal and forensic standpoint for instance. At this stage, it is a necessity for the leading magistrate to understand the process of recognition and collection of relevant physical trace at the scene. The search and collection of relevant physical traces by the forensic officers depend on the nature of the case and the questions to solve, the latter being strongly influenced by the parties' positions. Then, to guarantee an investigation in a balanced way, questions from both sides could be anticipated. Such approach could be discussed with the leading magistrate, who also acts as a prosecutor later on at the tribunal. A good example of such discussion around the relevancy concept is about the touch DNA trace. To find the touch DNA of a main suspect at the scene does not mean that the contact trace is directly relevant to the case at hand and will incriminate the suspect. The trace might find some legitimate cause to its presence, such as the suspect is familiar to the place. The conundrum of the touch DNA lies on the fact that the nature of the source and the activity at the origin of the questioned transfer or contact between a suspect and a victim are not known, as it could be easily inferred from traces of saliva or sperms for instance. This is where considering the defendant and prosecution positions might have a strong impact on the relevancy assessment of the traces collected. This could be discussed between the instructive magistrate and the forensic science practitioner to fix a strategy regarding the search and collection of traces at the scene, based on both sides' propositions.

Also, the shift of the leading magistrate from the investigative position to the prosecution's one might interfere at some stages of the enquiry, mostly when the magistrate is in charge of deciding what pieces of evidence might be relevant or not. Some bias could happen when it comes to impartially gathered evidence. Such situation might not guarantee the right conditions of a fair trial [1].

For the forensic science practitioner, her culture and logic focus on the relevant physical traces, on making them speak, and aiming at inferring the cause of their presence or absence within a definite context. The forensic officer uses physical traces and not facts provided by parties, at the difference of the leading magistrate. The discussion about the forensic and legal relevancy should be of interest between the investigation stakeholders to ensure a more balanced investigation work, refraining from potential bias where confirmatory evidence could only be considered as relevant during the investigative phase.

## CONCLUSION

There is a strong interest in the criminal system to acknowledge the importance of the assessment of relevancy. From the scene to the court, the understanding of the reasoning process that pertains to this evaluation is part of a control process of the information that will be used to support judiciary decisions.

Investigation is a complex process, where the various perceptions of what is relevant for the various participants and their heterogeneous interests could be a strong asset while processing and investigating the scene.

Discussing relevancy themes between the main actors of the enquiry could be fruitful. Used as a vector of communication, it could open new leads for the investigation and strengthen the investigation process. Also, questioning dimensions such as the question of relevancy will reinforce the underpinnings of forensic science and help define it as an independent discipline with its own culture among the criminal sciences field.

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# ARE MEDIATION AND RESTORATIVE JUSTICE PROGRAMS SUITABLE FOR ADDRESSING PROBLEMS BETWEEN POLICE AND ETHNIC MINORITIES? (THE FOCUS WILL BE ON COMMUNITY-BASED ACTIVITIES AND POLICE-MINORITY RELATIONS REGARDING THE COREPOL PROJECT)

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**Abstract**: Hungary is suffering from large number of ethnic-based conflicts of which the majority involves the Roma people. It is a serious problem so we must always keep in mind the special profile of the Faculty of Law Enforcement at NUPS and the expectations of students considering their future professional status. Criminal justice should serve justice for those involved in the conflict, whether the offenders or the victims, so that the norm itself and its moral contents are strengthened. It is realised that the perspective of **Restorative Justice** is a suitable and effective guide to criminal policy reform and the restorative justice creates a closer link between attitudes based on ethical or penal law considerations. The concept of RJ has been applied successfully by Anglo-American research in relation to police-minority conflict.

It aims at repairing the relationship between the offender, the victim and the community involved. Only when citizens have trust in police and confidence that they are doing professional and fair police work, police are supplied with necessary information and support by those they serve.

The proposed presentation will answer the question of how better police-minority relations can be achieved in the context of European democratic policing. It will determine the extent to which restorative justice is presently used and how it can be made suitable to improve police minority communication and interaction.

**Keywords:** policing, ethnic minorities, the Roma, restorative justice, mediation

## ARE MEDIATION AND RESTORATIVE JUSTICE PROGRAMS SUITABLE FOR ADDRESSING PROBLEMS BETWEEN POLICE AND ETHNIC MINORITIES? (THE FOCUS WILL BE ON COMMUNITY-BASED ACTIVITIES AND POLICE-MINORITY RELATIONS REGARDING TO THE COREPOL PROJECT)

In teaching a ***Mediation and Restorative Justice course*** at the Faculty of Law Enforcement of the National University of Public Service I must always keep in mind the special profile

of the Faculty and the expectations of students considering their future professional status. Our teaching materials discuss in great details the prejudice and the views held against the minorities within the police. Criminal justice should serve justice for those involved in the conflict, whether the offenders or the victims, so that the norm itself and its moral contents are strengthened. Furthermore, it should, at the same time, fulfil its preventive objectives, namely to contribute to the prevention of the emergence of similar conflicts and the possibility of repeated victimisation.

Police mediation is a new instrument, which includes professional conflict resolution into police work. It has proven to have a strong impact on crime prevention through solving or significantly calming down conflicts in police cases. A high degree of satisfaction and an increased feeling of personal security on the part of the conflicting parties themselves can be achieved and according to the parties in conflict, the esteem of police and police work is significantly enhanced after mediation. The systematic use of it, alongside usual police work, is a logical step in preventative security measures and should be part of modern policing.

## DEFINITIONS OF MEDIATION AND RESTORATIVE JUSTICE

**Mediation** connected to Restorative Justice is still often the subject of discussions. According to the Council of Europe, mediation in general can be described as follows: *"The term 'mediation' in a general sense (i.e. not specific to a penal context) is normally reserved for a process of conflict resolution, involving intervention by an impartial third party with the intention of encouraging voluntary agreement between the parties. In the Recommendation, mediation in penal matters is defined as a process whereby the victim and the offender can be enabled, voluntarily, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party or mediator. The reference only to the victim and the offender as parties does not exclude other persons (legal and physical) participating in the mediation".*[1]

**Mediation** can be considered as a ***common technique*** in different consensual models of conflict resolution. This consensus of movements in conflict resolution *"has been variously described as community justice, Restorative Justice, informal justice, etc., but in practice it is most often referred to by means of the technique which most models have in common, which is 'mediation' as distinct from legal adjudication".*[2]

However, attention should be paid to the fact that this statement primarily refers to the European context.

The conflict resolution based on the concept of restorative justice. *"The foundation of the restorative justice model lies with the idea that crime causes harm and offenders should be held accountable for, and work to repair the damage their actions have caused (…). While victims may bear the direct consequences of a criminal act, harmful acts also disrupt the web of connection and care between individuals in the larger community."*[3] *It is not a narrowly defined set of instruments, it is normally not directly integrated into the Criminal Justice System, and it is meant to solve conflict between the "stakeholders" (offender, victim, peers, and community) more effectively.*

1 Council of Europe, Committee O. M. 1999. Mediation in Penal Matters: Recommendation N° R (99) 19 adopted by the Committee of Ministers of the Council of Europe on 15 September 1999. and explanatory memorandum. Available: http://www.mediacio.hu/files/EU_dok/CoE_R(99)19_mediation.pdf [Accessed].
2 ibid.
3 Elis, L. (2005) "Restorative Justice Programs, Gender, and Recidivism" Public Organization Review 5, p.

*"Restorative Justice is an approach to problem solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies and the community. Restorative Justice programmes are based on the fundamental principle that criminal behaviour not only violates the law, but also injures victims and the community. (...) Restorative Justice is a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders. It is an evolving concept that has given rise to different interpretation in different countries, one around which there is not always a perfect consensus."*[4]

Restorative justice programs under the auspices of criminological research were first carried out in parts of Australia. They were meant to address and mitigate the overrepresentation of Australian Aboriginal population in Australian prisons. This situation was also prevalent in New Zealand for the Maori population. Historically restorative justice has emerged from tribal/clan justice practices of indigenous people in North America and Oceania. You can read about the success of the project and the reduced pressure on the respective justice systems in the works of Braithwaite.[5]

## HISTORY: THE BEGINNINGS OF THE COREPOL PROJECT

The preliminary steps of the **COREPOL** project (*"Conflict resolution, mediation, restorative justice, and police activity among ethnic minorities in Germany, Austria and Hungary")* No. 285166, FP7-SEC-2011.6.5-1 were taken in summer 2010, when Prof. Dr. Joachim Kersten, the Head of the Department of Social Sciences at the German Police University of Münster proposed to start a joint project between Hungary, Austria and Germany funded by the European Union.[6] In Western European countries that time, the main problem was and still is now, the high volume of new migrants while Eastern European countries are struggling with Roma-police conflicts.

The political dimension of police-minority relations is obvious in all three countries under comparison. In Germany, the debate about the integration of migrants from Turkey and Middle-Eastern countries has reached a new stage of public controversy. Xenophobic attitudes and anti-Islamic sentiments have increased, and so have right-wing demand for "a strong leader". In Austria accusations of "racism" have surfaced for police officers, and the new government in Hungary is apparently taking the Roma problem very seriously while prohibiting vigilante activities by right-wing groups in the Roma communities with the necessary eloquence.

It is a common feature of the police's abuse of force (ethnic or racial profiling) that it undermines the democratic accountability of the police and the image of fair democratic policing. Only when citizens have trust in police and confidence that they are doing professional and fair police work, police are supplied with necessary information and support by those they serve. Minority neighbourhoods and communities are often over- and under-policed at

4 "Handbook on Restorative Justice Programmes" United Nations Office on Drugs and Crime, 2006.
5 Braithwaite, J. 1989. Crime, Shame and Reintegration. Cambridge University Press, Kersten, J. 1991. Beschämung, Verantwortung, Kontrolle – Japan als Referenzpunkt kulturvergleichender Forschung zur Kriminalitätskontrolle. In Monatsschrift für Kriminologie und Strafredchtsreform 75, 342-357. Kersten, J. 1993. Street youths, bosozoku, and Yakuza: Subculture formation and societal reactions in Japan. In Crime & Delinquency, 39, 277-295.
6 The partners were the following institutions: The German Police University (DHPOL, Germany) from where Prof. Dr. Kersten was delegated as a project coordinator, the Police College (RTF, Hungary, Faculty of Law Enforcement of the National University of Public Service), Science Academy of Safety, Science and Research Institute (.SIAK, Austria), Institute of Sociology of Law and Crime (IRKS, Austria); and the European Research Services Inc. (ERS, Germany).

the same time. Because of dense living situations and prevailing problems of street crime and drug dealing such areas are likely candidates for frequent patrols and arrests.[7]

In all three areas of difficult police-minority relations there were established traditions of policing minorities in the field of crime, corrections, and victimization. Anglo-American Research indicates that the practice concept of restorative justice (RJ) has been used to successfully to deal with police-minority conflict and related problems.

In regard to the European cooperation, a workshop titled "Anti-Discrimination, Diversity and other Fundamental Rights Topics in Police Academies: From Theory to Practice" was held in October 2010, organized by the Association of European Police Colleges, CEPOL, focussing on practises on how human rights provisions can be integrated in police training. During this workshop, one of the presenters mentioned "restorative justice program" as a way of dealing with domestic violence offenders. The chairperson's question whether the concept of Restorative Justice was familiar among the participants revealed that more than half of those listening (senior police, academics at police colleges and the like) had never heard of it, so it had to be explained to them by Professor Kersten. He was working at the Criminology Institute of Melbourne University in the late 1980s on the theory of "***re-integrative shaming***" – which is a corner stone of what later developed into Restorative Justice.

The idea of "re-integrative shaming" was based on the assumption that Japan's extremely low (reported) crime rates were mainly the result of the country's tradition as a ***"shame culture"*** (versus Western "guilt cultures"). In parallel Braithwaite developed a "shaming theory" and found that New Zealand's Maori communities turned away from the dominant Anglo Common Law tradition of criminal justice. These communities re-enacted tribal forms of conflict resolution in the areas of domestic violence and juvenile violence such as family conferences (conferencing). In the course of the development of restorative justice in the United States and Canada similarities to indigenous law practice/conflict resolution were rediscovered, e.g. among the Navajo, First Nation people of Canada, and other Native American people.

## ROMA IN EUROPE AND IN HUNGARY

The Roma in the enlarged Europe are facing extraordinary complexity of challenges. Unlike other minority groups, they have no historical homeland and live near in every country across Europe. They are extremely diverse with multiple subgroups based on language, history, culture and religion. Estimates of the size of the Roma population diverge widely. Census date is widely debated, since many Roma do not give a declaration about their ethnic background. The other sources which are most reliable, are the sociological surveys carried out by scholars. The governments use this kind of research as building blocks for their policies. By most estimates, the share of Roma has grown to between 6 and 9 percent of the population in Hungary, Bulgaria, Romania, FYROM and the Slovak Republic.

According the World Bank's report, in total, about 9 million Roma live in Europe - population equal to that of Sweden or Austria (according to the Research Platform "Human Rights in the European Context" this number is about twelve to 15 million). A recent study of the EU Fundamental Rights Agency showed that the majority of Roma in the EU are exposed to discrimination in all areas of life. The EU launched several initiatives in response to better guarantee the rights of Roma.

7 Kersten, J. (2009 mit Reza Ahmari), Die Reichweite von Interkultureller Kompetenz, in: Polizei und Fremde – Fremde in der Polizei, hrsg. von Karlhans Liebl. Studien zur Inneren Sicherheit. VS Verlag für Sozialwissenschaften, S. 239-242.

Hungary is suffering from large number of ethnic-based conflicts of which the majority involves the Roma people. Their estimated number by far exceeds that of other minority groups. Estimates go from 4-6% to up to 7-10% of the total population, which means from 400, 000 to up to 1 million Roma people are affected. During the national census in 2011, when citizens were asked about national affiliation on an anonymous basis, 315,583 people defined themselves as Roma but in 2001 only 190, 046. The latest sociological research shows that approximately 8% of the population are Roma.

The Roma's situation is quite different from that of other 12 minorities living in Hungary. They do not have a mother state, so they cannot get financial and intellectual help from their home country. The majority of them lost their languages and speaks only Hungarian.[8]

In previous decades, especially during socialism, industrial work or even full-time work in agriculture provided the basic livelihood. A general aim for the members of this group was to define themselves first and foremost as Hungarian citizens rather than refer to their "Roma descent." The Roma living in isolated and segregated settlements wished to move to villages and towns and live among non-Roma, and they were offended when others called them Roma [*gypsy*]. Despite all their efforts, they did not succeed in moving to prosperous villages to live among the non-Roma. Everywhere they were forced to face the social consequences of their ethnic background. The assimilation attempts of Hungarian speaking Roma were only partially successful. Even in the communities where the men used to work in industry or in agriculture, buying and selling and street-vending became possible livelihood solutions. From the second half of the 1980s, many Roma - above all unskilled workers and labourers - became unemployed and lost their stable and secure livelihoods. Many Roma who had already attained a lower middle-class quality of life, were forced once again into casual work and insecure livelihoods, for the Roma communities the security of employment and the security of the family have become the purpose of life. The Roma in Hungary are severely affected by poverty - seven times more than non-Roma. They are marginalized and discriminated against in their access to education, housing and employment. Romani children are frequently placed in special education designed for children with mental disabilities and are segregated in separate Roma-only classes and schools. Discriminatory rules and practices of local authorities towards Romani families impede their access to social housing. The unemployment rate of the Roma is estimated to be 70 per cent, more than 10 times the national average.

The number of ethnic-based conflicts has been drastically increasing in Hungary, mostly against the Roma people. There were eight similar attacks against the Roma people between July 2008 and August 2009 in North-East Hungary. The attackers used guns, grenades and petrol bombs in these assaults on the Roma over a 14-month period. Six people died, 55 were seriously injured. Among the victims there was a couple in their forties, an elderly man, a father and his son, and a single mother with a 13-year-old daughter. In one attack a house was set ablaze and as the Roma father and his four-year-old son fled they were shot dead. Fear spread to other villages and other counties. The Roma people were afraid everywhere, they felt that the police were not able to protect them.[9] Life sentences were handed down to three perpetrators, the fourth defendant got a 13-year prison sentence.

8Three subgroups among the Roma population can be identified: the largest is the group of Hungarian–speaking Roma (70-75%). There are also Vlach-Roma, who speak Romani (15-20%) and so called Beash-Roma, who speak the Beash language, an archaic form of Romanian (10%).

9 On that topic see the movie of Bence Fliegauf "Just the Wind" and a documentary movie of award-winning filmmaker Eszter Hajdú: "Judgment in Hungary" https://www.youtube.com/watch?v=BGDt6HRZYtk The trial of four serial killers charged with murder on racial grounds started in Budapest in March 2011 and lasted over 30 months (167 days). The film documents the trial from the very first day until its end in August 2013.

Within Europe, the Hungarian Roma can be considered one of the most apparent subjects of discriminatory ethnic profiling by the police. Law enforcement officials need to take steps towards increasing the confidence of hate crime victims, so that they in turn feel safe enough to report such crimes to the police. That can only be done if the Roma groups are assured that thorough investigations are made in instances of police ill treatment of Roma. To bridge this trust gap, it is crucial for the police to receive adequate training on community policing that can help them to handle conflict resolution at local levels.

## THE COREPOL PROJECT

The aim of the project is to enhance the cooperation of three EU countries (Austria, Germany and Hungary) concerning the training institutions of police officers. The main scope of the project was to examine how police can effectively use mediation, restorative justice in law enforcement, how this method can be used in conflicts between minorities (Turks in Germany, Africans in Austria and the Roma people in Hungary). We had anticipated and we were eager to prove that tools of restorative justice can improve the relations between the majority and minorities everywhere from school to the local neighborhood and in the entire justice system.

We were convinced that the vulnerability of both the majority and minorities can be effectively treated with understanding and humane methods of conflict management and only this can lead to peaceful society. According to various surveys, the majority of the society thinks that the role of the government is to protect the social order, and it has to ensure that citizens adhere to the norms of social coexistence.

It is also agreed that state must act strictly against perpetrators of serious crimes, nevertheless, alternative solutions should be sought against those who committed less serious offenses.

Nowadays RJ as a new alternative method of conflict resolution and mediation is becoming well-known in several countries. More and more people are aware that his method is faster, cheaper and it can significantly reduce the Court's workload and it can be successfully used for prosecution to terminate the judicial process, the victim restitution can help to reduce the pain and losses due the committed crime and the parties can feel the more personal treatment and can accept the verdict.

One of the aims and a major task of the project was to carry out a research focussing on professional education of key competencies such as ***empathy, responsibility, tolerance, problem solving, confidence in professionalism, efficiency, collaboration, openness, respect, and the recognition of different values, communication skills and creativity***. All of these skills are essential for those working in law enforcement and highly essential in any democratic country throughout the European Union.

The project received an EU grant in November 2011 for a duration time of 36 months, i.e. it was running from January 1, 2012 and terminated on December 31, 2014**.**

There were six work-packages (WP) defined according to the main tasks stated in the project. The responsibility of the ***WP1*** was to coordinate the scientific work which had to be ensured during the entire project period. The task of the ***WP2*** was to collect literature on restorative justice, to carry out a comparative analysis of the theoretical and practical approach by interviewing experts. The ***WP3*** contained mainly field work, which was actually the most important part of the project. The responsible manager for WP3 was the Hungarian partner focusing on minorities and carried out related research including different participating countries. The ***WP 4*** was to investigate the role of the police, to prospect and explore the du-

ties of the police and to provide comparative analysis of the activity. The ***WP5*** focused on the dissemination of the results. The data to be collected was about the names of the researchers and places, times and what scientific conferences and meetings attended, what publications have appeared on the subject and what our plans are for the future. The ***WP6*** included technical, financial, administrative and ethical responsibilities, which are relevant for the project and had to be maintained.

## THE FIELDWORK RELATED TO WP3, PROBABLY THE MOST IMPORTANT PART OF THE PROJECT

The results were obtained by the Hungarian team according to the interview outlines which were accepted by all the participants and prepared according to the interview outline agreed by all the other parties of research in Germany, Austria and minority problems in Hungary regarding the representation of a comprehensive, multi-perspective viewpoint.

In these three countries, the police conduct on minorities is one potential reason for the growing political and ethnic conflicts. The work package focused on a specific analysis of the situation concerning three targeted minorities, examining the relationship between the law enforcement and minorities for the participating countries of the study. The primary objective of the consortium was to gain information from the results of field research concerning restorative justice programs effectiveness for these minority populations, and to find out whether the police units engaged in these programs or not.

In each of the three countries the same interviews were prepared and issued. In Hungary, the interviews were administered in six villages of Nógrád County.[10] In addition to these villages, some urban areas of Miskolc and the 13th district of Budapest were researched. In Germany Berlin, Hamburg and Mannheim cities were interviewed while in Austria Vienna and Graz were investigated.

Firstly the interviews with the members of ethnic minorities focused on everyday life, and the questions about security and protection were asked. We inquired about the family's situation, how many people lived in the same household, what school qualifications the members of the family had, whether they were employed, how they spent their free time, how safe and protected they felt in their environment and we asked the interviewees about their conflicts and treatments.

Later we asked about their experiences with the police, the image of the police, personal experiences, potential conflicts and asked whether they could propose any solution to the problems.

We tried to get primary information from the local police representatives, officers and non-commissioned officers, local authorities and members of the local governance systems using qualitative interviews, who could be considered as a participating party dealing with minorities within the administrative authorities, for example, educational institutions, representatives of non-governmental organizations, etc.

The main problem was to find out whether the attitude of the police was acceptable or not and the main focus was to find out what comes from experience.

The outline of the police interview first contained questions about the professional situation (what his rank was, for how many years the officer was working in the body, what responsibilities the officer had and when and how he had direct contact with the public). It was

10 Mátraverebély, Bátonyterenye, Mátraterenye, Sóshartyán, Hugyag and Drégelypalánk

followed by the questions concerning the perception of minorities, professional experience, the most typical cases, the procedure and the progress of the conflict, what measures and solutions were used in these situations, etc.

The WP3 gave an overview of the socio-economic status of minority communities, described the way in which the law enforcement institutions were managed and we focused on the methods that were used by the law enforcement agencies related to restorative justice while dealing with minorities: if the police were involved in the existing programs of restorative justice, and if so, what experiences they had.

*The following three summary tables show the numerical data obtained from the interviews with minorities, police and representatives of various organizations in Hungary, Austria and Germany.*

**Overview Data Collection Hungary** COREPOL

| Spatial settings | Minority | | Police | | Other stakeholders | Σ (no double-counting) |
|---|---|---|---|---|---|---|
| | Persons from minority in total (men/women) | Thereof Representatives of Minority Organizations | Police officers in total (men/women) | Thereof in leading position | | |
| **Nograd county** | **13** (7/8) | 3 | **10** (6/1) | 1 | **3** | **26** |
| **City of Miskolc** | **11** (7/6) | 2 | **10** (5/3) | 2 | **3** | **24** |
| **City of Budapest** | **10** (3/5) | 1+1 | **11** (7/3) | 3 | **9** | **30** |
| **Σ** | **34** | 6 | **31** | 6 | **15** | **80** |

**Overview Data Collection Austria** COREPOL

| Spatial settings | Minority (=M) | | Police | | NGOs | Politicians/ representatives of authorities | Σ (no double-counting) |
|---|---|---|---|---|---|---|---|
| | Persons from minority in total (men/women) | Thereof Representatives of Minority Organizations | Police officers in total (men/women) | Thereof in leading position | | | |
| **Vienna** | **21** (12/9) + 3 women with children with one African parent | 6 | **24** (16/8) *(incl. 2 M)* | 8 | **12** *(incl. 4 M)* | **3** | **57** |
| **Graz** | **20** (14/6) | 4 | **17** (14/3) | 7 | **6** *(incl. 2 M)* | **3** *(incl. 1 M)* | **43** |
| **Σ** | **41 + 3** | 10 | **41** | 15 | **18** | **6** | **100** |

**Overview Data Collection Germany** COREPOL

| Spatial settings | Minority | Police | | NGOs | Politicians/ representatives of authorities | Σ (no double-counting) |
|---|---|---|---|---|---|---|
| | Persons from minority in total (men/women) | Police officers in total (men/women) | Thereof in leading position | | | |
| **Berlin** | **8** | **7** | 1 | **4** | | **19** |
| **Mannheim** | **7** | **8** (7/1) | 3 | **2** | **1** | **17** |
| **Hamburg** (supplemental) | **7** | **5** | - | **4** | | **16** |
| **Σ** | **22** | **20** | 4 | **10** | **1** | **52** |

The joint research results on the practices of the three participating countries have been presented in various scientific studies, papers, reports and interviews and they were summarized at workshops, national and international conferences. Publications have been prepared about the results using the methods of other social sciences (history, law, sociology, communication, political science, criminology) in such a way that these could be used in academic curriculums as well.

Our intention was to prove that the restorative justice approach is a rather complex system, whose primary aim is to restore the damage created by criminal offense. Mediation is an existing judicial approach in Europe and it has been increasingly used in practice to negotiate the case and solution between victim and perpetrator. The mediation process represents a new kind of judicial culture in which the parties' main goal is not merely a victory over each other, but the final aim is to reduce tensions and to understand each other, build trust and respect and to seek a joint solution acceptable to all.

This is an alternative dispute resolution method which transforms the relationship between the parties, providing more opportunities to understand each other with a form of a dialogue, which is extremely important in the conflicts where the parties need to work together to resolve the dispute. Mediation can be considered as a "success sector" and it is an area where the government does not act like an authority, but only supports and encourages partners to enter the conflict management process. This is why the project participants considered this as an essential method and urged that more and more people become familiar with this method both in theory and practice.

As the results of the project there were several successful mediations, the community cohesion has been significantly strengthened according to the local people, and there is now a group of freshly trained and committed local people, who are willing to help their community as mediators and to volunteer in other community-based actions.

***The research leading to these results has received funding from the European Union Seventh Framework Program (FP7/2007-2013) under grant agreement 285166 (COREPOL) www.corepol.eu***

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# FUNDAMENTAL PRINCIPLES OF CRIMINAL PROCEDURE AND SIMPLIFIED FORMS OF PROCEEDINGS IN CRIMINAL MATTERS

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**Abstract**. *The paper discusses the modalities of simplification of procedural forms, established to achieve the objective of expediting criminal procedure. That can be obtained by the simplification of the general procedural form or by the introduction of the specific simplified procedural forms. The undertaken reform of Serbian criminal procedure represents the continuation of the tendency of developing specific criminal procedures, which in this paper are observed from the right to trial within a reasonable time point of view. The institutionalization of the regime of exempting certain procedural principles in the specific criminal procedures is a method suitable for making these procedures shorter, faster and more deformalized. Redefinition of basic principles reflects on the regulation and coherence of the structural elements of the general criminal procedure, which is emphasized when one of the basic principles is being limited or abolished. Since negative effects of the regulation of the basic principles are transferred from the general to the specific forms of criminal proceeding, the author critically analyzes the abolition of the principle of truthfulness, as well as the degradation of the principles of directness and contradiction, which resulted in jeopardizing right to a fair trial.*

**Keywords:** *criminal procedure, basic principles of criminal procedure, simplified procedural forms, directness principle, contradiction principle*

## ON SIMPLIFICATION OF PROCEDURAL FORMS

Simplified forms of proceedings in criminal matters have their origin in the need for rationalization of criminal proceedings which is more and more evident every day by making itself felt in the reforms of criminal procedure laws governments have been undertaking with increasing frequency. In which direction the said rationalization will move depends on the causes and factors which create the need for it. If the causes of a slow criminal justice system lie in the statute itself, the way out of it should be looked for in its reform. An increase in the number of new cases referred to the courts, which has not been accompanied by a corresponding increase in the number of judges and prosecutors, as well as the existing formalism whose purpose is to provide better protection of defendants are offered as arguments in favour of simplification and acceleration of proceedings.[2] In a joint action of its member states to speed up and simplify the working of the criminal justice system, the Council of Europe has also taken as its starting point a rise in the number of criminal cases handled by courts, in particular those which carry minor penalties, as well as the opinion that delay in resolving crimes brings the justice system into disrepute and affects the proper administration of

1 E-mail: vojadj@gmail.com
2 Pradel, J., Droit pénal comparé, 2nd edition, Paris, 2002, p. 603.

justice.[3] Frequently, the duration of criminal proceedings is the main criterion for evaluating how successful judicial authorities are in their work and a synonym for the premise on the "slow judiciary", "slow justice", too much time which passes from the moment a crime is committed until "its perpetrator has received a fitting punishment".[4]

How much significance is attached to justice administered without delay is expressed in all the international documents on human rights, under which *the right to a trial without undue delay (within a reasonable time)* is included in the fundamental human rights. Thus, the European Convention of the Protection of Human Rights and Fundamental Freedoms also establishes in its provisions which govern the right to a fair trial (Article 6, paragraph 1) the right to a trial without undue delay.

The acceleration of proceedings is both legal and political problem,[5] so it is understandable that the Committee of Ministers of the Council of Europe has adopted a recommendation on the simplification of criminal justice, which not only advises /the member States/ to resort to the principle of discretionary prosecution but it also sets out these guidelines on how to remedy delays in the administration of criminal justice in proceedings for minor offences which occur on a massive scale: the so-called summary proceedings should be used; out-of-court settlements should be applied as an alternative to trials; the so-called simplified proceedings should be used; ordinary judicial proceedings should be simplified - Recommendation No. (87) 18.

Pursuant to these recommendations, the acceleration of criminal procedure may move in two directions, either towards of the simplification of the ordinary form of criminal proceedings (by implementing measures for making individual stages and phases of those proceedings more simple and flexible) or towards developing special simplified forms (then, as a rule, individual phases or stages are omitted or some instruments of out-of-court resolution of criminal matters are resorted to - the diversionary method).

The lawmakers move away from the ordinary and opt for special proceedings whenever they aim to achieve expeditiousness in trials for certain criminal offences.[6] Recently, the simplification of procedural forms has turned towards avoiding trying cases at main hearings by moving the centre of adjudication to some earlier stage in the proceedings. It was typical of older forms of simplified procedure that stages which preceded the main hearing were omitted as was the case with our summary criminal proceedings in which there was no investigation.

It has been noted that contemporary legislatures are characterized by frequent reforms based on multiplication of special, simplified forms of criminal procedure.[7] However, the aspiration to simplify procedural forms may not cross the lower limit below which a process does not represent a stable system of guarantees for achieving a due process of law and a proper decision on the merits.[8]

3 See the Preamble to the Recommendation No. R (67) 18 of the Committee of Ministers of the Council of Europe to member States concerning the simplification of criminal justice (adopted by the Committee of Ministers at on September 17, 1987 at the 410 meeting of Deputy Ministers).
4 Radulović, D. Efficiency Of Criminal Procedure And Its Influence On Crime Prevention, in Realistic Possibilities Of Criminal Legislature, Belgrade, 1997, p. 159.
5 Vasiljević, T., Means For Expediting Criminal Procedure, Collection of Papers of the Faculty of Law in Novi Sad, 1966, p. 141.
6 Vasiljević, T., Means For Expediting Criminal Procedure, Collection of Papers of the Faculty of Law in Novi Sad, 1966, p. 61.
7 Brkić, S., New Procedural Forms In Criminal Procedure Code, in Place Of Yugoslav Criminal Law In Contemporary Criminal Law, Belgrade, 2002, p. 218.
8 For more details on the simplification of procedural forms, you can consult: Grubač, M., New Provisions On The Main Hearing In The Criminal Procedure Code Of Decembre 12, 1976, Yugoslav Criminology And Criminal Law Review, 2/1987, pp. 467-514; Bejatović, S., Simplified Criminal Proceedings And

There have been more and more new models of simplified criminal proceedings in comparative law, heterogeneous and distinguished from each other by the manner in which they have been structured. Their underpinning idea is that the simplification of procedural forms[9] and adapting them to the subject matter of court proceedings will lead to faster, more rational and efficient trials. Following the said trend and modeled on the solutions from comparative law,[10] two completely new special criminal procedures were introduced in Serbia by the 2001 Criminal Procedure Code: a) sentencing procedure prior to the main hearing and b) procedure for imposing a sentence and suspended sentence by an investigating judge. Those were radical and bold legislative solutions, based on the idea that procedural efficiency may be achieved by preventing all the proceedings which have begun from reaching the stage of the main hearing by definitely resolving the subject matter of the proceedings at some of the earlier stages which came before the main hearing. Thus, the Court has been released from the needless and unnecessary burden of bringing each criminal matter to the main hearing. In such a manner, the postulate of the traditional hybrid type of criminal procedure according to which *there can be no adjudication unless the main hearing has been brought down.* Unlike summary proceedings, which are also built upon the idea of simplification of procedural forms from which the stage of investigation has been eliminated, the stage of the main hearing is avoided in these newly established special proceedings, which until recently would have been inconceivable for a trial in the civil law model of criminal procedure. Following modern ideas about possible models of rationalization of proceedings, Serbian legislators introduced another new form of simplified procedure by the 2009 Law Amending the CPC, namely the agreement on the admission of guilt. Simultaneously, an instrument of negotiated justice was thus adopted, which until recently would have been unimaginable in the hybrid model of criminal procedure. All those simplified forms of procedure, with the exception of the procedure for imposing a sentence and a suspended sentence by an investigating judge, are provided for in the new Code as well. Basically, previous legislative solutions have been kept and the scope of application of summary proceedings has been extended to include all the offences which carry the punishment of maximum eight years in prison, some provisions have been restructured, while some proceedings have been renamed.

## FUNDAMENTAL PRINCIPLES OF PROCEDURE IN RELATION TO SIMPLIFIED FORMS OF PROCEEDINGS

It is a feature of simplified forms of proceedings that they differ from the ordinary criminal proceedings in their structure which adapts to various reasons for simplification (nature and seriousness of an offence; complexity of the case and quality of evidence; defendants personality; parties' attitude towards the charges, such as defendants guilty plea or an agreement between the parties, etc.). Essentially, structural changes come down to the omission of individual stages or even entire phases (the investigation stage is omitted or the entire preliminary proceedings or even the trial, after which the procedure on legal remedy may also be omitted). Precisely the said "defectiveness" of structure requires that procedural stages and actions be linked with each other and that primary procedural functions be structured on fundamental principles of procedure which are differently applied. Since an explanation of how the fundamental principle of procedure correlates with the simplified forms of procedure is necessarily based and depends on how procedural principles and their function are conceived of and how

Tendencies In State Reaction To Crime, in Strategy Of State Reaction Against Crime, Belgrade, 2003; Đurđić, V., Actual Issues And Basic Features Of Principal Criminal Procedure, Yugoslav Criminology And Criminal Law Review, 3/1999, pp. 23-38.

principles are classified as fundamental and how their essence is defined. Firstly of all, those general notions will be briefly explained.

Considering that in the theory of criminal procedure law there is no generally accepted definition, an opinion can be deemed acceptable according to which the fundamental principles of procedure are conceived of as *general legal rules which are made through the synthesis of the rules of procedure from international or national law from which they emerge and focused on certain postulated social values to whose achievement the establishment of criminal procedure should serve.*[9] The function of procedural principles is divided between jurisprudence, legal policy, and practice of law. Jurisprudence endeavors to build a system based on theory and reduce a plurality of individual legal rules to a definite number of principles, a need that arises out of the economy of scientific thinking which requires that as many objects as possible are reduced to the same explanatory notion.[10] In respect of the lawmaker, principles are understood as his best choice of procedural institutes in the light of criminal policy, whereas in respect of the authorities in charge of criminal proceedings, they are understood as tools which help them interpret the regulations of criminal procedure law, especially when they include legal standards or legal gaps which need to be filled (Krapac, 2003,78).

In general, legal principles are distinguished from ordinary legal rules by the normative structure which is the basis for their application - a legal rule is applied either in its entirety or it is not applied at all (it may not be applied partially), whereas principles include a requirement that a social goal is achieved either fully or as much as possible (they are "optimal commandments" – *Optimierungsgebote*).[11] The said lack of definition of required conduct, due to which the principles are referred to as "optimal commandments", may lead to a conflict of principles which results in their limited implementation. This characteristic of legal principles in general, and thus of procedural principles as well, is revealed in particular in the realm of simplification of procedural forms.

In essence, the simplification of procedural forms includes three requirements, whose subject matter is different, but which are focused on the same goal. Namely, those requirements emerge as means of reaching one and the same goal - to establish a simplified form of procedure which corresponds to the reason for simplification. This involves: *the abbreviation* of proceedings which is achieved by omitting individual stages or entire phases; the *acceleration* of proceedings by setting or lowering time limits for taking procedural actions or on the duration of coercive measures; and making proceedings *less formal* (by dispensing with formalities or some guarantees).[12] A departure from the consistent application of certain procedural principles by setting up a regime of exceptions in special criminal proceedings has emerged as a particularly suitable method for achieving the said goal.[13] A general conclusion could be drawn from the above, namely that the application of certain fundamental principles characteristic of the ordinary form of procedure is limited in simplified forms so that they could be released from the burden of guarantees in accordance with the grounds for simplification and its manner and so that the purpose of introducing each simplified form of procedure could be achieved. It is not possible to lay down in advance a general rule based on which principles will be limited in simplified forms of procedure, but it seems reasonable that the purview of principles which dominate a stage or a phase which is omitted from the

9 Đurđić, V., Revision Of The Basic Procedural Principles On Which The New Serbian Criminal Procedure Was Built, Legal Word, 33/2012, p. 449.
10 Živanović, T., System Of Syntetic Legal Philisophy, 1951, p. 265.
11 Alexy, R., Rechtsregeln und Rechtsprinzipien, Archiv für Recht – und Socialphilosophie, Beiheft, 25/1985, p. 19.
12 Brkić, S., New Procedural Forms In Criminal Procedure Code, in Place Of Yugoslav Criminal Law In Contemporary Criminal Law, Belgrade, 2002, p. 218.
13 Vasiljević, T., Importance Of Speed And Causes Of Tardiness Of Criminal Procedure, Archive For Legal And Social Sciences, 2/1941, p. 96.

structure of a particular simplified form should be restricted. By way of example, the scope of the inquisitorial principle is reduced in those simplified forms from which investigation is omitted, while the purview of the principle of directness and the adversary principle is limited in simplified forms in which there is no main hearing.

Limited application of the fundamental principles of criminal procedure has relativized the optional character of those simplified forms whose initiation or completion depends on the will of the parties. The sentencing procedure prior to the main hearing, now, truth be told, wrongly renamed to the sentencing hearing,[14] commences at the motion of a public prosecutor, while a judgment of conviction is passed if a defendant agrees with the prosecutors motion for the type and extent of a criminal sanction (Art. 512 and Art. 517, Para. 2, item 1 of the 2011 CPC). Apart from this, defendants may prevent an already commenced sentencing procedure without a main hearing from being concluded and turn it into summary proceedings (in order for the main hearing to be held) by filing an objection to a judgment of conviction which has been passed because a defendant has failed to appear at a hearing (Art. 518, Para. 2 and 3 of the 2011 CPC).

Generally speaking, legal principles are not related to each other in a uniform manner and they may be either superior or subordinate to each other, they may exclude each other, they may partially overlap or there may be a lack of mutual contiguity.[15] These correlations also exist between procedural principles, both in the ordinary form of criminal proceedings as well as in the simplified forms and they may be useful when selecting the manner in which procedural principles will be transformed, a process which needs to lead to the integration of structural elements (stages and phases) making up the abbreviated structure of a simplified form of proceedings. What this means is that restricting the application of a fundamental principle will not necessarily result in favouring a particular fundamental principle or definitely imply restrictions on some other principle. Transformation of the fundamental principles of procedure in the process of simplifying procedural forms is only subject to the legitimizing grounds based on which a particular simplified form of procedure is established in the first place, whereas the said correlation between legal principles may be a valuable method for coordinating the fundamental principles of procedure while achieving the said goal. In brief, the fundamental principles of criminal procedure must be transformed in such a way as to serve the purpose of the simplification of procedural forms.

## TRANSFER OF NEGATIVE EFFECTS OF THE MANNER IN WHICH FUNDAMENTAL PRINCIPLES ARE STRUCTURED FROM THE ORDINARY FORM TO SIMPLIFIED FORMS OF PROCEEDINGS

Under the influence of various factors,[16] both legal and non-legal, principles are subject to change, their scope and subject matter changes, as well as the reasons which justify them and purposes they serve, or one set of principles is exchanged for another - therefore, they are characterized as relative.[17] At the normative level, the changes of fundamental principles are

14 Đurđić, V., Redifining Classical Procedural Notions In The Draft Of The 2010 Criminal Procedure Code, Criminology And Criminal Law Review, 2/2010, p. 19.
15 Penski, U., Rechtsgrundsätze und Rechtsregeln, Juristenzeitung, 3/1989, p. 256.
16 See: Grubač, M., Principles Of Criminal Procedure And Their Transformation, Yugoslav Criminology And Criminal Law Review, 1-2/1995, p. 72.
17 Vasiljević, T. Transformation Of The Criminal Procedure Principles, Annals of the Faculty of Law in Begrade, 3-4/1969, p. 300.

manifested in the course of legislative reforms as either widening or restricting the scope of application of a particular fundamental principle, as their new redefinition in the statute, or even the abolishment of a particular principle.

Each of the said changes in the fundamental principles has an impact, either to a lesser or greater extent, on the manner in which the ordinary form of criminal proceedings is structured, while their effect on the manner in which structural elements of the proceedings are organized and interconnected is particularly prominent when it comes to limiting and setting aside one of the fundamental principles. Abolition of a principle which is applied in the ordinary form of proceedings and classified as a fundamental principle according to the doctrine, as was done by the 2011 Criminal Procedure Code, has repercussions on the restructuring of the entire ordinary criminal proceedings, in particular if it concerns the principle which is deemed (or used to be deemed) to dominate all the other principles, such as the principle of the establishment of truth. Numerous questions have arisen due to the abolishment of the principle of establishment of truth from criminal proceedings: If truth about a criminal incident is not established in criminal proceedings, how can the rules of substantive criminal law be correctly applied to any given case, which is a generally accepted purpose of criminal proceedings? Since in a country in which the "rule of law" is upheld, no one may be punished unless it has been proven with certainty that they are subject to the State's right to sanction, on which will the State's ius puniendi be based once the principle of truth is abolished and the Court is released from the duty to prove all the legally relevant facts? It is a crucial question, from the aspect of both legal theory and policy, but also an ethical and philosophical issue for which Serbian lawmakers have not provided an answer. Ultimately, should the State entrust the parties with the establishment of facts on which the public interest to punish an offender is based or is it a civilization approach to rely on an autonomous, independent, impartial and competent authority such as the Court?[18]

The fundamental principles of procedure also apply to simplified forms of criminal procedure, unless their application has been restricted or abolished by special statutory provisions governing the given simplified proceedings. The said equally applies to the effect which legislative changes made to the fundamental principles have on the simplified forms of procedure, even when it involves negative effects. To put it differently, negative effects which the reform of a fundamental principle has on the manner in which the ordinary criminal proceedings are structured and used are also transferred to the forms of simplified proceedings in which the given principle is neither limited nor from which it has been excluded. Therefore, we will point out the effects of some fundamental principles redefined by the 2011 procedure code.

Accusatory Principle - An erroneous statutory definition of criminal proceedings had forced the lawmakers to omit from the new Code a provision governing the accusatory principle. Since the investigation is, according to the lawmakers' idea, a structural element of criminal proceedings in the narrow sense of the word and since it is initiated by the decision of a public prosecutor issued in the form of an order (Art. 7, Para. 1, item 1 of the 2011 CPC), it was not possible to keep the previous statutory definition of the accusatory principle, otherwise standard in codes of procedure,[19] which read as follows, "Criminal proceedings shall be initiated upon the request of an authorized prosecutor."[20] Instead of looking for a way to eliminate the cause preventing the accusatory principle from being properly and consistently

18 Đurđić, V., Revision Of The Basic Procedural Principles On Which The New Serbian Criminal Procedure Was Built, Legal Word, 33/2012, p. 454.

19 See; Art. 17 Macedonian CFC, Art. 405 of the Italian CPC, Art. 2, Para. 1 of the Croatian CPC, Art. 18, Para, 1 of the Montenegrin CPC, etc.

20 *Article* 19 of the 2001 *Criminal* Procedure Code (*Official Gazette the FRY,* no 70/2001 and 68/2002 and Official *Gazette of the RS, no.* 58/2004, 85/2005, 115/2005. 85/2005 - other law, 49/2007, 20/2009 - other law, 72/2009 and 76/2010).

provided for in the law, the lawmakers had resorted to a pragmatic, not in the least inventive intervention - they excluded the definition of the accusatory principle from the code of procedure. However, this does not imply that any future criminal procedure will not be established on the accusatory principle because it follows indirectly from other provisions, for instance those governing the authorized prosecutor, the subject of a judgment,[21] 'judgments dismissing the charges, substantial violations of the rules of criminal procedure as grounds for contesting judgments, etc. (Art. 5, Para. 1, Art. 420, Para. 1 and Art. 422, Para. l, item 1, Art. 438, Para. 1, item 7 of the 2011 CPC).

The lawmakers would have had an opportunity to see that a statutory definition of the accusatory principle was possible even when the investigation was defined as prosecutorial only if they had familiarized themselves with the experiences of comparative law in which the notion of criminal proceedings was properly defined. The statutory definition of indictment/charges exists as well in the legal systems on which we have traditionally modelled our criminal procedure law, even our legal system, as a whole; as well, it also exists in the criminal procedure law of the country whose solutions have frequently been adopted or paraphrased by our lawmakers. There is a statutory definition of charges in the German procedural law, which has been our traditional source of ideas for the development of our legislation, "The opening of court investigation shall be conditional upon preferment of charges" (§ 151 StPO). In the legal system of Croatia, the accusatory principle has been elevated to the level of a constitutional principle (Art. 25, Para. 5 of the RC Constitution) and as such, it has been incorporated in their criminal procedure code, "Criminal proceedings shall be conducted on the request of an authorized prosecutor" (Art. 2 of the Croatian CPC). Such a solution can also be found in the Montenegrin criminal procedure law, with the exception that the very definition specifies that the accusatory principle also needs to be applied in the course of criminal proceedings, "Criminal proceedings shall be initiated and conducted pursuant to an indictment issued by an authorized prosecutor" (Art. 18, Para. 1 of the Montenegrin CPC). Instead of making use of the experiences from comparative law, the lawmakers stayed consistent with and loyal to their erroneous understanding of criminal procedure even though their persistence razed many definitions of traditional concepts of criminal procedure.

Instead of establishing preliminary proceedings on the accusatory principle, whose definition has been left out from the procedure code, their structure (the stage of investigation, in the first place) involves some prominent elements of the inquisitorial principle: the investigation is initiated ex officio even against an unknown perpetrator, and this also applies to the criminal proceedings in the narrow sense of the word under the wording of the Code eo ipso; defendants are not entitled to appeal in order to conduct investigation; only prosecutors may undertake evidentiary actions in the course of an investigation whose findings may be used as evidence at the main hearing without any statutory preclusions; a public prosecutor decides on defendants or his counsels motions to present evidence; the defense is not entitled to question witnesses or expert witnesses during an investigation so that their testimony could be used as further evidence at the main hearing; if an investigation was conducted against an unknown perpetrator, the indictment may be confirmed only based on evidence offered by the public prosecutor, etc.

Principle of Directness - If we look at the history of amendments made to our criminal procedure law, one may get the impression that each new conceptual amendment has broadened some more the scope of departure from the principle of directness (e.g. both new codes of procedure, the one enacted in 2006 and the one enacted in 2011, included amendments which either directly or indirectly assailed the principle of directness).

21 Inn our opinion, the title 'Subject Matter of a Judgment' is more appropriate for Art. 420 of the CPC than "Relationship of the Judgment to the Charges".

The 2011 Code is specific because the application of the said principle has been called into question although provisions which depart from direct presentation of evidence at the main hearing have not been amended. The problem has arisen on account of the fact that the nature of investigation has been changed and as opposed to judicial, the investigation has become essentially prosecutorial, whereas the indirect presentation of evidence at the main hearing has not been adapted to that radical change. Provisions which governed the departure from the principle of direct presentation of evidence at the main hearing were not altered, so evidence gathered by non-judicial authorities has been put on a par with evidence whose presentation was ordered by the Court. The fact that the evidence presented by a public prosecutor, the Court or the police has the same strength as evidence whose obtaining was requested by the Court is evident from the provisions on "inspection of contents of the transcripts of testimonies" under which records of evidence presented during an investigation may be used at the main hearing and may constitute grounds for a judgment, irrespective of which authority presented each particular piece of evidence (Art. 406 of the 2011 CPC). Under the new statutory regulations, evidence presented by non-judicial authorities in the course of an investigation is not different in any respect from the evidence presented by the same authorities during preliminary investigation. (From such perspective, it would be the same and even simpler if evidence gathered by non-judicial authorities in preliminary investigation were validated in the current procedure code instead of doing away with judicial investigation.) The fact that in certain cases an obligation is imposed on public prosecutors to obtain authorization from a preliminary proceedings judge prior to questioning witnesses and expert witnesses (when they are questioned without a defendant being present there, either if he has not been summoned or it is a case of an investigation against an unknown perpetrator), does not increase the probative force of prosecutor's evidentiary actions nor a statement thus obtained may be validated by a prior judicial decision.

As opposed to the offered conception that both evidence ordered to be obtained by the Court and evidence gathered by non-judicial authorities in the course of an investigation has the same legal force, it is almost generally accepted that the presentation of evidence whose obtaining was ordered by the Court following strict formal rules may provide a factual basis for a judgment even when it is presented at pre-trial stages and that its probative strength is superior to that of evidence gathered by non-judicial authorities. (Physical evidence is an exception to this rule as well as evidence obtained through the so-called special evidentiary actions taken pursuant to a judicial decision.) However, this does not imply that the prosecutorial investigation will result in evidence from the investigation being absolutely excluded at the main hearing. Such a rigid concept had been originally advocated in the radical reform of the Italian criminal procedure, when a pure version of the adversarial model was introduced, but it was later abandoned primarily due to the so-called mafia crimes. It occurs more frequently in comparative law that evidence from the prosecutorial investigation may be exceptionally used as a factual basis for rendering a judgment, but only under strict conditions, such as in German criminal procedure.[22]

When the new conception of the probative force of evidence presented by non-judicial authorities during an investigation is linked to the main hearing established on the adversarial principle, it can be inferred that one party, namely the public prosecutor is favoured in our new criminal procedure by way of provisions governing the departure from the principle of directness, which makes such a conception dubious. Whereas a defendant must prove each fact which goes in their favour at the main hearing by way of application of the principle of directness and the adversarial principle, a public prosecutor may indirectly introduce evidence they have presented themselves (even evidence presented when the suspect was not present

22 See. § 251 StPO.

there) into the proceedings by making use of the records of presented evidence and it may constitute grounds for rendering a judgment. Proceedings in which adjudication is based on evidence gathered by non-judicial authorities are far from fair since defendants do not participate in the presentation of evidence and since the equality of arms has not been ensured.

Adversarial Principle - The adversarial principle is not defined by some express legislative norm but it follows from the very manner in which proceedings are structured. It can only exist in those models of criminal proceedings which are structured to a lesser or greater extent as a dispute between equal parties before a court of law. In legislation, adversarial proceedings are usually provided for when physical presence of the parties is guaranteed, when an obligation is imposed on the authorities in charge of the proceedings to duly notify the parties of the time at which procedural actions will be undertaken and about the subject matter of the proceedings, as well as of the rules which provide forgiving statements and making motions.[23]

Limitations of the adversarial principle are typical of preliminary proceedings, but they may occur at a main hearing as well. Some departures from the principle of directness are at the same time departures from the adversarial principle. For instance, indirect presentation of evidence at the main hearing obliterates both the directness and adversaries of proceedings to the prejudice of the quality of judicial decisions and it is also judged negatively if viewed from the aspect of the protection of human rights.

In that respect, and from the point of view of adversariness, the biggest question mark hangs over the compatibility with the Constitution and European Convention of those provisions from the latest Serbian code which stipulate equal legal strength of evidence directly presented at the main hearing and circumstantial evidence produced at one of the previous stages in the preliminary proceedings, or even in the course of preliminary investigation. In such cases which involve testimonies of witnesses and expert witnesses or the questioning of an expert advisor, defendants are not afforded an opportunity to put questions at the main hearing as in the case of adversaria] hearings and they are thus denied the right to "equality of arms" and put at a disadvantage in the proceedings. Statements given during some of the earlier stages in the proceedings may be used as evidence, which is not inconsistent with Article 6, para. L and 3(d) of the European Convention on condition that a defendant is provided with an adequate and proper opportunity to challenge and question a witness against them, either at the time the witness makes their statement or at some later stage in the proceedings.[24] When legal provisions governing evidentiary actions in the course of an investigation are linked to the departures from the principle of directness at the main hearing, they do not satisfy the legal standard on which the principle of fair trial is based and which is known as the concept of "equality of arms".

In this case, the principle of "equality of arms" does not exist for a number of reasons. During an investigation, evidentiary actions are exclusively undertaken by a public prosecutor, whereas a defendant and their defence attorney may only be present when they are undertaken, but neither this right is guaranteed without restrictions (Art. 300 of the 2011 CPC). Not only witnesses for the prosecution, but also witnesses for the defence (this applies to expert witnesses as well), are questioned by the public prosecutor during an investigation because the rules on direct examination, cross-examination and redirect examination which are laid down for the main hearing do not apply to investigation. It is not difficult to infer the direction in which examination will move when a witness is questioned by an opposing party! A defendant and their defence attorney are only entitled to propose to a public prosecutor to put a specific question to a prosecution witness, a defence witness or expert witness for the purpose of clarifying circumstances of the case, which the prosecutor may either reject or re-

23 Grubač, M., Criminal Procedure, Belgrade, 2006, p. 145.
24 The Kostovski Case, judgment of November 20,1989, A.166.

phrase (exceptionally, a public prosecutor may approve that questions be put directly). Defendants are not entitled to cross examine prosecution witnesses in the course of an investigation since those rules apply only to the main hearing. How can we even mention equality of any kind when defendants are not entitled to directly question their witnesses or cross-examine prosecution witnesses during an investigation? Rather, it could be asserted that defendant's and their defence attorney's presence during evidentiary actions undertaken in the course of an investigation is a form of control of public prosecutor's work, but that it is insufficient to ensure "equality of arms". In itself, it does not run contrary to the concept of a fair trial if its purpose was to ensure the bringing of an indictment, However, since witnesses' and expert witnesses' statements given during an investigation may be used at the main hearing without any restrictions, a defendant is not afforded an opportunity to contest them and question witnesses against them under the same conditions or to directly examine the witnesses (it is sufficient that either a witness or an expert witness does not appear at the main hearing, i.e. that they "cannot be reached" or that they refuse to testify without legal grounds, for their statements to become a factual basis of a judgment on the motion of the prosecution and by decision of the Court).[25] Equality of arms is directly defeated in cases when a public prosecutor questions witnesses or expert witnesses in defendants or their counsels absence and then their statements are used at the main hearing as factual bases for a judgment without examining them by applying the principles of orality, directness, and adversariness. In cases when summonses "are not served on" defence attorneys and defendants "in accordance with the provisions" of the code of procedure and when investigations are conducted against unknown perpetrators, a public prosecutor is authorised to question witnesses or expert witnesses in the absence of the defence attorney and the opposing party, for which they need to obtain a prior authorisation of a preliminary proceedings judge (Art. 300, para. 6 of the 2011 CPC). Still, it is completely clear that without a special argumentation, any prior authorisation by the Court may not enhance the credibility of evidence given by a witness or an expert witness who are questioned by a public prosecutor in the absence of a defence attorney and a defendant, nor may it have any bearing on the "equality of arms". The grounds for giving judicial authorisation have not been laid down. They are left to the discretion of a judge, so a question arises as to the ratio of such a provision. Given the fact that all the power in the investigation is on the side of a public prosecutor, it cannot be expected from a preliminary proceedings judge to prevent investigation against an unknown perpetrator by not granting their authorisation and as a legislative solution, it is dubious in itself.

Departures from the principle of directness have therefore remained the same as if the judicial investigation had not been substituted by prosecutorial. What this implies is that evidence produced by other government authorities in the course of preliminary investigation or investigation has the same value as that presented by the Court in pursuance of the strict legal form and procedural principles of directness, adversariness, and publicity which dominate the main hearing. Nevertheless, it should not be allowed that evidence whose obtaining is ordered by the Court and evidence obtained by non-judicial authorities may be put on an equal footing with regard to its probative force because in that way proceedings stray from their primary task - the correct application of substantive criminal law to a specific incident, but due to an unequal standing of a defendant with regard to the presentation of evidence, such proceedings may not be called fair.

The adversary principle presupposes that proceedings are structured to a certain extent in an "adversary manner", i.e. as an adversary proceeding, which is why it is the principle which features the most at the main hearing. The lawmakers have developed the said idea exhaustively: at the main hearing, the evidence is presented exclusively by the parties, while

25 See Art. 406, para. I.ilerm 1 and A of the 2011 CPC.

the Court's role has been rendered completely passive. The evidence proposed by a prosecutor is presented first, then defences evidence, and finally the evidence whose presentation has been ordered by the Court acting ex officio. The law also lays down the order in which a defendant is interrogated and witnesses, expert witnesses and expert advisors are examined. The examination may be direct, when witnesses and expert witnesses are questioned by the party which proposed them, cross, when they are questioned by the opposing party, and redirect, when they are once again questioned by the party which proposed them as witnesses (Art. 396 and 402 of the 2011 CPC). Based on the above, it appears that conditions have been created for a lawyers' duel between two equal parties. Still, for criminal offences punishable by imprisonment of less than eight years, defendants do not have to have a defence attorney, which means that professional defence lawyers are optional for the majority of criminal offences according to the legal classification and committed criminal offences. In such cases, if a defendant does not hire an attorney, the manner in which evidence is presented and legal relevance of facts is assessed is left to his layman's understanding, and then the equality of parties is nonexistent. In a purely adversarial version of the main hearing, the reasons of fairness require that defendants must have professional defence lawyers in all cases irrespective of the type and seriousness of a criminal offence manifest in the punishment which it carries, but the lawmakers have overseen this requirement blinded by a new shiny model of the main hearing built on a formal equality of parties. In cases when a defendant has a defence attorney, irrespective of the fact if a defence counsel is mandatory or optional, it is also questionable in how many cases a defence will be competent and effective, on which solely depends actual and not formal equality of arms.

## CONCLUSION

In the process of simplification of procedural forms, a transformation of fundamental principles of criminal procedure is a very suitable method for coordinating and integrating structural elements of a particular form of simplified proceedings in criminal matters, in accordance with the values postulated to represent a basis for simplification and the function which the given form should serve.

The scope of application of each fundamental principle based on which ordinary criminal proceedings are established also includes simplified forms of adjudication of criminal matters if it is not restricted or even abolished during the creation of the given procedural form. For that reason, all the effects, even the negative ones, of redefining, restricting the scope of application, or eliminating a fundamental principle, are transferred to simplified forms of criminal proceedings (elimination of the principle of truth from ordinary criminal proceedings precludes ascertainment and proving of truth in all the simplified forms of procedure).

The restructuring of fundamental principles of criminal procedure and prescribing guarantees for the right to a defence which are not adapted to the prosecutorial type of investigation and adversarial version of the main hearing raise doubts about whether or not the new criminal procedure governed by the 2011 Code ensures that trials are fair. The legislative solutions which question the right to a fair trial are numerous. A defendant is not afforded a possibility to seek judicial relief against a decision of the prosecuting authority to launch an investigation against them which is under an express provision contained in the new code only the first stage in criminal proceedings, understood in the narrow sense of that word, which is in direct contravention of Constitutional guarantees of the right to a fair trial, namely that only the Court may decide "whether or not there existed reasonable suspicion which provided grounds for initiating criminal proceedings". By providing for a possibility of

conducting investigation against an unknown perpetrator, defendants right to participate in criminal proceedings conducted against him has been denied, even though the said right is a constituent element of the principle of a fair trial. It has not been provided that defendants must have a professional defence attorney in cases involving criminal offences processed in summary proceedings, which account for the great majority of criminal offences, and defendants have thus been placed at a disadvantage in adversarial proceedings in relation to public prosecutors when it comes to interpreting the rules of criminal law and presentation of evidence, which is now exclusively in the hands of the parties. The ban prohibiting defendants and defence attorneys from offering and presenting evidence after a specific stage in the proceedings directly encroaches on the right to present a defence and runs contrary to the presumption of innocence because it forces the defence to offer evidence at that stage in the proceedings, instead of placing the burden of proof exclusively on the prosecutor. The prosecution is favoured and the "equality of arms" is defeated as a fundamental factor of the fair trial principle by restricting the principles of directness and adversariness in the code, which was done when the same probative force was given to the statements of witnesses and expert witnesses obtained by the prosecuting authorities in the course of an investigation as if they were obtained during cross-examination.

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# ROLE OF GUARDIANSHIP AUTHORITY IN IMPLEMENTATION OF CORRECTIVE MEASURES TO MINORS - RESPONSE TO CHALLENGES IN FUNCTIONING OF MODERN FAMILY

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**Abstract**: In proceedings against juveniles in conflict with the law, role of the guardianship authority is essential, and is reflected in the implementation of measures against juveniles in criminal proceedings, in development and improvement of prevention activities that contribute to preventing and combating social problems, as well as the continuity of work with juvenile and family during and after the pronouncement of certain criminal sanctions. Minors are often part of a system of social support in the early age, which implies that the guardianship authority may affect the prevention of risks that include families, which can later lead to socially unacceptable behavior. Area of juvenile justice is a complex and especially sensitive considering age accompanied by various changes, crisis and the impact of numerous internal and external factors. The purpose of corrective measures is that with the protection and strengthening of responsibility of juveniles ensures their re-integration into the community, and develop into a healthy and mature personality. The guardianship authority is an invaluable resource of society, and in the course of an corrective measure is present in all phases that result in the social reintegration of minors. Bearing in mind the current social context, family went through transition from traditional to modern, and in this process the risks to the expansion of the unacceptable behavior of young people automatically increased. Due to the rapid life tempo and everyday challenges that modern families are faced with, its mechanisms are weakened and risk factors increased. Support to juveniles and families in coping with life crises, and at the same time strengthening the juvenile justice system is conditio sine qua non for creating a favorable social climate and social prosperity.

**Keywords**: minors, family, guardianship authority, corrective measures, the judiciary.

## INTRODUCTION

The family as the basic cell of society, in the present, characterized by stress and lack of free time, is exposed to many risk factors that can disrupt its unity and balance. Narrowing social networks, increasingly evident alienation, rapid changes of socio-economic status, di-

vorce, the influence of environmental factors, unemployment, weakening the boundaries of the family system and resistance to change are just some of the reasons why the family as a phenomenon and as a purpose, in a very short time period, can reach a high level of material and spiritual vulnerability.

Children and juveniles are one of the most vulnerable categories of the population. When it comes to this category, families are faced with constant challenges that may affect its functioning, and change it completely. The most prominent challenge faced by families with minors are existence and strengthening of mechanisms to guide the behavior of a child, and the preservation of family core. Children in conflict with the law need additional system support to successfully overcame all life crisis and to go through life cycles. As an immediate "facilitator" of the family, there is a center for social work, which is the backbone of family and legal protection, and whose significance is essential for children and juveniles, particularly those in conflict with the law.

The current situation in the field of juvenile delinquency should be considered from the standpoint of existing solutions, the existing actors and the basic characteristics of the phenomenon of violations of the law. Existing solutions are reflected in the current legislative framework and practices that are carried out, while in the domain of actors are present legislators, state institutions that implement the practice, educational institutions for staff working in this area, government organizations dealing with the protection of human rights, local authorities and non-governmental sector. Adjusting to the conditions of market economy, accompanied by reforms in the rule of law, the reform of the social sector as well as the uneven development of the civil sector, creates a situation in which the society can not provide adequate care for children. On the other hand, the economic poverty of the population, changes in the value system, with greater aspirations towards material values and a changed traditional role of the family increase the risk factors related to children's health and their social behavior. Juvenile crime is on the rise, while society's response to this phenomenon, largely rests on the remains of the model response from the previous period, with reduced resources of institutions working with children in conflict with the law. The reform process in the justice sector that brought changes in juvenile justice legislation and organization, are not yet tracked by investing and adapting existing infrastructure to implement the legal solutions for juveniles who have come into conflict with the law. In addition, projects and initiatives by international and local organizations implemented in the field of juvenile justice, which are mostly partial and relatively modest, did not result in substantial changes, neither in the approach to this issue, neither in the prevailing practice of work with juveniles. There is a need to improve the work in the field of juvenile delinquency, bringing it in as much as possible harmony with international standards[1] (UNICEF Bosnia and Herzegovina, 2014).

The issue of juvenile prevention is currently present in social discussions and the search for solutions that are best suited for this problem. A large number of experts actively participate in the creation of guidelines and defining the role of the actors in this broad field. Today, in most modern societies social welfare institutions are a key link in the organized and formal systems of social reaction to the delinquency of children and minors. The most commonly conceived role of modern system of social protection is dealing with the protection of the interests of children and minors. Social welfare services start from the standpoint that the criminality of children and minors is a manifestation of a disorders in their social development and in meeting their social needs. From the institutions of social protection and social work major role in the social response to juvenile crime has guardianship authority or center for social work. All of the roles of this institution towards juvenile delinquency are of direct or indirect preventive character. From the methodological point and content regard, the role

1 UNICEF Bosnia and Herzegovina (2014): Assessment of Juvenile Justice in Bosnia and Herzegovina.

of the guardianship authority in the prevention can be labeled as the advisory instructive, professional and methodological, initiative driving, organizational and coordinative.[2]

When it comes to attitudes and knowledge that the general population has towards the field of juvenile justice, studies[3] have shown that they are largely negative, and include stigmatization and non acceptance of this category of children. Considering the fact that the public is not sufficiently familiar with this area, new tendencies direct switching focus from punishment to prevention of juvenile delinquency and their reintegration, as for long term more quality and more desirable for society. It is necessary to explain to parents and other stakeholders how system is operating, and how they can I get adequate information and to whom they can turn if they feel that they need help in preventive action in risk behavior of juveniles, as well as in cases where the contact with the law already occurred. Also, educations of professionals and networking of institutions operating in this field is very important.

Assessment of Juvenile Justice in Bosnia and Herzegovina[4], pointed out that the strategy of juvenile offenses should be based on a realistic assessment of risks and the expected limits, a careful analysis of the most urgent changes of the system and the relevant assessment of the profitability of possible approaches and measures for resolving priority issues. The priority should be support of the guardianship authorities in the development of capacities that will enable them to fulfill their obligations in accordance with the law. Opening a larger number of day care centers may affect on correction of existing gaps in secondary prevention, and legal solutions should be constantly monitored and analyzed.

## IMPORTANCE OF GUARDIANSHIP AUTHORITY IN PREVENTING ANTISOCIAL BEHAVIOR OF MINORS

Law on Social Protection of the Republic of Srpska defines the centers for social work as social welfare institutions established by local municipalities[5]. In the Republic of Srpska, in accordance with the Law on Social Protection, social work center, as a social welfare institution, among others, exercises public authority for implementation of measures against juveniles in criminal proceedings, and develop and promote preventive activities that contribute to preventing and combating social problems. It is evident that the role of the guardianship authority is legally justified, and the question is to what extent it participates in essential prevention and, whether it can carry out all its obligations with regard to the workload and the number of areas in which it has a key role?

Vidanovic (2006) defines preventive social work as a practice aimed on preventing conflict or unwanted behaviors and conditions. The goal is to empower people to avoid or overcome the predictable and unexpected problems in their own lives. Preventive practice often includes educational activities and work in different spheres of social life, especially in those with possible occurrences of life crisis, destruction and disorganization. Same author defines primary prevention as well as actions taken to prevent the occurrence of conditions that result in diseases or social problems. In social care, primary prevention includes activities related to basic education and socialization of people and activities that provide clients with the new pro-social opportunities.

2 Jugovic, A., Brkic, M. (2010). *Social protection in the prevention of juvenile delinquency – Role of contra verse and good practice*. Social Policy and Social Work IV Part: Faculty of Political Sciences.
3 Custom Concept (2014) *Survey of knowledge, attitudes and practices and formative research on justice for children*, Sarajevo.
4 UNICEF (2011). *Assessment of Juvenile Justice in Bosnia and Herzegovina.*
5 *Law on Social Protection*, Official Gazette of the Republic of Srpska, no. 37/12 and 90/16.

General provision of prevention of juvenile delinquency is defined as whole system of mutually agreed measures and activities taken by the society and its organized parts who oppose this phenomenon, its occurrence, repetition and its development into more serious forms. Primary or basic prevention is a set of measures to prevent, disable and avert deviations in the behavior of young people. Such a goal of primary prevention is achieved by measures to eliminate or reduce to the smallest possible measure of social and other objective factors which facilitate or cause other forms of criminality and violation behavior of young people. In that aim, the society should be more concerned with young people, providing them quality requirements, space and opportunities for sports, music, entertainment, recreation and rational use of free time through engaging content. Primary prevention thus becomes the most profitable investment because it gives lasting results. Secondary prevention is a set of specific criminal law and out criminal law measures and activities. The police, prosecution and courts for juveniles carry out the established practice of criminal law measures, which in any case are repressive measures. However, parents, schools and society in general must take constant care, educational work and implement prevention from an early age, because practice and experience shows that early detection and diagnosis of disorders and organized application of measures of enhanced pedagogical care and social welfare give good results in combating and the prevention of juvenile delinquency. In the prevention and organized fight against all forms of deviation, antisocial and delinquent behavior among young people it is necessary to include all institutions and organizations to work youth and be a role model for them. Only a healthy environment can form and educate young people. Juvenile crime is a particular social and educational problem, and if preventive and corrective measures are not taken timely, juveniles will become real criminals.[6]

Regardless of a fact is a juvenile criminally responsible or not, each discovered criminal offense leads that society, through its institutions and agencies, seeks to protect juvenile offenders and with increased educational methods to affect on preventing behavior like that in future, and to grow up in person which will obey the law and be successful. It is often not easy, and it happens that minors, despite all efforts, due to the large number of negative experiences that they experienced in their family, school and peer group does not believe they can fix it and that there is no way to have a better future. Therefore, it is always better that society helps minors before they commit a crime, and that, with the help of members of their families, protects their rights from birth. This is, in fact, the best response and the best prevention of juvenile delinquency, and so it is very important to prevent the consequences that go along with socially unacceptable behavior[7]. Therefore, the center for social work as guardianship authority should provide resources, technical and financial, so that the prevention of juvenile delinquency in society is recognized as a priority.

The prevention of juvenile delinquency is an essential part of crime prevention in society. It includes all measures that reduce or otherwise contribute to the quantitative and qualitative reduction of delinquency and insecurity among citizens, either through directly deterring criminal activities or through policies and interventions designed to reduce the potential for crime and the causes of crime. It includes work of government, local authorities, judicial bodies, associations of experts and individuals, scientists, NGOs, and the public supported with media etc. Prevention means intervention. Act preventively means intervention on some specific way with all available resources and measures aimed at preventing the occurrence of crime in general in relation to the offender - executor, the victim, the circumstances and the law. The importance of prevention is also determined with international documents - Riyadh

6 Selman, Mitrovic, Uletilovic, Mirkonj and Sain (2012): *Juveniles in criminal proceedings with book of regulations in the field of juvenile justice*. The Ministry of Justice of the Republic of Srpska.
7 Save the Children UK, Sarajevo (2005): *A Guide to the activities of prevention of juvenile delinquency on the school formal classes* - Project of prevention of juvenile delinquency.

Guidelines which are integral document with an emphasis on the prevention of juvenile delinquency, which encourages healthy development of children in society, reducing the number of children who have a big chance of becoming juvenile offenders.[8]

Successful prevention of juvenile delinquency requires efforts of the whole society in order to ensure harmonious development of adolescents, with respect for and promotion of their personality from early childhood. What is very important is the professional and responsible media reporting which implies the use of terminology that not in any way stigmatize the minor suspects, accused or convicted of executing criminal delict (crime or serious offense). Using discriminatory and pejorative labels like "thief, rustler, robber, burglar, vandal, murderer, attacker," and the term "delinquent", not only indicates a tendency toward sensationalism, but can detrimentally affect the personality and identity of the stigmatized person. Stigma or negative marking and devaluation of minors, often favors the strengthening of delinquent behavior.[9]

Because of the lack of by-laws governing the imposition and the implementation of certain measures and the absence of institutions that are intended for the implementation of specific corrective measures, the authorities should issue and enforce measures that are available to them, regardless of the assessment of whether the expected results in relation to the offense committed. This primarily refers to the measure of increased supervision, which, as an alternative, is imposed when there is the impossibility of imposing other corrective measures. Generally speaking, the biggest problem is the lack of institutions to carry out so-called institutional correctional measures, as in the Republic of Srpska territory, and also on local level. It is noticeable the increase in the number of perpetrators who are under 14 years of age and who are criminally irresponsible what means by which they cannot impose sanctions. Recidivists make up slightly more than 20% of the total number of juvenile offenders. They represent the category on which corrective measures currently were imposed but had no effect. The problem is insufficiently planned and carried out preventive activities, which could significantly reduce the number of children with antisocial behavior. Practice shows that work with children and minors starts when they commit a crime, and that until then they go unnoticed in the social environment in which they grow up. Problems that occur in the school environment or behavioral outbursts in narrower social group are rarely reported or are seen as a transitory phase.[10]

## SOCIAL EXPOSURE OF CHILDREN IN CONFLICT WITH THE LAW

Faced with prejudices of surrounding, minors in conflict with the law may form a delinquent identity. As it comes to people in a sensitive period of development, susceptible to environmental influences, the stigmatization of minors by the media, and then of the entire society, influence the formation of their self-esteem and self-image. Marking of minors as "problematic" and prematurely drawing conclusions about their guilt, can lead to isolation by the environment, withdrawal, development of depression and anxiety. Minors can eventually adopt the estimates of others about themselves, and begin to act in accordance with the identity of "the offender", attributed to them. Marking juveniles in conflict with the law makes their rehabilitation harder, also social integration and active participation in society, chances for employment, education and starting their own families are reduced. This creates

8 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).
9 Heatherton T. F., Kleck R. E., Hebl M. R., Hull Jay. G. (2000). *The Social Psychology of Stigma*
10 Report of the Center for Social Work Bijeljina, 2015.

a magical circle from which a way out is not offered to the minors. The use of appropriate terminology by the media is also important for educating the public in order to break the circle of stigma and substantiating risk and delinquent behavior. In the interest of any society is to have stimulating effect on minors to improve their behavior and the possibility of reintegration and reduce the risk of relapse, or return of delinquent behavior. Only with the help of community and cooperation between institutions, juvenile offenders may become healthy and active members of society. Reporting on juvenile delinquency should contribute to the understanding of the problem and not intimidating to the public. Media rarely speak about the causes of delinquency and risky behavior that precedes it. Rather than point to the risk factors and protective factors, the media are more prone to reporting on "deviance" of minors, as if it comes to people who are "naturally" predisposed to commit criminal acts. Deviation is sociological concept which indicates a deviation from the social norms, values and accepted models of behavior in a social community.[11]

Labeling a person as "deviant" is the first step of social control. Deviation from the expected social behavior is an integral part of growing up and should not encounter moral condemnation. Conformity, uniformity and passive submission to norms that society defined as "correct", "healthy" and "moral" does not encourage innovation and creative thinking, and it certainly can not be considered to be the values that the media should promote and stimulate. The causes of juvenile delinquency are very complex, and reporting on this issue should not be reduced to a simplified explanation and search of causes in personality of perpetrators.[12]

Preventive actions are the key to success in working with children and minors, so that early recognition and use of all available resources are the most important in re-socialization. Advisory work with children at risk and their families is one of the fundamental rights guaranteed by the Law on Social Protection of the Republic of Srpska. The problems of modern families and their minor children are very complex and require a systematic approach to work, expertise and education of professional staff at a much higher level than before. Often, due to the workload of jobs, lack of time and with reduced resources and capacities, institutions neglect preventive work with children and families in crisis, and do not include juveniles in treatments that are available. Interdisciplinary work and greater cooperation between the institutions are also important in the process of working with children and juveniles with behavioral problems. First of all, importance should be given the to the cooperation with schools, which are able to detect problems on early stage.[13]

## GUARDIANSHIP AUTHORITY IN PROCEEDINGS AGAINST MINORS

The guardianship authority in domestic positive legislation is specific subject of criminal proceedings against juvenile offenders, which does not have the status of party in criminal proceedings, but has significant authority and process capabilities. The guardianship authority with its active participation gives full contribution to making quality solutions, completion of legal proceedings against a minor and is the organ that assists the court in the decision making.[14]

11 *Haralambos M.*, *Heald R. (1980)*. *Sociology: Themes and Perspectives*, University Tutorial Press.
12 Media responsibility for the prevention of juvenile delinquency – Book of text, Media Center, Sarajevo, 2004.
13 ibidem
14 Simovic, M.N, Jovasevic, D., Mitrovic, Lj. Simovic, M. M (2013). *Juvenile criminal law*. Faculty of Law University of East Sarajevo.

The legislation of the Republic of Srpska, Article 32 of the Law on protection and treatment of children and minors in criminal proceedings[15] provides three types of corrective measures, namely: measures of warning and guidance (court reprimand, special obligations and referral to a reformatory educational center), measures of intensified supervision (intensive supervision by parents, adoptive parents or guardians, enhanced control in other family and enhanced surveillance by guardianship authority) and institutional measures (reference to an educational institution, a reference in a correctional facility, and to a special facility for treatment).

When it comes to the implementation of corrective measures, role of the guardianship authority is reflected in the following:

1. In regard of specific obligations, the court may request the report and the opinion of the guardianship authority (Article 35, paragraph 6).

2. In imposing the measure of increased supervision by parents, adoptive parent or guardian, the court determined that the competent guardianship body is checking its enforcement and supports parents, adoptive parents or guardians. When the guardianship authority responsible for the implementation of these measures finds that parent, adoptive parent or guardian is not acting in accordance with special instructions and do not co-operate with an expert, he must notify the Prosecutor (Article 37, para. 3 and 5).

3. Verification of implementing measures of intensive supervision in another family is the responsibility of the guardianship authority which points out necessary assistance to the family in which the minor is located. In the case when a family where the juvenile is placed is not acting upon specific instructions and fails to cooperate with experts, the guardianship authority must notify the Prosecutor (Article 38 par. 3 and 4).

4. If the parents, adoptive parents or guardians of minors are not able to carry out enhanced surveillance, and there are no conditions for the imposition of an corrective measure of intensive supervision in another family, the juvenile shall be placed under enhanced supervision of the guardianship authority. In this case, the juvenile remains with the people who take care of them, and intensified supervision over him shall be implemented through a competent representative from guardianship authority or other qualified person designated by the guardianship authority. The guardianship authority is taking care of the juvenile's studies, his employment, his detachment from the environment which is affecting him in a harmful way, his necessary medical treatment and the improvement of living (Article 39).

5. Record on corrective measures is imposed by the competent guardianship authority on the basis of regulations issued by the ministry in charge of social protection. These data can be given only to the prosecution, court, police forces and authorities of guardianship in connection with criminal proceedings conducted against a person who was pronounced a corrective measure. This information may not be used in a manner that would be harmful to the rehabilitation of person against whom criminal proceedings were conducted (Article 49).

Instruction on keeping records on ordered corrective measures[16], provides that records of corrective measures imposed on minors for criminal offenses and young adults when they were sentenced to correctional measures, is led by guardianship authority competent

15 Law on Protection and Treatment of Children and Juveniles in the Criminal Procedure Code, Official Gazette of the Republic of Srpska, no. 13/10 and 61/13 has been in force since 1 January 2011, and the amendments that have occurred three years later were related, inter alia, to the harmonization of the provisions of the Act with the provisions of the new Criminal Code of the Republic of Srpska, Official Gazette of Republic of Srpska, no. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12 and 67/13.

16 Instructions on how to keep records on ordered corrective measures, Official Gazette of the Republic of Srpska, No. 66/12, issued in accordance with the Law on Protection and Treatment of Children and Juveniles in the Criminal Procedure Code, Official Gazette of the Republic of Srpska, no. 13/10 and 61/13 and the Law on Republic Administration, Official Gazette of the Republic of Srpska, no. 118/08, 11/09, 74/10 and 24/12.

by place of residence or temporary residence of the minor. The records include data on the pronounced corrective measure, details of subsequent changes to corrective measures, information on completed corrective measure (start of execution, location, disposal, cease, parole, revocation of parole, suspension of enforcement of corrective measures, continuation of the execution of the corrective measure, substitute with another measure, benefits, disciplinary offenses and disciplinary measures) and data on the treatment of guardianship authority. Records are kept in the book of records of imposed corrective measures, which includes all the scriptures on which data is written in the records. Data on imposed corrective measures are deleted from the register after the expiry of three years from the day when the execution of corrective measures finished, and in any case when person turns 23 years of age.The removal of data from the records shall be made in official note.

6. In measures regarding minors, guardianship authority has the right to get acquainted with all facts and circumstances during the process, and also to give suggestions and indicate on the facts and evidences of importance to make the right decision. The Prosecutor shall inform the competent authority of each proceeding instituted against a minor, and the prosecution and the courts inform guardianship authority when in criminal proceedings established facts and circumstances indicate a need to take measures to protect the rights and welfare of minors (Article 81).

7. The importance of social anamnesis, as the most important instrument of social workers, in particular is indicated in Article 87 of the Law. Before launching the preparatory proceedings for an offense that a juvenile is charged, the prosecutor is required to obtain data from the competent court concerning the age, maturity and other personality characteristics of juveniles, the environment and conditions in which they live in order to decide whether to specific case, they will act by applying the principle of opportunity, stop the procedure or access the process of applying the corrective recommendations or will issue an order to start the preparatory procedure.

Quality social anamnesis includes listed and explained in detail the basic information about the minor and his family, living circumstances, socio-economic status, family structure, social network of minors and the proposal of measures and activities. Data presented in the social anamnesis must be realistic and objective, because they influence the course of the process in proceedings against juveniles.

8. If during the preparatory proceedings the prosecutor needs other data regarding minors, their behavior and the circumstances in which they live, they obtain the opinion of the guardianship authority if the minor was sentenced to correctional measures (Article 92). The prosecutor also may allow the representative of guardianship authority to be present during preparatory proceeding and to give suggestions and ask questions to the person who is being examined (Article 93).

9. Guardianship authority is responsible for the execution of corrective measures (Article 133). Qualified person entrusted with the execution of corrective measures constitutes a work program with a minor in accordance with the instructions of the competent court and the guardianship authority (Article 147).

10. When it comes to the acting of the guardianship authority, under the provisions of Article 180 of the Law, the expert team of the center for social work who works with juveniles in conflict with the law in this regard is in constant contact with the institution in which the minor is located, as with the professionals in institutions, and also with juveniles in providing support in different ways. Contacts take place by telephone with the professionals, but also a field visit to the institution. When making a decision on release of juveniles on a weekend or a few days, professional team together with the expert team of the guardianship authority go to visit family, and then jointly assess the possibility that the juvenile spends some time at

home, and the willingness of the family to accept him (every family has different dynamics and in many cases, the dysfunction is present). When releasing the juvenile on a weekend or longer, they are in communication with guardianship authority which gives them adequate preparation and support. Also, depending on the needs (one-time assistance, counseling, etc.), the guardianship authority provides support to the family while the minor in an institution. Considering the fact that the guardianship authority is in constant contact with the institution in which the minor is located, it has a continuous information on the course and stay of minors, and receives written reports on the conduct and results achieved.

11. The provision of Article 181 of the Law concerns the notification of the guardianship authority and its duty to provide assistance after the execution of juvenile criminal sanctions. The guardianship authority gets information about the juvenile from the institution in which the minor is located, but also during the hearings on the court because guardianship authority representative is present at the hearing when institutional measure is suspended, and he gives his opinion on the above, and before that prepare and inform the family on a possible end of institutional measure. Based on the foregoing, it is evident that the family, guardianship authority and institutions share the necessary information. After the execution of criminal sanctions, guardianship authority often assist a minor in accordance with their capabilities. Often such families are usually users of different services on other bases, and are in constant contact with them, but more concrete and long-term assistance in the form of finding a job or support in this regard is often not possible.

12. Given the fact that most juveniles become adults at the time when they leave the institution, guardianship authorities often do not have the opportunity to work with juveniles who have no parental care, and who carry out some of the institutional measures. Assistance in education and treatment depends on their motivation and help in food, clothes and finance is often possible to provide. Help in employment is not easy, the guardianship authority may participate as someone who will make a recommendation for employment, which is often very difficult because the environment and the views of others are stigmatizing and labeling, and the same generally do not have adequate education, nor interest in, and often no motivation for employment. In this context, innovation in the development of specific programs or projects to improve employment conditions is of great importance. Often these families have low social-economic status and dysfunctional relationships significantly, and they constantly deal with it, for example because of other children in the family, poverty, some of them are users of financial assistance or the right to assistance and care of another person, alcoholism is often present or other social and other pathologies.

Finally, the role of the guardianship authority in proceedings against juveniles in conflict with law is unique, inspiring, focused on the best interests of the minor, empowering families and strengthening the system mechanisms for most appropriate overcoming of social anomalies.

## CONCLUSION

The role of the guardianship authority should be of great importance for the prevention of the juvenile delinquency, due to the fact that juvenile offenders are often part of a system of social support at an early age. This implies that the importance of the guardianship authority is essential, because it detects risks in families which can can later result in socially unacceptable behavior.

Children and juveniles in conflict with the law should and have the right to proper care, protection and the opportunity for social reintegration - rights on which criminal justice system for minors should be constituted. Improvement has been achieved and the growing

importance of providing mediation in the social security system, especially in relation to juveniles in criminal proceedings. Centers for social work are the focus of the public because they are busy dealing with the consequences of certain social problems and less time are allocated for prevention activities. A positive trend is the organization of large number of scientific meetings where experts exchange experiences and contribute to improving the general social situation, pointing out the importance of the problematic aspects of the individuals, groups, and society as a whole. Research should go toward relief of centers for social work, providing resources and professional staff, public information and improving the general social climate, because healthy society and environment encourage children and young people to be aware, conscientious and responsible for their own actions.

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# CONTEMPORANEITY OF THE LEARNING OF ENRICO ALTAVILLA[1]

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**Abstract:** The positivist approach to the study of criminal offenders, as key participants in the criminal justice system, influenced the development of specific scientific disciplines dealing with psychological observation of the offender's personality. These subject-specific scientific disciplines are: criminal psychology or psychological theories of crime; forensic psychology, or the psychology of crime and trial proceedings; prison psychology; and legal psychology. Forensic psychology is the study of the criminal offender's behaviour, considering the offender's specific role in criminal procedure, i.e. the role of the defendant. This paper examines the behaviour of other participants in criminal proceedings: the injured party/victim, witnesses, the prosecutor, the defense counsel, judges. One of the most complete studies in this field of science is Enrico Altavilla's book *Forensic Psychology* (1955), which presented the theoretical and practical knowledge in this branch of psychology. The contemporary development of criminology, particularly the development of criminal psychology, calls for revisiting the past and exploring the origins and genesis of criminology. In particular, this paper focuses on the contribution of Italian criminologists to the initial research on the endogenous factors in the genesis of criminal behavior of individuals. In order to successfully apply the envisaged criminal legislation, which is ultimately aimed at counteracting criminal behavior, there is a need for specialized scientific knowledge and a multi-disciplinary approach to this issue, not only from the aspect of law but also from the perspective of anthropology, psychology, forensic medicine, psychiatry and sociology. The process of reforming the criminal justice system does not include only nomotechical rules. It also includes the development of a special awareness of the processes and significant events in the course of criminal proceedings. Such a reform cannot be effectively implemented without being aware of the postulates of criminological sciences, especially concerning the implementation of the positivist method.

**Keywords**: forensic psychology, criminology, positivism, Altavilla.

## INTRODUCTION

The starting point in criminological literature are the standard topics and issues pertaining to the basic postulates of criminology as an independent science, such as: the subject matter of study, criminological methods, the ideological foundations for interpreting the re-

1 This paper is a result of scientific research conducted within the project "*Protection of Human and Minority Rights in the European Legal Area*" (No 179046), supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia.
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sults obtained by empirical research, or collecting and classifying the findings on the basis of academic criminology, and the current principles of digital humanism.

From the very beginning of theoretical study of crime, which was not confined only to criminal law conceptions, there was considerable multiplicity and ambiguity in understanding the concept of crime and criminality in general, its origin and causes for the occurrence. Criminological issues were first explored by experts of various other sciences: psychologists, biologists, doctors, anthropologists, sociologists, who used the knowledge from their respective sciences and scientific disciplines as a source for interpreting and explaining various facts observed in the course of examining a criminal phenomenon or criminal offenders.

The study of criminology, just as the study of any other social science or scientific discipline, implies a clear, precise definition of the subject matter and purpose of theoretical and empirical research, as well as the application of adequate methodological procedures, aimed at determining the subject matter of study. Various issues from the field of sociology, criminology, penology, and victimology (etc.) are covered by some of the leading ideas in the Western intellectual tradition, primarily concerning the nature of scientific knowledge and the related scientific methodology. In science, there is a constant need to clearly depict the history of development of human thought and the ongoing prolific human research, which ultimately makes it difficult to consider the results of one's scientific thought and knowledge to be definitively "the first stepping stone, the founding idea in intellectual history."[3]

However, in the social sciences, such as sociology and criminology, dealing with interrelated and frequently "intertwined" phenomena, there are other criteria that "justify the establishment of separate and independent scientific discipline,[4] irrespective of the similarity of the subject matter of study and the application of identical scientific methods. This kind of demarcation, accompanied by justification for establishing an independent scientific discipline, may certainly be observed between the epistemological and the methodological points of view in a specific scientific field.[5]

Back in 1964, while translating the original French version of Jean Pinatel's "tiny" "*Criminology*" into Serbian, dr Dragoljub Dimitrijević rightly noted that "on a wider scale, crime and the fight against crime cannot be observed and resolved by applying the methods of natural sciences and medical treatment, nor by means of descriptive sociology alone."[6]

Pinatel remarks that the founders of criminology are: Cesare Lombroso (1836-1909), a military doctor, whose work *Criminal Man* (1876) is considered to be the cornerstone of criminal anthropology and criminology in general; Enrico Ferri (1856-1929), who wrote *Criminal Sociology*, which was published in 1881 under the title *New Vistas of Criminal Law*; and Raffaele Garrofalo (1851-1934), who textbook on *Criminology* was published in 1885. In this regard, Pinatel notes that the development of criminology was clearly evidenced by the International Congress of Criminal Anthropology, first held in Rome (1885) and then in Paris (1889), Brussels (1892), Geneva (1896), Amsterdam (1901), Turin (1906) and Cologne (1913).[7]

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3 See: David Oldroyd, *The Arch of Knowledge*, 1986, p. 1, http://books.google.com/books?, Accessed: 17.10.2011.

4 Ibidem

5 See more: Đurić, M. (1962). *Problemi sociološkog metoda (Problems in the Sociological Method).* Beograd: Savremena škola, p. 32.

6 The epistemological standpoint entails determining the constituent principles of scientific activity, i.e. what science is striving to achieve, whereas the methodological standpoint refers to how and in what ways "a scientist really adapts his behavior to the ideal requirements of activities in which he participates." Dimitrijević, D. (1964). „*Predgovor*" (Preface). (pp.3-5). In: Pinatel, J. (1964). *Kriminologija (Criminology)*. Sarajevo: Zavod za izdavanje udžbenika, p. 4.

7 Pinatel, J. (1964). *Kriminologija (Criminology)*. Sarajevo: Zavod za izdavanje udžbenika, p. 7.

This conception corresponds with Pinatel's explanation given in 1960, in respect of American criminology. Pinatel pointed to the assimilation of criminology and penology in the USA, based upon the model taken from the 19th century French school of thought. Thus, criminology includes two major parts: criminal etiology and criminal penology. Every crime prevention program includes knowledge of the basic elements, forms and factors contributing to the commission of crime; in order to determine the relevant methods of treatment of criminal offenders, it is essential to find out more about the dominant characteristics of one's personality, its structure and development.[8]

Criminology does not entail simply a sum of the established facts that have quantitative significance. In fact, the established facts are placed in the context of a specific legal system and they are subject to scientific analysis by applying a range of methods: analytical and synthetic method, inductive and deductive method, as well as materialistic, historical and dialectical method. That type of study of facts, in the context of specific genesis of social phenomena, is the essence/ core of scientific knowledge. However, empirical monitoring and recording of phenomena is not an end in itself. Such a procedure does not end at the level of describing the facts, without previously developed theoretical concept, whose basic postulates serve as guidelines for interpretation and verification of theoretical assumptions, in an effort to discover the principles governing the studied phenomenon.[9]

## FORENSIC PSYCHOLOGY OF ENRICO ALTAVILA

The dilemma, posed by the question what is more significant in terms of obtaining scientific results: the use of qualitative or quantitative research of a criminal phenomenon, practically goes beyond the need to clarify and present valid arguments, given that the response does not stem from the dilemma itself but rather rests on what has been stipulated as the subject matter of criminological research, as well as how and at what level (macro or micro) a criminal phenomenon will be observed. The path and method of obtaining knowledge is important both for Criminology (as an independent science) and for criminal justice practice. The value, appropriacy and necessity of using qualitative methods may be subject to discussion. Due to their unique contribution to the depth of understanding the phenomenon, as the primary objective which can be provided by using qualitative methods, criminologists discuss the frequency of using these methods; moreover, if a research is conducted according to these rules, they examine how and in what way it can contribute to creating criminological knowledge and developing the criminal justice practice.

The contemporary development of criminology, particularly the development of criminal psychology, necessarily points to the need to revisit the past and explore the origins and genesis of criminology. In particular, it is essential to focus on the contribution of Italian criminologist, who studied the endogenous factors in the genesis of individual criminal behaviour. In order to successfully apply the envisaged criminal legislation, which is ultimately aimed at combating criminal behavior, there is a need for specialized scientific knowledge and a multi-disciplinary approach to this issue, not only from the aspect of law but also from the perspective of anthropology, psychology, forensic medicine, psychiatry and sociology. The process of reforming the criminal justice system does not include only nomotechnical rules but also the development of a special awareness of the processes and significant events in the course of criminal proceedings. Such a reform cannot be effectively implemented without being aware of the postulates of criminological sciences, especially concerning the implementation of the positivist method.

8 Pinatel, J., op. cit. p. 16.
9 Aranudovski, Lj. *Kriminologija (Criminology)*. (2007). Štip: 2-ri Avgust S, p. 104-105.

The positivist approach to the study of criminal offenders, as key participants in the criminal justice system, influenced the development of specific scientific disciplines dealing with psychological observation of the offender's personality. These subject-specific scientific disciplines are: *criminal psychology* or psychological theories of crime, *judicial psychology* or the psychology of crime and criminal trial proceedings, *prison psychology,* and *legal psychology*. Judicial psychology is the study of the criminal offender's behaviour, with reference to the offender's specific role in criminal procedure, i.e. the role of the defendant. Yet, special attention is also given to the conduct of other participants in criminal proceedings: the injured party/victim, witnesses, the prosecutor, the defense counsel, and the judge.

One of the most complete studies in this field of science is Enrico Altavilla's book *Judicial Psychology* (1955), which presented the theoretical and practical knowledge in this branch of psychology. [10] The book is divided into two volumes, and each volume includes two parts.

Volume 1 is titled: "*The Psychological Process and Judicial Truth*." In the Serbian translation of this book, the two parts of Volume 1 cover a total of 585 pages (single pages typed on a typewriter). Volume 1 starts with *Introduction to the fourth edition*. It is interesting that Alltavila wrote about the *new* editions of his book; thus, in addition to previously mentioned languages, the book was also translated into Spanish and published by De Palma, Buenos Aires.

The peculiarity of this fourth edition is the *Preface,* reprinted from the first edition which was written at Altavilla's request by Enrico Ferri in Rome, in April 1925 (who was acclaimed as "the famous sociologist, lawyer, reformer of criminal law") and Gennaro Marciano in Naples, in 1928 (who was praised as "the greatest lawyer that Italy has had for the last fifty years")[11]. Altavilla notes: "This book is a result of lessons learned from exploring their work, as well as a result of previous scientific research and practical applications; thus, my scientific background, psychological training and my experience as a lawyer made the laboratory research useful in the halls of justice."[12]

10 The original title of this book is *Psicologia giudiziaria*, Torrino 1955 (*Psicologia giudiziaria*, UTET, Torino 1925 (II ed. Accresciuta 1927, con Prefazione di E. Ferri e app. A parte, rist. III ed. 1949 rifatta in 2 voll. nel 1955). It was first published in 1925 in Turin, and the 4th edition of the book was last published by the same publisher in Italy in 1955, when it was translated into Serbian; the text of this first Serbian translation was typed on a typewriter (in single-sided format). The 4th edition of this book was also translated into French in 1959. The German translation was published in Cologne and Graz was published between 1955-1961, including all four parts of the book: Vol. I (parts. 1 and 2) and Vol. II (parts 1 and 2). It was translated into Portuguese and published in Brazil between 1957 and 1960, and reissued in 2003. The Swedish translation was published in the 1954 edition of *Natur Kultur,* Stockholm. Obviously, this book was a focal point of interest in the 1950s when all these translations were done. Owing to Yugoslav political prisoners, the Serbian translation of this book was available in Yugoslavia at the same time as in Europe. A rare copy of the first Serbian translation (typed on a typerwriter) is a valuable item in the Library Collection of the Law Faculty, University of Niš. For the purpose of this research, the data were collected and systematized by Vesna Stojanović, the Library Manager, Faculty of Law, University of Niš, on 13 March 2017.

11 Altavilla, E. (1955). *Sudska psihologija (Judicial Psychology)*. I Tom. Prvi deo. Psihološki proces i sudska istina. Torino: Tipografski savez. Torinsko izdavačko preduzeće. (daktilografisani prevod na srpski jezik). str. 4. (Volume 1 Part 1. Psychological Process and Judicial Truth. Torino; Serbian translation tuped on a typewriter).

12 Elaborating on his own life, Altavilla further writes: "The fluttering sensation of a long life filled with desire to be a criminologist, a jurist and a lawyer specializing in criminal matters, all at the same time, enable him to correlate law, psychology and criminology, both in theory and in practice. The unique success of this book may be attributed to the rigorous scientific consideration and debate supported by ample casuistic documents. I hope that this edition will enjoy an equal struck of good luck as the previous editions, and that it will contribute to the promotion of Italian science in other countries; for, the great Italian scholars are not the *Hercules pillars* of Italian science, as it may seem to foreigners of limited insight, because their students take their own paths, frequently outpacing the scientists who do not know our work." Ibid.

In his preface, Ferri points out that the positivist study of criminals led to the development of the four scientific fields: criminal psychology, judicial psychology, prison psychology, and legal psychology.[13] In Ferri's opinion, *criminal psychology* explores the criminal offender as "the author of crime". *Judicial psychology* studies the offender's conduct when he/she is charged with a crime. P*rison psychology* studies the offender's behaviour after being convicted and while serving a sentence of imprisonment. L*egal psychology* "coordinates the psychological and psychopathological concepts that are necessary for the implementation of the applicable criminal legislation on specific requirements (such as mental capacity) pertaining to a juvenile, mentally impaired, deaf or mute person, or a drunkard, as well some aggravating circumstances (premeditation, malice aforethought, etc.) or some mitigating circumstances (irresistible impulse, provocation, anger, intensity of sustained pain, crimes of passion)".[14] Ferri also notes that forensic psychology involves the study of the criminal offender as a defendant in criminal proceedings, as well as the study of behavior of other participants in the procedure: the injured party/victim, the one who reported the crime, witnesses, the prosecutor, the defense counsel, and the judge.

In his preface, Enrico Marciano was equally inspired to share his thoughts on the subject matter. After noting that "the soul is the key to the universe, " Marciano asserted: "The study of the soul in its multi-faceted manifestations, in its shortcomings and in its abundance, in its up and downs (depressions), in its aspirations and its variability, supplemented by the study of multiple and innumerable factors that determine its vibration, constitutes the most important and most productive contribution to court life and the key to the judiciary, the supreme goal of which is to establish the truth despite the inevitable uncertainty of events and traps set up by parties concerned, and to punish the convicted offender by ensuring that the penalty is proportionate to the crime and danger that criminals pose to society, through the storm of human passions."[15]

Volume 1, Part 1, is divided into seven chapters: *The Psychological Process in its normality; Age and Sex; Emotions and Passions; Individual Differences; Behavior; Disorders of Mental Processes;* and *Mentally Impaired and Mental Disabilities.*

Volume 1, Part 2, includes five chapters: *Mental Illnesses; Faking Mental Illnesses; Psychological Interpretation of Documents; Establishing identity of persons and identifying objects;* and *Truth-finding Methods.*

Volume 2 is titled *The Participants in Criminal Procedure*. In the Serbian translation, the two parts of Volume 2 cover a total of 788 pages (single pages typed on a typewriter).

Volume 2, Part 1, is divided into three chapters: *The Defendant; The Injured Party (Victim) and the Prosecutor;* and *Witnesses*.

Volume 2, Part 2, is divided into six chapters: *Confrontation; The Expert Witness and the Interpreter; The Advocate; The Public Prosecutor; The Judge; Psychological Profiles and Criminal Procedure Law.*

It may be interesting to compare the more contemporary material from the field of forensic psychology, written by domestic criminologists, with some of the elements listed in Altavilla's understanding this science. In his book *The Psychology of Crime and Trial (1988)*[16], Aćimović

13 Altavilla, E. (1955). *Sudska psihologija (Judicial Psychology)*. I Tom. Prvi deo. Psihološki proces i sudska istina. Predgovor Enrico Ferri. op. cit., p. 6.
14 Ibid.
15 Altavilla, E. (1955). *Sudska psihologija (Judicial Psychology)*. I Tom. Prvi deo. Psihološki proces i sudska istina. Predgovor Enrico Marciano. Op. cit., p. 9.
16 Aćimović, M. (1988). *Psihologija zločina i sudjenja (Sudska psihologija) (Psychology of Crime and Trial – Judicial psychology)*. Beograd: Savremena administracija.

cites several conceptions while explaining the subject matter of forensic psychology. In his opinion, the broad concept of forensic psychology includes the same conception on the subject matter of judicial psychology as the one provided by Altavilla in his two-volume study. Referring to the opinion presented by Ferri in the preface of Alltavila's book, Aćimović notes that the subject matter of this science includes all those "psychic events that should be known for the prupose of successful performance of judicial activities".[17] Aćimović also cites a similar opinion on the subject of judicial psychology which was advocated by D. Jevtić. In his book *Judicial Psychopathology (1960),*[18] Jevtić defined psychology as "the science of normal soul (psyche) and normal mental (psychological) phenomena," whereas he defined psychopathology as "the science of abnormal psyche and the abnormal psychological phenomena". Jevtić also noted that "judicial (forensic) psychopathology is an applied science which investigates processes and interprets abnormal mental phenomena and abnormal mental activity, if they are significant for the relationship between the mentally abnormal and the norms of positive law."[19]

In this sense, Aćimović concludes that Altavilla's comprehensive conception is actually a collection of several scientific disciplines, which may provisionally be designated as judicial (forensic) psychology. He points out that "a joint study of these disciplines could be of significant practical benefits."[20]

## CONCLUDING REMARKS

The title of this paper, its central part and concluding remarks clearly indicate the author's intention to initiate a discussion on the fundamental issues in criminology and related disciplines, such as: penology, victimology, and forensic psychology, with the aim of revisiting the existing corpus of knowledge and providing new interpretations on this subject matter; at least, it will be an attempt to cast a new "light" on these issues, particularly in the context of completely altered social and economic circumstances in the contemporary world.

In the first half of 2016, the social reality in Serbia gave rise to the academic debate on the position of social sciences, as well as on the importance of studying social sciences and humanities at local universities. Of course, the debate was caused by the prosaic but objective circumstances concerning the method of funding scientific research in the field of social sciences and humanities. When comparing the application properties of natural sciences and social sciences/humanities, natural sciences are most likely to prevail. So, where does the inspiration for this paper and the presented considerations come from?

Criminology may offer abundant knowledge and various findings about the phenomenological and etiological characteristics of crime. Its achievements in the field of crime prevention are immeasurable. Yet, there is a need to revisit its basic scientific postulates and achievements in the field of criminalization and decriminalization of certain forms of behaviour, in order to remind the citizens that crime is an act committed by humans. As such, it may never be completely eradicated; however, detection and prevention of crime must be the absolute priority of every state which shall exert its best efforts to counteract criminal conduct.

In the era of digital humanism, research of library collections at Serbian law schools is certainly not a futile job. The historical heritage of the pioneering criminological conceptions

17 Aćimović, M., op. cit. p. 10.
18 Jevtić, D. (1960). *Sudska psihopatologija (Judicial Psychopatology)*. Beograd – Zagreb: Medicinska knjiga.
19 Jevtić, D., op. cit. p. 2.
20 Aćimović, M., loc. cit.

is always necessary for comparing the past and present attainments, and assessing the current level of development of contemporary scientific knowledge.

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# THE ANALYSIS OF THE AUDIO AND AUDIOVISUAL MODALITY IN THE ESTIMATION OF THE AUTHENTICITY OF A STATEMENT

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Starting from the assumption that the signs of cognitive load as the result of lying will be more clearly seen in the audio-visual record than in the audio record, the authors tried to answer whether it is important for determining of the success in the estimation of the authenticity of a statement if the examinees only listen to the audio record or look at and listen to the audio-video record of the persons who lied or told the truth at the same time, as well as whether there is any difference in the accuracy of the estimation of a statement regarding the sex. There were 180 participants in the research (88 men and 92 women, aged 21-24), the students of the Academy of Criminalistic and Police Studies in Serbia who were divided into two groups – the control and experimental. Ten audio-video and ten audio records with the interviews of persons i.e. demonstrators who lied or told the truth were a stimulus set.

The differences in the accuracy of the estimation of the authenticity of the statement between the audio and audio-visual situations were examined by the use of Wilcoxon signed-rank test for repeated measurements. Significant differences were established statistically in the total accuracy of the estimation of the authenticity of the statements between the audio-visual and audio situations, $Z= -5.97$, $p<0.001$, the accuracy of the estimation of the authenticity of the statements, $Z=-3.14$, $p<0.01$ and accuracy of the estimation of the false statements $Z=-4.50$, $p<0.001$. The whole successfulness in the audio-visual situation was 61.4 %, while in the audio situation was significantly lower and amounted to 56.9 %. Similarly, the accuracy of the estimation of the true statements was higher in the audio-visual situation (60.89 %) than in the audio situation (57.11 %), while the accuracy of the estimation of the false testimony was also higher in the audio-visual situation (61.89 %) than in the audio situation (56.78 %). The gender differences in the accuracy of the estimation of the authenticity of the statement (both modalities jointly) were examined by Mann-Whitney test for independent samples. The differences between men and women were statistically significant in the total accuracy of the estimation $U = 1918.5$, $p <0.001$.The total accuracy of the estimation was higher for men (62.10%) than for women (56.36%).

The results of the research have indicated the importance of the audio-visual against the audio modality in the evaluation of the authenticity of the statement, which is in accordance with the results of other researches.

**Keywords:** estimation of the authenticity of a statement, auditory modality, audio-visual modality, a false statement, a true statement

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# INTRODUCTION

We often come across the lying phenomenon in the police practice during the hearing of suspects or witnesses who are ready for deceitfulness and also during the information gathering from citizens as a part of crime scene investigation.[2345] Most practitioners[6789]assert that one of the positive characteristics of the police officers and examiners at all is the ability of detecting deception especially in the investigation procedure.

Most researchers who have dealt with the issues of lie detection for decades essentially have come to the same results according to which the wrong assumptions that people can detect a lie have just been based on observing of the behavior.[10]It is proved that laymen cannot easily detect a lie, i.e. that their success in lie detection was about 53% in the studies of success in lie detection.[11]Persons who tell the truth are valuated with the higher level of precision suggesting that the ability to recognize persons who lie is at the level of 50% or even lower.[12]The level of lie detection was not even better in the cases of professionals (police officers, judges, customs officials) who achieved similar results as laymen[13141516171819202122232 4].

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The results of thirty researches[25] show that the appraisers detect the false statements more precisely (compared with random guessing) when they have information about movements, body position and vocal signs, while the accuracy of guessing is below 50% when they have information about facial expression only. It has been shown that appraisers have less percentage of accurate assessments when they have the data about facial expression in combination with the other nonverbal signs.

In some studies observers have watched different video and audio recordings of persons who lied or told the truth. In the research of Zuckerman, Koestner and Colell[26]in which one group of observers could see only the faces of demonstrators, the other group could hear their voices, the third could see and hear, the respondents achieved the higher percentage of accuracy after the training than the police officers who also participated in the research of Kohnken[27], Vrij[28]and Vrij and Graham.[29]

In the study of Anderson and coauthors[30]and DePaulo and coauthors[31] the respondents could better detect false and true statements when they listened to the audio recordings than in the case when they watched audio-visual recordings. The results of these researches implicate that people are more precise in deception of deceit when they rely on sound signals than when they rely on visual information.

In the research of Baić and Batić[32], the respondents were significantly more successful in total accuracy of statement assessment when they watched audio-visual recordings than in the case when they listened to audio recordings. Based on the research results it is concluded that the better result in audio-visual situation is partially the consequence of the effect of practicing, and because of that the research should be repeated with the use of more complex plan of the research.

One of the clearest conclusions concerning detection of deception is the result of the research which is done by Zukerman and coauthors.[33]Namely, it is affirmed that the deception is noticed more quickly from any information with words such as transcripts, audio tapes or video tapes with sound and then from a source without words such as face and body.

Bearing in mind the significance of this field for the police work and the fact that the objectivity of a statement is still one of the key issues of proving in criminal procedure[34]we strived to achieve some objectives. The main objective is to check the results of research which assert the significance of audio-visual modality in the assessment of the statement. In this respect the research involved a considerably bigger number of reviewers than in seminal studies. Second, a more complex research project is set with a control group and the so-called procedure of contra balance. Finally, we consider that the results of the research could be im-

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plemented in the concept of training course of the students of The Academy of Criminalistric and Police Studies.

# METHOD

## PARTICIPANTS

One hundred and eighty respondents participated in the research (88 men and 92 women aged 21-24), all of them being the students of The Academy of Criminalistics and Police Studies who were divided into the control and experimental group. The structure of the sample according to affiliations to experimental or control group and sex is given in the Table 1.

**Table 1.** *Distribution of the sample according to the group and sex*

| Group | | Frequency | Percentage |
|---|---|---|---|
| Control | Men | 47 | 52.2 |
| | Women | 43 | 47.8 |
| | Total | 90 | 100.0 |
| Experimental | Men | 41 | 45.6 |
| | Women | 49 | 54.4 |
| | Total | 90 | 100.0 |

Stimulus material

The stimulus set consisted of 10 audio-video and 10 audio recordings where the interviews with demonstrators who lied or told the truth were shown and who were chosen based on the previous research.[35]

Data analysis methods

The correct answers of each respondent are gathered for all ten statements (audio recordings). The total accuracy of estimation is expressed as percentage of correct answers multiplied with 100. Then the scores of accuracies for true and false statements are calculated separately for each respondent and after that scores are converted into percentage. In that way, the accuracy of estimation of a true statement and the accuracy of estimation of false statements are calculated separately for each respondent. The same procedure is repeated for the audio-video recordings, too.

We use descriptive statistics for statistical analysis of description of a sample (frequency and percentage). The accuracy of estimation of statement veracity is expressed as percentage of exact answers of the respondents. Descriptive indicators are used for the description of accuracy variable of recognition of true and false statements (arithmetic mean, standard deviation, minimum, maximum, median, interquartile range).

*Mann-Whitney* nonparametric test for independent samples is used for examination of differences between a control and experimental group in total accuracy of statement veracity, accuracy of true and false statements. The nonparametric test is chosen because the distribution of criteria variables was not normal. Furthermore, sex differences in accuracy of statement estimation are examined with the use of *Mann-Whitney* nonparametric test for independent samples. The differences in the success of estimation between audio and audio-video

35 Baić, Batić,*op. cit* (fusnote 31).

modality are examined with the use of *Wilcoxon signed-rank* nonparametric test for repeated measuring. The nonparametric tests are chosen because the distributions of success variables of statement veracity estimation deviated from normal distribution (Appendix 1).

Procedure

In the preparatory phase with the aim of avoiding of implicit assumptions of deceitfulness, the estimators are presented the knowledge about verbal, nonverbal and vocal signs that are characteristic for the lying situations.

In the first phase of the research, the respondents of the experimental group had the task to do the estimation of statement veracity of persons they listened to when the audio recording was finished (5 true and 5 false statements), while the respondents of the control group had the task to estimate the veracity of the statements of the persons they looked at and listened to at the same time after each audio-visual recording (5 true and 5 false statements). In the second phase of the research, the counterbalance is done, so the respondents of the experimental group were to estimate the statements of the persons they looked at and listened to at the same time (audio-visual recordings), while the respondents of the control group had to estimate the statements of the persons they listened to. All the respondents estimated the different statements in order to avoid the "effect of learning".

## RESULTS

The differences between the experimental and control group in the veracity of statements (audio recordings).

With the aim of significance examination of differences between the experimental and control group in success of the statement estimation the *Mann-Whitney nonparametric test* for independent samples is used (Table 2). The results show that there are statistically significant differences in total accuracy of estimation, accuracy of estimation of true statements and accuracy of estimation of false statements between the experimental and control group.

**Table 2** *Testing the significance of differences between the experimental and control group in success of estimation of statement veracity with the use of Mann-Whitney test (audio recordings)*

| | U | W | Z | p |
|---|---|---|---|---|
| Total accuracy of assessment | 2399 | 6494 | -5.275 | 0.000 |
| The accuracy of assessment of true statement | 3280 | 7375 | -2.662 | 0.008 |
| The accuracy of assessment of false statement | 2846 | 6941 | -4.358 | 0.000 |

Legend: U – Mann–Whitney`s test, W – Wilcoxon test, z – standardized value

The experimental group had the total accuracy of estimation 60%, while the control group had the total accuracy of estimation lower and it was 53.9%. The accuracy of estimation of true statements for the experimental group was 59.6%, while the control group had 54.7%. Similarly, the accuracy of estimation of false statements for the respondents in the experimental group was 60.4% and for the respondents in the control group it was 53.1% (Table 3).

**Table 3** *Descriptive data for assessment of the veracity of statement: the accuracy of the assessment for the control (N = 90) and for experimental group (N = 90)*

| | Group | Min | Max | M | SD | Mdn | IQR |
|---|---|---|---|---|---|---|---|
| Control | Total accuracy of assessment | 20.00 | 70.00 | 53.89 | 8.31 | 55 | 10 |
| | The accuracy of assessment of true | 20.00 | 80.00 | 54.67 | 13.67 | 60 | 20 |
| | The accuracy of assessment of false | 20.00 | 80.00 | 53.11 | 13.12 | 60 | 20 |
| Experimental | Total accuracy of assessment | 40.00 | 70.00 | 60.00 | 6.18 | 60 | 0 |
| | The accuracy of assessment of true | 40.00 | 80.00 | 59.56 | 9.93 | 60 | 0 |
| | The accuracy of assessment of false | 40.00 | 80.00 | 60.44 | 7.92 | 60 | 0 |

Sex differences in the assessment of the veracity of statement (audio recording)

To examine sex differences in the accuracy of estimation of a statement, we used the Mann-Whitney test for independent samples. The differences between men and women were statistically significant in total accuracy of estimation and accuracy of estimation of true statements, while statistically significant differences in the accuracy of estimation of false statements were determined (Table 4).

**Table 4** *Testing the significance of differences between the men and women in the success of estimation of veracity of statement with the use of Mann-Whitney test – audio recordings*

| | U | W | Z | P |
|---|---|---|---|---|
| Total accuracy of assessment | 3115 | 7393 | -2.982 | .003 |
| The accuracy of assessment of true statements | 3272.5 | 7550.5 | -2.681 | .007 |
| The accuracy of assessment of false statements | 3732.5 | 8010.5 | -1.142 | .253 |

Legend: U – Mann–Whitney`s test, W – Wilcoxon test, z – standardized value

Total accuracy of estimation was higher for men (58.4%) than for women (55.5%). The accuracy of estimation of true statements was higher for men (59.1%) then for women (55.2%), while there were no sex differences in estimation of false statements (Table 5).

**Table 5** *Descriptive data for estimation of the veracity of statements: the accuracy of estimation for men (N=88) and women (N=92)*

| | Sex | N | Min | Max | M | SD | Mdn | IQR |
|---|---|---|---|---|---|---|---|---|
| Male | Total accuracy of assessment | 88 | 20.00 | 70.00 | 58.41 | 8.15 | 60 | 0 |
| | The accuracy of assessment of true statements | 88 | 20.00 | 80.00 | 59.09 | 12.47 | 60 | 0 |
| | The accuracy of assessment of false statements | 88 | 20.00 | 80.00 | 57.73 | 11.91 | 60 | 0 |
| Female | Total accuracy of assessment | 92 | 30.00 | 70.00 | 55.54 | 7.47 | 60 | 10 |
| | The accuracy of assessment of true statements | 92 | 40.00 | 80.00 | 55.22 | 11.62 | 60 | 20 |
| | The accuracy of assessment of false statements | 92 | 20.00 | 80.00 | 55.87 | 10.91 | 60 | 0 |

The differences between the experimental and control group in the estimation of the veracity of the statement (audio-video recording)

The differences between the experimental and control group in the estimation of the veracity of the statement (audio-video recording) were examined with the use of Mann-Whitney test for independent samples. It has been shown that there are statistically significant differences between the experimental and control group in the total accuracy of estimation, accuracy of estimation of true and accuracy of estimation of false statements (Table 6).

**Table 6** *Testing the significance of differences between the experimental and control group in the success of estimation of veracity of statements with the use of Mann-Whitney test (audio-video recordings)*

| | U | W | Z | p |
|---|---|---|---|---|
| Total accuracy of estimation (AV) | 2100 | 6195 | -5.940 | 0.000 |
| Accuracy of estimation of true statements (AV) | 3151 | 7246 | -2.967 | 0.003 |
| Accuracy of estimation of false statements (AV) | 2395.5 | 6490.5 | -5.630 | 0.000 |

Legend: U – Mann–Whitney`s test, W – Wilcoxon test, z – standardized value

The total accuracy of the estimation of the experimental group was 65.4%, while the control group had significantly lower accuracy of 57.3%. The accuracy of estimation of true statements of the experimental group was 64% and control group had 57.8%. The accuracy of the estimation of false statements of the experimental group was 66.9%, while for the control group it was significantly lower, 56.9% (Table 7).

**Table 7** *Descriptive data for the estimation of the veracity of the statements: the accuracy of estimation for the control (N=90) and experimental group (N=90)*

| Group | | Min | Max | M | SD | Mdn | IQR |
|---|---|---|---|---|---|---|---|
| Control Group | Accuracy of estimation of true statements (AV) | 20.00 | 80.00 | 57.78 | 14.82 | 60 | 20 |
| | Accuracy of estimation of false statements (AV) | 40.00 | 80.00 | 56.89 | 10.77 | 60 | 0 |
| | Total accuracy of estimation (AV) | 40.00 | 70.00 | 57.33 | 8.84 | 60 | 10 |
| Experimental Group | Accuracy of estimation of true statements (AV) | 40.00 | 80.00 | 64.00 | 10.47 | 60 | 20 |
| | Accuracy of estimation of false statements (AV) | 40.00 | 100.00 | 66.89 | 10.88 | 60 | 20 |
| | Total accuracy of estimation (AV) | 50.00 | 80.00 | 65.44 | 6.73 | 60 | 10 |

Legend: AV audio-video recording

Sex differences in the accuracy of statement estimation (audio-video recording)

To examine sex differences in the accuracy of estimation of statements, the Mann-Whitney test for independent samples was used. The differences between men and women were statistically significant in the total accuracy of estimation, accuracy of estimation of true statements and false statements (Table 8).

**Table 8** *Testing the significance of differences between men and women in the success of the estimation of veracity of the statements with the use of Mann-Whitney test – audio-video recordings*

| | U | W | Z | p |
|---|---|---|---|---|
| Total accuracy of estimation (AV) | 1764.0 | 6042.0 | -6.959 | 0.000 |
| Accuracy of estimation of true statements (AV) | 2520.5 | 6798.5 | -5.042 | 0.000 |
| Accuracy of estimation of false statements (AV) | 2745.0 | 7023.0 | -4.435 | 0.000 |

Legend: U – Mann–Whitney test, W – Wilcoxon test, z – standardized value, AV –audio-video recording

The total accuracy of statement estimation was higher for the men (65.8 %) than for the women (57.2 %). The accuracy of estimation of true statements was higher for the men (65.7%) than for the women (56.3%). The accuracy of estimation of false statements was 65.9% for male and for female respondents (Table 9).

**Table 9** *Descriptive data for the estimation of veracity of statements: the accuracy of estimation for men (N=88) and women (N=92)*

| Sex | | Min | Max | M | SD | Mdn | IQR |
|---|---|---|---|---|---|---|---|
| Male | Accuracy of estimation of true statements (AV) | 20.00 | 80.00 | 65.68 | 13.54 | 60 | 20 |
| | Accuracy of estimation of false statements (AV) | 40.00 | 100.00 | 65.91 | 11.81 | 60 | 20 |
| | Total accuracy of assessment (AV) | 40.00 | 80.00 | 65.79 | 8.54 | 70 | 10 |
| Female | Accuracy of estimation of true statements (AV) | 20.00 | 80.00 | 56.30 | 11.07 | 60 | 0 |
| | Accuracy of estimation of false statements (AV) | 40.00 | 80.00 | 58.04 | 10.72 | 60 | 0 |
| | Total accuracy of assessment (AV) | 40.00 | 70.00 | 57.17 | 6.85 | 60 | 10 |

Comparing the accuracy of estimation between the audio and audio-visual situation

The differences in the accuracy of estimation of the veracity of statement between audio and audio-visual situation were examined with the use of Wilcoxon signed-rank test for repeated measures. The statistically significant differences were established in the total accuracy of the estimation of the veracity of the statement between the audio-visual and audio situation, $Z= -5.97$, $p<0.001$, the accuracy of the estimation of the true statement, $Z=-3.14$, $p<0.01$ and the accuracy of estimation of false statements $Z=-4.50$, $p<0.001$. Total success in audio-visual situation was 61.4 %, while in the audio situation it was significantly lower-56.9% (Table 10). Similarly, the accuracy of estimation of false statements was higher in audio-video situation (60.89%) than in the audio situation (57.11%). The accuracy of the estimation of false statements was also higher in audio-video situation (61.9%) than in audio situation (56.78%).

**Table 10** *Descriptive data for the estimation of true statements through modalities*

| | Min | Max | M | SD | Mdn | IQR |
|---|---|---|---|---|---|---|
| Total accuracy of estimation (audio) | 20.00 | 70.00 | 56.94 | 7.92 | 60 | 10 |
| Accuracy of estimation of true statements (audio) | .00 | 80.00 | 57.11 | 12.17 | 60 | 0 |
| Accuracy of estimation of false statements (audio) | 20.00 | 80.00 | 56.78 | 11.42 | 60 | 0 |
| Total accuracy of assessment (AV) | 40.00 | 80.00 | 61.39 | 8.83 | 60 | 10 |
| Accuracy of estimation of true statements (AV) | 20.00 | 80.00 | 60.89 | 13.17 | 60 | 0 |
| Accuracy of estimation of false statements (AV) | 40.00 | 100.00 | 61.89 | 11.90 | 60 | 0 |

Sex differences in the accuracy of the estimation of the veracity of the statement (no matter of the modality)

Sex differences in the estimation of the veracity of the statement (both modalities together) were examined with the use of Mann-Whitney test for independent samples. There is the statistically significant difference in the accuracy of estimation, $U$=1918.5, $p$<0.001. The total accuracy of the estimation was lower for the women (56.36 %) than for the men (62.10 %) (Table11).

**Table 11** *Descriptive data for the estimation of true statements: the total accuracy of estimation for men (N=88) and women (N=92) – both modalities*

| | Sex | Min | Max | M | SD | Mdn | IQR |
|---|---|---|---|---|---|---|---|
| Male | Total accuracy of assessment (both modalities) | 35.00 | 75.00 | 62.10 | 7.26 | 65 | 5 |
| Female | Total accuracy of assessment (both modalities) | 40.00 | 70.00 | 56.36 | 5.69 | 55 | 5 |

## DISCUSSION AND CONCLUSION

In this research, we have endeavored to examine the significance of audio and audio-visual modality in the estimation of the veracity of the statement with the determination of total accuracy of the statements estimation, accuracy of the estimation of true and false statements and the differences in accuracy of estimation according to sex. The research results show the significance of audio-visual modality during the estimation of the veracity of the statement in contrast to the audio modality. Namely, the respondents were significantly more successful in the total accuracy of the estimation of the veracity of a statement when they conducted the estimation based on audio-video recordings than when they conducted the estimation based on an audio recording. At the same time, the respondents were generally more successful both in the estimation of the true and false statements in audio-video situation than in audio situation. Regarding the sex, the research results presented the greater achievement in the case of male respondents than the female respondents.

Before we conclude, it is important to remark some basic cognition that the researchers of the phenomenon of deception and its detection have found out. Namely, the opinion that persons who lie are better manipulators of verbal behavior because it is easier to control it than nonverbal behavior had been prevalent for a long time. For that reason, the intention is to focus attention to nonverbal behavior when detecting deceptive behavior what, inter alia, practitioners advocated.[36] Nowadays, the prevailing opinion is that successful detection of lying requires the analysis of a total context and the estimation of someone's deceptive behavior based on the wide spectra of verbal, vocal and nonverbal behavior signs.[37]

Excepting the disadvantages of the research in experimental conditions where the demonstrators are usually instructed to give true or false statements, we can conclude that the results of the research are in accordance with the other results where the emphasis is on the significance of audio-visual modality in the estimation of accuracy of a statement.[3839] Taking a wider perspective into consideration, the results of the research can point out at the significance of visual modality since in both experimental situations audio modality was present. Finally, the research results can point out that the estimation of deceptive behavior should be done based on the verbal, vocal and nonverbal signs.[40]Regarding the sex differences, the research showed the existence of the differences in the experience and estimation of some aspects of appropriate stimulation between the male and female respondents. The potential source of assumed differences suggests the preference of certain type of information rather than higher or lower level of sensitivity within the provided channel.[41]

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APPENDIX

Descriptive indicators and check of normality of continuous variables distribution

| | M | SD | Skjunis | | Kurtozis | | Kolmogorov-Smirnov test | |
|---|---|---|---|---|---|---|---|---|
| | | | SK | SE | K | SE | KS | p |
| Total accuracy of estimation (audio) | 56.94 | 7.92 | -.968 | .181 | 2.547 | .360 | .317 | .000 |
| The accuracy of estimation of true statements (audio) | 57.11 | 12.17 | -.671 | .181 | 2.440 | .360 | .366 | .000 |
| The accuracy of estimation of false statements (audio) | 56.78 | 11.42 | -.731 | .181 | 1.644 | .360 | .400 | .000 |
| Total accuracy of estimation (AV) | 61.39 | 8.83 | -.177 | .181 | -.134 | .360 | .221 | .000 |
| The accuracy of estimation of true statements (AV) | 60.89 | 13.17 | -.403 | .181 | .532 | .360 | .312 | .000 |
| The accuracy of estimation of false statements (audio) | 61.89 | 11.90 | .131 | .181 | .254 | .360 | .346 | .000 |
| Total accuracy of estimation (A+AV) | 59.17 | 7.10 | -.471 | .181 | .242 | .360 | .174 | .000 |

Legend A – audio recordings, AV – audio-video

# THE SENTENCE BARGAINING IN THE MACEDONIAN CRIMINAL LEGISLATION

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**Abstract:** The procedural institution "sentence bargaining" for the first time was introduced into Macedonian legal system in 2010 when the new Law on Criminal Procedure (LCP), was adopted by the Macedonian Assembly. As stated in the LCP's explanation, the efforts towards the acceleration of the criminal justice system and reaching a final and enforceable judgements, shall be done by accepting models of simplified procedures, which means - by tending the judgment to be reached in the earlier phase of the criminal procedure, by endeavouring the parties to give their agreement on the sentence and by avoiding the usage of the legal remedies. In essence, besides the Reaching a judgment on the basis of a plea agreement between the Public Prosecutor and suspect (Chapter 29), the new LCP governs three additional models of accelerated procedures, i.e. Summary procedure (Chapter 28), Mediation procedure (Chapter 30) and Procedure for issuing a penal warrant (Chapter 31).

Having in mind the above, the main goal of the Paper shall be to comprehensively elaborate the Macedonian legal framework dedicated to the sentence bargaining, especially the new LCP, Criminal Code and Law on Determining the Type and Meting Out the Degree of the Sentence. Also, the Paper shall give a special attention to the Judgement on the basis of a draft plea agreement reached between Public Prosecutor and one of the accused in the case publicly known as "Putsch".

**Keywords:** Sentence bargaining; Accelerated procedure; Law on Criminal Procedure; Republic of Macedonia.

## INTRODUCTION

The Macedonian criminal procedure from 1997 needed to be changed.[1] Slowness of the procedure contributed the traditional mixed criminal procedure to accept certain procedural decisions, often unknown and even incompatible with its basic principles. Therefore, a breakthrough of institutes that are characteristic for the accusatory criminal procedure can be noted. In this context, the possible forms of settlement (or contracting) between the Public Prosecutor and the accused or so called contracting justice can be emphasized; expanding of the frames of opportunity principle in the proceedings by the Public Prosecutor for the minor criminal acts; respecting the position of the damaged party, his / her opinion and consent

1 With the start of application of the new Law on Criminal Procedure - LCP ("Official Gazette of the Republic of Macedonia" No. 150/2010, 100/2012), the old LCP ("Official Gazette of the Republic of Macedonia" No. 15/1997, 44/2002, 74/2004, 15/2005 - consolidated text, 83/2008, 67/2009, 51/2011) shall cease to be valid, except for the procedures that are conducted according to the Article 556 of the new LCP (the procedures initiated prior to the application of the new LCP shall be completed according to the provisions of the old LCP).

to deviate from the ordinary course of criminal procedure; accomplishing compensation as a possibility the criminal procedure not to be initiated, i.e. resolving the disputes by mediation; prescribing short and efficient deadlines for taking specific procedural actions, as well as accepting special forms of accelerated procedures.[2] These procedures include four possible forms that simplify and accelerate the procedure, and thereby effectuate the criminal justice: Summary procedure (Chapter 28), Reaching a judgment on the basis of a plea agreement between the Public Prosecutor and suspect (Chapter 29), Mediation procedure (Chapter 30) and Procedure for issuing a penal warrant (Chapter 31).[3] Thus, a brand new procedure is the procedure for reaching a judgment based on the agreement between the Public Prosecutor and the suspect, by which a new institution in our criminal justice system is introduced, known in the Anglo-Saxon procedures as bargaining in respect of the sanction (sentence bargaining).[4]

## LEGAL PROVISIONS ABOUT THE PROCEDURE ON REACHING A JUDGMENT ON THE BASIS OF A DRAFT PLEA AGREEMENT

The Articles 483 to 490 of the LCP's Chapter XXIV regulate the procedure on reaching a judgment on the basis of a plea agreement between the Public Prosecutor and the suspect.[5] According to the Article 483, before raising the indictment,[6] the Public Prosecutor and the suspect may submit a draft plea agreement (DPA) requesting the Judge of Pre-trial Procedure (the Judge) to impose a criminal sanction determined in the DPA. The criminal sanction should be determined by type and duration within the legally prescribed limits for a specific criminal act, and it should not be lower than the limits for mitigation of the sentence as defined by the Criminal Code (CC).[7] Along with the DPA, the Public Prosecutor should enclose

2 For more, see: Government of the Republic of Macedonia: *Draft-Law on Criminal Procedure* (submitted to the Assembly in July 2010; available on: http://www.sobranie.mk), page 249. The explanation of the Draft-LCP points to several recommendations of the Council of Europe that address acceleration of procedure (Recommendation No. R (87) 18 concerning the simplification of criminal justice; Recommendation No. R (95) 12 on the management of criminal justice; Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure; Recommendation No. R (87) 21 on assistance to victims and the prevention of victimization).

3 See: *Ibid*, page 250.

4 See: Академија за судии и јавни обвинители: *Модул 4 - Забрзани постапки - Прирачник,* Скопје, 2013, page 15. Comparatively, there are three types of bargaining: charge bargaining, fact bargaining and sentence bargaining. For more, see: *Ibid*, page 33. According to L. Brashear Tiede: *An Analysis of Macedonian Sentencing Policy and Recommendations for Future Directions: Towards a More Uniform System,* Skopje, 2012, page 26, in the United States federal system, the vast majority (96 to 99 percent) of all cases result in a plea bargain.

5 The Public Prosecutor has several rights and duties concerning the criminal acts that are prosecuted ex officio, among which is to negotiate and bargain with the accused on a guilty plea under the conditions and in a manner determined by the LCP (Article 39 Paragraph 2 Line 8). The part "on a guilty plea" of the provision "to negotiate and bargain with the accused on a guilty plea" should be erased, since they negotiate and bargain about the sentence. This provision is followed by the Article 206 that regulates the advisement of the accused on his / her rights. Namely, before the beginning of the first examination of the accused, he / she shall be informed about the right to bargaining with the Public Prosecutor. More about the rights of the accused see: Article 206 of LCP.

6 According to LCP's Article 483 Paragraph 1, in the practice there shall be a gap between "before raising indictment" and "main hearing". Therefore it should be changed to "until the indictment is verified" or "until the main hearing".

7 As stated by 2013 Explanations of the Draft-Laws on Changing and Amending Criminal Code, given by the Macedonian Government, harmonization of CC with LCP is provided by LCP's Action plan for its implementation. The purpose of the amending CC's Article 40 was to create preconditions

all evidence, together with the written statement signed by the damaged party regarding the type and amount of any legal or property claim.[8] The plea agreement procedure shall be conducted between the competent Public Prosecutor and suspect, in the presence of his / hers defense counsel.

The subject of the plea agreement, as mentioned above, is the type and duration of the criminal sanction. If the suspect gives consent, then the legal or property claim of the damaged party may also be a subject of DPA. Therefore, the LCP prescribes the following elements that any DPA must contain:

1. Data regarding the Public Prosecutor, suspect and his / her defense counsel;
2. Description and legal qualification of the criminal acts covered by the DPA;
3. Proposed criminal sanction by type and duration;
4. Type and amount of any legal or property claim and the manner of its effectuation (if the suspect gave consent);
5. Statement of the suspect that he / she is consciously and voluntarily accepting the DPA and any consequences deriving from it;
6. Statement by the Public Prosecutor and the suspect that they waive their right to appeal, if a judgement accepting DPA is reached;
7. The costs of the procedure;
8. Signatures of the Public Prosecutor, the suspect and his / her defense counsel;
9. Date and venue of concluding DPA.

for implementation of the institute bargaining prescribed by LCP. See: Government of the Republic of Macedonia: *Draft-Law on Changing and Amending Criminal Code* (submitted to the Assembly in February 2013; available on: http://www.sobranie.mk), pages 3, 9; Government of the Republic of Macedonia: *Draft-Law on Changing and Amending Criminal Code* (submitted to the Assembly in December 2013; available on: http://www.sobranie.mk), pages 2, 5; Criminal Code ("Official Gazette of the Republic of Macedonia" No. 37/1996, 80/1999, 04/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 07/2008, 139/2008, 114/2009, 51/2011 - two changes and amendments, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015).

The given CC's amendments rule that the Court may determine to the perpetrator a sentence under the limit prescribed by law, within the framework provided in CC's Article 41, or to apply a more lenient form of sentence in two cases. The first case is when the Court is imposing a sentence based on DPA concluded between the Public Prosecutor and the accused, and the second case is when the accused pleads guilty at the main hearing in accordance with LCP's provisions. Also, the Court may impose a more lenient sentence, within the framework provided in CC's Article 41, when in accordance to the legally prescribed procedure for bargaining between the Public Prosecutor and the accused an agreement is reached for more lenient sentence than the sentence prescribed for that criminal act by the law. In addition, the Law on Determining the Type and Meting Out the Degree of the Sentence ("Official Gazette of the Republic of Macedonia" No. 199/2014), should be mentioned since it contains provisions regarding the negotiations on the type and duration of the sentence between the Public Prosecutor and the accused. Based on its Articles 20 and 21, the Public Prosecutor and the accused may not agree on a sentence that would be lower than 50%, i.e. 70% of the sentence that would otherwise be imposed if the provisions of this Law apply in regular judicial procedure while they are negotiating during the investigative procedure and up to the filing a penal warrant in the summary procedure, i.e. during the indictment review stage. And finally, if the accused pleads guilty during the main hearing, after the parties' opening statements, the Court may not impose a sentence to the accused that would be lower than 70% of the above mention sentence.

8 The Public Prosecutor, under Article 483 Paragraph 2, is obliged to enclose a written statement signed by the damaged party regarding the type and amount of any legal or property claim. This provision provides an opportunity to the damaged party to "delay" the whole procedure. Or, the bargaining not to be realized if the damaged party does not give such statement.

Also, there is another "must" rule - the participation of defense counsel in the plea agreement procedure from its outset is a must.[9] Contrarily, the Judge must not participate in the plea agreement procedure.

The Judge within three days of DPA's receiving shall schedule a hearing for its assessment and shall summon the persons who filed it. The Judge is obliged to examine whether the DPA was submitted voluntarily, whether the suspect is aware of the legal consequences from its acceptance, the consequences related to any legal or property claim and the costs of the criminal procedure.[10] Throughout the hearing, the Public Prosecutor, the suspect and his / her defense counsel must not put forward a motion for a criminal sanction different from the sanction contained in DPA. If any of them puts such motion, it shall be considered that they have withdrawn from DPA and the Judge shall adopt a decision to reject DPA (Article 489 Paragraph 1). Therefore, the Judge shall advise the Public Prosecutor and the suspect and his / her defense counsel on following:

- The right to withdraw from DPA until decision is adopted,
- The acceptance of DPA shall be considered as waiving the right of appeal against the judgement reached on DPA's basis.

However, the Judge may adopt a decision to reject DPA (Article 489), which cannot be appealed. This type of decision shall be reached if the Judge finds that the collected evidence regarding the facts relevant for selecting and determining the criminal sanction do not justify the pronouncement of the proposed sanction, i.e. that the Public Prosecutor, suspect and his / her defense counsel filed a motion during the hearing for criminal sanction different than the one that DPA contains. In such situation, the minutes of the held hearing and the DPA may not be used in the further course of the procedure, and they shall be treated in accordance with LCP's Article 336 Paragraph 4 (shall be separated from the rest of the case file, shall be sealed in a separate envelope and kept by the Judge). Also, the Judge shall submit the case files to the Public Prosecutor.

On the other hand, if the Judge accepts DPA, shall pronounce a judgement that must contain the same criminal sanction as the one in DPA. The judgment, with elements of judgment of conviction pursuant to LCP's Article 404,[11] shall be announced immediately and shall be prepared in writing within three days of its announcement. Without any delay, the judgment

9 If the suspect fails to choose a defense counsel by him/herself, then the President of the competent court shall appoint a defense counsel ex officio. The LCP's Article 74 dedicates six paragraphs to the compulsory defense with a defense counsel, among which is the procedure of negotiation and bargaining with the Public prosecutor on the guilty plea (Paragraph 4). The same as before, the part "on the guilty plea" should be erased.

10 Академија за судии и јавни обвинители: *Модул 4 - Забрзани постапки - Прирачник,* Скопје, 2013, page 38, mentions several test questions that the Judge should ask the accused: personal and family circumstances; circumstances from which shall determine that the accused fully understands the nature and consequences of the agreement (in order to avoid possible misunderstandings or fraud); mental state of the accused at the time of the agreement; whether the accused was under the influence of drugs or alcohol; whether the accused was feeling good; whether the accused consulted defense counsel before admitting the guilt, etc.

11 The judgment of conviction contains several elements: 1. Criminal act that the person has been found guilty of, by indicating the facts and circumstances that represent the attributes of the specific criminal act, as well as those on which it depends the application of the CC's provisions; 2. Legal title of the criminal act and the CC's provisions that have been applied; 3. Sentence for the accused or if he / she is relieved from any sentence according to the CC's provisions; 4. Alternative measure decision; 5. Decision on any safety measures, confiscation of property and proceeds, and seizure of objects; 6. Decision on the inclusion of any time spent in custody, detention or time already served; 7. Decision on the costs of the criminal procedure, about the legal or property claim, as well as whether the judgement that has entered into force should be published in the press, on the radio or television. In addition, if the accused has been sentenced to a fine, the judgement shall indicate the deadline within which the fine has to be paid and the manner of substitution if it cannot be forcefully collected.

shall be delivered to the Public Prosecutor, the suspect and his / her defense counsel, as well as to the damaged party. If the damaged party is dissatisfied with the type and amount of the legal or property claim awarded with the judgment, he / she may effectuate such right through dispute litigation.

In addition, there are several LCP's provisions that address the guilty plea. For example, after the indictment is received by the suspect, there are three possibilities at disposal to him / her. The second possibility is to file a guilty plea, and the others are to file an objection against the indictment (first possibility) and to submit a list of evidence that he / she proposes to be presented during the main hearing (third possibility). If the suspect chooses the second possibility, then the guilty plea may address to all or certain criminal acts of the indictment.

During the indictment review, the Judge or the Chamber may believe that it is necessary to hold a hearing in order to review the indictment. In such situation, they shall schedule a hearing within a period not longer than 15 days from the receipt of the objection against the indictment, i.e. after the expiration of the deadline for submission of an objection against the indictment. At the hearing, the suspect may give a statement and plea guilty with regard to all or certain criminal acts of the indictment. If these situations happen (the suspect who has a defense counsel, gives a statement and pleads guilty with respect to all or certain criminal acts of the indictment, or if he / she pleads guilty at the hearing), then the Judge or the Chamber shall check two things: first - whether the guilty plea has been given voluntarily, consciously and with full understanding of the consequences, including the consequences related to any legal or property claim and the costs of criminal procedure, and second - whether there is sufficient evidence to prove the suspect's guilt. The statement of guilt admission, i.e. the guilty plea shall be entered into the minutes.[12]

Same as before, the Judge or the Chamber for indictment review may rule in a positive or negative manner, i.e. they may:

- Accept the guilty plea - upon a motion by the suspect and his / her defense counsel or by the Public Prosecutor, a postponement of the hearing may be asked in order to conduct a bargaining procedure and to file DPA in accordance to LCP's Articles 483 to 490. In such event, they shall postpone the hearing for a period of 15 days and shall set a date for the next hearing, and

- Not accept the guilty plea - such decision shall be noted in the minutes. The present parties shall be informed accordingly and the indictment review hearing shall continue. The guilty plea, i.e. the minutes that contain guilty plea, which were not accepted, may not be used as evidence in the further criminal procedure. They shall make sure that the motion, i.e. the minutes are placed in a separate file and kept apart from the case file.

At the hearing, the Public Prosecutor and the suspect and his / her defense counsel may file a motion for bargaining agreement, with elements provided in LCP's Article 485. Afterwards, the Judge or the Chamber shall review the proposed DPA and may accept it (shall adopt a decision pursuant to LCP's Article 490), and may not accept it (shall adopt a decision for non-acceptance) and shall decide upon the indictment.[13]

12 The guilty plea is not a precondition to start a plea bargaining procedure during the investigation procedure, which is not the case with plea bargaining in the stage of review of the indictment when the confession is a necessary precondition to start a plea bargaining procedure. For more, see: G. Buzarovska / D. Re / M. G. Karnavas: *Plea bargaining - a guidebook for practitioners,* Skopje, 2010

13 Same as before, DPA that was not accepted may not be used as evidence in the further criminal procedure; the minutes with the guilty plea and the proposed DPA will be placed in a separate file and kept apart from the case file.

## THE CASE "PUTSCH"

Based on the media information, in the case publicly known as "Putsch", six persons were suspected for committing criminal acts Unauthorized Wiretapping and Audio Recording, Espionage and Violence Against Representatives of Highest State Authorities. Beside Z.K., among the suspects were Z.V. - former head of the secret police during the governance of the political party Social Democratic Union of Macedonia (SDSM), S.V. - Z.V.'s wife, Gj.L. - official of Ministry of Internal Affairs (MOI), B.P. - local official from Strumica and Z.Z. - opposition leader (leader of SDSM).[14]

The same day (31 January 2015), when the Macedonian MOI filed a criminal report against four of the above mention persons (Z.V., S.V. B.P. and Z.Z),[15] the Public Prosecutor of the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption issued an order for conducting an investigative procedure against them.[16] Eight days later, the charges were expanded to two more persons (Z.K. and Gj.L.).[17]

On 25 February 2015 the Basic Court Skopje 1 Skopje, as Criminal Court of First Instance, informed the public that after the Public Prosecutor of the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption delivered DPA to the Court, the Judge of Pre-trial Procedure with a Judgement verified the agreement, according to which Z.K. was sentenced to three years imprisonment as a single sentence for two criminal acts. In line with LCP's Article 490, the Judge adopted and published the Judgement IV KOK.PP. No. 131/15,[18] based on the Draft Plea Agreement KO 25/15 concluded between the Public Prosecutor and the accused Z.K. and his defense counsel.[19] The Judgement was adopted on 25 February 2015, i.e. on the same day when:

- DPA was concluded and delivered by the Public Prosecutor to the Court,
- DPA was received by the Court,
- Hearing on DPA's assessment was held in the presence of the Public Prosecutor, Z.K. and his defense counsel.

Z.K. was convicted for committing Unauthorized Wiretapping and Audio Recording under Article 151 Paragraph 4 in connection with Paragraph 1 in connection with Article 45 of CC (first criminal act), and Espionage under Article 316 Paragraph 4 in connection with Article 24 of CC (second criminal act).[20] Therefore, he was sentenced to one year imprisonment

14 More about the case "Putsch", see:
- http://www.akademik.mk/osudeniot-vo-puch-zvonko-kostovski-treba-da-se-vrati-na-doizdrzhuvane-na-kaznata-zatvor/,
- http://makfax.com.mk/crna-hronika/vraboten-vo-mvr-obvinet-vo-puc-dobi-trigodisna-zatvorska-kazna/,
- http://www.alfa.mk/News.aspx?ID=90084#.WJITFPkrLIU,
- http://www.libertas.mk/so-target-obvinetite-vo-puch-ke-stanat-svedotsi-a-svedotsite-obvineti/, etc.

15 See: http://vesti.mk/read/news/4473639/1685451/mvr-so-krivichna-prijava-protiv-zaev-za-nasilstvo-kon-pretstavnici-na-najvisokite-drzhavni-organi/.

16 See: http://jorm.gov.mk/?p=1139.

17 See: http://plusinfo.mk/vest/14250/video-mvr-vraboten-i-poraneshen-vraboten-vo-policijata-se-privedeni-vo-puc; http://plusinfo.mk/vest/14292/30-dena-pritvor-za-dvajcata-vcera-uapseni-vo-puc.

18 The Judgement IV KOK.PP. No. 131/15 was provided by the Basic Court Skopje 1 Skopje, as a holder of information, upon a Request based under the Law on Free Access to Public Information.

19 Based on the Judgement, Z.K. has the following characteristics: Macedonian citizen; married; father of a minor; graduated on Electro-Technical Faculty; MOI's employee; average wealthy; not been convicted.

20 More about the mentioned CC's provisions see: Crime in continuation (Article 45) and Accessory (Article 24).

for the first act, and two years and six months imprisonment for the second act, or a single sentence of three years imprisonment.[21]

According to the Judgement IV KOK.PP. No. 131/15, in a period of unspecified date in 2010 onwards using the same relations and similar occasions, Z.K. while performing his duty as a MOI's official, repeatedly used and overstepped his official authorities, so contrary to the Law on Monitoring Communications (LMC) and the LCP, used special devices for tapping and audio recording of the technical capacities of the means to monitor communications within MOI. Acting as a part of a structured group and intentionally encouraged by the accused Z.V. and Gj.L. he used the means to monitor to which he had access and knowledge to use them, and without authorization listened and audio recorded the communications - conversations and statements that were not meant for him. On request of Z.V. and Gj.L., Z.K. entered phone numbers in the MOI's means to monitor communications of several persons whose exact number had not been determined (public officials, public figures and other persons, among which were N.G., G.J., M.J., R.M., S.M., A.M., B.C, N.S., R.Sh., V.M., A.M., and others as damaged parties). Through these monitored communications as well as communications which were monitored by MOI under LMC and LCP, technical records with no authorization were obtained with an opportunity the contents of the monitored communications to be reproduced and placed on portable data carriers.

All of this was performed by Z.K. on the request of Z.V. and transmitted by Gj.L. Namely; Z.K. gave the obtained contents of the monitored communications to Gj.L. who transmitted them to Z.V., with an intention to announce and hand them over to a foreign country, organization and person that serves them. Gj.L. and Z.K. for a financial compensation, made available means to Z.V. to commit the crime, and by doing so, with intent helped Z.V. in the commitment of the act Espionage (CC's Article 316).

After the DPA's evaluation, the Judge determined that it contained elements prescribed in LCP's Article 485 and everything necessary to be ruled. The Court during the hearing held on 25 February 2015, examined Z.K. and his defense counsel, and established that DPA was submitted voluntarily, and that Z.K. was aware of the legal consequences of DPA's acceptance. Afterwards, the Judge advised the Public Prosecutor, Z.K. and his defense counsel, that they must not put forward a motion for establishing a criminal sanction other than the criminal sanction contained in DPA because it would be considered that they have withdrawn from DPA; that they are entitled to withdraw from DPA before the judgment is made, and that their acceptance of DPA is considered as waiving the right of appeal against the judgement reached on its basis.

Further, the Court examined the submitted evidence, concluded that they justified the proposed criminal sanction to be imposed (by type and level), decided to accept DPA and finally - reached the Judgement IV KOK.PP. No. 131/15 by which it found the accused Z.K. guilty for the above mention criminal acts.

However, the situation become complicated when the President of the Republic of Macedonia on 12 April 2016 adopted several decisions to parole,[22] and two of them referred to the case "Putsch":

- Decision to pardon a convicted person No. 08-550/1, that fully releases the convicted person Zvonko Kostovski from Skopje from further serving prison sentence, and

21 The time spent in detention was calculated in the sentence (determined by the Decision IV KOK PP No. 81/15 of 08 February 2013 for 30 days period, 08 February 2015 - 08.10 am to 10 March 2015 - 08.10 am). Also, Z.K. according to LCP's Article 105 was obliged to pay the costs of procedure in the amount of MKD 8,640.00.

22 The President's decisions to pardon were published in "Official Gazette of the Republic of Macedonia" No. 72/2016.

- Decision to pardon - release from prosecution without conducting a procedure No. 08-538/1, to 1. Zoran Verushevski from Skopje, 2. Gjorgji Lazarevski from Skopje, 3. Sonja Verushevska from Skopje, 4. Zoran Zaev from Strumica, and 5. Branko Palifrov from Strumica.

The next day, the Basic Court Skopje 1 Skopje informed the public that the Cabinet of the Macedonian President delivered to the Court the Decision to pardon a convicted person, with a note that the Judge for Execution of Sanctions immediately forwarded this Decision to the Prison institution in order the convicted Z.K. to be fully released from serving his sentence.[23] Regarding the other five persons, on 1 May 2015 the Public Prosecutor of the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption filed an indictment against them.[24] But, on 7 June 2016 the Macedonian President annulled several decisions to pardon, and among them was the Decision No. 08-865/1 to annul the Decision to pardon No. 08-550/1 dated 12 April 2016 for Zvonko Kostovski from Skopje.[25] So, once again the Court published a press release that the Judge for Execution of Sanctions, acting in accordance to the President's Decision to annul the Decision to pardon Z.K., convicted by a final court judgment, on 10 June 2016 delivered to him an Act under which he should return to prison in order to further serve his three-year prison sentence.[26]

Bearing in mind the current political crisis in Macedonia, and without analysing the work of the Public Prosecutor's Office for Prosecuting Criminal Acts Related to and Arising from the Content of the Illegally Intercepted Communications (publicly known as "SJO"), once again it should be noted that the case "Putsch" was firstly initiated by the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption Skopje. However, when SJO was established,[27] it overtook the jurisdiction of this case as a NSK-KO No. 16/15. At the end of 2015,[28] SJO established jurisdiction over the case KO.No. 25/15 of the Public Prosecutor's Office for Prosecution of Organized Crime and Corruption Skopje which indicted five persons.[29] However, on 18 January 2017 SJO informed the public that it had submitted a written document to the Basic Court Skopje 1 Skopje with whom it withdrew the indictment since the factual situation presented in the indictment was inconsistent with the evidence that SJO possesses and with the findings of investigative procedure about the cases "Target" and "Tvrdina".[30] In essence, by submitting a written document under the LCP's Article 352 to the Basic

23 See: http://www.libertas.mk/osudeniot-vo-puch-ekspresno-izleguva-od-zatvor-po-amnestijata-na-ivanov/.
24 See: http://jorm.gov.mk/?p=1620.
25 The President's decisions to annul the decisions to pardon were published in "Official Gazette of the Republic of Macedonia" No. 108/2016.
26 See: http://telma.com.mk/vesti/zvonko-kostovski-edinstveniot-osuden-za-puch-mora-da-se-vrati-vo-zatvor/. The weekly newspaper Fokus (No. 1122 of 7 April 2017) states that ZK has applied for postponement of the sentence because he was the only person who cares about the health condition of his father. But, the Judge rejected the request as inadmissible and ordered after the decision becomes final, within eight days Z.K. to start serving the sentence, or otherwise a warrant for his arrest shall be issued. This decision was also appealed by Z.K.
27 See: Law on the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications ("Official Gazette of the Republic of Macedonia" No. 159/2015).
28 SJO on 14 December 2015 informed the public that it had established jurisdiction over 34 cases, among which was "Putsch" (http://www.jonsk.mk/2015/12/14/14-12-2015/), and on 21 December 2015 once again informed that it had asked the main hearing to be postponed since it needed to be fully familiar with the contents of the evidence that were submitted to the Court, and which were not included in the prosecutors' case file that was submitted to SJO (http://www.jonsk.mk/2015/12/21/21-12-2015/).
29 After decisions to pardon were annulled and in order the procedure to continue, SJO to the Appellate Court Skopje submitted a written proposal to abolish the decision of the Basic Court Skopje 1 Skopje for the case "Putsch", which had stopped the process under the decisions to pardon. See: http://www.akademik.mk/osudeniot-vo-puch-zvonko-kostovski-treba-da-se-vrati-na-doizdrzhuvane-na-kaznata-zatvor/.
30 See: http://www.jonsk.mk/2017/01/18/.

Court Skopje 1 Skopje, prior to the commencement of the main hearing,[31] SJO withdrew the indictment stating "The facts of the case outlined in the indictment do not corresponds to the evidence obtained in our preliminary investigations pertaining to the illegal interception of communications which try to uncover who, how and in what manner conducted the illegal wiretapping in the Republic of Macedonia. The purpose of our decision is collecting additional evidence that will fully clarify the facts and will enable rendering of a correct and lawful prosecutorial decisions…. we cannot pursue an indictment which is contrary to the evidence at our disposal and the investigations opened by us… we do not prejudge whether someone is innocent or guilty by withdrawing the indictment in the case "Putsch", but believe that the full and accurate determination of the facts requires further evidence, which cannot be obtained in the main hearing stage." From such SJO decision, five documents were submitted for withdrawal of indictment,[32] which were subject of a complaint filed by MOI to the Council of Public Prosecutors arguing that the withdrawal of the indictment was unlawful.[33]

In addition, concerning the Judgement IV KOK.PP. No. 131/15, SJO on 4 October 2016 by post send a Motion for protection of legality to the Supreme Court. The Supreme Court received the Motion two days later, and asked SJO to submit the case records.[34] However, the Supreme Court still have not decided on the Motion, since the Basic Court Skopje 1 Skopje to the SJO did not give the Minutes of the agreement regarding the convicted Z.K. (SJO asked for the Minutes in September 2016).[35] According to the media, there were illogicality and, likely, a violation of the law, because Z.K. bargained with the Public Prosecutor and admitted guilt for assisting in perpetration of the above mentioned criminal acts, however there was no "main" accused and convicted person for the crimes when Z.K. plead guilty. So, there was an accessory, but no convicted perpetrator.[36]

Therefore, several questions arise from the case "Putsch", and especially from the Judgement concerning Z.K.:

- To whom Z.K. gave assistance in committing the criminal acts for which he was sentenced to three years of imprisonment?

- Who was the "main" perpetrator of the criminal acts if Z.K. was accessory?

- Why the Judgment does not contain data about the foreign country, organization and person that serves them, for which benefit Z.K. spied? The Judgement only uses the legal formulation of the criminal act Espionage.

- Since SJO withdrew the indictment concerning five accused persons, what shall happen to the Judgement that convicted Z.K.? Namely, the Judgement verified the DPA based on Z.K. guilty plea.

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31 The mentioned LCP's Article 352 states that if the plaintiff withdraws the indictment before the commencement of the main hearing, the Presiding Judge of the Trial Chamber shall discontinue the criminal procedure with a decision and shall deliver the decision to the parties and damaged party, and also shall inform any persons who have been summoned to the main hearing thereof, if the main hearing has already been scheduled.

32 More about the case "Putsch", see: Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications: *Report on the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communication for a period of six months (for the period from 15.09.2016 to 15.03.2017),* Skopje, 2017, pages 16-17.

33 See: http://telma.com.mk/vesti/sjo-kje-go-informira-sovetot-na-javni-obviniteli-zoshto-se-otkazha-od-puch/.

34 See: http://www.vsrm.mk/wps/portal/vsrm/sud/vesti/.

35 See: http://sdk.mk/index.php/makedonija/vrhovniot-sud-ne-rasprava-za-barane-na-sjo-oti-krivichniot-sud-ne-dava-zapisnik-od-puch/.

36 See: http://sdk.mk/index.php/makedonija/vrhovniot-sud-ne-rasprava-za-barane-na-sjo-oti-krivichniot-sud-ne-dava-zapisnik-od-puch/.

- Why did Z.K. plead guilty as an accessory? The weekly newspaper Fokus founds out that Z.K. feared of liquidation, and that is why he decided to sacrifice three years of his life, and to have peace when comes out.[37]

- What shall happen with the Motion for protection of legality since LCP's Article 457 prescribes that only the Public Prosecutor of Republic of Macedonia may file such motion to the Supreme Court? On one hand, in the Law that establishes SJO there is no strict provision that it has an authority to file such motion, and on other hand, there is a provision stating that the Public Prosecutor that governs SJO is empowered to take action and to advocate in cases before the basic courts, appellate courts and the Supreme Court (Article 5 Paragraph 3).

- Under which provision MOI filed a complaint to the Council of Public Prosecutors arguing that the SJO's withdrawal of the indictment was unlawful?

- Can the damaged parties file a complaint against SJO's withdrawal of the indictment?

## CONCLUSION

Insisting the criminal procedure to be efficient and economical led to a series of studies and analyses of the economic viability and advantages that characterize the bargaining as a market mechanism to improve the quality of the criminal prosecution by reducing the costs of the criminal procedure.[38] There are many reasons in favour of accepting the plea agreement: simplified procedure in cases where evidence for the committed crime is clear and unambiguously corroborate the reasonable suspicion that the suspect has committed the criminal acts for which he / she is charged; expected final outcome of the procedure which reduces the suspect's unpleasant situation of uncertainty about the criminal sanction that shall follow after the end of criminal procedure; the realization of criminal justice is enabled as quickly as possible, etc.[39]

It can be noted that the plea agreement procedure offers opportunities to accelerate the criminal procedure, but on the other hand its implementation should be subject to strict control. For what kind of fast justice can we speak, when the procedure for the case "Putsch" is being "dragged on"? Maybe the acceleration refers to the beginning when on the same day the agreement was signed and submitted to the Court, the Court scheduled and held a hearing, and afterwards ruled on the agreement. But, the same cannot say about the procedure concerning the Motion for protection of legality. And finally, the bargaining's illogicality is emphasized in this case - the accessory is convicted, but there is no "main" perpetrator of the criminal acts.

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37 See: Weekly newspaper Fokus (No. 1122 of 7 April 2017), page 15.
38 See: Government of the Republic of Macedonia: *Draft-Law on Criminal Procedure* (submitted to the Assembly in July 2010; available on: http://www.sobranie.mk), page 251.
39 For more, see: Н. МАТОВСКИ / Ѓ. ЛАЖЕТИЌ - БУЖАРОВСКА / Г. КАЛАЏИЕВ: *Казнено процесно право (второ изменето и дополнето издание),* Скопје, 2011, pages 440-448.

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16. Recommendation No. R (87) 21 on assistance to victims and the prevention of victimization.

# FREEDOM DEPRIVATION PUNISHMENT IN SERBIA IN THE SECOND HALF OF 19TH CENTURY[1]

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**Abstract**: Freedom deprivation punishment in modern Serbia does not have the tradition it has had in most European countries. During the first half of the nineteenth century different forms of corporal punishment and death penalty prevailed in its penal system, while freedom deprivation punishment served to ensure effectuation of criminal sanction or debt payment. With penetration of the idea of humanization of punishment in Serbia, freedom deprivation punishment gradually found its place in the penal system. This process began with court verdicts that replaced crude corporal punishment with imprisonment, continued with normative exclusion of certain categories of persons from corporal punishment and subjecting them to imprisonment and it was completed by including the freedom deprivation punishment in the Criminal Code of 1860. Freedom deprivation punishment - as prescribed in the Criminal Code - had three forms – "*robija*", "*zatočenje*" and "*zatvor*" and became the dominant penal sanction in Serbia in the second half of the nineteenth century due to a large number of offences for which it was prescribed and court practice to impose it whenever it was envisaged as an alternative sanction. It was a great innovation in the penal system which implied existence of prison accommodation capacities adequate to the new punishment purpose. Relevant state factors tried to harmonize realisation of this penalty with the proclaimed penal principles, but their attempts had limited scope primarily due to the lack of financial means. Despite numerous theoretical works and specific proposals by the commissions established on several occasions by the Ministry of Justice Serbia entered in a Yugoslav state with an unreformed penal system, namely, without unique regulation on the system of realisation of freedom deprivation punishment.

**Keywords:** freedom deprivation penalty, imprisonment, detention, jail, penal institution.

## INTRODUCTION

Criminal law in Serbia of the first half of the nineteenth century was incomplete and unsystematic. Until the adoption of the Criminal Code in 1860, criminal regulations were scat-

1 This paper is the result of the research on the following project: "Crime in Serbia and instruments of state response", which is carried out by the Academy of Criminalistic and Police Studies in Belgrade (2015-2019).

tered in various prescripts.[2] Different forms of closure are mentioned under different names in ten regulations that formed the basis of contemporary criminal law.

During the period of the Serbian uprising there was the so-called "*haps*", which was maintained in the courthouses or in separate dungeons which were being built at that time.[3] Since it was in a function of the execution of punishment with beating, freedom deprivation penalties in general were short-term measures.[4] During the first government of Milos Obrenovic, freedom deprivation penalty had a form of "*haps*" or imprisonment in heavy shackles.[5] Instances of sentencing to "*haps*" and imprisonment were not numerous because of the prevalence of corporal punishment[6] and serving the sentence in improvised prisons,[7] usually basements or shanties constructed along the buildings of the police and the courts. At that time, treatment of a person sentenced to freedom deprivation was essentially determined by the attitude that the state should not spend funds on supporting the prisoners whose work was used to generate income[8] and recognized the need for separation of male and female prisoners.[9] Separation of prisoners prescribed in 1838 stipulated that hard core criminals, such as murderers and violent robbers, should be in one class and that those who were sentenced to more lenient corporal penalties for minor offences should be in another class.[10]

Transformation of Serbia in the legal state undertaken during the constitutionalists rule implied also the penal reform. Although the general provisions of criminal law were comprehensively regulated,[11] the number of criminalization increased and regulations were technically improved, the criminal justice system had not been completely shaped. The absence

2 In addition to Milos's commands, commandments, instructions and constitutional laws, regulations, decisions, orders and instructions, sources of criminal law were also the existing mores and the "voice of conscience and common sense". Драган Николић, *Кривични законик Кнежевине Србије*, Градина 1991, 37.

3 Зоран Мирковић, *Карађорђев законик (кривично, породично и државно право устаничке Србије)*, Београд 2008; Тома Живановић, *Законски извори кривичног права Србије и историјски развој његов и њеног кривичног правосуђа од 1804. до 1865* (= *Законски извори*), Посебна издања САНУ, књига CDVIII, Одељење друштвених наука, књига 59, Извори српског права I, Београд 1967.; Велибор Б. Савић, Карађорђе, Документи I (1804-1809), Горњи Милановац 1988, 432 (док. бр. 252).

4 Зоран Мирковић, *Казна лишења слободе у Србији 1804-1860. године*, Зборник радова Правног факултета у Новом Саду, 1/2013, стр. 155-170.

5 Since the Duke Petar Cukić in 1820. acquired 10 pieces of fetters from Zemun, shackles were used in Serbia. Вукашин и Никола Петровићи, *Грађа за историју Краљевине Србије*, I, Београд 1882, 247.

6 In Belgrade pashaluk 1826 there was no more than 15 "*arestant*". Јоаким Вујић, *Путешествије по Сербији*, Будим 1828, 373. In the largest prison in Kragujevac in 1833, there were 11 convicts in the long imprisonment. Мита Петровић, *Финансије и установе обновљене Србије*, I, Београд 1897, 612.

7 Prisons were "towers fall and brothels". Владимир Јовановић, *Затвори у Србији*, у: „Приватни живот код Срба у 19. веку", Београд 2006, 685.

8 Едикт за чланове магистрата од 1. јануара 1828. и Дужности чланова нахијских судова од 8. јула 1833., Тома Живановић, *Законски извори*, 67, 84. The costs of sustemamce for poor prisoners, who received only bread and water, were covered from charity, then from prisoner incomes, and since 1846 from the state budget. Иван Јанковић, *Женско апсеничко радилиште у Пожаревцу 1848–1852*, Годишњак за друштвену историју 3, 2013, 12-13. Уредба о давању апсеника на рад од 8. априла 1842., *Зборник закона и уредаба за Кнежевину Србију (=Зборник),* II, 180.

9 In 1828, it was stipulated that women accused of murder must be detained in jails until sentencing, while others had to be detained in the houses of local officials or priests. Тома Живановић, *Законски извори,* стр. 69. In 1836, it was resolved that jails for women should be built in all the districts near the court, as "brothel-like" pits secured the timbers. Циркулар Управителнога совјета од 19. марта 1836, *Зборник*, XXX, 107. A decree of 1840 ordered the courts strictly to take care that "inmates do not commit adultery". Ђорђе Петровић, *Речник закона, уредби и уредбени прописа и пр. и пр. издани у Књажеству Србије од 1827 до 1854* (= *Речник*), Београд 1856.

10 Одлука од 15. маја 1838., Тома Живановић, *Законски извори*, стр. 117.

11 Станко Пихлер, *Основне црте у развоју кривичног права Србије од 1815. до кодификације из 1860. године*, Анали Правног факултета у Београду, бр. 1-2, 1974, 150-151.

of basic criminal law limited the scope of the criminal provisions, scattered in numerous regulations which constituted a framework of criminal law in Serbia.[12] The arrangements for justices of the peace from 1839 envisaged that each municipality must have a "cottage-like jail, conveniently built" close to the court.[13] Regulation on district courts from 1840[14], whose provisions over the next twenty years were the cornerstone of criminal justice and the judiciary in Serbia, predicted conscript labour, incarceration, and prison as forms of freedom deprivation penalty, but the minimum and maximum penalties were not specified. The practice of using convicts' work continued, but the important step forward was the prohibition to use a defendant's work before the verdict becomes executive.[15]

Jurisprudence that significantly influenced the reduction of cruel penalties prescribed in the Regulation for punishing thieves and robbers from 1845[16] and Criminal law for burglary and theft from 1847 expanded the scope of freedom deprivation penalty.[17] When there were mitigating circumstances, the courts imposed a freedom deprivation penalty instead of the death penalty and punishment of running the gauntlet, considering that in spite of the existing criminal laws they can judge according to their "conscience and common sense."[18] Police Regulation from 1850 allowed replacement of penalties for the police offenses, so the corporal punishment for perpetrators of ill health and poor perpetrators were replaced by imprisonment.[19] Law on replacing corporal punishment in 1853 created the legal basis for a wider application of freedom deprivation penalties.[20] The courts were authorized to impose a penalty of imprisonment on those offenders who would not be able to withstand the punishment of running the gauntlet, while the death penalty was frequently replaced by the freedom deprivation punishment in the amnesty process.[21]

Due to an increased number of prisoners, jails were built "from strong thick timbers", mainly with three rooms, of which one was for women, in most districts of Serbia in the mid-nineteenth century. The penetration of European ideas about more humane treatment of

12 *Закон војени* из 1839., *Устројеније судова окружни* из 1840., *Закон о бунтовништву* из 1843., *Уредба о казнењу крадљиваца и лопова* из 1845., *Казнителни закон за поаре и крађе* из 1847., *Уредба о томе како ће полицајне власти с полицајним преступницима поступати и како ће их оне казнити* и *Казнителни законик за полицајне преступке* из 1850., *Уредба о поступању судова при кривичном суђењу* из 1852. и *Закон о замени телесне казне* из 1853.

13 Привремено устројеније и круг дејателности примирителних судова од 17. јула 1839., *Зборник*, I, 236.

14 *Зборник,* I, 182.

15 Закон за неупотребљавање окривљеника на рад пре извршителне пресуде од 16. маја 1845., *Зборник,* III, 57.

16 Уредба о казнењу крадљиваца и лопова од 22. маја 1845., *Зборник*, III, 48.

17 Казнителни закон за поаре и крађе од 26. маја 1847., *Зборник*, IV, 28.

18 An order to determine the proportion of punishment and guilt until law regulation according to the "common sense, natural understanding of justice and conscience" from the Regulation of district courts from January 26th, 1844 and the Decision which lays down the rules for trial and accountability of judges from February 22nd 1844 were legally abolished in regulations from 1845 and 1847, but in spite of that fact the courts practiced it.

19 Уредба о томе како ће полицајне власти с полицајним преступницима поступати и како ће их оне казнити од 18. маја 1850., *Зборник*, V, 205-206.

20 Закон о замени телесне казне од 31. јануара 1853., *Зборник*, VII, 28-33. The Decision of May 6th 1859 abolished all forms of flogging punishment and replaced them detention or imprisonment. In addition to the reasons mentioned in the introduction of the decision - that the flogging is against the spirit of the time, that it "degrades the feeling of humanity" and that it causes "loathing in people" - an important reason for its abolition was the frequent inability to find people required to carry out these penalties. *Зборник,* XII, 40.

21 Mirkovic quotes the number of convicts whose sentence to death was commuted to a sentence of imprisonment: 35 persons in 1853, 55 persons in 1854, 63 persons in 1855, 48 persons in 1856, 61 persons in 1857, 64 persons in 1858 and 68 persons in 1859. Зоран Мирковић, *Казна лишења слободе у Србији 1804-1860. године*, 161-162.

prisoners in Serbia faced the so-called constitutionalists with a need to structure penal institutions on modern penal principles. An attempt to resolve the issue in principle was made by prescribing the Structure of Experimental Economy in Topčider Penitentiary 1851[22], which was to serve a new punishment purpose – compulsory re-education of convicts and remission through work, instead of former sheer intimidation and neutralization of public danger. The tendency of the suppression of the death penalty and corporal punishment by the freedom deprivation penalty, which continued in the sixth decade of the nineteenth century, required broader approach to the issue of prison planning and execution of freedom deprivation punishment. Since there were no other penal institutions except Topčider, those sentenced to freedom deprivation penalty were kept where the country needed free labour, which prevented uniform treatment of convicts based on a particular system.

Relevant state factors were aware of the need to structure penal institutions in Serbia in accordance with modern penal ideas and practical experiences of developed countries. In the first theoretical work on the penal institutions in Serbia, published in 1858, Stojan Veljkovic recommended "the system of isolation" as a base for the prison treatment, complemented by "a limited system of joint work" and the classification of prisoners in the prison.[23] That same year he made the first project of the law on execution of prison sentence, which failed because the Soviet did not accept it.[24]

## FREEDOM DEPRIVATION PUNISHMENT AFTER PASSING THE CRIMINAL CODE IN 1860

Passing the Criminal Code in 1860 created the basis for prescribing regulations on effectuation of freedom deprivation punishments. Forms of freedom deprivation punishment prescribed in the Criminal Code were conscript labour, incarceration, and imprisonment. The conscript labour was the most severe form of freedom deprivation penalty, because in addition to the closure, it meant forced labour and wearing shackles. The incarceration was freedom deprivation punishment limited in time (from two to 20 years) without any additional load. The imprisonment was imposed for minor offenses for a period of 35 days to five years with compulsory labour. According to offenses division into three types, the Criminal Code stipulated that punishments for crimes were conscript labour and incarceration, for misdemeanours imprisonment longer than one month and a fine upward of 300 dinars and for infringement up to one month of imprisonment and a fine up to 300 dinars. The stipulated replacement of corporal punishment with imprisonment was directed towards the humanization of punishment.

At that time, freedom deprivation punishments were served on the premises of the police authorities, district courts, county jails and penitentiaries, of which there were only two in Serbia - one in Topčider and another in Ćuprija. The criminals sentenced to hard labour and incarceration dwelled in facilities previously built for other purposes (for example Belgrade Fortress and Gurgusovac Tower). The hard labour sentence was served in casemates where prisoners were separated only by gender at first, and later by age as well. Inmates sentenced to hard labour got food and clothing from the state and were employed in public works outside

22 Legislative decision of 29 November 1851 authorized the Ministry of Interior to issue a temporary Structure of the economy in Topcider. *Зборник,* VI, 65. Based on that, the Structure of Experimental Economy in Topčider was issued on December 20th, 1851. *Зборник,* XXX, 317-328.

23 Стојан Вељковић, *О апсанама*, Гласник Друштва српске словесности, свеска X, Београд 1858, 278-295.

24 Тихомир Васиљевић, *Ђорђе Д. Ценић – Развој кривичноправне мисли у Србији XIX века*, САНУ, Одељење друштвених наука, Извори српског права VII, Београд 1987, 232.

the casemates or handcrafts for the state.[25] The incarcerated convicts initially served their sentence in special jails or private penitentiary departments, and then in penitentiaries. They wore their own clothes and ate at their own expense and had the work obligation only in case state fed them because of poverty. Prisoners served their sentence in court and police prisons if the penalty was imposed for infringement and in penitentiaries if they were punished for misdemeanours. Those convicted of infringements wore their own clothes, ate at their own expense and were not obliged to work, while the perpetrators of misdemeanours wore prisoner clothing and ate prisoners' food.[26] Priests and officials were exempt from compulsory labour due to their position and weak and sick prisoners due to their health status.

Since it was not stipulated in which penitentiary the inmates from certain places would serve their sentence, courts decided on sending convicts to a particular penal institution. As far as there were no firm rules for serving a sentence, there was no further classification of convicts in a penitentiary except separation by gender - all convicts served their time together: adults and minors, those convicted of minor offenses and hardest criminals, the ones convicted for the first time and multiple recidivists, mentally healthy and ill.[27] It was a rather primitive "system" of common prison, where the existing rules on serving the sentence of freedom deprivation was in practice interpreted by the warden of the institution at his own discretion.

Aspirations of Prince Mihailo toward enlightenment brought some progress in the penal system as well. The issue of judicial treatment of detainees was resolved in 1865,[28] and the Assembly held in 1867 proposed the reform of penitentiaries in the sense that they "could serve as schools for correcting the prisoner."[29] From the reports of the Ministry of Justice from 1864 to 1867[30] it is obvious that convicts sentenced to hard labour and incarceration served their punishments in the Topčider penitentiary and Kragujevac Foundry, while the women and juvenile prisoners served their penalties in Ćuprija until 1866, when they were moved to Požarevac.[31] The women convicts were placed in the same house with men convicts,[32] which caused many difficulties to the administration of a penitentiary institution. Their transfer to the state stables next to the penitentiary in 1870 was a forced solution,[33] and the problem was

25 According to the Decision of May 20th 1861 the guard was authorized to kill the convict "if he attacked him or he wanted to kill him, and there was no other way he could overcome him". *Зборник*, XIV, 92.

26 *Правила о издавању хране осуђеним, који казну издржавају у окружним местима и за оне, који се шаљу у апсанско заведење, док се код начелништва налазе, као и за време путовања њиног до апсанског заведења и пропис о подвозу осуђеника* од 23. фебруара 1861., *Зборник*, XIV, 13.

27 Since the Metropolitan Petar opposed to accommodation of mentally disordered offenders in Studenica monastery, the problem was solved only just on March 3rd 1861, when the Institute for mentally disturbed was established. Зоран Мирковић, Војислав Станимировић, *Оснивање 'Дома за с' ума сишавше*, Теме, бр. 3, јул – септембар 2012., 1339-1354.

28 *Правила о томе, како ће се обдржавати притворени код судова окружни за време кривичног ислеђења и суђења* од 29. новембра 1865. The court detainees were given "about one kilo of bread and water per day"; if they did not have their clothes, the court supplied them with clothes made of rough fabric and with one blanket to cover if the weather was cold. *Српске новине*, бр. 5 од 15. јануара 1866.

29 Предлог јагодинског проте Јована Јовановића. *Протоколи редовне Народне Скупштине држане о Миољу-дне 1867. у Крагујевцу*, Београд 1867, 13.

30 Извештај министра правде од 25. септембра 1867. о раду и стању правосудне струке поднет Народној скупштини по заповести кнеза од времена велико-госпојинске скупштине, *Зборник,* XX, прилог.

31 Заведење затвореника да се премести из Ћуприје у Пожаревац,а у Ћуприји да издржавају казну женске и малољетници ма на какву казну осуђени били од 21. септембра 1865., *Зборник,* XVIII, 162. The penitentiary in Požarevac was housed in abandoned military barracks built during the first government of Prince Milos.

32 Милутин А. Поповић, *Албум Женског одељења пожаревачког казненог завода са статистиком*, I, Пожаревац 1898.

33 Архив Србије (=АС), Министарство унутрашњих дела–Полицајно одељење (=МУД-П), 1870, Ф XI, 71.

finally solved by constructing new buildings for female convicts in 1874. The lack of space hampered organization of work in the penitentiary, and the convicts who were taken outside to work frequently escaped. It was necessary to build new institutions in which it would be possible to achieve the purpose of punishment, but the state budget did not allow it.

The Great Assembly held in Topčider after the assassination of Prince Mihailo in 1868 demanded that the prisoners be transferred from the penitentiary in Topčider, which the Prince's assassins had come from.[34] This was done in 1869.[35] Recognizing that the unsettled situation in penal institutions requires an urgent solution, on October 7th 1868 Minister of Justice Đorđe Cenić, although busy organizing the trial for the assassination of Prince Mihailo and making a new constitution, issued the Regulation of the domestic order for the Požarevac penitentiary,[36] which stipulated issues of admission, treatment, maintenance, labour, disciplinary punishment, reward and release of prisoners and prescribed measures to maintain order and security in this institution.[37]

Police officers escorted convicted offenders to the penitentiary, where they were received by the accountant. A convict was then registered in the book of convicts which included a detailed personal description, data on crime and punishment; the convict was then searched, medically examined, trimmed, shaved, bathed, dressed and duly informed on prison rules. The first three days he spent in a cell for "newcomers" to see "what his nature is like, how healthy he is, what the level of his corruption is, what labour and doctrine he knows, and what labour [...] was the most suitable for him"[38], and based on that the administrator decided whether he would stay in a cell or placed in a common prison. When determining what class and group the convict was to be assigned to, the administrator had to pay particular attention not to put accomplices into the same group or those who had previously been in a cell with those who had not.[39]

Adult males convicted to hard labour served their sentence either in the cell or in company by day and alone in the cell at night, or in company divided into classes and groups. All those "who were convicted for heavy crimes, or were obviously corrupted" had to endure cell prison from six months to two years.[40] Closing in a cell at night for a period from one to six months with the daily labour in company was reserved for those who had previously been in cell and to those for which the administrator with relevant officials of penitentiary so resolved. A convicted offender had to spend six months in the cell and thereafter the pen-

34 Ljubomir Radovanović and Lazar Marić who participated in the assassination of Prince were prisoners in Topčider penitentiary, while its administrator Svetozar Nenadović facilitated the meetings of the conspirators in the penitentiary, so the public was convinced that the penitentiary was a school for training criminals.

35 Пресељење робијаша из Топчидера у Град београдски, АС, Министарство правде (=МП), 1848, бр. 376. Милан Дамјановић, „Поглед на београдски казнени завод за 1869. год.", *Српске новине*, бр. 58-68 од 15. до 27. марта 1883.

36 Правила Бр. 3590, у: *Збирка кривичних закона, уредаба, правила, упутстава и расписа допуњујућих Казнени законик и Кривични судски поступак Србије,* са коментарима Т. Живановића, Београд 1921., 241-268.

37 The Rules prescribed by Cenić, whose validity later extended to the penitentiaries in Belgrade and Nis, remained in force in Serbia until 1929, when Yugoslav Law on execution on freedom deprivation penalty was adopted. *Српске новине*, бр. 138 од 21. октобра 1868.

38 *Српске новине*, бр. 138 од 21. октобра 1868.

39 *Српске новине*, бр. 140 од 24. октобра 1868.

40 The hardest crimes were "treason, intentional murder, robbery, arson and dangerous theft". Equal treatment was given to those who were "in return and in coincidence with more serious crimes". The administrator - in consultation with officials of the penitentiary - decided which convicts should be held in the prison cell as villains. Detention in a prison cell was not intended for "convicts with physical defects, of poor health and over 50 years old, because loneliness is harmful for the weak and old, and, in addition to this, the chance that the old could be corrected is poor". *Српске новине*, бр. 139 од 22. октобра 1868.

itentiary council resolved "if this isolation should end before two years expired or continue depending on the convict's behaviour".[41] If the council decided that there is no need for further isolation, the convict came into the first class, as well as a convict who spent two years in cell prison. Finally, cell prison for a period from six months to two years was the most severe disciplinary punishment.[42]

Common prison consisted in the fact "that more convicts work, eat, talk and stroll together." These prisoners were divided into three classes, with several groups (bunches) in every class.[43] The first class consisted of those who had previously been in a cell and those who could not be placed in a cell. Convicts had to spend six months in this class and thereafter - if well-behaved - they were moved to the second class. The convicts spent at least 12 months in the second class and, if well-behaved, they were transferred to the third class, where they remained to the end of the period they had been sentenced to. A convict who had served two years in the third class and behaved well during that time could perform tasks outside the penitentiary.[44]

House rules were the same for all convicts in prison. Prescribed labour time was every day from five o' clock in the morning to seven o'clock in the evening, both in summer and winter, with breaks for meals.[45] The prisoners were given three meals. Those who performed hard labour also received certain allowances, and ill convicts were given the dishes that the doctor prescribed.[46] Prisoners from the third class who behaved well received "12 ½ drachms of brandy" or "one cigarette" every other day.[47] Cells and labour rooms were sparingly heated in winter, and in the bedrooms the fire was lit only by night.[48] Labour rooms were lighted with oil lamps and bedrooms with tallow candles. Convicts were taken out for fresh air twice a day.[49] All convicts under the age of 30 years had to go to school, except those who were relieved of that obligation due to their illness. Going to church and listening to sermons was compulsory for all convicts, and prisoners convicted to hard labour had to receive Communion twice a year (during the Christmas and the Easter fast).[50]

The convicts younger than 30 had to learn a craft that was carried out in the penitentiary - "carpentry, blacksmithing, tailoring, weaving, shoemaking, matting, basket knitting, making wood car, dung forks, shovels and spoons", while the others were obliged to do domestic labour.[51] All convicts had to labour for the state and penitentiary needs. If the state had no labour to employ them, convicts could work for private persons, and if there were no such engagements, the prison administration would get raw materials for making things that were sold afterwards.[52] For each working day convicts received reward: those in cells 10, those in the first class 20, those in the second class 30, and in a third class 40 hundredths of a dinar, with the possibility of increasing by 10 more. Half of the prize was given to the convicts, and the other half was kept as a deposit until their release.

41 *Српске новине*, бр. 141 од 25. октобра 1868.
42 *Српске новине*, бр. 141 ид 25. октобра 1868.
43 *Српске новине*, бр. 141 од 25. октобра 1868.
44 *Српске новине*, бр. 141 од 25. октобра 1868.
45 *Српске новине*, бр. 142 од 29. октобра 1868.
46 The convicts were given only bread for breakfast and snack, and in the evening they were given meat broth (approximately ¼ litre) with bread. Stewed vegetables that were alternately given to convicts were cabbage or sauerkraut, spinach, beans, lentils, rice and pea which had to be "well cooked and seasoned".
47 *Српске новине*, бр. 148 од 12. новембра 1868.
48 *Српске новине*, бр. 148 од 12. новембра 1868.
49 *Српске новине*, бр. 142 од 29. октобра 1868.
50 *Српске новине*, бр. 144 од 2. новембра 1868.
51 *Српске новине*, бр. 143 од 31. октобра 1868.
52 *Српске новине*, бр. 143 од 31. октобра 1868.

During their leisure time, the convicts could write letters, which were sent only after having been read and approved of by the administrator or the priest. Letters and packages were delivered to convicts only after checking their contents by the administrator or priest.[53] Prisoners had to be quiet and obedient, and any violation was punishable. Penalties included reprimands, visit and correspondence prohibition, seizure of labour rewards for up to 3 days, food reduction up to a half for a period of one to five days, closing in a separate cell for those who work in the community for up to five days, the ban on leaving the cell for up to three days for those who labour in the cell and closing in a dark cell for two days (the last three punishments could be increased by reducing the food to half for up to five days). Corporal punishment was prohibited, but guards had the right to use "weapons always with care" to defend themselves.

Some rooms "on the healthiest and cleanest place in the penitentiary" had to be arranged so as to accommodate 20-30 sick convicts,[54] while those suffering from "dangerous infectious diseases" had immediately to be forwarded to the city hospital. The dead convict whom the family did not want to take over was buried at a penitentiary cemetery.[55] Two days before the release a teacher and a priest taught the convict about his future behaviour and the penitentiary administration sought to find him a convenient job. If the discharged convict had no his own money, it was given to him from the penitentiary fund established for that purpose, and if the convict had extra money it was sent to the local authorities "so that he would not spend it along the way."[56]

Juvenile convicts were subjected to the same rules, with the following differences: shorter closing time in a cell, compulsory apprenticeship and less severe disciplinary punishment.[57] Female convicts that were strictly separated from male convicts were subjected to the same rules, too, with the following differences: penitentiary staff had to be women, time in the cell prison was the same as for juveniles, they worked different jobs, attended only two years of school and were disciplinary punished as juveniles.[58]

Soon after the Regulation, Cenić initiated a project which, on May 22nd 1869, became the Law on conditional release of culprits from prisons.[59] Only the convicts sentenced to hard labour or incarceration for more than two years or a prison longer than 12 months which proved to be good workers and were expected to live an honest life and behave well when releaser, and who have served half of their sentence (if recidivists, two thirds) and during all that time behaved so that "they might reasonably be considered to have actually been corrected", could be conditionally released. Conditional release would be interrupted if the convict did not behave well, if he committed even the smallest offence or if there was a reasonable suspicion that he did such a thing, if he wandered without any business or could be reasonably suspected of not subsisting himself in an honest way, if he continued friendship with suspicious company or convicted criminals and serious offenders in spite of warnings of municipal or police authorities, or if he changed place of residence without the permission of the local police authorities. Time spent out of prison did not count in time of serving the sentence to the convict returned to the penitentiary. Decisions on conditional release were made by the Minister of Justice after hearing a special committee, while the decision on abolition of the conditional release was made by the local police authority or administration of a penitentiary,

53 *Српске новине*, бр. 144 од 2. новембра 1868.
54 *Српске новине*, бр. 146 од 7. новембра 1868.
55 *Српске новине*, бр. 146 од 7. новембра 1868.
56 *Српске новине*, бр. 150 од 16. новембра 1868.
57 Food reduction up to half could not last longer than two days as well as closing to the cell of those who work together. Full isolation was excluded, as well as stricter detention in a cell. The closure in the dark cell was limited to one day. *Српске новине*, бр. 151 од 19. новембра 1868.
58 *Српске новине*, бр. 151 од 19. новембра 1868.
59 *Зборник*, XXII, 34-37.

against whose decisions the convict could appeal to the Minister of Justice. As early as 3 June 1869 Cenić issued the instructions for the execution of the law of 22 May 1869 under which the culprits were conditionally released from prisons.[60] Despite the minister's warning not to propose convicts for the conditional release based only on the expiry of the prescribed penalty time, i.e. to do so only in exceptional cases, administrators of penitentiaries used this new institute to relieve overcrowded penitentiaries so that the exemption practically became the rule.

Aware that the progress in the execution of the freedom deprivation punishment sentence cannot be achieved only by prescribing regulations, in his second ministerial mandate Cenić worked on building new penitentiaries.[61] Towards the end of 1873 a Fund for building-up penitentiaries was established on his initiative. The Fund formed by savings on certain expenditures for the maintenance of the prisoners and earnings from convicts' labour was entrusted to the Directorate of funds until sufficient money was raised for building a new penitentiary. The assets of the Fund rapidly increased: 16,000 dinars in 1873, 15,847 dinars in 1874.[62] In 1883 the sum in the fund amounted to 777,998 dinars[63], in 1885, there were 850,000 dinars[64], and at the beginning of 1900 there were 3,000,000 dinars. That amount, however, was never used for building a penitentiary since it was made available to the Minister of Army for military purposes in 1900.[65]

Anticipating an increase in the number of prisoners due to the definitive abolition of corporal punishment, Cenić tried to solve the problem of accommodation facilities by separation of male and female prisoners. At his proposal, a new building was constructed in Pozarevac in the autumn of 1874 to serve as a women's prison, which had ten rooms, cells for solitary prison, four labour rooms, a separate room for the accommodation of ill convicts and also a waiting room, kitchen, office and apartment for the supervisor.[66]

From the autumn of 1875, when Cenic retreated from the position of the Minister of Justice, until the beginning of the twentieth century there were no regulatory changes in the penal system of Serbia, but the question of penitentiaries during all that time was of primary importance. Aware that the establishment of a system for serving a sentence of imprisonment in accordance with modern theoretical and practical experience of advanced European countries was impossible without adequate space, competent state authorities discussed the possibility of establishing modern penitentiaries. Expert commissions formed in the Ministry of Justice in 1885, 1889-1891, 1897 and 1899 worked on the reorganization of the penitentiaries in which the freedom deprivation punishment would be served in accordance with the new progressive system, but the proposals and plans they made remained without results mostly due to the lack of money, so that arranging the system of prisons, although placed among the most pressing national needs for decades, made little progress.[67]

The most important improvement was the insertion of another phase in the process of serving the freedom deprivation sentence, which was not only the result of an effort to bring serving prison sentence in Serbia closer to the model of a progressive system adopted in the

60 Упустства под Бр. 2055, *Збирка кривичних закона*, 179-208.
61 *Протоколи заседања Народне скупштине*, 1873., 321, 469; *Зборник*, XXVI, 53-54; Тихомир Васиљевић, *Ђорђе Д. Ценић – Развој кривичноправне мисли у Србији XIX века*, 235.
62 Извештај министра правде поднет Народној скупштини 15. августа 1875.
63 Миленко Жујовић, *Поглед на стање наших казнених завода за 1883-1884-1885*, Бранич, бр. 2 из 1887.
64 Извештај министру правде о раду на реформи наших казнених завода од 17. јула 1890., АС, МП, 1908, Ф XXX, 26.
65 Закон о изузимању фонда за казнене заводе од Управе фондова, а за потребе војске од 29. јануара 1900, *Зборник*, LVI.
66 Драган Фелдић, *Стари Пожаревац*, Пожаревац 1992, 213.
67 Милан Дамјановић, *Погледајмо опет мало на наше казнене заводе*, Бранич, бр. 20 из 1887, 675.

exemplary prisons in European countries, but also of the objective need to relieve penitentiary capacities. The Minister of Justice prescribed Rules on serving prison sentences outside penitentiaries in 1883, under which the prisoners who had to serve less than a month's sentence and sentenced to a prison term of less than six months served their sentences at the police authorities instead in the penitentiary. The rules also predicted that the adult convicts from Knjaževac, Krajina, Kruševac, Aleksinac, Crna Reka, Niš, Pirot, Toplica and Vranje district should serve their sentences in the Niš penitentiary (founded in 1878), convicts from all other districts and female convicts from all over Serbia in Pozarevac penitentiary, while juvenile convicts served in Belgrade penitentiary.[68] It was rather complicated to distribute convicts among the three existing penitentiaries according to the type of sentence they were to serve. The penitentiary in Požarevac was originally meant for housing the prisoners, while sentences of imprisonment and confinement were served in the penitentiaries in Belgrade and Nis. From 1898, detainees and from 1902 juvenile prisoners were also sent to Požarevac penitentiary, while the penitentiary in Belgrade hosted both juvenile and adult inmates, and the one in Nis only adult convicts sentenced to hard labour.

## CONCLUSION

In the nineteenth century, Serbia had no structured system of serving freedom deprivation punishment. In the absence of a unified Criminal Code and with the prevailing belief that the purpose of the penalty was retribution and intimidation, which resulted in the prevalence of capital punishment and various forms of corporal punishment in the first half of the nineteenth century, little thought was given to the system of execution of the freedom deprivation punishment, which, as a secondary criminal sanction, was imposed only sporadically. Modern ideas about correcting the perpetrators of crimes and humanization of prison treatment that penetrated into Serbia in mid-nineteenth century led to the realization of the anachronism of its penal system and caused the desire for Europeanization of punishment. The relevant state factors have succeeded in adopting a unified Criminal Code which created a reliable legal basis for the establishment of a system of execution of prison sentence, but the lack of money in the state budget was an insurmountable obstacle to the reform of the penitentiaries. The gradual expansion of the field of application of freedom deprivation punishment, which was consequence of normative changes and even more so due to changes in judicial practice, was not accompanied by a matching increase in prison capacities, and after the definitive abolition of corporal punishment the problem of accommodating inmates serving lengthy sentences of imprisonment became a pressing matter. Due to overcrowded penitentiaries presented an increasing health hazard for the prison population and the prisoners were all trying to rescue themselves from the inhumane conditions in which they were serving their sentences by frequently escaping. Starting from the 1880s, the state tried to solve the question of penitentiaries in a comprehensive manner, and on several occasions seriously worked on a penal reform. Since the reform, in addition to regulatory changes, included building new penitentiaries, all plans were left outside the scope of the latched state budget which always had to meet some "pre-emptive needs".

The extensive use of conditional release and temporary repairs that were carried out on the existing penitentiaries were forced solutions with which Serbia entered the twentieth century. Work on the new Criminal Code initiated in 1908 resulted in the 1910 project which provided for serving the freedom deprivation punishment following the progressive system.[69]

68 Правила о издржању затвора изван казнених завода од 17. августа 1883. године № 2990, АС, МП, 1883, 6; *Зборник*, XXXIX, 215.
69 Душан Умићевић, *Системи извршивања казни лишења слободе*, Сарајево 1938, 136.

The enactment of this project was thwarted by the advent of the war period. A significant step forward was made in 1909, when the municipality of Pozarevac ceded land in Zabela for building a juvenile penitentiary,[70] which was completed in June 1912.[71] All this, however, was not enough to establish a unified system for the execution of the freedom deprivation sanction. Serbia entered the joint Yugoslav state with the regulations on penitentiaries older than half of a century and unreformed penitentiaries.

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# MODERN WOMEN OR POOR LADIES: FEMALE CRIMINALITY IN THE REPUBLIC OF MACEDONIA

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**Abstract:** Women, as in many other areas, were mostly evaded and poorly researched in the area of criminological researches. In the past there were different opinions suggesting that women cannot commit crimes or such that suggested that they were absent from criminal world. But, there were also opposite ones concluding that females were worse criminals than males, and that they mostly committed abortions and infanticides. Others beside the already mentioned crimes add prostitution as one of the most common deviant behaviors known to women.

The paper analyzes women's criminality in the Republic of Macedonia in a 15 years period, using data from the State Statistical Office from the period between 2001 and 2015. It analyzes the most important phenomenological characteristics, such as volume, dynamics and structure of female criminality connecting them with current social and cultural positions of women in our country.

**Key words:** crime, phenomenology, position, social, women.

## INTRODUCTION: WOMEN'S POSITIONS AND THE GENDER - CRIME RATIO IN MACEDONIAN SOCIETY

Proclaiming itself as modern one, Macedonian society is still struggling between patriarchal relations and gender equality. Women are still underpaid for the same job positions men have (State Statistical Office of the Republic of Macedonia, 2016), they are perceived as less worthy, the ones with "long hair, but short mind" (Macedonian proverb).

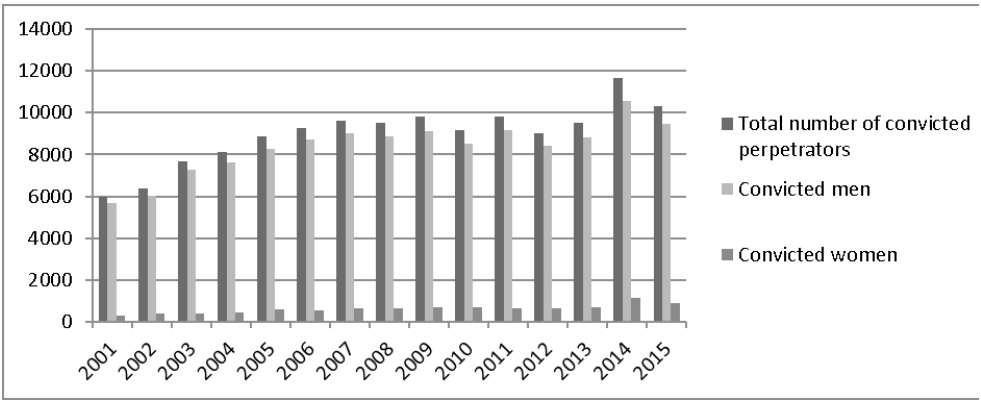
Although, fewer female children graduate from secondary schools (47%), data shows that more women (54%) enrol Universities, even higher percentage graduate (57% are women), but still the employment rate among women (33.7%) is lower than the one among men (50.5%). The activity rate for women is even lower (44.9%) than the one of men (68.9). The differences between rural and urban areas represent a very difficult social situation for women that are not unknown to our territories and have roots in socially divided relations in traditional families. The activity rate among women in rural areas is 38.7% and the employment rate 29.6%, on the other hand, in urban areas the former is 49.6% and the latter is 36.7% (State Statistical Office of the Republic of Macedonia, 2016).

The number of women working at Universities is lower than the one of men, 2095 men are academic staff opposite of 1885 women. Women are mostly clerical support workers, technicians and associate professionals, service workers, shop and market sales workers. They occupy less than 20% of job positions such as legislators, senior officials and managers (State Statistical Office of the Republic of Macedonia, 2016).

Gender of criminal offenders has never been an independent determinant, but it has always been connected with social, economic, cultural, political and other conditions. Since past times until today, they have shown that crime is a male's occupation. Some authors give ratio of 1:5 for women and men as convicts; 1:20 for women and men as inmates and 1:20 for juvenile females and males (Arnaudovski, 2007; Stanojoska, 2011; Aslimoski&Stanojoska, 2015). Such differences are known as "gender gap" or "ratio gender - crime". Women commit fewer and less serious crimes; they withdraw without hesitation; they reach critical age earlier than men and rarely commit professional crimes (Maguire, Morgan, Reiner, 2010; Aslimoski&Stanojoska, 2015). It is a result of the different nurturing of genders. Girls are educated to be calm and nice, in contrary boys should be strong. Many authors find those differences in natural role of women to be pregnant. It is not only connected with their sexual nurturing and education, but also to the whole social codex (Sutherland &Cressey, 1978; Stanojoska, 2011; Aslimoski&Stanojoska, 2015).

Women are exemption in the criminal world, such as crime is an exemption in societies (Lombroso, 1876; Konstantinovic - Vilic, Nikolic - Ristanovic, Kostic, 2010). As in other social areas, women's percentage in the area of criminal behaviour is much lower than the one of men.

***Figure 1:*** *Total number of convicted perpetrators, convicted men and women in the period 2001 - 2015, in the Republic of Macedonia (State Statistical Office of the Republic of Macedonia)*




The ratio between women and men between 2001 and 2015 oscillates between 5.27 in 2001 as the lowest and 10.66 in 2014 as the highest ratio. The average number of convicted women in the 21 year-period is 554 women a year, which is around twelve times lower than the one of men.

# PATTERNS OF WOMEN'S CRIMINALITY IN THE REPUBLIC OF MACEDONIA

Criminological researches through the years have shown many differences between men and women regarding their criminality. Biological, psychological, social and feminist theories are trying to explain women's criminality using different factors, but all of them are united in their conclusion that both genders have different patterns inside their criminal behaviour and activity. Women are the other side of the coin, mostly found as victims of crimes and rarely as offenders.

***Table 1:*** *Convicted offenders rate and convicted women rate per 100 000 criminally liable citizens, and convicted women rate per 100 000 criminally liable women in the Republic of Macedonia*
(State Statistical Office of the Republic of Macedonia)

| Year | Total number of criminally liable/responsible citizens (Age 14 years - more) | Total number of criminally liable men (Age 14 years - more) | Total number of criminally liable women (Age 14 years - more) | Total number of convicted perpetrators | Total number of convicted women | Number of convicted perpetrators per 100 000 criminally liable citizens | Number of convicted women per 100 000 criminally liable citizens | Number of convicted women per 100 000 criminally liable women |
|---|---|---|---|---|---|---|---|---|
| 2007 | 1 667 690 | 830 604 | 837 086 | 9639 | 622 | 578 | 37 | 74 |
| 2008 | 1 678 404 | 835 865 | 840 539 | 9503 | 635 | 566 | 38 | 76 |
| 2009 | 1 689 265 | 841 122 | 848 143 | 9801 | 695 | 580 | 41 | 82 |
| 2010 | 1 698 313 | 845 516 | 852 797 | 9169 | 669 | 540 | 39 | 78 |
| 2011 | 1 706 069 | 849 304 | 856 765 | 9810 | 661 | 575 | 39 | 77 |
| 2012 | 1 711 140 | 851 792 | 859 348 | 9042 | 624 | 528 | 36 | 73 |
| 2013 | 1 717 353 | 854 737 | 862 616 | 9539 | 701 | 555 | 41 | 81 |
| 2014 | 1 721 528 | 856 864 | 864 664 | 11683 | 1126 | 679 | 65 | 130 |
| 2015 | 1 726 369 | 859 324 | 867 045 | 10312 | 865 | 597 | 50 | 100 |

The rate of convicted women from 2007 until 2015 follows the general trends of convicted offenders. Namely, when the total number of convicted perpetrators is going up, then the number of convicted women is also higher than the one from the previous year. But, we should not forget and mention the decline between 2014 and 2015 when there is a drop of the number of convicted women for around 25%. Analysing it, we came to a conclusion that starting from 2014 a lot of women have been convicted for the crime of *Use of a document with false contents*. During this period the state made changes in the Law for health insurance, asking people to sign a statement regarding their income in the previous year. Many women gave false information and were reported and convicted later on. After 2015 every criminal process regarding these crimes were stopped and those women were not convicted. The already convicted women for these crimes during 2014 and 2015 should have been erased from the criminal evidences and records, but until today the state did not undertake such steps.

The percentage of women in conviction rates in other Balkan countries (in 2010) is 6.8% (270 convicted offenders per 100 000) in Albania, 6.6% in Bulgaria (517 convicted offenders per 100 000), 10.2% in Croatia (547 convicted offenders per 100 000), 11.7% in Greece (384 convicted offenders per 100 000), 9.8% in Serbia (319 convicted offenders per 100 000) and 10.9% in Slovenia (411 convicted offenders per 100 000). Macedonia's percentage of convicted women in 2010 is 7.2% from 540 convicted offenders per 100 000 criminally liable citizens (European Institute for Crime Prevention and Control, 2014). The developed countries have

higher percentages of convicted women, which is expected knowing how women's situation is different compared to the one in developing and less developed countries. For example, Germany has 18.8% women from 994 convicted offenders per 100 000 citizens, Finland 19.8%, Denmark 18.9%, Sweden 17.4%, Austria 14.5% (European Institute for Crime Prevention and Control, 2014).

***Table 2:*** *Base and Chain Index of the total number of convicted perpetrators and convicted women (State Statistical Office of the Republic of Macedonia)*

| Year | | | | | | |
|---|---|---|---|---|---|---|
| | Total number of convicted perpetrators | Base index | Chain index | Women | Base index | Chain index |
| 2001 | 5952 | 77.19 | 91.62 | 298 | 53.79 | 83.47 |
| 2002 | 6383 | 82.78 | 107.24 | 374 | 67.51 | 125.5 |
| 2003 | 7661 | 99.35 | 120.02 | 394 | 71.12 | 105.35 |
| 2004 | 8097 | 105 | 105.69 | 463 | 83.57 | 117.51 |
| 2005 | 8845 | 114.71 | 109.24 | 574 | 103.61 | 123.97 |
| 2006 | 9280 | 120.35 | 104.92 | 560 | 101.08 | 97.56 |
| 2007 | 9639 | 125 | 103.87 | 622 | 112.27 | 111.07 |
| 2008 | 9503 | 123.24 | 98.59 | 635 | 114.62 | 102.09 |
| 2009 | 9801 | 127.10 | 103.13 | 695 | 125.45 | 109.45 |
| 2010 | 9169 | 118.91 | 93.55 | 669 | 120.76 | 96.26 |
| 2011 | 9810 | 127.22 | 106.99 | 661 | 119.31 | 98.8 |
| 2012 | 9042 | 117.26 | 92.17 | 624 | 112.63 | 94.4 |
| 2013 | 9539 | 123.71 | 105.5 | 701 | 126.53 | 112.34 |
| 2014 | 11683 | 151.51 | 122.48 | 1126 | 203.25 | 160.63 |
| 2015 | 10312 | 133.73 | 88.26 | 865 | 156.14 | 76.82 |

***Table 3:*** *Structure of women's criminality in the Republic of Macedonia (between 2001 and 2006) (State Statistical Office of the Republic of Macedonia)*

| Crimes | Year | | | | | |
|---|---|---|---|---|---|---|
| | **2001** | **2002** | **2003** | **2004** | **2005** | **2006** |
| Total number of convicted women | 298 | 374 | 394 | 463 | 574 | 560 |
| Crimes against life and body | 42 | 44 | 44 | 43 | 60 | 52 |
| Murder | 2 | 5 | 3 | 3 | / | 3 |
| Murder under sudden passion | 1 | / | 1 | / | 1 | / |
| Voluntary manslaughter | 1 | / | / | / | 1 | / |
| Infanticide | 1 | 1 | 2 | / | / | 2 |
| Bodily harm | 29 | 24 | 25 | 35 | 38 | 35 |
| Grievous bodily harm | 5 | 5 | 6 | 3 | 8 | 3 |
| Participation in a brawl | / | / | / | / | 6 | 3 |
| Threatening with a dangerous instrument during a brawl or a quarrel | 1 | 5 | 5 | 2 | 4 | 6 |
| Crimes against freedoms and rights of humans and citizens | 2 | 4 | 5 | 16 | 6 | 9 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Crimes against work relations | 2 | 1 | 2 | 4 | 1 | 1 |
| Crimes against honor and reputation | 29 | 33 | 42 | 37 | 45 | 27 |
| Defamation (I и III), (II) | 6 | 5 | 5 | 9 | 14 | 8 |
| Insult | 23 | 27 | 37 | 27 | 31 | 18 |
| Crimes against sexual freedom and sexual morality | 2 | 4 | 1 | 2 | 6 | 7 |
| Crimes against marriage, family and youth | 24 | 35 | 40 | 42 | 53 | 61 |
| Abduction of a child | 8 | 15 | 17 | 13 | 8 | 10 |
| Neglecting and mistreating a child (I и II) | 7 | 12 | 13 | 11 | 25 | 23 |
| Non-payment of maintenance | 4 | 7 | 7 | 10 | 13 | 15 |
| Crimes against human health | 8 | 7 | 8 | 11 | 18 | 7 |
| Crimes against environment and nature | 1 | **8** | / | / | **2** | **1** |
| Crimes against public finances, payment operations and economy | 18 | 15 | 30 | 30 | 42 | 26 |
| Counterfeiting money | 5 | 4 | 9 | 5 | 10 | 6 |
| Tax evasion | 7 | 5 | 11 | 10 | 16 | 10 |
| Crimes against property | 69 | 112 | 111 | 129 | 163 | 159 |
| Theft | 28 | 44 | 42 | 53 | 74 | 68 |
| Aggravated theft | 11 | 24 | 22 | 21 | 30 | 32 |
| Robbery | 2 | 1 | 3 | / | 1 | 2 |
| Armed robbery | 1 | / | / | / | 1 | 1 |
| Embezzlement (IV) | 11 | 9 | 4 | 17 | 11 | 8 |
| Fraud | 10 | 24 | 30 | 28 | 37 | 33 |
| Crimes against official duty | 13 | 10 | 5 | 9 | 19 | 14 |
| Misuse of official position and authority | 6 | 7 | 2 | 4 | 14 | 8 |
| Crimes against the administration of justice | 6 | 5 | 4 | 7 | 8 | 11 |
| Crimes against the public order | 8 | 10 | 13 | 18 | 22 | 34 |
| Autocracy | 2 | 3 | 7 | 9 | 9 | 21 |
| Crimes against legal transactions | 26 | 35 | 28 | 33 | 42 | 48 |
| Falsifying a document | 24 | 33 | 28 | 31 | 41 | 46 |
| Crimes against the general safety of people and property | 2 | 1 | 5 | 1 | 4 | / |
| Crimes against traffic safety | 42 | 47 | 40 | 55 | 51 | 70 |
| Endangering traffic safety | 42 | 46 | 40 | 55 | 51 | 70 |
| Crimes against the armed forces | **1** | **1** | **1** | / | **1** | / |

***Table 4:*** *Structure of women's criminality in the Republic of Macedonia (between 2007 and 2015) (State Statistical Office of the Republic of Macedonia)*

| Crimes | Year | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2007 | 2008 | 2009 | **2010** | **2011** | **2012** | **2013** | **2014** | **2015** |
| *Total number of convicted women* | *622* | *635* | *695* | *669* | *661* | *624* | *701* | *1126* | *865* |
| **Crimes against life and body** | **34** | **40** | **61** | **62** | **50** | **63** | **55** | **63** | **61** |
| Murder | / | 1 | 1 | 2 | 1 | 2 | 2 | / | 3 |
| Infanticide | 1 | / | 1 | / | 1 | / | / | / | / |
| Bodily harm | 25 | 33 | 46 | 46 | 43 | 50 | 43 | 51 | 48 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Grievous bodily harm | 4 | 4 | 8 | 7 | 4 | 4 | 5 | 7 | 3 |
| Participation in a brawl | 1 | 1 | 2 | 1 | / | 4 | 4 | / | 1 |
| Threatening with a dangerous instrument during a brawl or a quarrel | 2 | / | 2 | 4 | 1 | 3 | / | 5 | 6 |
| **Crimes against freedoms and rights of humans and citizens** | **8** | **14** | **19** | **15** | **14** | **13** | **18** | **19** | **19** |
| Endangering of security | 5 | 6 | 9 | 7 | 8 | 8 | 9 | 10 | 13 |
| **Crimes against elections and voting** | **/** | **/** | **1** | **3** | **/** | **/** | **2** | **/** | **/** |
| **Crimes against work relations** | **/** | **/** | **/** | **2** | **1** | **6** | **/** | **1** | **3** |
| **Crimes against honor and reputation** | **39** | **45** | **38** | **38** | **30** | **37** | **5** | **/** | **/** |
| Defamation | 6 | 11 | 8 | 10 | 11 | 9 | / | / | / |
| Insult | 33 | 31 | 30 | 27 | 18 | 28 | 5 | / | / |
| **Crimes against sexual freedom and sexual morality** | **7** | **2** | **2** | **2** | **/** | **4** | **5** | **2** | **/** |
| **Crimes against marriage, family and youth** | **59** | **53** | **45** | **58** | **56** | **48** | **53** | **56** | **64** |
| Abduction of a child | 17 | 17 | 17 | 13 | 19 | 16 | 9 | 12 | 14 |
| Neglecting and mistreating a child | 13 | 16 | 16 | 19 | 5 | 7 | 10 | 11 | 6 |
| Non-payment of maintenance | 23 | 11 | 6 | 16 | 22 | 20 | 21 | 26 | 37 |
| **Crimes against human health** | **5** | **9** | **14** | **6** | **31** | **22** | **12** | **14** | **13** |
| Unauthorized production and release for trade of narcotics, psychotropic substances and precursors | 4 | 6 | 11 | 6 | 18 | 18 | 10 | 11 | 13 |
| **Crimes against environment and nature** | **1** | **3** | **6** | **3** | **1** | **3** | **3** | **3** | **/** |
| **Crimes against public finances, payment operations and economy** | **27** | **34** | **19** | **24** | **28** | **25** | **44** | **38** | **34** |
| Counterfeiting money | 4 | 5 | 4 | 8 | 5 | 6 | 8 | 5 | 5 |
| Tax evasion | 12 | 13 | 3 | 9 | 12 | 10 | 22 | 16 | 17 |
| **Crimes against property** | **179** | **196** | **243** | **229** | **213** | **189** | **286** | **289** | **352** |
| Theft | 93 | 109 | 109 | 90 | 86 | 64 | 100 | 99 | 107 |
| Theft of electricity, heat energy or natural gas | / | / | / | / | / | / | / | 42 | 56 |
| Aggravated theft | 28 | 25 | 33 | 34 | 26 | 62 | 66 | 49 | 77 |
| Robbery | 1 | 2 | 4 | 3 | 1 | 3 | 2 | 4 | 1 |
| Armed robbery | / | / | 3 | / | / | / | 1 | / | / |
| Embezzlement | 6 | 10 | 10 | 9 | 6 | 5 | 11 | 10 | 8 |
| Fraud | 38 | 35 | 45 | 41 | 46 | 43 | 72 | 48 | 57 |
| Unauthorized use of a motor vehicle | / | 2 | 1 | / | 2 | / | / | 1 | / |
| Concealment | 7 | 2 | 6 | 9 | 7 | 3 | 5 | 6 | 21 |
| **Crimes against official duty** | **18** | **35** | **23** | **21** | **28** | **32** | **27** | **46** | **43** |
| Misuse of official position and authority | 11 | 25 | 20 | 15 | 15 | 21 | 20 | 35 | 23 |
| **Crimes against the administration of justice** | **15** | **11** | **19** | **18** | **20** | **20** | **18** | **20** | **14** |
| False reporting of a crime | 12 | 5 | 12 | 10 | 7 | 6 | 14 | 16 | 8 |
| **Crimes against public order** | **37** | **28** | **25** | **18** | **22** | **18** | **19** | **42** | **30** |
| Obstructing an official in the performance of official duties | / | 7 | 2 | 2 | 5 | 3 | 3 | 8 | 5 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Act of violence | 3 | 2 | 3 | 2 | 4 | 7 | 5 | 6 | 4 |
| Autocracy | 25 | 10 | 11 | 2 | 3 | 2 | 2 | 1 | 4 |
| **Crimes against legal transactions** | **65** | **47** | **50** | **63** | **63** | **47** | **36** | **414** | **142** |
| Falsifying a document | 56 | 44 | 45 | 59 | 55 | 45 | 29 | 41 | 26 |
| Use of a document with false contents | 8 | 2 | 3 | 3 | 4 | 1 | 6 | 373 | 115 |
| **Crimes against the general safety of people and property** | **3** | **/** | **7** | **5** | **3** | **10** | **9** | **11** | **9** |
| **Crimes against traffic safety** | **104** | **106** | **114** | **95** | **97** | **83** | **104** | **105** | **71** |
| Endangering traffic safety | 103 | 105 | 114 | 94 | 97 | 82 | 104 | 105 | 71 |
| **Crimes against humanity and international law** | **2** | **3** | **5** | **2** | **2** | **2** | **5** | **3** | **10** |

Women in Macedonia are mostly convicted as perpetrators of property crimes. Crimes against property are mostly committed by women who are of Macedonian ethnic origin. But there is also another part of these crimes - Roma women. They commit frauds in a role of soothsayers; have a low level of education which makes their employment hard or merely impossible. Being illiterate, unemployed and poor those women in most cases are marginalized, symbolically abused and perceived as social "trash". Such positions make them suitable to become criminals.

The other part of property crimes is committed by women with dominantly higher level of education (secondary school or faculty diplomas). They use their facilities services and do not pay for them afterwards; selling apartments which are not their own; or promising working positions abroad.

Regarding thefts their locus operandi are factories or houses where they work. They steal cables or iron products and sell them.

Violent crimes or crimes against life and body are the best example of social pressure that Macedonian women are feeling in everyday life. Namely, because of patriarchal relations in Macedonian communities, women are supposed to stay at home, give birth and take care of children, not pursue a career, be obedient and respect the spouse and his parents; also they must take care of their home. These relations and general views in some occasions create objective strains (with their actions that are opposite to these beliefs, women are perceived as deviant and "modern") which can result in criminal actions. The research results show that in 4.91% of the analysed cases (the crimes are bodily injury and grievous bodily injury) the perpetrator and the victim are members of the same family. The process of committing the crime is a result of dysfunctional family relations, because of the attitude and actions of the wife/daughter-in-law is seen as unfit to the traditional role of a wife and is disliked by most members of the community. These objective strains create subjective strains in the lives of Macedonian women, which emerge as a form of dislike to the events and conditions given by society. The data has shown that women who have been victims of emotional and in some cases physical violence because of their role of "modern" wives and daughters- in- law, felt subjective strains that have been directed towards committing crimes such as bodily injury and grievous bodily injury in the area of domestic violence. Their victims in each case have been family members who criticized and humiliated them and their "modern" way of life (Stanojoska, Jurtoska, 2017). As Agnew explained it is the strain women feel that predominate and predict their criminal behaviour.

As we already mentioned, the high number of crimes against legal transactions are the result of the health care reforms in Macedonia. Women who gave false information regarding their yearly income were convicted between 2014 and 2015.

There are also a high number of crimes against marriage, family and youth, in which cases women mistreat their children (in most cases it is the alarm and starting point for domestic violence) or women do not pay maintenance for their children after they divorce their husbands. Female offenders of these crimes are mostly poor, with lower levels of education, financially dependent.

The general picture for female offenders in the Republic of Macedonia draws a woman which is marginalized; she has lower levels of education and is unemployed; she is given the position of a housewife, and her only role is to give birth to children; she shouldn't pursue a carrier; she is financially dependent. Obviously, social and cultural positions of females in our society are the core of problems regarding their criminality.

***Table 5:*** *Recidivism among female offenders in the Republic of Macedonia, between 2001 and 2015*
*(State Statistical Office of the Republic of Macedonia)*

| Year | Total number of convictions | | Previously convicted | Convicted for similar offences | Convicted for other offences | Convicted for similar and for other offences |
|---|---|---|---|---|---|---|
| | All | Females | | | | |
| 2001 | 5952 | 298 | 22 | 14 | 6 | 2 |
| 2002 | 6383 | 374 | 20 | 8 | 11 | 1 |
| 2003 | 7661 | 394 | 12 | 4 | 4 | 4 |
| 2004 | 8097 | 463 | 22 | 18 | 4 | / |
| 2005 | 8845 | 574 | 41 | 23 | 18 | / |
| 2006 | 9280 | 560 | 42 | 22 | 16 | 4 |
| 2007 | 9639 | 622 | 50 | 28 | 19 | 3 |
| 2008 | 9503 | 635 | 32 | 18 | 13 | 1 |
| 2009 | 9801 | 695 | 48 | 19 | 26 | 3 |
| 2010 | 9169 | 669 | 41 | 25 | 16 | / |
| 2011 | 9810 | 661 | 49 | 27 | 19 | 3 |
| 2012 | 9042 | 624 | 43 | 25 | 18 | / |
| 2013 | 9539 | 701 | 42 | 22 | 18 | 2 |
| 2014 | 11683 | 1126 | 58 | 40 | 17 | 1 |
| 2015 | 10312 | 865 | 69 | 44 | 23 | 2 |

Recidivism is the key point which shows how much the re-socialization process has been successful or not. Analyzing the data from the State Statistical Office, we may conclude that women are rarely recidivists, and in the cases when they are, they commit similar offences which make them special recidivists. In these cases the institutional treatment and the post penal one did not fulfill their primary goals. After leaving the penitentiary institutions, women are back in their old environment. Even in cases they have changed, their environment had not which makes things difficult.

## CONCLUSION

Being the others in criminal statistics, women have rarely been a point of interest in criminological researches. In most cases if they have been analyzed, their criminal activity was researched through the prism of infanticides, abortions or prostitution. Using their social positions and the roles of housewives, without any important functions inside communities, females were never perceived as the dominant gender and the criminally "dangerous" ones.

Patriarchal relations inside Macedonian society are deeply rooted and their influence is inevitably high in the process of "forming" possible female criminals. Statistics show low educated women, mostly between the age of 30 and 59 years. They are mostly property crime offenders, poor, uneducated, unemployed; they commit thefts, aggravated thefts and frauds. They are also perpetrators of crimes connected with family, either mistreating their children

or not paying alimentation. And last but not less important there are the violent crimes which are in most cases a direct consequence of the financial dependence of women, their impossibility to pursue careers, the communities expectances from females, their predestination to be mothers, take care of their children, help their husbands to continue their family name, to stay at home and be housewives.

Can female criminals be perceived as Merton's rebels or are they the new offenders built on the male criminal models? And is it male dominance that pushes females towards victims' side or is it the starting point of criminality as freeing act? Can we speak for "modern" women born through the years of strain and dependence?

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# PREDICTIVE POLICING RESEARCHES IN HUNGARY

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**Abstract:** Criminalistics is developing continuously as many new policing methods are being elaborated. Predictive policing, which was developed in the US approximately one and a half decades ago, is one of these methods. Predictive softwares predict where criminal acts are expected as well as who are expected to be victims based on past events by means of mathematical algorithms. Primarily it were universities and big companies that developed computer programs which were able to predict consumer behaviour based on the models of the private sector. So, the idea of creating models by using a wide range of data and use these models in order to predict consumer habits, behaviours and forecast future trends was first used in commerce. Big chain stores started predictive analyses in order to determine their future sales strategies based on the results. Law enforcement borrowed the idea to use predictive softwares from commerce. In the beginning this method was used in the US and it spread over to Canada, Western European countries, and Australia, where it was also applied successfully. Due to predictive policing the crime statistics improved a lot and the number of criminal acts decreased meaningfully. This method is applied the most successfully in case of serial crimes; for example robbery, theft, homicide, sexual crimes, etc. As specialists dealing with predictive policing have declared several times in the past, predictive policing should not be considered as a "crystal ball" that tell where the offender is. It is just a method that can help law enforcement in crime prevention. Unfortunately this method is practically unknown in Central Europe. As long as I know it is not applied in maintaining law and order. In my study and in my lecture I would like to introduce this new method of criminalistics and how it is applied in Hungary.

**Keywords:** Predictive Policing, prediction, Criminalistics, Police Studies, serial crimes, spatial crime.

## INTRODUCTION

It can sound as commonplace that within the field of science there is not a single moment to let off the pace of research. It is especially true for the past period when science has practically developed day by day. It is no different with criminalistics where the latest inventions in natural sciences, IT etc. help the police officers' work.[1] Adopting these novelties and inventions is indispensable during the everyday work since people working in law enforcement can find themselves in insurmountable competition disadvantage over the criminals.[2]

The Hungarian Law Enforcement higher education tried to keep up with the scientific and technical developments to the extent of their personal and financial resources. However, in recent times such a high number of impulses have arrived that it has been getting more and more difficult to keep up with the latest investigation techniques and technical novelties that

1 Sallai, J. (2015): 5-28
2 Mészáros, B. (2016): 72-80. and Hautzinger Z. (2015): 122-129

appeared in the Anglo-Saxon law enforcement.[3] By realising this, the Faculty of Law Enforcement Science of the National Public Service University founded its own Institute of Criminalistics and within this the Department of Policing Strategies. The primary task of the department is – besides its teaching activity – to find and map the latest scientific fields and research methods within law enforcement which can aid a more efficient operation of law enforcement in Hungary, too. One of these fields quite unknown in most countries is predictive policing, which is being introduced to the professional and interested audience within the framework of this study. Predictive policing is an individual subject within the Masters programme of the National Public Service University in the 2017/2018 academic year.

## WHAT IS PREDICTIVE POLICING?

Unfortunately it can be stated safely that predictive policing is a practically totally unknown notion in Hungary. It can be proven clearly by the fact that Google search engine did not find a single match to the combination of words above. If we want to give an exact definition for the notion of predictive policing then it is useful to rely on definitions present in foreign (mainly American) literature. But just to calm ourselves even in the USA the definition of this notion is not unequivocal either. As Kristina Rose, the director of National Institute of Justice mentioned it at a Predictive Policing Symposium organized by NIJ if we asked ten people in the USA what predictive policing is we would receive ten different answers.[4]

Let's look at what Predictive Policing – The Role of Crime Forecasting in Law Enforcement Operations the first book written on the subject and until now the most often cited, means by predictive policing.[5] "Predictive policing is the application of analytical techniques – particularly quantitative techniques – to identify likely targets for police intervention and prevent crime or solve past crimes by making statistical predictions." [6] Predictive softwares can be used in several areas thus they are capable of predicting crimes and victims. (Table 1.)

Table 1.: Law Enforcement Use of Predictive Technologies: Predicting Crimes[7]

| **Problem** | **Conventional Crime Analysis (low to moderate data demand and complexity)** | **Predictive Analytics (large data demand and high complexity)** |
|---|---|---|
| Using historical crime data | Crime mapping (hot spot identification) | Advanced hot spot identification models; risk terrain analysis |
| Using a range of additional data (e.g., 911 calls, economics) | Basic regression models created in a spreadsheet program | Regression, classification, and clustering models |
| Accounting for increased risk from a recent crime | Assumption of increased risk in areas immediately surrounding a recent crime | Near-repeat modeling |
| Determine *when* areas will be most at risk of crime | Graphing/mapping the frequency of crimes in a given area by time/date (or specific events) | Spatiotemporal analysis methods |
| Identify geographic features that increase the risk of crime | Finding locations with the greatest frequency of crime incidents and drawing inferences | Risk terrain analysis |

3 Recently a new trend can be observed, since nowadays tactical proving methods are being effaced by technical proving methods (Girhiny, K. (2015): 89-99)
4 Rose, Kristina (2009): 15
5 Perry, W. L. et al (2013): 189
6 Perry, W. L. et al (2013): 1-2
7 Perry, W. L. et al (2013): 10

## THE RELATIONSHIP OF PREDICTIVE POLICING WITH PARTICULAR SCIENTIFIC FIELDS, ITS PLACE WITHIN LAW ENFORCEMENT SCIENCE

Maybe it would be too early to talk about predictive policing as an individual scientific field or discipline since this research method is only a decade long. As long as the development of predictive policing remains undiminished in the coming years still it would be better to look at it as an intersubdiscipline since its subject, terminology, methods, scientific theory principles are based and depend on the research of other scientific fields.

About its relationship with other scientific fields we can say that predictive policing – according to the author – is set on the edge of several disciplines out of which the most marked are criminalistics and IT. The set section of criminalistics and IT gives the common set that is predictive policing. We can detect relationship between predictive policing and several fields of law enforcement science as well among others with criminology, criminal psychology, security policy, criminal andragogy[8] etc. Examining predictive policing from an IT aspect we can state that it is mainly GIS the field it has a close relationship with. In this context mathematics and statistics are those fields which it has a close connection to.

To sum up we can state that predictive policing – despite its strong IT orientation – can be classified among the criminal sciences. It is obvious though that the subject is set on the edge of several disciplines out of which the most marked are criminalistics and IT.

## THE ROOTS OF PREDICTIVE POLICING

To predict the number of crimes law enforcement experts and researchers have dealt with the statistical and spatial analysis of certain delicts for decades now (see: crime mapping, criminal prognostics). It was the last decade when the interest for analytical tools rose significantly, which were able to draw useful conclusions from huge data sets. How did these analytical methods come about? As well as with other innovations used during law enforcement we can also say about predictive policing that it was the civil sphere that developed the basis of the method driven by economic interest while later on by realizing the efficiency of the method law enforcement started using it.

It was mainly universities and bigger companies which created computer programmes based on models of the private sector which could anticipate customer behaviour. It was the world of trade where the idea was born that with a wide range of data input we can create models about customer habits, customer behavior and the expected trend changes.

The bigger store chains started predictive analysis in order to define their future sales strategies after receiving the results. In the predictive analysis of trade Walmart, the US-owned giant enterprise had a pioneering role. The company analysed weather data in order to decide what kind and what amount of products should be stored in a bigger amount. They recognized that when certain weather events happen (sudden cold or heat, huge rainfall, strong wind etc.) the demand for certain products grows in an extreme measure (e.g. mineral water, duct tape, fruit biscuits, strawberry). As long as they know the coming weather then they can prepare in time for the expected demand growth and by this the expected demand for certain products can be predictable. According to Walmart analysts in the case of certain products there is a clear correlation between the weather and the quantity of the purchased products

8 Miklósi, M. (2013): 163-176

(e.g. mineral water) but there are products which require a more thorough statistical analysis which examines consumer habits in a more detailed way (e.g. fruit biscuits). By realizing the effectiveness of the method certain researchers tended to discover analogies between the predictable consumer habits and crimes thus they made computer analyses to "predict" and prevent crimes.

The methods targeting the prediction of crimes have long been available however, modern technology only recently developed mathematical algorithms which are connected to this. In connection with the creation of predictive policing model we must mention the name of William J. Bratton who was the Chief Police officer of Los Angeles. In 2008 Bratton spoke widely about the successes of LA Police Department mentioning a new method which was used to predict gang wars and tracking real time crimes. In the testing and further development of the method Bratton worked closely with the director of Bureau of Justice Assistance, James H. Burch II as well as with the director of National Institute of Justice (NIJ) Kristina Rose so that they study the new concept and draw conclusions for the law enforcement agencies. They organized two symposiums at NIJ during this time. The first was held in November 2008 in Los Angeles where in her opening speech Kristina Rose emphasized the catalysts role Bratton played in putting predictive policing in the forefront. She also mentioned that already at that time there was huge interest in getting to know this new method across the USA. Among others the leaders of Boston, Chicago, LA, Metropolitan DC, New York Police Departments and Maryland State Police indicated that they would take part in a predictive policing research and they would be willing to be sample areas of the experimental researches. Besides the police profession organisations soon the media showed great interest as well as executives of software manufacturing and private security companies.

The second symposium was held in Providence (Rhode Island) where a general agreement was reached that it was necessary to continue and develop predictive researches. Participants emphasized that later results could only be achieved if data sharing between law enforcement agencies happened, regionalization was strengthened and a strong analyzing capacity was established.

In the next two years following the second symposium there was a booming rise of interest in predictive policing. One of the reasons for this was partly the exaggerating effect of the media concerning predictive methods. Several TV stations and newspapers (CBS Evening News, the New York Times and NBC Nightly News) have reported about a predictive software package called PredPol (or at least hinted at) as something which can predict precisely where crimes take place. IBM, in one of his commercials, basically stated it as a fact that a police officer –thanks to data analysis – had appeared at the crime scene before the criminals appeared.

Naturally, predictive methods have found their real places and roles by now and it has become clear for professional participants that predictive policing alone cannot abolish crime though it can be a fairly useful tool besides the traditional methods.[9] We can say that there is a wide range of groups in the USA by now which for one reason or another show vigorous interest in the topic among others people who work in law enforcement, researchers, government officials, crime analysts, software manufacturers and human rights organisations etc.

## THE MYTHS CONNECTED TO PREDICTIVE POLICING

Predictive policing has also fallen into the trap – through no fault of its own – like several new therapy, technical innovation or invention that it has spread like wildfire thanks to the selfish interest of the media which presented it as a new method that basically can decrease

9 Pearsall, Beth (2010): 16-19

the number of crimes by itself. Thanks to this predictive policing has received significant media coverage in a short time. Myths were born in connection with the new law enforcement method and such expectations were composed which totally ignored reality. A false and underlying assumption was developed in certain circles that mathematical and IT background alone is enough to decrease the volume of crime.[10] But it became clear in no time that predictive policing – as the authors of Predictive Policing – The Role of Crime Forecasting in Law Enforcement Operations put it – is not a crystal ball which shows where the criminals are.

Let's see what are the most common myths connected to predictive policing.

1. The computer knows the future.
2. The computer does everything instead of us.
3. The application of predictive policing is costly.
4. The precise predictions automatically lead to a significant decrease in crime.[11]

## THE HUNGARIAN APPLICATION OF PREDICTIVE POLICING

When I tried to get to know the predictive method more thoroughly the most obvious solution seemed to be to get in touch with the American experts. I contacted several experts through mail but I did not receive any answers. I called the phone numbers on the PedPol website but in vain, could only talk to the answering machine. I left a message but they never called me back or sent an e-mail. Then I tried to look for someone among Hungarian experts doing research in different areas who can provide any significant information. This is how I first found the well-known Hungarian mathematican, László Mérő (1949) who after I had outlined what I had read in the American literature said that that these are all based on mathematics and their foundations are probability theory and average value calculation. Mérő said that he also used a programme which tried to predict at Budapest Water Authority where a water pipe would develop a fault. Both processes are practically based on the same logic.

I continued the "investigation" and thus found the ex-head of department of the 3rd District of the Budapest Police Headquarters about whom a colleague of his said that had written some kind of computer programme which could predict where cars would be stolen. That is how I got to the now retired Ferenc Traub police major.

The history of Hungarian predictive policing and this study become interesting from this point. In the beginning of the 2000s a lot of cars were stolen in Budapest and especially in the 3rd District. No day went by without 2-3 cars being stolen in the district so the positions of the captain and its deputy were both in danger. The only thing they could do was to come up with a method that would decrease the number of stolen cars. There were not enough police officers so they had to find another method.

The deputy of the police station who dealt with IT as a hobby started to write a programme which was based on the calculations of probability theory and average value calculation and on past events and could forecast when and what kind of crime would happen in the district.

10 Pearsall, Beth (2010): 16-19
11 The book of title „Predictive Policing - The Role of Crime Forecasting in Law Enforcement Operations, Rand Corporation" written by Walter L. Perry et al have been invoked in chapters 3-4.

## THE PREDICTIVE SOFTWARE IN PRACTICE

Let's look at the application possibilities of predictive software from the practical point of view, what we can specifically use it for. One of the main areas of use is action plan. If we ask police officers who make action plans what they base their action planning on then unfortunately the majority of them would answer where the most crimes happened the day or the week before. Unfortunately it can be done only superficially because of the workload. On what other principles can public service be organized? Crime mapping can also be ranked among the more modern proceedings. There are several undisputable advantages of crime mapping though the fact is that a map is static in itself since it can record only a given moment of the past (period of time). To define the optimum patrol routes and posts you need much more than that. Predictive policing gives help in this. The preparation of police actions and patrolling cannot be a mere routine. It has to be logical and contextual. Low police resources have to be used in the most optimal way. The programme entitled BÖBE started in 2006.[12] At that time the database already stored data from 2004 and at present the system contains criminal statistics from the past one and a half decade. One of the advantages of the programme is that its handling is very easy to learn. Entering new data in the system can be done in ten seconds so it does not provide extra burden on the staff. BÖBE gives prediction in the case of five crime types which significantly affect the subjective feeling of security, these are: car breaking, car theft, robbery, burglary, tricky theft. The programme marks out the future spot from past data.

According to the hypothesis of Ferenc Traub some criminals or criminal groups will not commit crimes one day and repeat it at the same place the following day. He was right. After committing crime criminals usually change the place of crime, as they expect police patrolling at the place where they committed criminal acts. (This is the reason why it is often inefficient to organize police actions based on crime mapping.) Based on the predictive method (if sufficient police resources are available) 80 % of crimes are predictable. However, unfortunately, only 6-8 streets allocated by the software can be controlled safely due to the low police resources. In case of a single pair of patrolmen has to check an area of 15-20 streets, it has a high risk that they cannot catch the criminal(s), even if the softer predicted it.

The programme asks the officer on duty how many vehicles can be used the given day in the service. The programme marks out those 6-8 streets separately for two police vehicles where according to the forecast the most crimes may occur. The streets belong to one vehicle are close to each other. The programme gives the most suitable time for the action e.g. that the most robbery at the given area can be expected on Wednesday between 6 and 10 pm.

What can police expect from the software? It can predict where, when and what kind of criminal acts are likely to be committed. It can indicate where the different types of criminal acts will occur. Furthermore, it provides information about where and what type of criminal activities can expected per streets.

The programme in 2008 also located the most optimum place to install CCTV cameras. Later on the installments of CCTV cameras were also done by the help of BÖBE.

The software can be used efficiently only if criminal data is refreshed every day. It is the officer in duty who enters the fresh criminal data in every shift. It is very important to enter accurate data (type of criminal act as well as exact time and address where it was committed) into the software otherwise it will return incorrect prediction.

12 The name of the programme - BÖBE - was given after Ferenc Traub's wife. The creators of the programme had been developing the software for long months. They had been working on it after duty and often until dawn. During their strenuous work it was Böbe who created the calm background for the creative work with her tasty dishes. In gratitude the creators named the software after her.

Currently the software is not connected to any databases. New criminal acts have to be entered into the software manually daily. However, the long term plan is to integrate BÖBE into RobotZsaru (the software used by Hungarian police). As soon as this happens the place where criminal acts have been committed will be available automatically, as a result of which crime prediction will be easier.

And what were the results? Within three years the number of crimes declined by 75 %. At present the "problem" is that there are too few crimes so the programme has to examine a time frame of several years to give the optimum areas. The programme was introduced to foreign police officers who attended Sziget Festival in the same district and then took it with them to France, Germany, Poland and the Czech Republic.

## SUMMARY

The first part of the study defined and introduced the notion of predictive policing and the circumstances in which it was born. Then it showed those areas where predictive policing method can be used in the everyday law enforcement. Though we cannot and should not formulate irresponsible expectations in connection with predictive policing. The method has been tried out and worked in practice but we cannot expect a "miracle" from it. Primarily it helps to complement the earlier investigative methods, it requires correction, supplement and development in several areas. Furthermore, the study showed that almost at the same time with the American programmes, but independent of it a predictive software forecasting crimes was created in Hungary, as well though its use was not widespread.

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# RIGHT TO SECURITY AND ANTIQUITIES SMUGGLING

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A**bstract:** Literature is rather apprehensive to recognize the existence of a constitutional status, as far as the human right to personal security of private individuals is concerned. Quite the opposite, it puts the stress on the protection of data of personal character. However, the creation of the European Union area of freedom, security and justice is an important development in the history of the protection of human rights. This space is strictly related to the fight against crime (terrorism, organized crime exemplified by antiquities smuggling, cybercrime etc.), let alone piracy. A military European operation off Somalia, called ''Operation Atalanta", copes with this very important case of maritime piracy worldwide. For the first time, the European Union has been endowed with a military navy force, although not a permanent one. As far as antiquities "trafficking" is concerned, to which is related the European Arrest Warrant mechanism, relatively little empirical data have been gathered and published, compared to other types of commodity traffic, in drugs, wildlife or even human beings. Italy, endowed with worldwide reputation against antiquities looting, asked in vain for the adoption of rules against "trafficking" of cultural goods coming directly from illegal excavations in Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of an EU member state. Besides, a new trend consists of the criminalization of antiquities counterfeiting whilst there is also the comparable practice of "antiquities intellectual counterfeiting" on demand of private collectors. Last but not least, the similarity of antiquities smuggling and the migrant one, as for their incentives and methodology, has been proved.

**Keywords:** antiquities intellectual counterfeiting, antiquities smuggling, area of freedom, security and justice, European Union, piracy, right to safety

## INTRODUCTION

The most innovative concept of the twentieth century has been the European integration in a continent devastated by two World Wars. The success of the European Union (EU) is due mainly to the fact that war-making mechanism has been blocked. This paper, at first, focuses on the legal good of safety, particularly in the interior of the Union. This general-range analysis is completed by a specialized approach to the specific question of the confrontation of smuggling of cultural heritage.

It is to point out that this paper takes account of the recent scientific research, realized on the topic of antiquities smuggling in correlation with migrant smuggling.[2]

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## EU AREA OF FREEDOM, SECURITY AND JUSTICE

Literature is rather apprehensive to recognize the existence of a constitutional status, as far as the human right to personal security of private individuals is concerned. Quite the opposite, it puts the stress on the protection of data of personal character.

However, the creation of the EU area of freedom, security and justice is an important development in the history of the protection of human rights. This legal institution is based on the Tampere (1994-2004), Hague (2004-2009) and Stockholm (2010-2014) programs. It derives from Title V of the Treaty on the Functioning of the EU, which regulates the "Area of freedom, security and justice".

This original concept has a main point of reference, the European citizen, in favour of whom it has been created.[3] According to the Commission, this Area includes the essence resulting from the democratic traditions of the communitarian countries and of the principle of "rule of law". It signalizes that the freedom loses a great part of its significance if it cannot be enjoyed in a secure environment, with a full back of a system of justice, in which all EU citizens and residents may have trust. So, the notion of this Area is not strictly definable, given that the notions which form this synthetic innovation cannot be defined accurately, at least on the basis of juridical criteria. The notion on the matter is general and open, leaving a large merge of faculty of distinction for its further formation.[4] It is strictly related to policy fields of competence, such as the management of the EU external borders. It also includes asylum and immigration policies and the fight against crime (terrorism, organized crime exemplified by antiquities smuggling, cybercrime, etc.).

## EUROPEAN ARREST WARRANT

For strengthening the judicial cooperation, to ensure the presence of offenders in criminal proceedings and leaving the long, complicated and traditional extradition procedures, the European arrest warrant has been introduced.[5]

On 13 June 2002, the Council of Ministers of the EU adopted the relevant Framework Decision. This act entered into force on 1 January 2004 and the communitarian countries were required to introduce it into their national legislations. However, the member states were reluctant, primarily because of the obligations that resulted from it, which basically required substantial and specific changes in the national law of the states involved.

Anyway, the warrant may be issued by the national judicial authority if the person that is returning is required and is accused of a crime meriting a prison sentence of at least one year or this person is sentenced to imprisonment of at least four months. The order must be executed as quickly and easily as possible in the rest EU states. This means that member states may no longer refuse to surrender to another member state their citizens who have committed serious crimes or at least are suspected of committing such a crime in another EU country, on the grounds that they are citizens of a member state. The country in which a person is arrested must surrender him/her to the state that issued the warrant within 60 days from the date of arrest. If the detained person consents to the surrender, the decision should be brought

3 Fr. Kainer, *The Area of Freedom, Security and Justice: Analysis on European Justice and Internal Affairs Policy*, Integration 3/2007, p. 344 (in German).
4 D. Papagiannis, *The Area of Security in the European Union*, Ant. N. Sakkoulas Publishers Athens – Komotini 1998, p. 31 (in Greek).
5 S. Stojanovski, B. Stefanova, *European Union warrant and extradition procedure*, Book of proceedings of Tara Conference 2015, pp. 380-381.

within 10 days. However, despite these limitations at the time of execution of the warrant, in specific cases that the surrender cannot be held with the prescribed period of 60 days, the decision provides an opportunity to postpone the surrender for additional period of 30 days.

The issuing of the warrant is conditioned with a list of offences, for which this act can be sent out. In these cases, it should be executed by the State, in which the fugitive is arrested, regardless of whether the definition of the offence in the State is identical or not, if the offence is punishable by at least three years in prison in the State which issued the warrant. As long as other crimes are concerned, namely which are not included in this list or are punishable beyond the list of 3 years, the principle of "double criminality" remains as a condition for the execution of the warrant. The list on the matter is related to various crimes, such as unlawful seizure of aircraft/ships, and is strictly related to the antiquities smuggling, indirectly (participation in a criminal organization, laundering of the proceeds of crime) and directly (illicit trafficking in cultural goods, including antiquities and artworks).

## PIRACY AND ANTIPIRACY PROTECTION MEASURES

The above-mentioned remark of the legal literature on the dynamic nature of the Area of Freedom, Security and Justice is thoroughly confirmed by the recent development of the EU policy on security matters. This Area has been "duplicated" by the same concept in the field of public international law, particularly at the high seas. This is true particularly for the criminality of maritime piracy, which is located especially in this legal zone of the planet.

Some of the most important EU countries were the protagonists even in the golden age of piracy, a period that began around 1500 and lasted for 300 years.[6] During that time, the Caribbean islands and coasts of the Americas were the dynamic centre of a trade empire linking ships which carried slaves, sugar, precious metals, tobacco, and coffee among all three and generated enormous wealth for the dominant colonial powers: England, France, Holland, Portugal and Spain. However, the boom in piracy did come to an end. In the early 1700s European nations began to introduce stronger antipiracy law, increase the number of warships in the area, and offer rewards to those who turned in pirates. In 1717, England offered pirate captains and crews amnesty, threatening those who refused with no mercy if, and when, caught. Over the following years, the buccaneer captains fell one by one.

Nowadays, the EU has created the first military navy fleet in its history, to cope with piracy in the wider region of Somalia.[7] This operation, called "Atalanta", is a paradigm of syncretism, having a very important impact, particularly in terms of prevention.

It is based on Decisions by the EU Council in accordance with relevant United Nations Security Council Resolutions and international law. In the area of operations, Atalanta forces are enabled to arrest, detain and transfer persons suspected of intending to commit, committing, or having committed acts of piracy or armed robbery at sea. The suspects can be prosecuted by an EU member state, by regional states or by other states with which the EU has established relevant agreements. With this fleet another similar operation collaborates, the NATO force "Ocean Shield".

If the lifespan of Atalanta has been extended by European Council to December 2018, another legal measure has been adopted, of undefined duration, in various national legal orders. It is about the institutionalization of commercialized protection, offered by private professionals. These guards, usually being armed, serve on board only when ships pass through

6 M. Lara Martínez, *Piracy's golden age*, National Geographic History 2016 Vol. 2 No. 1, pp. 67, 74.
7 A. Maniatis, *Sea and see piracy*, pp. 1238-1247 in the Book of proceedings of the 8th EuroMed Academy of Business Conference, 2015.

the zones of high danger for piracy attacks, like Somalia, Nigeria, etc. This international trend of traditional maritime countries is exemplified by specialized law 4058/2012 "Delivery of services by unarmed or armed guards to merchant ships and other dispositions", in the Greek legal order. One of the first cases of application of this measure was the protection of the oil product tanker, "Great Lady", registered in Greece, in August 2012. Somali pirates attempted to rob the ship, protected by four unarmed professional guards being in coordination with the crew. They could not reach the ship surface because their ladders were proved to be too short to make landing.

French Republic was reluctant to modernize its maritime law by adopting the measure on the matter, as it was inspired by the "doctrine Colbert". This doctrine has to do with the traditional culture of state interventionism for the protection of merchant navy, introduced by the Marine Minister Baptiste Colbert in the 18th century. Antipiracy policy was considered as a case of "royal power".[8] However, in 2014 the French state institutionalized anti-piracy protection by private guards for mercantile navy registered in France.

## INSUFFICIENT LEGISLATION ON EXCAVATIONS AND ANTIQUITIES SMUGGLING

Today the unlawful removal of cultural property is regarded as utterly unacceptable. Alongside the international conventions applicable in the case of war or armed conflict, particular importance has the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.[9] This text, which is the most important to cope with antiquities looting, has now been ratified by 127 countries. With the Act on the Return of Cultural Objects which entered into force in 2008, Germany incorporated the Convention into national law and on this basis cultural assets brought unlawfully to Germany after 26 April 2007 can be stopped and returned at the request of a State party. It has turned out however that the demands contained in the law are so high that no single cultural object has been returned in this way to date. Given the difficulties in applying the Act on the Return of Cultural Objects, the German Government presented a report on the protection of cultural property in Germany in April 2013, which assessed the legal situation and recommended key improvements in the form of amendments to the law.

Finally, a new law was adopted, the Act on the Protection of Cultural Property, which entered into force on 6 August 2016.[10] What was previously regulated in three different acts is now regulated in one single piece of legislation. Furthermore, numerous new and simplified provisions were added. The new Act was adopted inter alia to implement the new EU directive 2014/60/EU of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of an EU member state. Previously, Germany considered cultural property within the meaning of the EU Directive protected only if it had been entered in a register of cultural property of national significance. Since 1955 (the previous provision dates back to 1919) it has been common practice in Germany - and some other States – to register protected cultural property in lists to make sure that such cultural property is not exported without a license. About 2.700 entries have been registered in Germany, to September 2016. However, the vast majority of Germany's national cultural property, especially in public museums and similar

8 J. – P. Beurier (Dir), *Maritime Laws*, Dalloz 2014, p. 863 (in French).
9 Federal Foreign Office, *Protection and restitution of cultural property*, http://www.auswaertiges-amt.de/EN/Aussenpolitik/Kultur/Kulturgueterrueckfuehrung.html.
10 Federal Government Commissioner for Culture and the Media, *Key aspects of the new Act on the Protection of Cultural Property in Germany*, September 2016, pp. 5, 9, 10.

institutions, was previously not protected by law. To take advantage of the extended scope of the protection provided by the new EU Directive (in favour of each interested member state) and to close legal gaps which existed in Germany up to the adoption of the new German Act, public collections as a whole are protected as "national cultural property" in virtue of this Act. This means that claims for the return of such property are now subject to longer limitation periods (75 years) under the EU law.

It is to signalize that according to the fourth report of the Commission in the matter of the application of the former Directive 93/7/EEC, Bulgaria and Italy insisted on the question of illegal trafficking of archaeological objects coming from illegal excavations, due to the difficulties to cope with, in order to prove either the origin of the goods or the date of their illegal removal of the territory of the State concerned or both these data.[11] As a matter of fact, they asked for a solution of this problem through the revision of the directive but this measure was not taken, at least directly, through the adoption of the aforementioned Directive 2014/60/EU.

First of all, it is not coincidental that the mainstreaming archaeological state among them, Italy, in its relevant report to the Commission gave some information on the objects illegally removed (namely 10.372, from 2008 to 2011), of which many consisted in archaeological goods coming from illegal excavations.[12] The point that has not been mentioned in this report is that there exists a gradual reduction in the number of illegal excavations discovered. More concretely, excavation is not a crime that can be quantified in absolute terms, just as it is impossible to pinpoint exactly which and how many ancient relics are removed from sites each year.[13] However, a general idea might be given by the numerous relics by the TPC Unit and other law enforcement agencies. There has been a gradual decrease in the number of clandestine excavations discovered, whose numbers have dwindled from a peak of more than 1.000 per year, identified in the 1980s and 1990s, to 103 in 2008. This impressive achievement reveals the importance of the political will to make use of the state power to cope with antiquities looting, as it is the case of Italy endowed with a worldwide reputation.[14]

According to the same report of the Commission, the EU member states signalize that, for evident reasons they do not have information on the total of cultural goods being illegally removed from their territory. So, it is difficult for them to evaluate whether the removals have increased or not. Finally, it is to point out that the trade of antiquities coming directly from excavations implicates particular difficulties as for the question of documentation and proof of the commission of the crimes on the matter. It is also possible to make the illegal traffic itself more difficult, due to the frequently used practice of "antiquities laundering".

11 Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Fourth report on the application of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member State*/*COM/2013/0310 final*/, p. 5.
12 Commission, *Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee Fourth report on the application of Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member State*/*COM/2013/0310 final*/, p. 8.
13 G. Nistri, *Chapter 11 The Experience of the Italian Cultural Heritage Protection Unit*, in S. Manacorda and D. Chappel (eds.), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer Science + Business Media, LLC 2011, p. 185.
14 A. Maniatis, *The measures for protection of cultural goods*, RSC, 2010, n. 1, p. 304 (in French).

## LITTERATURE ON ANTIQUITIES SMUGGLING: AN UNDERSTUDIED CRIMINALITY

As far as antiquities smuggling is concerned, it adopts a more inventive methodology than migrant smuggling, as implied by the so-called "Chippindale's Law", which is the following: "*However bad you feared it would be [so far as antiquities looting and smuggling are concerned], it always turns out worse*". Relatively little empirical data have been gathered and published on it, compared to other types of commodity traffic, in drugs, wildlife or even human beings.

Most countries have no dedicated art police, an important point to note, as it is evident that the governmental administration of these countries does not consider art crime of sufficient severity to warrant a department of its own, despite numerous publications to the contrary.[15] The reason for this is the relative paucity of sufficiently extensive empirical data and statistics on art crime – the result of a cyclical self-destructive system. The empirical data are sparse because governments do not dedicate resources to gathering and analysing data on art crime. They do not dedicate resources because the existing data have not proven their extent and severity to them. Interpol's Stolen Works of Art department acts as an information-gathering point for world art police, keeping track of reported crimes and stolen objects on a data-base, and functioning as a point of reference. They publish annual data, as reported to them by constituent countries, but they themselves admit that the data from each country are incomplete and report only a fraction of the total art crime activity. That said, Interpol ranks art crime as the fourth highest-grossing criminal trade, behind only drugs, arms, and human trafficking, a subtle distinction from the US Department of Justice, which ranks it third, ahead of human trafficking. Anyway, we consider as very important the fact that human trafficking exists, let alone that it is comparable with antiquities smuggling. A recent research on sex slavery, human trafficking and urban child markets claims that there are more slaves today than at any point in human history![16]

Art crime has come understudied due to two primary factors. On the one hand, police services do not distinguish stolen art from general stolen property in their filing activities and, on the other hand, there is a limited number of art crimes coming to police attention at all (the rest remaining in the dark side of criminality).

## LITTERATURE ON ANTIQUITIES SMUGGLING AND THE "ANTIQUITIES INTELLECTUAL COUNTERFEITING" THEORY

A research, supported by the European Research Council under the EU's Seventh Framework Program, has ended up to the following findings until a recent empirical study conducted in Cambodia and Thailand.[17]

a) Organized crime is involved in antiquities looting and trafficking

That is why the first anti-looting L. 3658/2008 in the Greek legal order has submitted groups committing cultural law crimes to the legal notion of criminal organization.

15 N. Charney, *A History of Transnational Trafficking in Stolen and Looted Art and Antiquities*, pp. 139-140, in G. Bruinsma (ed.), *Histories of Transnational Crime*, Springer Science + Business Media New York 2015.
16 E. Benjamin Skinner, *A Crime So Monstrous, Mainstream Publishing Edinburg and London*, 2008, p. 17.
17 S. Mackenzie, T. Davis, *Temple looting in Cambodia. Anatomy of a Statue Trafficking Network*, Brit. J. Criminol. 2014, 54, pp. 722-740, mainly p. 722.

b) The traffic in looted artefacts overlaps with the insertion of fakes into the market

As a matter of fact, the fake monuments have proved to be a serious danger for culture and science as they may prevent specialists from drawing reliable conclusions on the historical past. It is not coincidental that national legal orders have the tendency to criminalize the acts on the matter, such as the antiquities counterfeiting. This tendency is exemplified by the aforementioned Greek L. 3658/2008, which has introduced the delict consisting in counterfeiting of monuments. This new delict has to do not exactly with the construction but with the promotion of fake objects.

A development of the recent expansion of the antiquities market lies in the much widened access to the acquisition of ancient artefacts provided by the growth of the internet and its widely used trade forums.[18] Since the advent of the internet as a major vehicle for retail of all kinds, anyone with a computer and phone line can now purchase an endless variety of antiquities – most of minor significance or monetary value – merely with a few strikes of the keyboard and a credit card. The effects of this on the antiquities trade worldwide has not been studied in great detail, although doubtless it has increased the business in forgeries and petty thefts.

Last but not least, besides the case of (material) counterfeiting, there is an immaterial alternative on international scale. Private collectors make use of the services of some experts to see their collections upgraded. This phenomenon is called "fulfilment of desire" of collectors, who pay archaeologists and art historians for this kind of treatment of their antiquities. These experts have the tendency to upgrade the value of these objects by making use of ambivalent technical terms and expressions, such as the term "figurines". Indeed, this word may declare an important object of ancient times, dedicated to worship processes but also a simple toy, for kids. We have introduced to legal doctrine the following original technical term: antiquities (or monuments) "intellectual counterfeiting".[19]

It is about an expression comparable with the official term "monuments counterfeiting" for the aforementioned type of delict. This proposed terminology is inspired by the term "intellectual forgery" being used by the doctrine as for the delict of emission of a false medical certificate, comparable with the delict of document forgery. Anyway, the issuing of a false medical certificate may occur due to pure altruism of the expert (doctor) towards the patient, for instance towards a youngster as for the question of his military service, whilst experts proceeding to antiquities intellectual counterfeiting do not try to help some weak members of the society but powerful private collectors or museums with large vanity.

c) Few stages there are between looting at source and the market placing of objects

Amazingly few stages exist between the stage of looting at source and the one of placing of objects for public sale in internationally respected venues.

## RESEARCH ON MIGRANT AND ANTIQUITIES SMUGGLING

The aforementioned research on migrant smuggling and the antiquities one, conducted unitl the beginning of 2016, has ended up to the following similarities:

a. Financial incentives, although antiquities smuggling has the particularity that it is basically a "white collar crime";

18 M. Miller, *Introduction to Feature Section: Looting and the Antiquities Market*, Athena Review, Vol. 4, no. 3.

19 A. Maniatis, *On the field archeological research and museums Supplementary education in Cultural Law*, Ant. N. Sakkoulas Publishers Athens – Komotini 2010 (in Greek).

b. Transnational character, with Italy as a country of strategic location;

c. Incorporation into the notion and the modern legislation on "criminal organizations", as for antiquities looting and smuggling and as for human trafficking, even if there is also the case of migrant smuggling, which deserves to be incorporated into;

d. Unlawful variations, namely human trafficking against migrant smuggling as well as monuments counterfeiting against antiquities looting and smuggling;

e. Potential bonds with cases of terrorism or other similar armed movements (refugee and migrant smuggling may facilitate the entrance of prospective perpetrators of acts of terrorism to the countries they want to offend, terrorist organizations or rebels are funded through antiquities looting and trade);

f. The existence of various legitimate tools, under the common label "sponsors", relevant to these two types of criminality or the correspondent legitimate social activity (the role of sponsors has been institutionalized for the legal immigration whilst companies may help the authorities outlaw perpetrators of crimes against the property of cultural goods).[20]

We consider that all these findings remain actual, as political instability, let alone terrorist attacks mainly in Western Europe (France, the UK, etc.), and financial crisis continue to prevail, on international scale.

## CONCLUSION

The right to personal safety constitutes one of the most important civil fundamental rights. It has been significantly promoted by the EU and deserves further consecration and protection. It would be useful to correlate it to the rights relevant to the enjoyment and protection of cultural goods, particularly heritage. The current paper has confirmed the previous recent research on the bonds between terrorism or other similar armed movements and antiquities looting and smuggling. It has also highlighted the complex nature of the set of cultural law crimes, exemplified by the modern delict of antiquities counterfeiting. Anyway, further research on law and practice relevant to excavations, antiquities looting and smuggling is highly recommended.

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20 A. Maniatis, *Migrant and antiquities smuggling*, Thematic Conference Proceedings of International Significance, Archibald Reis Days, Volume 3, 2016 in Belgrade, pp. 167-168.

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8. Federal Government Commissioner for Culture and the Media, *Key aspects of the new Act on the Protection of Cultural Property in Germany*, September 2016.

9. S. Mackenzie, T. Davis, *Temple looting in Cambodia. Anatomy of a Statue Trafficking Network*, Brit. J. Criminol. 2014, 54, pp. 722-740.

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14. M. Miller, *Introduction to Feature Section: Looting and the Antiquities Market*, Athena Review, Vol. 4, no. 3.

15. G. Nistri, *Chapter 11 The Experience of the Italian Cultural Heritage Protection Unit*, pp. 183-192, in S. Manacorda and D. Chappel (eds.), *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer Science + Business Media, LLC 2011.

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# CRIMINLAISTIC STRATEGY AND TRENDS IN CRIMINLAISTICS

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**Abstract:** The paper is devoted to the problems of criminalistic strategy and trends of criminalistics. These problems are decided by analysing criminal policy in connection with criminal law, penitentiary, criminal procedural, criminological policies and criminalistic strategy. The concept of criminalistic strategy is formulated as a field of knowledge connected with counteraction to the crime with the help of criminalistic means in the long term. The authors also paid special attention to the functions of criminalistics in different ways: 1) the function of science development (scientific); 2) the function of ensuring practice (investigative, prosecutorial, judicial, lawyer) (practical). The functions of criminalistics are differentiated depending on their focus: 1) cognitive; 2) prognostic; 3) educational (or didactic); 4) preventive.

As a result of this research the authors have formulated some trends in criminalistics: 1) crimininalistics started to support not only investigators and prosecutors by criminalistic means, but judges, barristers and other participants of judicial proceeding, as well; 2) criminalistics has to turn from studying the traditional materially recorded traces to the investigation into sonic (acoustic), electronic and genome ones; 3) expansion of the criminalistics limits.

**Keywords:** criminal policy, criminalistics, criminalistic strategy, function of criminalistics, trend in criminalistics.

## INTRODUCTION

The formulation of criminal policy is affected by the political vector and international position of the state, maturity of civil society, conditions for the commission of crimes, intellectual, technical, tactical, methodical and legal possibilities of representatives of criminal justice agencies to counteract crime, the availability of qualified specialists in the sphere of combating crime, volition of representatives of criminal justice agencies to counteract crime, understanding of the objectives of the criminal justice agencies and the purposes of punishment. These factors also explain why there are different approaches to the formulation of criminal policy in different countries and historic periods. Because of this idea, we started to find connections between criminal policy and criminalistic strategy, and among criminalistic strategy, function and trends of criminalistics.

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## CRIMINALISTIC STRATEGY AND CRIMINAL POLICY

Anselm von Feuerbach (1775-1833) was the first scientist to use the term "criminal policy"[3]. He understands it as a branch of science, which should give the criminal legislator guidelines for better organization of the matter of justice. A similar definition was suggested by Franz von Liszt (1851-1919) – a systematic complex of reasons, based on scientific research into the causes of crime and the effects produced by the punishment – grounds, in accordance with which the State should deal with crime by means of punishment and related institutions. Therewith he clarifies his position by stating that science-based criminal policy requires that criminal biology (anthropology) and criminal sociology (statistics) data should be taken as a basis for it. This approach turns criminal policy into a "broad" inter-branch and interdisciplinary concept for criminal law sciences, criminal procedure, criminalistics and other related sciences[4].

Currently, criminal policy can be defined as the sphere of knowledge, based on the study of the causes and effects of crime, aiming at strategic crime prevention by means of social and political impact on the reforming of criminal justice system in the long term. For criminal policy it is important not only to set strategic goals, but also to draw conclusions as for reaching them.

Criminal policy formulates strategic objectives for the sciences of criminal justice and differs in the following areas: 1) criminal law policy; 2) penitentiary policy; 3) criminal procedural policy; 4) criminological policy; 5) criminalistic strategy.

Criminal law policy should solve the problems of formulating the tasks of criminal law; principles of criminal law; strategy of its variability; the number of penalty types and their understanding; the purpose of punishment, exemption from criminal liability, punishment and enduring it. The primary objective of the criminal law policy is a strategic, long-term impact on the criminal law through the accurate knowledge of the cause and effect of the crime.

Criminal law policy can formulate the problems of the Criminal Code, the basis of criminal liability, the formation of general criminal law principles (for example, *non bis in idem*; *omnis indemnatus pro innoxis legibus habetur*), the purpose of punishment, etc. This is why criminal law policy cannot exceed the bounds of formulating strategic prospects of legal groundwork, which of course considerably narrows the criminal policy in comparison with the concept of criminal policy. Criminal law policy is also influenced by international treaties, conventions, strategic development of the state.

The penitentiary policy of the state is also connected with the realization of laws and bylaws in this sphere. It is realized by means of creating conditions for correction and resocialization of convicts, the prevention of the commission of new criminal offences both by convicts and by other persons and also the prevention of tortures and inhuman or humiliating treatment of convicts. Cesare Lombroso (1835-1909) points out that criminals should be treated in conformity with individuality of each of them and his/her character should be taken into account if they want to achieve any satisfactory results[5]. The joint of the criminal law and penitentiary policies is important because the criminal law policy forms purposes

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4 фон Лист Ф. Задачи уголовной политики, в изложении Бориса Гурвича. – СПб.: Типо-Литография К. Л. Пентковского, Екатерин. кан., уг. Казнач., 6-71, 1895, p. 2

5 Ломброзо Ч. Новейшие успехи науки о преступлении // Преступный человек / Пер. с итальянского. – Москва: Эксмо; Санкт-Петербург: Мидгард, 2005, pp. 219

of the punishment which influence the formation of the purpose of the whole penitentiary legislation.

The problems of criminological policy are also of some interest for researchers. Anatoly Zakalyuk (1930-2010) singled out the tasks which are set with respect to this science and the ways for their realization[6]. One of such vectors was the development of the modern strategy of counteraction, first of all, to organized, economic, corruption-related crime, crime connected with illicit drug trafficking and violent crime, including contract, acquisitive and violent and acquisitive crime and also among persons who were previously convicted and among minors. Taking into account these tasks which are set with respect to criminology, one can assert the presence of the common vector for the criminal law sciences, the common purposes and tasks and also the strategy of counteraction to crime. In other words, in the context of the criminal policy, one can also speak of the criminological policy (strategy).

The information about the contents of the criminal procedure policy can be found in the provisions of the Criminal Procedure Code concerning the tasks of criminal proceedings, the principles of criminal proceedings, etc. They include the protection of a person, the society and the state from criminal offences, the protection of rights, liberties and legal interests of the participants of criminal proceedings and also ensuring a quick, comprehensive and unbiased investigation and judicial examination so that each person who committed a criminal offence could be brought to responsibility within the scope of his/her guilt, no innocent person could be accused or convicted, no person could be subject to ungrounded procedural compulsion, so that a proper legal procedure is applied to each participant of the criminal proceedings. The presence of a real mechanism connected with the achievement of a goal and the supervision of the bodies of criminal justice is crucially important for the successful realization of the criminal procedure policy.

The interest in the strategy has increased greatly in criminalistics in the XXI century. The newly published works with respect to this problem (O. Bayev[7], R. Belkin[8], V. Bernaz[9], H. Malevski[10], M. Shepitko[11]) are worthy of attention. According to H. Malevski, the existing approaches to the place of the criminalistic strategy in criminalistics differ: 1) a certain instrument which shows tendencies and directions of the development of the science; 2) an independent part of the science; 3) a certain model or program of the investigation of a certain crime[12].

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6 Закалюк А. П. Курс Сучасної української кримінології: теорія і практика: У 3 кн. – Кн. 1: Теоретичні засади та історія української кримінологічної науки. – Київ: Ін Юре, 2007, pp. 34-35

7 Баев О. Я., Баев М. О. О конечных целях деятельности участников уголовного судопроизводства и стратегиях их достижения (к проблеме криминалистической стратегии) // Криминалист первопечатный. – 2012, № 4, pp. 8-18

8 Белкин Р. С. Криминалистика: проблемы сегоднешнего дня. Злободневные вопросы росстйской криминалистики. – Москва: Норма, 2001, pp. 78-80

9 Берназ В. Д. Криминалистическая стратегия в расследовании преступлений // материалы межд. науч.-практ. конф. «Криминалистика XXI века». – Харьков: Право, 2010, pp. 203-209

10 Малевски Г. Криминалистическая стратегия, стратегия в криминалистике или стратегия криминалистической политики? // материалы IX межд. науч.-практ. конф. «Криминалистика и судебная экспертиза: наука, обучение, практика». – Вильнюс, Харьков, 2013, pp. 17-31; Малевски Г. Проблема соотношения понятий тактики и стратегии в криминалистике и деятельности правоохранительных органов // Криминалист первопечатный. 2014, № 9, pp. 99-120

11 Шепитько М. Место криминалистической стратегии в связи с изменчивостью понимания уголовной политики // Криминалистика и судебная экспертиза: нау- ка, обучение, практика. – Х.: Сб. науч. трудов в 2-х т. – Харьков: Видавнича агенція «Апостіль», 2014, Т. 1. pp. 154-164

12 Малевски Г. Криминалистическая стратегия, стратегия в криминалистике или стратегия криминалистической политики? // материалы IX межд. науч.-практ. конф. «Криминалистика и судебная экспертиза: наука, обучение, практика». – Вильнюс, Харьков, 2013, p. 31

At present the criminalistic strategy has been already formed as a category and a separate direction. The development of the criminalistic strategy as a separate category in criminalistics has not reached the level of a separate branch of the science. The criminalistic strategy cannot be realized in the investigation of a certain crime either as it contradicts the realization of the criminal policy of the state. That is why the criminalistic strategy is the field of knowledge connected with counteraction to the crime with the help of criminalistic means in the long term.

## FUNCTIONS OF CRIMINALISTICS

Criminalistics in realization of its strategy can be considered in three aspects: as a science, as a taught course and a practical activity in the fight against crime. Traditionally, criminalistics serves the purposes of disclosure, investigation, legal proceedings and prevention of crimes.

Every crime should be promptly and fully solved. To solve the crime means to identify all its features and the offender. A crime can be solved by means of activities based on scientific methods, techniques and procedures of criminalistics. The solution and investigation of crimes involves the use of scientific and technical means, technical and tactical methods, and methodological recommendations.

Judicial proceedings are also not possible without the use of criminalistic expertise (knowledge). Tactical techniques of court proceedings, application of scientific and technical means (such as audio and video recording, videoconferencing), guidelines for considering certain categories of cases are required in court. It is actually about judicial criminalistics or criminalistics of judicial activities.

Hans Gross (1847-1915) considered criminalistics accessory in relation to criminal law and defined it as the study of realities of criminal law. According to the "father of criminalistics", the essence of the new science consists of: 1) revealing the truth in every criminal case (practical aspect); 2) the study of the criminal and the criminal offense (theoretical aspect)[13].

Criminalistics is continuously expanding the object of its research. Criminalistic expertise (knowledge) is useful not only for investigative activities, but also for forensic intelligence, prosecutorial, judicial, lawyer, experts activities. Therefore, the functional orientation of criminalistics and its means is important for various types of legal activities.

Criminalistics as a science performs important functions: 1) the function of science development (scientific); 2) the function of ensuring practice (investigative, prosecutorial, judicial, lawyer) (practical). These functions are related to each other and are interdependent, reflecting the unity of theory and practice.

The functions of criminalistics can also be differentiated depending on their focus. In this respect, it is expedient to distinguish between the following functions: 1) cognitive; 2) prognostic; 3) educational (or didactic); 4) preventive.

The cognitive function lies in the fact that its methods and means promote knowledge, insight into the unknown. Criminalistic expertise (knowledge) is aimed at obtaining objective information, identifying certain patterns and relationships. Knowledge is acquired in scientific and practical directions. The cognitive function of criminalistics is carried out in the context of activities of various subjects, applying criminalistic expertise (knowledge). The

13 H. Gross's views on the content of forensic science are described in his works on the problems of crime disclosure (See: Гросс Г. Руководство для судебных следователей как система криминалистики. Новое изд., перепеч. и изд. 1908 г. –Москва: ЛексЭст, 2002, p. 1088)

pragmatic side of cognitive function of criminalistics shows in investigative, judicial, prosecutorial activities and advocacy.

The prognostic function of criminalistics promotes making projections, models, long-term planning of activities, development of its strategy and tactics. The prognostic function can be also carried out in the context of scientific research, analysis of the trends of scientific advancement, general and sub theories.

The educational (didactic) function of criminalistics focuses on academic aspects, the problems of studying criminalistics. Educational (didactic) function supplies the content for the learning process, provides learning with the educational product, and offers the best forms and methods of teaching criminalistics. The target audience of criminalistic knowledge is prospective lawyers, practicing professionals in the process of retraining and professional development. The educational (didactic) function of criminalistics is to provide lawyers depending on the lawyer's specialization and his/ her future profession (investigator, prosecutor, notary, legal counsel, judge, lawyer, etc.) with criminalistic knowledge of different range.

The preventive function of criminalistics is to prevent crimes or reduce their number. The aim of criminalistics is to prevent crimes. But this area is in some sense limited. Many sciences that comprise the criminal law cycle contribute to the prevention of crimes. Criminalistics facilitates the development of special preventive measures (mainly technical) (for example, improving locking devices, alarm systems, creation of special paper (or protective nets) for documents and etc).

## TRENDS IN CRIMINALISTICS

Research of criminalistic strategy and formulation of criminalistics functions pay attention to the trends in criminalistics development. The criminalistics trends are mainly dependant on the methodological grounds thereof. The criminalistics methodology is in need of new researches. The role of the methodology lies in counteracting the emergence of criminalistic "phantoms", anti-scholar concepts and theories, false ways for the development of the science. Recently the emphasis has been on the potentials of applying new (non-conventional) methods. They suggest using astrology, palmistry, kinesics, criminalistic hypnology, etc. The said offers provide for no scientific ground, they contradict the positive development of criminalistics, distract the attention from the topical problems of nowadays.

The contemporary advance of criminalistics is featured by the formation of the general theory thereof, elaboration and implementation of modern scientific and technical facilities and information technologies into the crime fighting practice, improvement of the criminalistic tactical techniques and proposals of individual methods to inquire into the new types of crime.

The criminalistic knowledge in criminal proceedings is used at various stages of the process. This problem becomes even more acute as it is crucial to harmonize the procedural criminal mechanism in regard to the International and European standards, to introduce adversary principle, to provide the due balance of public and private interests. The specialized scientific sources provide for an active discussion of the "judicial criminalistics", "judicial proceedings criminalistics", "tactics and methods of judicial investigation". Currently we face dramatic discussions of the "criminalistic attorney studies", "criminalistic provision for the prosecutor's activity", "criminalistic constituent of the court". Various approaches to the solution of the problem of the application "criminalistic knowledge in court" indicate the fairness

of the point on attributing the regularities of "trial examination of crimes" to the subject of criminalistics"[14].

The reform of the criminal justice authorities is intended to change their structure and functional orientation with the purpose to augment the efficiency and quality of their activity. Critical changes refer not only to the organizational work of court and prosecution offices, but also to the pretrial investigation bodies. Alongside, there are controversial (and even colliding) proposals to centralize the pretrial investigation bodies (for instance, through the formation of the respective investigation committee) or further to have a complete refusal from the pretrial investigation institution and to assign some of its functions to another stage of the process, i.e. the court one. The democratization of the criminal court proceeding is also connected with a drive for transformation of the pretrial investigation authorities and implementation of adversary principles, reasoning of the necessity to let the conflicting social structure "prosecution-defence" exist. The role of the self-dependent and procedurally independent investigator who performs the major function of collecting and recording evidence (crime investigation function) is materially restricted by the procedural mechanisms (court control, criminal indictment on the part of the prosecutor, etc.). Under such conditions, the subjects applying the criminalistic knowledge shall be altered as well. The solution of reformation problems should provide replies to the questions: Who is the subject of collecting and recording the evidence? What are the ways to achieve the goal in the settlement of the criminal legal conflict? Which means can be used for this purpose? Will the changes facilitate the efficiency of the crime detection and investigation, court proceedings on a criminal case, and finally lead to the settlement of the conflict and restoration of justice?

The problem of specifying the goal and ultimate result of investigation, inspiration to *ascertainment of truth* in a case is currently under discussion. There are opinions that negate the opportunity to ascertain the impartial truth in a criminal proceeding or propose to replace it with another category: the formal truth (procedural, judicial and inquiry ones). Such opinions are erroneous from the methodological point of view.

Truth in a criminal process may not be probabilistic or be restricted by the type or subject of activity. The impartial truth shall be ascertained as a result of an investigation or court proceeding, otherwise the inquiry activity will become ill-defined.

Elimination of the truth from the goals of the criminal process will indeed affect the essence of criminalistics as it is. The point at issue is which regularities will be studied by criminalistics then? Criminalistics is designed through its provisions to facilitate the activity of law enforcement agencies on the ascertainment of the truth.

Reformation of the pretrial investigation authorities shall be scientifically grounded, systemic and well-scaled. It is far from admissible to make non-pondered or chaotic steps and doubtful offers to change the procedural criminal area. One may not "break" the foundations without knowing the things to place instead and the consequences that such "breaking" will give a rise to. The modification of the procedure will cause the changes of criminalistics means too. Such reforms must impartially show the existing situation and actual opportunities to put such changes into practical activity of the investigator or other subjects.

Variance of criminalistic knowledge is in the first line connected with the scientific and technical progress of the modern society. Informational support of the social environment has led to "technological support" for criminalistics, development and implementation of information, digital, telecommunication technologies. Information technologies are the new category of criminalistics purporting to stand on a due place in its structure. The technolog-

14 Белкин Р. С. Курс криминалистики в 3-х т. Т. 1: Общая теория криминалистики. – Москва: Юристъ, 1997, p. 84, 147

ical approach is used not only in the criminalistic engineering, but also in criminalistic tactics and methods (technology to make specific investigation actions, inquiry or criminalistic technologies).

## CONCLUSION

Under the new conditions, criminalistics has to turn from studying the traditional materially recorded traces to the investigation into sonic (acoustic), electronic and genome ones. Furthermore, the methods, ways and approaches to work with such traces and the procedure of collecting and recording them are being changed. In modern conditions, revolutionary scientific and technological changes lead to the fact that the established criminalistic methods are not satisfying any more. From discussing the need for universal fingerprinting we turn to the need for adoption of a special law "On Fingerprinting" to offering the new biometric methods of identification: DNA fingerprinting registration, identification by iris or retina of the eye, venous map scan method, video-computer recognition of man by the image of his face, etc. Objective reasons for the development of science and technology lead to the formation of new areas in criminalistic technology: criminalistic study of explosives, forensic acoustics or criminalistic phonoscopy, polygraph examination, criminalistic engram examination.

Thus, the expansion of the criminalistics limits is an objective process. Alongside, one may not have a mechanical transfer of criminalistic guidelines, approaches and methods as offered for crime investigations into other areas. The contemporary tasks of criminalistics are specified through new conditions for the society development, a new phase of the science and engineering development.

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# THE IMPORTANCE OF THE JUDICIAL POLICE EXPERT REPORTS FOR COMBATTING ORGANIZED CRIME

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**Abstract**: Regardless of the fact that in accordance with Spanish judicial regulations the Code of Criminal Procedure grants the police reports the value of mere statement, the practice shows us that, despite the legal provisions, many procedures conducted during investigation, and among them in particular the expert intelligence reports, have demonstrated to have great procedural value and are sometimes enough for the innocence presumption to be weakened.

The police reports allow us to get acquainted with the facts related to the crime committed, presenting the suspects to Court Authorities disposal, providing instruments and material proof of the crime, representing as such a valuable source of police actions conducted in order to demonstrate the relation among terrorist organizations or organized crime groups.

All the activities of the Judicial Police must be focused on facts, and in accordance with regulations as well as the legal rights of citizens, in order to maintain the procedural value they intend. All of these activities, developed most of all in the initial phases of investigation, should never lose that focus, and we should always keep in mind the true evidential activity, of which the police reports will take part, and which is finalized in the indictment phase, in accordance with the principles of immediateness, contradiction, oral testimony, concentration and publicity.

The analysis of Jurisprudence provides us with the necessary insight we must maintain in order not to contaminate the above mentioned value, demonstrating at the same time its importance in the fight against the most serious types of crime.

**Keywords**: Police reports, procedural value, sources of evidence, expert evidence, intelligence, organized crime.

## INTRODUCTION

The goal of this research paper is to focus on the importance of the expert reports, elaborated by the Judicial Police, paying particular attention to intelligence reports, which are fundamental in the fight against transnational organized crime, as well as terrorism.

In order to do so, we will briefly reflect on the nature and the procedural value of police reports and police actions conducted during investigation in accordance with the Spanish judicial regulations aand the regulations with regards to the the search of sources of evidence, harmonized on the one hand, with the Law of the European Union, and on the other hand, adapted in accordance with different regulations of the European Tribunal for Human Rights,

all crucial requirements in order for those sources of evidence, to be presented by the Judicial Police and have procedural effects.

The paper analyzes the expert evidence and studies the procedural value of expert reports, more specifically the expert intelligence reports.

Even though our Code of Criminal Procedure[1] considers police reports to have the procedural value of a mere statement,[2], the practice has shown us that the report has a fundamental value for the development of the criminal proceedings, furthermore, without it in most cases the proceedings would not even be initiated.

Furthermore, the proceedings which are a part of the police reports, are of utmost importance with regards to evidence development, and are fundamental in the phase of preliminary investigation.

The report allows us to get to know the facts with regards to the crime; it also serves to put at Court Authorities disposal the suspect perpetrators and facilitates material evidence or proof of crime[3], thus providing, as will be demonstrated later on, a fundamental source of evidence, in particular when it comes to the actions undertaken in order to demonstrate the links among terrorist groups[4] or organized crime groups.

## CONCEPT AND JUDICIAL NATURE OF POLICE REPORTS IN SPAIN

We can start by defining the concept of a police report[5] as an official document of administrative nature, which contains all the actions undertaken by the Judicial Police, and whose goal is to clarify the crime related facts, as well as to determine the different perpetrators involved, the circumstances of the event and the responsibilities, as is to collect evidence, instruments and proof of crime, all in order to present it at the disposal of the Courts Authorities[6].

Based on the words of the Commissioner of the National Police, Martín Ancín[7], it is a document which contains all the details related to the actions undertaken by the members of the Judicial Police, which could serve as indicators or evidence for clarification and verification of the suspect illicit behavior, and in some cases, for the apprehension of the responsible perpetrators. Cabo Mansilla[8] defines it as a document which contains all of the details related to the actions undertaken by the officers of the Judicial Police which could serve as indicators or evidence for clarification and verification of the suspect illicit behavior.

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1 In further text LECrim.

2 Art. 297 of LECrim: "*The written reports as well as oral testimonies of the officers of the Judicial Police, with regards to the investigations which they conducted, are considered as statements for all legal purposes...*"

3 Art. 282 of LECrim: "*The Judicial Police has for a goal and it is the obligation of all who form part of it, to investigate all public crimes which are committed in its territory or jurisdiction; in particular, and in accordance with its jurisdictions, all the necessary actions undertaken in order to verify the facts and locate the suspects, collect the evidence, instruments and material proof of the crime committed, presenting them at Court Authorities disposal….*"

4 We will show further in this article that such reports with regards to the expert proceedings in many cases have the power to weaken the innocence presumption.

5 http://www.seguridadpublica.es

6 http://www,enciclopedia-juridica.biz14.com/d/atestado/atestado.htm

7 MARTÍN ANCÍN, F, "Metodología del atestado policial. Aspectos procesales y jurisprudenciales, Tecnos, Madrid, 2002, p. 67.

8 CABO MANSILLA, JM, "El atestado policial. Diligencias básicas", Dirección General de la Policía, División de Formación y Perfeccionamiento, Madrid, 1991, p. 21.

The Head of the Department of Procedural Law, Gimeno Sendra[9] goes even further in his definition describing it as *preliminary investigation activity, conducted and documented by the judicial police, of urgent and provisional character, all for the purpose of investigating a crime, localization and identification of its perpetrators, facilitating support to the victim, assuring corpus delicti and adopting certain cautionary and provisional measures.*

From the above mentioned statements, we can conclude that a police report leaves traces of the investigation activities conducted by the Judicial Police, and has great influence on the further activity of the Judicial Authorities, as is indicated by Delgado Barrio[10].

The actions undertaken by our Judicial Police are in accordance with all technical and judicial norms, even though we could indicate that in most cases they are not regulated firmly within our legislation, but through a very changing legal system.

In my opinion that is the reason why police reports, as well as all other actions undertaken during an investigation, should be under the jurisdiction of either Judicial or Prosecution Authorities, in order to maintain the procedural value corresponding them.

## THE PROCEDURAL VALUE OF POLICE REPORTS IN SPAIN

For Ruiz Vadillo[11], the principal goal of the Proceedings is the search for material or real truth, although in my opinion it refers more likely to the search for the truthfulness of the facts, separating ourselves from the intellectual practice, which is apart from the terms of impartiality, neutrality and procedural clearness.

It is for that very reason that the actions undertaken by the Judicial Police, developed first and foremost in the preliminary stages of the investigation, should not be separated from those qualifications, always keeping in mind that the true evidential activity of which the expert reports form part is developed in the indictment phase, in accordance with the procedural principles of immediateness, contradiction, concentration and publicity.

The activities undertaken by the Judicial Police, as is well emphasized by Climent[12], should be focused on the facts. They should also be in accordance with the regulations of the proceedings as well as the rights of the citizens.

Our Code of Criminal Procedure indicates that the actions of the Judicial Police, as is emphasized in the Articles 714[13] and 730[14] can be considered during oral testimonies, even though their true value is continually controverted by the Legal System as well as by the Doctrine, as is explained by García Muñoz[15], generating thus, in my opinion, continuous attacks

9 GIMENO SENDRA, V, "La prueba preconstituida por la Policía Judicial", *Revista Catalana de Seguretat Publica,* 2010, p. 65.
10 COMISIÓN NACIONAL DE COORDINACIÓN DE LA POLICÍA JUDICIAL, Criterios para la práctica de diligencias por la Policía Judicial y sobre los "juicios rápidos", Ministerio del Interior, Secretaría General Técnica, Madrid, 2006, prólogo.
11 RUIZ VADILLO, E, "Resumen", *Cuaderno Vasco de Criminología,* 1999, p. 265.
12 CLIMENT DURÁN, C, *La prueba penal,* Tirant lo Blanch, 2005, p. 8.
13 Art. 714 of LECrim.: "*When a witness testimony during oral hearing does not coincide with the presented report, during the hearing it is possible for either part to solicit the reading of the summary. After the reading, the President will ask for the witness to clarify the difference or contradiction in question*".
14 Art. 730 of LECrim.: *"Based on the petition of either of the parties it is also possible to read the summery of the actions undertaken, which, for reasons, independent of the will of either of the parties, cannot be repeated during oral trial."*
15 GARCÍA MUÑOZ, P. L., *Estudios sobre prueba penal. Actos de investigación y medios de prueba en el proceso penal: competencia, objeto y límites*, La Ley, Madrid, 2010, p. 1.

on the principals of legal security since the police reports are occasionally considered to be valid proof for indictment, while in some other cases they are indicative evidence, or mere statements, testimonies or expert evidence.

In my opinion this represents a true risk of constant collision between the protection of general interests, achieved through judicial practices within the Proceedings with all its guaranties[16], affecting seriously the investigations conducted by the Judicial Police, as is clearly stated by Sánchez Colomer[17], which are first and foremost undertaken for the sake of the safety of all citizens.

Absolutely agreeing with the professor Dolz Lago[18], the Judicial Science continually mixes up the activities of investigation and evidential measures, granting evidential value and investigational activities, which are a part of Judicial Police reports capable of distorting the innocence presumption without having in mind the principles of contradiction and immediateness or evidential practice in judicial presence.

It is for that reason that we need to emphasize that Judicial Police undertake the most decisive activities of the criminal investigations, by *motu propri,* or following the orders of the Judicial or Prosecution Authorities.

## INVESTIGATION AND THE SEARCH FOR SOURCES OF EVIDENCE

The Judicial Police[19] have a key role in the search for material which, as is indicated by Martín Ancín[20], captures its work of verifying and clarifying the facts through the actions undertaken during an investigation and allows the sentencing body to emit its judgment of valuation[21], which is why I consider that it is of great importance to present a brief review of the sources of evidence as well as the legality of its collection, with a special emphasis on expert reports.

As is indicated by Climent[22], the valuation judgment of the Judge is an intellectual task, focused on the facts, employing thus the criteria which are supported by experience, and it is highly relevant for the Judicial Police to participate adequately in this task and to preserve the necessary knowledge in order to fully comprehend every evidential activity.

16 Art. 24 of CE: "*1. Every citizen has the right to obtain judicial protection, conducted by the judges and tribunals and in accordance with the legitimate rights and interests not ever facing defenselessness.*
*2. Also, every citizen has the right of access to a Judge, predetermined by the Law, the right of legal assistance and defense, or the right to be informed of the accusation against them, during a public proceeding, without any unnecessary delay and with all the guaranties of being able to use every resource for defense against the charges, and not having to declare oneself guilty or testify against oneself, thus maintain the presumption of innocence...*"
17 GÓMEZ COLOMER, J. L., "La investigación criminal: problemas actuales y perspectivas de unificación internacional", *Revista del Poder Judicial*, 2001, p. 207.
18 DOLZ LAGO, M. J., "La aportación científico-policial al proceso penal", *Diario La Ley*, 2008
19 Art. 282 de la LECrim.
20 MARTÍN ANCÍN, F., *Metodología del atestado policial...* op., cit., p. 110.
21 Art. 741 of LECrim: "*The Court, in accordance with the evidence presented during trial, the presented reasons for the accusation and defense, as well as the testimonies of the suspects, will present its sentence within the conditions determined by this Law...*"
22 CLIMENT DURÁN, C., *La prueba penal...* op. cit., introducción.

Following the classical definitions, for Bentham[23] the art of proceedings consists of facilitating evidence, where evidence is defined as *a supposedly true fact, whose purpose is to serve as a motive for credibility of the existence or nonexistence of another fact.*

In reality both Bujosa[24] and Fenech Navarro[25] consider that evidence is an activity which provides to Proceedings through legal sources and procedures the reasons which are to convince a Judge of the truthfulness of the facts.

As is well indicated by Bujosa[26], and further supported by Carnelutti[27], we must make a distinction among the sources and means of evidence; the first group not forming part of judicial world, while the second is developed during Proceedings. So, for instance, the witness and his knowledge of facts represent a source, while the testimony represents a mean, which is why we should first search for sources and afterwards incorporate them into proceedings through means provided by the Law.

This double concept has generated prohibitions whose infractions cause negative effects in the evidential activity.

Beling[28], has put some light on the problem of lack of acceptance of the evidential elements without any regards to the regulations established by the Constitutional or Procedural Law since the jurisdiction of Judicial Bodies in investigating the events is not limitless, which is why the Judicial Police should also respect these limits in their investigative tasks. In the same way, Véscovi[29] focuses on the crossroad between investigating the truth and respecting fundamental rights, which certainly need to be resolved in favor of the later if our intention is for the activities and specifically the expert reports to hold procedural value.

Our Constitutional Court indicates that the presumption of innocence[30] emphasizes that *the certainty of guilt, obtained by the evaluation of evidence, is reached by employing the corresponding guaranties of the proceedings… and that the evidence represents a foundation for conviction by the judge; as well as the importance of preserving the presentation of the evidential means and the guaranties of the said presentation*[31].

As is indicated by Fernández Entralgo[32] the regulatory norms of evidence, even though it may sound as a paradox, serve to prosecute and install penalties upon the guilty individual, but also as a guarantee of all of the rights of the above mentioned person, which is why, if the actions undertaken by the Judicial Police violate the said rights, they cannot take part in the Proceedings, nor could they complete their main objective, which is to present to the Judge a vivid picture of something he has not witnessed in person which, in the case of expert reports is often difficult to understand[33].

The evaluation of evidence corresponds completely to the authority of the Tribunal, limitating its revision with annulment while verifying whether there has been at least a minimal

23 BENTHAM, J, *Tratado de las pruebas judiciales*, Ediciones Jurídicas Europa-América, Buenos Aires, 1979, p. 18.
24 BUJOSA VADELL, LM y otros autores, *Derecho procesal penal,* Dirección Editorial Ciencias de la Seguridad, Universidad de Salamanca, 2007, p. 230.
25 FENECH NAVARRO, M, *El proceso penal,* Agesa, Madrid, 1982, p. 99.
26 BUJOSA VADELL, LM y otros autores, *Derecho procesal penal...* op. cit., p. 231.
27 CARNELUTTI, F, *Teoría general del derecho,* Comares, 2003.
28 BELING, E, *Las prohibiciones de prueba como límite a la averiguación de la verdad en el proceso penal. Las prohibiciones probatorias,* Temis, Bogotá, 2009, p. 3-52.
29 VÉSCOVI, E, *Teoría general del proceso,* Temis, Bogotá, 1999.
30 Art. 24.2 of Spanish Constitution.
31 Fundamento de derecho Segundo de la STC 55/1982 de 26 de julio, en el mismo sentido, la STC 31/1981, de 28 de julio y la STS de 1 de junio de 1982.
32 FERNÁNDEZ ENTRALGO, J. "Prueba ilegítimamente obtenida", *Revista jueces para la democracia,* 1989, p. 24.
33 CAPOGRASSI, V., *Il problema della scienza del diritto,* 1937.

evidential activity, whether the conviction is revealed through the laws of logic and whether any illicit methods have been employed, which might have generated failure of defense by violating the rights which is extrapolated through the revision of statement[34].

This principle is found in our procedural law in Article 11.1 of the Law of Judiciary Act[35], which reflects the Doctrine of *exclusionary rule*[36] of North American Law which rejects all evidence obtained with the violation, direct or indirect, of fundamental rights, adopted by our Jurisprudence since the famous Auto of Naseiro case[37] in the year 1992.

## GENERAL CONSIDERATIONS OF EXPERT EVIDENCE AND JUDICIAL POLICE

We can define expert evidence as one of the means of evidence, as *the statement of knowledge presented by the person non related to the proceedings about certain facts related to criminal proceedings in the sense of scientific, artistic, technical o practical knowledge*[38], emphasizing the presentation of special knowledge of the expert which is finalized in general as any evidential activity during oral testimony even though it could be considered as preliminary evidence in the summary phase, performed by the Judicial Police.[39].

The expert reports of the Judicial Police are used ever more often, facilitating even more evidential strength, which is why numerous convictions grant them the quality of testimonial evidence through the testimonies of police officers in charge of creation of such reports[40]. However, I agree with the contrary opinion, the one which considers them to be documental evidence[41] whenever it is incorporated in the Proceedings as a pre-established evidence respecting the principles of oral testimony and contradiction[42] since there is nothing more impartial and relevant like the use of technical knowledge in the search for the truth hidden among the controversial facts, being how the clarity and certainty of the expert reports have nothing to do with the perplexity and continuous changes of the testimonies[43].

I consider that the scientific progress has made a possible more frequent use of scientific procedures before the Tribunals with regards to presenting the sources of evidence. However, there are still many methods which are currently in the phase of standardization[44] advocating the emission of conclusions based on statistical percentages, which are considered to be deprived of any errors instead of certainties or standards of admissibility[45] which, without a doubt, give credibility to expert work.

34 GÓMEZ DE LIAÑO, F, *El proceso penal,* Forum, Oviedo, 1992, p. 275
35 Art. 11.1 of LOPJ: "*In all of the proceedings the rules of good faith must be respected. The evidence collected, whether directly or indirectly, which is not in accordance with the fundamental liberties and rights will not be taken into consideration*".
36 www.law.cornell.edu/wex Cornell University Law School.
37 Auto de la Sala II del Tribunal Supremo de 18 de junio de 1992.
38 BUJOSA VADELL, LM y otros autores, *Derecho procesal...*,op., cit., p. 235.
39 GIMENO SENDRA, V., *Manual de Derecho Procesal Penal*… op., cit., p. 662.
40 GARCÍA MUÑOZ, PL., "La actividad policial con incidencia probatoria", *Estudios sobre prueba penal. Volumen I. Actos de investigación y medios de prueba en el proceso penal: competencia, objeto y límites,* La Ley, Madrid, 2010, p. 27.
41 GIMENO SENDRA, V., *Manual de Derecho Procesal Penal*… op., cit., p. 284.
42 SSTC 33/2000, de 14 de febrero y 80/2003, de 28 de abril.
43 Y ya así lo señalaba BENTHAM, J., *Tratado de las pruebas...* op., cit., p. 120.
44 LUCA DE, S., "La prueba expert y su valoración en el ámbito judicial español", *Revista Electrónica de Ciencia Penal y Criminología,* 2013.
45 The Judge Harry Blackmun (Daubert vs. Merrell Dow Pharmaceuticals, 509 US 579, 1993) advised on demanding the expert control and a general consensus of the scientific community, as well as the determination of the procentege of error and the fulfillment of technical standards as a necessary

Our Law[46] finds it that the expert report needs to include the description of the initial state of the object of the analysis, the operations and the expert conclusions always in the accordance with the adequate control performed by the Attorney of the Justice Administration, but however, there are no precise rules with regards to the evaluation of the evidence where common sense is to be employed, which with all due respect has had negative effects in the cases of Judges who lack adequate education with regards to the evaluation of evidence, especially in relation to the IT technology or intelligence related to financing of terrorism, as will be analyzed further in the paper.

Our legal foundation for the expert reports elaborated by the Judicial Police is found in both Procedural Law, as well as in Constitutional Law 2/86 of the Security Forces and Bodies and in the Royal Decree 767/1987 which describes the duties of the Judicial Police[47], being how they vary much[48], we must add to this traditional classification the IT expert analysis, especially having in mind the ever growing activity of Cyber Crime, as well as expert analysis related to intelligence, which are fundamental when it comes to prosecution of terrorism and organized crime for whose emission the knowledge obtained by the activities performed by the Judicial Police are crucial and very difficult to obtain in any other area of the scientific doctrine or knowledge.

After having made this brief introduction with regards to the expert evidence, we will move on further to the analysis of their procedural value and in particular,of the expert analysis of the intelligence as a relatively new area of investigation.

## PROCEDURAL VALUE OF EXPERT REPORTS OF THE JUDICIAL POLICE

There are certain occasions in which the expert reports are not reproducible, which is why, as we have explained above, the Jurisprudence considers them as preliminary expert evidence although they are to be presented during plenary session through testimony in order to guarantee the principle of contradiction[49].

In any case, since the year 2002[50] our Procedural Law have recognized the documental value of the expert reports whenever they are elaborated and presented by the official laboratories and with the record of all of the protocols implemented for their elaboration[51]. This hesitation of Jurisprudence, as in other police activities, has been constant even with the following inconsistencies indicating that the blood alcohol test can be substituted for the testimony of the agents, and in other occasions that the expert analysis on its own is not sufficient, and it is necessary for the testimony to be performed[52], which is why it is required because of this

criteria for the performance of an expert analysis in accordance with protocol.
46 Arts 456 to 485 and 741 of the Codeo n Criminal Proceedings.
47 Arts. 292, 11 1 g) and 28, respectively.
48 ALONSO PÉREZ, F. y otros, *Manual del Policía,* La Ley, Madrid, 2003, p. 474, y VELASCO NÚÑEZ, E., "La prueba expert", *Diario La Ley,* Nº 8258, Sección Doctrina, 2014, p. 10.
49 Among others, SSTC 100/1985, from the 3th of October; 103/1985, 4th of October; 148/1985, 30th of October; 145/1987, 23th of September and 89/1988, 9th of May; 80/1986, 4th of July; 149/1987, 30th of September; 22/1988, 18th of February; 137/1988, 27th of July; 19/1992, 14th of February; 51/1995, 23th of February y 49/1998, 2nd of March.
50 Modification of the art. 788.2 of LECrim, introduced by the Constitutional law 9/2002, on the 10th of December.
51 Agreement of the non jurisdictional comitte of the Second Audience of the Supreme Court from 25th of May 2005.
52 SSTC 43/2007, 26th of February and 134/2007, 4th of June.

judicial insecurity to have a complete regulation of the activities of investigation, including expert reports.

Another aspect worthy of reflection with regards to the procedural value of the expert reports is the repercussion of the activities of the parties, such as the lack of disagreement or a petition of contradictory reports, which are crucial in order to be able to convert the expert analysis into an evidence introducing it to a trial as a document, as was ratified by the European Justice since the year 1988[53], which should be the way to go because in this way the principle of contradiction is respected and the police report maintains the procedural value as a preliminary evidence making its reproduction sufficient in the oral stage.

Furthermore, since the year 1991our Constitutional Tribunal, has established that it is not necessary for the First Instance Judge to be present at the reclaim of traces found at the place of the crime scene[54], and as from year 2006, the Supreme Tribunal[55] grants documental value, without the presence of the officers, to the action of technical police inspection with the collection of prints in case that none of the parties requests to be present during oral testimony.

It is evident that certain actions undertaken by the Judicial Police, such as technical inspection, should have the value of preliminary evidence developed[56] before any action of the Judicial Authority, and making a bold statement, replacing its immediateness, being how collection of evidence is a natural ambiance for the police activities[57] which ensures that the traces can be selectively presented at the hour of elaborating expert reports or in case of an emergency.

Nevertheless, I must disagree with the exception of urgent actions which must be undertaken, that it should always be necessary to obtain judicial authorization or the one of an interested party for the collection of traces which are afterwards to be used for expert analysis since, apart from the cases where such collection could directly violate someone's right to privacy, it would require constant intervention by a Judge or a Prosecutor for every investigative group.

For example, during the investigation of environmental crimes, since it is necessary to wait for a Judge or a Prosecutor for the recollection of traces which are to be analyzed, many of those traces could no longer be available or the perpetrator could be far away by the time of their arrival. As a result, the crime remains unpunished.

The level of expertise, technical knowledge, organization and transnational character of crime makes it necessary for the fight against this phenomenon to employ efficient tools at the disposal of the Judicial Police, which is modern, impartial and most of all qualified, counting on the society's support and which according to my understanding can react with anticipation and with all the guaranties of the judicial intervention with full procedural effects.

Obviously, the report elaborated by the Judicial Police can be subject to contradiction with other experts at the petition of either of the parties, but that first report with the use of scientific methods allows us to obtain the sources of evidence, respectfully and always guaranteeing the fundamental rights without the previous authorization of the Authorities, which is why it should be granted procedural value.

For example, in the proceedings with regards to attacks of 11-M in Madrid, the evidence for the charges were based fundamentally on the expert reports, without a doubt elaborated in detail and maintaining the principle of impartiality, dignified of any regular procedural action.

53 STEDH December 6th of 1988, as. C-10590/83, Barberá, Messegué and Jabardo vs. Spain.
54 Among others, STC 24/1991, February 11th.
55 Fundamento de Derecho 1, STS 27 de diciembre de 2006
56 SSTS 28th of January, 20th of March and 5th of May 2000; 17th of October 2005.
57 GARCÍA MUÑOZ, P. L., "La actividad policial con incidencia probatoria"… op., cit., p. 28.

It is evident that expert reports, even more so if they are reports of intelligence or economy, can be in contradiction with the patterns of the Procedural Law, suppressed to continuous variations in its interpretation on behalf of Jurisprudence, but the Judicial Police[58] should be competent to investigate without the need to initially address to Court,[59] the contribution it makes with its technical and scientific reports represents the rationalization of the Proceedings.

We will conclude by focusing our attention on the intelligence expert reports.

## PROCEDURAL IMPORTANCE OF INTELLIGENCE EXPERT REPORTS ON ORGANIZED CRIME

We first of all have to define intelligence. According to the United Nations[60] the concept is not easy to explain, and often is intertwined with information.

According to some opinions it is information prepared for undertaking actions; according to others it is evaluated information, and for some it is information transformed through analysis, but we can conclude that it is any kind of information which is useful for the Security Forces and Bodies to be able to fight crime.

Traditionally, intelligence was oriented towards fight against terrorism, but recently, due to the high level of specialization of many types of crime, the intelligence has become indispensable for the fight against any kind of organized or financial crime, as well as in the fight against corruption and money laundry.

On the other hand, the analysis of intelligence elaborated by the Judicial Police has evolved along with the technology of information and communication through the use of special analytical informatics tools whose work is extremely relevant, as is shown in the expert reports.

In these reports it is necessary to clearly emphasize the scientific method employed during the analysis which allowed for the conclusions to be made, so that respecting all of the criteria analyzed in the above written paragraphs its procedural value as source of evidence remains intact.

As we will further see in the jurisprudential analysis, nobody disputes the value of knowledge of the authors of the intelligence reports but what is the subject of the discussion is its procedural value.

As some authors indicate, it is difficult to disregard the affirmations based on the professional experience[61], but in order to maintain the principle of contradiction this fact does not prevent any of the interested parties to have access to expert reports of different police units or even those non related to the Security Forces and Bodies, as for example, those elaborated by criminologists who without a doubt have valued knowledge of the matter.

We have to emphasize the declaration of our Supreme Court[62] in the sense that there is no reason to doubt the truthfulness, as well as absolute neutrality and impartiality, given its expertise and involvement in matters of the State and Social and Democratic Law, when it comes to the elaboration of the expert reports elaborated by the Judicial Police.

58 STS 22nd of July of 2004.
59 DOLZ LAGO, M. J., "La aportación científico-policial... op., cit., p. 7.
60 OFICINA DE LAS NACIONES UNIDAS CONTRA LA DROGA Y EL DELITO, Sistemas policiales de información e inteligencia. Manual de Instrucciones para la evaluación de la justicia penal, Viena, 2010, p. 1. Disponible en: https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Police_Information_and_Intelligence_Systems_Spanish.pdf
61 En este sentido, GUDÍN RODRÍGUEZ MAGARIÑOS, F., "La presunta prueba expert de inteligencia: análisis de la STS de 22 de mayo de 2009", La Ley, 2009, p. 5.
62 STS 4th of December 2005.

Castillejo Manzanares[63] emphasizes that (and I agree with his affirmation) the search for evidence which could be sufficient for indictment is difficult without the police activities adding (and in this we disagree, as well as Guerrero Palomares)[64], that the nature of these reports is doubtful since they are based purely on experience.

However, the information obtained as a result of the activities of collecting intelligence is undoubtedly a source of evidence through the reports presented at the oral hearings through the testimonies of its authors, and it is considered as such by the Supreme Court[65].

In any case, there is a current doctrine which disputes their value founding its explanation on the breach of the principle of immediateness, the contamination of the Judicial Authorities, or lack of impartiality perverted by the search for certain statistical results, as is defined by Gudín Rodríguez Magariños[66] or Sáez Valcarcel[67].

However, I have to strongly disagree with these doctrinal opinions since the search for strategic goals which marked by the direct teams are in the hands of the Judicial Police is always executed with a special focus on the fundamental rights through the use of legal methods of investigation in accordance with the established rules found in its basic principle of performance[68], as well as in the Instruction 12/2007 of the Secretary of Security, when it comes to dealing with the arrested persons, an issue stressed by the public support and recognition with regards to the work undertaken by the Judicial Police, as is shown constantly through public surveys of the Center of Sociological Investigations in Spain.

The Police are in charge of obeying and implementing the Law; they investigate a specific case, search the indications of criminal activity in an objective and impartial way without separating themselves from the final outcome of the process; they protect the innocent and punish the guilty, and in that way collect, as is done in the rest of the investigation related activities, the results of the intelligence reports.

It is because of that fact that we must start from, as is well indicated by[69], the nature of the expert intelligence evidence in order to be able to determine if we are dealing with an evidence of expert or testimonial nature.

The Supreme Court has different opinions on the matter, considering such evidence in some of its decisions to be of expert nature[70] while in others of testimonial[71].

The arguments of those who defend its expert nature lie in the use of complex procedures which require special knowledge in order to obtain expert evidence, but on the other hand, others understand that those are simple appreciations founded in the empirical considerations which do not require any special knowledge, which is why they should be channelled through testimony.

In this later sense, Guerrero Palomares[72] indicates that there is no science or art applied in the intelligence reports and that those are mere opinions whose use is to embellish a brief document, while there are others who disagree with this opinion, like Castillejo.

63 CASTILLEJO MANZANARES, R., "La prueba de inteligencia", *Diario La Ley*, 2011, p.1
64 SÁEZ VALCÁRCEL, R., "Juicio penal y excepción. ¿Una involución en el proceso de civilización?". *Estudios de derecho judicial,* 2007, p. 63.
65 SSTS 13th of December 2001, or 19th of July 2002, among others.
66 GUDÍN RODRÍGUEZ MAGARIÑOS, F., "La presunta prueba expert... op., cit., p. 100.
67 SÁEZ VALCÁRCEL, R., "Juicio penal y excepción... op., cit., p. 63.
68 Basic principles of proceedings, paragrapgh II of the Constitutional Law 2/1986, March 13th , of Security Forces and Bodies.
69CASTILLEJO MANZANARES, R., "La prueba de inteligencia... op., cit., p. 4.
70 STS 13th of December 2001, 7th of June and 19th of July 2002, 29th of May 2003, 6th and 21st of May 2004, 22nd of April 2005 , 19th of January or 1st of October 2007.
71 SSTS 26th of September 2005, 31st of May 2006 or 16th of February 2007.
72 GUERRERO PALOMARES, S., "La denominada «prueba de inteligencia policial» o «expert de inteligencia", Derecho y Proceso Penal, 2011, p. 85.

Obviously, I share the opinion of the latter author, that the intelligence reports do contribute with their scientific value acquired through long years of experience in the work of investigation, and it is as such recognized by our Judicial system[73] considering as one of the requirements for the expert evidence, the knowledge and use of technical, scientific, practical and artistic abilities, necessary in order to depict a reality which the Judge himself cannot know.

This was concluded by the sentence dated from the 31st of March 2010 by the Supreme Court recognizing it as an evidential method not predicted by the Law as valid, which is elaborated by experts who are supporting the Tribunal presenting interpretative elements about the information related to the case adding that the relevant thing is whether these conclusions formulated by the experts are rational, and whether they could be assumed by the Court once they are presented in a rational and contradictory manner.

It is because of all that, that these reports could not be based on simple appreciations, but they must be able to be presented to a Judge or a Tribunal, the kind of knowledge they could not acquire on their own.

Now we will move forward in making a more detailed analysis regarding the evolution of the Legal system of the Spanish Tribunals in relation to the expert evidence.

As a starting point, we will mention the Supreme Court sentence from 13th of November, 1997 in which it is qualified as indirect, expert evidence of personal nature.

The sentence of the Supreme Court, dating from 23rd of October, 2000, taken into account as an expert evidence, states that it is not a preconstituted document converted in preconstituded, but of expert nature, in case the accused party fails to express its objection, therefore it would not be necessary for the experts to testify during oral hearing.

In the sentence of the Supreme Court from 13th of December 2001, with regards to the attack of the terrorist organization ETA in the quarter of the Civil Guard in Llodio, it is qualified as expert, but always keeping in mind that the documentation in which the report is based on is at disposal of all parties.

This sentence also confirms that the expert could not be considered as witness because on the one hand he possess some of the technical knowledge not related to the process, while on the other hand, because he is replaceable, he examines the documents maintaining the active position in the process, much unlike the witness who passively maintains the role of the investigate, through interrogation.

The Supreme Court sentence from the 27th of March 2003, concedes special evidential relevance to the intelligence reports, refusing to admit that the dependence of its authors to the Ministry of Interior is a motive for subjectivity.

The sentence of the Supreme Court from 29th of May of 2003 recognizes it as an option of the expert evidence, defining it for the first time as expert analysis of the information, fundamental for the determination of existence or participation in a criminal organization.

In the sentence of the Supreme Court from 26th of September 2005, there is a change in qualification, understanding that it is not evidential.

This sentence argues the role of the author as an expert, because his appreciations with regards to who is a member of an organized criminal group were of a generic nature with no use of technical abilities.

It also disputes the evidential quality of the report, qualifying it as an analysis of the declarations which the Tribunal already has at disposal, which is why the expertise of an author

73 Among others, SSTS 17th of July 1988, 13th of December 2001, 29th of May 2003 and 31st of March and 1st of October 2010.

is neither different nor special, and such report could only be introduced in the evidential register through testimony.

In the same way, the sentence of the Supreme Court dating from 31st of May 2006 considers intelligence reports to obtain indicatory testimonial evidence, since they do not include the knowledge of an expert.

The sentence of the Supreme Court from 19th of January of 2007 continues in the same argumental manner, adding that it is not important whether the agents are referred to as experts or witnesses.

The sentence of the Supreme Court from 16th of February 2007 is the first one introducing an intelligence report about the apologia of jihadist terrorism in the evidential register, once again qualifying it as evidential, which if is coherent with other evidential methods, could contribute to the confirmation of the evidence charges without the author having to be considered as an expert.

With the sentence of the Supreme Court dating from the 25th of June 2007 with regards to the terrorist organization GRAPO, a new circle is produced admitting the value of the intelligence reports as expert evidence, considering it as capable of illustrating a reality which the Judge directly could not find out.

However, once again there is a procedural oscillation, by summoning one of the authors of those reports to oral hearing both as an expert and as a witness, while others are only summoned as experts.

The Supreme Court sentence dating from the 1st of October 2007 grants the same value to the reports on a document presented by France in a case of terrorism of the terrorist organization ETA through the rogatory letter, which since they were conducted by official laboratories whose officials form part of a Special Brigade, presented to the Tribunal the kind of knowledge without which it could had not found out the reality of the matter.

This sentence is interesting, because for the first time it emphasizes the notes which qualify these reports as evidence, they qualify them as singular evidence, which is not designed by the Law depending on the free valuation of the Judge, which is not documental unless it is elaborated by the official bodies and not challenged, participating with a mixed nature, both expert and testimonial, but closer to expert since by its reading it can provide to the Tribunal necessary means in order to draw conclusions.

The Supreme Court sentence from the 15th of September 2008, referring to the importance of the experience of Judicial Police with regards to its knowledge of terrorist organizations, based on the analysis of the seized documents, as well as the value of the intelligence reports, which along with their declarations during oral hearing, could have the accusatory value since they serve to correct the inferences of the Tribunal.

The Supreme Court sentence from the 22nd of May of 2009 about the case of Ekin[74] recognizes that the reports have the goal to make the Tribunal understand the situation of the organization valuing them as a source of evidence not predicted by the Law since they provide crucial elements about the information which was the foundation of the accusation.

The Supreme Court sentence from the 13th of October 2009 also analyses the intelligence reports on forming part of a terrorist organization, recognizing its probatory and expert value since they affect a part of knowledge which cannot be obtained by the Tribunal.

74 Ekin was an organization declared illegal due to its relation with the terrorist organization ETA.

I understand that in this sentence it is very much stressed that it is recognized with regards to the Article 741 of the LECrim[75] since not all conclusions of the experts were taken into consideration, which demonstrates the Independence of the Court decision.

Specifically, the sentence indicates that the reports contribute to the relations with a terrorist organization, but not when it comes to the evidence with regards to the identification of objectives, the recruitment of new militants or double militants which were on trial.

The Supreme Court sentence from the 31st of March 2010 on being a member of a terrorist organization declares inadmissible the annulation of the expert intelligence because the police officers were present as experts, recognizing the presentation of technical knowledge necessary to emphasize a reality to which a Judge could not had come on his own.

Lacking the limited character, it qualifies as indirect evidence supported by the testimonies of experts, which is why it must be evaluated alongside other evidential methods.

It is important to emphasize that the sentence declares that there is no doubt about the impartiality of its authors since Article 5 of the Constitutional Law 2/1986 of Security Forces imposes it, besides recognizing its professionalism and the possibility for any of the parts to propose alternative ruling.

I restrain myself from stressing this possibility since the defense with all the guaranties prevents ulterior resources which presume the annulation of the evidence methods.

In this line continues the sentence of the Supreme Court of the 21st of March of 2011 in the case of Kalashov involved in organized crime, illicit association, money laundry and forged documents,.

The sentence mentioned the reports elaborated by the Police Forces of different countries qualifying them as intelligence reports and recognizing their evidential value for investigating new forms of transnational organized crime.

It declares impartiality, the expert quality of its authors and the importance and the necessity for such reports, which add to credibility.

The sentence of the Supreme Court dating from the 25th of October 2011with regards to the intelligence reports on terrorism, which stands out because it analyses the entire studied judicial practice, concluding with the validity of the reports as expert evidence, as long as the conclusions are rational and presented in a contradictory way before the Tribunal, but with a particular vote against.

Once again, we are faced with contrary opinions, the mirror of a catalog of different decisions which we have demonstrated in our jurisprudential analysis which is why, in my opinion, it is necessary for one permanent decision to be made which cannot be conducted by Jurisprudence, but the legislator, because the free interpretation of the evidence in accordance with Article 741 of our Law on Criminal Proceedings under these parameters is only creating insecurity and uncertainty.

In the Supreme Court sentence dating from the 28th of March 2012 with regards to another terrorist organization, once again the evidential value of intelligence reports is recognized and as a climax of this jurisprudential line, the sentence of the Supreme Court from the 2nd of October 2012 leaves all doubts behind as is indicated by Hernández Domínguez[76] with regards to the procedural value of such reports.

75 In this article the principle of free evaluation of evidence by the Judge is recognized.
76 HERNÁNDEZ DOMÍNGUEZ, J.J., "Valor procesal del informe de inteligencia policial", *Diario La Ley,* 2013, p. 14.

At the end we will emphasize, a new (even though conducted by the National Audience) sentence of its Third Section of the Penal Court, dating from the 2nd of February 2015 in which the intelligence reports form part of the evidential register with regards to piracy at sea.

In this last sentence we will analyze the most important element that allows for the intelligence reports due to their objectivity, impartiality and independence, as well as evidential effectiveness without procedural contradiction unless the parties involved demonstrate their discontent, the character of preconstituded evidence, introduced in the plenary through the testimony of its authors.

## CONCLUSIONS

The activities described in the report are in an obvious relation to the indictment, which is why we must abandon in practice the consideration that the report has the value of a mere denunciation despite the criticism of different authors who conclude that such an opinion would interfere with the activities which are to be undertaken by the Judicial Authority since based on Article 282 of the Spanish Law on Criminal Proceedings, in my opinion, this auxiliary task does not represent an additional limitation to their competences, but an addition itself demonstrating evident professionalism, strictness and specialization.

In our legislation it would be wise to introduce a more detailed regulation with regards to the activities undertaken by the Police since this issue is replaced by Jurisprudence, which is far from being constant and is always changing, which according to my opinion only generates judicial insecurity for the Judicial Police as well as for the other participants involved in the forensic science, and of course for the victims and the society as a whole.

We must recognize the importance of the Judicial Police role in the search and presentation of the evidence sources, among which is the expert report, in which its authors must contribute with their knowledge going far beyond an empiric or recopilatory activity appreciated directly by the Judicial Authority with no need for additional reports since then it would lack the authentic procedural value.

It is for that reason that the reports should reflect the police science known by experts in issues such as terrorism, other forms of organized crime and financial investigations, which are of an incredible importance in order to collect the necessary logical material employed for the functioning of criminal organizations.

We must emphasize though that this kind of police science cannot disregard the fundamental human rights in order to be considered as such, as well as all of the procedural principles which guarantees that its efficiency will remain intact.

After a detailed analysis of Jurisprudence and Doctrine with regards to expert and intelligence reports, we must conclude that its evidential, personal and indirect value is sometimes recognized, while in other occasions it is considered as preconstituted evidence if the parties do not oppose to it, other opinions consider it to be testimonial and indicative, understanding the reports not as expert; the opinions once again lean towards the expert recognition in occasions even documental, similar to the reports of the official laboratories; and finally, in the most recent sentence it is qualified as expert with the same procedural weight as testimony or documental evidence.

However, in my opinion and in the end we must be more ambitious demanding a more clear regulation of the expert intelligence in all of our Procedural Laws, as documental evidence, but for that we must be aware that since the beginning of the Proceedings we must respect unless it interferes with other interests worthy of protection - the security, the investiga-

tion, the victims, the principle of contradiction and the right to defense. With those previous conditions in mind, it should be viewed as expert evidence in any case.

We should be aware that only by following that line of interpretation and action, we could grant the intelligence reports, as well as all of the investigation related activities, its procedural value which they deserve having in mind the fundamental and crucial importance of such reports in order to be able to achieve prevention of the illicit activity and eradication of some of the most serious forms of crime which represent a great threat to the State of Law, such as terrorism and transnational organized crime.

I finally consider absolutely crucial for all of our legislations to be harmonized in order to achieve a full international cooperation, which is absolutely necessary in the fight against all of the above mentioned forms of crime, and only as such can it achieve efficient results and further judicial efficiency which follows after our police investigations.

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# CRIMINAL INTELLIGENCE PROCESS AND THE DEVELOPMENT OF THE CRIMINAL INTELLIGENCE

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**Abstract:** The modern police organisations strive to be "intelligence-led". Initial step in achieving this is to, first of all, understand what is meant by "intelligence-led policing" as well as what criminal intelligence information are and how they are generated. Criminal intelligence information is no ordinary, or so called "raw information", which without analysis has minimal value. Certainly, we must point out the fact that the gathering of quality information has always been good for police work; however, nowadays modern police organizations are using sophisticated systems for collecting useful information, adding new value to them after the process of evaluation, collation and analysis, creating a new product – Criminal Intelligence Information. Such information will remain without value unless delivered to appropriate users, which are mainly tactical or strategic teams. Tactical criminal intelligence information provides assistance in operational investigations, while strategic criminal intelligence information is mostly used to create policy work of police organizations and planning. In this respect, the use of criminal intelligence information provides a broad view of the criminal environment, which will provide the police management sufficient basis for an efficient allocation of resources, and in return will provide assistance in crime prevention and criminal investigation.

Criminal intelligence information, as the subject of this article, will be explained in detail, and special attention will be paid to the topics of collecting, evaluating, collation, analyzing and disseminating criminal intelligence information, that is the "criminal intelligence process", since in theory and practice this kind of activity is marked by this term.

Also, the empirical research that has been carried out has presented the results of the self-assessment of police officers regarding their activities in collecting and indexing information on the appropriate formalized report, and which represent the "raw information" which is necessary for the creating of criminal intelligence information.

**Keywords:** intelligence-led policing, criminal intelligence, criminal intelligence process, analysis of information.

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# INTRODUCTION

The primary objective of any police service is to prevent crime from occurring. A crime prevented means one less victim, one less crime investigation and avoids all the expense and activity that is required to support an investigation. Effective policing, which identifies risk of harm to communities, prevents crime and assists in the detection of offenders, will always rely on accurate and timely intelligence.

Professional, effective intelligence management involves linking information from a wide range of sources to build a composite picture. The collation of appropriate information, its accurate assessment and timely analysis is vital to effective policing. This means that good quality intelligence is the life blood of policing operations and is used to inform managers of risk issues.

In an information-driven society, police departments are under increasing pressure to run an intelligence-led police model. This model asserts that police can spend less time reactively responding to crime if supported by a system that provides data analysis and crime intelligence, allowing officers to reduce, disrupt, and prevent crime.[2] The first step to achieve this is to understand what is meant by "Intelligence-Led Policing".

Despite its popularity, the effectiveness and/or efficiency of this police organization model has not been sufficiently tested. Indeed, there is no standard definition of Intelligence-Led Policing (ILP), which results in the fact that police work led by criminal-intelligence information is perceived and "framed" differently, depending on the perspective of many scientists and practitioners.

In the academic community the dominant definition of ILP was given by Ratcliffe: "Intelligence-led policing is a business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption and prevention through both strategic management and effective enforcement strategies that target prolific and serious offenders."[3]

Although the concept of "criminal intelligence" is not new, it has been steadily growing in stature and importance in the last few years. In 2000 the British Government gave its blessing with the launch of the national intelligence model; in 2003, the US Government endorsed the National Criminal Intelligence Sharing Plan;[4] and then, in 2004, the Hague Programme of the European Union officially declared "intelligence-led policing" as part of its five-year strategy for establishing an area of freedom, security and justice.[5] In other parts of the world, too, notably in Australia, New Zealand and Canada, criminal intelligence has been embraced as the great law enforcement hope for the future.

This article will review the meaning of "intelligence" in the law enforcement context and, through a consideration of its inherent characteristics in further text we wish to reveal the process of generating the criminal intelligence.

2 Ratcliffe, J.H., *What is intelligence led policing?* Retrieved from http://jratcliffe.net/research/ ilp.htm (04/02/2017).
3 Ratcliffe, J.H.,*Intelligence-Led Policing*. Cullompton: Willan publishing, 2008, p. 89.
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5 Council of the EU, *The Hague Programme: strengthening freedom, security and justice in the European Union* (16054/04 JAl 559), 2004, p. 22.

## CRIMINAL INTELLIGENCE PROCESS

The Division of Intelligence applies the intelligence cycle to accomplish the tasks that fall under the Division's responsibilities. The intelligence cycle, as it pertains to criminal intelligence, is the process of developing raw information into finished intelligence for consumers, including policymakers, law enforcement executives, investigators, and patrol officers. These consumers then use this finished intelligence for decision making and action. Intelligence may be used, for example, to further an ongoing investigation, or to plan the allocation of resources. Also, intelligence is used to develop the criminal threat picture, which contributes to the overall threat picture. Its purpose is to convert police information and raw data into usable and/or actionable Criminal Intelligence – CRIMINT.

The Intelligence Process has been depicted in a variety of ways throughout the intelligence literature. The number of phases in the process may differ, depending on the model used, but the intent of each model of the Intelligence Process is the same: to have a systemic, scientific, and logical methodology to comprehensively process information to ensure that the most accurate, actionable intelligence is produced and disseminated to the people who provide an operational response to prevent a criminal threat from reaching fruition.[6]

Wherever the concept of criminal intelligence has been formally adopted, the key stages of the intelligence cycle will be represented in some form or other: Planning and Direction, Collection, Evaluation, Processing/Collation, Analysis and Production, Dissemination and, Evaluation and Feedback.[7] [8]

The following text contains individual Criminal Intelligence Process phase review:

**1. Planning and Direction –** involves management of the entire intelligence effort, from identifying the need for data to delivering an intelligence product to a consumer. It is both the beginning and the end of the cycle. It is the beginning because it involves formulating specific collection, processing, analysis, and dissemination requirements. It is the end because finished intelligence, which must support decision making and action, frequently generates new information requirements. The intelligence process is consumer-driven. That is, the entire process depends on guidance from the consumer – the end-user – of the intelligence. Consumers from all levels of government – federal, state, and local – may initiate requests for intelligence. In addition, policymakers, executives, investigators, and patrol officers usually have different information needs. Thus, the effective planning and direction of the intelligence effort requires an understanding of the needs of a variety of consumers.

**2. Collection –** is the gathering and reporting of the raw information that is needed to produce finished intelligence. To be effective, collection should be planned, focused, and directed. The place or person from which information is obtained is called a "source". Information and intelligence can be sourced anywhere and at any time. There are many sources of raw information, including open sources such as governmental public records, media reports, the Internet, periodicals, and books. Although often underestimated, open source collection is important to an intelligence unit's analytical capabilities. There are also confidential sources of information. Law enforcement officers collect such information from various sources, including citizens who report crime, investigations that are conducted, and speaking with persons

6 Carter, L. D., *Low Enforcement Intelligence: A Guide for State, Local and Tribal Law Enforcement Agencies – second edition*, p. 57.

7 In accordance with European Criminal Intelligence Model – ECIM. See The Annex-A European Criminal Intelligence Model, Justice and Home Affairs Informal, 8-9 September 2005. Retrieved from http:// www.eu2005.gov.uk.

8 Read more about Criminal Intelligence Process see the: Šebek, V., *Criminal Intelligence Models of Police Organization in Criminality Control* PhD thesis defended at the Faculty of Law, University of Kragujevac, 2014, pp. 206–296.

who participate in criminal activity. To gather this information, law enforcement officers use a variety of collection methods such as interviews, undercover work, and physical or electronic surveillance. However, the most important (and often most underutilised) source for criminal intelligence is the patrol officers who are in constant contact with the community and are the first to attend crime scenes. The more developed the concept of criminal intelligence is, the greater the volume of information and intelligence contributed by these patrol officers will be.

**3. Evaluation** – best practice has evolved whereby all information or intelligence submitted is evaluated on the basis of (a) the previous history of reliability of the source and, (b) to what degree the source has direct knowledge of the information he or she is providing (for instance, did the source acquire the information directly, or did he or she hear it from someone else?). There are different systems in use for this, but, essentially, the idea is the same: to provide an estimate of risk and reliability for the information. Often the evaluation will result in a "source evaluation code" consisting of a letter and a number chosen from a standard grid of options. The evaluation needs to be kept under continuous review as new information may be discovered which changes the perception. Allied to this evaluation, there may be a further "handling" or "dissemination" code added that limits the extent of permission for further distribution. This is intended to protect the information or intelligence from any unauthorised disclosure.

**4. Processing/**Collation **–** processing and collation involves conversion of raw information into a form usable by analysts. This is accomplished through information management. Information management is the indexing, sorting, and organizing of raw data into files so that the information can be rapidly retrieved. For example, the processing step includes entry of data into a computer, reduction of data, collation of paper files, and other forms of information management. Effective processing and collation requires an understanding of the consumers' needs, the types of information that are being processed, the collection plan, and the analytic strategy.

**5. Analysis and Production –** is the conversion of basic information from all sources into finished intelligence. It includes integrating, evaluating, and analyzing all available data – which is often fragmentary and even contradictory – and preparing intelligence products. In short, analysis gives additional meaning to the raw information. Analysts, who are subject-matter specialists, consider the information's reliability, validity, timeliness, and relevance. They integrate data into a coherent whole, put the evaluated information in context, and produce finished intelligence that includes assessments of events and judgments about the implications of the information for consumers.

Intelligence and analysis units may devote their resources to producing strategic intelligence for policymakers and executives, providing operational intelligence to continuing investigations, or making available tactical intelligence for an immediate law enforcement need. These important functions are performed by monitoring current crime and non-crime events, warning decision makers about actual and potential threats to public safety and order, and forecasting developments in the area of criminal activity.

Intelligence and analysis units may produce numerous written reports, which may be brief – one page or less – or lengthy studies. They may involve current intelligence, which is of immediate importance, or long-range assessments. Overall, the final product of "raw information" analysis is called Criminal Intelligence – CRIMINT.

**6. Dissemination –** the last step, which logically feeds into the first, is the distribution of the finished intelligence to the consumers – the same consumers whose needs initiated the intelligence requirements. These recipients of finished intelligence then make decisions or take action based on the intelligence that has been provided. This step should also include an opportunity for feedback, to assess the value of the intelligence that has been provided. The

decisions, actions, and feedback may lead to the levying of more information requirements, thus triggering the intelligence cycle once again.

**7. Evaluation and Feedback** – this function within the criminal intelligence process helps determine whether or not the requested information was provided and whether or not it supports needs the requestor. The evaluation and feedback function also acts as a type of quality control. If the information provided was inadequate or insufficient for the requestor, the intelligence analyst will conduct the necessary research and analysis again based on the updated criteria provided by the requestor. The evaluation and feedback function helps requestors refine their requests and the intelligence analysts refine the scope of their research and analysis. When the information meets the needs of the requestor, the intelligence analyst can catalogue it for possible future use, thereby amassing an organizational library of successful practices.

## RESULTS OF EMPIRICAL RESEARCH

In order to get the standpoint of the respondents about a very important issue, such as collecting and recording information, the authors created an interview questionnaire with value scales, by which they examined the standpoints of the employees on this significant issue, i.e. the willingness of police officers to collect information on a regular basis, record them, and enter them into a formalized form or unique information system. [9]

Based on the conducted research, they found out that respondents were "mostly ready" to regularly collect, record on the appropriate report, and deliver information to a unique information system. By analyzing the results, the authors come to the conclusion that the average score is 3.91 and that more than half of the respondents are mostly ready for this job. Almost a quarter of respondents are always ready, almost a fifth is neither ready nor not ready, while only 7.3% to some extent is not ready for this type of activity. This data is encouraging the efforts to establish a process of collecting information that will include all police officers.

9 Empirical research was carried out by a survey technique on a sample of 250 subjects selected by the method of a disproportionate stratified sample from the following classified subgroups of the population, based on certain professional and experiential characteristics of such subgroups:

- subgroup (stratum) of police officers of the MoI of the RS, primarily management – Executives of the Criminal Intelligence Service and Undercover Agents. In the descriptive text, this group is designated *Executives Intelligence Unit;*

- subgroup (stratum) of Intelligence Officers of the Criminal Intelligence Service and Undercover Agents of the MOI of the RS. In the descriptive text this group is designated as *Intelligence Officers;*

- subgroup (stratum) of Police Officers of the MOI of the RS, primarily management - Executives of other organizational units (Service for Combating Organized Crime – SBPOK; Police Department – PU; Police Stations – PS). In the descriptive text, this group is designed as the *Executives of other Units*;

- subgroup (stratum) of other Police Officers of the MoI of the RS (Service for Combating Organized Crime – SBPOK, Criminal Police Officers and Police Officers in Police Departments – PU; Police Stations – PS). In the descriptive text, this group is designated as *Police Officers;*

- subgroup (stratum) of Analysts engaged in all previously stated organizational units of the MoI RS. In the descriptive text this group is designated as *Analysts*.

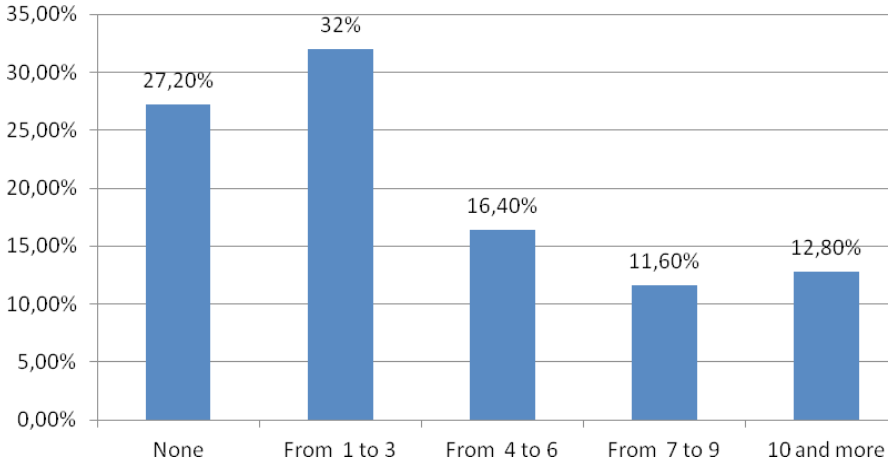


**Chart 1:** *Number of operative information (or operative reports) made in previous six months – descriptive measures*

By inspecting the results of the research, it was found that almost one third of respondents made 1 to 3 reports in the last six months (Chart 1). A little less than that, 27.2% of respondents did not make a single report, 16.4% from made 4 to 6 reports, 11.6% from 7 to 9 reports, and 12.8% made 10 and more reports. A detailed overview of the percentage participation of different categories of respondents by the number of reports made in the previous six months is given in Table 1. From here it can be seen that half of the Executives of Intelligence Unit made from 4 to 6 reports in the previous 6 months, one-fifth from 7 to 9, same number made 10 and more reports, and only 10% did not make a single report.

**Table 1:** *Number of operative information (or operative reports) made in previous six months by the category of respondents*

| Category of respondents | None | From 1 to 3 | From 4 to 6 | From 7 to 9 | 10 and more |
|---|---|---|---|---|---|
| Executive Intelligence Unit | 10,0% | ,0% | 50,0% | 20,0% | 20,0% |
| Intelligence Officers | 2,0% | 2,0% | 18,0% | 36,0% | 42,0% |
| Executives of other Units | 30,4% | 41,1% | 14,3% | 8,9% | 5,4% |
| Police Officers | 29,3% | 45,5% | 17,2% | 3,0% | 5,1% |
| Analysts | 57,1% | 31,4% | 5,7% | 2,9% | 2,9% |

Based on the previous table, 42% of Intelligence Officers made 10 or more reports in the previous six months, 36% made from 7 to 9 reports, 18% from 4 to 6 reports, and only 4% of Intelligence Officers made 3 and less reports. Executives of other Units generally made fewer reports. Most of them (41.1%) have made from 1 to 3 reports in the last six months. Almost a third did not make a single report, while 14.3% of the Executives of other Units made from 4 to 6 reports, and same number made 7 or more reports. The structure of the number of reports made by Police Officers is similar. Namely, Police Officers mostly wrote from 1 to 3 reports (45.5%), then in 29.3% of cases they did not make a single report, in 17.2% of cases they made from 4 to 6 reports, and only 8.1% of Police Officers have made 7 or more reports over

the past six months. Analysts are the category of respondents which makes the least reports. In particular, 57.1% did not make any report in previous six months, less than one third of respondents made from 1 to 3 reports, 5.7% of analysts made from 4 to 6 reports, while from 7 to 9 and 10 and more reports were made by 2.9% of Analysts.

After the conducted statistical tests, the following conclusion can be made:

- Executives of Intelligence Units in larger percentage make from 4 to 6 reports compared to Analysts;

- Intelligence Officers in larger percentage make 7 or more reports compared to Executives of other Units, Police Officers and Analysts;

- Executives of other Units, Police Officers and Analysts in larger percentage make 3 or fewer reports compared to Intelligence Officers, and Analysts compared to Police Officers.

Such early findings related to the development of intelligence activities on this geographic area, that is, the standpoint and self-assessment of officers related to the recording of collected information in formalized reports, can serve as a basis for comparison with the findings of research conducted by *Maguire* and *John* on the sample of the population of police officers three Police Force Areas in the UK (*Lancashire, Surrey,* and *The West Midlands*), originally selected as areas for the pilot project of establishing the National Intelligence Model (NIM) In the United Kingdom[10]. The research produced valuable information about the experiences of three different police areas in the process of implementing this type of work.

Thus, the results of this research are very similar to the findings of the research conducted for the needs of this work on a sample of Police Officers of various types of Police Units of MoI RS, which defer amongst themselves (demographically, territorially, by volume, etc.).

A part of the comparative research was related to the standpoints of the respondents about their personal engagement in the collection and recording of information. On this occasion, the findings are similar, in the sense that staff employed in criminal intelligence units is significantly more involved in collecting and recording information compared to other police officers. Thus, of the other police officers involved in the survey, a significant majority (83%) stated that they were delivering intelligence reports at least once a month, and only one of the eight respondents reported that they submitted more than ten reports a month. About three-quarters of the respondents stated that the subjects of the research (i.e. the object they were collecting information about) are chosen according to their personal preferences, rather than in response to the set instructions or priorities in the work, while the others stated that they are performing these activities while making a balance between these two ways. Also, over 70% of all interviewed employees claim that they collect information from more than one source of information on a regular basis (on a daily basis), while others claim to do so sometimes. More than 70% of respondents believe that the information thus found is generally beneficial to their work, compared with only 10% of those who claim that such information is generally not helpful.[11]

## CONCLUSION

Criminal-intelligence affair is an activity that undoubtedly claims that the police can spend less time reacting, i.e. responding to committed criminal activities, provided that it supports a system that allows the collection and analysis of information with the aim of producing crim-

10 Maguire, M., & John, T., *The National Intelligence Model: Early implementation experience in three police force areas* (Working Paper Series No. 50). Wales: Cardiff University School of Social Sciences, 2004.
11 *Ibid*, p. 38.

inal intelligence information. Such information will be strong enough to enable law enforcement agencies to draw conclusions about criminal threats and to assist in decision-making, both tactically and strategically. Therefore, we will definitely agree with the fact that criminal intelligence information is related to the concepts of information and analysis, but also that such products represent a "brand" of criminal intelligence units by which it communicates with clients (service users) in the primary way.

Professional and effective criminal-intelligence work involves the collection and linking of information from a wide range of sources on basis of which they will build a composite image of a threat. To this end, the collection of relevant information, its accurate assessment and timely analysis are vital for the work of the police. In addition, the quantity, but above all, the good quality of the collected "raw information" can be linked to good criminal intelligence information. The conclusion imposed based on these facts is that the mobilization of all police officers in the process of collecting information, as well as other public-private partners, is expected to increase not only the quantity of information, but also the quality of the overall information management. Reason for this is that, based on the given results of the empirical research, the absence of engagement of the largest number of police officers in the process of collecting information is evident, and rightly it is proposes the involvement of all the officers according to the principle "every police officer is a sensor", i.e. a person which will have the obligation to observe, register, make a report and forward it or enter it into a specialized database.

In the end we must conclude that the criminal intelligence product will not have any value if the system is unable to deliver the right information – the right people – at the appropriate time, in order to take advantage of the values that such a product contains.

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# THE USE OF SPECIAL KNOWLEDGE IN THE PROCESS OF PROVING IN THE CRIMINAL PROCEEDINGS OF RUSSIA AND SERBIA: A COMPARATIVE ANALYSIS

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**Abstract:** The article considers a brief analysis of the legislation relating to the use of professional knowledge in the criminal process of the Russian Federation and the Republic of Serbia. Some peculiarities of national legislation are revealed. Similarities and differences are shown on some issues related to special knowledge. The notion of special knowledge is given, the question of the admissibility of the appointment (and conduct) of legal expertise is briefly considered, and the use of specialized knowledge as expertise is considered. Concerning the examination, the analysis was carried out according to the following criteria. The persons entitled to appoint an examination expert are named, a comparative analysis of the contents of the decision on the appointment of an expert examination is made, and the classification of forensic examinations in both countries is indicated. In addition, the author presents the content of the expert's concept, and the concept of the expert's conclusion. The author focuses on the figure of the specialist participating in the criminal procedure legislation of Russia, and the expert adviser, whose participation is provided for in the criminal proceedings of Serbia. The author gives a brief demarcation of the figures of an expert and a specialist in Russia and of an expert and expert adviser in Serbia. The expediency of introducing certain provisions of the legislation of the Republic of Serbia into the Code of Criminal Procedure of the Russian Federation is justified.

**Keywords:** judicial examination, expert, order of court examination, expert opinion, professional knowledge, specialist, criminal proceedings.

## INTRODUCTION

Professional knowledge is essential to provide evidence for the objective examination and resolution of criminal cases in criminal proceedings. The use of professional knowledge by participants in criminal proceedings is permissible at various stages of the process. The study of the use of professional knowledge shows that they have found wide application in the investigation and examination of criminal cases in both the Russian Federation and the Republic of Serbia. Investigative and judicial bodies of both countries investigate and consider a variety of crimes, which can only be disclosed by applying professional knowledge.

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## THE CONCEPT OF PROFESSIONAL KNOWLEDGE.

The enactor of the Russian Federation includes knowledge in the field of science, techniques, art or craft to **professional knowledge**. The definition of professional knowledge is contained in the science of the criminal process in Russia only, where there are different points of view. A very interesting view is that professional knowledge includes theoretical knowledge and practical abilities. Therefore, professional knowledge can be acquired not only through education, but also in the process of professional activity. Also, professional activity can be based on special theoretical training, which can be obtained not in connection with the education (for example, tailors). In general, an understanding is formed that professional knowledge includes theoretical knowledge and practical skills in the field of science, techniques, art or craft.

The enactor of Serbia and of Russia assigns knowledge, which the person receives through professional education or professional activity, to professional knowledge.

**The question of assigning legal knowledge to special ones** is an important issue for research[2]. Unlike the Code of Criminal Procedure of the Russian Federation, the Code of Criminal Procedure of Serbia (Part 2, Article 113) contains the following provision: examination can not be ordered with the purpose of establishing or estimating of legal questions that are resolved in legal proceedings. The CCP RF does not contain an answer to this question.

Thus, it follows that legal expertise in Serbia, as well as in Russia, can not be ordered on the questions of evaluation of the act[3]. The expert can not answer the legal questions resolved during the trial. This provision of the CCP of Serbia excludes the possibility of putting such questions to the examination, because the final evaluation of such questions applies to the competence of the court. Also, examination cannot be ordered to the questions of the evaluation act in Russia. Accordingly, for all other questions the order of a legal examination is possible.

## CONCEPT AND ESSENCE OF JUDICIAL EXAMINATION

According to the criminal procedural legislation of both Russia and Serbia, one of the most spread forms of using professional knowledge is **judicial examination.**

In the Russian legislation, the concept of judicial examination is contained in Art. 9 of the Federal Law on State Forensic Expert Activities in the Russian Federation, according to which judicial examination is a procedural act consisting of conducting research and giving expert opinions on question for resolution, which are put before an expert by a court, a judge, an body of inquiry, a investigator, an interrogator, in order to establish the circumstances to be proved in a particular case and requires professional knowledge in the field of science, tech-

2 More about question of assigning legal knowledge to professional in Russia see: Koysin A.A., Use of professional knowledge in legal proceedings, Textbook, allowance / Ministry of Education and Science of the Russian Federation, Federal State budget educational institution. prof. Education "Irkutsk state un. ", Juridical Institute. Irkutsk: IGU, 2013; Trapeznikova I.I., Professional knowledge in the criminal process of Russia (concept, signs, structure): the author's abstract. dis. ... cand. of legal sciences. Chelyabinsk, 2004, p. 7; Arseniev V.D., Zablotsky V.G., Use of professional knowledge in determining the actual circumstances of a criminal case, Krasnoyarsk, Publishing house Krasnoyarsk University, 1986; Zhilenkova T.S., Issue of Use of Legal Knowledge as professional in Commissioning of Forensic Expert Examination, Russian justice, № 10, 2017, pp. 78–85.

3 See, for example: Dr Momcilo Grubac, Expert in Criminal Matters under the new Criminal Procedure Code, Glasnik of Vojvodina's Advocate Chamber., year LXXXVI, Novi Sad, February 2015, Book 75 Number 2, p. 76.

niques, art or craft. There is no clear definition of the concept of judicial expertise in the Code of Criminal Procedure of the Russian Federation. The Regulation of the RF Supreme Court plenum of 21/12/2010 N 28 "About judicial examination in criminal cases"[4] notes that it is a study using professional knowledge in science, techniques, art or craft. This is the procedural action.

Legal expert activity in the Republic of Serbia is regulated as follows. The Criminal Procedure Code of the Republic of Serbia does not contain the concept of judicial examination, but it establishes that the procedural body in Serbia appoints an expert when it is necessary to use professional knowledge to establish or evaluate some facts in the proceedings.[5]

Professor Momcilo Grubach[6] notes in his article that examination is an evidential action that brings to the process the evidence of disinterested professional personnel for facts for which the establishment of legal qualifications and general education of judges and prosecutors is not enough[7].

The court, the judge, the body of inquiry, the person conducting the inquiry, the investigator, they all have the right to order judicial examination in Russia. The court or the court chamber (collegium), the police, and the prosecutor have this right in Serbia. It should be noted that in Serbia, unlike Russia, the prosecutor has the right to order a judicial examination.

The form of the document to order judicial expertise is somewhat different in the proceedings of Russia and Serbia. The procedure for ordering judicial examination is regulated in Art. 195 and 283 of the Code of Criminal Procedure of the Russian Federation in the Russian Federation, and Art. 118 of the Code of Criminal Procedure of Serbia in the Republic Serbia.

There are some differences in the content of the decision on the order[8] of institute of judicial expertise in Russia and Serbia. There are some general concepts such as the reasons for ordering expertise, the data on the expert or the expert institution in which the examination is to be conducted, the questions posed to the expert. The content of the order on an expert examination in Serbia is much broader than in Russia. Thus, order on an expert examination in Serbia includes the time limit for carrying out the examination, while there is an indication of the time limit for submitting findings and opinions in the civil process in Russia, in the criminal process such norm is not contained. Also, Russian legislation doesn't include an obligation for the finding and opinion to be delivered in a sufficient number of copies for the court and the parties. An indication of an obligation for exempted and secured samples, traces and suspicious substances is also contained only in the legislation of the Republic of Serbia.

The criminal procedural legislation of both countries includes the obligation to not disclose the investigation data that became known to the expert in connection with the production of the expert examination, a warning about the responsibility for providing false findings and opinions, and the need to indicate the name of the body that institutes the examination.

4 About forensic examination in criminal cases: the RF Supreme Court plenum of 21.12/2010 N 28, electronic resource, database "Consultant Plus", https://rg.ru/2010/12/30/postanovlenie-dok.html (last visited on 06/07/2017).

5 More about term expertise in Serbia see: Simonovic, B. Kriminalistika, Pravni fakultet, Kragujevac, 2004, p. 330.

6 Dr Momčilo Grubač, Expert in Criminal Matters according to the new Criminal Procedure Code, Glasnik of Vojvodina's Advocate Chamber, year LXXXVI, Novi Sad, February 2015, Book 75 No. 2, pp. 75–91.

7 For the notion of expertise and experts, see: T. Vasiljević, System of Criminal Proceedings of SFRY, Belgrade 1981, p. 334; D. Krapac, Criminal Procedure Law, First Book: Institutions, Zagreb 2010, p. 472; B. Marković, Journal of Criminal Proceedings, Belgrade, 1930, p. 355; N. Ogreleica, Criminal Procedure Law, Zagreb 1899, p. 368; M. Grubač, Criminal Proceedings, Belgrade, 2011, p. 280; D. Siracusano, A. Galati, G. Tranchina, E. Zappalà, Diritto processuale penale, volume primo, Milan, 2001, p. 365.

8 See more: Milosevic, M., Kesic, T., Boskovic, A. Policija u krivicnom postupku, Kriminalisticko-policijska akademija, Belgrade, p. 132.

The organizational procedural classification of judicial examinations is present both in the Russian procedural legislation and in the legislation of Serbia.

According to the scope of the study, judicial expertise in both Russia and Serbia can **be basic and supplementary**. According to the sequence of conduct, judicial examinations can be primary and repeated.

In the criminal proceedings of Russia the appointment of supplementary expertise is possible when new questions arise regarding the previously investigated circumstances of the criminal case. Supplementary expertise is assigned for the same object (sometimes for supplementary objects), of the same sort, kind, when new questions arise. Repeated examination is ordered if there are doubts about the validity of the expert's opinion or the presence of contradictions in the conclusions of the expert or experts, for the same questions as the main one.

According to the CPC of Serbia, a second expert examination can be appointed if the conclusions of the first expert examination are unclear, incomplete, vague or erroneous, and also if they contradict themselves or the circumstances of the case, or if there are doubts about their truth. If these shortcomings cannot be eliminated by conducting a second or supplementary examination, the procedural body appoints another expert who will conduct a new examination. That is a repeated expert examination in the understanding of the Russian legislation.

By the number of performers, judicial examinations are divided into **individual and commission**. Art. 200 of the Code of Criminal Procedure states that the commission expertise is an examination that is conducted by at least two experts of one profession. Expertise, conducted by experts of different specialties, is called comprehensive. In Russia, the concept of commission examination is examined in two aspects: a simple commission that is conducted by experts of one specialty, and a complex commissioned by experts of different specialties.

The CPC of Serbia notes that if the examination is complex, then two or more experts are appointed for its conduct. The concept of complex expertise in the CCP of Serbia is not contained. At the same time, the question of the specialties of experts is not specified.

## EXPERT CONCEPTS

In the case of expert examination, an expert is appointed. According to the Code of Criminal Procedure of the Russian Federation, an **expert** is a person with professional knowledge and is appointed in accordance with the procedure established by the Code of Criminal Procedure for the production of judicial examination and the giving of an expert opinion. Thus, a judicial expert is a person who is knowledgeable in a certain field of science, techniques, art or craft and who does not have a personal interest in the case, who is involved in the procedure established by law to resolve issues of investigation and trial[9].

According to the legislation of Serbia, an **expert** is a person with professional knowledge, involved in establishing or evaluating facts in the proceedings. Examination can be entrusted to an expert from the permanent list (register), or to a legal expert agency. In some cases, other persons may be appointed, if circumstances require so. In some cases, the production of expertise can be entrusted to a foreigner or to foreign institutions on the profile of expertise. It should be noted that the experts are not from the lists of permanent experts. It should be noted that the creation of such a register is also relevant for Russia. In Russia, the draft of a new law on legal expert activity has been developed, which provides for the creation of a state

9 See, for example: Moiseeva T.F., Fundamentals of forensic expert activity: Lecture notes, Moscow, Russian State University of Justice, 2016, p. 17.

register of judicial experts, which includes information on persons with special knowledge and who have received a certificate of competence.

The person involved as an expert is warned about criminal responsibility under both Russian legislation and the legislation of the Republic of Serbia. Also, the legislation of Serbia stipulates that an expert must submit his/her findings and opinions within a limited time frame. In Russia, a similar provision of legislation is provided only in civil procedural legislation. In addition, in Serbia, it is the duty of the expert to take the oath. The expert is invited to take the oath before the production of the examination. The permanent expert is warned before the production of the examination about the oath taken earlier. Thus, there is no need to sign each time that the expert knows his/her rights and duties. It seems advisable for state experts in Russia to introduce into the law a rule that requires the oath to be taken once one is given the right to make expert examinations.

## ABOUT THE EXPERT'S OPINION

The result of the examination of the CPC of the Russian Federation is that the **expert's opinion** reflects the progress and results of the expert examination conducted and represents the written content of the examination and findings on the questions put before the expert by the person conducting criminal proceedings or the parties. It is always a written document, the content of which is regulated by law. According to the CPC of Serbia, an expert witness's findings and opinion given orally is entered immediately in the record. Information about the qualifications of the expert, and information about the persons present at the examination is indicated in the expert opinion.[10]

## THE CONCEPT OF A SPECIALIST AND EXPERT ADVISER AND THEIR RELATIONSHIP

It is interesting correlation between **a specialist in the Russian Federation and an expert adviser in Serbia**.

According to the Article 58 of the Code of Criminal Procedure of the Russian Federation, a specialist is a person with professional knowledge, who is involved in procedural actions in accordance with the procedure established by the Code of Criminal Procedure, in order to assist in the detection, fixing and seizure of items and documents, the use of technical means in researching of materials of criminal case, for raising questions to the expert, and also for clarifying to the parties and the court the questions falling in his/her professional competence.

In the legislation of Serbia, an expert adviser is a person with professional knowledge in the field in which the examination is carried out.

The figure of an expert adviser in Serbia and a specialist in Russia are an additional remedy and a guarantee of the rights of the accused, which strengthens his/her position and expands the rights of his/her defense. An expert adviser in Serbia can also be enlisted to help a private prosecutor, while a specialist in Russia can be enlisted to help the parties and the court. The purposes of attracting an expert adviser are to clarify the conclusions and conclusions of the expert, to assist in the formulation of competent questions to the expert, to file an objection to

10 More about expert findings and opinion in Serbia see: Boskovic, A., Kesic, T., Krivicno procesno pravo, Kriminalisticko-policijska akademija, Belgrade, 2015, pp. 216–217.

the conclusions and conclusions of the expert when necessary, and to provide other assistance related to the production of the examination.

Through the institution of an expert adviser, the defense side in Serbia was given the right to represent its own views on the subject of the examination. The defense side realizes this right through the figure of a specialist in Russia. It seems that in Serbia the participation and the possibility of realizing the rights of the expert adviser are more legal. In Russia, the functions of a specialist are broader and include the possibility of attracting him on questions of professional knowledge, regardless of the conduct of the examination in the case. The expert in the Russian criminal trial also has the functions of an expert adviser in the Serbian criminal process (assistance in assessing the validity of the expert's conclusion, raising questions and others related to the examination conducted in the case). In the Russian criminal trial, the participation of a specialist is possible in the form of specialist's opinion and specialist evidence. The specialist evidence is the proof of the case in Russia indisputably. The problem of the Russian criminal process on this issue lies in the fact that the law does not define the conditions for recognizing the expert opinion as an admissible proof. Courts prefer to interrogate a specialist on the expertise, and then his/her testimony is regarded as evidence.

## ABOUT THE DIFFERENCE BETWEEN AN EXPERT AND AN EXPERT ADVISER IN SERBIA, AN EXPERT AND A SPECIALIST IN RUSSIA

The difference between an expert and an expert adviser in the criminal process of the Republic of Serbia is primarily that it is the expert who is tasked with establishing and evaluating certain facts in the process, which results in the expert opinion as evidence, while the expert adviser's the main task is to assist the party (defense) in the examination conducted in the case. However, both the expert and the expert adviser must possess professional knowledge from the area in which the examination is carried out. It should also be noted that both the expert and the expert adviser take the oath.

The main difference between an expert and a specialist in the criminal process of Russia is that the expert conducts research, and the specialist expresses opinions (opinion) on the questions requiring professional knowledge.

## CONCLUDING REMARKS

Thus, after a comparative analysis, it should be noted that the use of special knowledge in Russia and Serbia has some similarities. The need to adopt some experience of Serbia in improving the norms of the criminal procedure legislation must also be noted. So, it is of interest that the expert takes an oath when he/she obtains the right to be an expert (in office), which subsequently releases the persons authorized to order an expert examination from an additional explanation to the expert each time of his/her rights, duties and responsibilities. It seems expedient to create a register of state forensic experts in Russia following the example of the Republic of Serbia. It also seems possible to specify and legislatively fix the functions of a specialist, as it was done with the expert adviser in the legislation of Serbia.

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# INTERNATIONAL ASPECT OF THE PROSECUTION OF UNLAWFUL PRODUCTION AND CIRCULATION OF NARCOTIC DRUGS

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**Abstract:** After the introductory part, this paper deals with the cooperation within the international community in combating narcotics abuse. Then, the paper moves on to the prosecution side of the narcotics abuse problem, thus pointing to the international aspect of the jurisdiction to prosecute the offenders of criminal offenses related to narcotic drugs. This part also analyzes the Single Convention on Narcotic Drugs and the Convention on Psychotropic Substances that, *inter alia*, stipulate that any of the offenses provided for under these conventions, is considered a separate offense if done in different countries and that convictions made abroad for such offenses are taken into account to determine the recidivism. In that regard, it points out to the solution that exists in our criminal proceeding. The following part of the paper discusses the criminal offense of unlawful production and distribution of narcotic drugs from Article 246 of the Criminal Code, citing the international conventions which are of special importance for the regulation of such criminal offense. Special attention is paid to the object of criminal offense together with the recommendation that the term "narcotic drugs" in the Criminal Code should be replaced by the term "psychoactive controlled substance" along with providing arguments for such a solution. Considering that the effective combating of international narcotics smuggling requires a special evidence gathering known as controlled delivery as referred in Article 181-182 of the Code of Criminal Procedure, a special attention is given to this matter. At the end of the paper the conclusions are presented along with the quotes of the specific proposals that would lead to the change in some legal solutions in order to efficiently prosecute the unlawful production and distribution of narcotic drugs.

**Keywords:** narcotic drugs, psychoactive substances, controlled delivery, narcotic drugs abuse.

## INTRODUCTION

Production and circulation of narcotic drugs is nowadays brought under the control of the states and the international community worldwide so are limited to the amount needed for medical and scientific purposes. The activities that go beyond these frames are sanctioned as criminal offenses, so that, when it comes to narcotics, a severe and publicly accepted prohibition is in place aiming primarily to protect public health. It should be taken into consideration that a criminal offense linked to narcotics, since the beginning of the last century to the pres-

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ent, is one of the most important phenomena and a matter of global concern. Such a position is justified since the abuse of narcotic drugs endangers or harms human health in the modern world and in our country, taking the form of an epidemic. Therefore, there is a great interest of the international community to prevent narcotics abuse. Spreading of narcotics abuse and the danger that carries with it, imposes the need to intervene at the global level. This is made possible by establishing the organization of United Nations, although certain results have been achieved even in the time of the League of Nations and even before that. A large number of conventions relating to this area and the importance of the fight against narcotics drug abuse implies a constant need to study this issue.

The high degree of social development, science and technology has resulted in the emergence of contemporary forms of crime, which certainly presents a challenge imposed on the countries and the international community having no easy task to be coped with by legal and legitimate means to fight all forms of crime including those related to the abuse of narcotic drugs. Given that crime nowadays knows no boundaries and that the fight against it is not an independent matter of each individual country but of the entire international community, the most diverse forms of international cooperation in criminal matters are being created. In doing so, the international community in combating narcotics abuse implements innovation of the existing and creation of new mechanisms of cooperation among the competent authorities, as well as the adoption of new solutions in the criminal justice protection. In combating narcotics abuse the police cooperation is a matter of special importance without which the fight against this form of crime cannot be imagined, including the cooperation among other authorities in order to prevent and take repressive measures.[3]

## COOPERATION WITHIN THE INTERNATIONAL COMMUNITY IN COMBATING NARCOTICS ABUSE

The balance between preventive and repressive measures applied in the fight against narcotics abuse, on the one hand, and fundamental human rights and freedoms, on the other, are the basis upon which the strategic concept for combating this negative social phenomenon has been established. International cooperation in criminal matters has been significantly improved thanks to a number of institutional cooperations between the organizations, such as, for example, Eurojust, Europol, European Judicial Network in Europe and others. We should also mention the European Monitoring Centre for Drugs and Drug Addiction - EMCDDA)[4] which is an independent institution that deals with scientific analysis and processing of the information related to smuggling and abuse of narcotics as well as with creation of proposals for appropriate strategies and action plans. It was founded in 1993, and its particularly important contribution represents a harmonized methodology for the collection of national legislation on narcotic drugs that undergoes analytical processing. The center works with the support of the European Information Network on Drugs and Drug Addiction.[5]

When it comes to cooperation within the international community in combating narcotics, it can be said that the engagement of Serbia is satisfactory. The Law on Psychoactive Controlled Substances (Article 93) provides for the obligation for the ministry responsible for health to participate at the international level in combating the abuse of psychoactive controlled substances. Cooperation with the agencies of the United Nations, such as the International Narcotics Control Bureau (INCB), the World Health Organization (WHO), as well

3 Delibasic V., *Suzbijanje zloupotreba opojnih droga sa stanovišta krivičnog prava*, Belgrade, 2014, p. 68.
4 www.emcdda.europa.eu/
5 Reitox Network, www.emcdda.europa.eu/about/partners/reitox-network

as with other organizations and bodies of the United Nations is realized through this ministry. Also, there is cooperation with the bodies of the European Union in the field of psychoactive controlled substances, as well as with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). In addition, the ministry cooperates with the agencies and national authorities of other countries that deal with various aspects in the area of psychoactive controlled substances.

On the basis of the same statutory provision, the ministry carries out the ratified conventions of the United Nations in the field of psychoactive controlled substances and enables implementation of the procedures that ensure the availability of psychoactive controlled substances for medical applications, as well as for scientific purposes. At the same time, the ministry responsible for health submits to the International Narcotics Control Bureau reports on: a) agricultural areas planted with plants from which psychoactive controlled substances can be obtained; b) confiscated volumes of psychoactive controlled substances; c) implementation of international treaties on psychoactive controlled substances; d) production of plants from which psychoactive controlled substances can be obtained; e) production of psychoactive controlled substances; f) export and import of psychoactive controlled substances; g) application of psychoactive controlled substances; f) reserves of psychoactive controlled substances; and g) other reports at the request of the International Bureau of Narcotics Control.

It should be noted that our previous criminal procedural law prescribed a provision according to which an authority before which a criminal proceeding has been brought, had the obligation to submit, without delay, to the Ministry of Interior[6] both information about the criminal offense and the offender and the final judgement of a first instance court, when it came to the criminal offenses for which centralization of data was prescribed under the international treaties. Such obligations existed, *inter alia*, for the criminal offenses related to narcotic drugs, which was explicitly provided for in the Criminal Procedure Act[7] (Article 521) or the Criminal Procedure Code[8] (Article 535). The mere provision was not compatible with the terminology used in the newer laws regulating such criminal offenses, because the concerned obligation was referring, among other things, to the criminal offense of "unlawful production, processing and sale of narcotic drugs and poisons"[9] while the criminal acts were referred to as "unlawful production and putting into circulation of narcotic drugs" (Article 245 of Criminal Code of FRY), and later as the "illegal production, possession and putting into circulation of narcotic drugs" (Article 245 of GCC, or Article 246 of Criminal Code).

The provisions of the Code of Criminal Procedure which regulate the procedure for the provision of international legal assistance and enforcement of international treaties in criminal matters (Art. 530-538) ceased to have effect upon the entry into force of the Act on Mutual Legal Assistance in Criminal Matters[10] which governs this matter as of 2009. However, this law does not include a provision stipulating the obligation to submit data on criminal offenses related to narcotic drugs to the Ministry of Interior, for the simple reason that the Ministry of Interior files criminal charges against persons suspected of such criminal offenses so these data are already gathered in one place from which can be delivered to the international bodies in order to fulfill our international obligations. Such a need existed at a time when our country was a federal state with the several separate ministries of interior. However, given the fact that criminal charges in each case do not imply initiation of a criminal proceeding and that

6 At the time of the federal state, this was the Federal Secretariat of Interior or the Federal Ministry of the Interior.
7 "Službeni list SFRJ", no. 4/77, 36/77, 14/85, 74/87, 57/89 and 3/90 and " Službeni list SRJ ", no. 27/92 and 24/94.
8 " Službeni list SRJ ", no. 70/01 and 68/02.
9 The offense under this name was stipulated under the Criminal Code FPRY 1951 (Article 208).
10 "Službeni glasnik RS", No. 20/09.

the criminal proceeding do not always end in a conviction, it would be beneficial to prescribe the obligation of the first instance court to deliver the final judgement to the Ministry of Interior, in such a way facilitating international cooperation in combating narcotics abuse.[11]

Narcotic drugs are linked with crime in multiple ways. Traditionally, the production and distribution of narcotics is considered one of the most classic activities of organized criminal groups.[12] After the abolition of prohibition in the United States, drug trafficking as a form of manifestation of the organized crime is the most lucrative criminal activity. Due to the huge market and high profits, this business is difficult to control and monopolize, therefore in this area new associations and new organizations are constantly emerging. In addition, the narcotics appear as the second largest industry in the world, behind oil. It is interesting that from the narcotics manufacturer to the last seller, there are eight intermediaries in average and each time the profit doubles.[13] In this regard, it should be noted that Europol's research shows that in Europe 80% of the money paid by the final consumers for the purchase of narcotics, comes from criminal activities representing half of the total money gained by crime.[14] Also, according to Interpol, a large part of international crime is directly or indirectly related to narcotics.[15] Those criminal offenses generally have a markedly transnational character and in practice are mainly implemented through an intensive "international cooperation" among criminal organizations from different countries and even continents.

The fact that drug trafficking is the most profitable and the most frequent illegal trade in the world market, has always imposed the need to regulate this problem at the international level. For this reason it requires a daily battle and quality mechanisms in order to be eradicated. One such mechanism, of course, represents the international legislation relating to narcotic drugs. A tendency to control and combat narcotic drugs trafficking by some kind of international convention has been observed since long ago. Throughout the twentieth century an international effort was made to fight drug trafficking. US President Theodore Roosevelt urged thirteen countries to establish an international opium commission in 1909, which in the following period brought a number of resolutions recommending reduction in the use of opium. A formal convention followed a few years later (Convention Relating to the Suppression of the Abuse of Opium and Other Drugs, January 23, 1912, 38 Stat 1912 8LNTS 187). The following multilateral convention was adopted with the aim to regulate the use of narcotic drugs for medical and scientific purposes, under the auspices of the League of Nations (Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, Geneva, 13 July 1931). In 1946 UN Economic and Social Council established the Commission on Narcotic Drugs (Resolution of the First Session of the Economic and Social Council, Official Records, ECOSOC, First Session, 1946, Vol 1, p. 168), for the effective implementation of measures against abuse of narcotic drugs.[16] In the coming years, UN passes a number of conventions that represent a new and adequate framework in the fight against illegal drug trafficking.[17]

11 This proposal is mentioned for faster and more efficient data collection and systematization of data, but it should be taken with caution, as data on all offenses and offenders, including those relating to the criminal offenses related to narcotic drugs, are registered in the Statistical Office of the RS and in the criminal records of the Ministry of Interior.
12 Šikman M., *Organizovani kriminalitet-krivični, procesni i kriminalistički aspekt*, Banja Luka, 2010, p. 295.
13 Dobovšek B., Petrović B., *Mreže organizovanog kriminaliteta,* Sarajevo, 2007, p. 15.
14 Gogić D., *Trgovina drogom kao delatnost organizovanog kriminala,* specialist thesis, Belgrade, 2009, p. 5.
15 Ignjatović Dj., *Kriminologija,* Belgrade, 2000, p. 229.
16 Bantekas I., Nash S., *International Criminal Law,* Third Edition, Taylor & Francis e-Library, London, 2009, p. 240-241.
17 Bassiouni C., *The International Narcotics Control Scheme,* New York, 1986, p. 507.

The Economic and Social Council of the United Nations convened a conference aimed at the adoption of the Single Convention on Narcotic Drugs, 1961.[18] Its main tasks were unification of the whole matter, which would replace multilateral instruments that existed in this matter by a single instrument, reduce the number of international bodies established by the existing instruments exclusively dealing with the control of narcotic drugs and ensuring control of raw materials necessary for the production of narcotic drugs.[19] The preamble to the Convention recognizes the need for the medical use of narcotic drugs in relieving pain in parallel with the need to have mechanisms to support the justification of use for such purposes. Control in the signatory states is done through the Commission on Narcotic Drugs of the Economic and Social Council and the International Committee for the Control of Narcotic Drugs. Additional Protocol to the Convention was adopted in 1972. The Convention on Psychotropic Substances[20] was adopted at a conference in Vienna in 1971. Just like the Single Convention on Narcotic Drugs, this convention also tries to separate the illegal trade in psychotropic substances from the limited legal use for medical purposes. Cooperation of all countries is required as well as submission of regular reports on the implementation of the convention. Also, in Vienna in 1988 the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was adopted.[21] From the preamble to the Convention, it can be concluded that it emerged from the deep concerns with respect to the size and growth of the unlawful production, demand and trade in narcotic drugs and psychotropic substances. Indeed, an inadequacy of the Conventions of 1961 and 1971 to counter such phenomena contributed the adoption of this convention.

In addition to the proceeds of the above mentioned international regulations, the World Health Organization has a great importance in the fight against drug abuse achieved, in particular by prescribing the lists of substances which are considered forbidden. Furthermore, other important international bodies that have been established in order to combat drug trafficking are: UN Office for Drug Control and Crime Prevention, Interpol, the US Agency for combating drugs, Europol, Interregional Institute for Crime and Justice, different non-governmental organizations, as well as many other bodies.[22]

## INTERNATIONAL ASPECT OF THE JURISDICTION FOR PROSECUTION OF OFFENDERS

Our country has ratified the Unique Convention on Narcotic Drugs of 1961 and the Protocol on Amending the Single Convention on Narcotic Drugs of 1972. This Convention (Article 35) provides for the necessary measures to combat illicit trafficking in narcotic drugs. In accordance with this provision, taking into account their constitutional, legal and administrative systems, the parties signatories shall: a) ensure the harmonization at the national level of preventive and repressive action against the illicit traffic and determine an appropriate agency for coordination; b) assist each other in the fight against illicit traffic; c) closely cooperate with each other and with the competent international organizations to which they belong in order to lead a concerted fight against illicit trafficking; d) ensure that the international cooperation between the relevant agencies is done in an expeditious manner; e) ensure that the transmittal of legal papers between the countries for the purpose of persecution is effected in an expeditious manner to the addresses of judicial bodies designated by the parties, without prejudice

18 "Službeni list SFRJ-Dodatak ", No. 2/64
19 Lopez-Ray M., *A Guide to United Nations Criminal Policy,* Aldershot, Gower, 1985, p. 52.
20 "Službeni list SFRJ ", No. 40/73
21 "Službeni list SFRJ-Međunarodni ugovori ", No. 14/90
22 Lopez-Ray M., *op. cit.*

to the right of a party to require that legal papers be sent to it through the diplomatic channel; f) furnish, if they deem it appropriate, to the International Narcotics Control Board and the Commission on Narcotics Drugs through the Secretary-General, information relating to illicit drug activity within their borders, including information on illicit cultivation, production, manufacture and use of, and on illicit trafficking in drugs; g) furnish information at the request of a party.

Also, subject to its constitutional limitations of each party, its legal system and its national legislation (Article 36, paragraph 2) the Single Convention on Narcotic Drugs, *inter alia*, provides as follows: a) each of the offenses provided for under this Convention shall be considered as a distinct offense if committed in different countries; b) intentional participation in any of such offenses, conspiracy or attempt to commit any of such offences, as well as intentional act of preparatory or financial operations in connection with such offenses shall constitute criminal offenses for which penalties shall be imposed; v) foreign convictions for such offenses are taken into account for establishing recidivism; g) such offences committed either by nationals or by foreigners shall be prosecuted by the party in whose territory the offence was committed, or by the party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the party to which application is made, and if such offender has not already been prosecuted and judgement given. Parties shall consider such offence as an extraditable offence in any extradition treaty existing between parties; f) if a party which makes extradition conditional on the existence of a treaty receives a request for extradition from another party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in connection with the offenses under the Convention.

The Convention on Psychotropic Substances was signed in Vienna on 21, February 1971 and contains (Article 22) penal provisions which, from the aspect of this paper, are the most important. According to them, subject to its constitutional limitations, each party shall treat as a punishable offence when committed intentionally, in violation of a law or regulation adopted in pursuance of its obligations arising from the Convention, and shall take the necessary measures to ensure that such offenses are subject to adequate punishment, such as imprisonment or other penalty of deprivation of liberty. These provisions also stipulate that if a series of related actions constituting offences under this Convention, has been committed in different countries, each of them shall be treated as a distinct offence. The punishments imposed abroad for such offenses are taken into consideration when establishing recidivism, and the offenses committed either by nationals or by foreigners shall be prosecuted by the party in whose territory the offence was committed, or by the party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the party to which application is made, and if such offender has not already been prosecuted and convicted. Also, it is desirable that the offenses regulated by this Convention are considered as extradition crimes in any extradition treaty which has been or may be concluded between any of the parties, and, as between any of the parties which do not make extradition conditional on the existence of a treaty or on reciprocity, provided that extradition shall be granted in conformity with the law of the party to which extradition application is made.

# CRIMINAL OFFENSE OF UNLAWFUL PRODUCTION AND CIRCULATION OF NARCOTIC DRUGS (ARTICLE 246 OF THE CRIMINAL CODE)

The criminal offense of unlawful production and circulation of narcotic drugs is referred to in Article 246 of the Criminal Code, Chapter 23, regulating criminal offenses against human health. For a complete understanding of the criminal offense, it is necessary to take into account the international conventions in this field ratified by our country. The most important is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna in 1988.[23] Article 3 of the Convention is of special importance for stipulating the obligation of parties to determine certain activities as a criminal offense, as well as activities in which regard the criminalization has been recommended. Also, the Single Convention on Narcotic Drugs, 1961[24] which our country ratified in 1964, and the Convention on Psychotropic Substances of 1971[25] are of particular importance for this area.[26] In addition to the basic form, this criminal offense has two more severe forms, two distinctive forms, and given that narcotic drugs and means for their production and processing represent objects which are designed or used for the commission of the offense, it is mandatory to seize them as a security measure. For criminal and political reasons and for easier proving of such criminal offense it is stipulated that the offender of the basic offense of unlawful production and circulation of narcotic drugs and its more severe forms, as well as the offender who commits a minor offense such as unauthorized cultivation of certain plants,[27] can be released from punishment if discloses from whom he obtained narcotics. It should be noted that the case law has taken the correct position stating that an offender can be released from punishment only if he or she reveals from whom he or she purchases narcotics, but not for a full recognition of the offense and disclosure of accomplices in committing that particular offense.[28]

The basic form (paragraph 1) of the criminal offense of unlawful production and circulation of narcotics drugs implies a plurality of alternatively prescribed acts of commission. An unlawful production, processing, sale or offering for sale of narcotic drugs is considered an act of commission of an offense. At the same time, the act may consist of execution and unlawful purchase, possession or transfer for sale or facilitation of the unlawful sale or purchase of narcotic drugs. Also, the act of commission of the basic form also includes any other manner of unlawful placing into circulation of substances or preparations which are declared narcotics drugs. Essentially, the aforementioned acts of commission can be classified into two main groups: 1) acts of commission related to production and 2) acts of commission related to circulation of narcotic drugs.[29] In case that the same person commits multiple acts of commission, for example, after unlawful production of narcotic drugs, performs unlawful transfer of narcotics for sale, and then offers them for sale and eventually performs unauthorized sale, it would commit only one crime of unlawful production and placing into circulation of narcotic drugs, while the fact that several acts of commission have been committed could be taken into

23 ''Službeni list SFRJ-Međunarodni ugovori '', No. 14/90.
24 ''Službeni list SFRJ-Dodatak '', No. 2/64.
25 ''Službeni list SFRJ" No. 40/73.
26 Stojanović Z., *Komentar Krivičnog zakonika,* Belgrade*,* 2006, p. 574–575.
27 Those who cultivate certain plants cannot reveal from whom they purchases narcotics, but only from whom they purchased the seeds of plants they cultivate, which means that this is an error of the legislator.
28 The judgment of the High Court in Nis K No. 5/11 of 30 March 2011 and the judgment of the Appellate Court in Nis Kž No. 1369/11 of 18 October 2011.
29 Delibašić V., "Krivično delo neovlašćena proizvodnja i stavljanje u promet opojnih droga iz ćlana 246 . Krivičnog zakonika*", Branič*, number of 3-4, Belgrade, 2010, p. 83.

account as an aggravating circumstance in determining sentence. In such case, it is about the apparent concurrence of criminal offenses on the basis of alternativeness.[30]

The criminal offense is completed by unlawful undertaking of any activity that is designated as an act of such criminal offense while the consequence is an abstract danger to human life or health. It should be borne in mind that the acts of criminal offense of unlawful production and circulation of narcotic drugs is expressed by imperfect verb, which, pursuant to Article 112, paragraph 30 of the Criminal Code, shall mean that the offence is committed once or several times. In this connection, it might appear as a contentious issue of whether the offense of unlawful production and circulation of narcotic drugs can be committed within the continued period of time. The Serbian Supreme Court in one of its decisions took a stand in this respect determining it as a criminal offense with an indifferent number of actions excluding in such a way the possibility of constituting such criminal offence as continuing. This judgment states "that the concept of continuing crime is unacceptable in a particular criminal matter, because it is a permanent offense, which means that within a certain period the offender repeats identical acts, but the number of actions is indifferent, which constitutes a criminal offense. Already in the legal formulation [...] it is indicated that it is a continuing activity, and that the offender undertakes indifferent number of acts, identical in its substance. Thus, the acts that constitute the content of the incriminated activities of the convicted D. Z. are not independent within the criminal legal matter, since it is a permanent criminal offense, where in the said period the convicted committed the incriminating activities that, by its objective and subjective elements, constitute a criminal offense of unlawful putting into circulation of narcotic drugs which is an offense of a permanent character."[31]

Bearing in mind the continuous nature of such criminal offense, as well as the act of commission consisted of the unlawful transfer of a narcotic drug for sale, it raises the question of the proper legal classification in the context of international obligations arising from international conventions and our criminal legislation. For example, if our citizen performs unlawful transfer of narcotic drugs from Turkey to the Netherlands for further sale, the question is how many crimes he committed and which criminal law should be applied in this situation. To answer this question, it should be noted that the Criminal Code (Article 8) provides for active personal principle for the application of our criminal legislation. According to this principle our criminal law is applicable to our nationals when commit a criminal offense abroad and when it comes to any criminal offense, and not only those covered by primary real principle.[32] If we add the obligation that our country has assumed pursuant to the conventions that stipulate that if a series of related actions constituting criminal offenses in compliance with these conventions, has been committed in different countries, each of them shall be treated as a distinct offense, therefore, it can be concluded that the number of criminal offenses corresponds to the number of countries along the route of transport of narcotics. Furthermore, this means that such act, taking into account the Criminal Code and international obligations, should be qualified as a concurrence of criminal offenses and impose a single sentence of imprisonment. However, in practice, as a rule, the obligation stemming from international conventions is disregarded, taking into account only the Criminal Code, and such act is defined as a single criminal offense of unlawful production and circulation of narcotics.

## OBJECT OF OFFENSE

30 Delibašić V., *Suzbijanje zloupotrebe opojnih droga sa stanovišta krivičnog prava*, Belgrade, 2014, p. 164.
31 The Supreme Court of Serbia, Kž No. 94/2006 of 6 February 2006.
32 Stojanović Z., *Krivično pravo opšti deo,* Belgrade, 2015, p. 80.

All alternatively prescribed acts of commission of illicit production and circulation of narcotic drugs, whether relating to the activities of production character or to the activities related to the circulation of narcotic drugs. Pursuant to Article 112, paragraph 15 of the Criminal Code, narcotic drugs shall be considered all substances and preparations which are under the law or other regulations declared narcotics and other psychoactive controlled substances. On the basis of the Law on psychoactive controlled substances the term narcotic drugs means any substance of biological or synthetic origin, which is found on the List of psychoactive controlled substances, in accordance with the Single Convention on Narcotic Drugs, or the substance that acts primarily upon the central nervous system by reducing the sensation of pain, causing drowsiness or alertness, hallucinations, disturbances in motor functions, as well as other pathological or functional changes in the central nervous system. Considering that the term Narcotic Drugs also encompasses other psychoactive controlled substances should be said that these include: a) psychotropic substances which comprise any substance of biological or synthetic origin, which is on the list, in accordance with the Convention on Psychotropic Substances, that substance acts primarily on the central nervous system and change the brain function, in such a way changing the perception, mood, consciousness and behavior; b) products of biological origin that have psychoactive effects; and c) other psychoactive controlled substance.

Taking into consideration how the legislator determined what is considered under the term narcotic drugs in the Criminal Code (Article 112, paragraph 15) and under psychoactive controlled substances in the Law on Psychoactive Controlled Substances (Article 2, paragraph 2), it can be concluded that the legislator stating the term "narcotic drugs" in one, and "psychoactive controlled substance" in the other law, used different but synonymous terms, but still there is a need to correct it using one or the other term. Priority should be given to the term psychoactive controlled substance, in such case, the need for defining the term narcotic drugs in the Criminal Code would be omitted and that would lead to the deletion of Article 112, paragraph 15 of the Criminal Code, and in such a way the terms and content of the offenses referring to narcotics abuse would be changed.[33] Also, bearing in mind that doping endangers human health and that illicit production and circulation of doping are combated pursuant provisions of the Law on the Prevention of Doping in Sport, in the same way as the abuse of narcotic drugs, it would be acceptable to extend the object of criminal offenses relating to the fight against the abuse of narcotic drugs to the doping agents.[34] Consequently, the object of the offense would be both psychoactive controlled substances and doping agents.

## CONTROLLED DELIVERY

The Convention of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 provides that, in as far as permitted by the basic principles of the national legal systems (Article 11), the parties shall, within their means, take the necessary measures to allow the appropriate application of measures of controlled delivery at the international level, on the basis of agreements reached among them in order to identify the persons involved in the commission of offenses prescribed under the convention. Decisions on the implementation of measures of controlled delivery shall be made on a case-by-case basis and, where appropriate, taking into account financial arrangements and agreements relating to the determination of jurisdiction of the parties in question. Illicit shipments, whose

33 Delibašić V. "*Pojedina sporna pitanja u vezi sa opojnim drogama u Krivičnom zakoniku*", *Crimen,* Belgrade, 2014, p. 86-87.
34 See: Delibašić V., Mandarić *S., Sportsko i krivičnopravno suzbijanje doping u sportu,* Belgrade, 2016, p. 242-246.

controlled delivery is subject to agreement, and with the consent of the interested parties, can be caught and it may be allowed that narcotic drugs or psychotropic substances continue along the route as intact, removed or replaced entirely or in part.

Achieving a higher level of efficiency in the application of special investigative techniques or special evidence-gathering mechanisms, can hardly be imagined without an adequate international cooperation, which is typical for a controlled delivery and which, by definition, involves carrying illegal or suspicious shipments, primarily those related to forbidden psychoactive controlled substances, i.e. narcotic drugs, entry or exit of such shipments in the territory of one or more countries, with the knowledge and under the supervision of the respective competent authorities, with the aim of investigating and identifying persons involved in the commission of such an offense. This definition is specified under Article 2, paragraph 1 of the United Nations Convention against Transnational Organized Crime which is basically accepted by our legislature. When discussing the need for "investigation", by definition, it does not mean investigation as a phase of criminal proceedings in terms of our criminal procedural law, but the process of gathering information in the pre-trial proceedings, which necessarily implies certain evidentiary investigation, but not an investigation as a phase of the criminal proceedings, except when it comes to investigations led by the state (public) prosecutor, which is usually the case in the criminal proceedings of many countries.[35]

By fulfilling its duty, the Code of Criminal Procedure of our country prescribed special evidentiary actions. These can be ordered when two assumptions are cumulatively fulfilled, one of which refers to the type of crime, and the other to the existence of certain procedural difficulties. This means that the following two conditions must exist: 1) it is necessary to have the grounds for suspicion that a person to whom such offenses refer, has committed a criminal offense which falls into the category of criminal offenses in respect of which any special evidentiary actions are allowed; 2) it is necessary to have the situation where collection of evidence for prosecution would be impossible in any other manner, or its collection would be very difficult. Such actions may also exceptionally be ordered against a person for whom there are reasonable grounds for suspicion that he is preparing any of the "special" offenses, if there is any of the prescribed two alternative reasons: 1) should the circumstances indicate that in another manner a criminal offense could not be detected, prevented or proved, or 2) should disproportionate difficulties or serious danger could arise.[36]

If the conditions are met for ordering the special evidentiary actions (Article 161, paragraphs 1 and 2), the state public prosecutor or a public prosecutor of special jurisdiction may, in order to collect evidence for a trial, order a controlled delivery in such a way allowing, with the knowledge and under the supervision of the competent authority, illegal or suspicious shipments: 1) to be delivered within the Republic of Serbia; 2) enter, cross or exit the territory of the Republic of Serbia. The public prosecutor who ordered the controlled delivery determines the manner of its implementation (Article 181). The specificity of this special evidentiary action is that it is ordered by the public prosecutor and not by a judge for preliminary proceedings. Since the public prosecutor determines the manner of implementation of a controlled delivery, the said will also determine, for example, whether the delivery of illegal or suspicious shipments would be controlled through direct monitoring or from a distance (using modern technologies based on GPS system). The content of such an order of the public prosecutor should have similar elements as the order of a judge ordering the special evidentiary actions (information on the suspect, legal name of the offense, reference to the body that will carry out a controlled delivery, etc.).[37]

35 Škulić M., *Organizovani kriminalitet,* Belgrade*,* 2015, p. 479.
36 Škulić M., *Krivično procesno pravo,* Belgrade, 2014, p. 244.
37 Ilić P.G. *et al., Komentar Zakonika o krivičnom postupku*, Belgrade, 2012, p. 406-407.

A controlled delivery is conducted by the police and other public authorities designated by the public prosecutor, with the consent of the competent bodies of interested states and on the basis of reciprocity, in accordance with the ratified international treaties which regulate its content in more detail. Upon execution of the controlled delivery, the police or other state body deliver to the public prosecutor a report containing: information on the time of commencement and completion of the controlled delivery, data on the officer who carried out the action, description of the technical means employed, information on persons involved and results of the implemented controlled delivery (Article 182).

## CONCLUSION

A large number of international conventions dedicated to combating narcotic drugs abuse were adopted in special conditions in order to address specific problems. The most important is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in Vienna in 1988. Also, the Single Convention on Narcotic Drugs, 1961, as well as the Convention on Psychotropic Substances of 1971, are of particular importance for this area. However, none of them individually, taking into account the complexity of the problem, represent a perfect legal instrument designed for protection. Only when complementing each other, to some extent, do they achieve the goals for which they were created. By signing these conventions Serbia took on the obligation of ongoing international cooperation in order to combat narcotics drug abuse so it can be concluded that it successfully fulfills its commitments.

The most important criminal offense related the abuse of narcotics in the Criminal Code is unlawful production and circulation of narcotic drugs (Article 246). Bearing in mind the continuous nature of such offense, as well as the act of commission consisted of the unlawful transfer of narcotic drugs for sale, raises the question of the proper legal classification in the context of international obligations arising from international conventions and our criminal legislation. To answer this question it should be considered that the Criminal Code provides for an active personal principle for the application of our criminal legislation. If we add the obligations that our country has assumed under the conventions which stipulate that if a series of related actions constituting criminal offenses in compliance with these conventions, has been committed in different countries, each of them shall be treated as a distinct offense, therefore, it can be concluded that the number of criminal offenses corresponds to the number of countries along the route of transfer of narcotic drugs. Furthermore, the above stated means that such action, taking into account the Criminal Code and international commitments, should be qualified as a concurrence of criminal offenses and impose a single punishment of imprisonment. However, in practice, as a rule, the obligation stemming from international conventions is disregarded, taking into account only the Criminal Code, and such act is defined as a single criminal offense of unlawful production and circulation of narcotics.

Judging by the manner the legislator determined what is considered narcotic drugs under the Criminal Code and what psychoactive controlled substances are under the Law on psychoactive controlled substances, it can be concluded that the legislator citing the term "narcotic drugs" in one and a "psychoactive controlled substance" in the other law, used different but synonymous terms, but still there is a need to correct it by opting for one or the other term. Priority should be given to the term psychoactive controlled substance, in such case, the need for defining the term narcotic drugs in the Criminal Code would be omitted and that would lead to the deletion of Article 112, paragraph 15 of the Criminal Code, and in such a way the terms and content of the offenses referring to narcotics abuse would be changed.

Also, bearing in mind that doping endangers human health and the illicit production and circulation of doping are combated pursuant provisions of the Law on the Prevention of Doping in Sport, in the same way as the abuse of narcotic drugs, it would be acceptable to extend the object of criminal offenses relating to the fight against the abuse of narcotic drugs to the doping agents. Consequently, the object of the offense would be both psychoactive controlled substances and doping agents.

For successful fight against narcotic drugs abuse is necessary to apply, inter alia, the special evidentiary action known as controlled delivery. If the conditions are met for ordering the special evidentiary actions, the state public prosecutor or a public prosecutor of special jurisdiction may, in order to collect evidence for a trial, order a controlled delivery in such a way allowing, with the knowledge and under the supervision of the competent authority, illegal or suspicious shipments: 1) to be delivered within the Republic of Serbia; 2) enter, cross or exit the territory of the Republic of Serbia. The public prosecutor who ordered the controlled delivery determines the manner of its implementation. The specificity of this special evidentiary action lies in the fact that it is ordered by the public prosecutor, not by a judge for preliminary proceedings. The content of an order of the public prosecutor should have similar elements as the order of a judge ordering special evidentiary action for preliminary proceedings.

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# STRENGHTENING OF THE PENITENTIARY SYSTEM IN THE FUNCTION OF CRIME PREVENTION

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**Abstract**: This paper analyses the role of the penitentiary system in prevention and control of crime which has been constantly growing over the last decades and which is being expressed in different and more and more severe forms. While looking for mechanisms for fighting against crime, the prevalent opinion is that the more severe penal policy and longer prison sentences have greater effects on deterring future perpetrators. The role of the penitentiary institutions in combating crime can be viewed from three perspectives which correspond to three schools of thought. The first theory claims that penitentiary institutions repress criminal behaviour because the discomforts of life in prison and negative social stigma contribute to crime prevention. The second school of thought claims that the prisons are "schools of crime", namely, that they teach criminals and reaffirm their criminal behaviour. The third theory which is often called the "minimalistic theory" claims that the consequences of penitentiary institutions in crime prevention are largely minimal and that being in prison has more negative than positive effects.

This paper emphasises the need for strengthening the penitentiary institutions which would then be qualified to influence the change of criminal pattern of behaviour of the perpetrators which would significantly contribute to crime prevention. There is a general consensus in the field of penology that it is necessary to strengthen the penitentiary institutions in two directions: the first one is towards an improvement of normative acts and organisation of the prison system in line with international standards and the second one is towards the introduction of new, contemporary treatment programs which would respect individuality and personal characteristics of convicts, i.e. specialisation of treatments for specific categories of prisoners.

**Keywords**: penitentiary system, crime, crime prevention, treatment program, convicts, organisation of prison system

## INTRODUCTION

A large number of theoreticians and practicians who are studying penitentiary systems rightly state the dilemma whether the prison systems are an adequate need of the society and whether they succeed to fulfil their function. The function of the penitentiary system is mirrored in the protection of the society against criminals by isolating them, in warning the public not to commit crimes, in correcting criminal patterns of behaviour and in preparing the perpetrators for a normal life in the society. The analyses of the penitentiary and prison system have showed that the goals and the purpose of punishment are, as a rule, too ambitious considering the real possibilities of the society and that the prison system only partially

achieves the goals on a practical level. There was constantly a dilemma on whether the penitentiary system and its realisation in prisons can achieve the necessary level of efficiency which would satisfy the proclaimed goals. Throughout history, prisons were the most efficient in achieving the goal of isolating perpetrators from the rest of the society and the prison sentence partially succeeded in achieving general prevention by warning possible perpetrators that if they commit crime they will end up in a prison, while the results concerning the level of correction of their behaviour during serving the sentence, their change and re-socialisation were very modest results. The most important question here is whether there is a real possibility for disciplining perpetrators.[1] It is a well-known fact that the penal institutions in most systems except in the cell enable "criminal infection" of the majority of prisoners who are not structured as persons who are not prone to committing new crimes according to their criminological characteristics. Researches show that the penitentiary institutions may cause further criminalisation of their "inhabitants". Due to these facts, criminologists, penologists, psychologists and other experts from different of fields of science are focused on finding efficacious penitentiary systems which will eliminate negative effects of imprisonment and at the same time increase crime prevention.

In addition to making an effort to partially remove noted consequences caused by the penal institutions, there are also certain activities towards improvement of the penitentiary system and lowering the negative consequences of detention. In order to achieve this goal, norms and principles of execution of penitentiary sanctions are being developed, the legislation is being improved – the rights of prisoners are being widened, and the comprehensive categorisation of penitentiary institutions is being conducted along with the classification of prisoners according to personal characteristics, the level of criminal structure, the length of a prison sentence, social danger of the committed crime, etc. Along with these measures, contemporary penology insists on individualisation with regards to working with convicts, respect of dignity, humane treatment of detained persons, finding alternative criminal sanctions, etc.

## PENAL POLICY AND PENAL REALITY

The right to punish is one of the basic rights of a state which determines the purpose and the goal of punishment, i.e. the penal policy with regards to crime prevention. Issues of penal policy, the purpose and goals of punishments and execution of prison sentence are always topical in different fields of sciences such as criminal law, criminology, penology, victimology, psychology of crime, sociology and other disciplines which study human behaviour and social relations. There is a significant disproportion between praxis and theoretical doctrine on punishment, especially in the field of penal practise and penal reality. Over the last decades there have been extensive changes regarding response to crime. It is well known that the idea of resocialisation and rehabilitation of the perpetrators was rejected in the second half of 20$^{th}$ century and the policy of sharpening of the penal policy is more and more prevalent along with the increasing affirmation of prisons, politicisation of crime, expansion of crime prevention, involving civil society in crime control, accent on security, a new way of managing prisons critical situations, etc.

The conventional approach which relies on the treatment and rehabilitation gave way to the retributive way of thinking[2]. In the contemporary society or the risk society or the

1 Stevanović, Z. ( 2005) Kako novim zakonskim rešenjima unaprediti penalni sistem, *Kazneno zakonodavstvo: regresivna ili progresivna rešenja,* Institut za kriminološka i sociološka istraživanja, Beograd, p.507.

2 Vasiljević-Prodanović, D. (2011) Teorije kažnjavanja i njihove penološke implikacije, *Socijalna edukacija i rehabilitacija,* Beograd, p. 511.

postmodern society as different authors call it, the penal policy is focused on pragmatic goals of social control. A significant number of authors think that changes in the manner of reacting to crime are inconsequent, versatile, contradicting and deprived of a clear theoretical concept. A dual approach is noticeable: while perpetrators marked as dangerous for the society are severely punished, less dangerous offenders are punished with alternative sanctions or involved in processes of restorative justice. In the strategy of control and crime prevention, the policy of "harsh attitude" which relies on severe punishments and widened level of usage of penitentiary institutions has led to abandoning the concept of resocialisation of convicts. The penal policy which overrates the power of prisons is experiencing difficulties because prisons no longer have the power to prevent crime in a substantial way. Nowadays, the prison institutions are not achieving the expected goals. Prisons are not efficient enough in effecting changes in the behavior of prisoners towards a successful reintegration in the society after being released from prison. In fact, the prison sentence is primarily isolation of a perpetrator from the society. If a prison sentence is nothing but isolation and the prison as an institution does not fully achieve the purpose and goals of the punishment, there is a reason to question the effects of a prison sentence and the role of prisons in general. Is prison becoming a "reserve" for criminals who are being "disciplined" and remodelled into serious criminals being reproduced in arithmetic progression[3]? This is why there is a prevalent opinion that it would be better to leave perpetrators out of the penitentiary institutions, especially the ones who have just started their criminal careers. For this category of people, prison can be a negative experience which can lead to identification with criminals and acceptance of criminal patterns of behaviour.

Over the past few decades, with the tightening of the penal policy, penitentiary institutions have been more intensively used for crime control. This trend is especially present in America, but also in majority of countries around the world, and it is based on the opinion that the longer prison sentence is the means of discouraging perpetrators from committing new crimes. There are three schools of thought within the professional circles. One of them starts from the opinion that prisons repress criminal behaviour on a large scale. Considering the unpleasant life in prison and the negative social stigma which is related to detention, a prison sentence should be used to prevent future criminal behaviour. The second opinion is directly opposite to the previous one: penal institutions are increasing the crime rate, and prisons are "schools of crime". According to this theory, prisons produce much harder consequences for prisoners' personalities due to their destructive nature and inhuman conditions which include elements of destructivity and humiliation of various kinds as well as psychological suffering and diverse means of deprivation. All this leads to forming criminal patterns of behaviour which remain a permanent form of behaviour. The third school of thought, which is called "minimalist", claims that prisons have minimal effects on the change of behaviour of prisoners and that they in fact, "psychologically deep freeze" prisoners. Prisoners come with a number of anti-social attitudes, habits and culture and they change very little during their time in prison. This theory also emphasises that a longer stay in prison carries a serious risk of forming and accepting negative patterns of behaviour while the impact on antisocial and criminal attitudes of prisoners is minimal.

What is the function of prisons today and what are their effects? Are they institutions which execute prison sentences, act preventively to other citizens by encouraging them not to commit crimes and encouraging the process of resocialisation and reintegration of convicts into the society, or they are becoming "schools of crime". Characteristics of the contemporary prison systems on a global level have shown that they are overcrowded in relation to

3 Stevanović, Z. & Igrački, J. (2012) Stroga kaznena politika u fazi izvršenja kazne zatvora, *Kaznena politika -raskol između zakona i njegove primene,* Ministarstvo pravde Republike Srpske i Srpsko udruženje za krivičnopravnu teoriju i praksu, Istočno Sarajevo, p.325.

the available capacity while there is an insufficient number of staff, the general conditions are bad (for both convicts and staff), the level of security is low, the members of staff are not motivated to perform professionally, and there is a "toxic" blend of prisoners sentenced to long punishments as well as those who suffer from mental illnesses, drug addiction, etc. Such a situation among prisoners leads to creating strong informal communities which are to a large extent in control of prisons and which are also becoming mafia-like gangs[4], leading and controlling certain businesses within the prison and outside it. In such circumstances, the informal groups in certain cases collaborate with parts of the formal prison structure and cause riots, conflicts and other incidents which jeopardise the functioning of prison systems. This has led to huge crises of prisons on a global level.

The harsh penal policy and other prison sentences strongly affect individuals and the society as a whole. The dramatic growth of the prison population is the result of the lack of other mechanisms in fighting against crime. Repeated glorifying of the prison sentence is the result of the current policy which promotes the policy of punishment based on the anticipated popularity, and that prison is there to maintain security of the society but without taking penological consequences into consideration. Mass detentions are the result of such concept of punishment and they are above any level of the prison population and opposite of historical and comparative norms for the society of this type.[5]

The prison sentence is certainly necessary and there is no better solution in fight against crime at the moment. However, there is a question of measure in the application of the prison sentence, especially in weighing the punishment. The protagonists of such penal policy are convinced that a harsh penal policy and high prison sentences will deter people from committing further crimes. The influence of prisons on changes of behaviour of the prisoners sentenced to long prison sentences is not especially important, which is shown in the fact that recidivism is 3% higher among convicts with long prison sentences in comparison to convicts with shorter prison sentences[6]. Contrary to expectations that the prison sentence will have an effective impact on crime prevention, the practice shows that a stronger penal policy and frequent sending perpetrators to prisons do not affect crime prevention to the extent that is expected. The consequences that prisons leave on perpetrators are negative in many ways. The limitation of life activities, small living space and the limitation of freedom of movement is being perceived as humiliation and degradation as well as a threat to personality. This leads to the lack of self-confidence and emotional tensions which are hard to cope with for many prisoners. The regime which regulates every moment of life to the smallest details creates unbearable monotony which causes affinity towards fantasies and unreal events as a defence mechanism which is why prisons are called "kingdoms of obsessions, illusions and deceits". Moreover, prisons make people indifferent and dull their intellectual capabilities. Convicts find it particularly hard to cease connections with the outer world, especially communication with their families and friends. Some people experience a big shock and then emotional atro-

4 There are various prison gangs in America which are functioning within the prison system. The most famous ones include **Aryan Brotherhood**, **La Nuestra Familia** and **The Mexican Mafia** known for drug traficking, extortion and murders. According to statistics, out of all the murders in American prisons about 10% are executed by this mafia. **Nazi Low Riders** –the nazi gang which is, along with other nazi gangs, the fastest growing gang and has the aim to clash with coloured people inside as well as outside the prison. Over the past few decades, the number of prison gangs has increased on a global level and there is a tendency for these gangs to overtake control over the prison systems and thereby become a serious partner to the formal prison system.

5 Garland, D. (2001) *The culture of controle-crime and social order in contemporary society*. Oxford university Press., p.14.

6 Stevanović, Z. & Igrački, J. (2012) Stroga kaznena politika u fazi izvršenja kazne zatvora, *Kaznena politika -raskol između zakona i njegove primene,* Ministarstvo pravde Republike Srpske i Srpsko udruženje za krivičnopravnu teoriju i praksu, Istočno Sarajevo, p.325

phy, while others develop a fear from life in freedom due to the weakening of belief in future and lack of moral strength. Many of them no longer want freedom.

Convicts are also exposed to many other deviations and deprivations such as: deprivations of heterosexual intercourse which leads to a whole range of sexual deviations which are explained by the fact that the community in which they live in is made up of persons of the same sex; inability to use many other material goods which is especially hard for people who are used to a certain social status and possessions that come with it; deprivation of the feeling of security caused by attacks by other convicts and constant tension they have to live with in order to be ready to resist the attacks. There is a range of prison procedures which have a huge effect on a prisoner's psyche and cause degradation of person such as wearing uniforms, being identified by numbers instead of names, locking and unlocking of prison cells after leaving and entering them, etc. These deprivations and humiliations force prisoners to invent certain mechanisms in order to adjust to the harsh conditions of the prison regime such as: attempts to escape from the institution; psychological withdrawal, innovation (attempts to change life conditions in a peaceful way), conformism, ritualism, manipulation.

Recent research has shown that the prison isolation causes psychosis, depression, inhibitions, withdrawals and other psychological conditions. These conditions enhance the negative influence of a prison sentence and worsen the inmates' mental health. In social terms, the negative influence of prison sentences is mirrored in the problems that convicts' family members are faced with. Data show that 70% of married couples without children go through a divorce, and families with children survive crises because the environment puts pressure on children and this leads to emotional problems for all family members. Ever since the prison sentence was established, there has been a prevalent public opinion that deprivation of freedom is in itself dishonourable and any contact with prison creates a stigma that stays for a lifetime. This makes recovery of convicts and their return to the society much harder, but also affects their families. And it is not just the criminal offence that is considered as dishonourable, but also serving the sentence itself.

From the perspective of the right of execution of criminal sanctions, efficiency in crime prevention is measured by the number of perpetrators who are successfully reintegrated into the society after the prison sentence, the level of recidivism, the scale of realised treatment, etc. The treatment is efficient if it leads to: lower percentage of recidivism, desirable changes in behaviour, personality and environment of the convicted person[7]. Špadijer-Džidić and a group of authors have stressed that success of resocialisation with minors can be judged by the level of recidivism, alcoholism, gambling, begging, vagabondism, idleness, rude behaviour and connections with deviant groups, but can also be judged based by the outward appearance and success in school[8].

With the aim to find a more efficient method for fighting against crime, there is a tendency to find new ways of punishing perpetrators (such as imposing fines and alternative sanctions), in order to personalise the punishment, relieve the prisons and create a rational approach to punishment. It is obvious that the institutional resocialisation does not bring about changes of behaviour patterns in expected ways and that convicts quickly return to the criminal pattern of behaviour which often ends with much more brutal criminal offences.

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7 Stakić, Đ. (1977), *Neki problemi evaluacije metoda resocijalizacije*, Jugoslovenska revija za kriminologiju i krivično pravo, br.3, Beograd, p. 78-83.

8 Špadijer-Džidić, Ignjatović, I., Radovanović, D. (1975), *Kriterijumi merenja uspešnosti resocijalizacije maloletnih delinkvenata,*ZbornikInstituta za kriminološka i sociološka istraživanja, Beograd, p. 271-310.

# THE CRISIS OF THE PENITENTIARY SYSTEM – NECESSITY OF REFORMS OF THE PRISON SYSTEM TO INCREASE EFFICIENCY OF CRIME PREVENTION

The penitentiary system is a part of the wider system of legislation and interior affairs. The number of convicted persons which passes through the prison system depends on other parts of this system such as achievements of police regarding arrest of suspects, quality of work performed by the judiciary, the speed of courts in making verdicts and choosing sentences by the court. On the other hand, the results of the prison system also have influence on the crime rate – whether acting as a deterrent or through the process of disciplining the convicted persons with the aim to make them less prone to commit crimes after they have been released from prisons. The prison system should not be the weakest link in this wider system because this would make the entire system less efficient.

Today everyone agrees that the prison sentence just like the prison itself is going through a big crisis because it has failed in combating crime and the most important purpose of the prison sentence had not been achieved. In the context of the discussion on the crisis of prisons and the prison system as a whole, there are different types of crises which are mentioned in the literature. There is a *content crisis* which is related to the content of life and work in prisons, the system of organisation and regime of life of prisoners. This crisis is caused by the overcrowded prisons and lack of efficiency in organising life in prisons. There is also the *crisis of conditions* in prisons which is related to the living conditions and everything that goes with it. The special emphasis is on the *crisis of authority* in prisons which comes as a consequence of the prison administration, especially guards and social pedagogues. Over the past several years limitations of powers of persons who participate in treatments are more prevalent and this has the aim to increase respect of prisoners' rights. However, the prison administration finds this as a threat to their professional authority and, in such circumstances, they lose motivation to work and also lose authority in the eyes of prisoners. The *crisis of public* is yet another type of crisis which is related to traditional conservativism and narrow-mindedness of the prison system in their relation to the public. In most cases, there is an element of mystery because the public is not aware of what goes on in prisons and prisons themselves cause this. In the times of digital communication it is not possible to hide anything from the public and this includes functioning of prisons. Prisoners find different ways to share information on their lives in prisons and the state itself makes more efforts to make this segment of the society known to the public. Additionally, there is also the *crisis of legitimacy* which is especially visible in the British prison system and it is related to the "call for eliminating deprivation of freedom". It is thought that this crisis has a moral justification. The fact that the prison sentence has become a serious problem was shown in many papers presented at the First Congress of the European Society of Criminology which was dedicated to prisons. The most prevalent problems stem from the lack of adequate programs for working with prisoners, increasingly bad conditions in prisons, underdeveloped system of protection of the right of prisoners, overcrowded premises, the increasing number of drug addicts and mentally ill convicts, a strong informal system of prisoners which goes to the level of mafias, poor material conditions of prisons and inadequate staff. In such environment, it is hard to make important achievements in the rehabilitation and reintegration of convicts and this means that the majority of them will return to crime once they are released from prisons.

Modest effects of prison sentences on crime prevention have stimulated professionals in the field to find the new methods of punishment which are widely known as the alternative sanctions. Alternative sanctions can be defined as methods of punishment which are located

in a continuum between the traditional probation and traditional punishment (Junger - Tas, 1994). They are often referred to as detention alternatives, non-institutional measures and community programs, and sometimes they are related to the wider penal strategies which are called deterrents or diversions, deinstitutionalisation and penal reductionism. In 1986 the European Union issued a report which mentioned alternative sanctions that had been applied in its member states. They included modified institutional sanctions such as half-imprisonment, job placement, weekend arrest, house arrest and serving sentence in other institutions such as hospitals and drug addiction centres. The second group of alternative sanctions which was referred to as non-institutional sanctions included fines, sanctions which limit certain rights (revocation of a driver's licence, confiscation, restitution, prohibition of work), disciplinary measures, moral sanctions (judicial admonition, special obligations) and supervision. Another special group of alternative sanctions include: *probation measures* and *unpaid community work*. Measures which are related to delaying the sentence include: delaying execution of the institutional punishment, delaying the verdict and not imposing a sanction at all. In some countries alternative sanctions include *mediation* between the victim and the perpetrator which is often followed by *restitution* or *compensation* which can include paying a fine or mending a destroyed or damaged object and working for a victim. There are also other modalities of alternative sanctions such as daily fines and work in the community (non-paid work in the community is measured by hours and is limited to a certain period of time), referral to the daily centres, increased supervision and electronic surveillance (electronic bracelet or a telephone call), intensive supervision programs, boot camps designed for younger adults as a "shock therapy" caused by the strict military regime.[9]

In addition to inventing these contemporary methods of punishing perpetrators, there is also a global effort to reform the prison system. The reform of the prison system in Serbia is an integral part of the reform of the legal system and police which is an obligation imposed in the Action Plan on alignment of the Serbian legal system with European standards. The strategy for reform of the system of execution of sentences outlined three assignments that are related to three interconnected fields of this system: institutional sanctions, non-institutional sanctions and the period after the release. These three fields together contribute to the realisation of the key goal of the system for execution of institutional sanctions, and that is a humane execution of the sanction with the aim of protecting citizens and lowering the percentage of recidivism. To determine the priority of the reform, the following assignments have been imposed: (1) Adoption of laws and legal acts which provide the legislative framework for further development of stable, efficient and humane system of execution of criminal sanctions in line with European standards; (2) Improvement of infrastructural capacities of the prison system by building new objects and reconstruction and adaptation of the existing objects in order to improve security and proper functioning of the system and create conditions for adequate accommodation of persons deprived of freedom; (3) Ensuring respect of human rights of prisoners through efficient mechanisms of protection and cooperation with independent institutions and organisations for prevention of torture and human rights protection; (4) Improving conditions for accommodation of minors, women, disabled people, sick persons and persons in charge of security measures in penal institutions; (5) Improving specialised and individualised programs for vulnerable groups with the aim to achieve successful resocialisation and reintegration and enable adequate post-penal acceptance; (6) Application of the wide spectrum of program treatments (therapy, education, professional training, learning social skills, etc.) which are focused on maintaining mental and physical health of the convicted persons while serving their sentence; (7). Improving health care; (8) Modernisation and security of the obligatory psychiatric treatments; (9) Improving organisation of trust services; (10)

9 Stevanović, Z. &Igrački, J.(2011), Efekti kazne zatvorai institucionalnog tretmana u prevenciji kriminaliteta, Pravna riječ, br. 2. Udruženje pravnikaRepublikeSrpske, BanjaLuka,

Strengthening capacities of the Centre for Professional Training of the Directorate for Execution of Criminal Sanctions; (11) Building efficient surveillance systems to monitor functioning of the Directorate and the institution with the aim to improve the way the staff treats prisoners and ensure that the treatment is in line with European standards; (12) Establishing integrated security systems based on new information technologies[10].

## CONCLUSION

Execution of prison sentences reflects other, wider social problems. The penal policy and policy of executing prison sentences are closely connected to the level of development of the society and its economic as well as political power. This paper analyses the effect of punishment and the role of a penitentiary system in crime prevention.

The key question related to the prison sentence is whether it achieves the purpose of the stated sentence and to what extend it does so. This also reflects the influence of the penal institution on crime prevention. In contemporary penology, efficacy of the treatment of convicts is very topical because results show that the majority of the forms of treatments applied in the process of resocialisation have not met the expectations. The percentage of recidivism and behaviour during serving a prison sentence shows that the institutional influence on convicts does not give positive results. As a reaction to limited effects in crime prevention over the last decades traditional method of combating crime was prevalent –sharpening the penal policy and application of repressive concept of punishment. Worryingly, the results of this approach have not given expected results in crime prevention; on the contrary, crime in its various forms is more and more present and the prison population has grown to about 10 million people, the prisons are overcrowded and institutional treatment also does not affect the change in the behaviour pattern which means that the results of prevention are modest. In such conditions of the crisis of prisons, attempts of finding new ways to punish perpetrators (fines and other alternative sanctions) are permanently present in order to personalise the punishment, relieve the prisons and economically rationalise the punishment. Over the last few decades, the prevalent attitude is that the institutional resocialisation does not adequately affect the change of pattern of behaviour and that the perpetrators quickly return to the criminal pattern of behaviour which often results in committing even more brutal crimes. The situation in the prison system is generally very complex and it generally generates new criminal behaviour. The prisons are congested, the structure of prisoners is increasingly complex in the criminal as well as in psychological sphere, there are more and more drug addicts, the material situation is poor, the staff is inadequate and workers in prisons are not sufficiently motivated. In such an environment, the "criminal infection" is further emphasised, the formal system is weaker and less efficient which, in synergy of all factors, leads to questioning the purpose and goal of punishment itself.

There are activities aimed at crime prevention and new forms of punishing perpetrators are being introduced, and there is also the permanent reform of penitentiary system which is being adjusted to fit contemporary needs of the society.

10 Strategija razvoja sistema izvršenja krivičnih sankcija u Republici Srbiji do 2020. godini, poglavlje, 1,2.,Službeni glasnikRS, br. 114/2013.

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# IMMUNITY OF WITNESSES AND THE PRINCIPLES OF LEGALITY AND OPPORTUNISM IN CRIMINAL PROCEDURAL SYSTEM OF BOSNIA AND HERZEGOVINA

**Zeljko Krsic MA**[1]

**Summary**: All Laws of Criminal procedures in Bosnia and Herzegovina (Bosnia and Herzegovina, the Republic of Srpska, the Federation of Bosnia and Herzegovina, Brcko District) stipulate that the right of a witness is not to answer certain questions if truthful answers to those questions could expose the witness to criminal prosecution, as well as the possibility that the witness answer these questions if given immunity by the prosecutor. Given that none Criminal procedural law of Bosnia and Herzegovina, apart from the simplest plea agreement, stipulates any form of agreement on the plea with a clause on cooperation of the defendant or a convict, criminal prosecution authorities use, due to expediency, promises and witness immunity with the aim of enabling that person to testify against other persons in the same or related criminal procedure. Often, in practice, prosecutors use „criminal cunning" and do not invite persons for whom they know that they can be directly connected to the crime as suspects, but as witnesses to „negotiate" immunity in exchange for testifying against others. The question is: to what extent is this treatment in accordance with the principles of legality and opportunism of the criminal proceedings? This paper discusses this question from the author's point of view and points out to some flaws in the Law of Criminal procedures Bosnia and Herzegovina and some, in the author's view, positive examples of comparative legislation of surrounding countries.

**Keywords**: witness immunity, negotiating guilt with the clause on cooperation, Law of Criminal procedures, principles of legality and opportunism.

## WITNESSES' IMMUNITY IN CRIMINAL PROCEDURAL LAW IN BOSNIA AND HERZEGOVINA

Giving witness immunity means prosecutor`s "promise" to the witness, who agrees to testify about the facts that can expose them to criminal prosecution, that they will not be prosecuted if they testified about these facts[2]. When we talk about facts that could expose witnesses to criminal prosecution, we can talk about many different situations. The first possibility is that the witness, for whom prosecution authorities until the time of the hearing do not have any knowledge and the grounds for suspicion that in any way participated in the commission of the offense and who has been called to testify during the hearing avoids to answer or give

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an honest answer, because of fear that they might be subject to criminal prosecution. (?) In such situation the prosecutor may provide that witness immunity and after obtaining an immunity, he provides an answer to their question (?) (not clear). In such situations, usually it is about a full immunity or prosecutor`s 'promise' to witness that they will not in any case be subject to criminal prosecution in connection with the content of the answers given during the hearing under immunity. Another option is when the prosecutor gives immunity to the party for whom they previously had information that they werr involved in the crime, or gives a 'promise' to a suspect or defendant that they would not be even prosecuted for criminal offenses, or they would not be prosecuted for certain crimes in exchange for testimony against the others or other forms of cooperation with the prosecutor. In this case, the prosecutor could give a defendant a complete or partial immunity, so the criminal procedural entity in specific modes changes the status; meaning the suspect or defendant receive a status of a witness. In this form of granting immunity in exchange for cooperation with the prosecutor, it is usually conditional on the previous recognition that the defendant has committed the criminal offense they are charged with. When deciding on granting immunity, the prosecutor evaluates the importance of the information that the witness can reveal in the investigation and proportionality of contributions of such information to the investigation in relation to the possible responsibility of witnesses[3].

When granting immunity to the witness the prosecutor must give a written statement or make a decision and sign some kind of an agreement with the witness in order to specify the scope of immunity and obligations of witnesses.

The Laws on Criminal Procedure in Bosnia and Herzegovina (LCP B&H, Republic of Srpska, the Federation of Bosnia and Herzegovina, Brcko District B&H) know or issue only the possibility of granting immunity to the witness by the prosecutor and during the witnesses` hearing.

The Law on Criminal Procedure of the Republic of Srpska in 2012[4] provides for the granting of immunity to the witness in only two provisions. Thus, in Article 43 - The rights and duties of the prosecutor, under item v), the RS Law on Criminal Procedure provides that the prosecutor grants immunity in accordance with Article149 of the Law on Criminal Procedure. In addition to the aforementioned provisions, the Law on Criminal Procedure, only in Article 149 - The right of witnesses to refuse to answer some questions, regulates the granting of immunity, in the following manner:

1. A witness has the right not to answer certain questions to which a truthful reply would result in prosecution.

2. The witness exercising the right referred to in paragraph 1 of this Article will answer these questions if provided the immunity.

3. Immunity may be granted by a decision of the prosecutor.

4. A witness who was granted immunity and testified shall not be prosecuted except in case of false testimony.

5. A witness gets a lawyer for consultant by the decision of the court during the hearing if it is obvious that they are not able to use their rights during the hearing and if their interests cannot be protected in any other way.

In the same way, and in other laws on criminal procedure in B&H granting immunity to the witness is stipulated (Article 45., paragraph (1), item c) and Article 98 of the Law on Criminal Procedure of the FB&H[5], Article 35, paragraph (1), item c) and Article 84 of the Law

3 Ibid;
4 The RS Official Gazette 53/12;
5 The FB&H Official Gazette, number 35/03,37/03,56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10;

on Criminal Procedure of B&H[6], Article 35, paragraph (1), item c) and Article 84 of the Law on Criminal Procedure of Brcko District B&H[7].

In addition to the above-mentioned provisions of the Law on Criminal Procedure in force and applied in B&H and its entities and the Brcko District of B&H, no other provision regulates granting immunity. There is no single Law on Criminal Procedure in B&H, nor any other law, which regulates giving the immunity to the witness, suspect or defendant in exchange for some form of cooperation with the prosecution in revealing and proving the crimes committed and their perpetrators.

## THE PRINCIPLE OF LEGALITY IN CRIMINAL PROCEDURAL LAW IN BOSNIA AND HERZEGOVINA

One of the fundamental, and certainly the most important principles of criminal law is the principle of legality. For the purposes of this paper, we discuss the principle of legality in criminal procedural sense, rather than the principle of legality in criminal material sense. The principle of legality of criminal prosecution means that the prosecutor shall initiate criminal prosecution if the legal conditions are met, regardless of his opinion on whether or not the prosecution is needed[8]. Professor Dr Snezana Brkic said that our principle of legality means that the prosecution does not depend on personal will of the prosecutor and that under the principle of legality entails the obligation of the public prosecutor to prosecute, as soon as actual and legal conditions provided by law are met[9]. According to Dr Brkic, actual conditions refer to the existence of a certain degree of suspicion that a criminal offense was committed or that a person is the perpetrator of the crime, while the conditions of a legal nature assume the possibility of subsuming the actions of the offender under a criminal offense prosecuted ex officio[10]. In this regard, the principle of legality of criminal prosecution is determined in the Criminal Procedural Law of the Republic of Srpska, in Article 17, which provides as follows: ''The Prosecutor shall initiate prosecution if there is evidence that a criminal offense was committed, unless the law provides for otherwise" (in the same way, the principle of legality is defined in other Laws on Criminal Procedure in B&H, Article 18 of the Law on Criminal Procedure of the Federation of B&H, Article 17 of the Criminal Procedural Law of the Brcko District of B&H - revised text, and Article 17 of the Criminal Procedural Law of B&H). Here we see that the legislator at the end of the provision said ''unless the law provides otherwise.'', which pointed to possible specific derogations from the principle of legality of criminal prosecution, in fact mandatory prosecution, which we will deal more with below.

As seen in the provisions of Article 17 of the Criminal Procedural Law of the Republic of Srpska, the principle of legality determines the obligation of the public prosecutor to prosecute if there is evidence that a criminal offense was committed. Since the provisions of the Criminal Procedural Law of B&H and its constituent territorial units are generally analogous to each other and to the almost identical way regulate the principle of legality, immunity of witnesses and the possibility of applying the principle of opportunity, for the purposes of this study I will continue to cite examples from the Law on Criminal Procedure of the Republic of Srpska.

6 The B&H Official Gazette, number 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13;
7 Official Gazette of Brcko District B&H, number 33/13, 27/14.
8 H.Sijercic-Colic, Criminal procedural Law, Book 1, Faculty of Law at the University in Sarajevo, 2008., page. 92.;
9 S. Brkic, Criminal procedural law 1, Faculty of Law in Novi Sad, 2014., page. 57.-58.;
10 Ibid, page 58;

In any currently valid Law on Criminal Procedure in Bosnia and Herzegovina there is no definition of what the prosecution and the criminal proceeding is, and therefore does not determine when the prosecution begins and criminal proceedings are instituted. In the criminal procedural system of B&H (B&H, the Federation of B&H, the Republic of Srpska, Brcko District B&H) there is no consensus on when criminal proceedings are instituted. The prevailing opinion in scientific circles is that the criminal proceedings are instituted by confirming the indictment by a competent court before which a prosecutor indicted[11]. Article 241 of the Criminal Procedural Law of the Republic of Srpska reads as follows: ''When during the investigation, the prosecutor finds that there is sufficient evidence which provides a reasonable suspicion that the suspect committed a criminal offense, they shall prepare and refer the indictment to the preliminary hearing" (indictment is defined identically in other Laws on Criminal Procedure in B&H, Article 241 of the Criminal Procedure Law of the Federation of B&H, Article 226 of the Criminal Procedure Law of the Brcko District of B&H - revised text, and Article 226 of the Criminal Procedure Law of Bosnia and Herzegovina). Unlike the supporters of this interpretation, certain part of the professional and scientific community believes that the moment you start criminal proceedings have considered the moment when the public prosecutor gave order on conducting the investigation. Article 224 of the Criminal Procedural Law provides that the prosecutor ordered the investigation if there are grounds for suspicion that a criminal act was committed, and Article 20, paragraph (1), item j) of the Act provides that the investigation includes actions taken by the prosecutor or authorized official in accordance with the law, including the collection and storage of information and evidence. From the above mentioned provisions, it follows unequivocally that the investigation is a process which precedes the process of charges, and that is aimed at collecting and providing evidence in order to raise a degree of suspicion at the higher, more certain level, from a reasonable suspicion to grounds for suspicion.

The notion of prosecution is a broader concept than the concept of criminal proceedings and includes all activities undertaken by the public prosecutor and authorized officials at the request of the public prosecutor, but after learning about the possible commission of a criminal act or acts of preparation of the offense, aimed at verifying those findings. Criminal proceedings is a legal relationship that occurs between the process subjects (court and clients) upon a request for a discussion of the criminal case, which involves a certain degree of suspicion that a criminal act is committed as a requirement of establishing a particular relationship, and consists of the performance of their rights and obligations (the processing function), with a view to the correct application of substantive law, and ultimately to protect society against crime[12]. Here I will point out the positive legal definition of the beginning of criminal prosecution and criminal proceeding in the Criminal Procedure Code of the Republic of Serbia[13].

Article 5 of the Criminal Procedure Code of R. Serbia provides for:

"For offenses which are prosecuted ex officio the authorized prosecutor is the public prosecutor, and for criminal offenses which are prosecuted by private action the authorized prosecutor is a private prosecutor.

Criminal prosecution begins:

1. With the first act of the public prosecutor or authorized officials of the police at the request of the public prosecutor, taken in accordance with this Code to check the grounds

11 Principle of accusatory provides that criminal proceedings may be initiated and implemented only after the prosecutor's request - Article 16 of the Criminal Procedural Law of the Republic of Srpska (The RS Official Gazette number 53/12), and in exactly the same way, the principle of accusatory is provided in other Laws on Criminal Procedures in B&H;

12 S. Brkic, Criminal procedural law 1, Faculty of Law in Novi Sad, 2014., page 42.;

13 Official Gazette of Republic of Serbia, number 72/11, 101/11, 21/12, 32/13, 45/13, 55/14;

for suspicion that a criminal offense was committed or that a certain person has committed a criminal offense;

2. With filling a private lawsuit.

If the Public Prosecutor states they give up the charges (Article 52), they may jeopardise their position as a plaintiff, under the conditions prescribed by this Code."

Next, article 7 of the Criminal Procedure Code of R. Serbia stipulates the following:

"The criminal proceedings were instituted:

1. by the order to conduct an investigation (Article 296);

2. by verifying indictment which was not preceded by an investigation (Article 341, paragraph 1);

3. by adopting the custody ruling prior to the submission of the proposal adversarial in summary procedure (Article 498, paragraph 2);

4. by determining a trial or a hearing for pronouncing the sentence in the summary procedure (Article 504, Paragraph 1, Article 514, paragraph 1 and Article 515, paragraph 1);

5. by determining the trial in a method for imposing the security measures of mandatory psychiatric treatment (Article 523)."

As we see from the quoted provisions of the Criminal Procedure Code of the Republic of Serbia, it is clearly determined when the prosecution begins and when the criminal proceedings started and does not leave room for conflicting interpretations. In accordance with the principle of legality, in fact lawfulness of prosecuting in situations when you do not have sufficient grounds for suspicion that a criminal offense was committed for an order to conduct an investigation after finding out about the possibly of committed criminal offense, the attorney shall begin the prosecution on their own or through the issuance of requests to authorized official entities in order to verify the grounds for suspicion that a criminal offense was committed or that a person has committed a criminal offense.

## THE PRINCIPLE OF OPPORTUNITY IN CRIMINAL PROCEDURAL LAW IN BOSNIA AND HERZEGOVINA

According to Dr Milan Skulic and Dr Tatjana Bugarski, the principle of opportunity of criminal prosecution is contrary to the principle of the principle of legality of criminal prosecution and in many papers it is not exposed to such special or particular criminal procedural principle, but only as a process opposite of the principle of legality (an exception to this principle ), and is reflected in the handling of "opportunity", so that the prosecution does not necessarily take even though they met all the required conditions arising from the principle of legality, but according to the assessment of the appropriateness of prosecution in certain case, the prosecution may or may not be taken, wherein the criterion for failure to prosecute in some national (comparative) criminal proceedings is associated with, for example, the high cost of the procedure, or is based on some attributes of the accused[14].

Unlike the previously cited paragraph, Dr Snezana Brkic believes that the opportunity principle implies an obligation of the public prosecutor to prosecute when they met all legal and actual legal requirements and if it is in a given case purposeful[15]. As Dr Brkic said, both the principles establish the obligation of prosecution, provided that the difference lies in the

14 M. Skulic, T. Bugarski, Criminal procedural law 1, Faculty of Law in Novi Sad, 2015., page 101.;
15 S. Brkic, Criminal procedural law 1, Faculty of Law in Novi Sad, 2014., page 59.;

fact that obligations with the principle of legality occurs automatically upon the fulfillment of all legal requirements, and with the principle of opportunity, after a preliminary evaluation of appropriateness.

The principle of opportunity of criminal prosecution represents some form of discretion of the prosecutor, who has the right defined by law after determining that the requirements for undertaking criminal prosecution are fulfilled, if he finds that there are particular reasons of expediency in favor of not initiating criminal prosecution or not to bring a prosecution, to decide on not prosecuting the perpetrator or the initiation of criminal proceedings or to propose completion of proceedings and terminate the proceedings in any other way.

At the discretion whether to prosecute, to start criminal proceedings, or how to complete the procedure, the prosecutor cannot be guided by self-interest or conviction, but the higher, national interest or the interest of the public. The national interest and the interest of social public or community can be in detecting and proving particularly serious crime with a marked social risk (organized crime, terrorism, giving immunity to witnesses and defendants in exchange for testimony), personal characteristics of the offender and his relationship to the crime committed and its consequences (juvenile offenders, etc.), the economy of criminal procedure (reduce the cost by avoiding the time-consuming procedures, particularly for less serious offenses where the stipulated minor criminal sanctions, etc.), cases where a decision on the initiation of criminal prosecution and the initiation of criminal proceedings does not depend solely on the decision of the Public Prosecutor (offenses for which the requirement for criminal prosecution is making the proposal for the prosecution by the injured party, etc.).

Elements of opportunity of criminal prosecution are also in agreement on the admission of the offense, which in addition to those elements of their content that are required, may contain certain optional elements: 1) statement of the public prosecutor of the withdrawal from the prosecution of offenses which are not covered by the agreement on the recognition of the crime, which is a form of opportunistic prosecution, wherein any specific design criteria (from the standpoint of expediency, the justification of the withdrawal, etc.) are not determined for such decision of the public prosecutor, but it is completely left to their evaluation; and 2) a statement of the defendant on the acceptance of obligations which cannot otherwise be determined under the procedure of the public prosecutor under the principle of conditioned opportunity of criminal prosecution (postponement of criminal prosecution in preliminary proceedings), and provided that the nature of the obligation makes it possible to begin its execution before submitting the agreement to court[16].

The principle of legality of criminal prosecution is the rule, while the application of the principle of opportunity of criminal prosecution is an exception to this rule and the public prosecutor can apply that exception for reasons of expediency, only when there are national (state) and socially justifiable reasons for this.

In contrast to the legality of the principle that is clear and in a special provision in the legislation defined as the principle of criminal proceeding, the opportunity principle as such is not particularly prescribed by the Laws on Criminal Procedure in Bosnia and Herzegovina. In the Article 17 of the Law on Criminal Procedure of the Republic of Srpska, which stipulates the principle of legality, it is determined that the claimant shall initiate prosecution if there is evidence that a criminal offense was committed, unless the law provides otherwise. The foregoing provisions of the Law on Criminal Procedure provides for the possibility that prosecutors in certain cases stipulated by the Law on Criminal Procedure does not prosecute even though there is evidence of a criminal prosecution. In addition, in the Article 43 - rights and duties of the prosecutor under item (v), the RS Law on Criminal Procedure provides for that the claimant provides immunity in accordance with Article149 of the Law on Criminal

16 M. Skulic, T. Bugarski, Criminal procedural law 1, Faculty of Law in Novi Sad, 2015., page 104.;

Procedure. In Article 149 - The right of witnesses to refuse to answer certain questions, regulates the granting of immunity to the witness by the prosecutor so the witness could answer the questions that they could refuse to answer on the ground that a truthful answer to these questions could expose them to prosecution. Also, a special law regulating the criminal proceedings against juvenile offenders, which also gives the prosecutor the option due to the specific characteristics of the perpetrator to decide whether to initiate criminal prosecution and criminal proceedings against juveniles and how the process will terminate[17].

By criminal procedure in Bosnia and Herzegovina provides for the possibility of signing the agreement on the recognition of the crime between the public prosecutor and the perpetrator, but only as a simplified form of processing in order to reduce and simplify the process.

## THE PRACTICE OF PROSECUTORS AND COURTS IN B&H CONCERNING THE GRANTING IMMUNITY RELATIVE TO PRINCIPLES OF LEGALITY AND OPPORTUNITY

The provisions of the Law on Criminal Procedure in B&H do not suggest in any stage of the proceedings that the prosecutor can give immunity to the witness, or in which way granting immunity is formalised, or whether the prosecutor must obtain the prior approval of the competent court for granting immunity, and the provisions of these laws did not specify what the prosecution implies and what the moment of initiating criminal proceedings is. From the above-mentioned provisions of the Law on Criminal Procedure which entitles the public prosecutor to give immunity from prosecution, it appears that the prosecutor gives immunity to the witness, which means the person for whom at the moment of testifying and deciding on immunity there are no grounds for suspicion of having committed a criminal offense and they might be questioned as a suspect and charged with committing an offense. However, in practice of prosecutions` treatment in Bosnia and Herzegovina the mentioned provisions are not applied so rigidly, or prosecution provides immunity also to people for whom they previously learned that they have committed certain types of offenses, in order to provide evidence against the other perpetrators or detecting and proving other offenses. Namely with the lack of high-quality legal mechanisms, public prosecutors are trying to find modalities to imprecise or unclear legal requirements and use some experience from other comparative criminal procedure systems and create a certain quasi mechanisms. Thus, in certain cases the prosecutors give immunity to the people who have been previously interrogated as a suspected of criminal offenses by the authorities, and even by the prosecutor. In practice of the prosecutions' conduct in the Republic of Srpska, the practice of issuing the decision on granting immunity to the witness and concluding the contract between the plaintiff and witnesses on granting immunity without having to obtain prior approval of the court is established. In the contract on granting immunity the prosecutor defines the obligations of witnesses determine the circumstances under which the decision on granting immunity might be withdrawn. In case that in the process of verifying information that the witness testified about it is established that the witness gave false testimony, the appointed will be prosecuted for perjury, and if not complied with the obligations under the contract prosecutor may revoke the decision on granting immunity and prosecute the witness based on the facts which they testified about.

While researching this issue, the courts examined the increasing number of decisions of the courts in B&H concerning the granting of immunity to the witness and the conclusion

17 Law on Protection and Treatment of Children and Juveniles in the Criminal Procedure, Official Gazette of the Republic of Srpska, No. 13/10, 61/13, 108/13

of agreements granting immunity between the public prosecutor and witnesses, suspects and accused, and in the sequel I will briefly present and display two specific cases. In order to understand them, it is necessary to fully discuss and understand the problem of ambiguous and imprecise legal provisions regarding the application of the principles of legality and the opportunity concerning the granting of immunity from prosecution in the criminal process systems in B&H.

On the day 10/25/2016, deciding on the appeal of the defense counsel of accused D.K. in the criminal case against the named because of the crime, the Supreme Court of the Republic of Srpska brought decision on consideration of the appeal, quashed the judgment of the District Court in Doboj, and returned the case to the mentioned court for retrial[18].

The appeal against the judgment stated that the first instance verdict was based, among other things, on the testimony of witness R.K. with whom the chief district prosecutor in Doboj on the day of Sep 13, 2012 concluded the immunity agreement which gives them immunity from prosecution in return for the suspect R.K. agrees to testify in the criminal case against accomplices in the crime of robbery D.K. and P.J., although before that, on two occasions on Aug 22, 2012 and Aug 23, 2012, R.K. was questioned as a suspect, and the named as a suspect was included in an order of implementing investigation by the District Prosecutor's Office in Doboj on Aug 23, 2012. Once concluded immunity agreement between the Chief Prosecutor and R.K., on the day of Sep 13, 2012, the named was heard as a witness and the record of the hearing of named designated as a witness was used in the criminal proceedings against the accused D.K.

Considering the previous allegations in the complaint, the Supreme Court Council of the Republic of Srpska embarked on the merits and the question arose whether the record of the examination of witness R.K. from Sep 13, 2012 was acquired in a lawful manner, considering that in this case the suspect, against whom an investigation has already been initiated, was given immunity from prosecution and he was then questioned as a witness to the evidence used for the establishment of conviction. Considering the previous question, the Supreme Court Council stated that the prosecutor has the authority to give a person immunity from prosecution, and therefore to apply the principle of opportunity of criminal prosecution which deviates from the principle of legality as the rule, and that the authorization to the prosecutor results from Article 43, paragraph 2, item v) of the RS Law on Criminal Procedure, where it was stated that the right of the prosecutor to give immunity is in accordance with Article149 of the RS LCP. The Council further notes that with Article 149 of LCP RS granting immunity by prosecutors is strictly limited to cases defined by law and that the plaintiff is entitled to give immunity by his decision to the witness who has the right to refuse to answer questions that might lead to his prosecution, and that the plaintiff is not entitled to give immunity from prosecution to a person who has the status of a suspect or defendant in criminal proceedings. The Supreme Court Council found that giving immunity to a suspect acted contrary to the provisions of Article 149, paragraph 3, in relation to Article 43, paragraph 2, item c) of the LCP of RS, which is why the suspect could not have been heard as witness, so that the record on hearing the named in the criminal proceedings is unlawful evidence on which the judgment cannot be based.

The Grand Chamber of the Constitutional Court of Bosnia and Herzegovina at its session on May 14, 2015[19], adopted an appeal of D.M., found that there was a violation of Article II/3e) of the Constitution of Bosnia and Herzegovina and Article 6, item 1 of the European

18 For details, see decision of the Supreme Court of the Republic of Srpska, number K002132 13 0 16 Criminal Code of 10/25/2012;

19 For details, see the decision of the B&H Constitutional Court on the admissibility and merits in case No. AP 1185/11, published in the Official Gazette No. 46/15;

Convention for the Protection of Human Rights and Fundamental Freedoms, quashed the judgment of the Court of Bosnia and Herzegovina number XK-06/193 from Jan 26, 2011 and returned the case for retrial to the Court of B&H. The appellant D.M. stated in the appeal that by the order of B&H Prosecutor's Office to conduct an investigation from Mar 18, 2008, he, along with six other persons, among whom is DZ.M., was suspected of having committed criminal offenses of organized crime in connection with other crimes. The B&H Prosecutor's Office concluded the immunity agreement with DZ.M. on May 15, 2018, and the agreement, among other things stated that the suspect DZ.M., if he signed the agreement, he would be obliged to tell the whole truth about everything he was asked. On the same day, May 15, 2008, the B&H Prosecutor's order suspended the investigation against DZ.M. After giving an order to suspend the investigation, the Prosecutor's Office heard DZ.M. as a witness. Based on witness's, DZ.M., statements, the B&H Trial Chamber held that D.M. together with four other persons committed the criminal offenses they are charged upon. Deciding on the allegations from the appeal that the appellant's right to a fair trial was denied by the use of illegal obtaining witness statements of DZ.M., who testified after being granted immunity from prosecution in exchange for testimony, the Grand Chamber analyzed in the process of deciding the quality of the evidence, including whether the circumstances under which the evidence was obtained cast doubt on their credibility. Also, it was stated that regarding the question whether in this case should depart from the principle of legality, according to which the prosecution has an obligation to prosecute offenders, the Constitutional Court notes that one of the ways used by the modern states for successful fight against the perpetrators of serious criminal acts is to create the legal mechanisms which allow the prosecution under certain conditions to depart from the principle of legality prosecution. The Constitutional Court found that the circumstances under which it acquired the disputed evidence (witness testimony DZ.M.) cause reasonable doubt as to its credibility.

In the first case, the Supreme Court of the Republic of Srpska brought a decision which clearly and unequivocally concludes that the establishment of the verdict on the testimony of witness, whom the Prosecutor granted immunity from prosecution in order to testify, and a person who was earlier in the investigation suspected of having committed a crime, was a substantial violation of the criminal proceedings, and that such evidence is illegal. It indicates from this decision of the Supreme Court that in the present case, the prosecutor wrongly departed from the mandatory application of the principle of legality of criminal prosecution as the rule and contrary to the provisions of the Law on Criminal Procedure they applied the principle of opportunity of criminal prosecution as an exception. In the specific case the principle of opportunity of criminal prosecution could be possibly applied for reasons of expediency in the interests of protecting the community from the most serious forms of crime.

In the second case, the Grand Chamber of the Constitutional Court did not further get into assessing the legality and regularity of the procedure of prosecutor, who gave immunity from prosecution to a person who has previously had the status of a suspect in the same case, in exchange for a promise to testify against other suspects in the case, then issued an order terminating the investigation against him, after which he was heard as a witness. The Grand Chamber of the Constitutional Court quashed and remitted verdict of the B&H Court, which was based on the testimony of the foregoing witness, stating that the evidence of a witness who was granted immunity from prosecution was not corroborated by other evidence, and circumstances of the case cause reasonable doubt to its credibility and accuracy. In the decision the Constitutional Court noted that one of the ways used by the modern states for successful fight against the perpetrators of serious crimes is a creation of legal mechanisms that allow prosecution to deviate from the principle of legality of criminal prosecution under certain conditions. Previously mentioned observation points to the need to establish new mechanisms in the B&H Criminal Procedural Law for the fight against organized and serious crime.

I think that in both cases, acting prosecutors, due to the lack of quality mechanisms in criminal procedural systems in B&H (such as entering into a plea agreement with a clause on defendant's cooperation) and inability to otherwise provide quality personal and material evidence, tried to serve the so-called 'criminal cunning' 'and emulating the practice of conduct of the prosecution in the neighboring countries and other countries to deviate from the principle of legality and application of the prosecution's principle of opportunity justified for reasons of the higher national interest - proving the most serious crimes that cause significant distress to the public.

In the criminal process system in B&H, in any currently applicable law on criminal procedure, even in the earlier laws on criminal proceedings, the possibility of giving full or partial immunity from prosecution of the suspect and the defendant in exchange for cooperation with criminal prosecution in order to solve criminal offenses and detecting and sanctioning the perpetrators thereof is not provided for.

## CONCLUSION

The principle of legality is one of the basic principles of criminal procedure law, and is also one of the basic principles stipulated in all laws on criminal procedure in Bosnia and Herzegovina. The principle of legality, along with the accusatory principle, is the purpose of existence and activities of the public prosecutor and obliges him by the knowledge that there is evidence or reasonable indications of the commission of a crime, to prosecute. The term prosecution is a broader concept than criminal proceedings. There are different views of scientists and experts of what is considered the beginning of the criminal proceedings, whether it is a moment of confirmation of the indictment by the competent court or the moment of order on conducting the investigation by the public prosecutor. Criminal prosecution is a broader concept than criminal proceedings and includes criminal procedure, but also all the actions undertaken by the public prosecutor and authorized officials from the moment of learning about a crime or information that is preparing to commit a criminal offense, in order to solve that crime, documenting and proving the same. In accordance with the foregoing, the principle of legality of criminal prosecution obliges the prosecutor to prosecute all persons for whom there are sufficient indications that they participated in the crime. In criminal procedures, which are currently in force in B&H, the way the prosecution begins and how to start prosecution is not precisely defined, although the term 'criminal prosecution' is often used in criminal procedure. The principle of opportunity of criminal prosecution is an exception to the principle of legality of criminal prosecution and gives the possibility to the public prosecutor for reasons of expediency not to prosecute, not to initiate criminal proceedings or submit the completion of criminal proceedings in a certain way. In order for the public prosecutor to deviate from the principle of legality of criminal prosecution and apply the principle of opportunity of criminal prosecution of previously mentioned reasons, the law on criminal procedure must provide for certain mechanisms for the implementation of the principle of opportunity. The Laws on Criminal Procedure in B&H prescribe only one form of possible application of the principle of opportunity against a person who could give specific information on criminal offenses and persons who participated in the commission, and only through the authority of the public prosecutor for their immunity from prosecution to witness who does not want to answer certain questions on the ground that a truthful answer to these questions might expose him to the prosecution. The Law on Criminal Procedure of the Republic of Srpska in Article 149, provides for that a witness who answers the underlying questions after getting the immunity will not be subject to criminal prosecution unless giving a false statement. The Laws on Criminal Procedure in B&H, even in the provisions which define the

conclusion of an agreement between the suspect/accused with the public prosecutor on plea for a criminal offense, do not predict accurately the ability of the public prosecutor to give that person a partial or full immunity from prosecution in exchange for cooperation with the prosecution in order to detect and prove criminal offenses and their perpetrators. With the conducted research and analyzing a certain number of criminal proceedings, and the decision of the higher courts by regular and extraordinary legal remedies, it has been observed that in Bosnia and Herzegovina, public prosecutors most likely due to the lack of good mechanisms in criminal procedure for the application of the principle of opportunity to offenders who would be cooperative and able to cooperate with the prosecution and help clarifying criminal acts and the perpetrators thereof proving liability, the so-called resort ''criminal cunning" and at the end the illegal use of the authority granting immunity from prosecution, which ultimately leads to the suspension of criminal proceedings, annulling and abolishing Court's decisions, which based on thus obtained evidence make judgment which find certain persons guilty of criminal offenses. In my opinion it is necessary to consider good comparative legal solutions from surrounding countries and other countries which introduce new mechanisms to fight against severe and serious forms of crime, such as organized crime and terrorism, and those solutions are based on the application of the principle of opportunity of criminal prosecution against persons who expressed willingness to collaborate and cooperate with the prosecution. Here I note only as good examples the provisions of the Criminal Procedure Code of the Republic of Serbia which stipulate the agreement on the testimony of the defendant (Article 320 to 326 of the Criminal Procedure Code of the Republic of Serbia). The principle of opportunity of criminal prosecution provides quality possibility to build and introduce new mechanisms for fighting against crime, provided that these mechanisms are clearly and precisely stipulated by law and also high-quality forms of judicial control are designed over the implementation of these mechanisms.

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# CRIMINAL OFFENSE OF EXTORTION - MODELS OF GOOD REGULATION IN LEGISLATIONS OF SOME EUROPEAN COUNTRIES

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**Abstract:** The crime of extortion is the old, classic criminal offense, and it can be said of a specific criminal offense, bearing in mind that the force and the threat of such forms of coercion emerge as ways of execution of this work aimed at obtaining illegal profit. Hence extortion considered violent property crime. All of this forms part of the punishment of imprisonment in different ranges, while using a general institute of the fine, the penalty may be imposed as an accessory for offenses motivated by greed, when not prescribed by law or is an alternative to imprisonment for a term determined by the court handed down as a principal punishment. Bearing in mind that the purpose of perpetrating the criminal offense of extortion is obtaining illegal material benefit, this work is considered a criminal act out of greed, but a fine as an accessory in imposing possible. While respecting the general principles criminal law in determining the fine, the judge is entrusted with the subjective evaluation in terms of imposing a fine, and then in terms of sentencing. This raises the question "Is a fine should be imposed as an accessory punishment prescribed cumulatively with the punishment of imprisonment for the criminal act of extortion." Some comparative legislation, such as the legislation of Italy and France have introduced this solution, and their reaction to this crime consists in a very rigorous punishment as a special case in the Criminal Code of France. Legislation Germanic countries, of which we have always taking the decision which proved to be as good as the more severe form of the offense prescribed by extortion and suicide, or suicide passive entity which is criminalized in the Penal Code of Austria, which represents interesting and the only solution in the European legislation. The authors analyze these solutions and domestic, and indicate the way in which these cases could our country to serve as a model for future modifications of some conceptual elements of the offense to "de lege ferenda" sense, considering that in the Serbian Criminal Code is one of the modern criminal laws the crime of extortion criminalizes adequately.

**Keywords:** extortion, Criminal Code, legislation, European legislation.

## INTRODUCTION

The Criminal Code of the Republic of Serbia by no means has a bad legal text, which is why it is considered as one of the modern criminal legislations, and with regard to this, the criminalization of offenses related to basic and qualified forms of extortion is fully adequate. For the purpose of modeling the criminal law norms relating to extortion, it is necessary to analyze the legislation of other European countries by employing a comparative approach, and adopting the models which could serve our legislation as role models, which would contribute to the future updates concerning this act.

The example of a comparative analysis of the criminal offense of extortion, in relation to the national solution, which also represents a model of good regulations in this paper, was taken from the Criminal Codes of Austria, France and Italy, for two reasons. The first is that the solutions of legislations from Germanic countries have always proved to be good, so we always opted for them in the past. The analyzed legislation of Austria was taken for this reason, and for its specific solution, while France and Italy are known for their rigorous penalties for all criminal acts, extortion included, and were, therefore, selected for analysis due to their specific and very rigorous punishments.

The question that arises in our legislation is whether a fine should be imposed cumulatively as prescribed punishment for extortion, in addition to the main prison sentence, bearing in mind that it is a property-related offense with the intention of obtaining unlawful material gain by committing this act. The Criminal Code of the Republic of Serbia regulates this instance in the general part of criminal law, referring to the general provisions on fines, and the provisions on the confiscation of material gain.

However, this seemingly simple solution, which is also accurate, indicates the possibility of modifying the legal norms that would fully regulate the punishment for extortion by the introduction of fines, and the punishment for extortion, applied in the legislation of Italy and France, shall serve as a model for this, as well as by adopting some of the provisions in terms of qualified offense forms stipulated in the Criminal Code of Austria. These norms will be analyzed hereafter, the provisions that the legislator should focus on will be strictly emphasized, and the reasons will be justified for the introduction of new standards with the incrimination of the crime of extortion which would be inevitable, adequate and important in the "de lege ferenda" terms.

## CRIME OF EXTORTION IN THE LEGISLATION OF THE REPUBLIC OF SERBIA

In the criminal law of the Republic of Serbia, extortion is regulated by the provisions of the Criminal Code[1] in the systematization of crimes against property stipulated in Article 214. The act has one basic and four severe (qualified) forms. The basic form of extortion consists of the coercion of another person by force or threat to do or not do something at the expense of their own or other people's property with the intention of securing unlawful material benefit for oneself or another person.[2]

The act of committing this crime involves the coercion of a passive entity to do or not do something at the expense of their property or someone else's property. Coercion (com-

1 „Službeni glasnik RS", No 85/05, 88/2005, 107/2005, 72/2009, 111/2009, 121/12, 104/13, 108/14 i 94/16.
2 V. Đurđić; D. Jovašević, Krivično pravo, posebni deo, Beograd, p. 112.

pulsion) is executed in two ways: by force or threat, which are marked alternatively in the incrimination, but this does not exclude the possibility of the perpetrator using both force and threat cumulatively.

According to its characteristics, extortion is a specific criminal offense because coercion here appears only as a means for achieving the primary objective of extortion, and this is obtaining illegal material gain[3]. Considering the fact that the aim of extortion is obtaining illegal material gain, this is the reason that this criminal offense is classified as a crime against property, not against the freedom and rights of citizens, although the use of force violates the rights and freedoms of citizens, which is not the main goal of the offender. Instead, the mentioned only uses it to achieve his primary objective, which is gaining illegal material gain[4].

The perpetrator of the offense can be any person, and culpability requires direct premeditation which is qualified by direct intent (obtaining unlawful material gain for oneself or another person). If force or threat is used without any such intention, the act will not be classified as extortion but another criminal offense, primarily coercion. This offense is punishable by imprisonment of one to eight years.

In addition to the basic form, the criminal offense of extortion has four severe forms. The first and second severe forms of extortion are qualified by the amount of the acquired material gain. If the illegal amount of the material gain acquired through extortion exceeds four hundred and fifty thousand dinars, the perpetrator shall be punished by imprisonment of two to ten years (paragraph 2), and if the basic form of the crime secures material gain in excess of the amount of one million five hundred thousand dinars, the perpetrator shall be punished with imprisonment from three to twelve years (paragraph 3).

In addition to these severe forms which are qualified by material gain, there are two other severe forms of the crime of extortion. The third severe form exists in one of two alternative prescribed cases: 1) if the perpetrator engages in the commission of the above-mentioned basic or severe forms of extortion (including a continuous execution of this offense, i.e. in the form of a trade). The qualifying circumstance of this form is in the "dealing", and for this concept, it is not sufficient to have extortion committed once, even in those situations in which it can unambiguously be established that there is an intention of repeating the act[5], or 2) if the act is committed by a group. This is a group that represents the qualifying circumstance of an offense, and pursuant to Article 112, paragraph 22, of the Criminal Code, it exists when there are at least three persons who are associated for the purpose of permanent or temporary commission of criminal offenses, who do not need to have defined roles for its members, continuity of membership or a developed structure. This offense is punishable by imprisonment of five to fifteen years.

The fourth, most severe form of the crime exists if the extortion (basic or severe forms which are qualified by the amount of material gain) is committed by an organized criminal group. Pursuant to Article 112, paragraph 35, of the Criminal Code, an organized criminal group is a group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more criminal offenses which entail a punishment of imprisonment of four years or more, for the purpose of achieving direct or indirect financial or other benefits. It should be noted that an identical definition of an organized criminal group is given in the current Criminal Procedure Code in Art. 2, p. 1, p. 33, by which the Criminal Code and the Criminal Procedure Code are fully harmonized, which is very significant from the aspect of the legal security of citizens on the one hand, as well as the uniform treatment of

3 LJ. Lazarević, Komentar krivičnog zakonika, Beograd, 2011, p. 714.
4 M. Škulić, Organizovani kriminalitet: pojam, pojavni oblici, krivična dela i krivični postupak, Beograd, 2015, p. 263-267.
5 Z. Stojanović, Komentar Krivičnog zakonika, Beograd, 2007, p. 523.

the public authorities, on the other hand. This form of extortion represents one of the typical organized criminal activities which are colloquially referred to as a "scam" or "racketeering".[6] The criminal offense of extortion is often identified as racketeering, which cannot be fully accepted, since racketeering is one of the ways and modes of action and expression of organized crime[7]. This most severe form of extortion is punishable by imprisonment of at least five years, which means that a specific minimum punishment has been determined, though the legislator has not prescribed a specific maximum punishment, but there is a maximum penalty equal to the overall maximum prison sentence of twenty years.

This last and most serious form of extortion was introduced in the incrimination of criminal legislation with the most comprehensive update of the Criminal Code in 2009, and it is the only one that represents a form of organized crime[8], while the previous forms, which represent the basic form and the previously qualified forms of the crime belong to classic forms of crime.

For all the mentioned forms of the criminal offense of extortion, the legislator prescribes punishment consisting exclusively of a prison sentence as an independent punishment. However, respecting the general norms of criminal law on fines, pursuant to Article 48 of the Criminal Code, the mentioned gives the judge the possibility of imposing a fine for the offenses committed out of greed, which includes the crime of extortion. In the sense of this article, for criminal offenses motivated by greed, a fine may be imposed as an accessory penalty, even if it is not prescribed by law or when the law stipulates that the perpetrator shall be punished by imprisonment or a fine, and the court imposes imprisonment as the principal punishment. This solution has not proven to be frequent in practice, and this sentence is imposed very rarely, while the legislator gives the judge the option of free assessment of whether this general institute regarding the fine shall be applied or not. The objection to this solution is that it undermines the principle of legality in sentencing, because the imposed penalty is one which is not prescribed for the committed offense, and the justification for this is that legislators cannot anticipate in advance which act can be committed out of greed to prescribe an alternative or independent prison sentence[9].

In addition to this possibility, the legislator prescribes the conditions and manner of confiscating the material gain obtained through the criminal offense from the offender, and if confiscation is not possible, the perpetrator shall be obliged to provide other property in exchange, one that corresponds to the value of assets acquired through the commission of the crime or gained as a result of the crime, or pay a cash value equal to the obtained material property (Article 92 of the Criminal Code).

Furthermore, the legislator prescribes the possibility of referring the injured party to criminal proceedings in a lawsuit regarding property claims, which the mentioned may seek to be reimbursed from the confiscated assets provided that a lawsuit is filed within six months from the day the decision of being referred to the case enters into force (Article 93 of the Criminal Code).

More legal options stem from the foregoing related to fines against the perpetrator of this offense and others. One of the possibilities is simply imposing a fine pursuant to Art. 48 of the Criminal Code, whereas other possibilities involve making a property claim if the injured party is instructed to litigation, as well as confiscation, which is not a punishment of the of-

6 M. Škulić, op. cit., p. 263-267.
7 M. Bošković, Kriminalistika metodika, Beograd, 2005, p. 160-163.
8 Each form of the offense that is committed by an organized group represents a form of organized crime, so the Criminal Code prescribes a whole sequence of acts, which are qualified as aggravated by the execution of acts by an organized criminal group (for more details, see: Z. Stojanović; D. Kolarić, Krivičnopravno reagovanje na teške oblike kriminaliteta, Beograd, 2010).
9 Lazarević, op. cit., p. 239.

fender. The essence of these options is to restore what has been unlawfully taken away, not punishment. In this regard, it would be more appropriate to introduce a fine for this serious crime, prescribed cumulatively with the main prison sentence, which would realize the importance of special and general prevention of the perpetrators of these acts, bearing in mind their intentions of committing the crime for the purpose of illegally obtaining property.

## AN EXAMPLE OF A SPECIFIC SOLUTION FOR THE CRIME OF EXTORTION IN THE LEGISLATION OF AUSTRIA

*The Criminal Code of Austria*[10] provides for the criminal offense of extortion and heavy extortion in Articles 144 and 145. Pursuant to Article 144, extortion consists of the following: "If someone employs the use of force or serious threat to compel another person to do, not to do or tolerate something, thus causing damage to the mentioned or to someone else, the offense is committed with premeditation, or by an act of extortion, in order to achieve an unlawful material gain for oneself or a third person, and such a person shall be punished by imprisonment of six months to five years."[11] Punishing the basic form of extortion consists of an independent prison sentence, just as in the domestic legislation. The only difference is the somewhat lighter penalty when compared to the punishment prescribed by the Criminal Code of Serbia.

The Criminal Code of Austria foresees *heavy extortion* as a special criminal offense rather than a qualified form of an existing offense, and in this sense, "Whoever commits extortion 1) under the threat of death, with significant mutilation or considerable mutilation of another person, by kidnapping, arson, risky use of nuclear energy, ionized radiation or explosive, or with the disturbance of the existence of economic or social position, or 2) where by directing dangerous threats of violence or other form of threats against the victim or someone else, the mentioned is kept in the state of expressed agony over a longer time period, the perpetrators shall be imposed a prison sentence for a period of one to ten years" (Article 145, paragraph 1, of the Criminal Code of Austria).

Pursuant to the mentioned article, in the event of heavy extortion, the punishment will also be imposed on anyone who 1) commits extortion in the performance of official duties, or 2) commits this offence against the same person in continuity over a long time period (Article 145, paragraph 2, of the Criminal Code of Austria).

The perpetrator shall also be punished in the event that the criminal offence results in suicide or attempted suicide of the victim or anyone else to whom violence or dangerous threats were directed (Article 145, paragraph 3, of the Criminal Code of Austria). This severe form of extortion is specific and should be discussed in terms of incrimination under our legislation.

Namely, from the standpoint of forensic medicine[12], the term suicide refers to two elements, i.e. suicidal predisposition and the motive for suicide that drives this predisposition. Therefore, the motive is not considered a medical or legal reason for suicide, but something that is a trigger or initiator of the suicidal predisposition that a person carries within them,

10 Strafgesetzbuch, Manz, Taschenausgaben, 9., durchgesehene Auflage, Wien, 1989; Strafgesetzbuch, Gesamte Rechtsvorschrift für Strafgesetzbuch, Fassung vom 04.10.2016, Bundesgesetz vom 23. Jänner 1974, Änderung 154/15, taken from the website http://www.legislationline.org/documents/section/criminal-codes Criminal Code of the Republic of Austria (1974, amended 2015), German version, access 08.05.2017.

11 This type of punishment, in terms of the range of prison sentences for the offense of extortion, is prescribed in some legislation of the neighboring countries in the region and the region of our former republics, such as the legislation of Bosnia and Herzegovina, and that of Croatia.

12 P. Mihalović; LJ. Božić, Sudska medicina, Beograd, 2001, p. 33, 34.

which is either developed or acquired through a variety of reasons, including genetics, so the motive for suicide is used more as a jargon term and the human interest response is fully justified. In this regard, this interpretation is also not in favor of proving suicide and its relationship to the qualified form of extortion.

Despite the stated reason that would inevitably present difficulty in securing proof, the legislator is entirely right to prescribe this form as qualified for a number of reasons. Firstly, it is known that, in practice, cases of suicide often occurred as a result of extortion on the person. On the other hand, as a criminal offense, extortion bears one psychological specificity and its execution also involves a psychological impact on the victim, bearing in mind that the threat or violence over the victim is performed continuously until the offender appropriates immovable property of the injured party (house, flat etc.), or money (which the injured party gives, causing harm to their property). What is more, in this regard, various living circumstances of the victim, such as the situation in the family, current weather conditions and the like, can lead to a state of narrowed consciousness of the victim, an inability to find solutions, fear of the perpetrators to report the crime, and finally, to the victim's suicide.[13]

This solution that the legislator prescribed as a severe form of extortion is entirely appropriate and justified, so the other comparative legislations, including the legislation of our country, indicate the possibility of incrimination of this act in the criminal legal decisions, bearing in mind the fact that this act should belong to the category of psychological offences, in addition to the category which considers it as a violent offense and property acquisition offense.

Finding adequate incrimination for the suicide of the victim due to the committed extortion should be complemented with a precise solution that would not create a possible problem in proving this act, and by employing this norm, the legislator should include these cases, which unfortunately exist in practice, within the scope of criminal legislation of which we were reminded by the solution which is criminalized in the legislation of Austria. The adoption of other severe forms of the crime of extortion existing in the legislation of Austria should be carefully considered and analyzed. Some of the solutions are familiar to our legislation, as in the case of continuously committing the act and the threat of death that is not comprehensively mentioned, but force and threat aimed at the injured party can include this threat as well. Focus of the paper will still be directed towards the adoption of the analyzed solution, while others should be analyzed in the future in terms of whether it would be adequate or not to introduce them in the incrimination of extortion.

Although it is well known that the history of Serbian legislation mainly involved adopting legal texts from countries of the Germanic region, such as the laws of Germany and Austria, and that such legal texts proved to be extremely good, it would certainly not be wrong to adopt the previously analyzed solution and incorporate it into the incrimination of our legislation. In addition, a long time ago, in his Commentary on the Criminal Code, prof. M. Čubinski emphasized that it was not rare for the victims of the "chantage"[14] of the time to be brought to despair, which ended in suicide, and that in this regard, more attention should be paid to such cases.[15]

13 The following circumstances may be cited as examples of this case: the victim has to sell the house or apartment to pay the money to the perpetrator, the weather conditions are difficult (snow, cold, etc.) the people who live in the house are incapacitated, health compromised persons or children and minors, while at the same, victims are experiencing various forms of force, threats, coercion to do something to the detriment of their assets, which can lead to the sale of the house or apartment to give money to the perpetrator, gifts, or fictitious sale of this real-estate property to the perpetrator, which can easily cause the suicide of the victim.

14 Chantage is a term for blackmail and comes from the French word *chantage*.

15 M. Čubinski, Naučni i praktični komentar Krivičnog zakonika Kraljevine Jugoslavije, Beograd, 1930, p. 294.

# FINE AS AN ACCESSORY PENALTY IN THE PUNISHMENTS FOR EXTORTION IN THE LEGISLATIONS OF ITALY AND FRANCE, AND ITS INTRODUCTION INTO OUR LAW "DE LEGE FERENDA"

*The Criminal Code of Italy*[16] prescribes the crime of extortion in the second book, under chapter 13, Article 629. The incrimination of this offense is very similar to the incrimination of our legislation, with the only difference being the adequate punishment, which entails a cumulatively prescribed prison sentence and a fine for all forms of the offense.

With regard to this, the basic form of the crime of extortion constitutes the following: "Any person who uses violence or threats to compel another person to do or not do something, in order to obtain unlawful material gain for oneself or other people, to the damage of someone else, shall be punished by imprisonment for a period of five to ten years and a fine of between 1000 euro and 4000 euro."

Apart from the similarly specified commission of the act in the formal sense, and essentially exactly the same in relation to the definition in our legislation, punishment for this offense is stricter, bearing in mind that the prescribed minimum is 5 years, in contrast to our solution with 1 year in prison, and 10 years as a special maximum, while it is 8 years pursuant to our legislation. On the other hand, more adequate punishment involves a cumulative determination of a fine in addition to the prison sentence, so in that respect, in addition to the main sentence, which is rigorous and harsh in itself (compared to the penalty in our legislation, as well as in the legislation of other countries), extra severity in the punishment is achieved by a cumulative determination of a fine as an accessory penalty.

A qualified form of the offense is linked to the previous article of this Code, relating to robbery, in the last paragraph, indicating that, in the aggravating circumstances already mentioned in the last paragraph of the previous article (robbery), the legislator prescribes a prison sentence of 6 years to 12 years, and a fine of 5000 euro to 15000 euro (cumulatively specified).

More serious forms of robbery, which have a direct connection with more severe forms of extortion, are regulated in the last paragraph of Article 628, and these cases are the following:

- if the violence is committed with weapons or the threat that weapons will be used, or the person is falsely representing themselves, or more people are associated;
- if the violence puts someone in a state of inability to act;
- if violence or threats of violence will be conducted by a member of a group;
- if the offense has been committed in the places referred to in Article 624 or in places such as ones disrupting the public or private defense;
- if the offense is committed in public transport;
- if the offense is committed against a person who is involved in the act of using the services of banks, the post office or ATMs used to withdraw money;
- if the offense is committed against a person who is more than 65 years old.

In a very large text that refers to the criminal offenses of extortion, *the Criminal Code of France*[17] prescribes the criminal offense of extortion in Articles 312-1 to 312-9, in a separate section. Pursuant to Article 312-1, coercion is the act of unlawfully gaining assets, securities or any other form of property, as well as classified information, with the use or threat of vio-

16 Codice penale, Libro II, Dei delitti il particolare, pubblicato 2007, agiornato 2015.
17 Code Pénal France, Dalloz, La Tipografica Varese (LTV), Juillet 2012, Edition 2013, Paris.

lence in order to compel another person to do something or not do something, or give their approval for something, or give up something. Extortion shall be punished by imprisonment for a term of seven years and a fine of 100,000 euros.

The legislator prescribes more stringent punishment involving a prison sentence of ten years and a cumulatively prescribed fine of 150,000 euro for the comprehensively described actions:

1. if the act is preceded by violence, if it is accompanied by the mentioned or involves violence against another person as a consequence, which leads to a total disability of another person to work up to eight days;

2. where the damage done to a person who is particularly vulnerable if their age is taken into consideration, as well as disease, weakness, physical or mental disability or condition of pregnancy, which was obvious or known to the perpetrator;

3. if the offense is committed owing to the victim's actual or presumed belonging or not belonging to a particular ethnic group, nation, race, creed, or sexual orientation;

4. If the offense is committed by a person who intentionally conceals the whole or parts of their face so one would not be able to identify them, and

5. If the offense is committed in a school or educational institutions, at students' entrance or exit points or similar access points around such institutions.

In addition to the previously stated qualified forms, the legislator adds to them the committed acts whose qualifying circumstance makes them more severe and rigorous in terms of punishment and execution. In this regard, extortion shall be punished by imprisonment for a term of fifteen years and a cumulatively prescribed fine of 150,000 euros if the offense is preceded by violence, if it is accompanied by the mentioned or if it involves violence against another person as a consequence, which leads to total inability of another person to work for more than eight days.

The prison sentence of twenty years and a fine in the amount of EUR 150,000 shall be imposed for extortion which is preceded by violence, if it is accompanied by the mentioned or involves violence against another person as a consequence, which leads to the mutilation or permanent disability of another person.

Extortion shall be punished by imprisonment of thirty years and a fine of 150,000 euro if the offense is committed with the threat or use of weapons, or by a person who carries a weapon requiring a license or one whose possession is prohibited.

In the provisions of a separate article, the legislator defines extortion performed by an organized criminal group[18], and for this form of extortion, the legislator prescribes imprisonment of twenty years[19] and a fine of 150,000. If the offense is preceded by violence, if it is accompanied by the mentioned or involves violence against another person as a consequence,

18 As a special circumstance, the legislator states that anyone who has attempted to commit the crime of extortion as part of an organized criminal group will be exempt from punishment provided that, after warning the administrative or judicial authorities, the mentioned contributes to the prevention of the commission of the offense and is involved in the identification, where applicable, of other perpetrators or accomplices. In addition, imprisonment imposed on the perpetrator of extortion or accomplices who acted in the framework of an organized criminal group shall be halved provided that, after warning such administrative or judicial authorities, the mentioned contributed to the prevention or termination of the crime that resulted in loss of life or permanent disability, as well as helped in the identification of other perpetrators and accomplices, if any. In the case of life imprisonment, the penalty will be reduced to twenty years' imprisonment.

19 For organized forms of extortion, the domestic legislation gives the possibility of imposing a prison sentence of 20 years, bearing in mind that this is a general maximum punishment, but it does not prescribe additional fines, as provided for within the framework of this incrimination.

which leads to mutilation or permanent disability against another person, it shall be punishable by imprisonment for a term of thirty years and a fine of 150,000 euro. Life imprisonment is prescribed if the offense is committed at gunpoint or by a person who is carrying a weapon requiring a license or whose possession is prohibited.

The maximum penalty of life imprisonment and a fine of 150,000 euro shall be imposed for extortion which was preceded by violence, if it is accompanied by the mentioned or has resulted in the violence that leads to the death of the injured party, torture or inhuman and cruel conduct. The same penalties are prescribed for the attempt of this offense.

The Criminal Code of France is characterized by a very harsh punishment that goes to the other extreme and transcends the meaning of punishment, which consists of retribution and prevention, bearing in mind that such long prison sentences sometimes cannot achieve the goal of punishment because of their length, and they cannot achieve the purpose of education and re-education of the perpetrators of these offenses. In addition, the French legislation provides for life imprisonment and a fine for the most severe forms of extortion, i.e. if the injured party dies. Life imprisonment can somewhat be equalized with the most severe penalty in the legislation of the Republic of Serbia, which entails imprisonment of 40 years for the most serious crimes, which do not cover even the most serious form of extortion that can be punishable by imprisonment for a maximum of 20 years. It is not justified to introduce life imprisonment into our legislature since there is no mitigation on the one hand, and on the other hand, the perpetrators are given the opportunity to subsequently commit more crimes in prison, during the execution of the sentence, bearing in mind that they could not be given a stricter sentence, and this is the reason why it would not be adequate for this crime.

Bearing in mind the above mentioned solutions, there is an impression of two things. Firstly, as qualifying circumstance, the legislation of both Italy and France cites a certain state, affiliation or status of the victim, citing as qualifying circumstances of the case the role of victims who are persons older than 65, the fact that the offense was committed against a person who is involved in the act of using the services banks, the post office or ATMs used to withdraw money, then the victims' belonging or not belonging to a particular ethnic group, nation, race, creed, or sexual orientation, and the case that the act is aimed at a person who is particularly vulnerable, taking into account their age, illness, weakness, physical or mental disability or state of pregnancy, which was obvious or known to the perpetrator, and that the act was carried out in schools and educations institutions, students' entrance or exit points or similar access points around such institutions, etc., while our legislation prescribes qualifying circumstances in relation to the amount of the acquired material gain, as well as cases of extortion committed by a group, organized group or in continuity, indicating that nearly all the qualified forms are related to the perpetrators and the circumstances of their actions, while the qualifying circumstances related to the victim are almost not prescribed. In this regard, some qualified forms should be adopted in the criminalization of extortion in our legislation. Secondly, in punishing extortion, both legislations prescribe both a prison sentence and fine as cumulatively prescribed. However, the Criminal Code of Italy prescribes more realistic punishment, while the legislation of France prescribes enormously high punishments both in terms of a single prison sentence, or its duration, and in terms of high fines.

When it comes to effectively combating this serious crime, in its criminalization within the criminal legislation, the Republic of Serbia should incorporate a model that would be similar to the punishment model of the Italian legislation, and if it a part of the punishment from the French legislation is adopted, then some middle ground between these two models of punishment should be found, which would be reduced to the definition of mandatory cumulative prison sentences and fines. In addition, our legislation should adopt some qualified forms related to the status of the injured party, which is present in the two legislations, keep-

ing in mind that they are indeed more difficult circumstances, especially if the injured parties are minors, the elderly, pregnant women and others. In domestic legislation, these cases are regulated through aggravating circumstances that the court would take into account when sentencing the defendant, but some possible adoption of the qualifying circumstances from these Criminal Codes should definitely be considered.

## CONCLUSION

By analyzing comparative legislation solutions, something needs to be adopted from all of them in order to improve the criminal legal form of extortion and conceptual elements in terms of improving the legal nomenclature of this serious crime. In this paper, three European legislations served as models of good legislation for extortion, such as the Criminal Codes of Austria, Italy and France. Their solutions are specific and should not be adopted entirely in terms of the full standards and definitions of extortion from their criminal legal norms, but simply in terms of what would be adequate for our legislation and modify it, bearing in mind that the legal text of our Criminal Code is by no means bad.

In this respect, when it comes to the crime of extortion, the qualifying circumstance relating to suicide, or suicide of the victim due to the committed extortion against the mentioned should be adopted from the legislation of Austria. With adequate legal norms and a more precise solution that would not present difficulties in proving the suicide of extortion victims, as a qualified form of the act, this solution would be fully justified and adequate, bearing in mind that, in practice, there are often cases of suicide victims, as well as the circumstance that the crime of extortion carries in itself, and this entails a certain psychological disposition, in addition to its framework concerning securing property and using violence.

In addition to these legal nomenclatures, the modification of the offense of extortion should constitute a different form of punishment, and this is where the legislation models of Italy and France, analyzed in this paper, would be able to help us. On the one hand, their extremes in terms of very severe punishments would not serve an adequate purpose that the penalty should achieve. On the other hand, the perpetrator is not provided with the possibility of rehabilitation. Therefore, in terms of prison sentences, the solution of the national legislation should be kept, but in order to realize a fuller punishment, a fine should be introduced, prescribed cumulatively alongside imprisonment. The fine would act on the awareness of the perpetrator, bearing in mind that their objective for committing the crime is to obtain illegal material gain, and if this acquired benefit was revoked, the purpose of punishment would not be achieved, but the reaction to this serious crime should consist in the current prison sentence and a fine, which would be assisted by the mentioned models of punishment for extortion, while adapting to the norms of our legislation. In addition to limiting freedom of movement, a fine would also have the purpose of hitting the defendant where his intentions lie for committing this crime, i.e. getting rich or increasing property in an illegal manner. In addition to the fine, some qualified forms of extortion, which would improve our legal norms that govern this offense, should also be adopted from the legislation of Italy and France.

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# FEMALE GENITAL MUTILATION IN THE NEW CRIMINAL CODE OF THE REPUBLIC OF SERBIA - THE IMPACT OF THE ACCEPTED DECREE ON IMPLEMENTATION

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**Abstract:** According to the Law on Amendments and Modifications to the Criminal Code, coming into force on the 1st of July 2017, criminal legislation of Serbia, among other things, includes the protection of women from all forms of violence. This obligation derives from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the so-called Istanbul Convention, which was ratified by the Republic of Serbia in 2013. In order to adjust to Istanbul Convention, the legislators have included new criminal acts: mutilation of female genitals, stalking, sexual harassment and completion of forced marriage.

The attention of the author was specifically drawn to the newly inserted criminal act of female genital mutilation, which is not only a novelty in legislation, but also a completely new term in scientific, vocational and social circles. Considering the fact that the subject is widely spread in international circles, and that in Serbia almost nothing is known about it, there is a need to make the public acquainted with the basic characteristics of female genital mutilation, which will contribute to the understanding of necessity to incriminate this behaviour and to the understanding of the problem. In addition to this, the author will point out the criminal law provisions of certain states in this area with the ultimate purpose of stressing the lack of formulation accepted in the Republic of Serbia and suggest the possible solutions which will be of great importance in practice when solving and proving this criminal act.

**Keywords:** female genital mutilation, violence against women, violence against girls, criminal code

## INTRODUCTION: WHAT WE SHOULD KNOW ABOUT FEMALE GENITAL MUTILATION

Before we start dealing with the main subject of this work, i.e. female genital mutilation in the national criminal law, it is necessary to provide answers to questions related to the main characteristics of this phenomenon. The answer to the question what is meant by female genital mutilation (FGM) will contribute to the better understanding of this inhuman practice, while knowledge about its incidence contributes to the understanding of the necessity for its incrimination in the Republic of Serbia. More attention will be paid to the frequency of FGM in Europe, considering the fact that Serbia belongs to Europe not only geographically, but it is also on its way of European integration.

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Female genital mutilation comprises all procedures involving partial or total removal of the external female genitalia or the injury to the female genital organs whether for cultural or other non-therapeutic reasons.[2] Different forms of genital mutilation, taking into consideration the intensity of the procedure as well as the part of the genitals to which it is applied, are divided into following groups:

- The first and the most innocent form is *clitoridectomy* - partial or total removal of the clitoris and/or the perpuce;
- The second is known as the *excision* - partial or total removal of the clitoris and labia minora, with or without excision of the labia maiora;
- The third one and also the most extreme is *infibulation* - narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia maiora with or without excision of the clitoris;
- The fourth one involves all other harmful procedures to the female genitals for non-medical purposes, such as pricking, piercing, incising, scraping.[3]

The most commonly applied form of FGM is partial or total removal of the clitoris and labia minora, which covers about 80% of FGM, while the brutal act of infibulation covers around 15% of all cases of FGM.[4] Although females can be subdued to FGM at any stage of their lives, it is most commonly done from their birth until the age of 15[5], which means that mostly girls are the victims of this inhuman practice.

FGM is mostly performed by traditional practitioners who were not previously educated in the area of medicine, and who use instruments such as knives, scissors, razors or glass [6] for the performance of this 'operation' , instead of real surgical instruments. Insanitary environment, the absence of anaesthesia, the age and the form of FGM to which a female is subdued are the factors which influence the severity of consequences. The cosequences may be short-term, which are manifested right after the performed FGM, and long-term. The most common short-term consequences include pain, shock, bleeding, infection and incontinence. Urinal and menstrual problems, infections, cysts, labor complications and infertility are some of the long-term consequences of FGM.[7] Any of these consequences can lead to death, so according to the estimates around 10% of all victims of FGM die from short-term consequences such as bleeding, shock and infection, while 25 % die from long-term ones such as urinal and vaginal infections and labor complications like severe bleeding and dystocia.[8]

Practice of genital mutilation, although it has no medical advantages, but numerous consequences which can lead to death, is a part of the tradition of communities which have ac-

2 World Health Organization (1997). *Female genital mutilation: A Joint WHO/UNICEF/UNFPA Statement*. Geneva: World Health Organization, p. 3.
3 World Health Organization (2008). *Eliminating female genital mutilation: An interagency statement OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO*. Geneva: World Health Organization, p. 4.
4 World Health Organization (1997), op. cit., p. 5
5 World Health Organization (2008). op.cit., p. 4.
6 Bogale, D., Markos, D., Kaso, M. (2014). Prevalence of female genital mutilation and its effect on woman's health in Bale Zone, Ethiopia: a cross-sectional study. *BMC Public Health*. 14. Available at: http://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-14-1076, ( 28.01.2017.)
7 See: Bogale, D., Markos, D., Kaso, M., op. cit.; Dirie, A.M., Landmark, G. (1992). The risk of medical complications after female circumcision. *East African Medical Journal*. 69. pp. 479-482. Available at: http://www.cirp.org/pages/female/dirie1/, (10.2.2017.); Toubia, N. (1994). Female circumcision as a public health issue. *The New England Journal of Medicine*. 331. pp. 713-716. Available at: http://www.nejm.org/doi/pdf/10.1056/NEJM1994091533111, (10.2.2017.); Verzin, A.J. (1975). Sequale of female circumcision. *Tropical Doctor.* 5. pp. 163-169. Available at: http://journals.sagepub.com/doi/pdf/10.1177/004947557500500409,( 3.2.2017.)
8 Momoh, C. (2005). Female Genital Mutilation In: C. Momoh (Ed.) *Female Genital Mutilation*. Oxford: Radcliffe Publishing. pp. 5-12.

cepted it. In these communities, it is believed that FGM is recommended by religion because it provides spiritual enlightenment. In addition to this, FGM is understood as the act of initiation into the world of adults and a guarantee that females will not be stigmatized. One of the most common excuses for the subdual to FGM are marriage, preservation of innocence till marriage, family honor, as well as the belief that a husband will have more pleasure in sexual interaction if his wife is mutilated. [9]

According to the estimates, there are at least 200 million girls and women in the world who were subdued to the genital mutilation[10], while there are 3 million females per year who are at risk of being victimized. [11]

Of all the females who were subdued to FGM, the majority live in Africa, according to the findings of the researches conducted on the representative national sample. FGM is almost universally practiced in Somalia, where 98% of girls and women are subdued to this practice[12], while in Guinea the rate is 96.9%.[13] An extremely high rate is noted in Djibouti 93.1%[14], while in Mali 91.4% of girls and women are subdued to FGM. [15] The rates of over 80% are perceived in Sudan (89.9%)[16], Sierra Leone (89.6%)[17], Eritrea (88.7%)[18] and Egypt (87.2%)[19]. More than 70% of girls and women are subdued to FGM in Burkina Faso (75.8%)[20], Gambia (74.9%)[21], Ethiopia (74.3%)[22] and Mauritania (71.3%)[23]. The rates from 30% to 60% have been observed in Liberia (58.2%), Central African Republic (43.4%)[24], Chad (38.4%)[25], Cote d'Ivo-

9 Bogale, D., Markos, D., Kaso, M., op. cit.
10 United Nations Children's Fund (2016). *Female Genital Mutilation/Cutting: A Global Concern*. New York: UNICEF. p. 1. Available at: http://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf, (20.2.2017.)
11 World Health Organization (2008). op. cit., p. 1.
12 *Northeast Zone Multiple Indicator Cluster Survey 2011 Final Report* (2014). Nairobi: UNICEF, Somalia, Ministry of Planning, International Cooperation, p. 104. Available at: https://mics-surveys-prod.s3.amazonaws.com/MICS4/Eastern%20and%20Southern%20Africa/Somalia%20%28Northeast%20Zone%29/2011/Final/Somalia%20%28Northeast%20Zone%29%202011%20MICS_English.pdf, (9.1.2017)
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14 *Enquéte Djiobutienne à Indicateurs Multiples Rapport Final* (2007). Ministère de la Santé, p. 94. Available at: https://mics-surveys-prod.s3.amazonaws.com/MICS3/Middle%20East%20and%20North%20Africa/Djibouti/2006/Final/Djibouti%202006%20MICS_French.pdf, (13.1. 2017).
15 Cellule de Planification et de Statistique (CPS/SSDSPF) et al. (2014). *Enquête Démographique et de Santé au Mali 2012-2013*. Rockville: CPS, INSTAT, INFO-STAT, ICF International, p. 296. Available at: http://www.dhsprogram.com/pubs/pdf/FR286/FR286.pdf, (12.1.2017).
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17 Statistics Sierra Leone (SSL), ICF International. (2014). *Sierra Leone Demographic and Health Survey 2013*. Freetown, Rockville: SSL, ICF International, p. 300. Available at: http://www.dhsprogram.com/pubs/pdf/FR297/FR297.pdf, (12.1.2017.)
18 Yolder, P.S., Wang, S., op.cit., p.17.
19 The Ministry of Health and Population [Egypt], El-Zanaty and Associates [Egypt], ICF International. (2015). *Egypt Health Issues Survey 2015*. Cairo, Rockville: Ministry of Health, Population and ICF International, p. 104. Available at: http://www.dhsprogram.com/pubs/pdf/FR313/FR313.pdf, (11.1.2017.)
20 Yolder, P.S., Wang, S., op. cit., p. 17.
21 The Gambia Bureau of Statistics (GBOS), ICF International. (2014). *The Gambia Demographic and Health Survey 2013*. Rockville: GBOS, ICF International. p. 222. Available at: http://www.dhsprogram.com/pubs/pdf/FR289/FR289.pdf, (12.1.2017.)
22 Yolder, P.S., Wang, S., op. cit., p. 17.
23 Ibid.
24 Ibid.
25 Institut National de la Statistique des Études Économiqes et Démographique (INSEED), Ministère

ire (38.2%)[26]. The rate over 20% is characteristic for Niger (24.8%)[27], Senegal (24.2%)[28], Kenya (21%)[29], Benin (12.9%)[30] and Tanzania (10%)[31]. The lowest number of victims of FGM, which does not exceed 6% was noticed in Ghana (5.4%)[32], Togo (4.7%)[33], Niger (2.2%), Cameroon and Uganda (1.4%)[34].

Migrations of African population conditioned the preservation of this tradition also in other parts of the world, in Asia, The USA, Australia and Europe.[35] According to the estimates of The European Parliament there are 500,000 females on the territory of the Europan Union who were subdued to FGM, and 180,000 girls and women are at risk of being victimized per year.[36] According to the estimates from 2011, there were 103,000 females who were victims of FGM in England and Wales, while 10,000 girls up to the age of 14 are at risk .[37] According to the 2011 records, there are 6,260 women in Belgium who were subdued to FGM, while 1,975 girls are at risk.[38] In France there are between 42,000 and 61,000 who took part in this ritual from the 2004' records [39], while in Netherlands number of victims is 29,120 according to the data from 2012[40]. Based on the records from 2011, there are 5,835 girls in Portugal who were born in countries where genital mutilation of females is accepted or their mothers were born

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26 Yolder, P.S., Wang, S., op. cit., p. 17.

27 National Population Commission (NPC), ICF International. (2014). *Nigeria Demographic and Health Survey 2013*. Abuja, Rockville: NPC, ICF International, p. 350. Available at: http://www.dhsprogram.com/pubs/pdf/FR293/FR293.pdf, (12.1.2017.)

28 Agence Nationale de la Statistique et de la Démographie (ANSD), ICF International. (2015). *Sénégal : Enquête Démographique et de Santé Continue (EDS-Continue 2012-14), Rapport Régional*. Rockville: ANSD, ICF International, p. 238. Available at: http://www.dhsprogram.com/pubs/pdf/FR315/FR315.pdf, (11.1.2017.)

29 Kenya National Bureau of Statistics et al. (2015). *Kenya Demographic and Health Survey 2014*. Rockville: ICF International, p. 333. Available at: http://www.dhsprogram.com/pubs/pdf/FR317/FR317.pdf, (6.1.2017.)

30 Yolder, P.S., Wang, S., op. cit., p. 17.

31 The Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC) et al. (2016). *Tanzania Demographic and Health Survey and Malaria Indicator Survey (TDHS-MIS) 2015-16*. Dar es Salaam, Rockville: MoHCDGEC, MoH, NBS, OCGS, ICF. p. 363. Available at: http://www.dhsprogram.com/pubs/pdf/FR321/FR321.pdf, (13.1.2017.)

32 Yolder, P.S., Wang, S., op. cit., p. 18.

33 Ministère de la Planification, du Développement et de l'Aménagement du Territoire (MPDAT), Ministère de la,Santé (MS), ICF International. (2015). *Enquête Démographique et de Santé au Togo 2013-2014*. Rockville: MPDAT, MS, ICF International, p. 274. Available at: http://www.dhsprogram.com/pubs/pdf/FR301/FR301.pdf, (11.1.2017.)

34 Yolder, P.S., Wang, S., op. cit., p. 18.

35 United Nations Children' s Fund., op. cit., p. 2.

36 European Parliament resolution on Combating female genital mutilation in the EU (2008/2071(INI)). Available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0161+0+DOC+XML+V0//EN. (21.2.2017)

37 Mackfarlane, A.J., Dorkenoo, E. (2014). *Female Genital Mutilation in England and Wales: Updated statstical estimates of the numbers of affected woman living in England and Wales and girls at risk Interim report on provisional estimates*. London: City University. p. 14-15. Available at: http://openaccess.city.ac.uk/3865/1/Female%20Genital%20Mutilation%20in%20England%20and%20Wales.pdf, pristupljeno (26.2.2017.)

38 Dubourg, D., et al. (2011). Estimating the number of woman with female genital mutilation in Belgium. *The European Journal of Contraception and Reproductive Health Care*. 16. p. 248.

39 Andro, A., Lesclingand, M. (2007). Female genital mutilation: The situation in Africa and France. *Population and Societes*. 438. p. 4. Available at: http://www.academia.edu/628745/Female_genital_mutilation_the_situation_in_Africa_and_in_France, (29.1.2017.)

40 Exterkate, M. (2013). *Female genital mutilation in the Netherlands Prevalence, incidence and determinants*. Utrecht: Pharos. p. 38 Available at: http://www.awepa.org/wp-content/uploads/2013/05/Female-Genital-Mutilation-in-the-Netherlands.pdf, (15.2.2017.)

in these countries, and 296 to 1,365 of them are at risk of being subdued to this act. There are 59,409 girls below 18 living in Sweden and out of them between 2,016 and 11,145 are at risk of FGM according to the data from 2011.[41] The girls have not yet been subdued to FGM but it is justifiably supposed that they could be victimized considering the fact that there is no certainty that migrant population will give up its tradition, therefore the girls are being sent to their native countries to be subdued to this act.[42]

## FGM IN CRIMINAL CODES OF EUROPE

Countries of the European Union are infrequently the final destination of migrants from Africa, so that the problem of FGM becomes the problem that most of the countries of this continent face. Since FGM is an inhuman custom which derogates the civil rights of girls and women, the EU has issued several resolutions aiming to contribute to suppression of this kind of violence against women on its territory, as well as at international level. These include the Resolution 1247 (2001) on female genital mutilation, Resolution on female genital mutilation (2001/2035(INI)) and Resolution on combating female genital mutilation in the EU which appeal to the member countries to provide the criminal code which would be effective in the prevention and repression of FGM practice.

The EU countries, as well as those which are on their way of European integration, apply different criminal law related to modalities of dealing with FGM. Some European countries treat FGM in their criminal codes as a specific criminal act. In Germany, those who mutilate external parts of female genitals are sentenced to one year of imprisonment minimum (art. 226a, para. 1)[43] and similar applies to Switzerland (art. 124, para. 1)[44], Belgium (art. 409, para. 1)[45] and Croatia (art. 116, para.1)[46]. A wider definition of genital mutilation is provided in the criminal code of Italy, in which it is clearly stated that genital mutilation involves excision, clitoridectomy, and infibulation as well as all other procedures which produce similar effects (art. 583bis, para. 1)[47]. The notion of FGM is similarly presented in criminal codes of Portugal (art. 144A, para 1)[48], Denmark (art. 245a, para. 1)[49] and Malta (art. 251E, para. 1 and 5)[50]. France, Austria and Spain have pretty vague solutions. Namely, in France it is canonic that

41 *Estimation of girls at risk of female genital mutilation in the European Union* (2015). Vilnius: European Institute for Gender Equality. p. 66, 76. Available at: http://eige.europa.eu/sites/default/files/documents/MH0215093ENN_Web.pdf, ( 4.2.2017.)

42 Pyati, A., et al. (2013). *Female Genital Mutilation in the United States-Protecting Girls and Woman in the U.S. from FGM and Vaccation Cutting.* New York: Snctuary for Families. p. 8 Available at: http://www.sanctuaryforfamilies.org/wp-content/uploads/sites/18/2015/07/FGM-Report-March-2013.pdf, (20.2.2017)

43 Criminal Code of the Federal Republic of Germany , available at: http://www.buzer.de/gesetz/6165/, (13.2.2017)

44 Criminal Code of the Swiss Confederation, available at: https://www.admin.ch/opc/en/classified-compilation/19370083/201701010000/311.0.pdf, (20.2.2017)

45 Criminal Code of the Kingdom of Belgium, available at: https://issuu.com/ethics360/docs/penal_code__belgium_, (20.2.2017)

46 Kazneni zakon Republike Hrvatske (Criminal Code of the Republic of Croatia), Narodne Novine, br. 125/11, 144/12, 56/15, 61/15

47 Criminal Code of the Republic of Italy, available at: http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale, (13.2.2017)

48 Criminal Code of Portugal, available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?ficha=101&artigo_id=&nid=109&pagina=2&tabela=leis&nversao=&so_miolo=, (20.2.2017)

49 Criminal Code of Denmark, available at: https://www.unodc.org/tldb/pdf/Denmark_Criminal_Code_2005.pdf, (18.2.2017)

50 Criminal Code of the Republic of Malta, available at: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25906&l=1, (20.2.2017)

every violence which results in mutilation and permanent disability is a punishable act (art. 222-9)[51], while in Spain "genital or any other form of mutilation is a punishable act (...)" (art. 149, para.2)[52]. In Austria,the consent of the victim, when it comes to bodily injuries, is irrelevant in cases of mutilation or injuring genitals (art. 90., para 3). Therefore, these countries have accepted gender-neutral solutions considering the fact that the object of victimization are not exclusively female genitals. Other countries issue specific acts related to FGM, as is the case with Sweden (Act on prohibiting the Genital Mutilation of Woman, 1982:316), Norway (Act No. 74. 15 December 1995 relating to the prohibition of female genital mutilation) and the United Kingdom (Fermale Genital Mutilation Act 2003). Prosecution for FGM can be based on the already existing incriminations which protect carnal integrity within the scope of bodily injuries, and some countries like Slovenia, Chech Republic, Slovakia, Hungary and other, have accepted this solution.

Due to the fact that the girls are being taken away to the countries of their origin for the purpose of performing FGM and the avoidance of criminal responsibility, there was a need for the processing of the act even in those cases when it is not punishable in the country in which it was performed. The principle of double incrimination has been removed from legislation of the countries which have proclaimed FGM as a specific criminal act, like Sweden, Switzerland, Denmark, the United Kingdom, Germany, Italy, Malta and Norway, as well as France and Austria which have specific statutes for mutilation. Besides, the consent of the victim is irrelevant in cases of this criminal act in the listed countries, but it excludes its absolute character in Spain, i.e. if FGM was performed on an adult, it does not exclude criminal responsibility, but is a ground for milder sentence.

## FGM IN THE CRIMINAL CODE OF REPUBLIC OF SERBIA

Even though there are still no reported cases of FGM in Serbia, obligation to incriminate this form of violence was brought about by ratification of Istanbul Convention. The ratification not only requires canonization of FGM as a specific criminal act, but also the obligation of punishing certain modes of behavior such as abetting and aiding, as well as punishing the attempt of performing this criminal act (art.41), and creation of legal means which would make punishment possible even in cases when FGM is not punishable in the country of its performance and that the processing in the Court of Law is not conditioned by the victim's report (art.44). Beside that, it is necessary to consider it as an aggravating circumstance in cases when a child is a victim of FGM (art.46., point d).

According to the Law on Amendments and Modifications to the Criminal Code[53] female genital mutilation is a specific criminal act in the part which protects life, physical and carnal integrity. Article 121a is named "Mutilation of female genitals", and prescribes the sentence of 1 to 8 years of imprisonment for a person who mutilates external parts of female genitals. The legislator stipulates a milder punishment in cases of extenuating circumstances, for which the sentence is from 3 months to 3 years of imprisonment. It is explicitly stipulated that anyone leading the victim into performance of the act or aiding in its performance will be sentenced

51 Criminal Code of the French Republic, available at: http://codes.droit.org/CodV3/penal.pdf, (1.3.2017)
52 Criminal Code of the Kingdom of Spain, available at: http://www.legislationline.org/documents/section/criminal-codes, (3.3.2017)
53 Article 8, "Sl. glasnik RS", br. 94/2016

to 3 months' to 3 years' imprisonment. More severe forms of this act which result in the victim's death, will entail the sentence of 2 to 12 years of imprisonment.

## THE COMMENT ON LEGAL SOLUTIONS REGARDING FGM

The legislator uses the phrase "the one who mutilates the external parts of female genitals"[54]. Mutilation is infliction of injuries whose consequences are permanent change on someone's body at the level of diminished functionality or putting into a state of disfunctionality, i.e. permanent destruction, which is mostly achieved by the acts of cutting and tearing . The essence of performing this act is in the action, which is suitable for genital mutilation. In cases of FGM, these actions are performed on external parts of female genitals, which may result in partial or complete cutting of clitoris, labia minora and labia maiora while the most extreme forms of this act involve sewing of the remaining skin after cutting some or all parts of the external genitals, which undoubtedly causes bodily injuries. Therefore, the term 'mutilation' is congruent with all the modalities of consequences associated with the criminal act of aggravated assault, or causing severe endangerment of one's health, putting life of the victim in danger, or destroying or severely damaging an important part of one's body or an organ[55],taking into consideration that this description matches the essence of mutilation. On the other hand, certain forms of FGM, such as excision, i.e. partial or complete removal of the perpuce which is an equivalent to circumcision, but which is very rarely practised, may result in substantially minor consequences. In these cases we cannot talk about mutilation in its right form, due to the fact that these actions do not count as mutilation either in terminology or in anatomy. Therefore, it is questionable whether the statute applies to these forms. The answer to this question may be sought in the imposition of a more lenient punishment when FGM is performed in extenuating circumstances.[56] The Criminal Code of the Republic of Serbia includes the intensity of the threat or the inflicted injuries, the degree of guilt, previous life of the performer, the circumstances in which the act was performed, personal circumstances (article 54., para. 1.) as some of the circumstances which can be treated as extenuating or aggravating dependending on a particular case. Extenuating circumstances are related to the criminal act and the perpetrator and as such represent legally relevant facts which are determined in the criminal proceedings. In order for an extenuating circumstance to exist, it is necesarry that at least two conditions are fulfilled: the first one is that there are two or more extenuating circumstances, and the other is that the Court decides to impose a milder punishment on the perpetrator to satisfy the purpose of sentencing.[57] All the above stated indicates that in every particular case the extenuating circumstances are being defined, but the punishment depends on the Court estimate (art. 56., para. 3). Alleviation of the punishment is optional for pronouncing sentences milder than the legally prescribed minimum i.e. a fine instead of imprisonment (art. 56., para. 1). This ground is mostly applied in the Court practice, even though it has no mandatory character. [58] Therefore, it is considered that there is no need to explicitly regulate it. If the intention of the legislator was to lay down regulations

54 Ibid., para. 1.
55 Krivični zakonik Republike Srbije (Criminal Code of the Republic of Serbia), "Sl. glasnik RS", br. 85/05, 88/05, 107/05, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, art. 121, para. 2
56 Zakon o izmenama i dopunama Krivičnog zakonika Republike Srbije (Law on Amendments and Modifications to the Criminal Code) op. cit., para. 2.
57 Jović, M. (2011). *Krivično pravo-opšti deo* (Criminal law-general part). Novi Pazar. Univerzitet u Novom Pazaru. p. 405.
58 Nikolić, D. (2004). Odmeravanje kazne (Determination of sentence) U: Slijepčević, D. (Ur.) *Bilten sudske prakse 3*. Beograd: "Sl. glasnik", p. 90

for milder sentencing in cases where FGM results in minor consequences which cannot be referred to as mutilation in the way stated by the law, they should be indicated in a way which clearly points that there was an endangerment of health of an intensity lower than the one in the original form of the criminal act. The legal solutions in Germany, where formulation "less serious cases" is used when imposing milder sentences (art. 226a, para. 2), or in Italy, where the legislator prescribed milder sentences in cases of hurting female genitals or diminishing sexual function (art. 583bis, para. 2) could be used as directives.

When defining a possible perpetrator of this criminal act, the term "whoever" is used, which suggest that anyone who commits an action considered to be a criminal act, will be punished. It seems that, upon defining this criminal act, certain operations performed on female genitals which may result in mutilation, but are done with the purpose of preventing or curing a disease, were not taken into account. Hypothetically, a surgeon may be performing a tumor operation on clitoris. During the procedure, not only the tumor, but the whole of clitoris is removed in order to preserve health of a woman. In this case, the surgeon has permanently destroyed a body part, which has legal consequences and also includes a sentence for a committed act. For the purpose of clarifying this form, legal solutions of some European countries may be used as a directive in the creation of the criminal code. The criminal codes of Portugal (article 144A, para. 1), Malta (article 251E, para. 1) and Italy (article 583bis, para. 1) use the term "non-medical reasons" as a clause in narrowing incriminations to cases which cannot be considered as performed for medical purpose. In addition to the listed countries, the criminal code of the United Kingdom in cases of FGM, punishment for licenced medical workers is excluded in cases where operation is necessary for preservation of physical and mental health or is connected with delivery (art. 2), while in Norway the reasons for the exclusion of punishment are medical, such as sickness or delivery, but also operations of sex change and correction of innate deformities.

One of the possible solutions related to the above mentioned inaccuracies of the current para.1 is to state that "whoever partially or totally, for non-medical reasons mutilates or harms in any other way, the clitoris, labia minora or labia maiora (...)". Besides, there is also a need for sanctioning the perpetrators who have caused a lower degree of damage to health or body. A possible solution , connected with the current para. 2, might be "if during an act from the para.1, a less serious bodily injury has been inflicted, or less serious damage to health (...)".

An additional problem concerns the absence of a stricter punishment in cases where a minor[59] is a victim of FGM. Considering the fact that girls under the age of 18 are subdued to FGM, we find that the remark is justified. With this kind of regulation, a legislator has privileged a perpetrator who commits a criminal act over a minor, by sentencing him more leniently for both the basic form of FGM and the one with death outcome, in comparison to criminal acts of aggravated assault. The Criminal Code is inconsistent: if harder punishment is conditioned by the age of the victim for the criminal act of aggravated assault (art. 121., para. 6), or other criminal acts from the part which protects life and body, such as murder (art. 114., para. 9), leading into and aiding in suicide (art. 119., para. 3), illegal termination of pregnancy (art. 120., para. 3) and putting in jeopardy (art. 125., para. 3), then the same should be done in cases of criminal act of FGM. Besides, this regulation is not a positive answer of the legal system to the Istanbul Convention's obligation regarding aggravating circumstances when a child is the victim of FGM. Therefore, the proposal is to modify Article 121a with a provision dealing only with cases of criminal acts over minors.

As it could be seen in the previous parts of the work, the states which have explicitly incriminated FGM find that the victim's consent is irrelevant, which means that even with the

59 According to the Criminal Code of the Republic of Serbia, a minor is a person under the age of 18, (article 112., para. 10).

existence of the same, the perpetrator will be prosecuted. Our legislator has not given any specific reply to this question. Nevertheless, if we take into account that legislator appoints prosecution *ex officio* for this criminal act, it can be concluded that the victim's consent cannot be considered relevant. Beside that, the legal description of FGM indicates it as *lex specialis* in comparison with aggravated assault, therefore the admittance of consent would be contradictory to human protection and against all social values (art. 3), due to the fact that the right to bodily integrity is one of the most important ones, and it has priority in the criminal code of Serbia, since it is in the first and special part of the criminal code. Furthermore, the consent of a victim, when it comes to FGM, cannot be taken seriously, since it is mostly immature girls , who cannot understand the nature and the importance of accesion to this kind of act, who are subdued to this practice. On the other hand, if the victim is an adult, who understands the nature of this act and importance of the consent to it, it cannot be said for sure whether her real and spoken will are conflicting. Namely, FGM is part of a tradition, and a woman's position in a society depends on the subdual to this custom, so there is always a dilemma whether the consent of a woman comes as a result of social pressure or her real wish grounded on the reasons which could possibly justify this act. Due to the fact that this criminal act is a novelty in the criminal code, the consent should be precisely excluded as it was done with the criminal act of illegal termination of pregnancy (art. 120, para. 1).

Leading a female person into subdual to FGM or aiding it in the act is made a punishable act as an answer to the obligation to Istanbul Convention, but it emanates from the accessory principle. Namely, a female person is not criminally responsible if she mutilates herself, therefore, according to the accessory principle, a person leading her into it or aiding her in it is also not responsible for the act. Considering the jurisdiction, Serbia has made a provision, which will cease being valid after the adjustment of legislation with Istanbul Convention. The provision was justified by the existence of a person having "habitual residence" (art. 44, point e), considering the fact that this term does not exist in our legislation. The mentioned term has most likely influenced on making the provision related to the legal processing which is not conditioned by the victim's report or receiving information from the country in which the act was committed. Considering the removal of the principle of double incrimination, an article which allows prosecution could be accepted, even when the act is not punishable by the criminal code of the country in which it was committed, but on condition that there is an approval of the state prosecutor or that it is confirmed by an international contract (art. 10., para. 2).

Summarizing the response of the legislator to the obligations which emanate from the Istanbul Convention, it seems that the reponse to most of the obligations was positive. Nevertheless, by analyzing the legal description of the criminal act, it is clear that it requires certain changes.

Taking into account all the contradictory legal provisions, the legal description of FGM could be:

1. One who partially or totally, with or without consent, for non-medical reasons, mutilates or in any other way causes damage to the clitoris, labia minora or labia maiora, will be sentenced to a period of one to eight years of imprisonment,

2. If during the act from paragraph 1 of this article, a less serious bodily injure or less serious endangerment of health has been done, the perpetrator will be sentenced to a period of three months to three years of imprisonment,

3. One who leads a female into subdual to the act from paragraph 1 of this article, or aid her in it, will be sentenced to a period of six months to five years of imprisonment,

4. If the act from paragraph 1 and paragraph 2 ersults in a death, the perpetrator will be sentenced to a period of two to twelve years of imprisonment,

5. If the act from paragraph 1 of this article is committed against a minor, the perpetrator will be sentenced to a period of two to twelve years of imprisonment, for the act from paragraph 2 the perpetrator shall be sentenced to a period of one to eight years of imprisonment, and for the act from paragraph 3 the sentence will be two to ten years of imprisonment. For the act from paragraph 4 the sentence will be five to fifteen years of imprisonment.

## CONCLUSION

FGM comprises different forms of changing the natural shape of female genitals , even though there are no medical reasons for it, but only the traditional ones. Even though FGM originated from and is most commonly practiced in Africa, this inhumane custom is characterized by trans-nationality, considering the fact that migrants from the countries where FGM is practised are to be found all over the world. Due to the frequency of migrations, the area of Europe has hosted a great number of people who come from the countries where FGM is practised to some extent. Since FGM practice is characterized as a violation of human rights of girls and women in Europe, above all in the EU, this kind of behaviour has been criminalized. *Ratio legis* of FGM is in the protection of women from all forms of violence with the ultimate goal of abandonment of this practice.

Seeing FGM as a specific criminal act in the criminal code of Serbia is a result of the obligation which emanates from the Istanbul Convention. Most of obligations coming from the Istanbul Convention were positively replied to by adopted legal provisions. All forms of FGM have been encompassed by the legal formulation, yet it has not been done clearly but by generalizing which is not correspondent with the newly introduced term. It is of a great importance to define more specifically what is considered to be mutilation in the context of this criminal act. More precise approach to the notion of FGM would not exclude any form, since the court decision on whether mutilation has been performed or not depends on the estimate of presented evidence, in accordance with each case in particular, but it would be a directive for all the parties to the criminal proceedings and contribute to a better understanding of the problem. Furthermore, it is necessary to make the norm more precise in a way which would exclude the procedures performed on female genitals for medically justified reasons from the notion of criminal act. Beside that, it is necessary to be consistent within the boundaries of the Criminal Code and explicitly prescribe stricter punishment in cases where a victim of FGM is a minor in accordance with the law.

Even though standardization of FGM is not conditioned by a real need, a certain legal caution is to be shown for the possible appearance of this phenomenon in the future, i.e. when Serbia enters the EU. The legislator has formed the standard in a way that there can be no discussion of the basic principle *lex certa.* All the inaccuracies regarding the crucial features of this criminal act tend to have a negative effect on the implementation, since it can be subject to different interpretations and insertion of different situations into this legal provision, which creates the possibility for abuse and arbitration, and leads to legal insecurity.

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# Topic III

# CONTEMPORARY SECURITY STUDIES

# CONTRIBUTION TO DIFFERENTIATION OF THE TERM "INTELLIGENCE OPERATIONS" FROM "ESPIONAGE"

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**Abstract:** Intelligence operations of specialized government agencies/departments, as well as espionage, are historical companion of all societies and states. Intelligence operation has existed, informally, since the formation of secrets in relationships. Because of the great technological development, complexities of international relations and expansion of individual transnational security threats (such as terrorism and organized crime), they are now stronger than ever. However, everyday use of the terms *intelligence operation* and *espionage* leads to mixing the two notions which are marked by them. Such terminology divergence and convergence can create confusion and misinforming of the public, government/authorities and the international community. Therefore, the aim of this paper is to clarify distinction between intelligence operations and espionage.

**Keywords:** intelligence activity, intelligence and security service, espionage, distancing intelligence activity and espionage

## INTRODUCTION

Intelligence activity and secret services are unquestionably one of the most popular and "the most romanticized" subjects of interest for the public, media, films, novels, politics, etc. The veil of secrecy that surrounds them, as well as the power attributed to them, are often awe-inspiring even when they are only mentioned. Frequently, the media speculates on the number of foreign intelligence services, as well as on the number of foreign intelligence officers and agents acting on the territory of some country. It could never be reliably known. However, the extent of their activities can be suggested.

In fact, almost every country that has diplomatic and/or consular mission in the territory of some country, has at least (but minimum) one intelligence/operations officer in charge of gathering intelligence on the host. Even if it is the case of "ignorant" intelligence officer, he will collect intelligence information from open sources (it is the so-called *open source intelligence*: electronic and print media, press releases, public negotiations, public results of scientific researches and educational work, etc.).This practice has been known since the institution-

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This paper is the result of two scientific research projects: *Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations* (Ministry of Education, Science and Technological Development of the Republic of Serbia, No 179045, 2010–2017; the leader of the Project is Full Professor Saša Mijalković, PhD) and *Management of police organization in preventing and mitigating threats to security in the Republic of Serbia* (Academy of Criminalistic and Police Studies, 2015–2019; the leader of the Project is Full Professor Dane Subošić, PhD).

alization of the diplomatic and consular practice, so diplomats in the Middle Age were also called "honourable spies".[2]

At the same time, there is an obvious mission of accredited military attaches and military representative offices. In their jurisdiction, inter alia, is the collection of knowledge (data and information) on the military aspects of the host country: potentials, resources, forces, weapons, armed forces of their allies, etc.).

Further, international security forces (United Nations, NATO, European Union) are stationed on the territories of some countries. In such situations, all the countries participating in the armed contingents/missions greatly increase their intelligence activities in the territories involved, to protect members of their armed forces.

Finally, it is undisputed that, by the very nature of things, in the territory of a particular state, there are increased activities of the intelligence forces of neighbouring countries. The reasons for this are numerous, and are often linked to national interests concerning national minorities in the territory of the host country.

All of this also applies to our country. Specifically, it is known that on the territory of the Republic of Serbia there are 157 diplomatic and consular representative offices of other countries[3], there are military representatives of other states and military alliances, and in the province of Kosovo and Metohija attended by representatives of the international security forces.

Furthermore, it is indisputable that some countries, from the aspects of their state and national interests, have logical, reasonable and legitimate interests to obtain as much intelligence knowledge on specific aspects of the state, social and international life of the Republic of Serbia.

In this regard, without attempt to present categorical statements which would accuse some state of espionage, but at the same time with taking into account all the specifics of global and regional geopolitical realities in the context of affairs in the Republic of Serbia, are generally known interests of:

- *the Russian Federation*, for plans, current events and achievements of the Euro-Atlantic integration of the Republic of Serbia, as well as for the activities of NATO and the European Union member states on the territory of the Republic of Serbia (primarily Camp Bondsteel);

- *the United States*, for plans, relevance and scope of cooperation between the Republic of Serbia with the Russian Federation, as well as for the activities of the Russian-Serbian humanitarian centre for protection and rescue in emergency situations (Niš), and for security and counterintelligence protection of NATO forces in Kosovo and Metohija;

- *Germany, France and Great Britain*, for plans, relevance and scope of cooperation between the Republic of Serbia with the Russian Federation, as well as for the efforts to influence individuals from the ranks of legislative, executive and judicial authorities;

- *China*, which is primarily interested in the details and opportunities in the field of economics;

- *Turkey*, which is primarily interested in the so-called Islamic question in the Balkans, and above all "to protect the interests" of all Muslims in the Balkans (Bosnia and Herzegovina, Serbian Republic, Bujanovac, Presevo and Medvedja belt, Raska region), with special emphasis on the self-proclaimed "Republic Kosovo";

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2 *Espionhonorable, шпијун-легалац*.See – Mijalković, S.; Milošević, M.: *Savremene obaveštajne službe: organizacija i metodikaobaveštajnog, bezbjednosnog i subverzivnogdjelovanja,* Visokaškolaunutrašnjihposlova, Banja Luka, 2013, p.16.

3 „Strane diplomatske misije u Srbiji"– „DIPLOMATIC MISSIONS"
(Sending States in Alphabetical Order, Updated – 24 February 2017), the official website of the Ministry of Foreign Affairs of the Republic of Serbia http://www.mfa.gov.rs/sr/index.php/diplomatsko-konzularna-predstavnistva/misije-u-srbiji?lang=lat, accessed on February 26th, 2017.

- *Romania*, which stands for resolving the so-called Vlach question in the area of Negotin region (Negotin, Bor, Zajecar, Pozarevac, etc.).

- *Bulgaria*, which "protects the interests" of Bulgarians in Serbia, which are predominantly stationed in the municipalities of Dimitrovgrad and Bosilegrad;

- *Hungary*, which "protects the interests" of the Hungarian minority in the Autonomous Province of Vojvodina;

- *Albania*, in whose national interest is the creation of the so-called "Great Albania" and independent "Republic of Kosovo";

- *Montenegro*, which is primarily concerned with the so-called Montenegro underground (criminal groups and organizations) in the encirclement of Montenegro-Republic of Serbia region;

- *Croatia*, which is trying to gather as much as possible intelligence information about the armed forces of Serbia, as well as of the professed "war crimes" against Croatian citizens who allegedly are in the territory of the Republic of Serbia;

- *self-proclaimed Republic of Kosovo*, whose pseudo-intelligence formations are trying to achieve an information superiority over the Republic of Serbia, which would facilitate the creation and international recognition of a sovereign country, and discredit Serbia in international relations and in international organizations.

Finally, we note once again that the intelligence operations of appointed states cannot be automatically called espionage, but include a wide range of intelligence methods.

## THE CONCEPT OF INTELLIGENCE ACTIVITIES

*In order to clarify all of the dilemmas regarding the use of the term espionage, and in order to fully comprehend the scope and content of the concept of espionage, which is necessary for its conceptual distinction from similar phenomena and terms, it is essential to point out the notions* of intelligence operations/services, the security operations/services, criminalistic operations/services, security-intelligence system and the national security system[4].

*Intelligence activity* is a set of activities and measures that are aimed at obtaining indications, data and information which are the subject of intelligence interests. Most often it is a secret-confidential information, which is necessary for making of sound political decisions that protect national values and interests, constitutional order and order of the authorities, and which is necessary for the efficient performance of duties by state authorities (primarily intelligence services, the sector of the Interior, justice, foreign affairs, defense and foreign affairs, customs, inspection and tax authorities). In an era of international integration, intelligence activities are used for gathering knowledge of importance for "protection, or to realize the strategic interests of the international federations or other appropriate entities"[5].

Intelligence operations are conducted by certain legal and illegal methods:

- *legal possibilities* include informal contacts and calls, monitoring of the media, analysis of texts and press releases, official guided tours and visits, meetings and exhibitions, exchange of data over diplomatic core, the so-called informative interviews with immigrants, refugees, deserters, war prisoners, etc.;

4 Furthermore in: Mijalković, S.: Obaveštajno-bezbednosne službe i nacionalna bezbednost, *Bezbednost*, Vol.1, Ministarstvo unutrašnjih poslova Republike Srbije, Beograd, 2011, pp. 74-92.
5 Milošević, M.: *Sistem državne bezbednosti*, Policijska akademija, Beograd, 2001, pp. 6–8.

- *illegal operations* include conspiratorial contact with agents, interception of telephone and other conversations, secretly recording forbidden regions and facilities, stealing and copying of confidential documents, unauthorized intrusion into computer networks and the use of the database, scouting by using special forces (violent scouting) and more. Intelligence methods in the strict sense of the word are: espionage (traditional) method, method of infiltration (secret embedding of intelligence officer) in the opponents structure, method of using secret technical means and the method of secret (undercover) data collection[6].

*The security operation* is a set of activities and measures aimed at preventing and suppression of: intelligence and subversive activities of foreign intelligence services; threatening activities of which are holders domestic extremists and members of extreme political emigration; national and international terrorism; endangering of the holders of highest state functions and the most severe forms of economic, financial and organized crime[7].

*Intelligence agency* is a specialized organization of the state apparatus that conduct intelligence, security, and other subversive and activities by using the specific methods and tools in order to protect the internal and external security and the realization of the strategic goals of their own country, as well as to protect the interests of the agency itself. In a narrow sense, it is the information agency, in charge of gathering intelligence indications, data and information. In a broader sense, this term includes the security agency.[8]

*Security agency* is a specialized institution of the state administration acting on the detection, prevention and suppression of the activities that threaten the existing state and social order, both from domestic political opponents who operate the unconstitutional positions, and of the worst forms of internal and transnational crime, but also of intelligence and subversive activities of foreign state or its specialized institutions, services and staff. It is specialized internal intelligence services that are at stake. In practice, the term "security agency" is traditionally used in a much broader sense. However, it denotes the individual specialized departments of public safety (police, but also lately - Criminalistic Intelligence Agency). Analogous to the above mentioned aspects of the security operations, security agencies may include: counter-intelligence agencies, counter-espionage agencies separately; agencies for protection of the constitutional order; anti-terrorism agencies; security agencies for persons and buildings, and criminalistic intelligence agencies[9].

Notions of intelligence and security operations are wider than the concepts of security and intelligence agencies: these operations are not dealt with only by agencies, but also by other state authorities (e.g. diplomatic authorities), institutions (e.g. media) and civil society subjects (e.g. commercial entities), as well as citizens (e.g. reporting of a crime, detaining persons who are caught in crime, etc.). On the other hand, intelligence and security agencies are engaged in these activities professionally.

Often the establishment of security and intelligence agencies is exclusivity of the state, while it is prohibited and punishable by law for the non-state actors[10]. Therefore, they are established and operate in the non-government sector under the firm of news media compa-

6 Mijalković, S.,Milošević, M.: *Savremene obaveštajne službe: organizacija i metodika obaveštajnog, bezbjednosnog i subverzivnog djelovanja,* Visoka škola unutrašnjih poslova, Banja Luka, 2013, pp. 140−142.
7 Mijalković, S.; Milošević, M.: *Obaveštajno-bezbjednosna djelatnost i službe*, Viša škola unutrašnjih poslova, Banja Luka, 2011, p. 320.
8 ,Mijalković, S.; Milošević, M.: *Obaveštajno-bezbjednosna djelatnost i službe*, Viša škola unutrašnjih poslova, Banja Luka, 2011, pp.16–17.
9 Mijalković, S.; Milošević, M.:*Obaveštajno-bezbjednosna djelatnost i službe*, Viša škola unutrašnjih poslova, Banja Luka, 2011p. 319.
10 Such a situation is, for example, in the Republic of Serbia. See Article 1 of the Law on Essentials Planning of the Security Agencies of the Republic of Serbia, *Службени гласник РС*, број 116/2007.

nies, detective agencies, companies providing security services and consulting, and agency services for physical and technical security of persons, property and business and so on.

*Security and intelligence system* has a scope of competence defined by rules and the mutual rights of all intelligence and security agencies and other state institutions that are involved in collection, evaluation and intelligence dissemination, as well as in performing other requirements that are assigned to their jurisdiction.[11] This is an organizational and functional unit of all intelligence institutions which collect intelligence directly (i.e. intelligence community) and carry out other activities that generate informational, protective and coordinating functions in the national security system. This is a unique system of intelligence activities performed by individual organizations, institutions and departments at all levels, with the inimitable aim to protect fundamental and general social values[12].

Finally, intelligence and security operations and agencies are in the function of the protection of *national security* or unhindered implementation, development, enjoyment and optimal protection of national and state values and interests. However, one must not forget that the intelligence agencies are only one of 'the tiles in a mosaic called the national security system'. Namely, *the national security system* is a form of organization and functioning of the state and society in the implementation of preventive, punitive and remedial measures and actions that reach/achieve and improve the referent national values and interests, enabling their provision and protection against security challenges, risks and threats, or revitalization if they are threatened[13]. This is *a state and society subsystem, which includes subjects and functions of state and non-state, civil and military sectors that protect national and state values and interests from the military and non-military security challenges, risks and threats*[14].

## THE CONCEPT OF ESPIONAGE

The use of spies (*humint*) is the oldest intelligence discipline[15]. Overall and "in relation to intelligence activity as a broader concept, espionage involves covert collection of information or the use of spies - people as secret sources of secret information on plans, activities, capabilities or potentials of rivals or enemies"[16]. More specifically, espionage is "collecting of confidential information about other countries, and doing so by secret and illegal means and methods, and to achieve the policy and objectives of the state which organizes such activities in order to protect the security of their country and to do harm to the interests, politics and security of other countries"[17]. In principle, one can distinguish espionage in peacetime and in wartime.

*In peacetime*, the spy is a person which, on the territory of a sovereign state, contrary to the constitutional and legal order of that country, performs intelligence tasks on behalf on and for the account of foreign intelligence agencies, organizations, countries and federations by collecting intelligence information on (political, economic, military and other strategic) secrets related to state values and interests in order to submit them to the above mentioned international actors for the sake of their interests, or one that for those purposes organizes an

11Đorđević, O.: *Osnovi državne bezbednosti*, Viša škola unutrašnjih poslova,Beograd, 1987, p. 33.
12 Milošević, M.: *Sistem državne bezbednosti*, Policijska akademija, Beograd, 2001,p. 6.
13 Mijalković, S..: *Nacionalna bezbednost*, Kriminalističko-policijska akademija, Beograd, 2015, p. 242.
14 See–Mijalković, S..: O krizi nacionalnog sistema bezbednosti Republike Srbije, *Revija za bezbednost – stručni časopis o korupciji i organizovanom kriminalu*, Vol. 5, Centar za bezbednosne studije, Beograd, 2007, pp. 41–45.
15 Taylor, S. A.: Uloga obavještajne djelatnosti u nacionalnoj sigurnosti, *Suvremene sigurnosne studije* (translation, ed. Collins, A.), Politička kultura, Zagreb, 2010, p. 290.
16 Bajagić, M.: *Metodika obaveštajnog rada*, Kriminalističko-policijska akademija, Beograd, 2015, p. 3.
17 Lukić, D.: *Savremena špijunaža*, Privredna štampa, Beograd, 1985, pp. 8–9.

intelligence network, or joins the foreign intelligence agency. In principle, the role of a spy can be performed by:

1. A member of a foreign intelligence agency, which performs intelligence tasks in our country;

2. A member of the domestic intelligence agency, which performs intelligence tasks for foreign agency in our country or abroad;

3. The agent - a citizen of our country or foreigner which in our country or abroad performs intelligence tasks for the benefit of the foreign state or organization, to the detriment of our country.

So, spies could be professional members of the intelligence agencies but they also could be agents.

Among the professional intelligence officers one should distinguish between two groups of spies: the first are the members of foreign intelligence agencies, which in our country perform intelligence tasks on order of the agencies whose members they are and against the interests of our country; the second are the members of our security agencies which perform intelligence tasks on behalf of and in the interest of foreign intelligence agencies, and to the detriment of the interests of our country.

*Agents* are persons who secretly, coordinated and professionally collect and submit data to a foreign intelligence agency, acting on its instructions and orders[18].

Motives of spies, both professional intelligence officers and agents, to work for the benefit of foreign intelligence agencies are different:

- greed (the promise or giving of money and other material values);
- fear for his own life (blackmail, and occasionally a threat or actual gross physical and psychological force);
- fear for their close ones (or open threat or actual violent actions, in terms of kidnapping, beating, rape, castration, 'hooking on a needle', physical liquidation);
- pain factor (different forms of torture or threat of acting with intensive force);
- sex emotionality (skilfully planting partners and various forms of pornography in order to 'relax', blackmail or exchange);
- despond (the manifestation of depression, as a result of spontaneous or imposed life circumstances and sometimes due to psychological and physical facility treatment);
- inner adventurism (giving a chance to the individual 'to play his own game');
- disagreement with the state system or organization (wise use of ideological disagreement and existing dissatisfaction of the object with their current position or tomorrow's perspective);
- disagreement with the specific figures (flare-up of negative emotions such as payback, envy and hostility, with an overwhelming desire to cause damage to 'the enemy');
- nationalism (a part in a play with deep feelings towards a national community: hate, pride, exclusion);
- religious feelings (reheating of intolerance towards 'those of other religion' or connection of specific situations with certain doctrines of some religions);
- civic obligations (play with respect for the law);
- ethics (a part with morality);

18 More detailed, in – Savić, A.: *Uvod u državn ubezbednost*, Viša škola unutrašnjih poslova, Beograd, 2000, pp. 84–93.

- subconscious need for recognition (speculation with an idealized representation of the man himself);

- corporate (clan) solidarity (play with concrete elitism);

- open sympathy toward the information recipient or his activities (adaptation to the facility);

- vanity (provocation of individuals to cause a certain impression, to show all their significance and abilities);

- light-headedness (bringing a man into a state of recklessness, carelessness and loquacity. This also includes the use of 'chronotopes'- the man whom we are convinced that we have a lot of confidence in him ('random companion');

- attentiveness (visible realization of a subconscious wilful and conscious labour and physical dependence of the object from the recipient information);

- "craziness" over something (close possibility for collectors to provide or lose passionately desired item; playing with phobias ...);

- overt intention to ensure the exchange of information (a technique 'tante za kukuriku' (nothing for nothing) or 'nose pulling');

- passionate desire to convince someone into something, to change their relation to something or someone, and to invoke the initiative to a particular operation (methods "hook swallowing" and "reverse recruitment") and so on[19].

*In wartime*, the spy is every hostile individual (i.e. a professional intelligence officer or agent) who covertly collects data and other information about one side (i.e. the country or military alliance) in order to deliver them to the other side (i.e. the country or military alliance) or the one who sends him on such a task. If commandos, diversants and paratroopers are captured while executing special tasks, they are treated like the other members of the armed forces of the conflict party which had sent them to carry out the task, but not as spies. Furthermore, the members of the opposite side armed forces, which collect the intelligence of the enemy and are uniformed and have a mark of belonging to the armed forces, are not spies[20].

Finally, when espionage is a method of subversive activities or has subversive effects, it is called *subversive espionage*. Namely, the preparation of aggression against a sovereign state also includes enhanced intelligence operations of an aggressor country against a country - a future victim of aggression. Enhanced intelligence activities often lead to increased detection of foreign intelligence officers and agents of foreign intelligence agencies, as well. The mere news of more frequent discovery of foreign spies creates a sense of fear of the presence of the enemy and distrust of citizens in the state. This disrupts the established life rhythm of citizens and the state, economy and tourism. Such espionage has subversive psychological effects on safety[21]

In the system of national criminal law, espionage is classified as crimes against the constitutional order and security of the Republic of Serbia. The Criminal Code of the Republic of Serbia[22] incriminates the offense called Espionage (Article 315). This criminal offense has four forms, and it is performed by a person who:

1. communicates, delivers or makes available secret military, economic or official information or documents to a foreign state, foreign organization or a person who serves them, for which a prison sentence of three to fifteen years is predicted;

19 Ronin, R.: *Obaveštajni rad*, Službeni glasnik i Fakultet bezbednosti Univerziteta u Beogradu, Beograd, 2009, pp. 34–36.
20 Radulović, R.B.: *Leksikon bezbednosti i zaštite*, Pravni fakultet, Novi Sad, 1994, pp.28–29.
21Đorđević, O.:*Osnovi državne bezbednosti*, Viša škola unutrašnjih poslova,Beograd, 1987, p.120.
22 The Criminal Code of the Republic of Serbia, *Службени гласник РС*, број 85/2005 with subsequent amendments.

2. creates intelligence agency in Serbia for a foreign country or organization, or whoever manages it, for which a prison sentence of five to fifteen years is predicted;

3. joins a foreign intelligence agency, collects information for or otherwise helps its operations, for which a prison sentence of one to ten years is predicted;

4. obtains confidential information or documents with the intent to convey or hand them over to a foreign state, foreign organization or a person who serves them, for which a prison sentence of one to eight years is predicted.

In the case that, due to the offense activities referred in paragraphs 1 and 2 of this Article, serious consequences for the security, economic or military power of the country have arisen, the law predicts a prison sentence of at least ten years.

In the context of the offense of espionage, as secret are considered those military, economic or official information or documents that the law, other regulations or decisions of the competent authority that are agreed and based on the law and declared to be secret, and whose disclosure would cause or could cause detrimental consequences for the security, defence or for the political, military or economic interests of the country.

Incrimination which is similar to espionage by the manner of execution (disclosure of confidential and secret data and documents) are *Revealing state secrets* (Article 316), *Disclosure of official secrets* (Article 369), *Disclosure of military secrets* (Article 415) and *Disclosure of trade secrets* (Article 240). The essence of these offenses is disclosure of certain secrets, or unauthorized submission of them to uninvited persons. None of these offenses imply that uninvited persons are a foreign intelligence agency or a person who works for it. This is the specificity of espionage – the disclosure of confidential data to a foreign intelligence agency. By submitting documents marked as military secrets to a foreign intelligence agency would also, for example, be considered as espionage offense, not a criminal offense of disclosure of military secrets.

## CONCLUSION

The scope and content of the concept of intelligence operations are expanding the scope and content of the concept of espionage. Namely, espionage is the intelligence operation; however, not all intelligence operations are espionage.

First, espionage involves an intelligence officer's or agent's operational activities, while intelligence operation also includes other forms of intelligence, and methods of collecting intelligence information (technical method, methods of cooperation, interrogation method, collecting data from open sources, etc.).

Further, espionage inevitably involves a foreign element, or intelligence in favour of a foreign state, agency, department or organization, while intelligence does not need to have the characteristics of internationality. Namely, the members of the intelligence agencies and their agents may be engaged in intelligence and espionage: when they work in our favour, either on our or on a foreign territory, they are not spies for us; if on this occasion they work against the interests of other countries, these countries regard them as spies; when in our territory or abroad, working on behalf of foreign entities, against our country, they are our spies; state for which they work in such situations do not consider them as spies. It is concluded on the basis of table below (Table 1):

***Table 1*** *The observations of spies and agents regarding their affiliation, the territory of their activities and their interests*

| | The operation on behalf of the interests of our country | The operation on behalf of the interests of foreign companies, to the detriment of the interests of our country | EXISTENCE OF ESPIONAGE AGAINST OUR COUNTRY |
|---|---|---|---|
| The operation of our intelligence officers and agents on the territory of our country | + | - | - |
| | - | + | + |
| The operation of our intelligence officers and agents abroad | + | - | - |
| | - | + | + |
| The operation of foreign intelligence officers and agents on the territory of our country | + | - | - |
| | - | + | + |
| The operation of foreign intelligence officers and agents abroad | + | - | - |
| | - | + | + |

Finally, the so-called 'double spies' are in a specific situation, who simultaneously work for the two intelligence agencies, whereby for one they work honestly, and for the second insincerely. From the point of view of national security, in relation to the land they work for dishonestly (to its detriment), they are spies, and for the land that they work sincerely they are agency co-operators; in the criminal sense, they are spies, regardless of whether they work sincerely or insincerely for the foreign service. Therefore, this kind of 'double games' are always the result of top-secret intelligence operations and the combinations: if secret services do not protect their associates, no one would ever work with them.

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# WESTERN BALKANS SECURITY IN CONTEMPORARY GEOSTRATEGIC CHANGES BETWEEN EAST AND WEST

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**Abstract**: The authors will point to the ongoing changes of the contemporary international and security relations with the primary aim to draw attention to the positioning of the Western Balkans between the global West and the East – the United States of America and the Russian Federation. In this regard, a special attention will be paid to the potential scenarios of that relation – either to the future confrontation of the United States and the Russian Federation, or the pacification and relaxation of their relations.

So, the author will notice how these scenarios affect the position of the Western Balkans, as well as the Republic of Serbia. That means primarily in the contemporary security environment that accompanies a still unfinished migrant crisis (2013–), the global economic crisis (2008–) and more pronounced conceptual and institutional dilemmas of the European Union after Brexit (2016).

**Keywords:** the Western Balkans, the United States of America, the Russian Federation, the European Union, geopolitics, influence

## INTRODUCTION

The Western Balkans, as a geopolitical construct linked to the integration of the countries formed on the territory of the former Federal Republic of Yugoslavia (up to 1991) into the European and Euro-Atlantic integration, is increasingly exposed to the strengthening of the influence of "new-old" actors during the past decade, primarily the Russian Federation, the People's Republic of China and Turkey.[1] In this context, it is important to emphasize that there has been a strengthening of various political subjects affecting the regional stability in south-eastern Europe and the Western Balkans. Along with the above-stated, during the past ten years, there has objectively been a gradual reduction of the role of the United States, which is one of the main constructors of the current Western Balkans (geo)political reality.[2] The USA focused its foreign policy on other parts of the world, which in a certain way implied the

1 Dragan Đukanović, *Balkan na posthladnoratovskom raskršću (1989–2016)*, Institut za međunarodnu politiku i privredu, „Službeni glasnik", Beograd, 2016, str. 38–55.
2 Dragan Đukanović, Marjan Gjurovski, "(Re)Balkanization of the Western Balkans: New Challenges on Security in the Region", in: Branislav Đorđević, Taro Tsukimura and Ivona Lađevac (eds), *Globalized World: Adventage or Disadventage*, Institute of International Politics and Economics, Belgrade, Global Resource Management, Doshisha University, Doshisha, 2016, pp. 87–107.

occasional attempt to leave the Western Balkans to the influence of other partners – primarily to the European Union and the Federal Republic of Germany.[3]

The departure of the Democratic administration in the United States and coming to power of the President Donald Trump in the second half of January 2017, has set a new question related to whether the foreign policy course towards a very sensitive region of the Western Balkans would change. So far (mid-March 2017), there are no visible signs that this will happen.[4] On the contrary, it is evident that in a way the continuity of foreign policy activity of this country towards the Western Balkans will be preserved, including the preservation of the existing post-Cold War balance of power in this part of Europe.[5] Despite some challenges related to the current situation in Macedonia, where the internal Macedonian tensions and political conflicts are strengthened, as well as the aspirations of the Albanian community for some kind of special status that goes beyond the solutions of the Ohrid Agreement (2001), the United States insists on the territorial integrity and wholeness of this former Yugoslav republic.[6] This, however, is not followed by the important diplomatic action because of yet unclear attentiveness of this country towards the Balkans. Nearly identical can be applied to the situation in Bosnia and Herzegovina, where the aspirations of the Serbs and Croats gradually reinforce, whether to strengthen their territorial autonomy or to form it according to the ethnic principle (aka. the third entity).[7] The Bosniak political elite, on the other hand, is evidently profoundly and in multiple ways linked to Turkey and the government of the President Recep Tayyip Erdogan. This only further illustrates the instability of the situation in Bosnia and Herzegovina, as a state with rather a problematic internal organization and a significant potential to transfer its internal instability onto the regional plan.

The relations in the negotiations between the authorities in Belgrade and Priština have also experienced some deterioration due to the announcement of the Priština authorities to suspend the normalization of relations. This process, on which the United States and the European Union insisted since 2012, is in a crisis due to the primarily insufficient readiness of the Priština authorities to establish the Community of majority Serbian municipalities in Kosovo, according to the principles set out in the First Agreement on Normalization of Relations between the authorities in Belgrade and Pristina, signed in April 2013.[8] Therefore, even four years later, the elemental frames for the constitution of the above-mentioned municipalities are not set, which leaves the Serbs in Kosovo in rather a difficult position.

The United States has been, in a certain way, also "stalling" with the ratification of the Accession Protocol of Montenegro to the North Atlantic alliance, which forms the basis for further deepening of the internal divisions on the above-mentioned issue.[9] These divisions are so pronounced that they present a serious threat to the fundamental security of Montenegro.

3 Srđan Janković, „Bez promjene politike SAD prema Balkanu i Crnoj Gori", *Radio Slobodna Evropa – Balkanski servis*, Prag, 9. novembar 2016. Internet: http://www.slobodnaevropa.org/a/crna-gora-tramp/28106176.html, 22/03/2017.

4 Rade Radovanović, „Predstavnik Trampove administracije u poseti Srbiji", *Glas Amerike*, Vašington, 11. februar 2017. Internet: http://www.glasamerike.net/a/predstavnik-trampove-administracije-u-poseti-srbiji/3719092.html, 22/03/2017.

5 *Ibidem*.

6 Chris Deliso, "Macedonia's Crisis Isn't Going Away", *The American Interest*, March 5, 2017. Internet: http://www.the-american-interest.com/2017/03/05/macedonias-crisis-isnt-going-away/, 22/03/2017.

7 Dragan Đukanović, „Obrisi nastanka trećeg (hrvatskog) entiteta u Bisni i Hercegovini: stavovi lokalnih aktera, SAD i EU", *Nacionalni interes*, broj 1/2015, god. XI, vol. 22, Institut za političke studije, Beograd, str. 127–150.

8 Marta Szpala, „Hostages to dialogue. The Process of Normalizing Serbian-Kosovar relations", *OSW commentary*, June 8, 2017. Internet: https://www.osw.waw.pl/en/publikacje/osw-commentary/2016-06-08/hostages-to-dialogue-process-normalising-serbian-kosovar, 15/02/2017.

9 "U.S. Senate to vote on Montenegro's NATO membership", *Reuters*, March 23, 2017. Internet: http://www.reuters.com/article/us-usa-nato-montenegro-idUSKBN16U33K, 25/03/2017.

Moreover, this allows the strengthening of the already significant presence of the Russian influence in Montenegro, especially in the political sphere. By entering of Montenegro into NATO, the situation in the Western Balkans would objectively change, primarily with the aim to enforce NATO influence and potentially reduce the influence of the Russian Federation on a smaller number of the Western actors (The Republic of Srpska entity, and to some extent Macedonia and Serbia).[10]

Otherwise, Albania has still been closely under the United States influence, which in a certain way affects the situation in the Adriatic seacoast, as well as on the Balkan Peninsula. An almost identical influence is transferred to the Priština authorities, which have mostly enjoyed the support of the former Democratic Administration of the United States. On the other hand, Serbia is trying to maintain equidistance between the influence of the United States and the Russian Federation, with a very frequent approach to the Federal Republic of Germany. Namely, in this country the political elites of Serbia actually see the most important partner to accelerate the path towards the membership in the European Union, but also to further relax the relations in this part of Europe, as a country that is at the "crossroads" of the influence of Central Europe and the Western Balkans.[11]

The European Union, "trapped" in numerous and sometimes inadequate complex bureaucratic procedures within the existing Stabilization and Association Process, is not in a position to enhance its role in the Western Balkans, nor to give some kind of new incentives for the countries of the region that have numerous problems – from internal instability, economic difficulties to the strengthening of certain aspects of extremism.[12] This lack of real possibilities of the European Union to focus more on resolving the situation in the Western Balkans and to accelerate its integration, leaves a space for the strengthening of the influence of the Russian Federation, as well as of Turkey and China. This should result, in some way, in an obvious weakening of the EU influence in this part of Europe, but also of the United States, which may lead to the occurrence of certain security problems.

## UNPREDICTABLE WESTERN BALKANS SCENARIOS: DIFFERENT ACTORS AND THEIR IMPACTS, AND (RE)CONFIGURATION OF THE REGION

Strengthening of the influence of the Russian Federation since the second half of the last decade has only further contributed to the shift of the current Western Balkans geopolitical reality. In fact, this country firstly "sailed" into the energy sphere in the countries of the region, and then increased its own influence in the economic sphere. Moreover, the Russian Federation did that in Montenegro, Serbia, and Macedonia and in one of the B&H entities – the Republic of Srpska.[13] Such a strategy was tied to the influence on the political elite. In this sense, the most significant impact has been achieved in the Republic of Srpska due to, among other things, a promise of a huge loan.[14] There also existed intentions of individuals

10 Dragan Đukanović, *Balkan na posthladnoratovskom raskršću (1989–2016)*, op. cit., str. 43–48.
11 Dragan Đukanović, „Spoljnopolitičko pozicioniranje Srbije (SRJ/SCG) od 1992. do 2015. godine", *Međunarodna politika*, god. LXVI, br. 1158–1159, Beograd, str. 115–127.
12 See: Dragan Đukanović, „Zapadni Balkan 2014. – napredak u evropskim integracijama ili stagnacija", u: Dragan Đukanović, Aleksandar Jazić, Miloš Jončić (urs.), *Srbija, region i Evropska unija,* Institut za međunarodnu politiku i privredu, Beograd, 2015, str. 247–259.
13 E.V.N./B.V./Agencije, „Dodik i Putin: Referendum je pravo naroda", *Večernje novosti*, Beograd, 22. septembar 2017. Internet: http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:626454-SASTANAK-PUTINA-I-DODIKA-Rusija-podrzala-Republiku-Srpsku, 22/03/2017.
14 „Nema ruskog kredita", *RTV BN*, Bijeljina, 2. maj 2015.

and groups in Macedonia to turn towards Moscow. However, the complex reality of Macedonia and the necessity of the Albanian-Macedonian consensus on all issues has not left a real stronghold for certain groups in Skopje to do so.[15] Although some individuals in this strategic turn towards Moscow saw the opportunity to prevent further support for democratic reforms, the venture failed.

In Montenegro, the events before and during the parliamentary elections on 16 October 2016, quite clearly indicated the presence of the Russian state and parastatal structures.[16] According to some sources, there was an attempt to bring to power those political options that are very close to the Russian political and economic power centres, i.e. those that replaced their two-decade long overemphasized orientation of binding with neighbouring Serbia with the ideas of Pan-Slavism and Russophilia.

Serbia is, on the other hand, the actor which in the long run "walks on a wire" between the influence of the global West (the United States and the European Union) and the Russian Federation, and it occasionally turns to other alternative centres of power, such as China.[17] Despite significant foreign policy challenges, Serbia managed to maintain this position in the most sensitive circumstances (such as the crisis in Ukraine in 2014 and 2015), although it reflected on the reduced level of harmonization of its foreign policy with the joint foreign and security policy of the EU.[18] Namely, these percentages during the last five years varied from year to year, for example: from 94% in 2012 to 62% in 2014.[19] On the other hand, it is evident that the essential change of the influence of the East and West in the Western Balkans will further influence on these percentages. But it is also unrealistic that Serbia, as a candidate for the membership in the EU, will impose the "restrictive measures" towards the Russian Federation, which is a request of the official Brussels. Also, it remains unclear for how long the above-mentioned "walk on a wire" will be sustainable, due to a possible new confrontation between the East and the West. Also, the penetration of China's influence to the Western Balkans is primarily linked to Serbia, which China perceives as a country that will have a very important role in the "New Silk Road" that actually aims to connect this country with the European Union market.[20]

From the above-stated reasons, it is clear that the potential scenarios of the Western Balkans future will be determined by its relations with the great powers. This would involve some very different geopolitical scenarios which will be elaborated here. Namely, these scenarios are predominantly related to the following potential conditions:

1. *The potential relaxation of relations between Washington and Moscow* could preserve the status quo in the Western Balkans, i.e. the dominant role of the United States, and to some extent the European Union, as well as in some measure the influence of the Russian Federation, primarily in the economic sphere. This scenario is possible to a lesser extent.

2. *The crisis within the European Union*, conditioned by Brexit, the economic and migrant crisis, accompanied by the weakening of the USA interests in the Western Balkans, would create a realistic possibility for political influence of the Russian Federation to be much more pronounced, including its impact on the adoption of a certain number of strategic foreign policy decisions. This primarily refers to Serbia, but also to Montenegro and Macedonia. Also,

15 Dragan Đukanović, *Balkan na posthladnoratovskom raskršću (1989–2016)*, op. cit., str. 122–124.
16 Iv. P., „Rusija pokušava da destabilizuje Crnu Goru", *Pobjeda*, 1. mart 2017, str. 3.
17 Dragan Đukanović, *Balkan na posthladnoratovskom raskršću (1989–2016)*, op. cit., str. 118–121.
18 Dragan Đukanović, "The Process of Institutionalization of the EU's CFSP in the Western Balkans Countries during the Ukraine Crisis", *Croatian International Relations Review,* Vol. XXI, No. 72, International Economic and Political Relations, Zagreb, September 2014-March 2015, pp. 81–106.
19 *Ibidem*.
20 Miroslav Antevski, Sanja Filipović, "Foreign Investments activities of Chinese companies", *Međunarodni problemi,* Vol. 66, No. 3-4, Beograd, 2014, str. 231–248.

this influence would undoubtedly lead to complete blockage of the political system of Bosnia and Herzegovina and thanks to that possibility it will enable the entity the Republic of Srpska to question the path towards the European Union and essentially its membership in NATO. This scenario could lead to the confrontation of the countries in the Western Balkans exactly along the line of the dominant influence of the Russian Federation and the United States.

Such a scenario would also involve redefining of the relations within the current European Union, in which it would differentiate the group of the countries of the Central Europe, under the influence of Austria and to some extent Germany.[21] This group could, in some way, have closer relations with some of the Western Balkans countries - primarily with Serbia, whose nearly a quarter of the total territory is located geographically in the Central Europe (Autonomous Province of Vojvodina and the parts of the city of Belgrade.)[22] Also, a strengthened geostrategic importance in this context would have Bosnia and Herzegovina, and especially its parts predominantly inhabited by Croatian population. This scenario would be to a certain extent more probable than the previous one.

3. *The additional confrontation between the East and the West* would include, in the forthcoming period, a clear determination of the Western Balkans countries in terms of their own foreign policy orientation. This option would thus narrow an already reduced "strategical space" for decisions about specific partnerships. In this regard, Russia would insist on strengthening the influence in at least four of the six Western Balkans actors – Bosnia and Herzegovina, Serbia, Macedonia and Montenegro. On the other hand, the objective influence of the United States on the so-called Albanian factor in the Balkans would only further strengthen the axle Tirana-Priština and potentially destabilize parts of Macedonia, southern Serbia and Montenegro. Also, such a scenario could be perceived in some other countries in South Eastern Europe, primarily Bulgaria and Greece, in which the Russian Federation is also trying to realize a significant political influence in recent years.

4. *Strengthening of the role of Turkey in the Balkans* in the context of local authoritarian tendencies of the current President Erdogan could also affect the relations of the Albanian and Bosniak political elites towards the European integration. This would mean that Albania and Bosniak part of Bosnia and Herzegovina may turn more towards Ankara instead of Brussels, i.e. towards Turkey in which Islamist tendencies are gradually strengthening. This scenario would substantially jeopardize the Western Balkans since the former Ottoman heritage and attitude towards it are still very important when it comes to the level of local ethnic distance between Christians (Orthodox and Roman Catholic) and Muslims. This could potentially endanger not only the regional but also the European security taking into account the current tensions between Turkey and some European countries, such as the Federal Republic of Germany and the Netherlands.[23]

5. *Potential strengthening of the China's position in the Western Balkan* region will not affect the local security. The only thing that should not be overlooked is the fact that due to the potential security instability in some parts of the Western Balkans the "New Silk Road" might be interrupted and thus the transport of Chinese goods to the EU market prevented. For example, the potential escalation of the crisis in Macedonia may jeopardize the above-

21 Dušan Proroković, *Nemačka geopolitika i Balkan: o ciljevima srednjoevropskog kontinentalizma*, Catena Mundi, Beograd, 2014, str. 239–301.
22 Dragan Đukanović, „Attempts to restore' Austria-Hungary after 1918 – between Austronostalgia and reality", in: Duško Dimitrijević (ed.), *The Old and New World Order – between European integration and the historical burdens: Prospects and Challenges for Europe of 21st century*, Institute of International Politics and Economics, Belgrade, 2014, pp. 209–223.
23 "Turkey labels Netherlands the 'capital of fascism' after ministers barred from speaking", *ABC News*, Vienna, March 13, 2017. Internet: http://www.abc.net.au/news/2017-03-13/turkeys-erdogan-says-netherlands-acting-like-a-banana-republic/8348338, 22/03/2017.

mentioned road that stretches from the largest and most important Greek port of Piraeus, which the Chinese bought in early 2016, towards Serbia.[24] China's investments in particular ports on the Danube – e.g. the "The Danube" port in Pančevo or building of completely new ports could affect relations, primarily between Germany and Serbia. Germany would be reluctant to accept the strengthening of China's influence in Podunavlje, bearing in mind the geopolitical importance of this river for this country.

6. *Unpredictable further strengthening of Saudi Arabia and other Islamic countries in the Western Balkans* out of the existing scope could also affect the situation in the region. Moreover, this could affect the relations between the members of the local Islamic communities.

All these already mentioned scenarios would significantly impact the security situation in the Western Balkans, as well as bilateral relations between the local actors. This would include the absence of the currently existing declarative division of the Western Balkans political elites when it comes to the regional cooperation. In fact, at a large number of meetings and summits organized on the occasion of strengthening of the Regional cooperation in the Western Balkans and on the occasion of the acceleration of the accession to the EU, very important and ambitious goals were usually set, which have almost never been implemented.

A potential new escalation of certain European crises, such as the Ukrainian (after 2013) would only further intensify the relations between Washington and Moscow, and thus would have more significant consequences on the situation in the Western Balkans. Also, a potential escalation of violence in the Western Balkans could fundamentally collapse the entire security architecture in the region created after the breakdown of the former Socialist Federal Republic of Yugoslavia.[25] In this sense, the political crisis in Macedonia, whose epilogue could not be perceived, but also the tense interethnic relations between Macedonians and Albanians could pose the most significant threat to the national security. Also, we should not belittle the potential of interethnic inner tensions in Bosnia and Herzegovina, which are permanently increasing because of new events. In fact, almost every day there appear some kind of new problems within Bosnia and Herzegovina – the crisis due to declaring unconstitutional the Republic of Srpska Day (9 January), the failure of the request for revision of the B&H lawsuit against Serbia for genocide during February and March 2017, the constant emphasis of the idea of permanent formation of the third (predominant Croatian) entity, about which there is an almost absolute consensus of the Croatian political parties in this country.

## CONCLUSION: IS THERE ANY PREDICTABILITY IN RELATION TO THE EVENTS IN THE WESTERN BALKANS

The modern history of the Balkans, and particularly its western parts, is not a reasonable basis for a successful long-term prediction of the local conditions. On the contrary, although just before the outbreak of armed conflicts in the former Yugoslavia in the early 1990s it seemed that this whole part of Europe will transform to the perspective of joining the European and Euro-Atlantic integration, there has been a drastic turn and the realization of one

24 John Vassilopoulos, "China completes majority purchase of Greece Piraeus Port", *World Socialists Web Site*, 2 September 2016. Internet: https://www.wsws.org/en/articles/2016/09/02/gree-s02.html, 22/03/2017.

25 Dragan Đukanović, "Is the Western Balkans a safe geopolitical construction?", in: Dragana Kolarić (ed.), *Archibald Reiss Days,* Vol. 2, Academy of Criminalistic and Police Studies, Belgrade, 2015, pp. 125–132.

of the worst potential scenarios.[26] Even very significant efforts of the United States, which objectively affected the cessation of armed conflicts during the past decade, to repair the relation between the newly established countries in the Western Balkans did not give the results. On the contrary, it is evident that the crucial issues in the region have remained unresolved, and all are related to the period of armed conflicts during the disintegration of the Yugoslav Federation.

The persistent offering of the European perspective to the countries of the Western Balkans during the last decade is reduced to the dominant proclaimed acceptance of this objective by the political elite in the local governments. However, this does not correspond with a deep acceptance of this idea in the Western Balkans countries. They are still primarily concerned with the set of so-called national issues, and to some extent supported by the maximalistic aims.[27]

In this context, the most evident is the tendency of the Albanian political elite to constitute the so-called "Natural Albania", as a particular form of association of territories that were occupied by the members of this nation in the Western Balkans. Especially worrying is the growth of the right-wing populism among the political parties of Albanians in Kosovo, which are often inclined for drastic measures against the Serbs. This applies both to the Serbs in northern Kosovo, and those in the rest of central enclaves. On the other hand, the Croatian political elites which for almost two and a half decades worked to "leave the Balkans" and to turn towards the Central Europe, are often aimed at the so-called Croatian question in Bosnia and Herzegovina, with a tendency to form the special ethnic-territorial units in this state. Also, a constant "concern" is expressed for the status of the Croats in northern Serbia, i.e. in Vojvodina, and thus often trying to block Serbia's progress on its path towards the full membership in the European Union.

The Bosniak political elites, however, are still trying through the pan-Bosnian program to master the entire Bosnia and Herzegovina and to gradually marginalize the Croats and Serbs. This, indeed, really triggers their significant resistance. Moreover, the Bosniak elites in Sarajevo sometimes openly overstate the question of their compatriots in Sandžak, i.e. in the south-west of Serbia and the north of Montenegro, and thus also call into question the bilateral relations of Bosnia and Herzegovina and Serbia, and also with Montenegro.

Within the current political establishment in Serbia, but also in a large part of the opposition, there exists a significant number of political parties who oppose any new forms of escalation in the Western Balkans. However, the growth of those political options that are trying to revive the defeated ideas concerning the so-called unification of Serbian ethnic territories from the radical right-wing positions is evident over the past few years.

Macedonia, however, faces an exceptionally pronounced political crisis. The Albanian maximalistic objectives in Macedonia represent only an additional basis for new interethnic misunderstandings and a potential spiral of thus motivated violence. Therefore, in the long run Macedonia will stay double-locked by internal fault lines.

Unfortunately, the only actor that could significantly affect the security in the Western Balkans - the European Union - is not yet ready to replace the current approach towards this part of Europe, and integrate this area as soon as possible. This is also affected by the internal stratification within the European Union, i.e. its announced acceleration to "multi-speed" and insufficient institutional adaptability of the Union when it comes to the admission of new members.[28] Various discourses on the future of the European Union also contribute to this

26 Dragan Đukanović, *Balkan na posthladnoratovskom raskršću (1989–2016)*, op. cit., str. 107–126.
27 Dragan Đukanović, „Evropska unija i Zapadni Balkan: očekivanja i iščekivanja", god. XI, posebno izdanje, *Kultura polisa*, Kultura — Polis Novi Sad, Institut za evropske studije, Beograd, Novi Sad, 2014, str. 25–38.
28 "The Rome Delaration", the European Council, Rome, March 24, 2017.

end, in which it is perceived from a loose union to a federal state. In many ways, it should add to such a sequence of events a still informalized process of the exit of the United Kingdom and Northern Ireland from the Union, as well as a potential new wave of refugees that could head for the European Union.

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# FACTORS OF WOMEN'S PARTICIPATION IN ARMED FORCES[1]

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*Without peace, development is impossible, and without development, peace is not achievable, but without women, neither peace nor development is possible.*[2]

**Abstract**. In the text are presented factors that contribute to women's participation in the armed forces. History shows that women in earlier centuries also were active in the armies. But after the end of the armed conflicts they were regularly excluded from military service and military professional privileges, which also happened during the twentieth century, after the First and Second World War and the national liberation wars. Not before the last quarter of the twentieth century began the professional integration of women into the armed forces. The main factor was the lack of men willing and able for military service, but also the current processes of increased social equalization of gender relations. In the text is presented the so-called, "Segal model" of multicollinear impact indicating the existence of multiple independent factors influencing the circumstances of women's participation in the armed forces. In this text, most attention is paid to military factors, including references to national security, the impact of recently-led wars, international military alliances and changes in military technology. Military transformation, evident over the past decade through the armed forces of NATO member states, inevitably involved the transformation of the military nature of women's participation. Such transformation, accelerated by the wars in Iraq (and Afghanistan), include changes to the hiring of female staff and their deployment. Today there is an increasingly expressed view that women have a "right to uniform", as the right to equal professional access, treatment and promotion in any field. Examples of successful military careers of prominent women in the armies of the world's major military powers, especially the recently promoted women in the highest general rank orders, were also highlighted in the text as models of strong influence to young women's decision to join the army.

**Keywords***:* women in armed forces, "Segal model" of multicollinear impact, lack of men, national security, NATO member states, "Jenny effect", women generals.

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1 This text was created within the project "Social transformations in the process of European integration - a multidisciplinary approach", which is financed by the Ministry of Education, Science and Technological Development, no. III 47,010th, implemented by the Institute of Social Sciences in Belgrade.

2 Chowdhury K. Anwarul (Ambassador), 2017, If We Are Serious About Peace & Development, We Must Take Women Seriously, *Indepth News*, March 26.

## INTRODUCTION

Whenever the issue of compulsory military service is raised publicly, usually all presented arguments, those for, as well as those against, focus upon only male recruits, e.g. what the military requires from them, whether the needs are met by adequate readiness and interest of young men to serve, and whether they have a general interest in a professional military career. Such debates usually ignore the situation of women's participation in the armed forces. Therefore it is necessary, beside the issue of male military engagement, to raise the question of factors that contribute to the growing presence of women in the armed forces of a country, or act in the opposite direction, by reducing it.

Around the world women played a more active and visible role in the military than before. Over the past three decades, advanced countries have utilized female labor force in the armed forces. Advocates assert that equal opportunities should be given to women serving in the military while skeptics worry that the presence of women in the military may hinder the efficiency of an organization they deem more appropriate for men. However, what is clear is that the skeptics' argument has been gradually losing its legitimacy.[3] Women in the armed forces of the world are no longer merely a temporary change. "Today, what was once a band of brothers has truly become a band of brothers and sisters."[4] Although women still have unequal status, and in spite of cases of professional segregation and cultural discrimination, women are no longer peripheral in the military organization, nor are they only passive observers of events within it. Internal organizational policies that discourage negative behavior against women in the military, such as discrimination, sexual harassment, humiliation, and deliberately hindering promotion, have not been empirically proven to be of essential importance for the success or failure of the process of integration of military women. But, to the contrary, more general social acceptance of women as soldiers may increase the attractiveness of military service to both women and men. To this also contribute positive and successful examples of women's military careers, and now the decades-long presence of women in modern armed forces of the world.

## HISTORICAL OVERVIEW

Although armed forces are undoubtedly male-dominated organizations the world over, [5] historical facts indicate that the presence of women, both in terms of the traditional female military companion and women uniformed to varying degrees who participated with weapons in military campaigns, was commonplace throughout history. Regarding female military companions, their presence on the battlefields in large numbers and for centuries is to be considered highly important. It is known that in the period from the fourteenth to the nine-

3 Hong Doo-Seung, 2002, Women in the South Korean Military, SAGE Publication (London, Thousand Oaks, CA and New Delhi), *Current Sociology*, Vol. 50(5): 729–743.

4 At her retirement ceremony in 2012, Ann Dunwoody (the first woman to serve as a four-star general in both the Army and the U.S. armed forces) said, "Over the last 38 years I have had the opportunity to witness women soldiers jump out of airplanes, hike 10 miles, lead men and women, even under the toughest circumstances," she said. "And over the last 11 years I've had the honor to serve with many of the 250,000 women who have deployed to Iraq and Afghanistan on battlefields where there are no clear lines, battlefields where every man and woman had to be a rifleman first. And today, women are in combat, that is just a reality. Thousands of women have been decorated for valor and 146 have given their lives. Today, what was once a band of brothers has truly become a band of brothers and sisters." Veterans Day 2016, Seven Famous Women Veterans, *Military.com.*.

5 Gustavsen Elin, 2013, Equal treatment or equal opportunity? Male attitudes towards women in the Norwegian and US armed forces, *Acta Sociologica* Vol. 56 (4): 361–374.

teenth century, "flocks" of women regularly followed traditional military camps and provided various services to troops, mostly in terms of logistics, which were of vital importance for all armies. Most of these military companions, were not, as is sometimes disparagingly assumed "just prostitutes", even though some undoubtedly were. These were, however, significantly outnumbered by other categories and professions, for example, women who were mothers, sisters, wives, fiancées, daugthers, or widows of soldiers, as well as women who worked various jobs that army needed, for example, cooks, healers, nurses, laundresses, seamstresses, couriers, scouts, spies who gathered variety of information, servants, but also not uncommon were armed and uniformed female soldiers. As a rule, these women originated from lower social strata, so that their engagement in the army, like for their male counterparts, was for them their source of existence.

There are also many documented cases (probably even more which have gone undocumented), that during the eighteenth century (in the United States during the War on independence) women sporadically managed to escape the attention of recruitment commissions, and, disguised as men, took up uniforms and weapons to participate in combat. However, after 1865, this practice was (at least in the US), put to an end thanks to the introduction of regular medical checks, performed by qualified doctors.[6]

Whether because of increasing militarization of supportive service that provided the necessary logistical assistance, or because of the introduction of the railways as a primary means of military transport, it became increasingly impossible for military units to freely transport the informal female companions of military camps, so this practice gradually declined. As a result, armed units became more exclusively male than ever before. The end of Napoleonic Wars in the early nineteenth century brought about with it the elimination of the final remnants of traditional women's military companion services, but also the complete exclusion of women from all military and logistic uniformed roles. Armies became more professional and bureaucratic, and therefore, exclusively male in their composition.[7]

The introduction of new types of relationships between women and armed forces, different from the preceding female military companion with its origins in the medieval period, arose. A milestone in this regard was Florence Nightingale with her troupe of nurses. These women, who were motivated primarily by patriotic and humanitarian feelings, came from the upper middle classes, and their presence in the wars of the mid-nineteenth century opened the door for the progressive institutionalization of medical and logistical supportive roles of women in armed forces during the two World Wars of the twentieth century.

## *DE FACTO* EXCLUSION OF WOMEN AND CULTURAL AMNESIA[8]

In the grand world wars of the twentieth century the systematic participation of women in both support and fighters roles was evident, with the latter being prominent primarily in revolutions, and liberation and partisan movements. During the two World Wars, women neither systematically carried weapons nor participated in combat operations, with exceptions mainly in the Soviet Red Army (and some other minor cases). But in all cases, and

6 Van Creveld, Martin, 2000, The Great Illusion: Women in the Military, Millennium: Journal of International Studies, Vol. 29 (2): 429-442.
7 Carreiras Helena, 2004, "Women in the military, a global overview; Gender and mlitray, A compaarive study of the participation of women in the armed forces", Figure 1.1.
8 Segal Wechsler Mady, 1995, Women's Military Roles Cross-Nationally: Past, Present, and Future, Sage Publications, Inc. *Gender and Society,* Vol. 9 (6): 757-775.

regardless of the roles women occupied, at the end of the war, they were expected to give up their military status (and also the related military privileges) and return to their traditional domestic roles. The new role of women in the armed forces during the World Wars was obviously only intended to be of limited duration. At the end of conflicts, in most countries their presence remains minimal. The prevailing rule was social exclusion and omission of women former soldiers. Women everywhere were generally immediately demobilized following the end of a conflict, but unlike other countries where some of them remain still in times of peace and rest in the armed forces with a special status, the presence of women in the Armed Forces USSR became irrelevant.[9]

In the Soviet Union, Yugoslavia, Italy and France, many women participated in the various resistance movements. In these roles, they were exposed to the same dangers and hardships of war as men, survived all difficulties faced by men, and were often killed alongside men. But when it came to opening fire on the invaders or piloting aircraft, women were still left on the periphery. They were rarely involved in actual firefights with enemy forces on the front lines due to, among other things, weapon shortages, with weapons therefore being firstly administered to men.[10]

Parallel to the demobilization of women after the end of wars and their deprivation of the rights and privileges afforded to veterans, the process of developing a specific cultural amnesia, deliberate ignorance, contributed to the almost total oblivion of women's participation in wars. This has persisted until a new situation in the form of a threat to national security has arisen. Then the history repeats itself yet again, and possibilities for women in the armed forces are re-opened. More precisely, when armed forces need women, memories of their previous military participation and involvement in the armed forces, their heroic deeds and heroic characters are again evoked, in order to show that in every army a woman can effectively perform duties across many different positions.[11]

In fact, the participation of women in the army began to be suppressed, restricted and minimized from the first moment of gender integration in the military, when it became clear that women had the capacity to meet the criteria required for all military duties.[12] Historical study of women's military participation, however, shows that they have been systematically excluded from combat operations in times of war, or participated in them only in exceptional circumstances. And when they were involved, their participation has become invisible to history, and therefore non-existent.[13] This partial blindness of military historians to the role of women has also been justified by the dominant methodological approach of military historiography, which usually focuses upon battles. As McDonald puts it: "Most of the written history is just endless presentation of wars, conquests and revolutions, driven battles and signed treaties, military and political tactics, great leaders, heroes and enemies. In this history, women rarely figure."[14] Also a factor has been, of course, as in current times, irrational rivalries emanating from men unwilling to face the fact of women's ability to perform military tasks with a success rate and level of professionalism equal to the average male soldier. Therefore, it is important to analyze the factors that contribute to realisation in practice of increased women's interest for military service, as it is to analyze examples of successful female military careerists.

9 Herbert Melissa, 1998, *Camouflage Isn't Only for Combat: Gender, Sexuality, and Women in the Military,* New York University Press, New York - London.
10 Van Creveld Martin, op.cit.
11 Carreiras, op.cit. Chapter I.
12 Harrell C. Margaret, Miller L. Laura, 1996, *New Opportunities for Military Women Effects Upon Readiness, Cohesion, and Morale*, Santa Monica: Rand.
13 Carreiras, op. cit. Conclusion.
14 MacDonald Sharon, Holden Pat, Ardener Shirley, eds. 1988, *Images of Women in Peace and War: Cross Cultural and Historical Perspectives*. Madison, WI: Univ. Wis. Press.

Before the abolition of a compulsory conscription system, armed forces were considered a part of the traditional European male gender identity. During the first three quarters of the twentieth century, with rare exceptions, all soldiers were men, and most men undertook military service. As almost all young men in the first three quarters of the twentieth century had to serve at least some sort of military service, the basic military training was deemed a specific male rite of passage, as is also sometimes the case in the present day. Although the primary objectives of the basic training were to transform civilians into soldiers, a secondary – but no less important – military aim was to transform boys into men. Therefore, many continue to see the military as an important way, and perhaps the most effective way, for achieving the maturity of a man.[15]

## CAUSES AND CONDITIONS OF WOMEN'S PARTICIPATION IN THE ARMED FORCES OF MODERN TIMES

Women throughout the world have today begun to function as integrated members of modern armed forces, previously exclusively male domains, only since the 1970s, but not before. This process of gender military transformation might be seen as even deeper than the introduction of nuclear weapons, mostly because there still are some skeptics who predicted potential danger to national defense as a result.[16] Since the seventies, women have begun to enter armed forces with full military, professional status, begun to receive identical or similar training to men, have been integrated into military education and granted access to a growing number of army positions, with the result that the historical pattern of masculine exclusivity of the armed forces has been significantly challenged.

There is always present a genuine desire of women to be professional soldiers, much higher than circumstances in the past allowed. [17] Those whose dreams are realized testify on this wish,[18] evidenced also by the willingness of women professional soldiers to withstand all military efforts, often combined with rejection of the male community to accept them. Therefore, all mentioned factors, are in fact those that allow the realization of these always existing, strong aspiration of women to be soldiers.

A large number of causes and conditions are involved in determining the nature and extent of women's military participation. Strong interaction effects between these independent variables create the situation known in statistical terms as "multicollinearity".[19] Carreiras identifies what she named as the "Segal's model" of factors affecting women's participation in the military. According to this model, participation of women in military is affected by the three groups of factors, Military, Social (structural) and Cultural factors. Military comprises national security situation, military technology, military accession policies. Social includes demographic patterns, labor force characteristics (women's labor force participation and occupational sex segregation), economic factors and family structure. Cultural includes social

15 Lahelma Elina, 2000, "Going into the army: A gendered step in transition to adulthood", *Young* Vol. 8 (4): 2.
16 Hong Doo-Seung, op. cit.
17 Pettersson Lena, Persson Alma, Berggren W.Anders, 2008, "Changing Gender Relations: Women Officers' Experiences un the Swedish Armed Forces", Uppsala University, Sweden, *Economic and Industrial Democracy,* Vol 29 (2): 212.
18 The first USA woman general Ann Dunwoody said: "From the very first day that I put my uniform on, right up until this morning, I know there is nothing I would have rather done with my life," she said. Veterans Day, 2016, Seven Famous Women Veterans, *Military.com.*
19 Multicollinearity exists whenever two or more of the predictors in a regression model are moderately or highly correlated. PennState, Eberly College of science, 2017, What is Multicollinearity?

construction of gender and family, social values about gender and family public discourse regarding gender values.[20]

But among all of them, the military's need for personnel was identified as the strongest driving force behind the expansion of women's military roles through history and across nations. Cultural values supporting gender equality also contribute and seem likely to have increased influence in the future. When there are shortages of qualified men, especially during times of national emergency, most nations have increased (and will increase) women's military roles.[21] Expanding economy framework also is seen as providing impetus for women to join the military service. What in economic terms increases the interest of men in a military career proportionally reduces the space available for the realization of women's professional military aspirations.[22] High unemployment rates (especially among young men) are associated with a ready supply of men to serve in the armed forces and relatively low opportunities for women in the military. Periods of low male unemployment, especially with volunteer militaries, sometimes lead to expanded military roles for women (and women more motivated to join, especially if they are relatively disadvantaged in the civilian economy).[23]

*Military factors.* Together with social and cultural as peacetime factors, an important, if not decisive, role is played by threats to national security. When there is a high level of insecurity, there is increased military involvement, and therefore the number of military positions available to women increase also. Whenever a society is faced with survival risks, women take up arms and become fighters, with their participation being not only welcomed, but also actively solicited. This happened throughout the entirely twentieth century: the two World Wars, revolutionary movements, national liberation wars, during regime changes, and in different situations of border vulnerability and conflicts with decidedly superior enemy forces. In this sense, the World Wars of the twentieth century were the turning point for the significant entry of women into military formations. As another turning moment, the Persian Gulf War should by all means be mentioned. Namely, had we not had the experience of the war in the Persian Gulf,[24] with public attention to women's successful combat performance, there would be more pressure even to reduce women's military roles. Indeed, the Gulf War increased political pressure to remove many barriers to women in combat.[25]

However, experience has shown that even in societies with low threats to national security, but with egalitarian cultural values that support gender equality, women's military participation increases, as is the case for example, with Canada, Sweden and the Republic of South Africa,[26] where a "women's right to uniform", is implemented in increasingly secure and complete ways. It is important to mention that examples of good practice can also be drawn from other, regional countries, especially those of, to Serbia similar mentality and traditions, e.g. Spain, Italy and Greece.

20 Carreiras, op. cit. Figure 1.1.
21Segal Mady Wechsler, 1995, "Women's Military Roles Cross-Nationally: Past, Present, and Future", *Gender and Society,* Vol. 9 (6): 757-775. Published by: Sage Publications, Inc
22 Duncanson Claire, Woodward Rachel, 2016, Regendering the military: Theorizing women's military participation, *Security Dialogue* 2016, 47(1): 3-21.
23 Segal, op. cit. 761.
24 The Gulf War (2 August 1990 – 28 February 1991), codenamed as "Operation Desert Shield", also is known as the First Iraque War or the Kuwait War.
25 Many of the 250,000 American women have been deployed to Iraq and Afghanistan on battlefields where there are no clear lines, battlefields where every man and woman had to be a rifleman first. Therefore, today, women are in combat; that is just a reality. Linehan Adam, 2016, Meet The Highest Ranking Female General In US History, *Task and purpose,* 16. May.
26 Heinecken Lindy, 2002, "Affirming Gender Equality: The Challenges Facing the South African Armed Forces", SAGE Publications, (London, Thousand Oaks, CA and New Delhi), *Current Sociology*, 50 (5): 715–728.

*International factors*. There is also the substantial role and impact of international organizations to consider, such as the UN through its peacekeeping missions, composed of more and more women; military alliances, e.g. the NATO countries, where women also have increasingly more significant and more numerous military roles. All of these examples show that international combat readiness does not decline when women enter armed forces. That is why their role is becoming larger-scale and more visible, as is the latest example of the British abolition of the prohibition of women fighting on the front line.

It is also necessary to mention the effects of good practice models based on comparative law regulations in other countries, such as the latest lifting of the ban on women's involvement in frontline combats in the British Army. Women soldiers in the UK will eventually enter the tanks and armored regiments on the front line, and in the next three years will gradually enter into all other detachments. At the moment, women in the British infantry can operate on the front lines, but not in direct contact with the opposing forces. The decision was made after research on the physical ability of women to be engaged in infantry combat on the frontline, strictly ensuring that the quality of the British armed forces will continue to be of the highest class, as it has always been. The abolition of this prohibition is a major breakthrough that will allow the armed forces to utilize all the skills and talents of women, and thus enable them to carry out any military duties.[27]

The newly designed small hand weapons flooded into the "new war" sites of Asia, Africa, Middle East and Latin American. Therefore, the last but not the least, among the international factors, (also belonging to the changes in military technology), is to be mentioned the current international innovations in hand weapons design, resulting in smaller and lighter, yet more lethal small arms. It largely obviated the ever present discourses about whether women were biologically unsuited for combat while these small arms are easily and efficiently used even by children.[28]

## WOMEN'S (MOVEMENTS) STANDPOINTS

As for women, wearing a military uniform is simply sometimes considered only as one of numerous possible life options while for young men, going into the army is seen as a transition to adulthood. The transition was also regarded as a question of honor, or as a challenge: 'finding out who's man enough'. For young men this challenge is a normal, taken-for-granted step in the transition. For young women, army can also be a challenge; but for them it is not the same challenge, but rather something that makes them different from other young women. It is not a necessary life transition, but an option, only open to them if they fit the male norm of fitness and endurance.[29]

The feminist movement is not unified and does not by any means play a factor supporting greater involvement of women in the armed forces. Pacifist feminists believe that women are, by their psychological constitution, essentially oriented toward giving and sustaining life, peace, with care and concern for others, so women allegedlly are all in conflict with the military profession. For example, the feminist pacifist attitude of Virginia Woolf demanded gender equality not through enabling women to participate in fighting, but by releasing men of military obligations.[30] It follows that pacifists, in principle, oppose the army and are surprised that some women, despite what they considered an essentialist "real woman's nature",

27 Beta, Tanjug, 2016, British army lifts the ban for women to fight on the frontline, *Blic,* 8. 7.
28 Moran H. Mary, 2010, "Gender, Militarism, and Peace-Building: Projects of the Postconflict Moment", *The Annual Review of Anthropology* 39:261–74.
29 Lahelma, op. cit. 7.
30 Heinecken op. cit. 715–728.

still want to serve in the armed forces. That's probably why those women in the feminist and peace movements still are frequently branded as politically naive, weak, and even falsly patriotic.[31] In contrast, although anti-militarist, radical feminists put forward a completely opposite opinion and support involvement of women in the military, arguing that specific characteristics of women contribute to changing the nature of war and the armed forces, and that there is an insiders ability of women in the military to influence security policy and, more importantly, the entire atmosphere of war.[32]

Very similar women's interest in structural social and organizational changes may also be evidenced when analyzing women's reasons to join non-state armed groups. When compared the reasons what make a person choose to support or fight for a non-state armed group (NSAG), there are significant differences between men and women. Men join such groups when having feelings of frustration, exclusion, and/or relative deprivation a grievance centered on political, economic, ethnic, and/or religious factors, plus, when there is a perceived personal benefit–like power, money, or loot. Meaning, men decide to join because of "grievance" or/and "greed". Women are significantly more likely than men to be found in leftist groups with an ideology focused on political and economic redistribution, and they are also active in the vast majority of all groups that advocate women's rights, but in both cases, they prefer support (non-combat) roles.[33]

The question is, then, whether women have the right to be part of the armed forces, or to put it differently, is there a women's right to a military career, uniform, and all the associated attributes/privileges of this profession? In addition to assuming the affirmative answer of feminist movements, it must be noted that women have not yet become an equal part of the armed forces, a typically and traditionally male institution. But the longer the presence of women in the armed forces, the better the access of the new generations of female soldiers is facilitated, and their aspirations in terms of professional military careers are increasingly being taken seriously. The fact that women can reach the tops of some professions strongly motivates and encourages young women to opt for such fields of work, thus becoming one of the key factors of increased female participation in the armed forces of a country.

## THE PEAK OF SUCCESS - WOMEN GENERALS

In the US military, there are now more than 60 women generals, but recently the first female US officer achieved a four-star general rank. There are women generals present in the structures of the armies of Israel, Nigeria, Pakistan, United Kingdom, Algeria, the Philippines, France, Croatia, and more. Below are some brief biographies of groundbreaking female generals around the world.

*Canada*.[34] At the end of June 2016, 47-year-old Colonel Jenny Carignan (after whom is coined the so-called *Jenny Effect* – the impact factor of individual examples of successful military career women) was upgraded to the rank of brigadier-general (one-star general), thus

31 "When we think about the definition of a patriot, we generally think of a man, often a soldier who defends his homeland, most especially his women and children, from dangerous outsiders". Tickner J. Ann, 1992, *Gender in International Relations, Feminist Perspectives on Achieving Global Security*. New York: Columbia University Press. Chapter I: Engendered Insecurities: Feminist Perspectives on International Relations.

32 Goldman L. Nancy, 1982, *Female Soldier: Combatants or Non-Combatants? Historical and Contemporary Perspectives*, Greenwood Press, Westport.

33 Henshaw Alexis, 2016, Revisiting Rebellion: Why Women Participate in Armed Conflict, *Political Violence*, 22. August, Center for Security Studies – Zurich.

34 Kembel Megan, 2016, Meet the world's first female combat general, *Maclean's,* June 3.

earning also the title of Chief of Staff of Army Operations. Although there are other Canadian women generals, they had thus far been advanced from non-combat roles, such as medicine, logistics, combat support, intelligence and administration. Carignan is the first woman in Canada who attained her rank from a combat role, having served in areas of the world with the most intense violence, which is a curiosity of its kind, because women in Canada were prohibited from participating in combat operations until 1989. Carignan grew up in a Quebec mining town, in a family where the jobs had never been divided along gender-specific lines. Throughout her youth at the farm of her parents, she handled a chainsaw, worked with a bulldozer, drove heavy off-road vehicles, camped in the mountains and handled firearms just as well as three of her brothers. Afterwards she acquired military education for the profession of combat engineer – which comprised frontline duties such as clearing minefields, demolitions, and raising various buildings and structures.

*United States of America*.[35] Lori Robinson, an aviation general, took over the command of the North Commands of the United States Air Force on 13th May 2016, becoming thus the first highest rank female officer in the military history of the United States, leading the unified command of combat units. Northern Command (NORTHCOM) is responsible for the defense of the US homeland and surrounding countries. Also, under her command is the North American Airspace Defense (NORAD). As the commander of NORTHCOM, Robinson is the highest ranking general in charge of the overall supervision of military activities in North America. Between June 2012 and October 2014, she advanced in service as Deputy Commander of the Central Command of the Air Force of the United States with two stars, the commander of the Pacific Air Forces in the service of a four-star general, which is the position with which she became the first woman four stars commander of combat forces.

Not to be forgotten is the fact that now-retired General Ann Dunwoody "smashed" in 2008 the so-called, "brass ceiling" when then-President George W. Bush appointed her as head of the command for the purchase of material (equipment) for the US Army, making her the first four-star woman officer.[36]

*United Kingdom*. The British Army also began promotion of women to its highest military ranks. In 2012, Elaine West was promoted to become the highest rank that a woman had ever had in the British Army, when she became Vice-Marshall of the Royal Air Force.[37] Brigadier Suzanne Ridge (52) was promoted to general-major in September 2015, after twenty-three years of military service, thus becoming the highest-ranking woman ever in the military. With this promotion, she will be the new Director General Army Legal Services in charge of a team of 130 lawyers. Her promotion came at a time when the British Army was deciding whether, for the first time, to open up frontline combat roles to women.

Women were not allowed till 2016 to participate in combat units in the field where the primary role is to "get near and kill the enemy". This policy means that women were till recently forbidden from entering into the infantry battalions, armoured regiments and the Roy-

35 Linehan Adam, 2016, Meet The Highest Ranking Female General In US History, *Task and purpose,* 16. May. The appointment of Robinson to one of the highest positions in the US Army was a result of her being the most capable officer, said the former Minister of Defense, Ash Carter, who attended the promotion ceremony at Peterson Air Force Base in Colorado. He then expressed the hope that the excellence she possesses would be a real inspiration for all women to become involved in the US Armed Forces. Now Robinson is the highest ranking female member of the armed forces in the history of the United States. While women have earlier reached the rank of four-star general - including Admiral Michelle Howard, who currently serves as Deputy Chief of Naval Operations - none reached such a high position as that of a commander of joint combat forces, as NORTHCOM is.

36 "From the very first day that I put my uniform on, right up until this morning, I know there is nothing I would have rather done with my life," she said. Veterans Day, 2016, Seven Famous Women Veterans, *Military.com*.

37 Farmer Ben, 2015, British Army appoints first female general, *Telegraph,*6 July.

al Marines. However, Michael Fallon, former Secretary of Defense, said that he hoped the ban would soon be overturned if this historical change would not damage the efficiency and morale of combat units.

*Croatia*.[38] With the promotion of Gordana Garašić,[39] the Croatian armed forces entered the growing club of states whose militaries have female generals. Gordana Garašić became, in May 2015, the first ever female general in the history of Croatian army. She attended specialist courses and seminars in the US, the UK, Austria, the Czech Republic and Belgium, in order to acquire specialist military knowledge, as well as the knowledge of legal aspects of participation in peacekeeping missions and operations. She served in the Chief Office of Staff[40] and Head of the Division Operations before 2004.[41] In the period between 2004 and 2008 she served as a military adviser to the Military Representation of the Republic of Croatia to NATO. At that time, in 2006, she also passed the bar exam. She was, for the first time in 2010, appointed to the mission in Afghanistan, where she served as head of the Department of Personnel Administration in the Regional Command North, and then as legal advisor of the RCN[42] commander. Gordana Garašić was the first person in the Armed Forces with such a high rank who played such an active role in the NATO peacekeeping operation.[43] After returning to Europe, she worked as an assistant advisor to the Secretary for Defense until 2012, when she was sent to the Dwight D. Eisenhower School for National Security and Resource Strategy, part of the National Defense University, where she obtained a masters degree as one of the legally prescribed prerequisites for future promotion to the rank of general.

## "JENNY EFFECT" - SUCCESSFUL INDIVIDUAL CASES OF WOMEN'S MILITARY CAREERS[44]

The term "Jenny Effect" comes from the Canadian Armed Forces, and is taken to mean an increase in the number of women interested in professional military education and later military service under the influence of success stories of previous generations of women officers. Examples of women who have reached the highest ranks of generals in the armed forces of their countries provide inspiration and models of behavior for today's young women, and play a decisive factor in them deciding on a military career, but also by their very existence send the message that women can reach the highest ranks within the military profession. Otherwise, in the Canadian army, women comprise only 2.4% of regular professional combat armed forces, compared with 14.8% of their total presence in composition of the army.

It is believed that this "Jenny Effect" is responsible for a change of statistics in the Canadian army, by increasing the involvement of women in combat armed forces, to which Colonel Jenny Carignan acted primarily through her personal example, as a mother of four children –

38 Žabec Krešimir, 2015, First of General in the history of HV, *Female power*, 29. May.
39 First Croatian generalica was born 25 May 1970 in Zagreb. At the Faculty of Law, graduated in 1994 and started working at the Ministry of Internal Affairs in the Department for citizenship.
40 Head of the Cabinet chief of staff.
41 Head of operations in progress.
42 The Royal College of Nursing (RCN) Defence Nursing Forum (DNF) is the largest professional organisation for defence nurses in the UK. The RCN had significant roles in recent wars in Iraque and Afganistan.
43 On her second deployment to Afghanistan in 2014, she served as counselor at the headquarters of Peace Support Operations of the ISAF mission. She has worked with the Afghan authorities, the United Nations Mission to Afghanistan, NGOs and other organizations responsible for women's rights. She has organized trainings and support in working with the local authorities to integrate a gender perspective in all aspects of life and work of the Afghan government and society.
44 Kembel, op. cit.

by defying stereotypes. Women joining the Royal War College jumped from 10 to 25 percent between 2013 and 2015, at that time Colonel Carignan met with the girls who were interested in military studies and their mothers at open doors days, and made numerous appearances in the media in Quebec. She informed them, among other things, that now the students were trained in correct sexual behavior. Carignan herself was a decisive factor in that part of military training being established, which is another component of the "Jenny Effect", and bears proof that the army became a more friendly environment designed for women. Carignan has, for example. recently pointed out to her colleagues that the current military education teaches males what is not acceptable in communication with women soldiers, but does not offer any alternative. Therefore, in September 2016, the Royal War College reintroduced ballroom dancing lessons, as an elegant form of military professional cooperation of both sexes.

## CONCLUSION

There is always a desire of women to be professional soldiers, therefore, all the aforementioned factors, are just those that allow the realization of the always existing, strong aspiration of women to be soldiers, in the current politically and socially changed world. The armed forces have to be socially representative. The military is an organization that exercises and manages violence legitimately, so their presence should be morally accepted and supported by the people.[45] But still, given the traditionally masculine nature of the military institution, it is one of the last bastions of male domination and there still are forces resistant to gender integration. Also the increasing number of military women causes somewhere public resistance because it challenges notions of masculinity and femininity. Therefore, the more egalitarian the social values about gender, the greater women's representation in the military. On the other hand, cultures that support traditional divisions of labor based on gender will tend to exclude women from the military or limit their roles substantially. As social values have become more egalitarian in societies, women's military roles have expanded.[46]

Today there is increasingly expressed the view that women have a "right to uniform", as the right to equal professional treatment in any field. Often it is the attitude that women inside can change the character of the armed forces is acceptable even by women of pacifist orientation. It can be concluded that for women's participation in the armed forces, the army must be perceived by the political elite, but also by the general population, as transformed, to be more harmonized to the needs of women (or to what should be women's needs). Otherwise, women must be modified and be perceived as changed, in ways that make them eligible for military service and the development of a military career. The meeting of both transformative processes, somewhere at the "halfway point", perhaps, might be a winning formula. Engagement of all parties in the process of inclusion of women in the armed forces is important for society as a whole, especially for its further equalization of general gender relations and the expansion of professional opportunities for women in all working domains. Namely, women in uniform from one side, and the army (whose salary they earn, whose uniforms they wear, performing their military duties), from the other, both contribute to better inclusion of women in the armed forces.

Finally, it is more and more clear that men themselves are also insecure partly because of the exclusionary, gendered way their own security has been defined. That's why overcoming gender inequalities in military is necessary, "not only for the security of women but also for the realization of a type of security that does not rely on characteristics associated with the

45 Hong, op. cit.729.
46 Segal, op. cit. 770.

hegemonic masculinity that has produced a kind of security that can be a threat to men's security also."[47]

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# COMPARATIVE REVIEW OF HYBRID WARFARE AND SPECIAL WARFARE

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**Abstract:** Hybrid warfare is a new term in the field of defence and security which became very popular in a last ten years particularly. Initially, this new term has arised from analyses of conflicts on the Middle East and Central Asia, but was powered additionaly with contemporary crisis in Eastern Europe and Syria. Its provoking name has attracted attention worldwide and accross many disciplines. Besides generaly accepted definition still do not exist, available concepts and recognized characteristics of hybrid warfare seems to be very similar to already existing forms. One of that is a special warfare -a concept that was well known during the second half of the twenty century. This paper aims to remind on already existing concepts, to find out similarities and differences and to enable better perception and understanding of ongoing security threats. Hybrid warfare erase borders between war and peace, regular and irregular actions, information and disinformation, military and civilian. Similarly as in a case of special warfare, activities in a hybrid warfare are characerized by complexity, ambiquity, surprise, diversity, agitation, desinformation, denial of involvement, covert actions, economic embargo, trade boycott, sanctions, etc. Due to the complexity of hybrid warfare, a response actions have to be based on reliable sensing of security sitiuation, objective perception and wise decision making. Effective national response to the hybrid threats have to be based on a qualitative cooperation and coordonation among all national resources and capacities appointed for national security and defence.

**Keywords:** security, hybrid warfare, special warfare.

## INTRODUCTION

Contemporary armed conflicts steadily change its character and evolve new forms and aspect, bringing more steam and clouds in the „fog of war". Almost every aspect of traditional conflict is questioned. Initiator of conflict tend to avoid term „war". Instead, some new terms are involved: intervention, campaign, hymanitarian action, peace enforcement, democracy implementation, liberation of threaten population, overthrough of tyrany, etc. Similarly, main reason for hostilities is usually hiden while declared proxy is chosen so that justify hostile actions and seems good enough for public and media. Clear physical framework of conflict is blured as well. There is no clear start nor end of conflict as a whole, instead there is a serie of phases with gradually distributred activities of crisis management. Initiator of the conflict tend to gather on his side many other subjects, from nation states and international organizations, accross media, until nongovernmental organizations (NGO) and prominent individuals. At the same time, initiator of the conflict tries to make his object of attack to be as alone as possible. Also, there is a tendency of „multi side" that is, existence of more than two waring

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parties, and a tendency of „many participants", that is, many various subjects interested for the conflict (NGO, media, humanitarian, peace makers, etc). In modern conflicts military forces are not exclusive user of the force. Instead, there is a tendency to attach them a role of a demonstrator of force or guardian and hold them behind, while other entities are more visible (freedom fighters, tribal's militia, people' movements, etc.).

Hybrid warfare[2] is one of the novel term which is, to say so, invented to ilustrate complexity of modern conflicts. This term has got great popularity and has become widespread across media, expert circles and attracted many research[3] to deal with it. Originally, this term arised from analyses of conflicts on the Middle East (a short war in 2006 between Israel and Hesbolah). New wave of popularity of the term has come with contemporary crisis in Ukraine and Syria. Media, politicians, analysts and a number of researchers have used extensively term hybrid warfare while reporting about mention crises.

Generaly accepted definition of hybrid warfare still do not exist due to theoretical disputes and diferences in terminology and perceptions. However, available concepts and recognized characteristics of hybrid warfare seems to be very similar to already existing forms. In domestic context, there is one of older concepts which is very similar to the concept of hybrid warfare: it is a special warfare. Special warfare is a concept which was well known during the second half of the twenty century in the former state of Yugoslavia. This paper aims to remind on already existing concept, to find out similarities and differences and to enable better perception and understanding of ongoing security threats. Hybrid warfare erase borders between war and peace, regular and irregular actions, information and disinformation, military and civilian. Similarly as in a case of a special warfare, activities in a hybrid warfare are characerized by complexity, ambiquity, surprise, diversity, agitation, desinformation, denial of involvement, covert actions, economic embargo, trade boycott, sanctions, etc. Ultimate goal of all that variety of activities is influencing, or even changing a ruling regime in a country which is chosen as an object of attack. Because of intricacy and ambiguity of hybrid warfare, appropriate response actions have to be created on the basis of reliable sensing of security sitiuation, objective perception and wise decision making.

## ABOUT HYBRID WARFARE

Hybrid warfare owes its name to a broad blend of tools and methods which could be and usually are, employed in a modern conflict. There could be a combined use of military and non-military forces, intelligence operations, sabotage[4] actions, economic sanctions, financial conditioning, travelling and transportation bans, media spinning and disinformation, organized crime, religious questions, humanitarian issues, terrorist acts, insurgency, etc. Hybrid warfare actions are applicable in a peace time but the best results are produced in a time of crisis. In fact, hybrid warfare actions lead towards the condition of crisis.

Hybrid warfare is relatively novel term in studies and considerations of modern warfare. Intriguingly-named phenomenon the "hybrid warfare" demands and deserves some terminology clarifications before any further considerations. Being relatively new, notion of the "hybrid warfare[5]" has provoked academic and experts' discussions over last decade. Trying to understand modern warfare researchers offered different views on the topic and evolved some similar issues of modern warfare as well. There are some other terms similar to hybrid

2 Mattis, James, Hoffman Frank, "Future Warfare: The rise of Hybrid Wars", Proceedings Magazine, 2005
3 Wither James, "Making Sense of Hybrid Warfare", Connections: The Quarterly Journal, 2016.
4 Office of Strategic Services, "Simple Sabotage Field Manual", Washington, D.C., USA, 1944
5 Hoffman Frank, "Conflicts in the 21st Century: The Rise of Hybrid Wars", 2007.

warfare as follows: chaoplexic[6] warfare, swarming[7], non-linear[8] warfare, network-centric warfare[9], etc. Some novel[10] research in the military branch suggests classification of warfare as follows: Unrestricted warfare, Compound warfare, Fourth Generation warfare, and Hybrid warfare. No doubt, current findings and existing dilemmas on terminology, classification and other aspects will be subject of further interest among researchers around the globe. However, the subject of this paper is not primarily a discussion on terminological issues related to the "hybrid warfare", but rather on some aspects that could be more useful for understanding the phenomenon, recognizing challenges and modalities for exploiting opportunities and countering hybrid warfare activities.

Hybrid threats and the need for countering them are recognized as an urgent need in the European Union (EU) among other issues at the meeting on the Common Security and Defence Policy[11] (CSDP), before intensification of conflict in the Middle East in the early fall of 2015 and terrorist attack in Paris in November 2015. Another EU document[12] is exclusively dedicated to the "hybrid threats". It presents good foundation for further elaboration on the topic. This document contains following structure: the context, defining aspect, vulnerabilities identification, EU response (awareness, resilience, deterring and responding), and recommended actions. Every structural element is supported with few explanations which will be useful for further elaboration and avoiding misunderstanding.

Hybrid warfare is also a mix of war and peace, that is, it presents a continuum. Two premises are of interest here. First one is based on well-known Clausewitz's saying that "War is the continuation of politics by other means". In other words, the politics and non-war state, or peace, are the predecessors of war. The second premise is based on logical deduction as follows: being the "continuation" of its previous state, war logically has some connections and similarities with its predecessor's state (peace). If the "hybrid warfare" is already identified, then it could be legitimate to talk about the "hybrid politics" or, in wider context, about the "hybrid peace". Similar views on the war-peace continuality could be found in other research[13] where it is pointed out as: "War as a Continuum". In perception of Clausewitz writing war is not an isolated event - there is a wider context and some preconditions and pre-events. As politics and peace are more complex, they are consequently more "hybrid". That means there are many potential challenges and modalities for generating hybrid threats and performing one or more activities of hybrid warfare. The logic of things suggests that "hybrid warfare" is some collection of deeply different activities undertaken in warfare, or: "a fusion of different forms of warfare rather then a singular approach[14]". In that sense the "hybrid warfare" presents combined use of conventional, unconventional, irregular activities in warfare[15]. However, here is not the end of the list and it could be continued with a set of other warfare modalities (that already have legitimacy in the military field), as follows: cyber warfare, biological warfare,

6 Antoine Bousquet "The Scientific Way of Warfare", Columbia University Press, New York, 2009
7 John Arquilla and David Ronfeldt, "Swarming and the Future of Conflict", Rand Corporation, 1999.
8 Sean Edwards, "Swarming and the future of warfare", Pardee RAND Graduate School, Santa Monica, CA, USA, 2005.
9 Arguilla and Ronefeldt.
10 Timothy McCulloh and Richard Johnson, "Hybrid warfare" *JSOU Report 13-4*, Joint Special Operations University, FL, USA, 2013.
11 Council of the European Union, "Council Conclusions on CSDP" *Outcome of Proceedings 8971/15*, EU, 2015.
12 European External Action Service (EEAS), "Food-for-thought paper: Countering Hybrid Threats" *Report 8887/15*, EU, 2015.
13 Margaret Bond, "Hybrid War: A New Paradigm for Stability Operations in Faling States" *USAWC Strategy research Project*, 2007.
14 Davi M. D'Agostino, "Hybrid warfare", report GAO-10-1036R Hybrid Warfare, US Government Accountability office, 2010.
15 D'Agostino.

chemical warfare, etc. Further, there are a variety of other (not necessarily military related) actions oriented towards the making damage to the opponent side as follows: trade war, custom war, economic sanctions, transportation corridors violations, social unrest stimulation, political life blocking, corruption expansion, high level criminality, industrial sabotage, infrastructure violation, panic and disinformation widespread, terror activities, assassinations, etc.

While there is no entirely new mode of warfare behind the term "hybrid warfare", the notion itself is good as a single designation that points out nature of changed and broadened physiognomy of modern warfare and conflicts in general. Some practical forms of applied activities which can be characterized as hybrid warfare, for the purpose of better illustration, are as follows. Economical sanctions are aimed to plunge national economy, commerce, market and industry primarily on a long term basis. Energy policy jamming is aimed at breaking power supplies and making damage in economy, transportation, heating, etc, in a very short time. "Media war" means wide spectra of activities and measures: information distortion, asymmetric reporting, biased reporting, exchange of roles offender-victim, inversion of cause-and effect issues, demonization, lying, etc. Stimulation of division of the targeted society across multi axes: ethnic, religious, language, political, etc. Isolation at international level across lowering level of diplomatic relations, economic and transportation links, sports connections, media coverage, military cooperation, etc. Pressures on the state representatives to act as external force want. Social and strategic agenda changes through directing attention at wrong or at least on unimportant issues, instead on adequate prioritization. Stimulating corruptive behaviour, nepotism and negative selection in all public services is a kind of long-term investment for future social eruptions, but also have short-term effects in the sense of reduced quality of public services.

## ABOUT SPECIAL WARFARE

Referential domestic literature[16] from midseventies of twenty century contain a lot of references related to the many aspects of today's meaning of the hybrid warfare. Then the used term was a „Special warfare". The meaning was related to the wide spectra of various activities that one subject has undertaken against the oposite side. The role of a subject was usually attached to states. However, the subject could be also a group of states (multilateral or bilateral aliances), or even a non-state actors. The matter of fact, non-state actors were usually related to the resistance movements (national and ideological) which were actual in that time (the middle of the second half of the twenty century). Today, non-state actors are perceived in a much wider sense and could be: national, ideological, religious, related to the organized crime, ecological, commercial, humanitarian, etc.

The spectra of applied activities contains all possible actions which could lead to the realization of the goals. Those activities could be of various kind: political, economical, psychological, propaganda, intelligence, subverzive, and military. All activities in special warfare are carefuly created, planed, organized, coordinated and executed. These notes are applicable today also, but with some additional aspect which exist or are enlarged today compared to the past. For example, propaganda issues from seventies evolved in media influence and issues today (globalised media, social networks, movies, music festivals, etc.).

Propaganda and psychology warfare[17], as old terms used in the context of special warfare, gained huge development, change and enlargement from the decades after WWII up to second decade of XXI century. Today, it becomes important, if not crucial, aspect of hybrid

16 Војна енциклопедија, том 9, друго издање, Војноиздавачки завод, 1975, страна 7
17 Војна енциклопедија, том 7, друго издање, Војноиздавачки завод, 1975, страна 512

warfare. Old fashioned special warfare distinguished three kinds of propaganda[18]: white, grey and black. Classification criterion was an estimated level of recognizing the main source of information. Identification of the main source of information is crucial because it is obvious that credibility of presented information will be proportional with credibility of the source of information. Also, it is logically clear that presented information will be in line with interests and values of the source of information. In case of the white propaganda it is known, who is the source of information. In case of the grey propaganda, the source is not obvious but it could be identified indirectly. And, in case of black propaganda the source of information is not known, that is, it could not be identified with enough level of reliability. In general, liberal relation with the truth (or lying) is much more possible in case of black propaganda because the source, which is hidden, has large freedom of action without danger to lose credibility because of unfair, unethical or illegal behaviour. There are a lot of room for a various propaganda activities as follows: biased informing, selective presentation, distortion of facts, parody on values which are respected in a targeted society, belittling of opponent, spinning and repeating, discreditation of opponent, revision of historical facts, revision of international norms, demonization of opponent, and lying.

In order to make systematic view of many possible tools for realization of special warfare, there is an analytic method from the Management science known as PESTLE analysis. In order to point out similarities between special warfare (old approach) and hybrid warfare (new approach), they are presented together in the Table 1 in the following section. One step forward is done and in the last column of Table 1, where some proposals are given for possible counter-actions.

## HYBRID AND SPECIAL WARFARE IN PESTLE ANALYSIS

Acronym PESTLE is related to a simple but comprehensive analytical methodological approach which is based on analysing of various aspects related to the research subject. PESTLE analysis comes from the field of the Management science. Acronym PESTLE stands for meanings as follows: P-Political, E-Economic, S-Social, T-Technological, L-Legislative, and E-Environment). This is very simple and robust method which helps decision maker and analyst to get clear and comprehensive picture of the problem under study. PESTLE approach is useful particularly in some cases like as follows: early phase of the problem solving, fuzzy description of the problem, messy requirements, unclear expectations of the solutions, complexity of the problem, etc. In a methodologically sense, defining hybrid threat and finding appropriate modalities of deterring and countering it is a good challenge for testing the power of the PESTLE analysis.

**Table 1.** PESTLE analysis for hybrid and special warfare and counter measures

| Factors | Aspects, forms, actors | Threats and challenges | SW | HW | Deterrence and countering |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |

18 Војна енциклопедија, том 7, друго издање, Војноиздавачки завод, 1975, страна 389

| | | | | | |
|---|---|---|---|---|---|
| P-Political | Officials (government leadership, members of parliament,..) | Misinforming | * | ** | Transparency |
| | | | * | ** | Public relations |
| | | Black-mailing | * | ** | HR management |
| | | | * | ** | Public security |
| | | Spinning | * | ** | Responsibility |
| | Processes (making laws and regulations) | Blocking | * | ** | Legality |
| | | | * | ** | Negotiations |
| | | Ignoring | * | * | Consistency |
| | | Impositions | * | ** | Lobbing |
| | International Affairs | Isolation | ** | ** | Allies finding |
| | | Tensions impositions | ** | ** | Active peaceful politics |
| | Internal Security | Public security erosion | * | ** | Awareness improvement |
| | | Border porosity | * | ** | Strengthening border police |
| | | Confusing crises management | * | ** | Advancement of procedures and decision maker training |
| | National security (Defence) | Arms race | ** | * | Priorities trade-off |
| | | Demobilization forcing | * | ** | Smart recruitment |
| | | Demilitarization | * | ** | Optimizing resources |
| | | Bureaucratization | * | * | Optimizing management |
| | | Decline of standards | * | * | Sustaining high quality |
| E-Economic | Public debt | Conditioning | * | ** | Restrictive budget politics |
| | GDP | Economic sanctions | ** | ** | Diversification |
| | Living costs | Monopolies | ** | ** | Liberalization |
| | | Supply chain Interruptions | * | ** | Market stability |
| | | | * | ** | Infrastructure protection |
| | Inflation, taxes | Distrust | * | ** | Stability |
| | Unemployment rate | Social turmoil | * | ** | Economic grow, Social aid |
| S-Social | Values, lifestyle | Corruption | * | ** | Accountability |
| | | Nepotism | * | ** | Transparency |
| | | Negative selection | * | ** | Positive selection |
| | Cultural identity | Ignoring | * | ** | Promotion |
| | | Oblivion | * | * | Memorial |
| | Education | Erosion | * | ** | Nurture |
| | Religion | Mockery | * | * | Respect |
| T-Technological | Production | Sabotage | ** | * | Safety prevention measures |
| | | Dirty technology import | * | ** | High standards requirements |
| | Power supply | Sabotage | ** | ** | Safety prevention measures |
| | Water supply | Sabotage | ** | ** | Safety prevention measures |
| | | Pollution | ** | ** | Safety prevention measures |
| | Research & Development | Obstruction | * | * | Cooperation |
| | | Theft | ** | ** | Prevention |

| | | | | | |
|---|---|---|---|---|---|
| L-Legal | Business rules | Unpredictability | * | * | Stable, long term |
| | Taxation rules | Frequent changes | * | * | Constant |
| | Employment rules | Uncertainty | * | * | Syndicate strengthens |
| E-Environmental | Weather & climate | Misuse of disasters | * | * | Emergency management |
| | Pollution, contamination | Man-made accidents | * | * | Detection & Warning system |
| | Infrastructure | Violation | * | * | Protection |
| | Energy availability | Interruption | * | * | Diversification |

Each aspect in the PESTLE analysis may have more or less detailed structure. In that sense, content presented in Table 1, is not final but may have some additional elements. Which aspect will be more or less analysed and worked out in more details, depends on estimation of vulnerabilities and strengths of the object (state, alliance, nation, organization, group or even an individual). After identification of singular topics for each aspect, next phase of PESTLE analysis is rating of the identified issues, estimation of the likelihood of the events realizations, and prediction of possible implications considered through analysis. Depending on the required level of details some elements of the cycle may be omitted.

How it seems in practice when developing different aspects in more detail? For example, let start with "P" (Politics). P-Politics may have many aspects and actors: political decision makers and administration on power; political parties (registered, parliamentary, and non-parliamentary); citizens; non-governmental organizations; academics and think-tanks; international organizations; etc. Hybrid warfare activities may take different shapes related to the political sphere, for example: influencing decision makers (state officials, public figures, journalists) in a broad range (informing, misinforming, black-mailing, etc); confusing and spinning of population; imposition of irrelevant topics; lobbing; etc. When set of threats is generated, together with wider analysis on identification of possible actors interested for the subject, it is much easier to define appropriate counter measure taking in a count all limitations and available resources. Data presented in Table 1 are given as a hypothetical example, while for real cases the table review will be certainly more detailed. Discussion and elaboration of other PESTLE "letters" are omitted here as not so much necessary in the methodological sense.

## IMPLICATIONS FOR SECURITY SECTOR

Due to richness of hybrid warfare manifestation, many aspects could be hypothetically evaluated or empirically analysed. An excellent novel example[19] has demonstrated power of open intelligence used in mapping social and technological network of a small European country, its armed forces and critical infrastructure. Social networks were used to identify personnel of military units and crows of main battle platforms, including theirs private personal status and family members. Similar approach has been used for identifying weak points of critical communicational infrastructure at national level.

The purpose of the special warfare was to obtain successful imposition of the own will and realization of proper goals. Usually it is considered that a regime change in a targeting country will obtain fulfilment of own goals. Figure 1 depicts this, through gradual activities aranged as a cycle. Ultimate goal of all spectrum of hybrid warfare is related to influencing, or

19 Van Haaster Jelle, Roorda Mark, "The impact of Hybrid Warfare on Traditional Operational Rationale", Militaire Spectator, 2016.

even changing a ruling regime[20] in a country which is chosen as an object of attack. It could be achieved in a more then one way. Traditional way of regime change assumes that with a change of a regime exponent (suppreme ruler) the state policy will be changed. However, hybrid approach suggests that the state policy could be changed toward desired direction, with a transition of willl, values and actions of the supreme ruler. So, the topic „Regime change" on the Figure 1, in fact means: „Regime behavior change". Which one of the many potential tools will be used as a „fuel for change" depends on the characteristics of each particular situation in the targeted country. It could be endemic coruption, religious tensions, ethnic conflicts, authocratic rule, lack of democracy, election irregularities, economic crash and other affears. Selection of particular issues comes after extensive intelligence and detailed mapping of vulnerabilities. Variety of options is considered through PESTLE analysis.

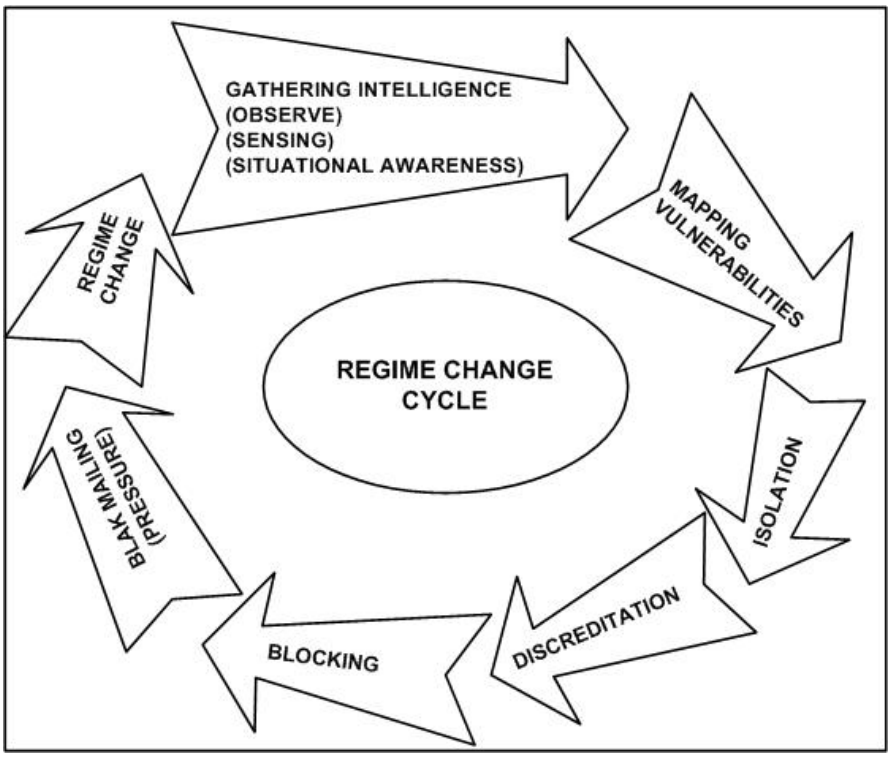


**Figure 1.** Regime change cycle

What is the best answer to the hybrid threats? "Prevention represents the best possible means of countering hybrid warfare[21]". This statement is a good reason for analyzing the hybrid peace as a predecessor state of war state. In the same paper it is pointed out that the Security Sector Reform (SSR) is one of the measures that have potential to prevent destabilization of state. It is not accidentally that SSR is frequently[22] pointed out as one of crucial activities in UN missions for stabilizing states and societies. Regardless on different context (UN vs. EU) there is a lot of space for improvement of SSR in the European countries. However, SSR has to be planed and performed in a smart way and to produce sustainable results that brings

20 Korybko Andrew, "Hybrid Wars: The Indirect Adaptive Approach to Regime Change", 2015.
21 Peter Pindják, "Deterring hybrid warfare: a chance for NATO and the EU to work together?" *NATO Review*. 2014.
22 UN Security Council, "Security Council Resolution 2151 on Security Sector Reform", 2014.

higher quality and reduces, not enlarge, set of problems by numbers and size. Considering the defence issues in the context of the SSR, it is known also as the military transformation. And this is a phenomenon by itself (problem of finding optimal or at least sustainable and functional shape, structure, composition and size of large hierarchal organizations of specific purpose (security and defence) in public sector). Hybrid warfare has gained recognition even in formal documents[23] for national security and defence.

In wider literature it could be found some concrete suggestions about countering hybrid threats that are defined for the specific national context. For example, one of possible approaches to preparing and responding to the hybrid threats is as follows[24]: Improving early warning systems and situational awareness; strengthening national defence capabilities; increasing alliance (partners) presence; redefining resources; testing decision-making procedures; increasing resilience against malicious propaganda; Strengthening social cohesion and democracy. Due to the complexity of hybrid warfare, a response actions have to be based on reliable sensing of security sitiuation, objective perception and wise decision making. Effective national response to the hybrid threats have to be based on a qualitative cooperation and coordonation among all national resources and capacities appointed for national security and defence.

## CONCLUSION

Intriguingly-named phenomenon of the hybrid warfare requires wider analysis methodologically and logically. In spite of popularity of the term it could be concluded that the hybrid warfare is not new phenomenon. It is very similar to the special warfare definition and perception in our country in the second half of the twenty century. Some ideas are presented as possibly helpful in a challenging task of identifying and countering hybrid threats and actions and getting the more comprehensive picture of series of ostensibly independent events. Hybrid warfare will have certainly important implications on the security organizations. Force generation, preparation, equipping, training and sustaining have to adapt to the requirements of hybrid warfare, but under limitations and in the framework of the hybrid politics and peace. Effective national response to the hybrid threats have to be based on a qualitative cooperation and coordonation among all national resources and capacities appointed for national security and defence.

One of directions of future research certainly has to be realted to finding and creating appropriate measures for countering hybrid warfare. First logical step is to find own weakness points and to estimate risk level related to each of those vulnerabilities. Second, interorganizational coordination and cooperation is needed, particularly accross diferent ministries and government agencies. This „whole-of governemnt-approach“ is of crucial importance in efficient engagement of national resources. But, this is also important at international level particularly in regard of some specific aspects of hybrid threats which also have beyond-the-border- character. Third, national resources for opposing to hybrid warfare are obvious mandatory element for any kind of response. This refer to all kinds of the armed forces, but also to the civilian elements. This implies well trained and equiped military and police personnel, sophisticated and clear procedures, and civilian structures which practice appropriate level of preparedness. Due to complexity of hybrid threats, and tough economic situation in public service financing in many countries, top decision making has to apply a careful balancing in a deployment of scarse resources.

23 The Federal Government, "White Paper on German Security Policy and the Future of the Bundeswehr", Germany, 2016.
24 Maigre Merle, "Nothing New in Hybrid Warfare: The Estonian Experience and Recommendations for NATO", 2015.

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# THREAT ASSESSMENT APPROACH AND SCHOOL SECURITY

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**Abstract:** The text deals with some characteristics, principles, and instances of threat assessment approach application in school milieu. Basic notions of this contemporary approach are described and analyzed, with some actual implications of the approach to the field of school security. Threat assessment approach application is briefly presented and reviewed, with an intention to point out some principal faculties, but also some potential and actual deficiencies of this approach in the field of school security. Text also presents the classic paradigm derived from Safe Schools Initiative model molded by U. S. Secret Service. With all positive and some questionable contributions to school safety, model presented in the text generally lack substantial and essential understanding of the school as a specific educational institution, with a uniqueness that remains basically unknown for the security experts as the main or exclusive authors of the model presented in this work. Starting from that viewpoint, however, authors accentuate the urging need for some recommendations originating from any of the school security models and approaches available, with more awareness of intrinsic attributes of school as a primarily educational institution, including school climate and social background, educational traits and strains, the psychological and behavioral conduct of school members in close and wider social circumstances.

**Keywords:** school, threat, threat assessment approach, security.

*Violence is a serious threat to education.*
*Chester & Tammy Quarles*

## INTRODUCTION

In various considerations of numerous security issues and threats emerging in past decades, many authors focus particular attention towards the issues related to potential and current safety threats in school, as a primary educational institution. Some very dramatic and tragic events, such as armed assaults on the school institutions, students, and teachers, sometimes accompanied by mass killings, seem to indicate an increasing need for greater attention of security experts, security services and forces and educational authorities, educators and teachers, school administration, leadership, and management.

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The analysis of safety threats' types and forms in schools in growing volume of literature fail to achieve uniformity and congruence, one of the reasons being that various sources approach this phenomenon, growing in its importance, from different stances. For instance, various professional circles had failed to develop a common approach in this security threat definition, data acquisition, monitoring, and analysis. Therefore, it is cumbersome to compare various data (regardless of the relative volume), thus drawing far-reaching conclusions on the trends that need to be plotted for the successful development of potential models and approaches for the prediction and prevention of various security threats and risks impacting school safety are very hard to reach.

Some of the authors and teams had made more or less successful attempt to start from their own data analysis approach and identify certain tendencies and trends in this field, therefore this text will mention and analyze some of those attempts. Apart from that, we shall attempt to indicate fundamental assumptions, elements, and principles of one of the responses to school safety threats – the so-called *threat assessment approach*. Specific traits, previous application, and possible results provide a broad analysis and evaluation field, with numerous elements indicating advantages and disadvantages of this approach. Therefore, the achievements of this approach will also be subject to findings and evaluation below, which may bring forward some recommendations that may potentially extend the existing school safety models and approaches.

## SAFE OR UNSAFE SCHOOL?

Attempting to clearly delineate the field of analysis to accessible and notable phenomena, for the purpose of clarity and practicability, we shall mostly tackle some of the most severe school safety endangerment forms. On the one hand, such forms and cases are covered by the greatest volume of relevant data collected, due to their dramatic nature and severe consequences attracting the general public and the professional attention; while, historically, the threat assessment approach is the recommended approach to achieve the safe school under the major program (campaign) for the safe schools in the USA, initiated due to the growing frequency of the events designated targeted school violence.

Undoubtedly, increased focus on the school safety issues in past years and decades was motivated by the fact that *the effects of crisis situations in schools towards the community members, broadcasted by the mass media, especially in severe cases, are traumatic, causing harsh and emotional response of public, creating the image of very low children safety level, circumstantially bringing forward political consequences*[2]. Evaluations and/or impressions on a "very low safety levels" may also be compared with the data and findings from some of the highest quality studies available tackling school violence.

Speaking of the most severe armed assaults in schools, noted as the *rampage school shootings*, Böckler and associates[3] clearly indicate a growing trend of such events, pursuant to the data collected globally in 2011. There is also a growth in school shootings *frequency* and *severity*. A sample of 120 attacks inflicted from 1925 to 2011 clearly indicates that 104 of them (86.67 % of total) had occurred in past three decades (1980's, 1990's, and 2000's); thus one aspect of this trend may be presented in the following manner, using the data from Böckler and associates[4].

2 Kešetović, Toth, Toth. 2014: 188.
3 Böckler, et al., 2013: 8–11; Bralić, Katić, Orlović Lovren, 2016: 32–34.
4 Böckler, et al.: 2013: 12.

**Table 1.** *Rampage school shootings in the United States and elsewhere 1981 – 2011.*[5]

| Number of attacks | U. S. | elsewhere | total |
|---|---|---|---|
| 1981 | | | |
| 1981 | | | |
| 1982 | 2 | | |
| 1983 | 1 | | |
| 1984 | | | |
| 1985 | 2 | | |
| 1986 | 2 | | |
| 1987 | 1 | | |
| 1988 | 3 | | |
| 1989 | | | |
| 1990 | | | |
| 1981–1990 | 11 | | *11* |
| 1991 | 1 | | |
| 1992 | 4 | | |
| 1993 | 2 | | |
| 1994 | | 4 | |
| 1995 | 2 | | |
| 1996 | 5 | | |
| 1997 | 4 | 1 | |
| 1998 | 4 | | |
| 1999 | 4 | 3 | |
| 2000 | 1 | 1 | |
| *1991–2000* | *27* | *9* | *36* |
| 2001 | 4 | 2 | |
| 2002 | 3 | 4 | |
| 2003 | 1 | 3 | |
| 2004 | 2 | 1 | |
| 2005 | 3 | 2 | |
| 2006 | 4 | 2 | |
| 2007 | 4 | 2 | |
| 2008 | 4 | 5 | |
| 2009 | 2 | 4 | |

5 Processed and adapted from: Böckler, et al., Op. cit. (authors' remark).

| Number of attacks | U. S. | elsewhere | total |
|---|---|---|---|
| 2010 | 3 | 2 | |
| 2011 | 1 | 3 | |
| *2001–2011* | *31* | *30* | *61* |
| **1981–2011** | **69** | 39 | 108 |

The data on growing number of fatalities and casualties per individual attack are also a cause of concern; the number of fatalities *doubled* (from 1.2 to 2.4), while the number of casualties *more than doubled* (from 2.5 to 5.9)[6].

The data above clearly indicate that the severe school violence issues are the most notable in the US schools, according to Böckler, et al., out of 120 attacks reviewed, as many as 76 or 63.33 % occurred in the United States, with 44 attacks (36.66 %) occurring in all other countries. Furthermore, just three highly developed countries – United States, Germany (8 attacks, 6.66 %) and Canada (7; 5.83 %) account for over three quarters (75.83 %) of the attacks that had occurred worldwide (91 out of 120). 104 attacks had happened in past three decades, by 2011 (86.67 %[7]).

Numerous other data sources indicate the growth of the issue, and the alarming scale of school violence threat, especially in the United States. This indicates an increasing number of severe and the most severe crimes happening in schools, decreasing age of offenders, thus the estimate *that violence is a serious threat to education*[8] is not without a foundation. The school children age is linked to victimization in an astounding manner – *the younger you are, the greater your risk*[9]. In the year preceding the war in Iraq, 116 preschoolers were casualties of firearms, which is more than a number of police and military casualties on duty during the same period; more young Americans were injured by firearms in thirteen years of peace period in the US than in Vietnam war; the number of child firearm casualties in the US grows annually since 1950; 25 children become murder victims every two days in the US[10]. Authors also note the list of *recent school shootings* that occurred in the US schools from 1979 to 2010 (xiv–xvi); we extracted that it lists 94 attacks, with 120 fatalities and 139 casualties[11].

Part of the problem credibly indicated by some (or many) authors is the fact that the school, being an institution that gathers many on a daily basis, becomes potentially susceptible to a myriad of security threats; it mostly assembles children and youth, it gets increasingly susceptible and vulnerable to various forms of threats and crises. *In fact, this vulnerability of the population, combined with its symbolic value and meaning, visibility and accessibility, along with a relatively weak defense system, makes them an "easy target", turning educational institutions nearly ideal target for various types of malevolent human actions*[12]. It is clear that the schools are not and cannot become fortresses or army barracks, not being established for the defense; instead, they are (should be) *open places for learning* and teaching[13].

6 Böckler, et al., op. cit.: 12; Bralić, Katić, Orlović Lovren, 2016: 34.
7 Bralić, Katić, Orlović Lovren, 2016: 32–33, from the table in Böckler, et al., op. cit.: 10, fig 1.3. However, the same source, p. 12, fig. 1.4, indicates that 108 (not 104) attacks had occurred between 1981 and 2011 (as much as 90 %).
8 Quarles, Quarles, 2011: xiii.
9 Op. cit.
10 Op. cit.: xiv.
11 Authors note: *Injuries less than five per event were not recorded in the statistical data referenced here* (Op. cit.:xvi).
12 Kešetović, 2012: 32.
13 Op. cit.

## THREAT ASSESSMENT APPROACH IN GENERAL

The threat assessment approach is one of the models for opposing security threats, promoted and used in the various contexts over the past decades. It emerged predominantly within the US Government agencies: the U. S. Secret Service (USSS), the Federal Bureau of Investigation (FBI), also accepted by the Department of Homeland Security (DHS).

*Threat assessment is a process of identifying, assessing and, managing the threat that certain persons may pose to Secret Service protectees. The goal of threat assessment is to intervene before an attack can occur*[14]. The process is implemented in three steps, with each being taken before the assailant attempts an assault, starting from (a) *identification* of a person with intent, idea or plan to commit an assault; over (b) *assessment* of the degree of threat posed by the individual, using a volume of information; down to (c) the process of *managing* the threat potentially posed by the individual (threat identification – threat assessment – threat management).

In general, this approach is a constitutive part of the so-called homeland security platform today, within the risk analysis and management for critical asset protection. This model covers asset characterization and screening, threat characterization, consequence analysis, vulnerability analysis, threat assessment, risk assessment[15]. Within the homeland security platform, established after 9/11 attack, the emphasis is obviously on the terrorist attack threat.

However, the model we refer to as the threat assessment approach was not initially designated for defense against the terrorism, or the school threat defense. Primarily, this model was dedicated to the prevention of assassination of national leaders by the USSS in early 1990's. Gradually, the USSS experts' circles had grown a prevailing standpoint that this model is suitable for other forms of targeted violence crimes, so by the late 1900's, further development led, *for the first time, threat assessment duties to almost every law enforcement department in the country*[16]. The implementation of this approach required the development of *a new way of thinking and a new set of skills for criminal justice professionals. These investigations involve analysis of a subject's behavior and examination of patterns of conduct that may result in an attack on a particular target(s). The level of threat posed by a given subject at a given time becomes a central concern in the investigation and management of the case.*[17]

The most fundamental, basic provisions of threat assessment may be identified through the following claims or facts.

1. All threats and all threateners are *not* equal.
2. Most threateners are *unlikely* to carry out the threat.

However, it is understood that *all threats must be taken seriously and evaluated*[18].

Basic principles of threat assessment approach, in brief, are as follows[19]:

*1. Targeted violence is the result of an understandable and often discernible process of thinking and behavior.* Acts of targeted violence are neither impulsive nor spontaneous. During a certain period, the offender considers and selects a target, assault time and access to the target, as well as the means of assault. Commonly, the offender reveals his/her intentions and plans to certain individuals in his/her vicinity, in different manners.

*2. Violence stems from an interaction among the potential attacker, past stressful events, a current situation, and the target.* Experts no longer focus primarily on an individual; instead,

14 Vosekuill, et al., 2004: 5.
15 Allen, Derr, 2016: 2–6.
16 Borum, et al., 1999: 327.
17 Op. cit.
18 O'Toole, 1999: 6.
19 Borum, et al., 1999: 329–330.

they are attempting to achieve a "situational/contextual" analysis and comprehension of threat.

*3. A key to investigation and resolution of threat assessment cases is the identification of the subject's "attack-related" behaviors.* Discrete behaviors that precede and are linked to their attacks (thinking, planning, logistical preparations) may be noted and recognized. Offenders often give away some discrete signs linked to ideas and plan to commit a specific attack and noticing and identifying such signs may be determinant to the threat assessment.

## THREAT ASSESSMENT APPROACH IN SCHOOLS

The authors from the USSS and the FBI mostly acknowledge that the leading cause of action for improving school safety in the United States was the mass crime in Littleton, Colorado. On April 20th, 1999, two offenders (eighteen-year-old Eric Harris and seventeen-year-old Dylan Klebold) killed 12 students and one teacher with firearms, and wounded 23 persons in the Columbine High School, and committed suicide afterward. This tragic event, comprehensively mediatized and present in public speaking and public space of the United States, led the governmental services and agencies to initiate the program (or the campaign) entitled the *Safe School Initiative*. With the secondary role of the US Department of Education, the program was led by the USSS.

Note that the working group that had implemented the Initiative examined (as little as) 37 cases of targeted school violence that had occurred from 1974 to May 2000. The preliminary findings were published in 2000, and the final report was published in 2004, entitled *The final report and findings of the Safe School Initiative: Implications for the prevention of school attacks in the United States*[20]. In a relatively short period, the working group performed research and analysis, comparison of different models and approaches, and came up with recommendations for school safety improvement. During the following years, the author teams of the Initiative published numerous texts attempting to clarify their recommendations and conclusions, without significant improvement to the models proposed.

The following models or approaches for prediction and prevention of targeted school violence were analyzed:

1. Prospective profiling. *In the context of school-based threat assessments, the strategy of profiling is prospective. A profile or description of the typical „school shooter" is compiled from characteristics shared by known previous perpetrators*[21], as opposed to retrospective profiling (FBI Behavioral Science Unit), which starts from the crime scene, attempting to unveil the significant characteristics of the perpetrator.

2. Mental health assessment. This model relies on the mental health professionals, mostly deficient in the *formal training in violence risk assessment.* Additionally, it was estimated that the psychological tests are not appropriate for the threat assessment of school-based targeted violence.

3. Automated decision making, actuarial formulas and expert systems related or based on artificial intelligence and artificial intuition. These advanced approaches, algorithms, and programs in the field of targeted school violence are yet to be developed, thus *the application of actuarial formulae to questions of school violence is essentially hypothetical*[22].

20 Vossekuil, et al., 2004.
21 Randazzo, et al., 2006: 148.
22 Op. cit.: 150.

All of the briefly mentioned approaches from the authors' recommendations were rejected, to promote the threat assessment approach as the recommended model. After the authors team had completed research, analyses and came up with conclusions and recommendations relatively swiftly, they came to the conclusion that this was an attempt to offer satisfactory response to major requirements relatively fast, thus the solution was forced to adjust and utilize an existing model developed for studying a different type of threat in prediction and prevention of targeted school violence. This attempt was evaluated in our previous text[23] as incomplete and inappropriate, with the indication of some shortcomings briefly listed below.

1. Imposed haste to realize the initiative yielded the results visible to the public with insufficient quality, thus the hidden objective of the initiative was to appease the public by contracting authorities and experts from significant governmental services and agencies.

2. Without any explanation, the report lacked some of the most elementary data on targeted school attacks, such as the number of fatalities in 37 attacks examined.

3. The data were presented in an incomplete, unclear and non-uniform manner.

4. The authors avoided stating an opinion on some of the potentially significant factors, such as firearms accessibility.

5. The report also neglected some of the important socio-cultural elements, such as media treatment of violence in general and targeted school violence in particular.

6. The authors lacked substantial and essential understanding of the school as a specific educational institution, with significant pedagogical, psychological and micro-social singularities that remain basically unknown to the security experts as the main authors of the recommendations promoted and presented in the report.

## ONE STEP BEYOND

Pursuant to the entire Safe School Initiative program shortcomings identified, we may indicate some of the significant elements that should be considered in molding the model for school safety improvement.

Fundamental understanding of the specific traits of school as an educational institution indicates an appreciation of additional important factors that any model of this type needs to encompass. It was shown that the models devised by the USSS and the FBI had seldom if at all, considered important traits of school. One of such traits, presented in a superficial and mechanistic manner, was the school climate which was, nevertheless, to a greater extent, mentioned in a guide resulting from the Final Report above – *Threat assessment in schools: A guide to managing threatening situations and to creating safe school climates*[24].

An indication of the school climate importance was due to the fact that most of the offenders of the most severe and the most tragic armed attacks in schools were current or former students. This rule also applies globally. For instance, the overview of 12 attacks committed in different countries between 1999 and 2011 indicated that *all offenders were current or former students* (6 current, and 6 former). In these attacks, there were 61 fatalities and 81 casualties, with 8 suicides[25].

The recommendations from the Guide that resulted from the Safe School Initiative are essentially the set of weakly substantiated requirements ("should"), which *should* be achieved in

23 Bralić, Katić, Orlović Lovren, 2016.
24 Fein, et. al., 2006.
25 Madfis, Levin, 2013: 83–84, Table 4.1 „International rampage shootings worldwide".

order to save school climate establishment to aid a comprehensive school safety improvement by means of threat assessment process. The authors list the following "major components and tasks for creating a safe/connected school climate"[26]:

1. Assessment of the school's emotional climate;
2. Emphasis on the importance of listening in schools;
3. Adoption of a strong, but caring stance against the code of silence;
4. Prevention of, and intervention in, bullying;
5. Involvement of all members of the school community in planning, creating, and sustaining a school culture of safety and respect;
6. Development of trusting relationships between each student and at least one adult at school; and
7. Creation of mechanisms for developing and sustaining safe school climates."

Brief and superficial clarifications of the most important tasks in the Guide (Chapter VII) are given on mere three and a half pages, or some 1400 words, which substantiates our conclusion that this is a relatively superficial coverage of an important aspect that deserves deeper understanding and broader explication.

Providing and assuring much broader and deeper appreciation and understanding of the complex *school climate* term is substantiated by the review of significant analyses, studies and opinions on the school climate elements, presented in numerous sources and voluminous literature[27]. The Guide even failed to rely on more comprehensive analyses and interpretations of the US National School Climate Center (NSCC, established at the Columbia University in 1996) when considering school climate. Further review of relations between the school climate and the school safety and security should preferably consider some recommendations, standards and definitions of the school climate indicators as a minimum, provided by the NSCC even before the Safe School Initiative[28].

However, seeing as there were no new programs in this field after the Safe School Initiative and its Final Report, conclusion may be drawn that the threat assessment approach, as presented and recommended, was and has remained but one of the possible approaches that may eventually contribute improving the school safety; however, such a contribution is yet to be verified, tested and analyzed, yet any serious, systematic and comprehensive verifications, tests and analyses have not been performed. Reliable verification or appropriate refute of the effectiveness of this model in school safety assurance by the means of systematic acquisition of relevant data, monitoring and trending were also omitted.

Some independent authors, however, present some data that do not indicate any tangible impact of the Initiative. On the contrary, some major school-based and school-targeted attacks occurred in the years after the recommendations of the Final report were widely applied, including rampage shootings at Virginia Tech University, Blacksburg, Virginia, 16. April, 2007 (32 murders plus suicide), and Sandy Hook Elementary School, Newtown, Connecticut, 14. December, 2012 (27 murders plus suicide). Also, some significant data[29] confirms that the problem of school based violence and school safety in general remains as a serious question addressing security experts, educational professionals, public policy makers, and many others.

Due to everything stated, the greatest program promoting the threat assessment approach under the Safe School Initiative was a major, yet missed opportunity, which stopped half way in the best scenario, for various and numerous reasons. This program, therefore, obvious-

26 Fein, et al., 2006: 13.
27 E.g. see overview in Đurić, Popović-Ćitić, Marković, 2012: 87–89, Table 1 deals with the elements of school climate presenting the most significant standpoints.
28 Op. cit.: 90 – 93.
29 Bralić, Katić, Orlović Lovren, 2016: 43–48.

ly missed to go one major *step further* to more thorough and substantial comprehension of school's safety and its interweaving with pedagogical background, important educational traits and strains, the psychological and behavioral conduct of school and its members in close and wider social circumstances.

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# CHURCHES AND RELIGIOUS COMMUNITIES – BRIDGE OF SECURITY COOPERATION

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**Abstract**: The essential character and determinant of the functioning of each country is reflected through efficiently established systems of security. Systematic monitoring and assessment of the challenges, risks and threats are the basis for successful development of a security system. The development of all the elements in a society, particularly those that have a direct impact on awareness, culture, behavior and education of people represents a key factor of state development.

Comprehensive understanding and study of churches and religious communities, properties specific to these churches and religious communities in the sphere of development of the society, at the same time represents a development factor of the security culture of the entire community and understanding among people.

The fact that the structure of the population of Serbia is heterogeneous, with different levels of economic development, cultural characteristics and historical heritage, makes the problem of security even more complex. Numerous factors in the context of the latest world trends and globalization affect the mind and the dynamic changes that inevitably affect the Republic of Serbia, lead to changes of certain inherited characteristics of the population and in areas which were not typically subject to such influences.

The paper describes the issues of cooperation between churches and religious communities as an important element of security in the Republic of Serbia. Special consideration is dedicated to segments which can have positive effects on the development and understanding of the specificity and culture among different cultural characteristics of the population both in religious affiliation as well as in other elements. The paper is a result of a research on a sample of different religious communities and churches.

**Key words**: security, church, religious communities, cultural diversity, cooperation.

## INTRODUCTION

Actuality of the security challenges in the Republic of Serbia can be seen as a continuity of solving many crisis situations, often caused by changes in the wider region and the consequences of global changes. Such effects have affected both the area of the Republic of Serbia

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and the countries in its broader and narrower vicinity. In such a situation, resolving security challenges is a complex issue, because there are many factors that make the operation of the establishment of stability policy difficult and more complex.

Cooperation between churches and religious communities in the field of security is based on the current issues and comprehension of relevant factors that may have implications for the security of the Republic of Serbia. The basic conceptual orientation of the Republic of Serbia upon the development of stable relations and security systems is based on a comprehensive approach to resolving and continuous access to security processes.

In these complex circumstances, churches and religious communities can have a significant influence on the formation of consciousness, development of tolerance and preservation of the identity of the population. These are areas in which churches and religious communities can seek their functioning within the development of Republic Serbia's system security. Cooperation between churches and religious communities is a key security segment and by active cooperation in various areas of social life, created are predispositions towards effective functioning of the security system of the Republic of Serbia.

The paper identifies elements and criteria of churches and religious communities and security system as a sphere of cooperation of churches and religious communities, which can have an impact on the effective functioning of the security system.

## DEFINITION

A lot of concepts and little clear meaning, thus the Constitution of the Republic of Serbia determines: that Serbia is a secular state, that churches and religious communities are equal and separate from the state, that the citizens are guaranteed freedom of "conscience" and "religion" and that everyone is free to express their "faith" or "belief", or "confession of faith"[2]. Freedom of religion includes the "freedom to have or have not, preserve or change religion or religious beliefs, or freedom of belief, freedom to worship God; freedom to, either alone or in community with others and in public or private, manifest belief or religious convictions in worship and performance of religious rites, religious instruction and teaching, cherishing and developing religious tradition; freedom to develop and promote religious education, culture."[3] The Law on Churches and Religious Communities of Serbia in Article 4 states: "The subjects of religious freedom in the sense of this law are the traditional churches and religious communities, confessional communities and other religious organizations."[4] Hence, from the above many questions open up and very little clear meaning. The problem becomes particularly articulated when in this specific case a particular term should be given a "legal connotation".

Dragan Novaković, in an article "The position of religious communities in the Serbian Constitution" properly used the term "churches and religious communities" because the same term cannot be used for the Islamic or the Jewish Community. Also, the author states: "This distinction is essential and principled, but it must be pointed out that the used terms in the Constitution are completely equal which indicates that within legislative action or practice there cannot be made a distinction between religious organizations whose names contain the title `church` or `religious community '. The use of the common terms `confession', 'religious organization` or previously used `denomination` would cause further confusion and would not help avert the dilemma. We believe that all possible doubt in the unequal treatment would be overcome that between these two names instead of `and` in the Constitution was used the

2 Устав Републике Србије, "Службени гласник РС" бр. 98/2006.
3 Закон о црквама и верским заједницама „Сл. гласник РС", бр. 36/2006, Београд, стр. I
4 Ibid, p. 3

conjunction `or`". Today, a multitude of concepts reside in use, the result is uneven understanding of concepts in everyday communication with people. So the aim of this question is to point out the possible meanings of such terms.

## CHURCH

The Dictionary of the Serbian language defines the term 'church' in the following way: church *f* "1. The building in which Christian religious rituals are performed, temple, place of worship: go to church, visit the church, build a church. 2. A community of Christian believers (as an organization, institution): orthodox ~, catholic ~, western ~, eastern ~ ,. 3. Ecclesiastical authority, church administration, church seniority: ask the church for marriage consent. 4. Service in the church, worship ... "[5].

The Dictionary of religious terms defined the word church (Gr.) as follows: "Organized community of Christians (v.), formed on the basis of their common faith, sociological features: wants compromise with the society and the social institutions, as opposed follow (v.) which rejects it. It is general and aims to encompass the entire life of mankind (mission has a universal character - for all nations and cultures); includes all - "saints" as well as "sinners". One belongs to a church by birthright: the newborn belongs to that church to which his parents belong. It gathers followers from all social levels regardless of the sex, age, racial or ethnic background. Religious community of the type of church is characterized by centralization of decision-making power, hierarchical relations and stability. It is easy identifiable with the society, with positive attitude towards it, it is easier adapted to it, sometimes can become the "guardian" of the existing society. Church in spatial terms, means a building in which Christians gather to perform rituals (v.) in a group; a place where believers gather participating in spiritual life that connects them as religious and moral community."[6]

The Law on Churches and Religious Communities uses the term "church" and links it to the "traditional church" as well as labeling of "confessional communities". By the term "confessional communities" of the Law on Churches and Religious Communities Article 19., covered is the term "religious organizations" which states: "In the Register cannot be registered a religious organization whose name contains a name or part of the name which expresses the identity of the church, religious community or religious organization which is already entered in the Register or which has already filed an application for registration"[7].

It can be concluded that the word church primarily refers to the building in which Christian religious rituals are performed, temple, church, community of Christians, organization, institution, the place where believers gather participating in spiritual life that connects them in a religious and moral community.

## RELIGIOUS COMMUNITY

In the literature in which the social community was a research subject, there are numerous terms on the community. Thus, Ljubomir Tadić defines community as "a state in relations among people in which is set a firm inter-human bond, a state in which the multitude acts as unity "all for one, one for all". Every community relies on strongly expressed spiritual or social connectedness, whether this is a conscious conviction or feeling of bondage. This internal

5 Речник српског језика, Матица српска, Нови Сад, 2007. стр. 1496
6 Речник религијских појмова, Прометеј, Нови Сад, 2009. стр. 464
7 Закон о црквама и верским заједницама „Сл. гласник РС", бр. 36/2006, Београд, стр. IX

connection, actually presents the linking tissue of the community; that force which helps to bridge or overcome the otherwise deep ravines or gaps that may exist among its members"[8]. Tennis Ferdinand says that "community expresses the natural connection of people's entire intimate lives. There we are found at birth and for it binds us kinship, language, customs, religion, neighborhood and friendship. The community is permanent mutual life. It is a living organism. The subject of the community is the will that has both animal and mental features. Its main content are: memory, conscience and religion. While marriage is the narrowest, the humanity is the widest human community."[9] Max Weber emphasizes that the community is " a form of interpersonal activity which is based on the subjective feelings of its members to belong to each other"[10].

In the context of understanding of the concept of community it is important to emphasize the understanding of Talcott Persona who says: "The community is a complex network of interconnected cross-cutting collectivities and collective loyalties, a system to which are inherent both the functional differentiation and the segmentation. Thus are mutually differentiated kinship family units, business companies, churches, government bodies, educational collectives etc. In addition, there are a number of individual forms within each type of collective unit, for example, any of the large number of households consists of only a few of the many individuals and multitude of local communities".[11]

For the above definitions characteristic is the common feature that is manifested in understanding the community as a relationship between people who belong to one another through spiritual and social closeness of the entire life.

In this context the term community can indicate towards a variety of institutions, non-profit organizations or agencies. From all the above, it can be concluded that it is very important to mention which real community is referred to when we use term. Consequently, this applies to the religious community as well.

The Law on Churches and Religious Communities, associates the term "religious community" with the term "traditional religious communities". According to Article 10, Par. 2 of The Law on Churches and Religious Communities, "Off. Gazette of RS ", no. 36/2006, "traditional religious communities are those that in Serbia have a centuries-long historic continuity and whose legal subjectivity has been acquired pursuant to separate legislation, i.e., the religious community and the Jewish religious community".[12]

Drawing on the above elements of the given definitions within the framework of the research, the religious community is determined by the content and the scope in an appropriate manner and forms part of the society, of people with common characteristics, that live in certain area and have a common history or shared social, cultural, economic and other interests and Islamic religion. Hence, imply binding features between those people who are members of the community. The binding factor can be the area and the religious identity.

8 Тадић, Љ.: Наука о политици, друго допуњено издање, БИГЗ, Београд, 1996, стр. 41.
9 Тенис, Ф.:Заједница и друштво, Београд, 1912, стр. 9–47.
10 Бешић, М., и Ђукановић, Б., «Богови и људи – религиозност у Црној Гори», ЦИД и СоЦЕН, Подгорица, 2000, стр. 66.
11 Парсонс, Т., «Модерна друштва», Градина, Ниш, 1992, стр. 23.
12 Закон о црквама и верским заједницама „Сл. гласник РС", бр. 36/2006, Београд, стр. VI

# LEGAL STATUS OF CHURCHES AND RELIGIOUS COMMUNITIES

The legal status of churches and religious communities in Serbia is defined by the constitutions of 1946, 1963, 1974, 1990, 1992 and 2006. Under the current Constitution, freedom of religion is defined in Art. 43, which states: "Freedom of thought, conscience, belief and religion shall be guaranteed, as well as the right to stand by one's belief or religion or to change them by choice. No person shall have the obligation to declare his religious or other beliefs. Everyone shall have the freedom to manifest their religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, and to manifest religious beliefs in private or public. Freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect lives and health of people, morals of a democratic society, freedoms and rights guaranteed by the Constitution, public safety and order or to prevent inciting of religious, national or racial hatred. Parents and legal guardians shall have the right to ensure religious and moral education of their children in conformity with their own convictions."[13]

Also, the Law on Churches and Religious Communities and the Proceedings on the content and manner of keeping the Register of churches and religious communities was adopted in 2006.[14] According to the text of the law, the subjects of the religious freedoms are traditional churches and religious communities, confessional communities and other religious organizations. According to Article 10 of the Law on Churches and Religious Communities, traditional churches and religious communities are defined as "traditional churches are those that in Serbia have centuries-long historical continuity, having acquired legal subjectivity pursuant to separate legislation, those being: the Serbian Orthodox Church, the Roman Catholic Church, Slovakian Evangelical Church a. v., Christian Reformist Church and the Evangelical Christian Church a. v. ".[15] Confessional communities are defined as all churches and religious organizations whose legal status was regulated by application submitted in accordance with the Law on the Legal Status of Religious Communities ("Official Gazette of the SFRY" No. 22/1953) and the Law on the Legal Status of Religious Communities ("Official Gazette of SRS ". No. 44/1977). The phrase "other religious organizations" below in the text of the law is not explained in detail. Also, Article 10 of the Law on Churches and Religious Communities defined the traditional religious communities as those "with centuries-long historic continuity, having acquired legal subjectivity pursuant to separate legislation, particularly the Islamic religious community and the Jewish religious community".[16]

According to the Law on Churches and Religious Communities, to the Serbian Orthodox Church is recognized the continuity of legal subjectivity it had acquired on the basis of *Načertanije o duhovnoj vlasti* (Decision of the National Assembly of the Serbian Principality from 21 May 1836). The Roman Catholic Church is recognized the continuity of legal subjectivity it had acquired pursuant to the Law on the concordat between the Kingdom of Serbia and the Holy Seat (Decision of the National Assembly of the Kingdom of Serbia of 26 July 1914, "Serbian Gazette". No. 199/1914). The Slovak Evangelical Church a. v., the Christian Reformed Church and the Evangelical Christian Church a. v. are recognized the continuity of legal subjectivity it had acquired pursuant to the Law of the Evangelical Christian Churches and the Christian Reformist Church of the Kingdom of Yugoslavia ("Official Gazette of the

13 Устав Републике Србије, available at: http://www.sllistbeograd.rs/documents/ ustav_republike_srbije_lat.pdf
14 Закон о црквама и верским заједницама „Сл. гласник РС", бр. 36/2006, Београд, 2006.
15 Ibid. p. V
16 Ibid.

Kingdom of Yugoslavia", no. 95/1930). The Jewish community is recognized continuity of legal subjectivity it had acquired pursuant to the Law on Religious Community of Jews in the Kingdom of Yugoslavia ( "Official Gazette of the Kingdom of Yugoslavia" no. 301/1929). The Islamic Community is recognized the continuity of legal subjectivity acquired on the basis of the Islamic Religious Community of the Kingdom of Yugoslavia ( "Official Gazette of the Kingdom of Yugoslavia" no. 29/1930). Confessional communities are all those churches and religious organizations whose legal status was regulated by application submitted in accordance to the Law on the Legal Status of Religious Communities ("Official Gazette of the FPRY", no. 22/1953) and the Law on the Legal Status of Religious Communities ("Official Gazette of SRS "no. 44/1977).[17]

For registration of churches and religious communities in the Register under the Law on Churches and Religious Communities, to the Ministry shall be submitted applications containing: Name of the church or the religious community, address of the church or the religious community, name and surname of the person authorized to represent the church or the religious community. Religious organizations, except the traditional ones (Article 10 of the Law on Churches and Religious Communities), for registration into the Register are to submit to the Ministry a request containing: the decision on founding of the organization with the names, ID numbers and signatures of at least 0.001% of adult citizens of the Republic Serbia, who have permanent residence in the Republic of Serbia, according to the latest official census or foreign nationals with permanent residence on the territory of the Republic of Serbia. According to the 2011 census,[18] it was estimated that 0.001% of the population makes a number of 72 citizens of the Republic of Serbia whose signatures are required for the religious organization to be enrolled in the Registry. In addition to the signatories, it is necessary to submit the statute, explanation of the teaching and the religious practice, as well as the address of the building that will host the organization.

The Law on Churches and Religious Communities has been the subject of sharp criticism of individuals and institutions as well as a number of questions being opened; thus a numerous deficiencies in the content of the Law on Churches and Religious Communities are referred, as well as the consequences that these shortcomings can produce. The debate in Serbia on the occasion of the adoption of the Law on Churches and Religious Communities has been very brisk. It started in 2001 with the announcements of the adoption of the Law on Religious Freedoms and the Regulation on organizing and implementing religious education as an alternative subject in primary and secondary schools at the level of the Federal Republic of Yugoslavia[19]. The debate at one time briefly calmed after the breakdown of Yugoslavia and again flared with the emergence of the first Template of the Preliminary draft law on the legal status of religious communities in 2004, at one time quite peacefully developed under the consultations held with the Ministry of Religious Affairs, OSCE, Council of Europe and interested religious communities, in order to burst again after a sudden delivering to the Assembly the Draft Law on Churches and Religious Communities and its adoption in 2006. Subsequent events related to the very implementation of the Law on Churches and Religious Communities have only multiplied the old disputes and open new ones. Thus, after the adoption, the Law came before the Constitutional Court. The Constitutional Court ruled in this case on four proposals and two initiatives for assessing the constitutionality of certain provisions of the Law on Churches and Religious Communities (Article 4, Article 7, Article 8, Article18, Article 26, Article 29, Article 31, Article 40) as well as the constitutionality of the Law in its entirety. The question before the Constitutional Court was, whether the Law, mak-

17 Ibid. p. VII
18 Попис становништва, домаћинстава и станова 2011. у Републици Србији, Републички завод за статистику, Београд, 2012.
19 „Сл. гласник РС", бр. 46/2001.

ing a distinction of the religious subjects on traditional churches and religious communities and confessional communities and other religious organizations, actually puts the traditional churches into better position, by which the principle of equality of the churches is broken and a state religion is established. Objected is the constitutionality of the provisions which determine the independence and immunity of the priests, state assistance during execution of decisions issued by church and religious communities' bodies, the state commitment to protect official uniform, religious officials' grade and dignity insignia. The Constitutional Court also decided on whether were anti-constitutional the provisions regarding the registration procedure of the churches and the religious communities and church property management. In this process the Constitutional Court held the position on the importance and the essence of the principle of separation of the church and the state in the Republic of Serbia.[20]

Although the Law on Churches and Religious Communities contains a series of, at the first glance, dubious provisions, the Constitutional Court still, by thorough and comparative interpretation, concluded that the disputable provisions are not anti-constitutional, at the same time giving its own interpretation of those provisions, what will be significant for the further application of the Law. The explanation of the Constitutional Court, however, in many instances is not clear enough, nor is it neither coherent nor logical according to many individuals and institutions. The Constitutional Court also gave interpretation of the constitutional principle of secularity, defining the relationship between the church and the state in the Republic of Serbia as a relationship of "cooperative separation", meaning that there is no complete separation of the church from the state but only there is no state religion and identification of the state with religion. Detailed analysis of the meaning of this term was not offered by the Constitutional Court, and a question is raised what legal consequences this attitude of the Constitutional Court can produce in practice, especially during interpretation and application of the Law on Churches and Religious Communities.[21]

According to the available data, and based on the Law on Churches and Religious Communities and the Regulations on the content and manner of keeping the Register of churches and religious communities, in Serbia recognized is the legal subjectivity of eight churches and religious communities, namely: the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church a.v., the Reformist Christian Church, the Evangelical Christian Church a.v., the Jewish community, the Islamic community, the Diocese of the Romanian Orthodox church Dacia Felix headquartered in Deta (Romania) and the administrative headquarters in Vršac. Pursuant to the Decision on registration into the Register of churches and religious communities, legal subjectivity acquired seventeen more - Seventh-day Adventist Church, the Evangelical Methodist Church, The Church of Jesus Christ of Latter-day Saints, the Evangelical Church in Serbia, the Church of Christ's love, Christ's Spiritual Church, the Union of Christian Baptist Churches in Serbia, Christian Nazarene religious community, Church of God in Serbia, the Protestant Christian community in Serbia, the Brothers of Christ Church in the Republic of Serbia, Belgrade Free Church, Jehovah's witnesses - Christian religious community, Covenant Church of Zion, Union of Reform Movement Seventh-day Adventist, Protestant Evangelical Church "Spiritual Center", Christian Evangelical Church. In the past few years in the Register of Churches and Religious communities, registered are five new religious groups while ten requests for registration were rejected "due to procedural deficiencies" and one was denied "due to tangible shortcomings ". Five applicants filed administrative complaints before the competent courts and two are still pending. Ministry of religion doesn't have data on the number of followers of the aforementioned churches and religious communities (except the submitted lists of signatories) and has no information on new and

20 Оцена уставности, Закона о црквама и верским заједницама (*Сл. гласник*, бр. 35/06), (број предмета I Уз 455/2011), Одлука Уставног суда од 16. јануара 2013.
21 Ibid.

alternative religions that are not officially recognized by the law. On the basis of these acts, we can therefore conclude that in Serbia there are only twenty-five religious organizations. Of course, such a conclusion would be wrong, but more will be discussed further in the text.[22]

According to the publication of the Statistical Office it is stated that the classification of religion, according to which was reported the data of the Census from 2011, "followed the recommendations of the Conference of European Statisticians for the Censuses of Population and Housing of 2010"[23]. According to the 2011 census the results are classified into thirteen categories, unlike the previous census in which these categories were eleven. The novelty compared to the previous census is the category - "Other Christian" (religion). Also, the new census included the category "Other religions" and also was introduced the category "Agnostic". The category "Not a believer" has been expanded, and now is "Not a believer (atheist)".

Statistical data of the census of the Republic of Serbia from 2011 indicate some changes in the ethnic composition of the population, which justly opens the question of cooperation between churches and religious communities in the field of security and which is the subject of this paper. A total number of 7,186,862 inhabitants of Serbia were registered. Of these, 6,555,931 of them identified themselves as Christians, i.e., Orthodox 6,079,396, Catholics 356,957, Protestants 71,284 and 3,211 of the surveyed Serbian citizens was classified as "Other Christian religion." According to the census in Serbia there are 222,828 citizens of Islamic religion. In the category other, 408,103 people were registered. Of these, 578 fall into Judaism, Eastern religions have 1,237, and members of "Other religion" are 1,776. According to the census, Serbia has 4,010 agnostics, 80,053 people declared themselves as nonbelievers (atheists), 220,735 citizens have used their constitutional right and did not declare on religion and for 99,714 religion remained unknown. The population of the Republic of Serbia according to the religion on the censuses 2002 and 2011 is shown in Table 1.

***Table 1**. Population by religion, according to the censuses of 2002 and 2011*

| Religion | 2002. | 2011. |
|---|---|---|
| Christian | 6 876 274[1] | 6 555 931[2] |
| Orthodox | 6 371 584 | 6 079 396 |
| Catholic | 410 976 | 356 954 |
| Protestant | 78 646 | 71 284 |
| Other Christian | 2 191 | 3 211 |
| Islamic | 239 658 | 222 828 |
| Other | 282 069 | 408 103 |

**Source:** Census of Population and Housing 2011 in the Republic of Serbia, Republic Bureau of Statistics, Belgrade, 2013, p. 13. (Processing of the author)

The data indicate that in the Republic of Serbia, according to the 2011 census, the population of the Christian religion decreased in comparison to 2002, from 6,876,279 to 6,555,931, while the population of the Islamic religion remained steady.

22 Danijel Sinana, In search for alternative religions: the "visibility" and "invisibility" of religious organizations in Serbia

23 Попис становништва, домаћинстава и станова 2011. У Републици Србији, доступан на: http://webrzs.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&p Level=1&pubType=2&pubKey=1586

# SECURITY ASPECTS OF THE COOPERATION BETWEEN CHURCH AND RELIGIOUS COMMUNITIES

An important question in the field of security and defense represents the collaboration between churches and religious communities, and this segment to a large extent, can have positive or negative implications on the overall situation in the country, especially from a security standpoint. In the context of security, it was important to consider the issue of cooperation between churches and religious communities, as one of the influential elements and interfaces between people, especially if one takes into account the immediate past and the events in the war-torn areas caused by the disintegration of the former Yugoslavia.

The conducted survey[24] on cooperation between churches and religious communities among respondents from the Islamic community is shown in Table 2.

***Table 2**: Attitudes of the respondents from the Islamic community about the statements: 'Churches and religious communities are the bridge for closer cooperation in the security field'*

| Rank | CLAIMS | **Frequency (f)** | **%** |
|---|---|---|---|
| 5. | Yes, I completely agree | 399 | 52.4 |
| 4. | Yes, I agree | 199 | 26.1 |
| 2. | Undecided | 102 | 13.4 |
| 3. | No, I partially disagree | 36 | 4.7 |
| 1. | No, I completely do not agree | 20 | 2.6 |
| 6. | No answer | 5 | 0.7 |

N = 761 (100%)

More than three quarters of the respondents from the Islamic community (78.5%) believe that churches and religious communities are bridge for closer cooperation in the field of defense and security. A very small number of the respondents (2.6%) opted for a disagreement with the said claims, which is statistically insignificant. This is very important, especially if one takes into consideration the experience of conflicts and the spread of nationalism and religious hatred among the population in the former SFRY.

In order to compare the attitudes of the respondents from the Islamic community, a survey was conducted among the members of the Serbian Orthodox Church, in order to obtain referent value assessment of the attitudes of the respondents. Comparative data are shown in Table 3 below.

24 The research was conducted for the purpose of the doctoral dissertation entitled "The influence of the Islamic Community on security and defense of the Republic of Serbia", which was defended at the Military Academy of the University of Defense in Belgrade.

***Table 3**: Comparative display of the attitudes of both populations about the statement: 'Churches and religious communities are bridge for closer cooperation in the field of security and defense'*

| DEGREE OF CONSISTENCY | Islamic community | | Serbian Orthodox Church | |
|---|---|---|---|---|
| | f | % | f | % |
| Yes, I completely agree | 399 | 52.4 | 124 | 21.6 |
| Yes, I partially agree | 199 | 26.1 | 219 | 38.2 |
| Undecided | 102 | 13.4 | 158 | 27.6 |
| No. I partially disagree | 36 | 4.7 | 41 | 7.2 |
| No. strongly disagree | 20 | 2.6 | 27 | 4.72 |
| No response | 5 | 0.7 | 4 | 0.7 |

N = 1334 (100%)

The results show that the perception of churches and religious communities as a bridge of cooperation in the field of security and defense. where three quarters of the Islamic community (78.5%) believe that churches and religious communities are a bridge of cooperation in the field of defense and security. compared to those of the Serbian Orthodox church (59.8%) is very important from the perspective of security and defense which should be given more attention and work on the development of that relation.

If we consider the height of the calculated scalar values, we can notice that within the respondents from the Islamic community the scalar value is M = 4.19 and within the respondents from the Serbian Orthodox Church it is M = 3.63. and based on these values it can be concluded that both groups believe that the churches and the religious communities are a bridge of cooperation in the field of security and defense (table 4.). In order to test the reasonableness of this assumption we applied a statistical procedure for testing the significance of differences of the arithmetic means. so-called t-test.[25]

***Table 4**: Display of the calculated values according to the statement "churches and religious communities are bridge for closer cooperation in the field of security and defense"*

| Value-category | Islamic Community | Serbian Orthodox Church |
|---|---|---|
| Crag value | 4.19 | 3.63 |
| Standard Deviation | 1.074 | 1.085 |
| t ratio [3] | 9.420 | |
| The significance level[4] | 0.01 | |

Using the t-test in respect to this statement, it was found out a statistically significant difference between the respondents. With the respondents from the Islamic community the mean value estimate is 4.19 and the standard deviation is 1.074; with the respondents from the Serbian Orthodox Church the mean value of the evaluation is 3.63. and the standard deviation is 1.085. The corresponding t-ratio is 9.420 and is significant at the level of p = 0.01.

The respondents from the Islamic community were even more united (σ = 1.074) on the question of "interference of the cooperation in the field of security and defense in relation to the members of the Serbian Orthodox Church" (σ = 1.085). which in turn can be ascribed to the correlation with the past events which were a result of the breakup of the former SFRY.

25 Two independent sample test from the software package SPSS 19 were used for mutual comparison of the results.

The research results indicate that the security situation of the Republic of Serbia can be significantly improved by resolving issues of common interest to the Churches and the religious communities. primarily by opening real perspectives of harmonization of the relations in the country.

## CONCLUSION

Churches and religious communities may have elements of connectivity between specific and culturally diverse backgrounds. particularly from the angle of religious affiliation. It also indicates that in the segment of security challenges. a significant part belongs to the establishment of harmonious relations between different cultural and other characteristics which represent features of the churches and the religious communities. It has been emphasized that churches and religious communities are legally regulated within the political system of the Republic of Serbia and that the legal subjectivity of eight churches and religious communities is recognized. The number of followers of churches and religious communities is not entirely accurate and there are no accurate data.

The key issue between the churches and the religious communities in the sphere of development of security culture and prevention of security risks refers to the views that the churches and the religious communities are a bridge for rapprochement and elimination of security risks and the basis for establishing effective functioning of all the elements of the security system. The views are largely consistent in the context of religious communities.

This can be interpreted as sensitivity to the questions of the security culture, so that the said positions reflect the reality of this area in the Republic of Serbia and the influence of global relations in the entire region and thus on the Republic of Serbia as well. However, the security situation can be - for all that has been said so far - understood as an "acquired necessity" in which the churches and the religious communities exist and achieve the functioning of the security system.

It has been especially pointed out to the contribution to the sphere of defense development and establishment of liability of certain religious communities and churches and the development of a system of values as determinant for successful functioning of the security system of the Republic of Serbia. Using the survey results and taking into account the theoretical approach to the security system, the churches and religious communities have been offered certain elements that reflect the most important issues of cooperation between the churches and the religious communities in the sphere of security. Particular emphasis has been placed on the attitudes of the religious communities regarding key issues that affect the security and the attitudes of the churches were used as a reference value to reflect these issues.

The essence of the relationship between the churches and the religious communities in the development of stable relations that ensure the development of the security system of the Republic of Serbia results in the identification of common values shared and developed so as to lay the foundation for respect for diversity.

It is important to emphasize that on the basis of the survey results, the attitudes of the religious communities are the churches are similar and do not show significant discrepancies when it comes to the security of the Republic of Serbia. The religious communities are interested in cooperation with the churches which uniquely reflects that they are interested in the security situation as well. Certain issues that are not completely correlated are the result of negative historical legacy and do not have substantial influence on active cooperation between the churches and religious communities in the Republic of Serbia.

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# THE U.S. INTELLIGENCE COMMUNITY AND THE FIGHT AGAINST ISIS: DONALD TRUMP ADMINISTRATION'S NATIONAL SECURITY POLICY

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**Abstract:** Fight against international terrorism remains one of the keystones of the United States' foreign policy in the upcoming period. The threat of the Islamic State is still grave for the international security, so it is understandable that Donald Trump administration will remain in this course. In the presentation of the new administration's program at the White House website, it is pointed out that "defeating ISIS and other radical Islamic terror groups" will be of the highest priority, and that joint and coalition efforts will be needed. In the inaugural address, the new President stated that the United States intent to "unite the civilized world against Radical Islamic Terrorism". It is initially obvious that, differing from the notion of "fight against violent extremism" used by the Obama administration, the new administration talks about the fight against radical Islamism. In this paper, the authors will analyze and present the key shifts in the United States' national security policy in the wake of the Donald Trump's administration. Key positions of Trump's presidential campaign regarding the foreign policy, national security policy, fight against the Islamic State, and the reform of the Intelligence Community, will be juxtaposed with decisions made during the beginning of the presidential term.

**Keywords:** Intelligence Community, United States, Donald Trump Administration, Terrorism, National Security Policy, Islamic State.

## INTRODUCTION

Decision-making process for the United States President's national security policy could not be properly fulfilled without effective intelligence, institutionalized within the Intelligence Community (IC), if we know that "intelligence as a function of government plays an important role in the creation and implementation of United States foreign and domestic policy."[2] If we want to fully understand the importance of well-informed decision-making and/or policy-making, we need to know the exact role and responsibility of the intelligence in that process:

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2 Stephen Marrin (2014). "The United States". In: Robert Dover, Michael S. Goodman, and Claudia Hillebranad (Eds.). *Routledge Companion to Intelligence Studies*. London: Routledge, p. 145.

"…those who produce intelligence should refrain from formulating policy—that is not their job. Instead, intelligence professionals should describe the world around them in the most objective way possible, free from political or personal concerns. It is their responsibility to 'tell it like it is' to the decision-maker. Occasionally, this involves passing along bad news; for example, telling a policymaker that his or her plans or policies are not achieving their desired ends. This takes a great deal of bravery—no one likes hearing bad news. Given the political intrigue that is often found in organizations, the IC analyst may be the *only* individual who tells the boss unfortunate news. This is the beauty and the power of the position—good decisions can only be made in honest circumstances. To that end, the brave analyst, one who is willing to speak the truth, may be the best friend policymakers have, whether they recognize it or not."[3]

However, this relation is not a constant one, nor the reliability of the decision-makers on the intelligence 'product' is permanent. Various administrations had different intelligence communities in diverse times, and not all of them had equally reliable and precise intelligence in given circumstances. Some presidents relied heavily on their intelligence agencies, some relied more on their cabinet members. Certain decisions were well-informed; some were intuitive and based on experience. Some of them entered the White House with prejudice towards the world of 'secret services', others had intelligence careers before that. "Other factors, from presidential neuroses to domestic political interests, are often more powerful."[4] And, finally, there are Presidents who had disputes with intelligence world before entering the White House. New American President, Donald Trump, is unique by many standards – he does not have a political background, he comes directly from the business world, and he refrains from political correctness. Also, during his presidential campaign, Trump had a rather big quarrel with the Intelligence Community.

The transition from Donald Trump's vastly ill-informed and populist presidential campaign rhetoric towards the first presidential systemic obstacles was rather dramatic, and was not only related to the matters of domestic policy, but also to the ongoing foreign policy and national security issues. The fight against Islamic State of Iraq and Levant (ISIS) was one of the hot topics in the presidential debate, along with the reform of the Intelligence Community in the wake of several domestic and international scandals. The role and the significance of the U.S. Intelligence Community in the war on terror is of great importance for the fight against ISIS as well, especially the defense agencies that make the majority of the Intelligence Community, and are key operational and tactical intelligence providers in the ongoing Middle East situation. Therefore, we will try to explain the relationship between the IC and different Administrations in the key periods of the American foreign policy (the Cold War, the post-Cold War period, the post-9/11 period), and try to give a general prediction about the new Administration's possible paths and directions of the Intelligence Community in the war against ISIS.

## THE U.S. INTELLIGENCE COMMUNITY

The United States Intelligence Community (IC) is probably the largest and the most complex national intelligence system in the world, with seven decades of active national security and foreign intelligence experience. From 1947, when National Security Act[5] was adopted,

3 Jensen, C.J., McElreath, D.H. & Graves, M. (2013). *Introduction to Intelligence Studies*. Boca Raton: CRC Press, p. 11.

4 Paul R. Pillar (2011). *Intelligence and U.S. Foreign Policy: Iraq, 9/11, and Misguided Reform*. New York: Columbia University Press, p. 6.

5 *An Act to promote the national security by providing for a Secretary of Defense; for a National Military Establishment; for a Department of the Army, a Department of the Navy, a Department of the Air Force;*

until today, this community was built from scratch into a 17-agency all-source intelligence system aimed at both domestic and international (foreign) threats. In brief:

"The U.S. IC is a coalition of 17 agencies and organizations within the executive branch that works both independently and collaboratively to gather the intelligence necessary to conduct foreign relations and national security activities. The primary mission of the IC is to collect and convey the essential information that the president and members of the policy-making, law enforcement, and military communities require to execute their appointed duties. The 17 agencies possess a wide range of capabilities and intelligence needs themselves."[6]

The history of the IC was rather dynamic and turbulent. Key cornerstones of its development were related to significant events in American domestic or foreign policy. For instance, after the Watergate scandal, the first bigger IC-related legislative reform was made with the Foreign Intelligence Surveillance Act[7] in 1978. This law was aimed at the improvement of intelligence collection and analysis, as well as to make a clear distinction between various tasks and authorities of then members of the intelligence community (at the time, still not officially named the Intelligence Community). The original idea was to make limitations to the IC covert or illegal ops, and to implement appropriate measures if these activities were carried out in unethical manner. However, in 1981 the Executive Order 12333 on United States Intelligence Activities[8] was signed by President Ronald Reagan, with the aim to "provide for the effective conduct of United States intelligence activities and the protection of constitutional rights"[9]. The Executive Order "clearly delineated the roles and responsibilities of agencies and individuals within the intelligence community"[10]:

"The objective was to ensure that the president and National Security Council received necessary and timely information 'on which to base decisions concerning the conduct and development of foreign, defense, and economic policy, and the protection of the United States national interests from foreign security threats.' To achieve this goal, Executive Order 12333 promoted analytical competition in the Intelligence Community and directed it to use all means "consistent with applicable United States law and this Order, and with full consideration of the rights of United States persons" to detect and counter espionage, terrorism, and other threats."[11]

The main contribution of the Executive Order 12333 to the reform of the Intelligence Community was precise definition of the roles of the IC members, and for the first time institutionalized it under the name of the Intelligence Community:

- "Collection of information needed by the President, the National Security Council, the Secretary of State, the Secretary of Defense, and other executive branch officials for the performance of their duties and responsibilities;

- Production and dissemination of intelligence;

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*and for the coordination of the activities of the National Military Establishment with other departments and agencies of the Government concerned with the national security*. Congress of the United States of America, 61 STAT. 495.

6 Jensen, C.J., McElreath, D.H. & Graves, M. (2013). *Introduction to Intelligence Studies*. Boca Raton: CRC Press, p. 12.

7 *An Act to Authorize Electronic Surveillance to Obtain Foreign Intelligence Information*. Congress of the United States of America, 92 STAT. 1783.

8 *Executive Order No. 12,333 – United States Intelligence Activities*, 3 C.F.R. 200 (1981 Comp.).

9 William F. Brown, Americo R. Cinquegrana (1985). Warrantless Physical Searches for Foreign Intelligence Purposes: Executive Order 12,333 and the Fourth Amendment. *Catholic University Law Review*, 35(1), 97-179.

10 Cully Stimson (January 24, 2017). *Will Trump Reform the Intelligence Community? History Offers Some Clues*. The Daily Signal, Available through: http://dailysignal.com/2017/01/24/will-trump-reform-the-intelligence-community-history-offers-some-clues/ (accessed March 10th, 2017).

11 *Ibid.*

- Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the U.S., international terrorist and/or narcotics activities, and other hostile activities directed against the U.S. by foreign powers, organizations, persons and their agents;

- Special activities (defined as activities conducted in support of U.S. foreign policy objectives abroad which are planned and executed so that the "role of the United States Government is not apparent or acknowledged publicly", and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions);

- Administrative and support activities within the United States and abroad necessary for the performance of authorized activities and

- Such other intelligence activities as the President may direct from time to time."[12]

Through the Executive Order, Reagan "not only made the intelligence community more responsive to oversight by elected officials, he also gave each agency clear responsibilities and goals. This empowered the intelligence community to work effectively to generate information necessary to make important policy and national security decisions."[13] The Order was used by the presidents for the past three and a half decades, and "has enabled every president to provide clear direction to the intelligence community regarding its organization and objectives."[14]

After 9/11, the American national security policy was dramatically changed and focused on protection of the U.S. national interests both at home and abroad, with all the available means. The reform of the Intelligence Community was imminent, primarily because of the large disappointment with one of the biggest intelligence failures in American history. The key document for the beginning of the new and comprehensive intelligence reform was a 9/11 Commission Report[15], which concluded "that the intelligence community needed significant changes to its organizational structure to better control and coordinate the complex web of intelligence agencies."[16] Thus, "the first major legislative reform of the intelligence community came in 2004 when President George W. Bush signed the Intelligence Reform and Terrorism Prevention Act (IRTPA) into law."[17] This Act established the position of the Director of National Intelligence (DNI), who is appointed by the President, but not a member of his Executive Office. However, the DNI is "subject to the authority, direction, and control of the President" to:

– "serve as a head of the Intelligence Community,
– act as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security, and
– oversee and direct the implementation of the National Intelligence Program."[18]

12 *Ibid*, *Executive Order No. 12,333*.
13 *Ibid, Will Trump Reform the Intelligence Community?*
14 *Ibid.*
15 The National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission), an independent, bipartisan commission created by congressional legislation and the signature of President George W. Bush in late 2002, was chartered to prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission was also mandated to provide recommendations designed to guard against future attacks. More through: https://9-11commission.gov/report/
16 Cully Stimson (January 24, 2017). *Will Trump Reform the Intelligence Community? History Offers Some Clues*. The Daily Signal, Available through: http://dailysignal.com/2017/01/24/will-trump-reform-the-intelligence-community-history-offers-some-clues/ (accessed March 10th, 2017).
17 *Ibid.*
18 *An Act to Reform the Intelligence Community and the Intelligence and Intelligence-related Activities of*

Because "intelligence requirements for counterterrorism span a matrix of strategic, operational and tactical analytical levels, and offensive and defensive measures and actions"[19], one of the major changes introduced by the IRTPA was the codification of the National Counterterrorism Center (NCTC), previously established by Presidential Executive Order 13354.[20] The idea behind the NCTC was to make a center for joint operational planning and intelligence, which will include officers from different agencies, notably members of the Intelligence Community. The Director of the NCTC reports both the President for counterterrorism planning line of responsibility, and the Director of National Intelligence for intelligence issues. He also has the duty to follow national security policy framework and directions from the President, National Security Council, and Homeland Security Council.

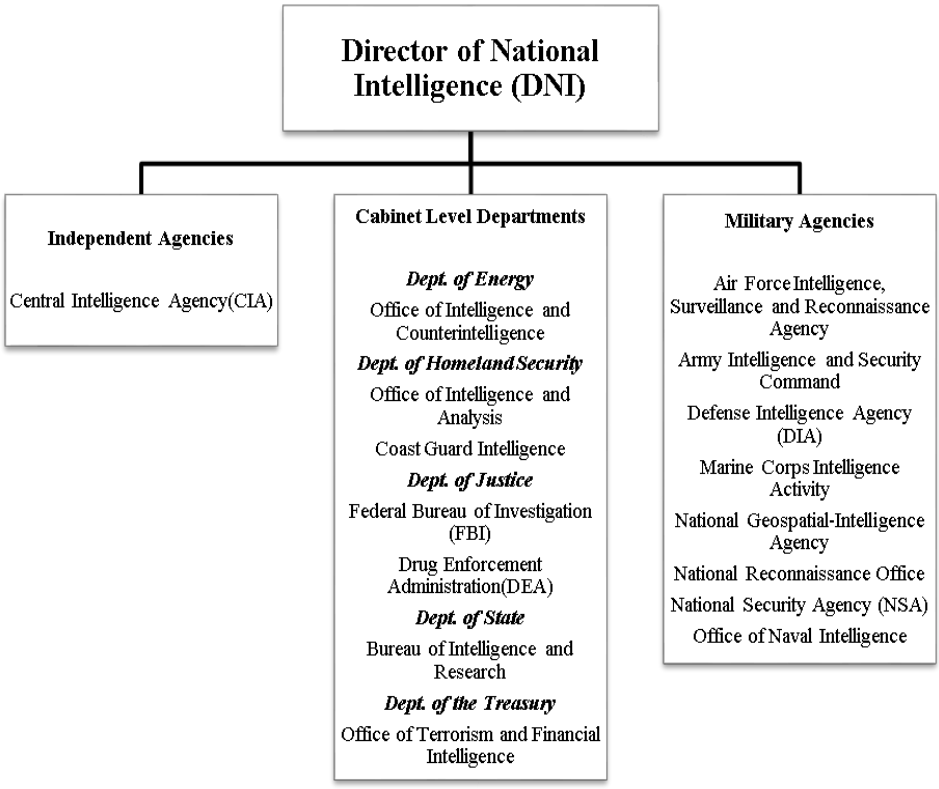


*Figure 1.* The United States Intelligence Community, Agencies reporting to DNI[21]

Apart from the War on Terror and fight against Al Qaeda in the 9/11 aftermath, the Intelligence Community did not have much of a success on the other fields, and also suffered some major failures, that raised high-level alert in the public about human and privacy rights abuse. First, the fact that the uprising in the Arab countries from 2010 to 2012 appeared completely under the IC radar is one of the setbacks of the intelligence reform, along with several

*the United States Government, and for other Purposes*. Congress of the United States of America, S. 2845.
19 Neal A. Pollard & Lt John P. Sullivan (2014). Counterterrorism and Intelligence. In: Robert Dover, Michael S. Goodman, and Claudia Hillebranad (Eds.). *Routledge Companion to Intelligence Studies*. London: Routledge, p. 247.
20 *Executive Order No. 13,354 – National Counterterrorism Center*, 3 C.F.R. (2004).
21 Carl J. Jensen, David H. McElreath, & Melissa Graves (2013). *Introduction to Intelligence Studies*. Boca Raton: CRC Press, p. 56.

terrorist attacks on American soil. Scandals with diplomatic cables leak (Wiki Leaks) and Edward Snowden revelations about National Security Agency's massive abuse of information and communication technology infrastructure in the U.S. and abroad raised even more questions about the responsibility of the Intelligence Community.

If we consider the stand of Stephen Marrin, that strategic intelligence "has limited influence on American foreign policy"[22], and that the main reasons for that are "due to the combination of political commitments and cognitive biases at the highest levels of national policy-making which hinder or otherwise prevent intelligence analysis from influencing policy"[23], we could consider Donald Trump's relation to the Intelligence Community as extremely biased and problematic, but not completely without reason. During the campaign, Trump had several very serious allegations towards some Intelligence Community agencies, which started in October 2016, after the Department of Homeland Security and the ODNI made the statement on Russian involvement in the election process. On multiple occasions from October 2016 to January 2017, Donald Trump commented the allegations by claiming there are direct linkage between the Democratic National Committee and the Intelligence Community, that some agencies purposely leaked false information to the media, and that the masterminds behind the allegations are the same agencies responsible for 2003 intelligence failure over Iraq's weapon of mass destruction.[24] However, on the first day of Donald Trump's presidency, he visited the Central Intelligence Agency and sent a message that the media exaggerated about his relation to the Intelligence Community, which could be considered as a good sign of their future relationship.

## THE U.S. AND THE FIGHT AGAINST THE ISLAMIC STATE

After the beginning of the Iraqi Civil War in 2014, it was obvious that the new security actor, the Islamic State of Iraq and the Levant (Islamic State, or ISIS) is gaining more territorial control than expected, and after spreading into eastern parts of Syria, it was clear that its conflict potential is far from controllable, especially when we know today that "the Islamic state has grown into a significant stakeholder in the conflicts in Syria and Iraq"[25]. From summer 2014, the United States entered the conflict with small troops in Iraq, which was followed with air strikes in Iraq and Syria from August, and making of the U.S.-led coalition of fourteen countries fighting ISIS. In two and a half years the number of actors, besides the coalition, involved Iran, Russia, Saudi Arabia, Bahrain, and United Arab Emirates. The situation on the field dramatically changed in 2016, when key towns were liberated, and ISIS lost the majority of territory occupied, especially in Iraq and Syria.

Donald Trump's relation towards the fight against ISIS has shifted since his Presidential Announcement in June 2015. Because ISIS was one of the hot topics during the presidential campaign, Trump has had numerous statements on possible American involvement during his term. First he stated that Syria should be "a free zone for ISIS, let them fight and then you

22 Stephen Marrin (2017). Why Strategic Intelligence Analysis has Limited Influence on American Foreign Policy. *Intelligence and National Security*, DOI:10.1080/02684527.2016.1275139.
23 *Ibid*, p. 2.
24 Eugene Kiely (January 23rd, 2017). *Trump and Intelligence Community*. FactCheck, Available through: http://www.factcheck.org/2017/01/trump-and-intelligence-community/ (Accessed March 26th, 2017).
25 Miroslav Talijan, Hatidža Beriša, Rade Slavković (2016). *The Battle against Islamic State: Some of the Possible Strategies*. International Scientific Conference „Archibald Reiss Days" Proceedings, vol. 2, p. 338.

pick the remnants"[26], and after that he supported the Russian military intervention in Syria. In 2016 Trump changed his rhetoric with focusing on the US military capacities for combating ISIS. First he proposed sending 20-30 thousand troops, but soon withdrew that statement, and then proposed the use of NATO and neighboring states (in the Middle East) in ousting ISIS from the region. In many of his speeches, the fight against ISIS was connected with the fight against the "radical Islamic terrorism".

In the presentation of the new administration's program at the White House website, it is pointed out that "defeating ISIS and other radical Islamic terror groups" will be of the highest priority, and that joint and coalition efforts will be needed. In the inaugural address, the new President stated that the United States intent to "unite the civilized world against Radical Islamic Terrorism". It is initially obvious that, differing from the notion of "fight against violent extremism" used by the Obama administration, the new administration talks about the fight against radical Islamism. However, relation towards rhetoric on radical Islamic terrorism changed after Trump began staffing the new Cabinet and Executive Office. New National Security Advisor, Lt. Gen. H.R. McMaster, already gave his stand regarding the fight against the radical Islamic groups. In February 2017, he stated that the label of "radical Islamic terrorism" was not helpful as the perpetrators were "un-Islamic", which is regarded as a "break from the rhetoric" of Trump's presidential statements.[27] Something closer to the stand of Obama's administration, which is also encouraging in terms of shifting the discourse from presidential campaign towards more realistic approach. Fight against international terrorism remains one of the keystones of the United States' foreign policy in the upcoming period. The threat of the Islamic State is still grave for the international security, so it is understandable that Donald Trump administration will remain in this course.

## CONCLUSIONS

Donald Trump's "reality check", apart from realizing that the division of power in the United States is still a keystone of the American political system, is also visible in his relation to the Intelligence Community and very sensitive question of the future course of American national security policy. First, he realized that the IC is very complex and sensitive legislative and institutional framework and a backbone of the United States counterterrorism strategy. The U.S. involvement in the fight against ISIS during the previous administration could not be implemented without the strong IC. Also, new administration should carefully cooperate with the Intelligence Community, where the position of the Director of National Intelligence is probably the key one. "The Director of National Intelligence would be the key player for implementing any intelligence community reforms dealing with security clearance, intelligence acquisition, and information sharing."[28] Also, President Trump is going to have "a lot of executive discretion as president on how to use the intelligence community, starting with his Director of National Intelligence, former Republican Senator Dan Coats. As a highly successful businessman, Trump will quickly learn that the director's office works best with a very

26 *Donald Trump running for President (Interview)* (June 17, 2015). FOX News, Available through: http://www.foxnews.com/transcript/2015/06/17/donald-trump-running-for-president.html (accessed March 10th, 2017).

27 Rebecca Flood (February 25th, 2017). Donald Trump and his New National Security Advisor Look Set to Clash on Radical Islam. *Independent*, Available through: http://www.independent.co.uk/news/world/americas/donald-trump-national-security-advisor-clash-islam-radical-mcmaster-a7599641.html (Accessed March 25th, 2017).

28 Cully Stimson (January 24, 2017). *Will Trump Reform the Intelligence Community? History Offers Some Clues*. The Daily Signal, Available through: http://dailysignal.com/2017/01/24/will-trump-reform-the-intelligence-community-history-offers-some-clues/ (accessed March 10th, 2017).

small but highly competent staff that promotes integration and collaboration among the 17 intelligence agencies under its charge and does not conduct operational activities itself."[29] As soon as he becomes well- informed by the closest Cabinet members about the national security priorities, capabilities and strategic and legal framework, the "big picture" will start to appear. Bearing in mind that the threat posed by ISIS is still on, this should be done as soon as possible, if new administration plans to maintain and/or improve the national and international security on the high level.

What are the challenges before the new administration? In the Intelligence Community arena, there are two possible obstacles. Firstly, "the director of national intelligence can foster collaboration and cooperation between intelligence agencies, but has limited authority to direct...", which means that "...there is no central position that can enforce change throughout the intelligence community."[30] Apart from that, there is a problem with different organizational structures of the 16 agencies, which are tailored for each of the agency's mission, so the biggest challenge will be to "create an analytical and communications structure that would also make the intelligence community more effective as a whole."[31] In the fight against ISIS, Feaver and Brands[32] give four different possibilities for Donald Trump:

"As president, he faces a broad range of choices. At one extreme, Washington could abandon its military commitments in the greater Middle East on the assumption that it is U.S. interference that provokes terrorism in the first place. At the other, it could adopt a heavy-footprint surge strategy that would involve using overwhelming military force to destroy globally capable terrorist organizations and attempt to politically transform the societies that produce them. In between lie two options: one, a light-footprint approach akin to that taken by the Obama administration before ISIS' rise; the other, a more robust approach closer to Washington's response to ISIS since late 2014."[33]

If we rely strictly on Donald Trump's discourse shift both in his statements regarding the Intelligence Community and fight against ISIS, we could draw a conclusion that there is a sort of mindset change caused by taking the seat in the White House. Maybe there was even a bigger reliance on his immediate personnel, especially advisory team, regarding the national security policy. That is certainly an encouraging picture, especially after a first impression that Trump publicly had before inauguration. But, one has to consider that there have always been cyclical relationships between the presidents and the intelligence communities, and that today's misunderstandings and quarrels could become a matter of history as soon as the circumstances change. One of the possible solutions for ending this distrust could be swift and clean ending of the ongoing fight against the Islamic State, something that has already begun, which could open space for further leveling of differences that exist between the President and the Intelligence Community.

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# PREVENTION OF VIOLENCE IN SPORT[1]

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**Abstract:** Considering the fact that sport is not characteristic of the modern age only, the authors have highlighted that the first cases of violence in sport have already been occurring in antiquity. This type of criminal violence has endured regardless of the changes of socio-political systems. Taking into account this circumstance, the authors have analysed a group of measures which when combined should contribute to the reduction of the amount of violence in sport by their preventive effect. Thus, in this article have been written about measures of educational character (fan coaching) whose base is the pursuit of education supporters, with a view to their conformist behaviour. The existence of so-called fan embassies, as the next preventive measure, enables visiting supporters to satisfy their needs in one location in the city hosting the sports event. As certain supporters are not participating in organized visits of the host country, it is necessary to develop special preventive measures for dealing with them. This special preventive measure for violence by supporters who are not in organized attendance of a sports event is embodied in the presence of so-called "accompanying" personnel. For this reason, the authors have dedicated a separate chapter of the work to the analysis of the need for presence of support personnel and their role in the prevention of violence in sport. As the next measure of prevention of violence in sport, the authors have cited the organization of the sports event, during which a balance must be found between a high level of safety for spectators and economic interests. The next measure of prevention of violence in sport is to be found in strengthening of relations between sports clubs, on the one hand, and the supporters on the other, leading to stronger social influence of the sports clubs. The increased involvement of clubs, as the next measure of prevention of violence during sports manifestations, is present in the education of young people who are practicing sport as well as stressing the importance of the value of sports ethics. The last preventive measure of violence in sport, which is the subject of analysis by the authors, is the greater involvement of local authorities in giving positive impulses to sports clubs, societies, and non-government organization in the fight against violence during sports manifestations.

**Key words**: sport, violence in sport, prevention.

1 This work is realized within the project no. 179046 of the Ministry of education, science and technological development of the Republic of Serbia

# INTRODUCTION

Sport, excluding maybe extreme varieties, develops noble feelings in people, contributes to their wish for victory and their perseverance. However, it also creates the possibility for the will to win to be turned into victory at all costs, and for perseverance to turn into obstinateness and recklessness. This applies for active sportsmen, but also to passive spectators of sports events during competitions – the supporters.[2]

Violence in sport is not a phenomenon imminent to the modern age. Its roots can be traced all the way to antiquity. The practice of sports has served as preparation for waging war. Some, like Poliakof, believe that the Greeks of antiquity have discovered the value of practicing combat sports after the battle at Marathon, during which the Greeks and Persians battled in 490 B. C. with bare hands (Jewell, Moti, Coates, 2011:17).[3] The first cases of violence in sport were recorded in antiquity. The Romans held gladiator fights to the death. To illustrate the widespread violence in sport, we shall quote a sentence from the famous Roman philosopher Seneca: "*In the morning, men are thrown to lions and bears. At mid-day they are thrown to the spectators themselves.*"[4] In this way, the audience demanded the fight between two gladiators to the death.

The occurrence of violence in sport endured in all epochs, regardless of the socio-economic context. The scientific community has begun to examine the forms of violence, its cause and measures of its prevention in sport only in the second half of the XX century. The reason for this has to be sought in the popularization and commercialization of sports in the XX century, when they became a global phenomenon. Violence in sport, in the modern sense, is tied to the hooligan[5] supporter groups in England.[6]Society's reaction to this pathological occurrence has ensued after several tragic events, of which two in particular stand out due to their consequences. In the final match of the European Champions Cup between Juventus and Liverpool in the Heysel stadium on May 28, 1985, 39 supporters of the Italian club lost their lives. The English supporters had caused the collapse of a part of the stadiums seats, on which the supporters of Juventus were located. The second event happened at the stadium Hillsboro, during the match between Sheffield-Wednesday and Liverpool. That day 96 supporters died. After that, England defined a series of crimes and prescribed prison sentences for causing of incidents at stadiums with the adoption of the Football Spectators Act of 1989.[7]

Examples of violence in sport have continued after these tragic events. Thus, the countries were forced to work on the prevention of this type of criminal violence with a combination of repressive and preventive measures. In the following portion of the work the authors shall give a brief overview of the measures of preventing violence in sport.

2 Dimovski, D., Social predetermination of violence in sport, Social thought, Belgrade 2009, no. 1, p. 115
3 Jewell, T., Moti, A., Coates, D., A Brief History of Violence and Aggression in Spectator Sports, Springer, USA, 2011, p. 17.
4 B. Wingate, Violence at Sports Events, The Rosen Publishing Group, New York, 2009, p. 10.
5 The terms "hooligan" and "hooliganism" date back to the XV century, but in expert literature only in the XIX century. This term signifies the destructive behavior of an individual or a group, which crosses social norms (Lj. Mitrović, Violence at sport events, Social thought, 1/2009, p. 23).
6 For more on the subject see: D. Bodin, L. et al, Sport and violence in Europe, Zagreb, 2007.
7 More on the legal framework in England: D. Šuput, The Legal Framework for fighting against violence at sports manifestations in European Countries, Foreign Legal Life no. 1/2010, p.240

## MEASURES FOR THE PREVENTION OF VIOLENCE IN SPORT

Great efforts were made for measures preventing violence in sport after the tragedy in Heysel stadium. The preventive measures were developed on the national and international level through the cooperation of authorities of internal affairs, the installation of visual surveillance in stadiums, the building of better infrastructure, control of supporters, the organization of ticket sales, as well as the adoption of special legislation to improve the legal framework the fight against violence in sport.

Starting from the fact that the greatest amount of violence in sport occurs during football matches, the authors shall introduce measures for the prevention of violence in sport through the spectrum of events at football fields. Football matches take place during the whole year because of which it is necessary to set mid and long-term goals in regards to the prevention of violence during football matches. Mid-term and long-term goals can be achieved through the combination of stimulation, development, as well as the strengthening of educational and social activities aimed at the perpetrators of violence in sport – the supporters, by which this type of criminal behaviour can gradually be reduced. During football matches it is necessary to have good capacities for security, with special attention to the organization of the match itself, as well as the happenings on the stands and outside of the stadium. For the successful prevention of violence cooperation between representatives of local authorities and the different structures within the club is necessary. The safe organization of international matches requires the presence of a person, traveling together with guest supporters, and responsible for the lodging of the supporters and their other needs.[8]

A combination of measures to prevent violence in sport, such as measures of educational character (fan coaching), the existence of so-called fan embassies, the selection of accompanying staff, good organization of sports events, strengthening the links of the club and the fans, the club increased commitment, greater involvement of local authorities as a measure of prevention of violence in sport, creates conditions for the reduction of violence in sport.

## EDUCATIONAL MEASURES FOR THE PREVENTION OF VIOLENCE IN SPORT

The prevention of violence in sport, especially violence during football matches as the most present type of violence, requires a combination of different measures of prevention. One of the measures is the education of supporters. As hooligans are the carriers of violence during football matches, special attention for the prevention of violence in sport is given to the application of measures for the prevention of violence in sport. At the same time, it is necessary to stress that hooligans have begun to employ more refined means for expressing their aggression, while violence has moved from the field to the space in front of the stadium, which requires the application of long-term educational measures aimed at reducing the hooligans' expression of aggression.[9]

Because of this certain European countries have undertaken educational measures, which are in the jurisdiction of social workers and aimed at a certain number of problematic supporters. An example of the application of this measure for the prevention of violence in sport is the organization called The Fan Coaching Association of Liege (Belgium), which was

8 Comeron, M., The Prevention of Violence in Sport, Council of Europe, Strasbourg, 2002, pp. 13-14
9 Comeron, M., op. cit., p. 14.

founded in 1990. The basis for the work of this organization was laid out by the Professor of criminology Georges Kellens and Commander of the gendarmerie Guy Wietkin in cooperation with the representatives of local authorities. The essence of their idea is that supporters will not behave aggressively while seeking employment or the completion of administrative affairs.[10] In other words, fan coaching consists of activities, which are undertaken on the very day of critical sports event, as well as educational and social activities undertaken between two sports events. On the day of the critical sports event it is important to undertake activities which will reduce the risk of violence occurring to a minimum. These activities are materialized in the mediation of specially trained people between supporters and the employees of internal affairs bodies as well as between supporters and spotters. Because these specially trained people are on location, their capacity for calming all potentially dangerous situations is great, because channels of communication are always open between supporters and match security.[11]

As we have already mentioned, educational and social activities are conducted between sports events. During the week in which the critical match is to be held, field trips, so-called street-art manifestations are held and visits to local clubs are organized with problematic supporters.[12]

In contrast to sport, which is subject to strict rules, some criminologists believe that only engaging in certain physical activities, without the existence of strict rules, represents its comparative advantage in the prevention of delinquency, and thus criminality during sports manifestations.[13] An example of such a program is known as the Outward Bound program, which in essence is not only about engaging in physical activities, but about learning basic techniques for surviving in wilderness. At the same time, training within the Outward Bound program the delinquents learn how to fulfil certain tasks in a short period of time, with the strengthening of trust between themselves as well as between them and the trainers.[14] The outward-bound program was conceived in England during World War II with the goal of teaching basic survival skills to sailors on trade ships. In 1960s, the Outward Bound program experienced its golden age in the United States of America. This program is supposed to contribute to the development of self-control and group cohesion and solidarity in the delinquent population.[15]In the federal state of Virginia, the town of Alexandria, races were organized between minors who committed crimes by the Road Runners Club of America. The result was the reduction of the participation of minors in crimes, which were, among others, committed at sports events. During 2008 and 2009 the pilot project called Sport 4 All Youth was launched on the St. Lawrence River in Brockville in the federal state Ontario. The goal of the project was to allow delinquent youths, especially those coming from families with low socio-economic status, to participate in wakeboarding events. The result was a drop in underage delinquency.[16]

At the same time, together with adventure activities, for the further prevention of violence at sports manifestation by supporters-minors it is possible to organize classic sports activities,

10 Retrieved 12. May 2016 from http://efus.eu/en/topics/places-and-times/large-events/%ACtivity%/5672
11 Retrieved 22. May 2016 from http://www.peacepalacelibrary.nl/ebooks/files/Coe11.pdf
12 Frosdick, S., Marsh, P., Football Hooliganism, Willan Publishing, Devon, 2012, p. 152.
13 Cameron, M., MacDougall, C., Crime Prevention through Sport and Physical Activity, Australian Institute of Criminology, Australia, 2000, p. 3. Retrieved 05 January 2014 from http://www.aic.gov.au/documents/3/E/F/%7b3EF114BC-51A4-4311-A912-0E9AD1833995%7dti165.pdf
14 The Yearbook of the National Society for the Study of Education, The National Society for the Study of Education Chicago, 1998, p. 144.
15 Walters, G., Foundations of Criminal Science: The use of knowledge, Greenwood Publishing Group, New York, 1992, p. 163.
16 See: http://www.huntsville.ca/en/documentuploads/Agendas/doc_634347663696986367.pdf, accessedon 28.12.2013.

such as football and basketball games. Examples for this type of prevention of violence by minors is possible to find around the world. Kansas City in the federal state of Missouri has started a basketball program in the evening and night hours, which has led to the decrease in underage delinquency between Afro-Americans. The results achieved exceeded expectations. According to Kansas City police reports, there was a total drop in underage delinquency of two thirds in those areas where this prevention program existed for delinquent youths between ten and twenty years of age.[17]In this way an indirect contribution was made to the reduction of violence during sports manifestations.

Within the framework of this measure for the prevention of violence in sport, it is possible to organize educational actions for young supporters, although it is necessary to keep in mind that not all hooligan groups are the same. It is therefore necessary to adapt these preventive measures to each one of them.[18] At the same time, these activities, as the criminologist Comeron has already highlighted, must not be reduced only to local supporters, but also the supporters of visiting teams. The continued action has yielded results in the reduction of the expression of violence by supporters. The idea has been accepted not only in Belgium, but also in clubs in Germany, the Netherlands and Sweden, which have all adopted the same concept.[19] The success of the work of this organization is also evidenced by the fact that in 2011 it received the European Football Supporters Award.[20] Preventive action using a fan-coaching are implemented in the organization of international tournaments in football, such as the European Championship. Namely, since the European Championship, which was held in England from 08 to 30 June 1996, each host city had organized places where fans could get all possible help and assistance while they were away from home. This practice continued at every upcoming football championship. Thus, for example, during the World Cup held in South Korea and Japan in 2002, all the fans had an opportunity to use a free public transport to the football stadium and back to the centres of cities hosting the sports event. Niigata City (Niigata) provided 300 buses in order to transport 23 thousand fans to the football stadium and back, which led to the fact that every fan was really satisfied and because of that safety on the stadium and outside it was at a higher level.

## ORGANIZING FAN EMBASSIES AS A MEASURE OF PREVENTION OF VIOLENCE IN SPORT

Close ties with fan coaching include the following measure in order to prevent violence at sports events. The essence of preventive measures as the fan embassies is to enable visiting supporters a certain place in the city hosting a sports event where they can satisfy all their needs. At the same time, this is the place where visitors are allowed to speak their native language with the officials who are familiar with all the details of the upcoming sports event, while none of the home crowd is not allowed to disturb them. In that way all the problems visitors may have while they are roaming in another country, such as problems with transportation to the sports facility and back, buying tickets, accommodation, loss of documents, theft of money or health problems are solved. Pioneers in the application of these measures

17 Dimovski, D., Prevencija kriminaliteta kroz bavljenje sportom i fizičkom aktivnošću, Zbornik radova Pravnog fakulteta u Nišu, Centar za publikacije, Niš, br. 69, 2015. godina, str. 136.
18 Titley, G., Young People and Violence Prevention: Youth Policy Recommendations, Council of Europe, Hungary, 2004, p. 48.
19 Retrieved 12. May 2016 from http://efus.eu/en/topics/places-and-times/large-events/%ACtivity%/5672/
20 Retrieved 12. May 2016 from http://www.fsf.org.uk/latest-news/view/belgian-group-wins-european-football-supporters-award-2011

on prevention of violence at sporting events are the Football Supporters Association (FSA). In fact, even at the World Cup in Italy in 1990 the Football Association wanted to change the image of their supporters abroad, and in cooperation with the staff and the FSA, organized fan embassies to encourage conformist behaviour of their fans. After that there has been a change of attitude towards the fans of England.

At the same time, during the football World Cup in France in 1998 mini-buses were organized for English and German fans in which they could refer to Championships officials so they could help them solve any problem. Positive results were confirmed by the University of Liege, which in the period from 1997 to 2000 conducted a criminological study of the fan embassies. One of the recommendations that came out of the criminological studies is the introduction of these measures on prevention of violence in sport in the countries hosting sports events. Therefore, during the European Championship in football in 2000 the Netherlands and Belgium implemented this recommendation to reduce the risk of the outbreak of violence by visitors.

## THE EXISTENCE OF SUPPORT STAFF AS A MEASURE OF PREVENTION OF VIOLENCE IN SPORT

Mobility of fans, as well as their heterogeneity, is one of the basic characteristics of fan groups. Some fans do not come to a country where sports is organized, and they do not use all the benefits of official organizations in the host country. Therefore, it is necessary to work on developing specific prevention measures that are based on work with the fans who come to the host country in small groups which are not organized. This special measure in order to prevent violence coming from fans which are not organized as such is reflected in the existence of so-called support staff. The support staff should know the language of the fans, as well as their culture and habits. The choice of this person is imposed by the people originating from the same country as the fans. Successfully performing tasks by supporting staff imposes an obligation to travel together with the so-called unorganized fans, where it is necessary to follow up the support staff dynamics and resting of such fans. At the same time, support staff must be present one day earlier, which raises security to a higher level. In this way, unorganized fans are provided the same scope and quality of services provided by support staff and fans who live in the so-called fan embassies. In other words, unorganized fans in this way have a chance to solve problems such as trouble with the transportation, ticket, accommodation, loss of documents, theft of money health problems.

In order to provide that the level of service to the unorganized fans is at a satisfactory level, special attention should be paid to the structure and selection of support staff. Selection of individuals for support staff should be based on criteria set by the host state. In fact, the host selects from the list of candidates compiled by the country disorganized crowd is coming from, using the criteria of independence, flexibility, communication skills and adventurous nature. Engaging in this business does not necessarily require that individuals should be experts who work on the prevention of juvenile delinquency and hooliganism or social protection, but it is necessary that they support the prevention of violence in sport by fans. The selection procedure can be simplified if the host has citizens originating from the country of the visiting fans. The countries in Western Europe are leaders in the possibilities of engaging individuals to work as support staff, particularly in the case of hosting national teams of the countries from the Balkans.

# GOOD ORGANIZATION OF SPORTS EVENTS AS A MEASURE OF PREVENTION OF VIOLENCE IN SPORT

As a further measure of prevention of violence in sport we can mention the importance of a well-organized household, as well as monitoring of fans to the stadium where the match will take place. The guiding idea for organizing various sporting events should be the importance of the security of not only the direct participants in a sports event, but also the safety of spectators in relation to the economic interest. In other words, during the organization of sports events, it is necessary to find a balance between satisfying all necessary safety standards in the light of the risks, on the one hand and the need not to endanger the entertainment value of such events, on the other hand. In order to achieve the necessary balance it is necessary to take into account that a sporting event should be pleasant for the home fans and the fans of the other team.

Practice has shown that integrated system operation of security services with adequate cooperation of authorities allows that the safety of the participants and spectators of a sporting event is at the maximum level, without compromising the pleasure such an event provides. Consideration of challenges connected to security from various aspects in planning, organizing, as well as the sporting event is essential in order to achieve these goals. When organizing international sports events the degree of coordination of various security agencies should be even better, because when such an event is organized it is necessary to establish beneficial and timely cooperation with foreign security agencies. Only the joint operation of domestic and foreign services at different levels can provide prevention of violence at sporting events, while the guiding principle of the work of security services must be the concept of hospitality. In this way it is possible to provide the best treatment for foreign fans. All preventive measures taken before the sporting event contribute to the comfort of the fans.

Preventive measures whose main goal is well organized household are demanding not only to track visitors, but also that the local population should be well prepared for the arrival of a large number of supporters of the opposing team. The local population, in addition to contributing to the warm welcome of visitors, has a stake in how successful sports events will be on and off the field. At the same time, it is necessary to bear in mind that when it comes to important sporting events some problematic young people may feel discriminated and that should be avoided, because that can only increase their frustration which can led to the expression of violent behaviour. The same analogy applies in the case of troubled neighbourhoods. To overcome this problem it is necessary to cooperate with non-governmental organizations, as well as centres for social work, in order to prevent the rejection by the society the young people may feel at the time of important sporting events. As an example that it is necessary to work on preventing young people from feeling rejected is best to state the developments at the European Championship in football in Belgium and the Netherlands in 2000, when young people thought that their only role in this sporting event was attacking English fans.

Organizing major sporting competitions is an ideal opportunity for local hooligans to promote themselves as leaders of fan groups using mass media. The mass media can play an important role in the accumulation of excess energy fans have and spending it in the way that is allowed during sports events. The media's role is to provide as much entertainment to a wider range of people. Giving attention to athletes, but also prominent supporters of the hooligans from the media, provides media a high rate of viewership. Paradoxically, this particularly applies to situations related to any form of violence manifested in the sport - from less important to the events with tragic consequences. Very often, the media are "glorifying" those athletes and hoodlums that are controversial and who behave aggressively. Very often the media glorify violence in sport, using the sensational and bombastic headlines in their

broadcasts and print publications. Taking preventive measures during the European Football Championship in 2000 in the Belgian city of Liege is a good example of how the active work with the most extreme fans in areas that are most burdened by violent hooligans have an impact on preventing violence at sporting events, which leads to decreasing in the popularity of the news reports. In that way the internal affairs authorities are relieved, which can lead to the possibility of their involvement in other activities in combating crime.

## STRENGTHENING CLUB AND FAN TIES AS A MEASURE OF PREVENTION OF VIOLENCE IN SPORT

The following measure in order to prevent violence at sports events is, as already mentioned, noted by criminologist Comeron, in strengthening relations between the sports club, on the one hand, and the fans, on the other hand, where there is a higher social impact sports club can have. Certain sports are the connective tissue in a society or community. Therefore, it is necessary to use as a sport binding agent of a greater number, especially for young people. At the same time, in that way a positive relationship is created with the local authorities. Sports clubs in some countries, such as Scotland and Scandinavia, cherish positive culture of their own fans on the basis of what fans have become ambassadors of fair play, not only in this country but also abroad. Through positive culture dialogue is cultivated between the fans of a country and the opponent team and then fans or the club, which contributes to calming tensions between fans of the two clubs or representation.

As an example of a good connection of sports clubs, particularly football, with their fans is Denmark. In fact, this country in 2003 founded the Danish Football Fan clubs (DFF), which has over 50,000 dedicated football fans. This organization provides a forum for fans of 29 clubs in which to discuss issues important to the supporters of different football clubs. At the same time, DFF has established a Standing Committee on Security and Prevention of Violence, racism and vandalism among fans.[21]

Modern sport, including the football as the most popular game in the world, leads to the fact that an average fan is passive comparing with a sporting event, whereby he has not assumed any responsibility for his behaviour. As for passivation of the fans and the lack of any responsibility for their behaviour an example of the club Neftchi from Baku (Azerbaijan) may be cited. The club was founded by the so-called Union of their fans, whose task to organize trips to away fans courts, as well as providing assistance to fans upon arrival at the home club. At the same time, the federations' union provides assistance to law enforcement agencies to increase security at sports stands.[22]

## INCREASING THE ENGAGEMENT TEAM AS A MEASURE OF PREVENTION OF VIOLENCE IN SPORT

Increasing the involvement of the club, as the next measures to prevent violence at sports events, is reflected in the education of young people involved in sports, as well as emphasizing the importance of the values of sports ethics. Sports such as football, basketball and others, are such social phenomena that permeate the everyday activities of people, and therefore the

21 Retrieved 17 May 2016 from http://www.fairfans.dk/english/
22 Retrieved 17 May 2016 from http://www.peacepalacelibrary.nl/ebooks/files/Coe11.pdf

engagement team for the sake of prevention of violence in sport should not be limited to a certain day of the match, but there must be continuity in the measures taken.

As clubs have a symbolic value for ordinary fans, where this value is even more accentuated in extreme fans (hooligans), sports clubs must play a leading role in the promotion of social policy in which the commitment to youth sports, youth education, and conformist behaviour will be high appreciated in a local community. As an example of increasing the involvement of clubs in preventing violence in general, and on the sports field, through work with troubled children, we can mention the football club Leeds United. Specifically, this football club, together with the Ministry of Education organizes classes for children who have specific problems in learning, in the official Leeds United bus. The results were more than satisfactory, because all the troublesome students upon completion of the project showed better success in mastering the material.[23] Liverpool football club, from the English town of the same name, has done the most in the field of crime prevention in general and on the sports field. The reason for the dedication of the football club Liverpool in crime prevention can be found in the fact that the supporters of this club were the perpetrators of one of the greatest tragedies in the history of football - events at the Heysel stadium in Brussels during playing the final match of the European Cup (forerunner of the Champions League) on 29 May 1985. The result of this event was the decision by the UEFA to ban all English clubs participating in the Euro Cups for five years. Aware of their part of responsibilities in the Heysel Stadium disaster, Liverpool football club took responsibility in the prevention of crime in such a way that at the end of 1980sthey initiated a special program, along with five other clubs under the auspices of the Professional Footballers' Association, whose aim was to improve the connection between football clubs on the one hand, and local communities, on the other hand. Already in 1993 there was an expansion of this initiative to other football clubs in England.[24]One of the actions taken to prevent socio-pathological behaviour of juveniles refers to a football camp in which professional footballers promote a life without the use of drugs, whose use is closely linked to criminal activities, in order to provide funds for its purchase. Since fleeing from school, as pre-criminal behaviour is in relation with committing criminal offenses by juveniles, Liverpool football club initiated a special award certificates to those students, who in a certain period of time attended school regularly.[25]

Another example of greater involvement of sports clubs in the promotion of sports ethics is a project called Lille Métropole (LOSC) in the French city of Lille. In the framework of this project the playing of football was promoted with the involvement of professional players in certain neighbourhoods where amateur football matches were organized. Among the East European countries that have recognized the benefits of greater engagement with sports clubs in the local community we can mention the Czech Republic. Thus, in the Czech Republic there are supporters clubs founded for children aged 8 to 12 years, with the aim of promoting sports and educational activities. At the same time, experts from social work centres are engaged in such activities, where activities are undertaken in a separate room of the club. In this way children are taught about conformist behaviour at sports events and in other circumstances.[26]

In addition to the countries of Europe other countries also implement similar measures of prevention of juvenile delinquency. In fact, Australia has developed a so-called Kick-Start program, which is funded by the Australian Football League (Australian Football League). Among other objectives of this program there can be specified reduced fuel abuse by juveniles

23 Ibidem
24 M. Johnson, M. Summers, *Sports Marketing*, Thompson Learning, Australia 2005, p. 64.
25 M. Cameron, C. MacDougall, *Crime Prevention Through Sport and Physical Activity*, Australian Institute of Criminology, Australia 2000, p. 4. Retrieved 05. January 2014 form *http://www.aic.gov.au/documents/3/E/F/%7b3EF114BC-51A4-4311-A912-0E9AD1833995%7dti165.pdf*
26 Retrieved 17 May 2016 from http://www.peacepalacelibrary.nl/ebooks/files/Coe11.pdf

in such a manner that breathing in its fumes would achieve psycho-physical condition similar to that achieved by using drugs.[27]In addition to engaging the umbrella organization of football in the prevention of crime and delinquency of minors, some football clubs have been working on the prevention of juvenile delinquency in the way that they visited some penitentiary institutions for juveniles. The members of football clubs Carlton, Brady Anderson, and the Kangaroos (former name of the North Melbourne), Glenn Manton, as well as a member of the Australian Olympic Handball Team Sandra Zlatanovski visited Parkville Youth Residential Centre in the Australian state of Victoria with the aim of applying the model professional athletes change the way of thinking and behaviour of juvenile delinquents.[28]

## GREATER INVOLVEMENT OF LOCAL AUTHORITIES AS A MEASURE OF PREVENTION OF VIOLENCE IN SPORT

The following preventive measure against violence in sport embodies a greater involvement of local authorities. The local authorities have to be stakeholders in preventive measures against violence in sport in terms of providing positive impulses to the sports clubs, associations and non-governmental organizations in the fight against reducing the scope of violence at sporting events. Local authorities represent the ideal level of government to secure rapid operationalization of the agreed preventive measures with other carriers fighting to reduce violence in sport, which requires the conclusion of a contract between them.[29]The importance of engaging local authorities in preventing violence in sport is best evidenced by the fact that local authorities, for example, in Germany provide 98% of public resources to finance sports activities, while the percentage is slightly lower in England and amounts to 95%.[30] At the World Cup in South Korea and Japan, we have already mentioned in this article, local authorities in the aforementioned city of Niigata in cooperation with organs of internal affairs and mass media undertook a number of activities aimed at increasing the level of security. Specifically, as the citizens of Niigata did not have any experience with hooligans, and the fear increased due to malicious reporting of certain media, the local authorities have taken a proactive security measures, putting key locations in the city under control, working with the countries where the visiting fans come from, as well as separating groups of fans of different teams.[31]

## CONCLUSION

Violence in sports, as a form of crime of violence, has been done since the ancient times. Its resilience in all socio-economic conditions with terrible consequences resulting from the events at the Heysel Stadium at the match between Liverpool and Juventus held on May 28, 1985, when 39 fans of the Italian club were killed, as well as the event that took place at the Hillsboro Stadium, at a match between Sheffield Wednesday and Liverpool, when 96 fans were killed in riots, led to alarming the general public that violence in sports is an embarrass-

27 J. Sellwood, M. Dinan-Thompson, F. Pembroke, *A Kickstart to Life for Indigenous Youth*. *http://www.aare.edu.au/data/publications/2004/sel04253.pd*f, January 06, 2014.
28 Life alternatives make a safer community, *http://www.health.vic.gov.au/archive/archive2010/humanservicesnews/oct00/altern.htm*, January 07, 2014.
29 Retrieved 17 May 2016 from http://www.peacepalacelibrary.nl/ebooks/files/Coe11.pdf
30 Bodin, D., Robène, L., Héas, S., Sport and Violence in Europe, Council of Europe Publishing, Strasbourg, 2005, p. 93.
31 Prevention of violence in sport, p. 25. Retrieved 21. May 2016 from http://www.coe.int/t/dg4/sport/Resources/texts/T-RV_2005_08_EN_Rapport_Lisbonne_FINAL_rev.pdf

ing problem that requires an adequate reaction from the state. Although after these events in England there have been a series of crimes introduced with prison sentences for inciting riots at stadiums, the adoption of the Law on Football Supporters in 1989,[32] the extent of violence in sport could not be reduced only to repressive measures. Therefore, countries around the world have begun to create a variety of measures to prevent this type of crime of violence. At the same time, it is necessary to emphasize that the operation of only one preventive measure is impossible to impact the level of violence in sport, and it is necessary to use a series of preventive measures whose synergy will make a significant step towards reducing violence at sporting events.

In this article, starting from the mentioned facts, the authors presented a variety of various preventive measures, along with a detailed explanation of each of them individually with the guidance of good practice. States which are faced with high levels of violence in sport should implement in their national strategies for the prevention of crime the measures that are particularly relevant for the prevention of violence in sport. Only in this way it is possible to expect that the combination of certainty that perpetrators of violence in sport are punished that all preventive measures will deter potential offenders from committing new crimes at sports events.

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# THE PRESENCE OF ISLAMIC EXTREMISM IN THE BALKANS

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**Resume:** Islam is the religion which was brought to the Balkans by the Ottoman Empire. The result of centuries of Ottoman presence in the territory of today's Balkans has permanently changed the demographic structure of the national population. After the fall of the Ottoman rule, the region of Southeast Europe in the religious sense remained incompact.

The paper will present the contents which indicate the great importance of regional Balkan Peninsula in terms of Islamic extremism, primarily as a touch area of the two most powerful world religions. In addition, the paper explains different contexts in which Islamic extremism occurs.

**Keywords**: Islam, fundamentalism, extremism, Balkan, Religion

## INTRODUCTION

The Balkan region has a remarkable geostrategic position and has always been a subject of interest of both regional and great world powers. It represents the bridge, and the link between Europe and Asia, both in the physical and political, and in the religious sense. The continuing struggle of interests caused numerous events that have left significant and long-term consequences on the development of South-Eastern Europe. Religious tensions and contradictions between Christianity on the one hand and Islam on the other hand have been deepening for centuries and constitute the basis for a long-term policy action, both of political and religious elites.

After the fall of the Ottoman rule in the Balkan region, religious sense remained incompact. Compactness of the Christian religious corps disrupted the large population of Islamic faith rooted in the genes of Turkish invaders, but also in the genes of the Christian world that willingly or unwillingly converted to Islam. In this way, Islam as a religion permanently entered the European continent and created a new quality of relations in the political, religious and security scene. The Balkan region thus became paramount for which it was worth and is worth fighting for. It became a place where the fates of nations and states are resolved.

Throughout history, the peoples who inhabit this part of the European continent have been exposed to numerous influences of various religious, political and national conflicts. If they wanted to survive they had to fight in order to save their homes, as well as the state and the church or mosque. Life in the permanently unstable environment and the existence of a

large number of security threats affected the specificity of cultural and social development of nations and religious communities in the Balkans. Specificities, under which it was created, the security environment of the region, primarily multinationalism, the struggle for religious domination, the intersection of interests of regional and world powers, as well as the complexity of political relations, influenced the Balkans in many respects so that it differs from other European regions.

Given the importance of the Balkan region, the degree of economic, social, cultural development of the peoples who inhabit it, the question is why extremism appeared in this area. How is it possible that at the end of the 20th and beginning of the 21st century, in the era of entire spiritual, scientific, industrial and technological progress, the southeast of the European continent is facing numerous security threats from extremism which occupies an important place? The Balkans is a region that faces the existence and operation of a number of radical organizations, ideological movements that propagate their ideas in a legally unacceptable way. A common feature of all the extremist organizations and movements is the dose of exclusivity to those who do not support their program. In addition, there is a threat to the realization of their ideas through violent means including armed action[1].

At the beginning of the 21st century, Islamic extremism experienced expansion around the globe and became one of the major security threats of today. The use of terrorism as the most important and practical method of operation, is characteristic for Islamic extremists. When it comes to Islamic extremism, the widespread opinion is that it is directed only to the members of other religious communities. However, the practice is not revealed. Terrorist attacks carried out in the Christian world and the many terrorist attacks on dissidents and innocent civilians in Muslim countries show that the target of Islamic extremism is anyone who does not respect and does not support their ideology and intentions, regardless of ethnicity or religion. The Muslim world has filed numerous, if not the greatest human casualties as a result of conflict of various Islamic extremist organizations. Of course, the largest Islamic extremist organizations are represented in the Middle East and in other regions of the world inhabited principally with Muslim population. However, due to the operating mode and the ability to fit their ideas into the story and motives of official Islam, the followers of Islamic extremism are also found in the areas with minority of Muslim population. Frequently, the followers and the support they gain from the members of other religious communities after accepting Islam, have as their aim achieving of defined interests. The geographical proximity of the region of the Middle East and a number of listed specifics influenced the appearance and operation of Islamic extremist organizations in the area of the Balkan Peninsula, as well.

The Balkan Peninsula is the most Muslim region in Europe, and naturally as such it is suitable for the entry and the spread of Islamic extremism. In the political, social, historical and religious sense, the Balkans is a key crossroad where the geopolitical and geostrategic road connects Europe and Asia. As a place where civilizations clashed for centuries, the Balkans as the heart of southeast Europe was continuously subjected to various security challenges, risks and threats of which a significant part of its roots lies in religious extremism. The importance that the Balkans has for Turkey, which in the Middle Ages, brought Islam on European soil, and as a country that is now emerging as a significant regional power, is immeasurable. The area of the Balkans is a bond which is the cradle of Islam connected to Islam in Europe. The fact that the homogeneity of Christian Europe is undermined precisely in its southeastern part was influenced by the fact that the importance of the Balkans intensifies in different ways. Certainly, one of the terms that indicate the importance of this part of Southeast Europe for the Christian world is that the Balkans is the "bastion of Christianity". However, if the Balkans

1 Хатица Бериша, Игор Баришћ, Катарина Јонев: „*The Influnce of Islamic on the Global Security*", Journal of Liberty and International Affairs, Specijal Isuse, Vol. 1 Supp. 1/2016, str.3-8

is for the Christians ramparts where they are kept, then we can certainly say that the Balkans for Islamic world is a gateway to Europe, which is partly open. History has shown that this gate has been unlocked and partially opened for the violent conquest of the Ottoman Empire and aggressive attitude towards the Christian population that is reflected in the physical extermination or converts to Islam. The place of historic confrontation of the two largest world religions is fertile ground for the emergence of religious, principally Islamic extremism.

## BALKAN AS A SOURCE OF ISLAMIC EXTREMISM

The Balkans, in the geopolitical sense, represents a very important area in which the regional and world powers different interests intertwine. The importance of this area is great. Modern political terminology used simultaneously names such as the Balkan Peninsula, the Balkans, but also South East Europe and Southeast Europe. These terms have been used simultaneously in some periods, sometimes more often than the other one, which depended on who used it and to what aim.

The Balkans usually reminded of territorial-political entity formed in this part of Europe, or simply taken to signify affiliation to Europe as a whole[2]. For Germany, during World War II, the term Southeastern Europe, meant the area south of the south-eastern borders of Germany, to the southern borders of the Soviet Union and included both Turkey and Cyprus[3]. The Nazi project of the new Europe, the Balkans and Southeast concepts were emerging as juxtaposed fact never taking place. It was nevertheless an extremely important part of the global discussion on the regulation of government millennial Reich on European soil[4].

The shortest, cheapest and least demanding land corridor that connects Europe and Asia extends across the Balkans. Southeast Europe and the Balkans region within it, represents an exceptional base for a breakthrough to the Caspian Basin and on to Russia's Far East. The rich history of this region indicates a continuity of events that largely create regional and global security scene. Practically, the region of Southeast Europe is not bypassed in any event of importance for global security.

The Balkan region is of the great importance from the aspect of religion, especially Christianity and Islam. Advantageous features of relief and a natural openness affected the flow of invasions that were historically guided in these areas. One of the most important was the Ottoman Empire invasion of Europe. Incompetence and disunity of big European powers of that time to resist the Ottomans resulted in centuries of enslavement of a substantial part of the Balkans. Besides Christianity, Islam becomes the second world religion that has stepped on the soil of Europe with great strides that will permanently affect the formation of the security situation in the regional and global context. Numerous casualties, which were subjected to Christian nations under Turkish administration in Southeast Europe, caused deep wounds and lasting animosity towards Islam. On the other hand, the presence of the Ottomans in the Balkans during the long historical period influenced the formation of the Turkish national identity awareness that this natural space belongs to them and that they have a claim on it. In addition, they refer to the high presence of Muslims in South East Europe, principally the Balkans and the close relationships that Turkey has with them in this area.

2 Solaja, M.: Balkans in transatlantic crack, Center for International Relations, Banja Luka CIR, 2006, pp.20.
3 Matijasevic, D.: PhD thesis ''Security of South East Europe-constant strategic concept of NATO", Faculty of Security, University of Belgrade, Belgrade, 2013, pp. 6th
4 Ristović, M.: Balkans in the Nazi project "New Europe" in the Second World War, meeting or a clash of civilizations in the Balkans, the Historical Institute of SASA, Proceedings, Book 16, Belgrade, 1998, pp. 478th

Religious intolerance between Christians and Muslims that has been lasting for centuries regional and world powers skillfully used to achieve their interests. Therefore, this region is one of the possible crisis areas in the world that can quite easily be activated in order to serve the interests of the holders of power in the region and the world. The evident example is the war in the former Socialist Federal Republic of Yugoslavia, principally on the territory of Bosnia and Herzegovina, Kosovo and the Republic of Macedonia. In addition, there are many security problems in other parts of South-Eastern Europe, which basically have civilizational and religious conflict between Christianity and Islam, such as a problem between the Greek and Turkish Cypriots and the problem in Bulgaria with the Turkish national minority.

Those security concerns have basically a religious conflict, permanent in nature and as such are highly suitable for the creation, development and operation of various forms of extremism[5]. Islamic extremism in the Balkans exists and it rests on the understanding of its holders that the countries in the region have unequal attitude towards Muslims than other non-Muslim population. In addition, Islamic extremism in South East Europe, principally in the Balkan Peninsula extended the hand of Islamic extremism that has been expanding, primarily in the Middle East, and other regions of the world inhabited by the Muslim population.

## BALKAN CROSSROADS OF RELIGIONS

The roots of the major world religions are located in the Middle East, where they gradually began to spread to other parts of the world. Due to different historical circumstances, Christianity managed to be the most widespread, principally to the area of Europe and Asia. With the Edict of Milan, Christianity was given full freedom in the territories of the Roman Empire, which created conditions for further expansion to new territories. On the other hand, Islam, as the youngest religion, from the area of the Middle East spread toward the remaining part of the Asian continent and to the area of Africa. In the beginning, and it could not be otherwise because the centuries of Christianity used the advantage to strengthen in areas where there was also to create conditions for religious occurrence to new areas, primarily the area of Africa. With the advent of Islam in the religious world, but also the security stage, there was a new distribution of power. However, when it comes to the power, almost as a rule, there is the case of dissatisfaction of one of the parties. This dissatisfaction was fertile ground for the emergence and development of inter-religious intolerance and conflicts that have claimed millions of victims.

In examining the issues of conflict of religions in the Balkans it is necessary to limit the conflict to Christianity and Islam. Inter-religious conflicts that have existed or lasted in the Balkans, and whose protagonists are not Christianity and Islam have the marginal importance for this work. The previously mentioned characteristics of the Balkan region in geostrategic and geopolitical terms inevitably influenced today's effects on developments pertaining to religion. This fact was crucial during the Middle Ages, when religion was identified with the state, and when it was the basis of planning political, social and religious life of the population.

The geographical position of the Balkans was naturally influenced by the formation of one of the most important and the most important land corridors in the world. South East Europe and the Balkan Peninsula as its key region, in the physical sense, is the bridge that connected and still connects two continents. A more important fact is that it is the bridge over which different cultures, civilizations and religions have been passing for centuries. The importance of this area is conditioned by the existence of a number of factors relating to the social, political,

5 Simeunovic, Dragan, „Određenje ekstremizma iz ugla teorije i politike, Srpska politička misao, vol 124, br.2, 2009

economic, cultural, religious and military spheres, regardless of whether they are internal or external violence caused by great powers[6]. However, in the opinion of Europeans this region has been for centuries and is even today, peripheral to Western culture. The general level of social development of the region compared to the rest of developed Europe may be used as evidence for the above mentioned statement. Here arises an important specificity of the Balkan countries in relation to the rest of the continent[7]. This specificity refers to the cultural and civilizational differences compared to the rest of Europe. In western political, economic and cultural circles we can often hear the words like 'Balkanization' which directly indicate their attitude towards everything coming from this area, but we can say from the entire region of the Balkans.

Apart from the fact that, in geographical terms, the Balkans is the part of the European continent, the region, till today, failed to overcome cultural distance and to be fully economically, politically and socially integrated into Europe. The Balkans is a set of small and medium-sized countries that have failed to create the formation of a kind of supranational cultural, economic, and religious entities. Instead, the region offers very favorable conditions for the implementation of regional interests and major world powers, and one of the most important conditions is the multicultural and multi-confessional space viewed from the perspective of the possible causes of provoking the crisis. Violation of the compactness of the Christian religion corps due to the appearance of Islam contributed to the emergence and development of the centuries-long sparks that can ignite fire safety in the Balkans whenever it is the interest of the great powers.

European conquests of Asia and vice versa, conquerors passing through South Eastern Europe and the Balkan Peninsula left behind new things that influenced the life and development of the countries of the region and the creation of security situation. From the aspect of the problem that is discussed in this paper, the most important routes passed by the Crusaders and the conquerors were in the region of Southeast Europe which was taken by the Ottoman Empire. Crusades, in the historical sense, left deep consequences of which, in terms of this paper the most important are the one concerning the relations between Christianity and Islam[8]. Undoubtedly, strengthening of the Islam and spread of its influence in relation to Christianity inevitably caused growing concern, discontent and the emergence of a sense of threat to Christianity. Identification of religion and state, during the Middle Ages, gave the political character to the growing influence of Islam in Asia Minor. Fearing the invasion of the old continent by the Islamic peoples from Asia, the leading European countries repeatedly organized conquests of the infidels, principally nations who received the Islamic faith. These declarative war marches were held under the banner of the struggle for the liberation of Jerusalem and the Holy Land from the Muslims. However, the essence of the organization and implementation of the Crusades was the desire of the ruling elite to increase power through an extension of tenure, access to raw materials and labor force, tax collection, pillage and the similar. The existing animosity between Christians and Muslims created in the previous period was deeply strengthened during the Crusades. Atrocities and crimes committed by European forces against the Muslim population under the guise of fighting for the Cross and the cradle of Christianity have contributed to the intensification of Muslim hostility toward

6 Lutovac, Article V .: Effect of big powers in the Balkans, www.bosnianold.ws.irib.ir, / 02.10.2015.
7 Dragan Simeunović *Terorizam, opšti deo*, Pravni fakultet u Beogradu, 2009, str 37-56
8 Under the Crusades (lat. Cruice Signato-baptism marked) means a series of wars waged by the Christian nations of Europe on one side and the Muslim peoples and other infidels from the other side. Lasted from 1095 to 1291, and were conducted under the pretext that it is necessary to restore the Holy Land and Jerusalem under the control of Christians. The Crusades began with the call of Byzantine Empire to defend Christianity from the growing influence and expansion of the Turks in Anatolia.

the Christian world. The Crusades caused enormous suffering and these wars belong to the conflict in human history causing the greatest human sacrifice[9].

Fighting in the Crusades, European countries, along with the full support of Christian church leaders, acquired significant economic benefits, but on the other hand, deepened the gap on the world security stage. The conflict between Christianity and Islam was on fire and it is still burning to this day, with more or less intensity. This, in the long term, from the security aspect, and relation Christianity-Islam, opened the Pandora's Box. The fact that the religious gap between Christianity and Islam is still on and there is no clear vision of how to overcome the complexity of the problem. In response to the Crusades undertaken by the Christian European countries, the Asian Muslim countries led by Turkey, a country situated at the junction of two continents, strengthened. On the historical scale it was not long when Turkey embarked on conquests, both in the area of Asia and in the territory of Europe.

The Turkish Empire invaded the area of the Balkan states in the 14th century inflicting to European Christian world, until then, the greatest defeat. In addition to the military subjugation of a significant part of the European continent, principally in the area of the current states of Southeast Europe, the arrival of the Ottoman Empire marked a permanent expansion of the influence of Islam on the newly conquered areas. Centuries of Ottoman presence in South-Eastern Europe has left a lasting impact on the creation of the security reality, both at regional and global levels. In this region there was not only a conflict between individual countries and the invaders from the East, but there was a conflict and mixing of two significantly different system of organization of state functions, customs and life in general. In a word, there was a collision of two completely different civilizations. Practically from that time until the present day, Southeast Europe has been developing a kind of new, sub-civilization that is a mixture of Western Christian, and Eastern Muslim. The new conditions of life of the population in this region have caused a series of characteristics that inevitably shape the security situation in the region. The fact that the area of the Balkans, Southeast Europe and Europe as a whole stepped Islam and has influenced the auditing, or defining new geostrategic interests of regional and world powers.

The conflict and mixing of Christianity and Islam in the Balkans, through the centuries, was skillfully used by the major powers to achieve their proclaimed interests. Reheating continuous tension between Christianity-Islam in the Balkans is directly in the interests of achieving long-term goals of the holders of power, both in political, and in the religious sphere. In the political sphere, the religious conflict between Christianity and Islam is used by Western European powers and the US for causing instability in the region, and the primary goal is the gradual approach and mastery of energy resources in the area of the Asian continent, principally the Middle East, the Caspian basin and Siberia. Here one can see the fact that points out the further continuation of the historical inertia of the leading Western European powers when it comes to creating long-term security of the continent. Analyzing the events in the recent history in the Balkans and Eastern Europe, it can be concluded that the Christian Western Europe may sacrifice the Balkan region in order to achieve short-term interests. However, what happened in the Balkans in recent history and what is happening today can easily hit the whole European continent in a modified form. The terrorist attacks on the territory of Western European countries, showed all its impotence and unwillingness to successfully defend.

On the other hand, we need to ask the question: "What are the possible interests of the Christian and Islamic religious leaders to maintain tensions between these two religions?" History offers a natural response[10]. Centuries of animosity and rivalry of these religions is so

9 The Crusaders killed between one million and nine million people.
10 Laythe, Brian, Finkel, Deborah G., Bringle, Robert G., Kirkpatrick, Lee A. (2002). Religious

ingrained in the minds of the people that it cannot be deleted just like that. In addition, it is important to mention that it is in the nature of man to struggle for power. Whether we want to admit it or not, and in religious circles, the struggle for supremacy and power is extremely present[11]. The clergy has several ways to increase their power, and thus the power of religion they represent. That is why it is the most important and the most significant to expand the territory where their religion is represented thus increasing the number of believers. A very successful way to wake up the population is maintaining the required level of inter-religious tensions and hostilities. By creating the sense of discomfort and vulnerability from the members of other religions, it also gives energy required to man that, in addition to the theoretical, goes into practical operation for the sake of religious goals. None of the known methods of influence to people and motivating them to make a move is strong as much it is a religious influence. Unlike other incentives, religion provokes a positive attitude towards what should be done in its name.

The conflict between Christianity and Islam in the Balkans has been in progress for centuries. This conflict does not occur alone or isolated from the political developments in the region. The connection of religion and politics is inevitable. Despite the fact that all the countries of the Balkans are secular and that religion, at least in theory, is separated from the world of government, the influence of religion is present and very significant. This is confirmed by the practice of political officials in defining national interests since before making any significant policy decisions, they hold meetings with religious officials. In practice, religious interests are incorporated in the national interest and in a different sense they cannot be seen.

Based on the results shown so far in this paper, it is clear that in the Balkans and Eastern Europe there is active "silent war" for the spread of political and religious influence between leading Islamic states, principally Turkey as one of the strongest regional powers and European countries. The religious conflict between Christianity and Islam should be viewed through the prism of achieving long-term interests of Turkey in the Balkans. In doing so, it is necessary to examine more closely the project "Green Transversal" which represents the achievement of a long-term interest of Turkey not only in this region but for the entire European space, as well.

"Green Transversal" is a project which is the subject of disagreement between scientists from the European Christian countries and those who are members of the Islamic faith. For those who advocate the view that the "Green Transversal" as a kind of conspiracy theory find their basis of teachings in the unreality of its realization. On the other hand, the historical events in Southeast Europe, and the presence of Turkey in various forms, principally economical and religious, clearly points to the reality of the existence of such a project and its far-reaching goals. In addition, a significant fact that points to a broader geopolitical interest of the USA that would be realized by implementation of the project "Green Transversal".

Considerations regarding the Green Transversal became more intensified in the late 20th century and during the conflicts in the Balkans. Lawmakers of the view that the Green Route is the reality and constantly achieves intensified their activities, directing scientific community to the fact that the events of the war in Bosnia and Herzegovina, the area of the Autonomous Province of Kosovo and Metohija, as well as strengthening of Islam in the Raska region practically operate in the achievement of Green Transversal. Practically, the above events justified the thesis that the underlying conflict between the Christian and Muslim world is in fact the conflict between the Christian and Islamic civilizations.

Considerations on the Green Transversal carry with them a large number of superficial and insufficiently clear definitions and interpretations, which are the product of subjective

Fundamentalism as a Predictor of Prejudice: A Two-Component Model, Journal for the Scientific Study of Religion, Volume 41, Issue 4, 623-635.
11 Ibid, str 627

visions of those who created them, but also the planning and operation of constant political elites trying to prove or disprove this project. The consequence of this approach is partial or deliberate diversion from the indisputable and objective facts related to this project. In contrast to the view of the Green Transversal from the perspective of the 90's of the last century when it was the sole basis of the conflict between Christians and Muslims, the modern scientific views accept this project as just one of the reasons for the conflict in the Balkans. For a complete understanding of the issues in the context of this problem it will be clarified on what thesis on the Green Transversal is actually based.

To understand the essence of the Green Transversal, the most significant aspects of the war in the former Socialist Federal Republic of Yugoslavia should be noted. Upon the end of these wars a completely new security reality in the Balkans was created. The majority of the Muslim population in Bosnia and Herzegovina advocated and today advocates unitary interest of this country, which would become unique in territorial terms, and would create conditions for the gradual suppression and putting into the background Serbian national corpus, which is Orthodox Christian. The realization of these intentions and taking into account the fact that concerns the violent secession of the southern Serbian province and the creation of an independent state is opening the door for further intervention and the Turkey presence in the Balkans. Looking across the spectrum of religious influence in the region, Islam through the implementation of the project Green Route determines its position in the Balkans, on the one hand, and on the other hand it creates the basis for further advance towards Central and Western Europe. Taking into account that the Christianity in the Balkans and the rest of the European continent is characterized by low population growth rate, which in a significant part of the country has a negative sign, Islam can provide long-term favorable conditions for its strengthening and further expansion.

The importance of the Balkan region, in terms of protection against the ingress of Islam from the Middle East, was realized very seriously even by the Austro-Hungarian monarchy. Unlike today's Europe, which quite passively observers slow but sure advance of Islam, the Austro-Hungarian monarchy undertook concrete measures. The special status and privileges for the Serbian population living on the southern fringes of the monarchy demanded adequate surrounding. Serbian population had a practical role of guardian of the Austro-Hungarian monarchy, which could be viewed in two ways. First, the Austro-Hungarian Monarchy, inhabited by Catholic Christians, engaged the Serbian Orthodox population to attack the Turkish invaders. Secondly, by doing this, the monarchy made a kind of political maneuver in relations with the Turkey Empire where, at any moment, it could take advantage of the Serb population to their interests. In practice, this meant that the Turkish blade was directly aimed at the Serbian Orthodox population. This inevitably caused an increase in the already tense inter-religious relations between Orthodox Christians-Islam[12]

One of the key epilogues of events in the Balkans at the end of the 20th century was the change in the demographic and religious structure of the Balkan Peninsula. The Serbian population was massively displaced from the area of the military landscape, the perimeter of the former Austro-Hungarian Empire. In addition, a significant number of Serbian Orthodox population left their ancestral homes in Bosnia and Herzegovina and the area of the Autonomous Province of Kosovo and Metohija. In this way, two countries inhabited by the majority population of the Islamic religion, Bosnia and Herzegovina and the so-called 'Kosovo' were created. These territories, although not physically connected, are connected with the area of Raska region which is from the point of considering theses on the Green Transversal has a

12 Hatidza Beriša, Igor Barišić, Katarina Jonev, „*The influnce of islamic on the Global security*" Journal of Liberty and International Affairs, Specijal Isuse, Vol 1, Supp.1/2016, str. 5-7

clear significance[13]. In this way, a significant part of the area inhabited predominantly with Muslim population, which includes transversal in the Balkans practically established and is well-rounded. The conditions for further connection of the areas inhabited by Muslims from the Balkans to Turkey on several key routes were created.

The first line stretches across the territory of Albania, Macedonia and Kosovo and Metohija and up through the Raska region to Bosnia and Herzegovina and the depth of the European continent. Part of this route is running via Montenegro continues to Bosnia and Herzegovina. This route further strengthens Green Transversal breaks two states populated predominantly with Orthodox population. In the north, there is Serbia, and in the south it is the territory of Montenegro.

The second important direction of the penetration of Islam to the Balkans and depth of the European continent leads from Turkey through Bulgaria's southern area, the area north of Macedonia to the area of Presevo and Bujanovac inhabited by the majority population of the Islamic religion. Furthermore, this line is in Kosovo and Metohija and it connects the first direction running to Bosnia and Herzegovina and further on to Central and Western Europe. The key object in the grip of this path is Green Transversal road that stretches from Belgrade through the Morava-Vardar valley to Skopje and further to Thessaloniki.

The arrival of Islam in Europe cannot be imagined without the territory and the population that teaches and nourishes faith. Therefore it is of crucial importance for achieving a long-term interest of Turkey in Southeast Europe that there are strong territorial ties covered by Muslims. The foregoing facts indicate that the thesis on the Green Transversal how the geopolitical aspects of expansion and influence of Turkey in the region of the Balkans and Southeastern Europe, as well as in terms of penetration and spread of Islam into new territories has complete sense. What is emerging as the logical question is: "What is a further object of geopolitical games of Turkey in Europe, and thus the spread of Islam?" One of the possible and real answers is to further penetration towards the European continent[14]. Modern migrations of the population of Islamic religion during the 20th century from the territory of Turkey, Albania, the Autonomous Province of Kosovo and Metohija, Montenegro and Bosnia and Herzegovina, as well as the area of the African continent to Western European countries have caused significant changes in the demographic, confessional, cultural and sociological structure of these countries. The obvious result is the settlement of multi-million Muslim population on the territory of developed European countries. Bearing in mind the simple fact stated in the paper that it is not possible to spread Islam or any other religion without the population, as well as allegations of the Green Transversal, a natural conclusion is that further goal of spreading Islam is aimed at the heart of the Old Continent. In this context, the Balkan region is of the great importance because it represents a springboard for further penetration of Islam in Europe[15].

By analyzing the theory of the Green Transversal in terms of respect of national and international law, and in terms of respect for human rights and freedoms, the foregoing considerations of the thesis of the Green Transversal are not in dispute. However, in terms of security, changes in inter-religious and inter-ethnic relations inevitably change the status quo. These changes can move towards improving the quality of the security situation or to its deterioration which depends on numerous factors. For this paper it is important to note that good interreligious relations produced good inter-ethnic relations and under the unwritten rule they lead to a stable security situation and vice versa. Bearing in mind the described events

13 Indigenous name for the Raska region by the local Muslim population is Sandzak.
14 Brettell, Caroline B. 2008. 'Theorizing migration in anthropology: The social construction of networks, identities, communities and globalscapes.' In: Migration Theory. Talking across Disciplines. Caroline B. Brettell and James F. Hollifield (eds), New York: Routledge 120-126
15 Hatidza Beriša, Igor Barišić, Katarina Jonev: „*The influnce of islamic on the Global security*", Journal of Liberty and International Affairs, Specijal Isuse, Vol. 1 Supp. 1/2016, str. 7

in the Balkans, who were imbued with a clear political, interethnic and interreligious conflict, and the consequences that these events left until today, no one can say that in the Balkans and Eastern Europe there is a level of inter-religious tolerance, which guarantees a long-term stable security situation. In this context, the inter-religious relations are considered to be a relationship between people who belong to the Christian faith on one hand and Islam on the other hand. As it can be seen, no remark refers to official religious authorities because they are, as a rule, imbued with the desire to maintain a good relationship, a high level of tolerance and coexistence with others who are members of other religions. The problem is that the practice does not show this so.

In the Balkans, principally in Bosnia and Herzegovina and the Croatia there is a very interesting inter-religious relationship. It is about the relationship between Catholic Christianity and Islam. It is interesting that these two religions in this area have a very good, even excellent relationship. In order to support this claim we can mention the fact that during World War II, in the ranks of the formation of the Independent State of Croatia, Catholics and Muslims were fighting together, on the same side. Moreover, in Bosnia and Herzegovina, which was one of the parties in the war, in practice, the population of Islamic faith embodied in the Bosnjaci and Catholic population represented by Bosnian Croats formed the alliance. Why is this so, when it is clear that between Christianity-Islam, looking at the global scale, there is a centuries-old animosity? The answer can be found in the fact that there is a common interest which is reflected in the common struggle against a common enemy, which was seen in Orthodox Christianity, which in this region naturally gathered around the Serbian Orthodox Church in the religious sense and the Republic of Serbia in the political sense. Here one can recognize religious disunity that followed the political disunity when it comes to relationships and long-term protection of religious interest of Christianity in this region.

The importance of the Balkans as a transit route is clear and unambiguous. As such, this region historically has been subject to constant changes and adaptation of new conditions of life which brought with them numerous invaders, businessmen, merchants and people passing this region to the final destination. They brought with them new customs which eventually became the basis for the emergence of a new, specific cultural heritage. The importance of the Balkans is not less contemporary developments. On the contrary, the region is still one of the most important geostrategic points on the globe. From the perspective of the conflict of religions, the importance of this region in the best way was highlighted by Samuel Huntington in his book "The clash of the civilizations". This conflict between the Western Christian civilization and Eastern Islamic civilization began in the Middle Ages, is going on nowadays and is likely to last until the full realization of the superiority of one religion[16].

## HISTORICAL, POLITICAL AND SOCIOLOGICAL CONTEXT FOR THE EMERGENCE OF ISLAMIC EXTREMISM IN THE BALKANS

Islamic extremism is a phenomenon that cannot be linked to one geographical region. Therefore, one of its main features is that it has global character. However, each individual region has specific conditions that contributed to the appearance of Islamic extremism. These conditions are numerous. They derive from different spheres of social life, of which special attention should be focused to the historical, political, sociological and security spheres. The Balkans and the Balkan Peninsula, as its central part, are characterized by a set of specifics that

16 Hatidza Beriša, Mila Jegeš, Igor Barišić.: „Institution building of and fight against crime", Међународна научна конференција: *Истраживање, безбедности-приступ, концепти и политика,* 02-03. јун 2015. године, Зборник апстраката, Охрид, Република Македонија, pp. 4 -9

in general terms were mentioned above in the paper. This part presents the main reasons for the emergence and development of Islamic extremism in this part of the European continent. The geopolitical significance of the region, historical events, multiethnic, multicultural and multi-confessional societies are some of the main reasons for the emergence and development of Islamic extremism in the Balkans. Those reasons need to be analyzed, both individually and in their mutual correlation, but also in the correlation with the interests of regional and world powers. The interests of great powers historically have always been directed when it comes to shaping the security situation in the Balkans. The emergence of Islam in the Balkans began with the conquests of Turkish Empire. This is the first fact which should be borne in mind when it comes to the causes of Islamic extremism. At first glance, this seems illogical. However, there is link that can represent the basic cause of Islamic extremism. The arrival on the ground of Southeast Europe marked the beginning of the five centuries' rule of the Ottoman invaders. It is indisputable that the Turks also brought with them a large number of positive civilization changes in the daily lives of the population in these areas. However, the wounds inflicted by the Turkish occupiers were more important for the Christian population in the Balkans. The Christian population has not yet forgotten and never should forget the evil that plied Ottoman state. There are many methods that Turkey applied when they conquered Christians in order to maintain their regime in every part of its empire. A significant moment that must be taken into consideration in this context is the identification of religion and national or ethnic identity. The fact that the Ottoman Empire was a classic example of this identification and it can be said theological nation persistently emphasizing their own ethnic and religious superiority over oppressed Christian population[17].

Because of the hostile attitude of the occupying forces toward the local Christian population the natural and strong sense of hostility appeared. That feeling was the guiding principle that led to rebellions and organized uprisings. As the time passed, from the conquered Christian poor nations the Turkish Empire was confronted with stronger and a more serious enemy. The stronger the enemy was the stronger animosity between the opposite parties was. This was particularly the case in the area of the Balkan Peninsula, nowadays the countries of the Western Balkans[18]. The gradual decline in power of the Ottoman Empire and its downfall in the Balkans caused the sense of defeat, helplessness, anger and desire for revenge directed against the Christian population. The development of such feelings is completely understandable given that it was hard to give up all the privileges of wealth and a sense of superiority over, until yesterday, the oppressed Christians. These feelings are deeply instilled in the consciousness of leaving Turkish state and the Muslims who remained in the Balkans. Such developments caused the centuries of hostility, both at political level and at the inter-religious lines. Local people of Islamic faith felt threatened by the new authorities knowing that they were yesterday's protectors of the Ottomans who ruled over the Christian population. Wherever there is a sense of vulnerability and discontent for the attitude of the state towards some ethnic or religious community, regardless of whether it is justified or not, there are also conditions for the development of extremist ideas[19].

17 Simeunović, D .: A new spate of violence, war informant, 1-2 / 2,002th

18 The term was made official after a public promotion of the EU summit in December 1998. "Western Balkans" is not geopolitical, geostrategic, or a specific geographic category. It is only practical political-economic term which was created as a common EU definition of a part of the South East Europe countries in the region, with the aim that on the basis of their mutual cooperation and assistance, relying on the cooperation and financial support of the EU they could quickly reach European standards placed before this countries in the process of its enlargement and in this part of Europe. Source: Solaja, M.: Balkans in the transatlantic crack, CIR, Banja Luka, 2006, pp. 25.

19 Hatidža Beriša, Katarina Jonev, Igor Barišić.: Islamic state - the causes of genesis and influence of regional powers, 7th International scientific conference*„ Contemporary Trends in Social Control of Crime", 30-31. 05.2016*. Ohrid, Skopje : Faculty of security, 2016 , str 7

Historical period of the last decade of the 20th and the beginning of 21st century is extremely important for the creation and development of Islamic extremism in the Balkans. The concept of the Socialist Federal Republic of Yugoslavia was based on the suppression of national and religious consciousness at the expense of the general ideas of equality and the interests of the state. The main problem was the uneven and unequal status of the leaders of certain Member States, and thus of certain nations. First of all, it refers to the relationship with the Republic of Serbia and its provinces and the Serbian people. This resulted in a lower level of economic and general social development. Bearing in mind the fact that a significant number of the population of the Islamic religion lived in the Republic of Serbia and its southern province, the general situation inevitably struck them, as well. The local Muslim population saw problem in their position and status within the authorities of the Republic of Serbia which was one of the main reasons to start their own vision of the struggle for a better life. The epilog is clear and well known. The focus of the origin and development of extremism among the population of Islamic faith was in the territory of the Autonomous Province of Kosovo and Metohija. In the last decade of the 20th century, after the fall of the joint state, there has been a significant expansion of Islamic extremism in the Balkans.

The civil war in Bosnia and Herzegovina which, in addition to fighting for the definition of national identity, was the conflict between Orthodox Christianity and Islam resulted in the arrival of a large number of volunteers from the ranks of the Islamic population worldwide in the Balkan region. The emergence of holy warriors, the Mujahedin contributed to more explicit religious line of this war. Special units were formed from these people, accounted for such crimes against the opposing side from which the modern world, intentionally or unintentionally turned a blind eye. Upon completion of the war, some of these people permanently resided in Bosnia and Herzegovina and represents a long-term potential security threat. This threat can be achieved by a negative impact on the security of the state, but also of the Balkan region as a whole.

First, that part of the population had fought on many battlefields around the world for their version of Islam. This is a problem because they do not accept a different view of life and faith, and members of other nations and religions are considered infidels and a permanent enemy. Such an attitude towards life and consciousness cannot contribute to a stable security situation, especially not living together with those who do not think the same. It is important to emphasize that the Mujahedeen have the same attitude toward the majority of the local population of the Islamic religion that is not extremist-minded.

Secondly, the arrival and permanent stay of Mujahedeen in the Balkans has resulted in the creation of a base for Islamic extremists. In the period after the war in Bosnia and Herzegovina and on the territory of the Autonomous Province of Kosovo and Metohija, on several occasions, the security concerns took place with members of the Islamic extremists from the ranks of the Mujahedeen and members of the Wahhabi movement. It is important to note that Islamic extremists in the region are connected to each other and work together extremely well. They are linked with criminal structures, above all, for the procurement of weapons and equipment, trade of illegal goods and the similar. Given that the Balkan region is located on a very busy transit route to Europe there is inevitable link with Islamic extremists in the Middle East. Islamic extremists from the Middle East seek any kind of support for their operations both in the Middle East and for actions targeted on Europe from their counterparts in the Balkans. In support of this contention is the fact that modern Europe, after the terrorist attacks carried out in Paris and Brussels in 2015 and 2016 seriously emphasizes the importance of the influence of Islamic extremism in the Balkans and its relations with the Islamic state[20].

20 The Islamic state is transnational, jihadist, terrorist organization of Sunni extremists emerged as a branch of Al Qaeda. It is also known under the names of the Islamic State of Iraq and the Levant (ISIL),

There are several reasons for the increase in the European concern for the security situation in South Eastern Europe. The Balkan transit corridor, in addition to a huge number of migrants from the region of the Middle East, is one of the main routes of infiltration of extremist Islamic state in Europe. According to available data of security services, weapons that were used in the mentioned terrorist attacks on the territory of Western Europe, originate from the former Yugoslavia[21]. It is significant that the officials from some Balkan countries admit that Islamist extremists gathered around members of the Islamic state are present on their territories. Thus, in September 2014 the Albanian Foreign Minister, Ditmir Bušati, admitted that the followers of the Islamic countries had their camps in Albania.

In addition, it is interesting that the Minister of Security of Bosnia and Herzegovina, Dragan Mektic said that '' ... in some parts of Bosnia and Herzegovina the rule of law does not function. These communities refuse to recognize the legal order ... ''. Mektic, in the aforementioned statement, asked '' How is it possible that they have established their guard in Maoča, the real points?[22]". These facts show the seriousness of the problem of creation, existence and development of Islamic extremism in the Balkans, regardless of its form of manifestation. Five decades ago the estimated number of Islamic extremists in the Balkans, mostly centered round Alija Izetbegovic, numbered several hundred individuals. Some estimates indicate that today the number of Muslims who support some of the basic ideas of Islamic extremists gathered around the Islamic countries is potentially digit number. The results of a survey conducted by the Pew Institute in 2011 showed that the population of South-Eastern Europe with the Islamic religion is by far the most liberal and most moderate in comparison with other Muslims in the world. However, the data indicate that more than 400 000 Muslims from Bosnia and Herzegovina, Kosovo and Albania support what is essentially the ideology of the Islamic state[23]. This is supported by the fact that a significant number of volunteers from the territory of these countries and other countries in the region was in the ranks of the Islamic State in Syria and Iraq.

The Republic of Serbia, as part of the Balkan region is faced with the emergence of Islamic extremism, primarily in the area of the Autonomous Province of Kosovo and Metohija, the municipalities of Presevo, Bujanovac and part of municipality Medvedja and part of the area of Raska region. Those territories were, in recent history, the scene of conflicts between the security forces of the Republic of Serbia and illegal armed formations and groups created by the members of the local population of the Islamic religion. The activities of Islamic extremists that are based on Wahhabism were registered in the area of Raska. In March 2007, the coordinated action of the Ministry of Interior on the mountain Great Ninaja destroyed a Wahhabi extremist group. There was even an armed clash with security forces[24].

The emergence of Islamic extremism in Serbia is related both to historical developments and events, as well as general social and economic situation in the country and the region. In addition, very important reasons for the expansion of Islamic extremism in the territory of Republic of Serbia were wars in Bosnia and Herzegovina and in Kosovo and Metohija and the municipalities of Presevo, Bujanovac and Medvedja. As previously stated, the events of the war in the Balkans in the 90's had essentially national, but also a prominent religious

the Islamic State of Iraq and Greater Syria (ISIS) and the Islamic State of Iraq and Sham (Islamic State in Iraq and al-Sham). It acts on the territory of Iraq and Syria, where they declared "caliphate", but its objectives related to other areas in the world that are principally inhabited by the Muslim population. In practice, this means that the projected territory of the Islamic state includes large parts of Europe, Asia and Africa.

21 Bardos, G .: article 'From the Balkans to the Islamic state,' 'www.politika.rs, /05.12.2015.

22 Ibid 05.12.2015.

23 Ibid 05.12.2015.

24 In the above action of the security forces of the Republic of Serbia, an Islamic extremists who was a member of Wahabbi movement Ismail Pendić from Novi Pazar was assassinated.

character. Because of the sense of religious identity and the need to help religious brothers, a significant number of citizens of the Republic of Serbia of Islamic religion took part in the war in Bosnia and Herzegovina on the side of the Federation of Bosnia and Herzegovina. This fact points out the problem that concerns the attitude of the population of the Islamic religion in the Republic of Serbia towards the official government bodies. With this extreme part of the Muslim population, this ratio is unfavorable, and they do not observe the Republic of Serbia as their country and in practice they show that. One of the ways in which they show disrespect to the state is the manifestation of the "March on Hadžet" which is annually organized by the extreme part of the Muslim population in Novi Pazar in September. The aim of this event is the anniversary of the shooting of local Bosniaks charged with war crimes committed during World War II[25]. An important aspect of the problem and significant for this paper is that on this occasion there is a section of local Muslims dressed in green uniforms with symbols of Sandzak indicating negative commitment to state of Serbia.

When considering the emergence and development of extremism of any kind, even Islamic in the Balkans, it is necessary to pay attention to the conditions arising from the general social and economic situation. The common characteristic of the countries of Southeast Europe in the period after World War II is the development in terms of the communist planned economy under the influence and political action of the Warsaw Pact. With the dissolution of the Warsaw Pact, the countries of South Eastern Europe found themselves in the vortex of transition from one economic system to another. The transition process was followed and accompanied by a series of negative consequences of which the most important are corruption and crime. There was a rapid stratification of society, where the middle class has virtually disappeared. On the one hand, there is a small number of very wealthy people, while on the other hand the vast majority of people live in conditions of misery and poverty. In addition, numerous crises that have struck the region affected even more the unfavorable economic and social situation. In these conditions, extremism is a phenomenon that occurs naturally. Unfavorable general situation, the inability to satisfy basic needs, as well as uncertainty about the existential sense influenced the accumulation of discontent for a substantial part of the people. In circumstances where government programs demonstrate their inefficiency, people who are in despair are offered alternative options to satisfy basic needs. Precisely such a situation is aggravated by trying to use the different social groups trying to reach their goals. By using the inability of state authorities to establish a favorable situation in the country, different forms of extremist organization took part in the security arena. It can be said that Islamic extremism is one of the derivatives of the adverse socio-economic conditions where the countries of the Balkans and South East Europe developed and are developing today.

Islamic extremism is a phenomenon intensified after the war in the Balkans in the late 90's of the last century. The events that followed the regime change in the area of North Africa known as the ''Islamic Spring" which culminated in an unprecedented war on the territory of Syria and Iraq, have influenced the development of Islamic extremism in the region of Southeast Europe. With the advent of the Islamic State, Islamic extremism has gained a new, global dimension, both in terms of the objectives of the facts, and by supporters. A large number of volunteers from the Balkans in the ranks of the Islamic State indicate the seriousness of the situation. The countries of the region need to pay special attention to fight against Islamic extremists, returnees from the conflict in Syria and Iraq. These individuals represent a potentially special type of security threat, principally in terms of spreading their influence to

25 In1944 in Novi Pazar, Partisans, executed a number of local Muslims accused of crimes during the Second World War. According to the data of the Party of Democratic Action in Novi Pazar about 2 000 Muslims from the area were killed without being tried or proved guilty. Source: www.bosnjaci.net, „SDA Sandzak calls on citizens to march on Hadžet" / 19.5.2016. god

promote extremist ideas and support to like-minded people in the planning, preparation and execution of illegal activities in the region and beyond.

## CONCLUSION

Extremism is an extremely complex security phenomenon. A number of specific features that characterize it make more complex its conceptual definition, as well as defining possible ways of dealing with them. The definition of extremism is affected by the specificity linked to specific characteristics of the individual[26]. In this sense, extremism has a certain amount of abstract sphere of its existence that is unique and very hard to predict. The most important determinant of extremism, intolerance towards the opinions and thoughts of others at the same time its willingness to attitudes and beliefs harrows available resources.

The Balkan Peninsula is a region characterized by a very favorable geographical position. The fact that the best natural foot traffic zone connecting the European and Asian continent extends over the Balkans causes multiple importance of this area. Conquers both from Europe and Asia influenced the economic development of a specific population of the Balkans, but also interethnic and interreligious relations. Specifics arise from the interweaving of interests of major international and regional powers, allocates security situation in the region of Southeast Europe. Throughout history, on several occasions, Southeast Europe and the Balkans as its central and key part were often the scene of clashes and different levels of importance. The conflicts that occurred in the Balkans, at the end of the last century, confirmed the existence of long and deep problems which still affect the design of the security realities of the region.

The importance of the Balkans in spreading Islam further to the depth of the European mainland is crucial. The penetration of Islam on the continent occurred in the period of the Ottoman Empire. A key result of centuries-long rule of the Turkish Empire in this area was changed ethnic and religious structures and intensifying animosity between the Christian and Muslim population. This hostility is a permanent source of instability in the region which, in accordance with their interests, enthusiastically was used by the great and regional powers at the expense of the interests of the local population. Unstable environment and interethnic and inter-religious intolerance form the basis for the emergence of various forms of extremism and related security threats.

Islamic extremism in the Balkans rests on the understanding of its holders that countries in the region have unequal attitude towards Muslims than other non-Muslim population. In addition, Islamic extremism in the Balkans, principally on the Balkan Peninsula extended the hand of Islamic extremism from the region of the Middle East. Islamic state, as the most famous and most powerful Islamist extremist and terrorist organization has a significant impact on the occurrence and development of Islamic extremism in the Balkans. The fact that a significant number of volunteers from this region fought in the ranks of the Islamic countries clearly indicates the presence and potential of Islamic extremism. The second problem of participation of volunteers on the side of the Islamic State and its operation is the potential impact on the security situation after returning to their home countries. Therefore, the countries of the region should take this threat seriously and act promptly in order to forestall, foil and avoid the negative consequences that can result in returning returnees from the conflict in Syria and Iraq.

26 Laythe, Brian, Finkel, Deborah G., Bringle, Robert G., Kirkpatrick, Lee A. (2002). Religious Fundamentalism as a Predictor of Prejudice: A Two-Component Model, Journal for the Scientific Study of Religion, Volume 41, Issue 4, 623-630.

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# HYBRID SECURITY THREATS AND CONTEMPORARY APPROACH TO NATIONAL SECURITY

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**Abstract:** Globalization with all its effects, as well as actual relations on international security arena, rising of conflicts, existing of nonlinear and asymmetric security threats, indicates that contemporary world present a stage of acting forms for developed security challenges, risks and threats. Namely, we are bear witness that states and non-state actors mostly practice unconventional forms of conflict, in purpose of achievement they own interests. Common concept of contemporary security paradigm with general unconventional forms of security violation is labeled as hybrid security threat, and theirs applied forms is recognized as hybrid warfare. In the contemporary global security paradigm, actualization of hybrid forms of state security endangering, shouldn't be overlooked. Scholars, as well as practitioners have demanding assignment regarding the contribute answering to the questions: What is hybrid warfare? Which are the forms and recognized area of hybrid security threats exposing? How to manage National Security and Defense System for successful preparation forward the hybrid security threats? Meaning of this paper is, to upon of wide base of scientific, scholar and analytic documents, as well as analysis of possible generic preconditions for existing of hybrid security threats, to contribute for the creation and development of possible contemporary approach to national security, which could be effective against possible occurrences of hybrid attacks.

**Keywords:** Hybrid warfare, national security and defense, contemporary security environment.

## INTRODUCTION

Contemporary international relations indicate globalization as main driver of global security changing. Namely, globalization should be overlooked through its positive as well as negative effects. Modern economy and neo-liberal concept are recognized as main globalization generator[2], with direct consequences in severance of international and global economy. Also, we are faced with rising of influence of non-state or under-state power based institutions and groups[3]. Main characteristic of existing approach to the global market is continuously devising for new, and spreading of existing markets, fragmentation of national economies behalf of interest of global players. Globalization is led by multinational corporations and that is subordinate to its interests[4] and its negative effects support numerous crises and conflicts all around globe. Namely, in last two decades, due to the impact of globalization, vanishing of ideological

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2 Katarina Štrbac, Miroslav Mitrović, (2012), "Interdisciplinarni pristup naukama bezbednosti i odbrane", Politička revija, broj 3/2012.
3 Robert Cox, (1996), "Perspektive of Globalization" in ed. Mittelman, J.H., *Globalization-critical reflections*, London, Lynne Rienner Publisher.inc., p. 22-23.
4 Štrbac, Mitrović, (2012), p. 282.

differences, developing of technology, communication and mass media, the previous geopolitical scene disappeared, as well as conditions for the prevailing of traditional warfare. It can be said that "global markets depend on international power structure"[5]. By its nature, globalization emphasizes the increased movement across the border in all forms of capital, labor, goods, and ideas, but also all forms of non-linear, hybrid and asymmetric threats. Geopolitical environment, conducted with collision of ambitions and interests of out-of-state power centers, which through institutions of state, international organizations or non-governmental organizations express their interest, potentially leads to the conflicts. General characteristics of contemporary conflicts are low intensity and unspecific forms of exposing. In academic and analytical comments, actual security threats and risks are frequently termed as hybrid security threats.

## CONCEPTUAL AND THEORETICAL ORIGINS OF HYBRID WARFARE CONSIDERATION

Hybrid warfare is a term widely spread in everyday colloquial discussions, but the idea and the concept of hybrid warfare are not completely new. Namely, Sun Tzu emphasized that the implementation of indirect forms of warfare is one of the most effective ways to fight against the enemy[6]. This concept involves achieving the benefits of defeating the enemy, without direct involvement of its own military effectives and resources. Contemporary elaborations of the war as the theory of conflict is conditionally divide of conventional wars in several generations[7]:

- 1st generation prevails and determines the characteristics of the so-called ''Napoleonic" wars and wars which had been acting during the nineteenth century, where the primacy of the army mostly had prevailed abundance in the conflict and the human potential;
- 2nd generation, which is tentatively placed in the time around the First World War (the first decade of the twentieth century), where prevail was on the side of innovation technologies and technical arms, and the focus of firepower;
- 3rd generation, the era of World War II until the mid-80s of the twentieth century, where the predominant component represented the ability to maneuver;
- 4th generation, which is coordinated and concurrent use of non-violent and violent form of civil protest, combined with the use of special operations with intensive use of political, economic and social instruments, like cracking down on the opponent's fighting ability, morality and system of organization. According to this theory, the classic conflict countries have become a relic of the past.

In addition, some authors have developed a theory of the 6th generation wars[8] and Asymmetrical warfare[9]. Actualization of the concept by Western authors is raised since 2014, after the annexation of Crimea by the Russian Federation, where this action is identified with the postulates of ''hybrid warfare". At the same time, the Russian authors in their works, sought to ''color revolution" in connection with the hybrid warfare concept. Taking the foregoing into

5 Džozef Naj, (2006)., *Kako razumeti međunarodne odnose,* Stubovi kulture, Beograd, , p. 251.
6 John Watson, "Sun Tzu's Art of War - Chapter 3: Attack by Stratagem". http://suntzusaid.com/book/3>./12/02/2017.
7 Bettina Renz., Hanna Smith, (2016) *Russia And Hybrid Warfare –Going Beyond The Label*, Finnish Prime Minister's Office, Government's analysis, p. 5.
8 Владимир Слипченко, (1999), *Война будущего*. Moscow: Московский Общественный Научный Фонд.
9 Miroslav Mitrović, "Hibridno ratovanje i asimetrične bezbednosne pretnje", Beograd:Vojno delo, 2/2017.

consideration, it could be said that current geopolitical scene represents a polygon of hybrid warfare, concept which is very close to 4th generation wars, primarily due to the fact of engaging non-military means, such as diplomacy, economy, energy, information and intensive use of media. Considering contemporary analysis and critical observation, we could conclude that hybrid warfare is not *de-facto* conducted as war in conventional understandings, but mostly as concept of actual, geopolitical clash of interests[10].

According to theories[11], hybrid warfare embodies whole range of various models of the conflicts, which are being carried out with conventional and unconventional tactics and engaged forces, including violence and civil unrest and criminal activity. Hart[12] conclude, that is much longer, more expensive and unproductive form of direct engagement of the armed capacity, than a more effective, strategic indirect access to various forms of action, which effectively destroys the psychological and physical balance and opponents achieved his retreat and defeat. In short, hybrid warfare is based on the discovery and articulation of hybrid risks thought threats, in order to accelerate weaknesses of targeting state, with purpose of achievement of their own interests, without (or with minimal) usage of direct military power. In further elaboration, it will be introduced correlation of hybrid concept of warfare with Chaos and Network-centric management theories.

*Chaos theory* and hybrid warfare conduct a common starting point of terms understanding. The fluidity and other characteristics of the hybrid warfare, indicate a possible identification of this phenomenon with the theory of controlled chaos. Korybko[13] though, that is possible to achieve the strategic goals of a hybrid warfare, through the ''under chaos" management chain. The starting point for this theory is work of Man[14], by which essence of chaos contains nonlinear dynamic system applications, with a large number of variables entities. In chaos process, a subject interacts in a nonlinear system, periodically taking on a balanced form, which can be described as organized chaos. The chaos was caused by the initial variables, which, by specific conditions could be proximately accurately defined in the specific situation and environment. By this approach, ''sub–chaos" which is created in frame of controlled environment, could be managed by the chaos management strategy, in order to achieve declared interest. Initial variables of chaos, according the Man, are: The initial shape or format of system; Understanding of the structure of the system; Connection between entities within the system and conflicting energies of individual entities. The applications of this concept of managing with controlled chaos are evident in contemporary international conflicts which could be recognized in works of Darius [15] and Shahskov [16].

*Network-centric warfare* theory also has direct relation to the frame of understanding of Hybrid warfare. According to some authors, network-centric warfare is a form of the conflict on the social level, which is different from the classical, so cold, ''Clausewitz's", methods of warfare, in which the protagonists use network forms of organization and doctrines, strategically and technically based on modern, information technologies. Actors of these conflicts could be national or international organizations, small groups or individuals who communicate, coordinate and synchronize their campaigns in a harmonized manner, often without sol-

10 Timothy McCulloh, Richard Johnson, (2016), *Hybrid Warfare*, Tampa, JSOU.
11 Frank G. Hofman, (2007) *Conflict in the 21st Century-The Rise of Hibrid Wars*, Potomac Institute for Policy Studies, p 8.
12 Liddell Hart, (1954), "The Strategy of Indirect Approach." National War College Internet Archive, 1954.
13 Andrew Korybko, (2015), *Hybrid Wars: the indirect adaptive approach to regime change*, Moscow, Peoples' Friendship University of Russia, p 23.
14 Steven Mann, (1992) "Chaos Theory and Strategic Thought", *Parameters*, Autumn 1992.
15 Mahdi Darius Nazemroaya, (2014), "Iraq and Syria are Burning, "Constructive Chaos" and America's Broader Strategy to Conquer Eurasia." *GlobalResearch.ca*, June 2014.
16 Sergei Shahskov, (2011) "The theory of 'manageable chaos' put into practice." *Strategic Culture Foundation*, 1 Mar. 2011.

id central management. In fact, the predominant way for the implementation of its objectives, the subject of implementation of network centric warfare is based on the use of soft power, especially in media operations and management of the public perceptions. Analyses of this concept could be found in the works such were made by Cebrowski & Garstka[17] and Leonid[18].

## CONTEMPORARY RECOGNITION OF HYBRID WARFARE

Implementation of hybrid concept as contemporary warfare, could be recognized since 1989, when Lind comment that ''Psychological operations may become the dominant operational and strategic weapon in the forms of media / information intervention ... (and) main target will be enemy population's support of its government and the war. Television news may become a more powerful operational weapon than armored divisions"[19]. Other US authors, characterized Hybrid warfare as the participation of elements of irregular armed forces and private military ''companies" in military operations, especially in the implementation of indirect and asymmetric operations[20]. At the national level, the US pays great attention for development of the Hybrid warfare concept. In the US Military Strategy[21] hybrid war is recognized as conflict placed between conventional (nation-state) and asymmetric (non-state), with purpose to increase the ambiguity, complicate and deliberate process of decision-making and coordination and the ineffectual response. US strategic documents assumes the legitimacy of organizing and implementation of special, closed (''*covert*") or black (''*blackops*") operations and activities, in aim to make a political and economic influence, as well as military resulted activities out of US territory, especially, when is estimated that the open engagement of the state administration (open military involvement and engagement), would not be well accepted from US interior public.[22] US doctrinal manuals for the engagement of Special Forces recognize unconventional and special operations.[23] Further more, the principles of hybrid warfare are elaborate even in the basic manual training, with recognition that the current conflict couldn't be solved only by military means. On contrary, attribute of success in contemporary warfare, by the manuals, require engagement of all available national capacity, such as diplomatic, informational, military and economic. This is practical application of the concept of *Full spectrum operations* as the basic operating concept of the US Armed Forces[24].

On the other hand, the analysis of the Russian strategic documents, appears to the very carefully analyzes of the hybrid warfare doctrine. Towards the Russian military doctrine from 2010, modern warfare is described as integrated involvement of military forces and resources which do not have a military character[25]. It also emphasizes the application of measures of informational warfare in order to achieve political objectives without the direct involvement of military forces, with the aim of shaping the desired response of world's public opinion, in

17 Arthur Cebrowski, John Garstka, (1998), *Network-Centric Warfare: Its Origin and Future*, U.S. Naval Institute.
18 Leonid Savin, (2011), "Network Centric Strategies in the Arab Spring", Open Revolt!, 29 Dec. 2011.
19 William Lind, Keith Nightengale, John Schmitt, Joseph Sutton, Colonel Gary Wilson. (1989), The Changing Face of War: Into the Fourth Generation", *Marine Corps Gazette*, Oct. 1989, p. 24.
20 Michael Kofman, Roger McDermott, (2015), "No Return to Cold War in Russia's New Military Doctrine," *Eurasia Review*, February 3, 2015.
21 US Joint Chiefs of Staff, (2015), *National Military Strategy of USA*, p 4.
22 Aki J. Peritz, Eric Rosenbach, (2009), *Covert Action*, Belfer Centre Memorandum, Harvard, July 2009.
23 Headquarters Department of the Arm, (2010), *TC 18-01 Special Forces Unconventional Warfare,* Washington, DC.
24 Headquarters, Department of the Army, (2008), *Field Manual No. 3-0: Operations*, Washington, DC.
25 *Военная доктрина Российской Федерации,* ( 2010), Москва,

relation to the involvement of the armed forces. Military doctrinal documents from 2014 declared necessity of providing of special forms of modern conflicts, in which Russia will apply the integrated operation of military and political, economic, informational and other non-military activities[26]. As one of the steps towards an institutional approach to organizing and managing hybrid operation is the establishment of the National Center for security management within the Ministry of Defense of the Russian Federation[27], in 2014.

## HYBRID SECURITY THREATS AND NATIONAL SECURITY

Taking into account that Hybrid warfare has strategic influence to the national interests of conflicting parties, it's noticeable that in addition to psychological consequences of hybrid warfare, it is certainly associated with the real, physical, resources and infrastructural devastation of the country. Also, could be noticed a dual approach to the effects of economic, energy and financial instruments of pressure on a particular country. General characteristics of hybrid wars, whether it is called "colored revolutions", various forms of economic or energy sanctions, support and escalation of different extremism or separatism, is that it loses a clear distinction between soldiers and civilians, as well as organized violence, terror and war.

Practically, hybrid warfare is a form of manifestation of strategic initiatives, and every state which has ambitions to became a great, global power has a necessity to implement strategy approach regarding the national defense, in order to preserve or achieve dominance in a variable and dynamic geopolitical arena.

Taking into account all above mentioned features of hybrid forms of warfare, it could be underlined a group of indicators, or potential challenges for national security as: dysfunctional state, the lack of state sovereignty, the existence of frozen conflicts, unresolved territorial disputes, the presence of arbitration or control of territory by supranational entities, ethnic and religious problems, separatism, extremism, unemployment, the existence of general poverty, long-term dissatisfaction of population with the political and social solutions in leading the country, corruption, powerful criminal elements, institutions with separate centers of power and governance, etc. In the correlation to listed indicators, looking through the scope of hybrid application forms, we could distinguish four basic pillows of hybrid concept of security violation:

- Special and psychological operations - limited time performance, high intensity with very high direct effects. Engaging armed forces within the framework of special and psychological operations, as part of a hybrid concept of war, could be found in the contents of conceptual documents of the US administration. Namely, in the form of irregular warfare conducted by the US Armed Forces, are recognized: the anti-rebel operations, information operations, counter terrorism, unconventional warfare, foreign internal defense (support of other countries in the aggression from outside), stability operations, security transition, and reconstruction, strategic communication, psychological warfare, information operations, civil-military operations, intelligence and counterintelligence operations[28].

- Economic, energy and political pressures – actions of variable duration and intensity, depending of the interaction, relationship and buck effects which could be affected to the side who use pressure. Effects depends of economic and energy capacity of the state which is object of the pressure, and mutual interdependence of the state (or supranational entity)

26 *Военная доктрина Российской Федерации,* (2014), Москва,.
27 *Национальный центр управления обороной Российской Федерации,* http://structure.mil.ru/structure/ministry_of_defence/details.htm?id=11206@egOrganization/:10.03.2017.
28 Department of Defense of US Government, (2007), *Irregular Warfare (IW)-Joint Operating Concept (JOC)*, 2007, Washington, DC, p. 7.

which apply pressure and the state which is the object of acts. Direct effects distress the complete object state, including its military power, and indirect could be expressed through the increase of poverty, expressing public dissatisfaction, collective apathy, losing of support for the state leadership, civilian protests and riots and so on. The complexity of hybrid forms of endangering national security in the energy and economic field stems rise from the fact, that this area impose negative impacts to the entire state structure, compromising its functional capacity, encouraging the internal instability and public dissatisfaction, rise the sense of frustration among the population, etc.[29]

- Information, media, Internet and its platforms - variable intensity activities, depending on the phase of others forms/fields implementation. Time of submission is usually long-term and depends of the goals and the phase of implementation of other hybrid activities. Usually is implemented by synchronized way, with common synergistic performance of multiple instruments and with a strong variable dynamics. The essence of achievement in this field is the penetration and changes of public opinion, as well as, the introduction of doubt, uncertainty and fear. Strong influence on public opinion is based upon on spreading of a diametrically opposed views and perceptions, different or changed interpretations of the same events, which are broadcasted extensively through various media (radio, television, Internet, social networks, etc.). In process are used instruments of propaganda, half-truths, organized ''spontaneously" group attitudes (especially via social networking platforms), ''internet trolling;"[30], ''spinning", etc.

- Public diplomacy-low-intensity, very long-term-oriented, comprehensive hybrid operation tool, which makes it more diverse activities in the sphere of social life. In the early papers, public diplomacy is explained as an activity that ''...deals with the influence on public attitudes in relation to the formulation and realization of foreign policy. Includes international relations beyond traditional diplomacy; handles relations public opinion in other countries; [An instrument of] the interaction of interests of individual interest groups and states; delivering analysis and opinions concerning foreign policy and the impact on its implementation; [Instrument for] communications between professional services, such as diplomats and foreign correspondents; [Represents] the process of intercultural communication"[31]. From inception to date, the essence of public diplomacy has not lost its primary purpose: to influence the creation of relation with a country outside the operation of the channel classic diplomacy has been reduced by applying the broadest model of communication at the level of society. In addition, public diplomacy is directly linked to the concept of soft power, which is processed by Nye, in a way that, according to him, among other things, soft power is based on intangible and indirect impacts such as culture, social values and ideology[32]. In short, it can be concluded that public diplomacy activities from the ranks of the broadest corps of social life: culture, education, education, religion, entertainment industry, non-governmental organizations, political movements and associations, civil initiatives and others that are undertaken to influence public the opinion of a state.

29 Miroslav Mitrović, (2017), ''Ekonomski i energetski aspekti hibridnog ugrožavanja nacionalne bezbednosti", Vojno delo, 6/2017.
30 NATO Strategic Communications Centre of Excellence, (2011), *Internet Trolling as a hybrid warfare tool: the case of Latvia*.
31 Murrow Center, "What is Public Diplomacy?" http://fletcher.tufts.edu/Murrow/Diplomacy.html/10.11.2016.
32 Joseph S. Nye, Jr., (1990), "The misleading metaphor of decline," *The Atlantic Monthly*, March 1990.

# CONCLUSIONS

Previous analysis, indicate that the hybrid forms of security threats are presence and vivid as concept, which is developed and implemented in contemporary global security environment. Conflicts which are raised and managed as hybrid concept could have dynamic, synergy based and flexible application forms of special units, guerrillas, psychological operations, civil unrest, various forms of internal revolution, economic, diplomatic and political, informational and media campaign. Usage of all listed above, with possible event variations, depends of strategic declared aims and contemporary geopolitical relations. Operational usage of hybrid concept have aim to achieve strategy predominance and to disrupting the national security system of the aimed state. Implementation of concept of hybrid security threats concept in colloquial discussions is recognized as ''Hybrid warfare".

Analysis of main pillows of implementation, indicate that the various type of hybrid security threats, are implemented intertwined, and that the action, time and target are conditioned. Also, it is noticeable that the intensity and time of realization are not identical and actions which contribute to hybrid nature of phenomena. For example, special operations have the strongest intensity, but the time is very limited. On the other hand, public diplomacy has very long-term implementation agenda, based on the nature of the used soft power instruments. Economic and energy instruments have variable intensity and duration, depending by the attitude of the desired aims as well as the effect, but also, its correlate wit their own economic and energy interests. The media and the Internet as a means of communication, as well contemporary used social networks, have supporting and catalyst role. The analysis of the field of action, possible means of enforcement as well as the holders or the protagonists, indicate that the basic characteristics of hybrid warfare are: comprehensiveness, flexibility and asymmetry.

As prevention and response to potential threats hybrid, based on the identified indicators, forms and range of operation, as well as the instruments of implementation, it is possible to distinct out the necessity of establishing the favorite state's conditions:

- Stable internal political scene with developed democracy instruments and functional state administration, with an efficient judiciary and police;
- Strong foreign policy integrity and a real authority in international relations with a strategically built relationships based on common interests;
- Long term developed and stable economy with the requisite degree of energy sovereignty;
- Tracking and understanding the origin of extremism with developed mechanisms for its control, as well as systematic struggle with organized crime;
- Dialogue and cooperation with neighboring countries, especially in ethnically and religiously mixed regions as well as developed a dialogue with ethnic minorities and their proportional participation in social and political life;
- Education and training of the population for raising the general level of awareness, reducing the influence of media and information manipulation;
- Efforts to establish reciprocity in the development and implementation of public diplomacy;
- Application of knowledge and experience in the development of defense doctrine and the permanent training and education of personnel in connection with the current hybrid forms of warfare;

In short, functional, developed and systematic organized state, which objectively considered their opportunities, challenges, risks and threats, and engages the necessary resources to eliminate them, suppression or prevention, has a real opportunity to become potentially difficult and demanding object for possible hybrid operations.

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# THE SALONIKA PROCESS 100 YEARS LATER AND CONTRIBUTION OF ARCHIBALD REISS TO STRENGTHENING OF THE SERBIAN ARMY MORALE ON THE SALONIKA FRONT

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**Abstract**: After the analysis of the events which took place on the territory of the Republic of Serbia after the Civil War in the 1990s and disintegration of SFRY, after NATO aggression on the Federal Republic of Yugoslavia and unlawful proclamation of so-called state Kosovo independence, a conclusion can be made that morale as one of three significant components of military power, was very seriously attacked. Current doctrine of the Serbian Army starts from the fact that morale component refers to ability of the Serbian Army expressed through *will* and cohesion to decisively oppose military threats and to win and, as far as non-military challenges, risks and threats are concerned, to give its full contribution to overcoming the crises. Theoreticians of war waging, Sun Tzu and Clausewitz, claimed that the essence of war waging is not in physical destruction of the enemy, but in imposing of own will and defeating of the enemy's will to offer resistance. It is more than obvious that this approach to war waging was applied in the past, but it is also obvious that it is applied nowadays, especially in the attitude of powerful countries towards the small ones which are not in possession of serious deterrents. The Serbian Army was in a similar situation on the Salonika Front at the end of 1917. In late July 1916 the Army went to the borders of the country and in November of the same year they liberated Bitolj, being stopped there. It was not possible to advance without serious support provided by the allied forces. The period of exhausting trench warfare was followed with fatigue of the army, disobedience, desertion and seriously shattered morale. All the Ally armies on the Salonika Front as well as their political leaders were facing serious challenges. Different opinions on the way of finishing the war due to strong psychological and propaganda activity of Germany and Austro-Hungary during 1916 and 1917, revolution in Russia in February 1917, pressure of the Allies and serious political disagreements among the political party representatives of the Kingdom of Serbia led to the Salonika Process. The process was something that the political and military leaders of the Kingdom of Serbia did not need at all in that moment and on the territory of a foreign country. The process had its introduction even before beginning of the Great War, its plot from September 1916 to March 1917, its denouement from March to June the same year, as well as repetition in 1953. Dr Archibald Reiss had a very important role during the process, especially from the aspect of strengthening of the army morale and pointing out the true values of the Serbian Army not only to Serbs, but to the international general public as well.

**Keywords**: military power; moral – component of military power; military and non-military challenges, risks and threats; psychological and propaganda activities and the Salonika Process.

## INTRODUCTION

One of the basic starting points in contemporary theory and practice is that military power is based on morale, physical and conceptual components. Morale component means willing ability and capabilities of the commands and units to defeat the enemy in combat operations and, as far as non-combat operations are concerned, to give their full contribution to neutralization of the ones in charge of non-military threats and to remedy the consequences of the crisis. The morale component is a variable category depending on the will, leading and managing capabilities, social and moral values and code of honour[1]. How important variable the will is in opposing the enemy and defence of the state is something that was long time ago pointed at by theoreticians of the art of war Sun Tzu[2] and Carl von Clausewitz[3].

The key element for the Serbian Army during the Wold War I was existence of a clear war aim and support of the Entente Allies. The clearly defined aim was the guiding idea on their way full of challenges, falls and rises. In the difficult and challenging times, the state and military leadership of the Kingdom of Serbia (KS) were several times in position to test their devotion to the idea of liberation and unification of all Serbs and Yugoslav peoples against Austro-Hungarian oppression, and also to test their loyalty to the Entente Allies because of the offers given by Germany and Austro-Hungary to accept the separate peace agreement. In difficult moments during the Kolubara battle, in spite of intensive psychological and propaganda pressures put by the enemy in the periods of termination of hostilities and synchronized attacks of German, Austro-Hungarian and Bulgarian units on the Kingdom of Serbia in continuation of the war, the offers for separate peace were not accepted.

The ultimate aim of the periodical suggestions given for signing of the separate peace agreement between the Kingdom of Serbia and the Central Powers, which were usually accompanied by strong psychological and propaganda activities, was throwing Serbia out of the war on the Entente side. All the suggestions relating to the separate peace agreement, irrespectively of the current position of KS during the war, were significantly different from its war aim and they were unacceptable. Possible acceptance of the separate peace agreement would have in the long run significantly undermined relation between KS and the Entente members and at that moment, it was an unacceptable risk.

Morale as a component of military power had the essential meaning for the Serbian Army. Because of threat of physical destruction and capitulation, the Serbian Army and government representatives were forced to leave their own country facing the onslaught of much stronger enemy and, after recovery and equipping of the army, to form a front on the territory of a foreign country. It was possible only thanks to one of special traits characterizing Serbian people – to express their best values and qualities in the most difficult situations. This trait of Serbs was recognized and described by their big friend Dr Rodolph Archibald Reiss[4].

1 Generalštab VS, Komanda KoV: *Doktrina Kopnene Vojske, Medija Centar Odbrana, 2012, pp. 15–16*.
2 '"To fight and win in all combats is not the top (military) virtue, the top virtue consists of breaking the enemy resistance without combat", Sun Cu, *Umeće ratovanja*, Mono i Manjana, 2009.
3 "War is an act of violence with the intention to make the enemy fulfill our will", Klauzevic, K: *O pamy*, Војно дело, Београд, 1951.
4 Rajs, A: Čujte Srbi čuvajte se sebe*, Akia Mali princ*, Belgrade, pp. 9–18.

# POSITION OF THE SERBIAN ARMY DURING 1916 AND 1917 SALONIKA PROCESS AND STATE OF MORALE

After the exodus, retreat across wilderness of Albania, permanent enemy attacks, lack of the Allies' understanding, recovery on Corfu of those who had survived the island of Vido, getting equipment, additional training and setting the forces on the Salonika front, the Serbian Army confirmed in practice the maxim that – *The What doesn't kill you, makes you stronger.* Morale component of the Serbian Army in that period experienced enormous transformations in a very short period of time – from despair and hopelessness up to Phoenix rise. Supported by the Allies, especially by France and UK, formation of the Serbian Army was changed. It was already in mid-March 1916 that the Allies decided to move the Serbian Army from Corfu to wider area of Thessaloniki; in mid-April the first units came to the planned location. The first combat engagement of the Volunteer detachment in May 1916 on the direction of Bitolj in the area of Florina on prevention of weapons smuggling, detection and capturing of the spies was enhancing faith and hope about soon going back to the homeland. Recovery, rest, additional training, preformation, bringing and arming of the Serbian Army in the area of Thessaloniki in actually short period of time had strong positive effect to state of morale which could not be disturbed even by the problem of malaria in the swamp terrain where the Serbian forces were disembarked.

About 300,000 of the ally troops were not significantly engaged till August 1916, while combat operations were conducted on the Western and Eastern front and these operations would in long run have decisive influence upon course of the events in Great War. Brusilov offensive and favourable course of the events in Galicia and Bukovina influenced upon change of the English attitude. In July 1916 British forces occupied the positions from Strymonian Gulf and Lake Kerkini, and French forces were grouped on the front between Krusa Mountain, the Dojran Lake and Majadag Mountain on the right bank of the Vardar River. In June 1916 the Government of the KS made the decision for all the Serbian divisions to be sent to the front within Bitolj direction of operations. This engagement of the Eastern Army forces meant establishment of about 450 km of the front. In spite of incomplete reorganization and equipping with heavy weapons and equipment, arrival of the Serbian forces to the front had strong positive influence upon further morale boosting.

General Sarrail planned another offensive operation to be performed within the Salonika front in August 1916. That offensive had a more concrete goal – to pin down Bulgarian-German forces along the front and provide conditions for Romania's entering the war on the Entente side. However, the First Bulgarian Army was the one which first attacked the Ally forces on the left flank of the front, i.e. the Third Serbian Army which was in the phase of approaching and preparing for the attack. The contact battle took place but the parties involved were not prepared for a better organized defence. Due to obvious operational surprise achieved by the enemy the commander of the Third Army and the commander of its Danube division were dismissed from duty. Issue of responsibility of the Colonel Dragutin Dimitrijević Apis – Deputy Chief of Staff of the Third Army and Major Ljubomir Vujović–the Intelligence Service Head, was not initiated. Engagement of the Vardar division and Timok brigade by the Serbian Army Supreme Command (SC) stabilized the situation on the Third Army front. The allied forces operations first stopped Bulgarian forces, and the key victories were won from September to November 1916 in the battle of Gornichevo, the battle on Kajmakcalan and the battle in the arc of the Crna reka which was completed by liberation of Bitolj. Serious failure made by the Third Army was also inactivity of the Danube division during the Kajmakcalan battle which resulted in enormous casualties in the Drina division. Centralized commanding of General Sarrail and decentralized execution of the given tasks by the subordinate commands,

along with good logistic support organization in the rear parts of the front, provided conditions for successful performing of the abovementioned offensive operations of the Allies and boosting of morale, especially among Serbian soldiers who were on the border of the native country. Unfortunately, the period of trench warfare began on the Salonika front which was unacceptable and extremely bad for the Serbian Army morale.

Along with the glorious activities of the Serbian Army and representatives of the civilian authorities, there were unfortunately some less glorious activities done by certain groups which could seriously damage morale of the Army. The Serbian Army, especially its officers, was divided into three groups. Through their engagement during withdrawal from Serbia, after arrival in Corfu, in Thessaloniki and finally on the Salonika front, members of the organization *Unification or Death* (*UorD*) confirmed their existence in spite of the attempts to negate that fact during the Salonika process. The first serious problem in the situation of the Army members' division appeared during the attempts of looking for the culprit for withdrawal from Serbia. It was sadly futile job because the decision on withdrawal of the people, military and the state government had been result of the conclusions made during the sessions of the Kingdom of Serbia Government in Kruševac and the meeting of the Supreme Command in Peć[5]. If there was anyone who should have taken the blame for exodus of the nation and Army, the Entente Allies were the ones who should have done that because their estimations during the whole war year 1915 had been absolutely wrong. The response of *Black Hand* organization members to the changes in the SC, i.e. the attempted coup, should have come – according to the statement given by Kosta Pećanac, in January 1916 after the King I Petar and Regent Aleksandar borded the ship in the port of San Giovanni di Medua and their separation from the main body of the Serbian Army. It was allegedly Milan Gr. Milovanović– Pilac the one who informed him about details of the coup and making the separate peace agreement with Germany during the meeting in Shkadra[6]. Since the King and SC Staff did not board the ship in the abovementioned port but they continued the journey towards Drac and Valona, the idea of coup was abandoned. The fact confirming that the coup was taking place was the statement made by Avram Lević – Head of the State Accounting, that Pilac had tried to take away the state property in the amount of 50 million dinars in the port[7].

According to Kosta Pećanac's statement, members of *UorD* organization, continued with their usual activities relating to criticizing the Government and King as well as with recruiting the officers after their arrival to Corfu and Thessaloniki. The civilian Rade Malobabić was allegedly in charge of junior officers and Colonel Ljuba Milić was in charge of senior officer. Pećanac allegedly changed his mind about joining the organization at the last moment when major Vulović, whom he knew by bad reputation, appeared there[8]. After studying of the data from various sources, it can be concluded that in spring 1916 the leaders of *UorD* organization formed a special group of volunteers[9] which they were preparing for special actions. Major Vulović was in charge of their training for special actions, and that was something that he

5 En extract from the Order sent to the operational units' commanders: "Capitulation would be the worst solution, as long as there are ruler, government and army, no matter how strong the state is, it does not lose its being and the Allies have to take it in account as a realistic fact", Kazimirović, V: *Crna ruka – ličnosti i događaji u Srbiji od majskog prevrata 1903. do Solunskog procesa 1917*, Prometej, Novi Sad, 2016. p. 655.
6 Ibid, pp. 663–665.
7 Ibid, p. 664.
8 Ibid, pp. 673–674.
9 The following volunteers were mentioned: Mustafa Golubić (confirmed agent of Russian Intelligence Service Ohrane and that helped him to avoid the trial in the Salonika process), Boško Arežina (he was allegedly the one who should have assassinated Regent Aleksandar), Nezir Hadžinalić (he was allegedly the one who should have assassinated Nikola Pašić), Muhamed Mehmedbašić and Vladeta Bilbija (they allegedly should have assassinated Greek King Constantine I), Milan Ciganović, Đuro Šarac and Veljko Zečević.

admitted later during the Salonika process. Unsolved murder of the volunteer Boško Arežina in Thessaloniki in May 1916 pointed to seriousness and danger of the illegal organizing of the group[10]. In spite of the differences about the persons who prevented the assassination of Greek King Constantine I, the statements given by Colonel Apis and Bogdan Radenković in prison in Thessaoliniki in April 1917, confirm that an attempt of assassination did take place. The Serbian Army, which was taking positions in the wider area of Thessaloniki during spring of 1916, was similarly to other Entente Allies exposed to strong propaganda and obstructive activities performed by Germany oriented Greeks. Because of all these events, General Sarrail introduced state of emergency in Thessaloniki. It is impossible even to predict the consequences of the insane acti – assassination of the sovereign of the host country which accepted the Allied soldiers.

As for finding out who was the one responsible for the sufferings in late 1915, some historians emphasize establishment of three fronts, i.e. confrontations on Corfu and in Thessaloniki during 1916[11]. Regent Aleksandar and Government of Nikola Pašić were responsible for members of *UorD* organization. However, the course of actions showed that there were only two sides – Regent Aleksandar with Government of Nikola Pašić and Supreme Command on one side and members of *UorD* organization together with some representatives of civilian authorities on the other side. Analysis of the situation and state in the Serbian Army in 1916 pointed to the fact that continuation of political activity of *UorD* organization members and confrontation between *Black Hand* and *White Hand* officers on Corfu, in Thessaloniki and on the front did not seriously influence state of morale. Rate and level of the Serbian Army's engagement in this period undoubtedly contributed to that, because there was simply no time for dealing with vague and behind scene activities.

The Salonika process has been subject of research made by numerous historians and political analysts. Many things have been written about it, and a general attitude of those dealing with it is that it was a show process with a predetermined goal. This attitude was confirmed in a detailed description written by Milan Ž. Živanović, Colonel Apis's nephew, in his book *Pukovnik Apis – Solunski proces hiljadu devetsto sedamnaeste (Colonel Apis – The Salonika Process in 1917)*. Actual intentions of the process organizers could be seen even during the procedure for establishment of criminal offences the defendants were accused of. Two criminal acts were defined in the written information sent by Minister of Internal Affairs to the Minster of war: act of coup, punishable by imprisonment and act of assassination of a Regent, punishable by death. The Court Department of the Kingdom of Serbia found out that there were sufficient grounds for launching an investigation against the accused for the following criminal acts: act of rebellion in the army, punishable by death, and act of assassination of royal family member, punishable by death. Disbanding of already existing court bodies and forming of the new First-instance Military Court for officers and Second-instance Big Military Court meant preparation of the ground for solving the issue in which the accused had no chances. Composition of the newly formed military courts just confirms the abovementioned claim. After completion of the process, the following persons were sentenced to death: Dragutin Dimitrijević Apis, Radoje Lazić, Bogdan Radenković, Milan Milovanović, Čedomir Popović, Vladimir Tucović, Velimir Vemić, Ljubomir Vulović and Rade Malobabić, while Damjan Popović and Muhamed Mehmedbašić were sentenced to time penalties. Death penalty was confirmed and on it was imposed only on Apis, Vulović and Malobabić in Micra besides Thessaloniki. As

10 There are suspicions that a conflict took place between the volunteers and Major Vulović because of refusing the task to kill Nikola Pašić and Regent Aleksandar, so it is possible that they applied the attitude from the Statute of the organization "UorD" about physical liquidation of the person who betrayed the organization. Although there had been cases of disclosing the data about activities of the organization, the attitude from the Statute was not applied before this event.

11 Kazimirović, V, op cit, p. 670.

for the others sentenced to death, their sentence was subdued to time imprisonment. The level of the hatred Regent Aleksander felt for the three men sentenced to death can be easily seen through the fact that their posthumous remains were buried in the Memorial Ossuary in the Serbian Military Cemetery in Thessaloniki, but not under their names and ranks – as should be appropriate, but under numbers: N.N. – 5027 (Colonel Dragutin Dimitrijević – Apis), N.N. – 5028 (Major Ljubomir Vulović) and N.N. – 5029 (Rade Malobabić).

It would be unfair towards history to claim that the Salonika process did not leave any trace on the Serbian Army and that it did not have negative influence upon state of morale in certainly difficult situation on the front after changing to trench war waging. Detaining of Colonel Apis and disbanding of the Volunteer detachment of Vojvoda Vuk, depriving the suspects in the Salonika process of freedom, disbanding of the Third Army as well as the very unfortunate judicial process did not cause serious troubles within the Serbian Army, but they surely left bad impression with all reasonable people. According to conclusions made by certain politicians, the Salonika process passed calmly and without serious consequences on unity of the Serbian Army, in spite of obvious legal failures and its misuse for political fights.

After 100 years there is an impression that the Salonika process did not solve obviously present problems and divisions among the Kingdom of Serbia political and officer elite which really did exist. Since it turned into political clashes between Regent Aleksandar and Colonel Apis and *UorS* organization members, "the Process" went on soon after coming of the Army back to the native country and end of the war. Division and confrontation of the opposed sides stayed and it showed, more or less intensively, till the Process revision. Unfortunately, in spite of the fact that the Process revision in 1953 annulled the indictments from 1917 and acquitted of all guilt, it did not completely meet the expectations because it was conducted in order to discredit Karađorđević dynasty in the years immediately after the end of the Second World War. Clausewitz said long time ago "that war is continuation of conducting politics with some other means" and it is matter of an officer's skill to learn the lesson about the time of duration and what belongs to competences of politics, and where a war begins and what military competences are. Near the end of the Salonika process, the very Colonel Apis admitted that, among other things, his dealing with politics had been something that had brought him into a hopeless situation. Unfortunately, totally honest and respect worth act of Colonel Apis did not get its deserved place in all the additional revisions and analyses. That is why it is very important nowadays for us to learn the lessons from the historical officer Apis on one side, and from the mythical revolutionary Apis on the other side – with all their good and bad sides.

## ENGAGEMENT OF DR ARCHIBALD REISS DURING 1916 AND 1917 AND HIS OPINION ON THE SALONIKA PROCESS

Great and confirmed friend of the Serbian people Dr Rodolph Archibald Reiss shared also destiny with their Army. It was soon clear that engagement of one of the world-acknowledged forensic scientists of that time was a clever act of KS Government. He became blade of the pen used for writing and spreading the truth about freedom struggle of the Serbian people and their Army in the Great War. In the time when the information operations did not exist, he was cooperating with the KS Government, Supreme Command and intellectual elite circles mobilized by the authorities, thus providing domination in the information space. Attention worth is one of the strongest texts of Dr Reiss written and published in late May 1916, when the Serbian Army was about to complete the transport from Corfu to the wider area of Thessaloniki and prior to one of the key Allied conferences in June 1916 on the operation

performed by Eastern Army. There was not a single reasonable person who could stay indifferent to the text under the title *Serbian Victims* and the text was an enormous stimulus to the exhausted Serbian Army but the clearest possible warning to the Entente Allies. Reiss informed wider international community about all the difficulties the Serbian Army had passed from the beginning of the Great War and the sacrifices it had suffered, including the Balkan wars as well. Emphasizing that number of victims was approaching ¼ of total population of Serbia, he in some way warned the Entente Allies to send additional forces into composition of the Eastern Army and stressed: "This time it is demanded from Serbs to sacrifice the last generation of their boys, their last hopes for the country renovation … among the people who have lost their lives are the ones who represent the country elite: high-school pupils, students, representatives of free professions, professors, lawyers, doctors and teachers"[12]. When talking about the Entente Allies and untried Ally-Serbia, he said that "there are still some English theoreticians who support Bulgarians ...Almost mother feelings of Russia towards Bulgaria are totally understandable … but Serbia has never stopped looking up at Petrograd as at its natural protector ... with Serbs, Italy will get the most loyal and most reliable allies ...France nowadays sees Serbia as a sister who, due to the superhuman undertakings and endless loyalty, has deserved all the rights."[13].

Although Dr Reiss published his book *What I Saw and Experienced during Great Days* in 1928, it can be seen from its contents in which way he understood and estimated the situation among his friends Serbs in winter, spring and summer of 1916 – in the period when he was not on the front. He began his comment with the problems of the present divisions among parties, and he thought that the especially unpleasant part of the divisions was taking of the conflicts out of the country and continuation of confrontations in foreign countries, for example in Switzerland. He obviously did carefully follow course of the events, albeit physically far from Corfu and Thessaloniki. It is out of doubt that, when talking about presence and political activities of Serbian distinguished citizens in Switzerland, he was referring, among others, to Miloš Bogićević and his support to concluding of the separate peace between Serbia and Germany and later between France and Germany. He was probably referring to Svetolik Jakšić as well and his *Letter to Serbs in Thessaloniki* in which he invited openly to overthrowing of KS Government in the time when the Entente Allies were preparing for the first serious offensive operation on the Salonika front. His reply to Jakšić's document after coming to the Salonika front was very interesting, so since November 1916 all his texts written by Dr Reiss on the liberated part of Serbia had the header *Letter from Serbia*. The first text of that sort was written in just liberated Bitolj on 12 December 1917, and it was later published in Gazette de Lausanne.

During the autumn of 1916 and glorious battles in Gorničevo, Kajmakčalan and within the arc of Crna reka, Dr Reiss was performing one of the most important missions given to him by Supreme Command of the Serbian Army – he was reporting about the events at the Salonika front. Unlike some war correspondents Reiss met during the war and who were sending their reports from Thessaloniki, his reports in foreign newspapers as well as the notes which for understandable reasons were not published, were sent from the first line of the front and they stayed as truthful testimony about engagement of the Serbian Army. Irrespectively of his additional disappointment by the reality, the issue which is very important to us as professional soldiers and officers is the impression of the war reporters which was emphasized by very Reis as well: "that they are very precious assistants to the military bosses and that their way of presenting the events should support morale of the audience in the rear parts"[14]. He stressed the importance of presence of Regent Aleksandar on the positions from the beginning of the first breakthrough of the Salonika front till the moment of his arrival to liberated

12 Rajs, A: *Šta sam video i proživeo u velikim danima*, Talija, Belgrade, 1997. p. 213.
13 Ibid, pp. 214–215.
14 Rajs, A: *Šta sam video i proživeo u velikim danima*, Talija, Belgrade, 1997. p. 211.

Bitolj. In the same time he stressed the telegram sent by Bulgarian heir to the throne Boris to the 1st Regiment Commander who was in charge of the position on Kajmakčalan and the order issued by Regent Aleksandar read after the first victory and mastering Gorničevo[15]. He stressed the former document – telegram in negative sense because it had obviously been sent pro forma and with no emotions or morale charge. The latter one – the order was emphasized in positive sense because it had been sent to all the soldiers, non-commissioned officers and officers, and it contained all real values from history and tradition of the Serbian people such as respect towards ancestors, family, native country and freedom, as well as faith and hope about soon liberation of Serbia. Truthful reports written by Dr Reiss supported by photos were extremely important for morale of the people on the front, in rear parts and they were also enormously important for Serbs and other Yugoslavs in the occupied native country and in Austro-Hungary decomposition which was expected to take place after the end of the war.

By reading the books made as result of his notes taken during the war as well as the author texts published in that period, it can be concluded that he, like majority of those being on the line of the front, was a little bit indifferent towards the Salonika process. Reiss did not want to make comments on the Process because most people understood it as a political clash within the struggle for gaining predominance among the ruling political parties. The reason for that attitude could be one of the first impressions he had got after coming to Serbia in late summer 1914 at the invitation sent by KS Government. Serbian opposition members labeled him then as "a man belonging to radicals". He considered the Process as an unfortunate affair, in wrong time and in wrong place[16]. He kept his neutrality because he knew very well both Regent Aleksandar and Prime Minister Nikola Pašić, but he knew Colonel Apis as well. Since he knew the persons from the military and state leadership of Serbia very well, he was probably familiar with the reason for moving Colonel Apis from the position of the Chief of SC Intelligence section to the duty of the Užice Army Staff Chief, then of the Timok Army and finally to the position of the Third Army Deputy Chief of Staff. He probably collected some extra information while visiting the Serbian armies and their divisions during his stay at the front in autumn 1916. There is high possibility that the assassination attempt on Regent Aleksandar in September 1916 and everything happening afterwards was one of the interesting topics in that time. It was written in his notes that he was in the Third Army Command from 26 to 28 November 1916 and that was the last time he met Colonel Apis before his imprisonment. In spite of being rather detailed in his notes from the front and about his meeting with well-known persons, it is interesting that Dr Reiss did not make any comment on Colonel Dimitrijević. It is obvious that even then it was unwelcome to make comments on anything in relation with *UorD* organization or Colonel Apis. However, it does not mean that Dr Reiss did not follow and estimate activities of the officers and other persons who were having some connections with the organization. There is the information that he exchanged with General Sarrail, i.e. with French Intelligence Service but, apart from transfer of the collected information, it is impossible to see if he supported any of the confronted parties[17]. General Sarrail for a long time believed that it was persecution of Francophile officers performed by the politicians

15 Ibid, pp. 141–142.
16 Ibid, p. 320.
17 Reiss emphasized in his report to French Intelligence Service that "the leader of Black Hand organization was spreading the idea that the only thing the Allies wanted was to use Serbs as cannon fodder, and that the Germans would have treated Serbs in a totally different way if they had understood that their interest had been joining the Central Powers. Besides, he claimed that Prince Aleksandar and Nikola Pašić were only agents of Entente and that through their political loyalty to Entente they destroyed the country." As for Major Vulović, Reiss said that "he was the man who was a real desperado and for whom there was evidence that he had killed, stolen and took away money". Reiss's opinion was that "the affair about UorD organization was very dangerous for internal piece in Serbia as well as for the interest of the country and that it was out of doubt that Dimitrijević and other leaders of Black Hand organization were cooperating with the enemy." Kazimirović, V, op cit, pp. 725–727.

from Corfu about whom he did not had some especially positive opinion. Dr Reiss had a very important role in that period in calming down the Allies who worried about possible transfer of the problems from the Salonika process to the front. Reiss then emphasized that "it was the internal matter which has nothing to do with the sympathies or antipathies towards France which, by the way, did not exist at all"[18]. Unfortunately, General Sarrail was right about one thing – when he thought that there was fatal influence of politics in the Serbian Army (among officers); fortunately, he was not right when he thought that the quarrels among the politicians reach the front. The neutral attitude which Dr Reiss had taken during the Salonika process would be changed after the war was over when he assembled a whole picture about the dangers threatening the Serbian people due to political and party divisions[19].

In the midst of the Salonika process, Dr Archibald Reiss wrote an article in May1917 under the work title *A Letter from Serbia – Portrait of a Commander*, which was published in journal *Gazette de Lausanne* in early June the same year. In a journalist article he presented to the public Vojvoda Živojin Mišić, the First Army Commander. In a symbolic way Reiss suggested to the public abroad as well as to the Serbian people who were carefully following the events relating Colonel Apis and his comrades in the Salonika process, an acceptable model of an officer who could be an inspiration to young officers and to those who would like to become ones. He began his presentation of Vojvoda Mišić with a sentence in which he actually sublimated everything and after which he could have completed the issue, and that sentence was: "Mišić is a man who is an extraordinary personification of all the qualities which are characteristic of the beautiful Serbian people"[20]. I will mention here just some of the qualities recognized by Dr Reiss in our famous Vojvoda, primarily because of young people who will maybe read this text and who will be able to try to find in themselves or develop the same values which adorn the Serbian people. "Vojvoda Mišić is the nicest and the best behaved cosmopolitan ...in the same time modest and smart ... deeply religious but not a fanatic, an excellent father of his family ... he is very attentive and he can always say something nice to many foreigners … he is also reserved and he devotes his personality only to those whom he considers to be his friends ...he is a commander adored by his soldiers and officers, he demands strict discipline, but he encourages all those who show good will, he is a just person ... he will listen to the complaints if they are founded, he will correct injustice … he has a friendly relation with the officers … he considers his officers his associates … during a battle he is calm, he speaks briefly and decisively and everybody listens to him ... extremely brave, very intelligent and with indocile energy … in spite of being famous, he knew how to stay simple and modest"[21]. Vojvoda Mišić is, even on world scale, an outstanding military commander who was able to successfully resist the attempts to make him join some political option. He successfully recognized where military began and politics ended, i.e. where politics began and military ended.

From the moment of pronouncing the verdict to the accused in the Salonika process till day when Colonel Apis, Major Vulović and civilian Malobabić were shot, Dr Reiss felt that he had to address the Serbian people and the international public. In July 1917, the readers in all the areas where the journal *Gazette de Lausanne* as well as other newspapers and magazines which used to take over its articles could be bought, had the opportunity to learn about another glorious Serbian military commander, Vojvoda Stepa Stepanović. Archibald Reiss met the Second Army Commander at the command post in Moglena. He began his story about the famous commander with description of his physical appearances and, like all experienced policemen, he gave the readers a faithful picture of Vojvoda Stepa. Reiss stressed that "he was

18 Rajs, A: *Šta sam video i proživeo u velikim danima*, Talija, Belgrade, 1997. p . 320.
19 Rajs, A: *Čujte Srbi čuvajte se sebe,*Akia Mali Princ, Belgrade, pp. 90–92.
20 Rajs, A: Ratni izveštaji iz Srbije i sa Solunskog fronta, Geopolitika, Belgrade, 2014, p. 277.
21 Ibid, pp. 276–278.

a highly respected and admired commander in the Serbian Army"[22]. As for Reiss's first impression about Stepa, he was a modest, not too talkative man and a little bit solitary. Vojvoda's behavior in June 1917 was quite understandable because he was Colonel Apis's friend and he was aware of the way in which he would be punished. He was also worried about possible implication of the Process upon the Army. Reiss then described the professional qualities of Vojvoda Stepa, mentioning his successes in the previous battles, in the Balkan wars and in the war that was in progress then. Indicating direction of the Second Army engagement in near future, it seemed as he had wanted to frighten Bulgarian and German soldiers on Dobro Polje. Like with Mišić, he emphasized that Vojvoda Stepa had come from a peasant family and that he was very closely connected to his homeland. He emphasized the fact that both famous Serbian commanders' origin was from the people, that they respected their soldiers and lived for them. When describing Vojvoda Mišić, Dr Reiss said that "only the commander who can rely on loyalty of his subordinates, can hope that big deed will be accomplished"[23], and the same was applicable in case of Vojvoda Stepa. Presenting of the glorious Vojvoda was completed with one good recommendation for the generations of young officers: "Stepa Stepanović is smart. He has devoted his life to his profession and his beloved country, and he has given up glory"[24]. In the tough times of trench war, desertion from the frontline, bad impression about just completed Salonika process and shooting of Colonel Apis and his comrades, Reiss provided the Serbian Army, but the people as well, with one more picture of the person worth of all respect and who could be a model of way in which a man should live and work for their homeland Serbia.

Dr Reiss stayed with the Serbian Army during the trench war in 1917 and he was the eyewitness of the second and final breakthrough of the Salonika front on 14 September after which he was present at its triumphant arrival to Serbia. Even after the war was over, he decided to stay in Serbia and with the Serbian people. Unfortunately, till his premature death he was witness of the additional implications of the Salonika process upon Serbian society.

## CONCLUSION

Finally, I would like to offer a compromise relating the Salonika process in 1917, using an interesting construction whose author is Miloš Ković, journalist in *Politika,* and I hope that, if not all of us, majority will agree with him. I am sure that even Colonel Apis, if he could be with us, would agree with the compromise solution. Indelible part of Serbian history is, on one side, officer of the Kingdom of Serbia Army – Colonel Dragutin Dimitrijević, **historical Apis**, and on the other side is the revolutionary and patriot Dragutin Dimitrijević, **mythical Apis**.

**The historical Apis** as a young officer violated the oath given to the King when his revolutionary feelings were misused for the first time by Austro-Hungarian intelligence service and the Karadjordjević Dynasty. As an officer who was expected to reach high duties and positions in the Kingdom of Serbia, due to his own fault, fault of those who he had brought to power but due to the fault made by his older colleagues officers in the General Staff as well, he did not manage to mark off where military ended and politics began, and where politics ended and military began. He allowed himself to be denounced because of homophobia and militaristic ideas relating to organization of the government in the country. As a senior officer and the first intelligence officer in the Kingdom of Serbia Army, he did not properly estimate who his friends and who his foes were, and that was confirmed in the course of the events on Vido-

22 Ibid, p. 298.
23 Ibid, p. 277.
24 Ibid, p. 300.

vdan in Sarajevo 1914, when his revolutionary feelings, as well as the feelings of *Mlada Bosna* organization members, were misused for the second time by German intelligence service, as well as during the Salonika process when almost all the accused began to speak against each other – apart from Colonel Apis.

**The mythical Apis** was primarily a patriot who loved Serbian people and who did not hate other nations. He could not stand autocracy and dictatorship of a sovereign of the people. He did not like political representatives who were performing their functions for their own greed, but not for general good. He was living for the moment when all Serbs and other Yugoslavs would be united and lived united and harmonious in one state. He was a revolutionary in his soul and he always had in his head an image of united, strong, better and happier Serbia. From time to time his enthusiasm was so strong that he was so blinded that he did not notice evil intentions of those surrounding and using him. It is pity that both historical and mythical Apis were focused and blinded by the idea of better future life for his people and state, so consequently he forgot about one of the sacred things of his people – own family. In the end, he remained alone.

It is good for both historic and mythical Apis, as well as for us who should learn about and respect history of our people, that he admitted that he made mistake when he allowed to become a part of political and party affairs and, consequently, to be less successful in his military job. Neither historical nor mythical Apis, nor his comrades, deserved being killed and buried without name and surname. In all of this, it is good for Colonel Apis and for Serbs that during the hard time of the Great War we had a common friend and that was Dr Rodolph Archibald Reiss. Only a man who genuinely respected values of Colonel Dragutin Dimitrijević – Apis, Regent Aleksandar Karađorđević and Prime Minister Nikola Pašić could, in the time of the unfortunate Salonika process, offer a solution which was containing a desirable model for young Serbian officers and for the future ones who wanted to become officers. Our ancestors – famous Serbian soldiers, non-commissioned officers and officers from the glorious battles on Cer, the Drina, the Kolubara, Gorničevo, Kajmakčalan, Crna Reka and Dobro Polje, thanks to their high morale values and outstanding will to defend the native country, were able to understand causes, reasons and possible consequences of the Salonika process and did not let its being transferred to the line of the front. In the name of our glorious ancestors and Dr Reiss, instead of letting the Salonika process become the reason for our further detachments and clashes, let us fulfill Colonel Apis's last wish and "let Serbia be happy".

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# PRIORITIES AND PROSPECTS FOR IMPROVEMENT OF THE EDUCATIONAL ACTIVITIES AT THE ST. PETERSBURG UNIVERSITY OF THE MINISTRY OF INTERIOR OF RUSSIA IN PREPARING STUDENTS FOR TECHNICAL CAREERS

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**Abstract:** In the article prospective directions of cadets' training related to the introduction of active and interactive pedagogical forms and methods, which in many ways increase the efficiency of training specialists of technical profile, are considered. To implement the presented pedagogical methods, software, availability of hardware complexes and knowledge of the teaching staff are necessary to implement the appropriate approaches based on modern computer classes with the ability to remotely administer workplaces of students.

The experience of using software is presented, which includes either specialized software complexes or virtual laboratory practices, and to some extent, standard widely used programs - STATISTICA, MathCad, Excel, etc.

The importance and necessity of the hardware of the educational process is noted, namely, the availability of a laboratory and technical base that allows to effectively implement the competence approach in the acquisition of cadets of professional skills and competencies, both in laboratory and practical classes, and during the passage of various types of practices in the profile Units of the Ministry of Internal Affairs.

The emphasis was placed on the need to introduce methods of conducting classes in computer classes with the ability to remotely administer automated workstations (AWP) of trainees. The experience of using such techniques allows us to establish the effectiveness of using computer classes in the contact work of the teacher with students, as well as during hours of independent work of cadets, in particular, when students prepare final qualification work.

The conclusion of the article draws attention to the need to use test programs to assess current and residual knowledge of students with the goal of introducing interactive methods based on the principles of interaction, activity of learners, reliance on group experience, as well as mandatory feedback.

**Key words:** active and interactive forms of education, software, hardware, innovative methods, test programs.

# INTRODUCTION

Modern society is interested in employees of law enforcement bodies, who have a high professional level and business qualities. To this end, departmental educational institutions need not only equip a graduate with a set of knowledge, but also to create such personality qualities as initiative, the ability to think creatively and find non-standard solutions.

A feature of the federal state educational standards of higher education (GEF VO) is their activity character, which sets the main task of the development of the personality of the cadet. This is manifested in the rejection of the traditional presentation of learning outcomes in the form of knowledge, skills and habits. Formulations of the GEF HPE indicate the actual activities and form the competencies of the graduate cadet. In this regard, it is required to change all the components of the educational process: content, methods of control and methods of teaching. One of the priority and promising areas for improving educational activities at the St. Petersburg University of the Ministry of Internal Affairs of Russia, related to changes in teaching methods, is the use of active and interactive methods in the educational process.

The basis of active methods is an experimentally established fact that, other things being equal, a person remembers only 10% of what he hears; 50% of what he sees and 90% of what he does. In other words, what I hear - I forget; what I see, - I remember; what I do, I understand.

As applied to the training of cadets at the St. Petersburg University of the Ministry of Internal Affairs of Russia, the following active teaching methods are used in the disciplines of the Special Information Technologies Department (SIT), which produces and is responsible for the technical directions of training:

- Training with the use of computer training programs (physics, fundamentals of electrical engineering and radio electronics, cryptographic protection of information, the basis of information security in ATS, information technology and others);
- Business games - a method of organizing the active work of students, aimed at developing certain recipes for effective educational and professional activities (the basis of information security in the police department);
- Brainstorming - a specialized method of group work aimed at generating new ideas, stimulating the creative thinking of each participant (the basis of information security in the ATS);
- Analysis of practical situations (case studies) - method of teaching skills in decision-making; its purpose is to teach students to analyse information, identify key problems, generate alternative solutions (the basis of information security in the ATS);
- System of clusters and others.

Thus, one of the actual problems in the educational practice is to increase the activity of the cadet in the class, his training should be based on active inclusion in the appropriate action.

The choice of a specific active method of training cadets depends on the didactic purpose of the lesson. So, for example, if the didactic goal of the lesson is to generalize the previously studied material, then it is advisable to use group discussion, brainstorming. If the didactic goal is to develop the ability to self-study or increase the educational motivation, then in this case a greater effect is provided by the business game, role play, the analysis of practical situations.

There are a number of examples of the use of active teaching methods depending on the didactic goal of the activity[123].

In January 2017, at the training and methodological collections on the priorities and prospects for improving educational activities held at the St. Petersburg University of the Ministry of the Interior of Russia, the issues of the introduction of active and interactive pedagogical forms were discussed in the work of section No. 9 "Interactive demonstration session in natural and mathematical sciences", as well as methods that promote the implementation of the competence approach in the learning process.

In the speeches of the scientific and pedagogical staff of the technical departments of the university, based on the generalization of the pedagogical experience of the use of active and interactive methods in the conduct of the classes, the following areas that contribute to the effective introduction of innovative pedagogical technologies in the learning process were noted.

First of all, the software of the educational process is required, as a rule, specialized; availability of hardware systems, i.e. modern laboratory and technical base, which is a requirement of federal state educational standards of higher education; possession of the scientific and pedagogical staff of the departments with methods that allow to implement the appropriate pedagogical approaches on the basis of modern computer classes with the possibilities of remote administration of workplaces of students; application of test programs to assess current and residual knowledge of cadets and listeners.

A few details about the above mentioned components.

## THE NEED FOR SOFTWARE EDUCATIONAL PROCESS

The software can consist either of specialized programs purchased from third-party manufacturers or manufactured in-house under the specific theme of a particular academic discipline, and to some extent, standard, widely used programs - STATISTICA, MathCad, Excel, etc.

Most of the practical classes on the academic disciplines of the SIT Chair are based on the use of specialized computer programs and laboratory complexes. The methodology of their application in class is based on the alternation of interactive and active forms of education.

Therefore, for example, in practical exercises in physics, the consolidation of the educational material outlined in the lecture begins with the provision of the possibility for the cadets to independently understand the interactive model of the process being studied, realized by the possibilities.

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1 Voronich V.V., Loknov A.I., Pospelov V.V., Primakin A.I. On the improvement of certain areas of activity of the departments of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation in order to improve the efficiency of training cadets in technical specialties: 09.03.02 - "Information systems and technologies" and 10.05.05 - "Information technology security in law enforcement" / Bulletin of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation. № 2 (66). 2015. – P. 162–169.

2 Muraviev A.V., Primakin A.I. Case-technology as a form of active methods of training cadets in conducting classes in technical disciplines / Improving the quality of the learning process through the use of active and interactive learning technologies: A collection of materials from the Round Table. Saint-Petersburg, April 27, 2015 / Compilation: Kochin A.A., Talyanin V.V., Shutova E.Y., Radchenko A.V., Loknov A.I. Staint-Petersburg: Publishing house of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation, 2015. – p. 163–165.

3 Kuvatov V.I., Primakin A.I., Yakovlev D.V. Method of forming the optimal sequence of studying the modules of the academic discipline on the basis of forgetting curves / Bulletin of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation. №. 2 (58). 2013. – p. 172–178.

Specialized laboratory computer practice for universities PHIZIKON. At the same time, students with interest communicate with each other, exchange knowledge, ways to translate this or that idea. In this case, the main task of the teacher is to skilfully and competently direct the activity of cadets in the direction of the studied issue. The used practice allows modelling, for example, the condition of the problem being solved, and the result (or the answer of the problem) is obtained not by a "formula" solution but by visualizing the phenomenon, modelling the corresponding physical process. This produces a strong impression on cadets, stimulates interest, and awakens creative activity[4].

The use of multimedia technologies in physics classes helps to reproduce a number of phenomena and processes of nature, for example, mechanics and optics. It is the technology, in which the perception of information is provided simultaneously by several senses. It is convenient to use the animations presented on the sites: "Classroom physics", "Unified collection of the COR" (http://class-fizika.narod.ru, http://school-collection.edu.ru); Video films "LLC" Video Studio "Kvart"; Electronic teaching aids "All physics. Library of electronic visual aids "," Open Physics 2.7 ". The combination of teacher's comments with video information or animation significantly activates the attention of cadets to the content of the presented training material and raises interest in a new topic.

The experience of applying innovative pedagogical technologies allows us to recommend an interactive methodology for conducting practical classes, in particular, on the discipline "Fundamentals of Information Security in the ATS." The thematic plan of this discipline presupposes cadets studying questions related to cryptographic methods of information protection, in particular with an electronic digital signature (EDS), which is more ideal for today.

As you know, the EDS algorithm is built on an asymmetric cryptographic system, so the first stage is studying the basics of cryptography. For this, the author's (developed by the teachers of the department) computer laboratory workshop "Control and training in encryption methods" is used. This laboratory practice allows not only simple and clear presentation of the fundamentals of cryptography to students, but also provides them with an opportunity for self-verification. - How correctly they understood the training material by referring to the section of the Workshop "Testing knowledge and encryption methods".

The cadet, in the process of checking the material he studied, is offered to decipher a message encrypted by one of the cryptographic algorithms he is studying. Faced with the difficulty in the decryption process, the cadet has the opportunity to apply to the section "Teaching encryption methods" again, simulate the situation proposed in the test task and, having eliminated the knowledge gap by the appropriate algorithm, return to the verification task. All this makes it possible to master the educational material in an accessible, visual and fascinating form.

In addition, the workshop contains a sufficiently extensive reference material on the historical development of cryptography, according to the algorithms of the cryptographic systems under study. The experience of conducting practical exercises with the application of the considered practical work shows that cadets study the material with interest, studying the elements of the game, the spirit of competition, excitement, and the desire to solve the proposed problem first.

4 Primakin AI The use of active forms and methods of education in preparing students of St. Petersburg State University Russian Interior Ministry in the preparation of the technical profile of the disciplines (in "Physics" discipline example) / Improving the quality of the learning process through the use of active and interactive learning technologies: A collection of materials from the Round Table. Saint-Petersburg, April 27, 2015 / Compilation: Kochin A.A., Talyanin V.V., Shutova E.Y., Radchenko A.V., Loknov A.I. Staint-Petersburg: Publishing house of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation, 2015 – p. 173–177.

Later, after the cadets mastered the basics of cryptography, the process of their learning passes to the second stage: the study and understanding of the functional purpose of EDS, which is extremely relevant today, especially taking into account the introduction of electronic document management in the work of law enforcement bodies. Pedagogical innovations used in the process of studying EDS are based on the practical training of cadets in the generation and distribution of cryptographic keys; signing, encrypting with their help an electronic message and transferring it to the addressee, carrying out the procedure for verifying the signature and decrypting the received message. Moreover, each cadet acts as a sender and recipient of an electronic document. Such interactive role-based approach (theory-practice-theory) in the process of mastering the studied subjects allows them to effectively achieve the goal of the lesson - to understand the rather complicated algorithm of EDS and apply it in the practical plane[5].

The Chair of SIT has worked out the method of studying mathematical disciplines taught at the department with the use of an interactive approach based on, to some extent, "standard" widely used computer programs - STATISTICA, MathCad, Excel.

To date, there are several mathematical packages that allow you to perform complex mathematical calculations quickly, simply and efficiently, even in a symbolic form. Here you should pay attention to such computational tools as Maple.

Mathematics and MathCad. These packages are allocated precisely because they support symbolic calculations at a sufficiently serious level.

The method of teaching mathematical disciplines is reduced to the cadet's fulfilment of the proposed tasks that presuppose both calculation and symbolic transformations of the proposed functions (for example, in performing differential and integral computations) with subsequent verification of the result in the environment of the integrated MathCad package. At the first stage of the practical lesson, the cadets independently carry out the solution of the problem without applying the MathCad package, and it is expedient to apply the element of "competitiveness", "rivalry" between the trainees: the first who fulfils the proposed task, has the opportunity to test it in the integrated MathCad package and proceed to the next tasks. Thus, using this technique there is an application of interactive learning technology: an independent solution of the problem, verification of its solution and transition to the next task.

It is advisable to apply the above methodology in the process of training cadets, both under the guidance of the teacher and during self-hours, which significantly increases the effectiveness of training. The integrated package MathCad allows you to visualize the material; the "physics" of the mathematical process becomes more understandable and clear. For example, in the section "Fundamentals of mathematical statistics", the cadets' understanding of what is a "distribution function of a random variable", "distribution density", what is the relationship between these functions, the way to verify the result is carried out quickly and clearly, in particular, finding the area of the figure Under the graph of the distribution density, which should be equal to one, is easily verified by means of the integrated MathCad package by means of the integration operation of the specified function[6].

5 Primakin A.I. Application of an interactive computer case study to improve the effectiveness of training cadets on the basics of cryptography / Regional Informatics (RI-2014).XIV Saint-Petersburg International Conference "Regional Informatics (RI-2014)". Saint-Petersburg, October 29-31, 2014: Conference proceedings. \ SPOISU. – Saint-Petersburg, 2014 – p. 181.

6 Primakin A.I., Yakovleva N.A. Improving the effectiveness of conducting practical classes in mathematics through the use of innovative technologies (using the example of the MathCad computer program) / Improving the efficiency of education and science at the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation within the framework of the implementation of the «Road Map» of the Ministry of Internal Affairs of the Russian Federation: materials of the educational and methodological training meeting. Saint-Petersburg, January 9-10, 2014 / Compilation: Kochin

# THE NEED FOR HARDWARE SUPPORT OF THE EDUCATIONAL PROCESS (THE PRESENCE OF A LABORATORY AND TECHNICAL BASE)

Formation of professional and professional competences of students makes special demands on the laboratory and technical base of the SIT chair, which provides all types of disciplinary and interdisciplinary training, laboratory, practical and research work of cadets and listeners provided for by the university curriculum. The analysis of the volume of the study hours on the disciplines of the SIT Department showed that practical types of classes oriented to the use of modern information technologies on the basis of specialized computer classes and classrooms account for more than 60% of the total classroom load.

The participation of the faculty of the SIT chair in the work of the interuniversity round table on the basis of the Moscow University of the Ministry of Internal Affairs of Russia on December 23 2016 expanded the experience of using the polygon-laboratory database in training cadets in the specialty 10.05.05 - "Information Security in Law Enforcement". The importance and necessity of the hardware of the educational process in the implementation of the competence approach was identified, as well as the role of the technical component for increasing the effectiveness of the acquisition of professional skills and competencies cadets and students during the passage of various types of practices.

Taking into account the requirements of GEF VO, as well as the volume of the theoretical and practical training load, the organizational structure of the laboratory and technical base of the SIT chair: a laboratory and two specialized computer classes was developed.

The laboratory of the SIT department consists of three offices: physics, electro- and radio measurements; systems and networks of data transmission; the software and hardware for information security; a polygon of technical protection of information. Each of the offices includes one or two auditoriums with the stands installed in them.

The general approach to the organization of classes on the basis of the technical protection information polygon is based on modelling situations related to attempts to penetrate an information system located in one of the adjacent audiences; the detection of threats and the organization of protection by the technical and software of a system located in another auditorium[7].

To increase the motivation, it is expedient to apply the group work of cadets: at the stage of consolidation of the studied material, each group includes students with weak, medium and high levels of training. The essence of this group work is this: the group gets the assignment; the stronger student implements it and explains to the weak comrades how it did it. This method develops cadets mutual assistance, collectivism, nurtures a culture of communication[8].

A.A., Kustov P.V., Pronina E.Y., Udaltsov A.A. Publishing house of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation, 2014 – p. 197–200.

7 Loknov A.I., Primakin A.I., Yakovleva N.A. Improvement of professional training of personnel in the specialty 10.05.05 - "Security of information technologies in law enforcement" for law enforcement agencies / Bulletin of the Ryazan branch of the Moscow University of the Ministry of the Internal Affairs of the Russian Federation named after V.Y. Kikotya. №. 9. 2015 – p. 67–74.

8 Zolotenko V.A., Primakin A.I. Methods of applying new information technologies to improve the effectiveness of independent training of cadets and listeners of the Saint-Petersburg University of the Ministry of the Internal Affairs of the Russian Federation / Organization of professional training in the context of improving the personnel policy of the Ministry of Internal Affairs of the Russian Federation: materials of the educational and methodological training meeting, Saint-Petersburg, January 10-12, 2013 / Compilation: Kochin A.A., Kustov P.V., Pronina E.Y. and others: Publishing house of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation, 2013 – p. 290–295.

## INTRODUCTION OF METHODS FOR CONDUCTING CLASSES ON TECHNICAL DISCIPLINES BASED ON COMPUTER CLASSES WITH THE ABILITY TO REMOTELY ADMINISTER WORKPLACES OF STUDENTS

The hardware and software of the specialized computer classes of the SIT chair allows: to control the mode of operation of each workstation of the cadet with the teacher's workstation; monitor the work of each student in an interactive mode and by learning to remotely conduct testing, the results of which are received at the teacher's workstation.

The experience of using the hardware and software capabilities of these classes to organize interactive practical exercises, in particular, on the discipline "Programming: languages, methods, technologies", showed the effectiveness of their use in contact work of the teacher with students, as well as during independent hours of cadets, specifically when preparing the final qualifying listeners [8].

To popularize the developed innovative pedagogical techniques and the experience of introducing active and interactive forms of teaching by the scientific and pedagogical staff of the SIT department, it was recommended that in the framework of summing up the results of educational and methodological fees (January, 2017), demonstration classes on the basis of computer classes with remote administration of workplaces of students were introduced, as well as installation of the necessary software that allows you to remotely administer the workstation in computer classes of St. Petersburg University HP Russia.

## THE NEED FOR A TEST PROGRAM TO ASSESS CURRENT AND RESIDUAL KNOWLEDGE OF STUDENTS

Improvement of educational activities at the St. Petersburg University of the Ministry of Internal Affairs of Russia assumes the ability to manage the delivery of educational material depending on the degree of its mastering by students. The control process is always connected with the existence of "feedback", which, in this case, manifests itself in the active application of test programs[9]. Test computer programs are required to allow you to easily create tests, both in textual and in graphical form, which is especially important for technical specialties; capable to increase the emotional response of cadets to the process of cognition, to motivate educational activity, to arouse interest in mastering new knowledge, skills and practical skills.

Until recently, the version of the program "Computer Testing System" was created and actively used at the SIT Department. Thus, the possibilities of the classical form of testing were realized, as well as some specific functions: accounting for your own score or the weight of the question in the test; introduction for each of the possible answers to the question of the degree of confidence in the correctness of the chosen scale response alternatives.

The first specific feature allows differentiating inside a test question in its fundamental importance. For example, an incorrect answer to a fundamentally significant question had a more negative impact on the result than an incorrect answer to a less significant question.

9 Kuvatov V.I., Potekhin V.S., Chudakov O.E. Statistical model for assessing the results of testing the knowledge of cadets, students and listeners of educational institutions of the Ministry of Internal Affairs of the Russian Federation / Bulletin of the Saint-Petersburg University of the Ministry of Internal Affairs of the Russian Federation. № 4 (68), 2015 – p. 195–299.

The second specific function allowed taking into account the emotional state of the tested person regarding the correctness of his answer, which was achieved by indicating the degree of his confidence. This specific function allowed the test person to form a certain tactics of behaviour during the test and developed in him the qualities necessary for skilful manoeuvring and rational use of firmly acquired knowledge[10].

At present, with the aim of introducing interactive methods based on the principles of interaction, activity of learners, reliance on group experience, the department of SIT is improving and improving the program "Computer Testing System".

## CONCLUSION

The directions presented in the article, based on the pedagogical experience of the scientific and pedagogical staff of the SIT and related to the introduction of active and interactive pedagogical forms and methods, make it possible to determine the priorities and prospects for improving the educational activity at the St. Petersburg University of the Ministry of Internal Affairs of Russia in training students in technical specialties.

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# CITIZENS EDUCATION ABOUT FLOODS: A SERBIAN CASE STUDY

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**Abstract**: The aim of quantitative research is a scientific explication of the effects certain demographic, socio-economic and psychological citizens characteristics on citizens education in Serbia about floods. It is because of that that during the whole 2015 a series of 2,500 face-to-face interviews was conducted in 19 out of the 190 municipalities of the Republic of Serbia. The study population consisted of all adult residents of the local communities in which floods occurred, and the sample size complied with the geographical and demographic size of the community. Results of the descriptive statistical analysis showed 24.9% of respondents were educated about natural disasters at school, 40.2% in the family, 29.9% at work, 39.9% of respondents know where elderly, disabled and infants live, 14% noted that they knew the risks of floods, etc. The research findings indicated that there is a statistically significant correlation between the level of knowledge about natural disasters and sex, age, marital status levels of education, fear of disaster, previous experience and income level. On the other hand, education at school, within the family, at work is statistically significantly associated with age, the level of education, marital status and employment status. The awareness of where elderly, disabled and infants live was not statistically significantly related to sex, the level of education, marital status and previous experience. The research indicates how to raise the level of citizens' knowledge starting from their demographic, socio-economic and psychological characteristics. The research originality lies in the uncharted impact of those factors on the citizens' knowledge about natural disasters in Serbia. The results can be used for the design of strategies to improve citizens' knowledge about the natural disasters caused by flooding.

**Keywords**: floods, citizens, education, factors, Serbia.

## INTRODUCTION

Flooding is usually defined as a result of the overflow of the river over its levees and spreading over nearby valley[1]. The risk of flooding only exists as part of the relationship between water and human habitation. For most of the world's population, flooding is a regular seasonal phenomenon that ensures the growth of crops as it brings danger.[2] In the period from 1900 to 2013, in world 8 thousand floods occurred, where 13 million of people died, 2 million have been injured, 6 billion have been affected leaving 176 million homeless. Over an annual statistical observation, it can be said that there were 74 flood events, six per month, and 0.20 per day[3]. Floods and torrential floods are the most frequent phenomena of the "natural risks" in Serbia. Their frequency, intensity and diffusion across the territory make them a continual threat to ecological, economic and social spheres.[4]

Every individual has the right and the obligation to be informed of the potential risks that exist in the area where they live or work and to be able to get ease access to this type of information. In this context, the role of the media is of particular importance. Mass media are responsible for the efficient and quick communication about the onset and consequences of disasters.[5] Disaster risk reduction should be systematically treated across the curriculum and through the grade levels at schools. The treatment must extend beyond the basic explanation of hazards and safety measures but need to consider prevention, mitigation, vulnerability and resilience[6]. School education is essential in enhancing knowledge and perception in this framework, but even the family education is a vital element too.

In general, people are resilient to natural disasters thanks to their knowledge and gained through experience made in previous similar situations. Families and communities education in this regard is directed towards the development of competencies to recognise the characteristics of such phenomena, to protect themselves and others, and to respond appropriately in a given moment[7].

## LITERATURE REVIEW

Dufty[8] defines community flood education as learning process or activity that builds community resilience. He highlighted that community flood education emcompasses both public communications than information products and services e.g. publications, Internet sites, and

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8 Dufty, N., 2008a, A new approach to community flood education, The Australian Journal of Emergency Management, Vol. 23 No. 2, May 2008

displays, but also training, development and industry- or community-specific programs comprehending education palns e.g. school and university curriculum. In addition, he proposes a new approach that involves the participation of the learners, focused on building people resilience, links with the 'flood cycle'and other flood mitigation and resilience-building plans and methods but gave emphasis on the longevity and the evaluation of flood education programs.

Shiwaku and colleagues[9] underlined that school disaster education based on lectures could raise risk perception, but it cannot enable students to know the importance of pre disaster measures and actions. They also argued that self education is an effective instrument for promoting students' preparedness for disaster risk reduction. Same findings have been highlighted by Shaw and colleagues[10] promoting the essentiality of self-education for realising and deepening the family and community education in the decision making process. They draw attention especially in the tool of disaster education finding conversation, experiencing, and visual aids to bet the more effective. In relation, Botzen et al. [11] found that individuals with little knowledge of the causes of floods have lower perceptions of flood risk proving that the provision of flood-risk information to the public usually increases their awareness[12]. Other socio-economic and demographic varibales such as gender have a degree of influence in the knowledge and acceptance of rflood risk. It has been found that they displayed larger sensitivity and knowledge to these events, however, this did not translate into a capacity to react[13]. They highlighted that their work as child-carers and housekeepers made them unable to create a strong social network within the community being less informed and involved in the decision-making process.

A lot of studies have been conducted to attempt to quantify the impacts of community flood education in minimising flood damages and assisting in emergency management.[14] Kellens and colleagues found that most studies operationalize disaster knowledge as perceived knowledge, by asking respondents to what extent they think or believe their knowledge reaches about risk related topics[15].Shiwaku and Shaw[16] in their research conducted in different parts of Japan, had the aim to understand the link between disaster education and students' awareness. They found a distinctly higher risk perception and risk reduction actions of the students in the Maiko, as compared to other schools. This is because the Maiko focuses on mitigation and preparedness, teaches about the social environment, and makes students develop the idea about the importance of prompt actions. According to the literature consulted, it appears that despite the fact students have already learnt about disasters and prevention measures for years at school they demonstrated to be confused about these extreme events.[17]

9 Shiwaku, K., Shaw, R., Kandel, R. C., Shrestha, S. N., & Dixit, A. M. (2007). Future perspective of school disaster education in Nepal. *Disaster Prevention and Management, 16*(4), 576-587.
10 Shaw, R., Kobayashi, K. S. H., & Kobayashi, M. (2004). *Ibidem.*
11 Botzen, W., Aerts, J., & Van Den Bergh, J. (2009). Dependence of flood risk perceptions on socioeconomic and objective risk factors. *Water Resources Research, 45*(10).
12 Raaijmakers, R., Krywkow, J., & van der Veen, A. (2008). Flood risk perceptions and spatial multicriteria analysis: an exploratory research for hazard mitigation. *Natural Hazards, 46*(3), 307-322.
13 Cvetković, V., Roder, G., Tarolli, P., Öcal, A., Ronan, K., & Dragićević, S. (2017). *Gender disparities in flood risk perception and preparedness: a Serbian case study.* Paper presented at the European Geosciences Union GmbH - EGU General Assembly 2017, At Vienna, Austria, Volume: Vol. 19, EGU2017-6720: Session HS1.9/NH1.18 Hydrological risk under a gender and age perspective, Wien.
14 Ronan, N. M., 2009, Future Flood Resilience – Victoria's Next Strategy, Paper presented to the Joint NSW and Victorian Flood Management Conference, Albury Wodonga 16 – 20 February 2009; Somek, D. M., 2010, Flood Risk Reduction – an Assessment of Costs and Benefits, paper presented at the IWA Young Water Professionals Conference in Sydney, July, 2010.
15 Kellens, W., Terpstra, T., & De Maeyer, P. (2013). Perception and communication of flood risks: a systematic review of empirical research. *Risk analysis*, *33*(1), 24-49.
16 Shiwaku, K., & Shaw, R. (2008). Proactive co-learning: a new paradigm in disaster education. *Disaster Prevention and Management, 17*(2), 183-198. doi:10.1108/09653560810872497
17 Tuswadi, & Hayashi, T. (2014). Disaster Prevention Education in Merapi Volcano Area Primary

Research results conducted in Scotland have shown that 38.1% of respondents informed about natural disasters over the neighbours, friends; 28.6% over the radio; 27.2% of the press; 28.5% over the national television; 36.7% through the competent authorities and 12.8% in other ways.[18] Cvetković et al.[19], found that those who had someone at school talking to them about natural disasters more often believed that they knew or were not sure whether they knew what best describes an earthquake, whereas those who did not listen to school when the subject of earthquakes was discussed more often believed that they did not know what an earthquake is. Also, they found that the sources of information about natural disasters (family, school, television, the Internet, radio, video games and lectures) influence the perceptions of secondary education students on their knowledge about earthquakes.

## METHODOLOGICAL FRAMEWORK IN RESEARCH

The aim of this research is to examine the role of citizens' education about floods in Serbia in their perception and preparedness actions. In this respect, the authors focused their attention in investigating the level of knowledge about floods, the vulnerable people that might be more exposed to such risks, the prompt actions after an official warning and the household safety procedures to undertake. To examine this, respondents were asked to rate on a Likert scale their opinions from 1 (I do know absolutely) to 5 (I do not know absolutely), or to express their agreement on close ended questions and multiple choice ones. To examine their level of education and knowledge about floods, they were asked to answer to the following questions:

- Have you ever been educated on flood events?
- Have you ever been educated by your family about the causes of floods?
- Have you ever been educated at your work-place about the causes of floods?
- Do you know elderly, disabled and infants live in your community?
- Do you have knowledge about risk maps and official warning about flood occurrence?
- Do you know what to do after an official warning of a flood occurrence?
- Do you know the location and how to manage water valve, gas valve, and electricity device in your household?

The sampling has been undertaken based on the stratification of the population of the Republic of Serbia and according to its exposure to flooding. For this reason, 19 out of 190 communities were randomly selected including Obrenovac, Šabac, Kruševac, Kragujevac, Sremska Mitrovica, Priboj, Batočina, Svilajnac, Lapovo, Paraćin, Smederevska Palanka, Sečanj, Loznica, Bajina Bašta, Smederevo, Novi Sad, Kraljevo, Rekovac and Užice. A series of 2,500 face-to-face interviews has been conducted during the whole 2015 being a good census-based representation of the whole population of Serbia.

Schools: Focusing on Students' Perception and Teachers' Performance. *Procedia Environmental Sciences*, *20*(The 4th International Conference on Sustainable Future for Human Security SUSTAIN 2013), 668-677. doi:10.1016/j.proenv.2014.03.080

18 Werritty, A., Houston, D., Ball, T., Tavendale, A., & Black, A. (2007). *Exploring the social impacts of flood risk and flooding in Scotland*: Scottish Executive Edinburgh.

19 Cvetković, V., Dragićević, S., Petrović, M., Mijaković, S., Jakovljević, V., & Gačić, J. (2015). Knowledge and perception of secondary school students in Belgrade about earthquakes as natural disasters. *Polish journal of environmental studies, 24*(4), 1553-1561.

## RESULTS

Given the importance of familiarity with safety procedures for responding to a flood, the respondents were asked to choose what they would do if a flood would occur. According to the results obtained the higher proportion of people (41.4%) would fill and use sandbags. In decrescent order, the 23.9% would put their furniture on the upper floors and similarly (23.9%) would keep the most important things and evacuate. The 4.3 % would move their vehicles to a safer place and just the 3.3% would brick up the doors and shut all the openings (Figure 1).

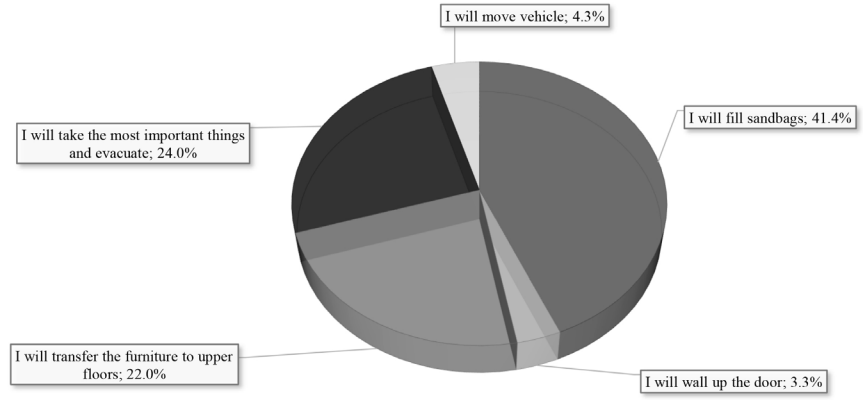


**Figure 1.** Percentage distribution of answers to the question: "What would you do in the period when expecting the flood wave?"

The school is a centre of education and results of this educational process are passed onto the families and the local community being centres of culture and teaching. Accordingly, the respondents were asked whether they have been educated about floods during high school. The answers were in the majority negative (75.1%) evidencing a tiny attention of school programs towards disasters occurrence and consequences. Apart from the school, the family, as the basic unit of society, usually bears the more negative burdens of floods. For this reason, they might have developed personal strategies to cope with these events generated by family-generated knowledge and past experiences acquired with previous situations. For this reason, the respondents were asked whether someone in the family educated them about floods. The majority (40.2 %) of the respondents discussed about flooding occurrence within the family context whereas the 38.9 % never explored this between household members. The remaining percentage was not sure about it. Furthermore, the respondents were asked whether the work-place was a source of knowledge about these events. The majority (45.5 %) answered negatively while the 29.9% received some information and training about flood events. The remainder again was not sure about the answers.

Mutual support and respect in the event of a natural disaster are of particular importance. However, to provide adequate assistance to vulnerable people, the citizens of local communities need to know where in their community elderly, disabled and infants live. Respondents were asked whether they have any idea about the locations of the most vulnerable people in the community. The percentage is not encouraging reaching just the 40 % of people that know where the more fragile people are based. In this regard, the respondents were asked to answer the question whether they know what type of assistance is required by elderly, disabled and infants before, during and after a flood. Slightly more than 50% of the respondents feel secure

about the procedures to undertake in the whole life of the flood may be ground on the composition of their own household.

Knowledge of flood risks by citizens in a local community is an essential precondition of awareness about the necessity of implementation of preparedness measures for a response. Risk map in this framework are essential knowledge to understand the place where they live and the potential danger they are exposed to. According to the interviewees only 14% are aware about the existing of these maps and are not knowledgeable about flood risk location in general. In line with this, the familiarity with warning systems is important for creating an environment in which evacuation could be an efficient procedure to undertake. According to the results, 26.6% said that they are familiar on the proper sections and after an imminent warning they know what to do. On the other hand, the remaining proportion of people are not sure (33.8 %) or don't know what do at all (32 %). The critical action to undertake before an incoming flood event needs to be taken even at the household level. People need to have sound knowledge of the location of valves for water, gas and main electricity supply and how to manage them in order to keep the house safe. The 76 % of respondents know where the water valve is, and 71.8 % know how to manage it. Concerning the gas valves, the 41 % of people know the location and only 38.8 % know their functioning. At the end 72.5% know where the main electricity switch is and 66.7% know how to treat it.

The results of chi-square test of independence show that there is a statistically significant relationship between almost all of the variables selected and the socio-economic factors, the demographic variable san dthe psycologicla ones (Table 1). Further analysis showed that men in a higher percentage than women claim that they know what a natural disaster is, in fact in slightly higher percentage than women (27.7 % vs. 25.3%) state that they have been informed at school. Similar findings have been found for adults respect the younger individuals. This is in contrast with the cross-tabulation with hazard education since the youngest are the one that expressed a higher education to these events. What is interesting to notice is that young people get educated even at a family level but this does not translate into a higher knowledge. The interviewees with a University degree in highest percentage (31.6%) state that they know what a flood is, unlike the citizens who have completed doctoral studies, i.e. the more educated category (0.5%), but no difference in education was found. Engaged citizens in the largest proportion (30.6%) claim that they know what a natural disaster is unlike the citizens who are singles or divorced. In addition, the power to be two individuals gave them the opportunity to speak about floods being more self confidence about these events. When it comes to fear, it was found that people who have fear of floods to a higher percentage (28%) respect painless people probably on the grounds of the education they have received. The information at household level has unfortunately been seen to be statistically correlated to fear. It seems that exchange communication elnarge the burden of worry. Even income has been seen to be a predictor of knowledge of floods occurrence. Low income people (up to RSD 50.000; 20.2 %) have lesser knowledge with respect to higher income people (above RSD 90.000; 35.4 %). Unexpected interviewees with no past experience (62.6%) of floods know better these events with respect to the ones who experienced such events (21.4%). The latter have been found to be more informed in the family context with respect to the opposite group. The employement status has been a predictor to the level of the information acquired at the houhold level. The unemployed people are more informed about these evetnts. Education at work is statistically significantly associated with all tested variables where men, adults, educated people, fearful people, employed and with prior flood experience got the higher values.

Table 1. Results of the chi-square test of independence

| | Gender | Age | Education | Marital status | Fear | Past experience | Income | Employment |
|---|---|---|---|---|---|---|---|---|
| Knowledge | .000* | .000* | .000* | .000* | .000* | .000* | .000* | .175 |
| Education | .347 | .000* | .003* | .003* | 0.263 | .087 | .000* | .000* |
| Family education | .085 | .000* | .000* | .000* | .012* | .001* | .162 | .009* |
| Work-place education | .000* | .000* | .000* | .000* | .000* | .002* | .000* | .000* |
| Knowledge of the location of vulnerable people | .249 | .005* | .060 | 0.07 | .008* | .338 | .023* | .011* |
| Knowledge of risk maps | .013* | .000* | .002* | .002* | .043* | .234 | .000* | .562 |
| Familiarity with official warnings and related actions | .073 | .000* | .000* | .000* | .021* | .000* | .000* | .027* |

*statistical significant correlation ≤ .05

Citizens aged 38 to 48 years in the highest percentage (45.9%) know where elderly, disabled and infants live. Similar statistical correlation has been found from married couples, more sensitive towards these fragile categories probably grounded on the comosition of the household. In additon, fearful people feel more concerned about the actions and the location around the more vulnerable in line with those that had previous experience. The correlation with knowledge of flood hazards and the set of dependent variables had almost the same results obtained for the knowledge of risk maps. Men (16.3%), citizens aged 58 to 68 years old, those that feel worried about these events (15.3%) and the employed (14.7%) are familiar with the risk maps. As expected past experience was the predictor of the knowledge of this documents.

Finally, education on how to act after an official warning about the approach of flood statistically significantly is associated with age, the level of education, marital status, fear of disasters, previous experience, level of income and employment while there is no association with gender. Adults are more confident on the actions to be underatken after a flood event (44.7%) with respect to the youngest (21%). Low educated people have similar confidence in line with sigle parents. It is probable that they have less responsibility for the preparing the household in the mitigation and recovery processes. Again the fear and past experience of floods is a proxy of a higehr level of knowledge about the actions in the aftermath a possible occurrence.

## CONCLUSIONS AND DISCUSSION

Regarding disaster risk reduction, schools should become increasingly important institutions in creating and improving the safety culture in children and youth. But not only since they provide the whole essential information and knowledge about disasters in the local community where students live. It can be said that the importance of school education on disasters has risen sharply in the last decades, especially bearing in mind that children are the most

vulnerable people in the society.[20] In this paper our findings highlighted the highest number of respondents were educated about natural disasters at school, than in the family and the end at work. School disaster education is very important and children who have been taught about the phenomenon of disasters and how to react to those situations have proved to be able to respond promptly and appropriately.[21] Also, continuous community involvement is the most important factor for school disaster education.[22] Johnston and colleagues found that the traditional educational programs on natural disasters focused on passive information provide a very low level of awareness and motivation of citizens to raise the level of preparedness for response.[23]

In the moments before the arrival of the flood the highest number of respondents would fill sandbags and the smallest nubmer would move their vehicles. Similar findings have been found in Scotland.[24] Regarding the actions aimed at preparing for a flood. They have evidenced that filled sandbags and locked doors were the most underatken measures underlining the place attachment and the unwillingess to evacuate or protect proper goods. Elderly people and disabled are in many ways especially vulnerable to the natural disasters and have specific needs in emergency situations.[25] Our findings highlighted that less than half of respondents know where elderly, disabled and infants live, while half of them know what assistance is required by these categories of people.

The awareness of the possibility to get exposed to a flood threats plays an important role in disaster risk reduction.[26]

The exposure to a threat plays an important role. In general, our respodents showed low personal flood-risk and level of knowledge of floods what to do in the period before the arrival of the flood wave. On the other hand, our findings highlighted that more than half of the respodents know where and how to handle the water valve and the main electric switch is. But less than half know where and how to handle the gas valve.

Community flood education is becoming an increasingly important flood mitigation and disaster management mechanism.[27] Citizens who are informed on time about the upcoming natural disaster through the warning and notification systems will not feel such fear because they know everything will go according to the pre-established procedures. [28] Besides fear, knowledge, previous hazard experience and feeling of threat of those at risk are important factors in the recognition of different risks.[29] We found that men, engaged citizens, respodents

20 Cvetković, V., & Stanišić, J. (2015). Relationship between demographic and environmental factors with knowledge of secondary school students on natural disasters., SASA, . *Journal of the Geographical Institute Jovan Cvijic, 65*(3), 323-340

21 Shaw, R., Takeuchi, Y., Ru Gwee, Q., & Shiwaku, K. (2011). Chapter 1 Disaster education: an introduction. In *Disaster education* (pp. 1-22). Emerald Group Publishing Limited.

22 Shiwaku, K., Shaw, R., Chandra Kandel, R., Narayan Shrestha, S., & Mani Dixit, A. (2007). Future perspective of school disaster education in Nepal. *Disaster Prevention and Management: An International Journal*, *16*(4), 576-587.

23 Johnston, D., Becker, J., & Paton, D. (2012). Multi-agency community engagement during disaster recovery: lessons from two New Zealand earthquake events. *Disaster Prevention and Management: An International Journal*, *21*(2), 252-268.

24 Werritty, A., Houston, D., Ball, T., Tavendale, A., & Black, A. (2007). *Exploring the social impacts of flood risk and flooding in Scotland*: Scottish Executive Edinburgh.

25 Eldar, R. (1992). The needs of elderly persons in natural disasters: observations and recommendations. *Disasters, 16*(4), 355–358.

26 Bosschaart, A., Kuiper, W., van der Schee, J., & Schoonenboom, J. (2013). The role of knowledge in students' flood-risk perception. *Natural hazards*, *69*(3), 1661-1680.

27 Dufty, N., 2008: Ibidem.

28 Paul, B. K., *Environmental hazards and disasters: contexts, perspectives and management*: John Wiley & Sons, Ltd, 2011.

29 Salvati, P. et al., 2014. Perception of flood and landslide risk in Italy: a preliminary analysis. *Natural Hazards and Earth System Science*, 14(9), pp.2589–2603.

who have a fear of floods, higher income peple and unemployed in a higher percentage than women, singles or divorcées, respodents who don't have fear of floods, low income people and employment claim that they know what a natural disaster is. To improve knowledge it is necessary to raise awareness through campaigns, educational programs and strategies for all citizens, especially women, citizens - aged 28 to 38 years, those who have completed doctoral studies, singles, those who have fear, who have incomes up to RSD 50.000 and who have no previous experience.

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# NEW TYPES OF THREATS AND THE CHALLENGE OF SECURITISATION

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**Abstract:** This study focuses on the new types of security threats and the problems around the methodology behind the potential reactions to them. It further discusses the disputed aspects that are taken into account in the process of securitisation.

A central question of our investigation is how the objective aspect of security related problems can counterbalance society's subjective perception, which is to a large extent shaped by public discourse. Many studies point out that one of the consequences of securitisation is when freedom rights are unreasonably restricted due to the application the "unusual mode of operation". As the meaning of security is interpreted only in an indirect manner, in the context of the existential threat, we must highlight the importance of the detecting indicators and their selection.

The study will also examine a special feature of the security complex (which can be interpreted as the complex derivative of the given threats), namely that it will/may become a conflict complex due to the incompatibility of interests.

We will also deal with the spatial structure of complexes but, besides the system of aspects of the Regional Security Complex Theory, we will emphasise the global relevance of security challenges, pointing out the expressly global embeddedness of the new types of threats (for example, security of resources, social problems, climate and water security, the ease of manipulation of the biological foundations of life).

**Keywords:** securitisation, threats, complexes, global challenges, conflicts

## INTRODUCTION: THE MANAGEABILITY OF THE INTELLECTUAL UNIT OF SECURITY

The security concept, which is derived from the Latin "sine cura" ("without any concern") concept, has become a key element of international relations with a rather exact meaning: interpreted in the context of state interest, it could mostly be associated with threats by and the application and control of armed forces.

In the reality described by James Rosenau as the "turbulence model"[1], the concept of security requires reinterpretation in several aspects. In the special "huge locality" context of the

1 Rosenau, 1990

globalised world, speaking of security only in a geographical sense and context has become an outdated idea.[2] The problem is made more complex by the fact that, at the same time, the importance of states does not decrease – on the contrary, "states that are inoperable or weak may become the black holes of the international system, which absorb their environment and might turn out to be the starting points of regional crises with global impacts." [3]

In the post-internationalist world[4], the context of the geography-based reinterpretation of power and security will become key and, as a result, not only the contents but also the methodology of security policy will entirely transform[5]. Meanwhile, as regards the overall picture, we can state that realistic endeavours are pushed to the background by postmodern narratives.

"In essence, the already known constructivist epistemological shift (Luhmann) defines security as a social fiction, which is not a political process, neither an objective, but a social tool for the reduction of complexity. Methodology-wise, therefore, the socially constructed concepts of security must be researched since these provide an interpretation framework for the understanding of what society considers as a security problem." [6]

It is not unjustified to consider the dispute around the expanded interpretations of security as one of the most exciting intellectual challenges of our days. In any case, the focus of the discourse on broadening vs. narrowing is one of the key issues of the new world order.

The notion of 'threat' is assuming an ever softer nature - besides high politics, low politics is also fast gaining space and, in this context, the process of classifying a phenomenon as a threat is becoming ever more exciting. What can be classified as a threat, and on what basis?[7]

The attention of security policy analysts must be turned from the mere observation of threats to the questions of how, by whom, in what circumstances and with what consequences certain issues can become security problems that can be construed as existential threats and why other issues are not classified into the same category." [8]

According to the securitisation theory of the Copenhagen School, threats are constructed in social communication – in essence, in speech acts – and then give rise to change in social reality through the verbal space. This approach is significant in two aspects. First, we must realise that for a speech act to be successful, the actor must fill in a social position from which s/he can speak authentically. This usually requires a social position / status, but does not always require a power position. Having a position that legitimises the person to say "important things" and also be believed is an indispensable element of the process of securitisation. [9]

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2 In this context, we consider it inevitable to refer to a study by Jean-Marie Guéhenno, in which he interprets the changes that took place in the 1990s as a special "regional revolution" and, in essence, discusses the crisis of the concept of security tied to geographical location. (Guéhenno, 1998 pp. 14-15 )
3 Kiss, 2006 pp. 214
4 Czempiel, 1999 pp. 244-245
5 In this context, reference must be made to a study of Kiss, who discusses the metamorphosis of security in the context of the postmodern state. Kiss, 2006
6 Kiss, 2006, p. 227
7 The broadened interpretation of the concept of security has brought about the broadening of the definition of the concept of threat: from a purely military interpretation, a more general definition was offered, while security related studies continued to fail to offer an accurate definition of "threat". It is obvious that the primarily role of the concepts of "threat", "potential threat" and "risk" is to express the degree of threat – but this can be rather different in the different dimensions of security. We ought not ignore the fact, which security issue journalists have been discussing since the 1960s, that security can be approached in both an objective and a subjective way ("real threat" and "threat perception", respectively), and it is far from certain that the two approaches always exactly overlap. Gazdag-Tálas 2008, p. 8
8 Sietschlag 2006, p. 15
9 Waever, 1998

The position, thus, also assumes the capability to conspicuously embed the threat included in the communication into both the past and the future: the threat may be authenticated by being possible to associate with the experience from the past and with a dark "vision" outlined on the basis of a forecast that is considered fair and reasonable for society. Par excellence, the threat included in the speech act shows, for both the past and the future, that the exactness of this problem can be attached far more to the successfulness of legalisation than its factualness.

At the same time, with regard to the complexity and heterogeneity of the problem of security the identification of the interrelations connected to threats, there exists a determining and universal starting point: to tie interpretations and identification attempts to the development context; "to the danger that development will get out of our control." [10]

In this regard, it is especially exciting to examine the resilient nature of the security of our turbulent world, since its twofold tension can be identified that exists between its load bearing capacity regarding change (efficiency) and its struggle for survival or stability (persistence). Consequently, all changes can be interpreted as threats that undermine the rules, norms and institutions that maintain the current system, while development, by its nature, assumes that these will be outdated – so, from a certain aspect, it is immobility and inability to change that can be interpreted as threats.

Discussing this paradox becomes especially important when the political dimension of threats and dangers is analysed. "The interpretation of political security is made rather complicated by the fact that several features of sovereignty have taken shape in the 21st century. In the European Union, for example, the sharing of sovereignty is common practice"[11], and while joint foreign policy has risen to a supranational level, real solutions to and proposals for crises and threats are created mostly at the level of member states or, more accurately, cooperation schemes between member states. The status quo of the EU clearly shows that the preconditions of political integration do not exist and, therefore, the crisis has given rise to the shaping and strengthening of political alliances/groups along local/national interests, and, as regards integration, it is this very regression that appears as the most severe threat. Furthermore, exciting issues arise as a result of the fact that the member states of the European Union show an increasing willingness to strengthen resilience as their fostering resilience at the regional level. The conflicts of interests between Brussels and the regionally organised member states offer a rather rich portfolio of events that illustrate this argument.[12]

## THE NEW CONTEXT OF PROBLEM MANAGEMENT: REGIONAL AND/OR ISSUE-SPECIFIC APPROACH

The changes in the medium of the operation of security policy in the 1990s gave rise to new conflict types and brought about changes in the forms of crisis management, power relations and orientation policies.

In the globalised world of our days, political and security policy conditions have changed and, consequently, the identification of threats and dangers is possible only with a brand new approach. First of all, completely new types of challenges are appearing[13], and, as a result of their interconnections, they can be interpreted in a unique complexity. They are intertwined

10 Kiss, 2006, p. 229
11 Tálas 2016, p. 7
12 Ugrin, 2017 SKI Manuscript
13 These new challenges include, besides migration, terrorism and organised crime, the maintenance of the operation of the globalised financial structure, environmental security aspects related to globalisation and, in the long term, climate change and its increasingly conflict generating nature.

they mutually amplify one another's impacts – while these impacts often become directly perceivable, through the operation of mass communication media. Another important feature of them is unpredictability.

The new challenges, the changed typology, methodological forms and legal background of crisis management require not only the identification of new topics and phenomena to get to know but also the reinterpretation of our attitude to information – first and foremost the availability of a system capable of properly selecting relevant and reliable information. Operation-orientedness is replaced by information-orientedness. (Laufer, B. 2010)

It is important, therefore, to identify and explore the quality related requirements which those involved in security policy making and application must face in any respect. The biggest challenges are the unidentifiability of the sources of threats and the inability to identify the actual nature of the given threat: it is often unclear what mechanism should be used to consider something as an existential threat.

Moreover, "with these changed political and security policy conditions in place, the aims of accessing and protecting information are no longer only to be secured against threats and dangers but also to collect any and all information that has an impact on the country's position in any form and in any direction and is related to politics, security policy, military issues, economics, finances, science, national security, internal security or other special fields and – as a novel phenomenon – to control the gathering of experience, the quality of partnership cooperation, the opinion of our partners about us and information about other areas, other fields of international cooperation and to prevent any acts against the country's interests".[14]

Security policy becomes social practice in the interaction of actions and reactions. It is an undisputable fact that governmental actors play the key role in shaping the security policy agenda, their thinking is also shaped and they are forced to take into account general social beliefs and to perform their speech acts in line with such beliefs. However, a new development of globalisation – and Buzan et al focused on this in creating their securitisation concept – is the fact that the position of states (and, generally, all the actors involved in this scenario) in the network of interconnections to a great extent depends on the movement of other, external players. The members of the system comprised of states are entwined in the network of the interdependency of global security[15], though the impacts and exposures are not equal.

Under normal conditions, the interdependence pattern of security is characterised by regional division and the regional clusters that can be identified in this pattern are referred to by Buzan et al as "security complexes".[16] The complex system of inter-state relations creates a unique structure and dynamics, whose main feature is interdependence. According to the Regional Security Complex Theory (RSCT), the regional security complex (RSC) is a group of states that is maintained and kept together by a tight attachment that forms along their security related problems as their group of problems cannot be interpreted and solved independently.

In the broadest possible context, the responses given to crises and their implementation may seem far more efficient at the regional level[17] than at the level of either the individual

14 Jávor, 2007
15 Buzan et al, 1998, p. 11
16 Buzan et al, 1998, pp. 11
17 In the broadest context, the example of the "Visegrád Four" in respect to regionalisation can be considered as a model. *New regionalisation attempts* have embedded European integration into the organic development process from the outset and continue on the same path in the deepening of integration. (Ugrin, 2017 SKI Manuscript)
The integration of a regional level into the cooperation of member states is not merely a theoretical scheme but is actually done based on existing practices, which are not far from the EU's current policy. The difference and novelty is that already existing regions get institutionalised within the structure of the European Union.

states or globally. Although Buzan et al tried to get rid of the global analysis level – the uneven and heterogeneous nature of global security complexes – and to differentiate the problem sectors by regions[18], the positions which raise doubt about the theory of Buzan et al on the grounds that security complexes often go beyond the boundaries of a given region without finally reaching a global coverage do not seem unjustified.

Such criticism seems justified even though it is undisputable that the role of regional structures as a special principle of arrangement is becoming increasingly important in the global-local ("globlocal"), especially because the big powers that can influence the security of regions other than and falling outside of their own no longer want to play a role in all regions, especially for economic and financial reasons. Thus, regions left alone can create their regional system and, as part of that, its security dimension on their own. In this respect, however, attention should be called to two factors.

On the one hand, we must emphasise that, if performed only on the basis of geographical location, problem management will be restricted. On the other hand, we consider that it is essential to manage the conflict complex[19].

The global-local ("globlocal") dimension, "global heterogeneities" render possible solutions more difficult to implement. New types of threats cannot be directly associated to a geographical area: they appear with the same intensity crossing borders and boundaries. This is exactly why we consider that it is essential to take an issue-specific approach.

Issue-specific security complexes are systems of actors, states and conditions that interact along a given issue and, within these complexes, this system of interactions actually (i.e. in a manner that can be proven with data) affects the existential security of the individual actors (or at least of some of these actors).[20]

"The issue-specific security complex as an interpretation framework can be a significant step forward in the discussion of problems that have (or seem to have) a security related nature because it sheds strong light on the nature (and validity) of securitisation with respect to different issues that are identified as threats.

It is a natural expectation of security policy makers to have, when talking about threats, a clear picture of the source, carriers, limitations and coverage of the given threat, as well as of the measures that can be considered optimal against the given threat at least in principle – even if they cannot be taken at the given time. [21]

## COOPERATION AND/OR CONFLICT COMPLEX

*„Politics is not a random process; there is an element of goal-directedness. Actors, individual or collective, subnational national or supranational (including transnational) try to attain something. There is an everlasting effort to realize goals, to implement programs written in a goal language, which leads to conflicts, including conflicts over the definitions of those programs."*[22]

Contemporary security policy thinking pays special attention to the conflict complex, which can be identified in the area of interaction between the threat complex and securitisation.

18 Buzan et al (1998) distinguish five sectors: political, military, economic, social and environmental.
19 In essence, "each security complex is at the same time a conflict complex, i.e. an interrelated system of the entirety of conflicts." (Marton-Balogh, Rada, 2015, p. 71)
20 Issue-specific security complexes also contain the phenomenon of securitisation.
21 Marton-Balogh, Rada, 2015, p. 66
22 Johan Galtung, 2010 pp. 159

Along the so-called overspill effect of threats, the management of threats at the appropriate level is becoming especially important – however, at the same time, the conflict of interests between the different actors is strengthening. Successful intervention, a key aspect of the management of this problem, thus to a great extent depends on whether and how the different aspects and calculations are taken into account.[23]

The three-dimensional approach to conflicts now qualifies as a classic approach: in essence, a conflict can be interpreted and classified into the conflict typology in the synthesis of conflict attitudes (cultural aggression), conflict behaviour (direct aggression) and the incompatibility of interests (structural aggression).

Professional literature usually identifies 6 conflict types in connection with security:

1. frontal conflicts – the type of the system of relations between actors which can range from open threats to actual wars;
2. implicit conflicts – an actor wilfully puts negative security impacts on others (for example, a denying support of terrorism by a country);
3. attribute or trust conflicts – mainly between partners, the lack of trust towards the other and the fear from being abandoned;
4. cooperation-embedded conflicts – conflicts arising in connection with the sharing of burdens related to security;
5. indirect conflicts – conflicts related to the negative externalities generated through the creation of security (when an actor non-wilfully puts burdens on others).
6. epistemological conflicts – conflicts arising from a conflict of views related to security. [24]

New approaches, which are inspired by economics and game theory, point out[25] that the basis of individual conflicts is the contradictory nature of the system itself – the world order – since the vacuum that has formed partly as a result of the wanting regulation of globalisation related and transnational courses for movement and partly as a result of attempts made to minimise the authority of the state is very deftly used by certain actors to capitalise on for their own benefit[26], as opposed to "security" that can be considered as a public good and interpreted universally.[27]

Consequently, conflicts can less and less be considered anomalies, the clumsy behaviour of backward regions which are left out of the globalisation of the world: on the contrary, conflicts are an organic part of the international environment. And the regional, international and transnational dimensions of conflicts seem to justify the position that the management of conflicts inside the state ought to be replaced with structural conflict prevention built upon institutional solutions, both at the regional and at the global level.

"The postmodern world is walking on the path of state-weakening: a path that deviates from the premodern one and is characterised by supranational integration, regionalisation, mutual openness, intervention in one another's internal affairs and the inseparability of foreign policy and domestic politics." [28]

23 And this is a rather complex task, since it is usually impossible to aim at making a large-scale and ultimate compromise. „By doing so, we would practically automatically accept all interest declarations as legitimate, which would be morally totally unacceptable. People tend to come up with unrealistic – and, at the same time, morally also unacceptable – claims." (Marton-Balogh-Rada, 2015, p. 79)
24 Marton-Balogh-Rada, 2015, pp. 72-73
25 See: Galtung, 2010
26 Many private actors of the world economy utilise the special economic opportunities offered by conflicts, i.e. that in the circumstances of political instability huge profits can be made in a short time. In her ethnographic research, Carolyn Nordstrom examined how conflict economies integrate into the global shadow economy and, then, how the latter becomes part of the world economy. (2004, p. 11)
27 Primarily Deudney, 1990
28 Marton, 2006

In the behaviour of actors in conflicts, recent research has increasingly identified the behaviour and logic of homo oeconomicus[29], which indicates that – besides communication and cultural problems – calculations connected to the cost-benefit analysis are in the background. "The actors of conflicts use their resources in an optimised way, create networks organised around their power centres to acquire and distribute such resources, join conflicts and then reshape them in accordance with their own interests." [30]

We must, therefore, highlight the change in the location of conflicts. In recent years, the transnational structures that maintain the conflicts – mostly through the creation and support of the actors themselves[31] – have gained increasing importance.

According to Friedmann, we can consider it a conceptual change that "conflicts can less and less be seen as a sign of backwardness or some sort of anomaly, which does not fit into the postmodern world order that is taking shape. On the contrary: they are a part of the new order." [32]

Consequently, the elaboration of the new tools of conflict management will play a key role. "The efficient operation of the security sector can be seen not only in that it provides stable security for the state and the people but also in that it is well organised. Under bad management, the right of people, communities and the state to security is infringed, security institutions will have a dysfunctional operation."[33]

Professional literature distinguishes state-centred and civilian-centred security. These can be measured with different indicators and indices[34]. Besides the traditional concept of the security of the state, therefore, the doctrine has also created the concept of individual-centred security. This is a security concept with a wider coverage than public security as it is also inclusive of the issues of human security.

*„What we are saying is in fact just this: homo mensura, man is the measure of all things. But this is not seen here as an abstract, value-loaded position only. It does not imply any rejection of the obvious, that there are collective actors that do pursue goals seen as "abstract"–in the preceding paragraph–such as wealth, power, democratic organization of political life, socialist organization of economic life. Nor is there any a priori rejection of the hypothesis that some of these strategies may lead to human need satisfaction for people below the politicians directly responsible for such exercises."* [35]

In this respect, it could be important to work out and apply a research-based methodology with indicators relevant for the measurement of governmental and intergovernmental performance and efficiency. In the field of security related studies, we would like to encourage the elaboration of mathematically manageable systems of indices, which are suitable for both the subsystem-level and the complex analysis and measurement of security[36].

29 „An important recognition of the new approach was that reference to the limitations of rationality (e.g. the role of imperfect information) or irrational factors (e.g. ancient hatreds) does not offer sufficient explanation for the formation and survival of conflicts." (Friedmann, 2007)
30 Friedmann, 2007
31 Literature began to increasingly emphasise the importance of the regional level, while attempts were being made at introducing a new concept. They included, among others, the following: regional conflict-complexes, black hole phenomena, conflict groups, overspill or infection effects. With respect to preference given to regionalism, reference ought to be made to the following works: Wallensteen, Sollenberg (1998) and Buhaug: Contagion or Confusion?
32 Friedmann, 2007
33 Kis – Szenes et al, 2014
34 Schroeder, 2014
35 Johan Galtung, 2010, p. 160
36 Of the assessments that identify external security with military force, the Global Firepower (GFP) index is important, which calculates countries' traditional military power from 43 indicators, which it uses to calculate a global power index ("PwrIndx"). By ranking the results, we get the list of countries

## SUMMARY

This study uses the multidimensional security model of the Copenhagen School, and attempts to present the conflict complex and its shifts toward cooperative multilateralism, in the context of the updated suggestions of the discourse space.

In the framework of the broad interpretation of the concept of security, mentions are made of the attempts at offering new definitions, which give a broader interpretation of 'security' than that of public security and, as part of the effort to integrate human security issues, encourage the application of the doctrinal and practical aspects of the further deepening of the meaning of security, as well as its mapping onto the dimension of human rights and of the operation of the rule-of-law state.

The importance of a uniform international methodology for the measurement of security is also highlighted. As neither a uniform system of interpretation nor a uniform measurement methodology has taken shape, research in this direction could have special importance. For the assessment of the foreign and security policy activities of international organisations and countries, scientific research support and the development and maintenance of databases are becoming increasingly important. The shifting of the data coverage and assessment of organisations dealing with statistical data processing towards security requires a proper intellectual background and expertise. It must be emphasised that the "softer" the essence of the concept of security becomes, the more important it is to strive for scientific exactness.

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ranked on the basis of their military power. "Comparative algorithms are compiled so that the GFP power index can compare larger and more developed countries with smaller, developing countries. Though the military power index measures warfare potential is measured over a broad dimension, it applies, to enable comparability, correction factors that make comparisons realistic (for example, comparison of a sea power with an inland country). However, the GFP index does not assess the quality of the given country's political and military leadership, and has excluded nuclear weapons from its measurements." (Kis – Szenes et al, 2014)

It is beyond doubt that the most comprehensive and most complex system of measurement was created by the European Union in 2010, when it created the integrated European External Action Service. The international performance of the individual countries and of the EU has been assessed by the European Council on Foreign Relations (ECFR) since 2010, based on 60-80 foreign policy indicators (66 indicators in 2013). The results show the EU's foreign policy performance and the successfulness of the member states' governmental activities in a broader context. (For more, see: Kis – Szenes et al, 2014)

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# ETIOLOGY OF MIGRANT CRISIS

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*,,Alarmed by the misery in which they were flooded with hope for a better future, run the spirit of endurance and courage, these intrepid adventurers have become a deterrent. The peaceful inhabitants of the countries where they hurried they could withstand a long powerfull people running so strong reasons."*

*R. Malthus*

**Abstract:** Migrant crisis, the result of a deliberate plan or set of circumstances, in any case, it is an event that fundamentally earthquake richest union confederation today - the European Union, but also all countries that are in the way of migrants. This paper analyzes the causes of the most massive modern,, the migration of peoples" and its consequences for the countries of the European Union and other transit countries. Authors presented semantic analysis of linguistic phrases,, migrant crisis". Special attention is paid to events that are collectively referred to as,, Arab Spring". This paper presents the historical genesis,, the Arab Spring" and its impact on national security, the countries of North Africa and the Middle East. As a direct consequence of ,,the Arab Spring" in terms of security, is launching a multimillion wave of refugees to Europe, which will lead to a migrant crisis, or to different reflection to the security of European countries, but also transit countries (the countries through which the refugees had to go to your goal). It turned out that the refugee columns epicenter of organized crime, war, terrorism, and the social and political upheavals of the countries through which they had on their way to go. The authors give a comparison of perceptions and migrant crisis and its consequences by leading domestic and foreign theorists of globalization.

**Keywords:** etiology, causes of migrant crisis, ,,the Arab Spring"

## INTRODUCTION

After the terror experienced during the two world wars, and the establishment of worldwide organizations whose primary purpose is the construction and preservation of world peace, the general opinion is that humanity ,,wised up" and finally went through respect for ,,the principle of peaceful coexistence". However, we are still witnessing a permanent threat to the fundamental rights to peace, freedom and protection of the territorial integrity and sovereignty of individual states. In fact, it seems that all the efforts of the modern world in terms of raising the level of international respect, tolerance and the spread of human solidarity was in vain. ,,Migrations" as a leading geopolitician called migration of the population of some countries of North Africa and the Middle East, the best proof of this assertion.

When a social anonymous, street vendor Mohammed Buazizi, burned in front of the city hall in the Tunisian town of Sidi Bouzid (17.12.2010. year), no one could assume that his protest, and his victim, actually represent a direct cause of a series of political protest which will result in a shift of power in several North African countries, that is the beginning of the

phenomenon „the Arab spring". The consequences of this phenomenon are multiple and in different spheres of life (political, sociological, security, economic) very influential and visible.

However, as a direct result „the Arab Spring" in terms of security, is launching a multi-million wave of refugees to the countries of Western Europe, which will lead to a migrant crisis, or to different reflection to the security of Western Europe (the ultimate objective of refugees), but also transit countries (the countries through which the refugees had to go to your destination). It has been shown that the refugee columns epicenter of organized crime, war, terrorism, and the social and political upheavals of the countries through which they had on their way to go. Also, in many of these countries refugees are perceived as a threat to the economy, social stability and the health care system as far as to imply the growing hostility of the local population and the rise of xenophobia, racism and strengthen the right-wing movement. Consequently, many domestic (Z. Dragišić, D. Simeunović, R. Milašinović) and foreign security scholars (B. Tamagno, E. Collet, D. Robinson), rightly considered migration, ie,, migrant crisis" as the most important and largest of consequence,, the Arab Spring".

The work is divided into two sections that give us a unique image of the phenomenon of migrant crisis. In the first part the focus is placed on semantic analysis of phrase,, migrant crisis", while the second part refers to the genesis,, the Arab Spring" as a generator of migrant crisis and its overall impact on the same.

## SEMANTIC ANALYSIS OF PHRASE,, MIGRANT CRISIS"

The phrase,, migrant crisis" consists of two terms,, migrant" and,, crisis" with a different meaning, whereby migrant has denotative and connotative role in crisis labeling. In order to nominal definitions given term, it is necessary to first determine the meaning of the terms,, migrant" and,, crisis". Using correlative term for migration (immigrants, emigrants, refugees, immigrants, migrants, asylum seekers) in everyday life is very common, and all the dates, in principle designate persons living outside their home country. However, in order to define the status of migrants in contemporary society, it is essential that more precise and more accurate to determine the scope and content of those terms, but also indicate their distinctions.

Migration[1] is the relocation of the population from one area to another, permanent or temporary, regardless of whether it takes place within the boundaries of national territory or between two countries. Domesticated side term migration to the more frequent use than the domestic population resettlement, which means only a spatial displacement, migration and the term is used only in the broad sense, in terms of changes of interest.[2] Two basic types of migration are: emigration and immigration, and the terms emigrant and immigrants are the only persons who are in a particular type of migration.

Webster's International Dictionary the term „migration" means to leave, or change of residence from one place to another; for example, the relocation of individuals, families, communities or tribes from one country or region to another. Also, migration is and periodic relocation from one region to another for eating and better living conditions, which is the case not only with people but also with animal species. Accordingly, the term "migrant" is defined as an individual who migrates, or change the location of life.[3] A more specific definition of the term "migration" gives Milan Vujaklija, which under the specified term means removal or eviction from the country. At the same time mentioned the term is also used to denote the

1 The word originates from the Latin word „migration", we translated this word as a „moving"
2 *Politička enciklopedija*, 1975, Beograd, Savremena administracija
3 *Webster's International Dictionary*, 1955, Second Edition, G&C Merriam Company, Springfield, Mass., USA, p. 1557.

set of all migrants from a country to live in another country. The term „migrant" (from the Latin word „emigrants") means a person who is moving out of the country in which he lived, that may be called the immigrant, or the person who left the homeland for political, religious or other reasons.[4]

Correlative term is a term refugees, which is the scope and content somewhat narrower, whereby the term migrant appears as a general (comprehensive, expanding). Definition of specifics reflected in the fact that the refugees forced to leave their country, while migrant principle may voluntarily decide to leave the country for various reasons that do not involve emergency. Thus, the term refugee is related to the political elements which comprise the face persecution on religious, racial or political grounds.[5]

The division of migration based on the legal status of migrants can be: legal and "illegal", and regular and irregular. Illegal (irregular) migration is any movement of population from one country to another, which is not in accordance with the applicable regulations of the country origin and the country of destination, as well as stay in a country in contravention of applicable regulations of that country. Illegal migrant foreign citizens who illegally entered and/or come to another country (entering outside a border crossing, the entry of counterfeit or otherwise illegitimate passport), but in order to stay or permanent residence. With this term equates to persons who have legally entered the country, but after the expiry of the legal stay that country never left. But according to current international regulations, illegal immigrant as a person who, for illegal entry into the country or the expiry of the visa does not have legal status in the country of transit or country of residence. The term applies to migrants who have broken the laws of the host country on entry of foreign nationals, asylum seekers without legal grounds or any other person who is not entitled to stay in the country concerned.

Despite the fact that there is no universally accepted definition of migrants at the international level, the term migrant is usually used to refer to those persons who migrate freely because of "personal convenience" or so-called voluntary migration. It means the absence of any external intervention of factors which can't be resisted. This is certainly not to be reckoned tourists.[6]

Seekers, and asylum seekers, the terms are often used in correlation with the terms migration and migrants. The word „asylum" for its origin is actually two Greek coins expression asylos - unrobbed or inviolable, and asula - robbing the temple, consequently, the term represents a safe haven, a sanctuary, a refuge for accommodation and living of the poor and persecuted. In short, under the asylum may be considered inviolable place where the persecuted seek refuge. A person who has obtained refugee status should not be prosecuted for their political activity in the country that gave him hospitality, and can't be extradited to another state for criminal prosecution or enforcement of penalties.[7]

There are two types of asylum such as: *territorial* and *extraterritorial*. Territorial asylum implies the right of individuals to reside in the territory of the country that has provided refuge and the right to refuse his extradition. Exterritorial law, the term more commonly known as diplomatic asylum may be granted in the premises of a diplomatic mission in the country where a person is exposed to persecution or war ship that gives the state asylum.

In ancient Greece the word„ crisis" (κριςις) meant„ judgment" or„ decision", that is the decisive moment trier of further positive or negative development. In Mandarin language

4 Vujaklija M., 1980, *Leksikon stranih reči i izraza*, , Beograd, Prosveta, p. 279.
5 Evans, G., Newnham, J., 1998, *The Penguin Dictionary of International Relations*, London, Penguin Books, p. 242.
6 Mijalković, S., Žarković, M., 2012, *Ilegalne migracije i trgovina ljudima*, Beograd, Kriminalističko-policijska akademija, pp 16-17.
7 Vujaklija M., 1980, *Leksikon stranih reči i izraza*, Beograd, Prosveta, p. 37.

symbol for crisis includes characters that mean,, danger" and,, opportunity", due to which it is interpreted that the crisis has both good and bad (which is incorrect because the experts in the Chinese language translations of this symbol as a chance to happen hazard). The crisis is defined as a significant unfavorable situation that occurs sudden emergency event and brings negative results. Although one of the main characteristics suddenness crisis, the crisis is often not unexpected, mainly because there are certain indicators that warn of possible crisis. The crisis should not be seen only from the point of possible danger and damage, but also from the standpoint of utilization of potential opportunities. In the circles of American theoreticians crisis is a critical incident involving death, serious injury and threat to human life; damage to the environment and animals, property and data of an organization; disruption in the execution of operations and tasks; threat to the mission by the end executed. Based on the above contents and executed distinction can be drawn following definition of crisis: in the event that a particular activity causes different psychological and social difficulties. Most organizations and institutions are not designed to predict the crisis or that they effectively managed. It is important to note that none of the forms of the crisis can't be viewed in isolation. They are interdependent and have the property enhancement (synergies).[8]

In the case of migrant crisis, we have a situation that the migration of several million inhabitants of the countries of North Africa and the Middle East in a very short period of time, the event (,,critical incident"), which has provoked a number of different aspects of the crisis to the fullest and richest economic confederal organization in the world (European Union), but also in countries that were included in the route for migrants. In fact, migrant crisis is one name for more forms of crises in which they find any of the European Union (EU), as well as transit countries (humanitarian, health, political, economic, security forms of crisis).

## ,,THE ARAB SPRING" AS GENERATOR OF MIGRANT CRISIS

When Tunisian Mohammed Buazizi burned himself everybody thought that was protest a desperate against violence and corruption of the police and local authorities, it is considered ,,steep incident" (the phrase used by Hans Toh), sudden event for himself tied rage army disenfranchised people. This act was seen as a symbol of the necessary fight against social injustice, but also as a direct cause for collective action that will lead to social and political changes, ie ,,wave revolution" that began to completely change the socio-political structure of certain countries in North Africa and the Middle East. ,,Wave of revolution" that began in Tunisia, very quickly transferred to other North African and Middle Eastern countries, and collectively referred to as - ,,the Arab Spring". ,,And when that happens, the situation is essentially harmless transmits the time and place for the destructive retaliation, and the incident of violence gigantic".[9]

The very next day, 15.12.2010. year, they began to mass protests and clashes with police in Tunis, their product expulsion president of Tunisia, in less than a month. After Tunisia, a wave of protests spreading to Egypt, and in just two months, repeating the same scenario. Next country is Libya, where protests are starting three months after Egypt. In Libya, protests instantly grow into armed rebellion and then into civil war with a foreign military intervention, after which toppled the government of Muammar el Gaddafi. Protests against Gaddafi began 15.02.2011. year. After the eight-month civil war and a seven-month intervention, Gaddafi

8 Popović, Ž., Kovačević, N., *Krize i krizni menadžment*, Prijevor-Čačak, DQM 2016, june 29-30., pp 553-560.
9 Toh, H., *Nasilnici*, 1978, Beograd, Prosveta, p. 281.

was captured and killed 20.10.2011. year. Five months after the beginning of Libya protests in Syria, a very fast and civil war in this country, which continues to this day. Eleven months after the incident,, precipitous" in Tunisia, Yemen's President resigned.

The protests were quickly transferred to the Jordan, Bahrain, Algeria, Iraq, Morocco, Kuwait, Lebanon and Oman, but their impact was heard, and in Sudan, Mauritania and Saudi Arabia. It looked as if „wave of democratization"[10] swept the coast of the Islamic world, but the fight for change that began under the name ,,jasmine revolution" moved quickly spiral of violence in which they are involved, many countries and led to the outcome that promises transition to democracy or is deposited on indefinite period, and in many respects relativized the importance of initial success, but the changed security environment in Europe. The only country in the region in which peace in Algeria. This is a very specific if you take into account the fact that it is a country with a fragile political stability, and it's territories, which has a major problem with Islamists and Islamist terrorism for over 20 years[11], and that it was the Algerians other nation (after the Egyptians) at numbers in the membership of Al Qaeda.

Outcomes of „the Arab Spring" are different: (1) in some countries, the military and police crushed protests (Judicial Arabia, Bahrain); (2) in Morocco, Jordan, Qatar, Oman and Lebanon, there was a political change that met the requirements of demonstrators; (3) in others there has been armed conflict (Yemen, Iraq) and civil war (Libya and Syria); (4) in the countries where the protests first began there have been elections and a change of government (Tunisia and Egypt). Then came the return wave of,, old regime" (Egypt), civil wars and foreign intervention (Libya and Syria) and brutal Islamism prone to terror and terrorism (embodied in the Islamic state), which is installed by instability in the region and led to a large number of casualties, refugee waves, economic and demographic decline in the region.

With regard to safety, allocate the following consequences of „the Arab Spring": (1) the announcement of democratic elections; (2) the fall of longtime dictator regimes; (3) to destabilize countries in the region; (4) the occurrence of permanent armed conflict and (5) not solving the problems that have initiated a „the Arab Spring". All of these consequences have encouraged the development of Islamism (as a generator of terrorism indicate by Islam), and the last three the emergence of migrant crisis, which also pose a security risk, a threat or a challenge for many countries in North Africa, the Middle East and Europe. From the aspect of security of the European countries most important products of,, the Arab Spring" is: terrorism and migrant crisis. Those consequences can't and must not be considered separately for the following reasons: (1) the beginning of the migrant crisis is inextricably linked to the calculation of the terrorists organized in the Islamic state with its indifferent „brothers in faith"; (2) migrant routes are also the ways terrorists in European countries; (3) The actions of terrorist cells in Europe worsens the attitude of European citizens towards migrants and minorities originating in the African and Middle Eastern countries, which reinforces religious and racial divide in European societies; (4) of this division are opportunity for terrorists to recruit new terrorists.

Terrorism and migrant crisis are now the two biggest risks and/or threats to the security of European countries, but for all the countries of the „Old Continent" essence of security challenges with which they are closely related, and certainly more profound: the political and social issues for Europe, including as appropriate and the following: (1) the rise of extremism; (2) the inefficiency of the EU institutions in addressing migrant crisis; (3) deterioration of relations between EU and the countries of the Arab world.

10 Hantington, S., *Treći talas*, 2004, Beograd, Stubovi Kulture, pp 39-40.

11 1990 Algerian Armed Forces prevented the arrival of Islamists to power - political party ,,Islamic Salvation Front" and in 1993 they founded the terrorist group GIA, from which will emerge in the late nineties branch of Al-Qaeda - GSPC. It is estimated that in the period from 1993 to 2009, the terrorists executed about 100,000 inhabitants of Algeria.

But part of theorists believes that migration is only one of the new weapons for waging the armed conflict, and migration are just a modern concept„ hybrid warfare". It is believed that the migration is only one of the ways or methods (in addition of„ the Arab Spring") achieving greater geopolitical goals of global and regional powers. In addition, cited the threat of Libyan leader Muammar el Gaddafi in 2004, 2006, 2008 and 2010, EU leaders. In fact, Gaddafi then claimed that make Europe„ black" (in the context of forced arrival of a large number of Arabs in Europe) if they fail to meet its requirements. That migrations are orchestrated and that can be controlled demonstrates agreement between the EU and Turkey on migrants (agreement entered into force on 20.03.2016. year). Under the agreement the EU has pledged to „speed up" Turkey's EU accession process and Turkey will donate EUR 3 billion, while Turkey has pledged to keep about 2.7 million refugees (that number was in time of agreement) on its territory and to receive part of migrants who will be returned from Greece.[12]

In support of this theory is the fact that migrants from disadvantaged areas do not go to the rich countries in the region such as, for example: United Arab Emirates, Saudi Arabia, Jordan and Qatar, but only to EU countries. On the one hand as if directing „the migration of peoples" outside the territory of North Africa and the Middle East deliberately going towards the creation of a permanent conflict areas, which is a leading American theorist of globalization, Zbigniew Brzezinski, long designated as regions „geopolitical earthquake and instability in the future". On the other hand there is the theory that the USA wants migrants exert further pressure on„ unsafe" partners in the EU and that migrant crisis weaken its economic and thus political power. Therefore it is logical that the majority of migrants wishing to settle permanently in two economically and politically most powerful countries of the EU, Germany and France.

Theorists of globalization (Kennedy, Habermas, Mandelbaum, Held, Pečujlić, Milašinović) believe that the migration of a logical sequence of events of the globalization process, and that the demographic imbalance and inequality of life chances (security landscape risks that are a direct product of globalization), comb their cause. Also, for evaluation and that the 21st century will be the century of „migration" a stand in favor of the fact that at its beginning there were more immigrants than ever before in history, unlike the 20th century, which was largely characterized by refugees as carriers of migration processes. Then the refugees from the former Yugoslavia and other crisis areas have launched the process of migration, which is still topical.

The demographic imbalance between rich and poor will result in a wave of migration to each other, and today's disturbing social and racial reactions may be small in comparison with what is happening in the world with eight or ten billion people. Explosive population growth, while reducing resources in underdeveloped countries and developing countries, in addition to the risk of internal migration and the various non-violent and violent conflicts has led to mass migration to other countries and regions. The most important reasons for the great migrations of the population are economic decline and environmental degradation, followed by cultural, ethnic and religious antagonisms and conflicts and political conflicts, instability and wars. In other words, the chaos started on the outskirts of the millions of poor, disenfranchised and vulnerable to looking for the optimal and safer living conditions leave the home country. Therefore, some authors believe that the increased number of refugees seriously undermines the security of states and qualify them as a direct threat to security. Therefore, Poll Kennedy warns:„ If the developing world remains trapped in poverty, then you will find the developed world before the onslaught of tens of millions of migrants and refugees, resolved to settle in prosperous democracy or the elderly population".[13]

12 Greenhill, M., K., 2016, Migration as a Weapon in Theory and in Practice, *Military review*, Nowember-December, pp 27-36.
13 Stojanović, S., *Globalizacija i bezbednosne perspektive sveta*, 2009, Beograd, Vojnoizdavački zavod, pp 127-129.

## CONCLUSION

We are witnessing a massive and complex migration, which is probably not seen since after the Second World War. Among these people are refugees fleeing from war-devastated Syria and northern Iraq, as well as economic migrants. What these people have in common is the search for better and safer living conditions. Despair presence of a large number of women and children, at risk of becoming victims of wide spread criminal networks has completed the picture. A growing number of migrants since start of the "Arab Spring" seeking asylum in the EU. In this paper, the existence of several starters (generator) of migrant crisis has been present. We have found that migrant crisis actually started in 2011, but its intensity is received in the summer of 2015, when it was the culminating point of the crisis. We pointed out the consequences of the crisis on migrant transit countries, but also on the theory of the origin and further development of the migrant crisis, based on the forecasts of leading theorists of security.

It is important to point out that the EU has regarding the migrant crisis manifested complete unwillingness and a high degree of disorganization, and even too much surprise and some EU member states even panic in the face of a migration wave. It also showed that he could not reach consensus on important issues such as a common migration policy, which, in addition to crisis management, included the performance of a common foreign policy directed to the stabilization of the political and security situation in crisis regions and their sustainable economic development. Therefore, we should expect the continuation of migration pressures, primarily in the region of the Southeast Europe and in the years to come, given that the instability of the region of the Near and Middle East and North Africa for certain. The relatively small and underdeveloped countries in the region are not in a position to significantly influence the migration flows crisis, but are in a position to create conditions for the safe and dignified room for migrants on their way to the countries in which they will seek asylum in accordance with the provisions of international and national law.

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# SECURITY ASSESSMENT - COUNTERBALANCE SECURITY CHALLENGES, RISKS AND THREATS

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**Abstract***:* Human history represents permanent men aspirations to protect and develop their own values and the values of the community in which they live, in conditions of continuous confrontation with the different forms of endangering physical, economic, cultural and any other integrity. Identification of destructive phenomena, analysis of strength of their negative influence, as well as the ability of predicting the development and actions of such phenomena in the future, are of crucial importance for adequate society reaction on preventing and minimizing their negative functioning. In that sense, the security assessment is imposed to be the key factor on the basis of which are reactions of security system of every society planned.

Bearing in mind the actuality of the problem, the paper highlights the problem of universal defining the security assessment and indicates the terminological difference and the difference of the impact level that security challenges, risks and threats have as the security factors. The functions and the basic elements are especially considered. Special attention is paid to methodology and specificity of security assessment building, with special emphasis on its importance as a document.

**Key words***:* security assessment, security challenge, risk, threat.

## INTRODUCTION

Mankind has been making an effort for centuries to secure "environmental climate" in order to timely identify the phenomena which are causing damage to them by their characteristics, intensity and mode of operation, as an individual but also to the community of which they are part. The need for survival and development is closely associated with creating conditions which ensure the protection of all the values on which depends their biological and overall social development. Security or the safe environment, as the main prerequisite for the protection of certain, life-necessary values, is a common denominator of those human aspirations.

Certainly there is no scientific field which, in a certain way, does not mention, or does not study the concept of security. Such a wide field of term use, attempts to define in same or a similar way, makes it more difficult. This basically means that security is not a term that is universally determined in theory. Differences in defining are conditioned by a multitude of synonyms for security, but also by what is taken as the basis for the defining or which social area is required (human security, technology, IT...).

Most authors start from the question if those terms security and safety synonyms or not. On the basis of many semantic and lexicographical analysis, it can be concluded that the term security is used, in particular, to refer to the condition of a subject (individual, group of people, community, institution), which is characterized by an absence of trouble, care, accident risks and other ills. On the other hand, it is more than obvious that there are many synonyms, such as safety, ensuring, protection, endangering tranquility, sheltered, protecting. However, none of these terms is an absolute synonym for security. Most of them have broader meaning, so only one part of them can be considered a synonym. Although it is same when it comes to the term safety, it should be noted that the term safety is a complete synonym for security and therefore it is mostly used, but also gives users the ability to separate terms such as state, national, international and other securities from terms such as legal, social and other safety relatively easily.[1]

Security is most often interpreted on the basis of the supposition that is certain state, organization, function or system, or all these terms together.[2] In the objective sense, security is the absence of threats to the adopted values, while in the subjective sense is the absence of fear that those values will be endangered.[3] It (security) can be defined as a state of any subject or object which normally and relatively smoothly exists and acts, or it is not endangered by some serious and grave dangers.[4] If there is no danger, there is no need for security, while otherwise any value (object of the security) can be in a danger. Value is an ideal form of certain objects (objects, acts, the contents of consciousness) attached by people and which consists of making them more desirable to men, because they are used to improve their lives and people enjoy them.[5]

Security and danger are multiple meaning terms, but terms of distinct interdependence as well. One acceptable approach for a precise definition of these terms and understanding of their interdependence are the answers to the questions: *What are we securing, defending, protecting or saving?* (Values - security object); *Who (why and how) protects security object?* (Man as an individual, an individual or as a member of the collective, that is the subject of security, and is protected by taking appropriate activities, because it is a condition of its survival and sustainable development) and *From whom (or what) are we protecting the object of the security?* (From someone or something that endangers or may endangers its security - subject or the source of danger). Security is a condition of someone who is not endangered, where danger to their physical, mental or property integrity is absent.[6] The danger would, in that sense, represent the form or the ability of something or someone to potentially cause damage. This damage can be caused by the intention of the man, their accidental actions or natural disasters and events that are not possible to be controlled, such as for example, a natural disaster.

The existence of certain values important to the man and the community in which they live, on the one hand, and the various phenomena and activities aimed at endangering them,[7] on the other hand, quite naturally impose the need to protect these values. In order to achieve this, it is necessary to have an appropriate assessment, which includes an analysis of possible forms of endanger, directions and intensity of their action, possible adverse effects and their sizes, but also "seeing" of their negative effects in the future. In this way, preparation of the

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2 Simic, D., *Science of security,* Official Journal FRY, Belgrade, 2002, p. 29-30.
3 *Glossary of the security culture*, Belgrade, Center for the civil-military relations, 2009, p. 14.
4 Ilic, P., About defining and definitions of national security, *Military act,* Belgrade, no. 2, 2012, p. 125.
5 Lukic, P., *Social lexicon,* Modern administration, Belgrade, 1982, p. 121.
6 Mijalkovski, M., Djordjevic, I,. Risk – specific form of security endangering, Belgrade, *Military act,* no. 1, 2010, p. 284-285.
7 Endangering represents every case, phenomenon, violent operation of man, nature or technical medium whose operation is sudden (unexpected), takes place at different times and causes different, harmful effects on people and property.

entire security system for an adequate response to all forms of threats is made and that is providing a reduction of their negative effects.

## PROBLEM OF THE UNIVERSAL DEFINING OF THE SECURITY ASSESSMENT

In general, the term assessment represents the process of determining the value of something, the value of some area of the life and activity.[8] It is used to denote a particular opinion or judgment about the forms or values, or about something that can be significant for a particular area of life and work. This is a special way of explaining certain phenomena, by considering various internal and external connections and relationships.

In terms of security, the assessment represent an analysis of certain factors which, individually or together, affect the level of security in particular communities or society, but also an analysis of the readiness of the system and security services to confront the endangering activities.[9] Its purpose is to identify the destructive phenomena, determining their intensity and directions of action, on the one hand, and to adequately assess their development and possible situations in the future, on the other hand.

However, the definition of security assessments in one, universal way imposes a number of problems. The main problem is the method of identification and understanding of the dynamics and importance of connection of security phenomena. Also, the problem is the difficulty of the assessment of complexity (including positive and negative) feedback processes that enhance or amortize the effects of certain changes, but also different perceptions of the same threat due to cultural, historical and strategic reasons. In the end, it inevitably affects the rationality of decisions or priorities that are defined by such decisions.[10]

According to one view, the security assessment is the phrase of the terms security and assessment. By their joining and queuing in a hierarchically logical sequence, we get the meaning of the phrase that reflects its substantial semantic and syntactical character. It follows that the assessment is a process of thought and practical activities in which, on the basis of verified and processed data and facts, with the usage of scientific methods make conclusions about the subject of assessment.[11] It is a set of conclusions that were created using the relevant scientific and operational methods in order to obtain data, indicators and information on all aspects of security vulnerability of specific human, material and natural resources and information on defense and security capacities and capabilities of the society.[12] This is a special type of explaining the security phenomenon, because it does not stop to explain the cause and effect connections in the phenomenon and the phenomenon with the world. In it, we try to explain other internal and external links of the certain phenomenon, but also the attitude and the strength of these connections and relationships that direct occurrence in a certain direction and affect its character, manifestation forms and the consequences it causes.[13] It is interactive and logical linking of certain facts and knowledge about certain phenomena in order to acquire knowledge about the possibilities and probabilities of danger, possibilities

8 *Serbo-croatian dictionary* ,Matica srpska, Novi Sad, 1973, p. 265.
9 Djordjevic, O., Security lexicon, Partisan book, Belgrade, 1986, p. 299.
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12 Stojkovic, B., Methodology of assessing challenges, risks and threats for needs of strategic management in security area, Belgrade, *Security,* no. 3, 2013, p. 37.
13 Markovic, B., *Theory of security with methodology of researching security phenomena*, Yugoart, Zagreb, 1988, p. 280-281.

of its prevention and the reduction or elimination of damage.[14] As an analytical process, it represents another comparison of the total destructive phenomena - endangering subjects, ways of expressing, probability of operation or the possibility of its own system to prevent (or minimize) the harmful consequences.

The main value of the security assessment is that it represents a mechanism for defining the important fact in determining a decision, or it can minimize uncertainty expression of certain destructive activity. It is made for the timely planning and taking measures against any form of security endangering or prevent the destructive effects that may impair state security. Under the concept of the security situation, it should be understood as: *the usual condition; a condition that does not have the characteristics of ordinariness,* and as such represents something special, specific, unusual; *the occurrence or existence of such circumstances* (causes or possible causes), which represent a real danger that a common, desirable or acceptable condition may be, in the real world, violated and to cross from one to another, in particular state.[15]

In this regard, the identification of potential challenges, risks and threats, which can lead to the distortion of one ordinary condition, is a prerequisite for planning adequate response of the entire security system. In this way, by the real valuation of their possible impact, it is contributed to preventing and reducing the negative consequences of such a thing.

## SECURITY CHALLENGES, RISKS AND THREATS -SECURITY ENDANGERING FACTORS

Security challenges, risks and threats and their identification and analysis of potential they have are made in accordance with the term denomination and the influence they may have on the security situation. These terms, generally, in modern conditions occur as synonyms for the earlier term "factors endangering the security", which has been used for everything that in any way has affect not only on people, but also on the social, natural and other phenomena and on those with common classification to those who have a positive and those that have a negative impact, who hinder, endanger. However, security challenges, risks and threats, cannot completely be synonymous with that term, for two reasons: due to the fact that phrase "security challenge" does not mean only the negative factors of security, but also positive ones and because in this phrase there is no clear demarcation of the factors and actors compromising security.[16]

However, bearing in mind that the aforementioned terms already used, both in the scientific literature and in the highest documents of security nature, it is necessary to draw attention to their distinction. The reason is the fact that they form the basis of making security assessments, therefore their unpredictability and the ability of their applications to one or more different levels, requires a precise conceptual definition.

*The challenges* are possible, potential forms of threat to the stability and sovereignty of the state and the identity of the individual and the state. They are a source of risk and threats and their breadth of influence stretches through military, political, economic, social and environmental dimension of security. Their value is initially neutral on the survival of the state and society and, depending on the response to it, can have a positive sign (in the dismissal), or negative (in further grading of the risks and threats).[17] This is a potential danger to the object

14 Djordjevic, O., Security lexicon, Partisan book, Belgrade, 1986, p. 300.
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(protected value), or condition that precedes the threat, and the threat is materialization of the challenge.[18] Challenges mean the specific activity, a process, a phenomenon, or a specific case, which by their nature, dynamics, or the potential energy can, in certain circumstances, change or influence the changing of certain conditions, beliefs, needs, interests and the like, and initiate concrete actors to a certain reaction as a concrete response to this challenge.[19] It is about phenomena whose harmfulness and certainty of occurrence of the real or at least probable. These are disturbing phenomena with the highest level of generality and the lowest intensity of direct destructiveness.[20] Identification criteria of challenges may be represented by: probability of occurrence; comprehensiveness; multi directions; negative or positive directions; capacity of challenges (according to their negative aspiration) to grow at risk; likely to manifest adverse impacts.[21]

Unlike challenges, *the risk* is the mismatch between the purposes, which is identified by interests and goals, and resources, which are shown by the available resources.[22] Those are closer, more visible and more clearly measurable forms of endangering the sovereignty and identity of the state and society. They are sources of security threats, and the breadth of their impact has clearer forms.[23] The risk can be explained as a potential loss of human life, changes in health status, threat to life, property and services, therefore, everything that could lead to an individual, a community or society as a whole is at risk due to the impact of natural, technical-technological, criminal and other dangers that endanger the lives of people, properties, the basic human rights and more.[24] When we talk about the risk it is up to a failure to achieve the strategic goal with the eligible costs.[25] That is the potential for damage to national security in combination with the probability of occurrence and the measurement of consequences.[26] It is a specific form of danger because it is inherent to the subject of the danger and the subject of security. This duality stems from the fact that the subject of danger and the subject of security exist in an uncertain security environment and continually make decisions about their own engagement, and every decision is fraught with certain risk.[27]

*Security threats* are specific phenomena whose appearance is at least uncertain, and their harming effects are undisputed and the greatest. They are phenomena where a specific endangering security factor attacks values of specific object. The most dangerous are armed aggression, military intervention, armed rebellion, economic sanctions, subversive acts, terrorism and organized crime.[28] It is any indication, circumstance, or case, which has the potential to cause loss or damage of the protected values.[29] It is about the intention of causing the specific damage or penalty, indication that something close, unwelcome and uncomfortable is com-

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18 Mijalkovski, S., Djordjevic, I,.*Uncatchable of the national power,*Belgrade, Official Journey, 2010, p. 166-167.
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21 Tatomir, D., The assessment of challenges, risks and threats of Republic of Serbia in function Serbian Army usage, Belgrade, *Military act*, no. 2, 2009, p. 101.
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23 Orlic, D., Term determination of challenges, risks and threats in process of changing the international security, Belgrade, Military act, no. 3, 2004, p. 92-93.
24 Kekic, D., Milasinovic, S., Mladjan, D., The usage of reduction concept of security risks in education institutions, In: *Security risks in education institutions*, Faculty of security, Belgrade, 2012, p. 105.
25 Holcomb, F. J., „Managing Strategic Risk", in *The Army War College quide to national security policy and strategy*, Carlisle: US Army Colegge, 2004, p. 119.
26 DoD (Unite States Department of Defence), *National Defence Strategy*, 2008a, Washington, DC, p.20.
27 Mijalkovski, S., Djordjevic, I,.*Uncatchable of the national power,*Belgrade, Official Journey, 2010, p. 170.
28 Mijalkovic, S., *National security*, Criminalistic-police academy, Belgrade, 2009, p. 127.
29 Kesetovic, Z., Crisis and managing crisis in education institutions, In: *Security risks in education institutions*, Faculty of security, Belgrade, 2012, p. 41.

ing, carrying direct negative consequences.[30] It is a deliberate attempt to cause damage to an entity, property or right, so object of the threat can be forced to fulfill the imposed behavior.[31] It is about clear, predictable and certain kinds of endangering (war, economic sanctions, a terrorist act), and they are negative to the survival of the state and society. These are the final, the most direct extract of challenges and risks.[32]

## FUNCTION AND BASIC ELEMENTS OF SECURITY ASSESSMENT

Security challenges, risks and threats, as different forms of expressing danger, can be systematized in different ways. The division may be by the source (base and/or situational); by origin (internal and/or external); by subject (the government and/or non-government); by content (military and/or non-military); by the intervention (local, (sub) regional, global) and by the range (current and permanent).[33] The mere possibility of multiple divisions indicates the abundance and diversity of security challenges, risks and threats. This, on the other hand, requires their adequate identification, determination of their intensity and dynamics of manifestation and to determine possible routes of action in the future. In this sense, the basic function of the security assessment is to analyze the security situations, which is used for consideration of all potential security challenges, risks and threats. Prediction of the further development of the security situation, phenomena and events is the thought process, which aims to be based on the analysis of safety data estimate or anticipate possible developments and trends of the security situation in the future. The essential task of prediction is to review the trends of development of some phenomena in the future and the selection of the most rational action for the realization of the set or determination of the objective.[34]

Bearing in mind that each state which is not usual represents a particular state, the action on such a state means the action of the security forces, which is focused on solving one or a group of related security issues and which is different from the usual activity in sense of:[35]

- the intensity of operational activities is very strong;
- activities are focused on a narrowly defined goal, which may be the particular security problem or criminal object which endangers security or object of the protection which is protected by security;
- there is special or existing organization established, as a rule, for objectives achievement and it is adapted to define the objective which should be achieved, and which can extend to the narrow or wider area depending on the content of the particular state of the security and the defined objective and,
- organization which is set up as this, with its work intensity, has own starting and ending time.

A unique system of making the security assessment and analysis of the security situation through an understanding of potential security challenges, risks and threats does not exist.

30 Bajagic, M., *Basis of the security,* Criminalistic-police academy, Belgrade, 2007, p. 130.
31 *Law encyclopedia,* Modern administration, Belgrade, 1979, p. 1101.
32 Orlic, D., Term determination of challenges, risks and threats in process of changing the international security, Belgrade, *Military act*, no. 3, 2004, p. 92-93.
33 Hadzic, M., *Security challenges, risks and threats, Global and national security (lesson)* Faculty of political science, Belgrade, 2004.
34 Stevanovic, O., *Management in police*, Police Academy, Belgrade, 2003, p. 153.
35 Kostic, S., *Basics of the crime operative*, *1st part*, VSUP, Belgrade, 1977, p 199.

However, it can set up a general structure of the security assessments, which is reflected in the following elements:[36]

- *general concept of security assessment*, which means the preference of theoretical approach in making security assessment. Based on the theoretical approach, it is determined which phenomena, in the social environment, should be considered as security phenomena and what significance should be given to these phenomena during the making of security assessment;
- *analysis of relevant security phenomena conditions,* represents basic conditions for ruling the security situation. Involves collecting and processing of internal and external security data;
- *determining the security situation*, is a synthetic conclusion on the situation and nature of the security phenomena with a detailed description of the nature of each of phenomena and prediction of the influence on the security situation in the future;
- *making a conclusion with the assessment of the security situation,* is the synthesis of all security issues and the definition of safety indicators. These are specific, measurable, sizes whose measuring and comparing of the values of different indicators, can lead to an accurate assessment of the security situation;
- *prediction of security situation changes,* refers to the trends and patterns of negative security phenomena in the evaluated period. They can be reached on the basis of analyses that are made in earlier stages of making the security assessment and
- *security tasks,* which are part of the security assessment, are work areas which are in security sector determined to every organizational unit depending of its nature or the nature of security challenges, risks and threats. Security tasks are, through the security plans, concretely developed and mostly prescribed as the security measures and procedures.

The basic and most important link in the entire security system is a high-quality security assessment. From its quality depends on security challenges, risks and threats approach. To make a high-quality security assessment, it is necessary to respect certain principles of its development, such as:[37]

- *The principle of objectivity,* means an impartial, objective approach to the collection and study of certain facts. Otherwise, the security assessment loses its function and leads to erroneous conclusions and wrong decisions;
- *The principle of systematic,* means unite and interconnectedness of all parts which are representing the whole about the assessment object and logical order in document content. The principle of systematic must be represented already in the process of data processing, their selection, assessment, classification and linking with other and prior data;
- *The principle of completeness*, stems from legal norms which are determining the content of security assessment. As long as you do not have enough data and information needed for the evaluation, it is necessary to look for information, because that is the only way to achieve the quality required for the proper evaluation;
- *The principle of privacy*, means necessary restrictions in data exchange or the use of the security assessment only under certain conditions and by persons who are entitled to it;
- *The principle of timeliness*, means reporting available data to predetermined users, which increases its value. Otherwise, security assessment loses value; and
- *The principle of prediction (prognostic)* stems from the fact that it is the mental picture of the future situation or case. Based on previous and current factors, future trends, relations and situations are predicted and that is the "crown" of the security assessment.

36 Dragisic, Z., *Security management*, Official Journey, Belgrade, 2007, p. 50-52.
37 Milosavljevic, B., Theoretic basics of the security assessment, Belgrade, *Military act*, no. 2, 2012, p.142-146.

## SPECIFICITY OF SECURITY ASSESSMENT

Security assessment is a written document. It materialized certain facts which were processed in during its making and formalize all knowledge of a particular phenomenon, predict future forms of its manifestation, influence on protected goods but also determines the most efficient way of reacting, which reduces the negative influence of the phenomenon being observed. Realistic assessment of data on phenomena and cases that may affect the security, the ability to predict future phenomena and cases and their impact on the security situation, it is essential for the timely organization (*setting*) security system to "protecting" position. The main objective of the security assessment, exactly, is the establishment of such a protection system, which:

- guarantees reducing the possibility of harmful events;
- by own stratification prevents the exploit of the vulnerability of the existing protection system;
- increases "attackers" costs, or significantly reduces its potential "gain" and the negative effect of harmful event.
- The process of making a security assessment, has certain characteristics, such as:[38]
- interdisciplinary researches;
- heuristic orientation;
- unavailability of essential (necessary) data;
- researches of small cases (events) with great influence and
- specific and variable researches.

This complexity of the process of making a security assessment, leads to the conclusion that this is not a method that is based on generally accepted and unique solutions. However, there are several key procedures in the process of making reliable assessments. These are:[39]

- defining problems;
- creation of hypotheses;
- collecting information;
- hypothesis evaluation;
- choice most likely hypothesis and
- current monitoring of new information.

Security assessment is an essential step that is undertaken in organizing certain security structures for the planned implementation of adequate security measures and actions, in order to prevent the negative effects of security challenges, risks and threats. It is necessary, first of all, to consider:

- the importance of protected goods, or its position in relation to the geopolitical, economic and other factors;
- which are possible reasons for its endangerment;
- forces and resources that can be used for endangerment;
- weakest "links" in the security system;
- forces and means of the security system, in terms of engagement to protect; and
- ways of cooperation between the security system factors.

38 Godson, R., *Inteligence Requirements for the 1980 (number Two) Analysis and Estimates*, Washington, National Strategy Information Center, 1980, p. 52.
39 Heuer, R., *Psihology Intelligency Analisis*, http//cia.gov/csi/books/1904/indeh.html, available since 04.03.2017.

In this sense, as one of the basic requirements in the process of security assessment making, is complete coordination of all stakeholders whose involvement in that process is necessary. Practically, this means:

- *First*, the establishment of a unified information system which is collecting information on the phenomenon which is assessed, or "pooling" of information at one place (defining the roles and responsibilities of all stakeholders, establishing the required relationships and modes of communication, the choice of activities subjects, etc.);

- *Second*, defining of clear procedures in all phases of security assessments making and defining specific tasks of all participants in the assessment process;

- *Third*, clearly defining the tasks and procedures, provides immunity of the system of security assessment making, or the protection of the "breakthrough" due to lack of understanding of its essence by certain students in the decision-making process, which could lead to incorrect assessing and wrong decisions making;

- *Fourthly*, the analysis of information obtained from the persons who previously had experience in dealing with this kind of information, thus achieving fully understanding of the available information meaning, between all participants in their analysis and

- *Fifth*, the possibility of revision of the security assessment, if at an early stage of its development changes of security challenges, risks and threats influence are identified. The objective of revision of the security assessment making is determining of the relevance of the current assessment and if necessary, taking certain corrective measures in the process of its creation.

Adequate, timely and high-quality security assessment is a condition of the existence of certain security prevention. This puts development and the negative influence of destructive phenomena "under control" in certain way, therefore the system protects against the negative consequences of their action.

The assessment is made for different levels of reaction to destructive phenomena. The highest level of this process is the creation of assessment as doctrinal document, or assessment that is made at the state level and which establishes a way to protect the basic, vital, value state. It is the basis for:

- managing the internal and external policy;
- the adoption and amendment of the systematic normative acts and
- organizing and directing the work of bodies and security services.

That shows the strategic function of the assessment. *Great assessment*, as doctrinal document, must include political, military, economic, geographical position of the country and it is different by that from all other types of (security) assessment. This "general concept of security assessments" may include political, economic or geographic elements on "micro" level (line), but in a part which directly influences the assessment of the situation, the assessment of security events trends and planning the work of security structures. Their direct impact on the security situation in a certain area and thus to each person, in the most general sense, gives the "security" sign to assessment. This level of influence "immediacy" of security challenges, risks and threats, requires its making to be precisely regardless for which level is made – highest (assessment at the state level), or individual cases (assessment of the situation).

Security phenomena, which need to be "treated" in general concept of security assessment are different, but their assessment should go in the following order:

- *activity of foreign intelligence services*, with a particular focus on their objectives, intentions and the possible results they have achieved through their activities;

- *terrorism and extremism*, includes all types (forms) of terrorism and extremism with foreign elements, with possible objectives of terrorist groups precisely determined, the

surveillance infrastructure and defined extremist behavior, especially in the part of the way in which you can achieve defined objectives;

- *internal extremism*, means objectives and intentions of "domestic" extremist groups, with special focus on their relationship with foreign element (intelligence services, terrorist organizations, etc.). In this part it is necessary to assess extremists actions to undermine the political and economic stability of society, but also the actions in order to achieve personal or benefits to certain stakeholders;

- *the crime ratio*, means the basic processing of crimes, with emphasis on offenses and perpetrators of offenses which directly affect the disturbance of citizens and thus the security situation, whether these are offenses with severe consequences or offenses that affect the above said elements with their nature. Special attention must be paid to organized crime and organized criminal groups action, their organizational structure, hierarchical connections, "specialties" in the work. Also, juvenile actions and returnees in offenses and must be especially considered;

- *state of public order*, means assessment of the state public law and order, especially when it is about the potential distortion to a greater extent with consequences and distortion that would be made by organized groups. Special attention should be paid to the distortion and perpetrators whose objective is not only public order, but also to other hidden objectives such as (political, economic ...), for them or for other persons and groups. Juvenile actions and returnees in offenses and violations must be considered here as well. In addition, attention must be paid to all kinds of public gatherings, which may result in a disruption of public order or committing criminal acts and offenses (gathering of the social character, labor protests ...);

- *state of the security state border*, means the assessment of the border threats, preferably, from external influences, with special identification of trouble spots, which would, from the security point of view, constitute a risk (possibility of aggression, possibility of terrorist and extremist groups, smuggling channels, the possibility of transmitting the armed events arising in the territory of neighboring countries ...);

- *movement of foreigners and their stay in country*, means consideration of the residence and movement of foreign nationals, with detailed data about their behavior and possible participation in crimes and offenses. In this case, it is important to investigate if these behaviors have elements of organization. Under present conditions, this part would mean discussion of the issues of a large influx of migrants, asylum seekers and other groups and the danger that those groups may represent, in terms of security;

- *organization, qualifications, training and equipment of authorities and the security services,* is a particularly important part. It is about the analysis of the readiness level of some elements of the security system to adequately answer to identified security challenges, risks and threats. This is very important, considering that the level of protection of proclaimed values of certain phenomena destructive activities depends on readiness of the security system;

- *cooperation bodies and security services,* must involve a high level of mutual cooperation between security structures as well as their cooperation with judicial and other state authorities. Here it is especially important to consider mutual relations in order to avoid certain overlaps, either there is an issue of jurisdiction or in terms of reaction, which in operational terms can be a problem and enable "breakthrough" of the security system during the response to security challenges, risks and threats.

Finally comes the conclusion with situation assessment where, from all these elements, short conclusions should be made with the assessment of possible trends of security phenomena. Conclusion making with situation assessment represents the synthesis of all security issues and defining security indicators, but it evaluates work of parts and of the entire security

system. It is necessary for the planned "setting" and secret services actions, or making a correct decision by the competent bodies, in crisis situations.

## CONCLUSION

Inalienable right of every country is to find a way to protect itself from all those phenomena that by their own destructive action try to influence certain (vital) values. In order to achieve this, it is necessary to identify all endangering factors, their modes of action, the available forces and the means with which they exert their destructive character, and on that basis take appropriate measures to eliminate their negative influence. The security assessment is the document whose making is identifying and tracking endangering factors.

Security assessment occurs on the basis of precise study of all the factors that may exhibit their (negative) effect on the security situation in a certain way. Its main value is that it is a mechanism for defining important facts in determining the decision on the actions on the various security challenges, risks and threats. It is used to minimize uncertainty of expressing certain destructive activities, but the uncertainty can't be completely ruled out, however, and the quality of security assessments can be evaluated only with a certain time distance, when it loses its "usable" value. Therefore, the timely processing and analysis of security interesting data is the main condition for high-quality security assessment making.

In this sense, for high-quality security assessment, processing and analyzing data must be accurate and, above all, time-current. Only in this way, with a timely analysis of the facts of phenomena expression they represent (or may represent) security challenge, risk and threat, while respecting certain principles of making, can we get accurate, quality and time-current security assessment and respond to the destructive effect certain phenomena adequately.

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# JURISDICTION OF THE REPRESENTATIVES OF THE SECURITY SYSTEM OF THE REPUBLIC OF SERBIA ABROAD

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**Abstract**: Since the appearance of the states, it became necessity for mutual communication in order to satisfy a variety of their interests. They established certain rules of behavior in communication between states over the centuries, which have gradually become part of customary international law. Later on these rules were transformed into legal norms of international low and made the scientific discipline of diplomatic and consular law. On the other hand, each state defines the organization and jurisdiction of the bodies dealing with the foreign policy by its own national legislation, of course, in accordance with the accepted international legal obligations. Strengthening interdependence, especially in the contemporary politics of lobalized world and gradually abandoning state centric approach to security, has caused the growing need for sending the representatives of the security system abroad. Earlier, all the issues in the field of security and defense were traditionally under the jurisdiction of the Office of Military-diplomatic Representatives. Serbia, like other states, is increasingly sending police attachés and representatives of the Security Information Agency in the diplomatic and consular mission abroad. The aim of this paper is to analyze the legal regulation and practice of jurisdiction of the representatives of the security system in diplomatic and consular missions. Although, at first glance, it seems simple to determine jurisdiction of specialized representatives, this is not the case because beside our regulations and state structure, it depends on the legislation and organization of the receiving state.

**Keywords**: Ministry of Foreign Affairs, Diplomatic and Consular Mission, Defense Attaché, Police Attaché, Representative of Security Information Agency.

## INTRODUCTION

The globalization process in the field of international relations led to unimagined interdependence and thus fully justified the platitude that "the world has become a global village". This resulted in an accelerating of chain of events on the international scene. At the same time, the concept of nation-state, that has been established since the Peace of Westphalia suffered a significant changes. Specifically, the power and sovereignty of nation states has become increasingly questionable, and suffering great challenges that are caused by activities of transnational subjects of international relations, such as international government organizations, private multinational companies and others. On the other hand, there are subjects of international relations, which operate in the fields that are known as non-governmental

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organizations, but also the phenomena of today that organized crime is connecting both the outside national framework and the regional level. Thus, it can be said that in the sphere of organized crime occurred kind of globalization that increase interdependence and cooperation among them in order to gain illegal profit. To these illegal actions, we must add the monster of the modern era, international terrorism, which has become a global threat for almost all world societies after September, 11 2001. The irrationality in the choice of targets of terrorist attacks and the national territory in which it is performing, necessarily points to the cooperation of state authorities in charge of prevention of functioning of terrorist organizations. The great migration processes, which we have witnessed in recent years, only further complicate the engagement of specialized state authorities and point to a higher level of international cooperation.

Because of these key factors, the nation states are forced to act jointly more frequently in order to eliminate common security challenges, risks and threats. In addition to the functioning at the multilateral level, or within the international organizations such as Interpol, the International Organization for Migration and others, there is a clear tendency for increasing international cooperation on the plan of bilateral cooperation of representatives who have responsibilities in the field of security and defense. In terms of jurisdiction in the functioning of diplomatic and consular missions accredited to international organizations, there are no major problems, since the operations are implemented according to The Founding Treaty of the international organizations, but in the case of bilateral cooperation could be problematic. Little attention is paid to this issue in the domestic literature, which can cause problems within the diplomatic and consular mission, but also in the relations with the receiving states.

## JURISDICTION OF AUTHORITIES OF THE REPUBLIC OF SERBIA IN THE FIELD OF FOREIGN POLICY AND SECURITY

The Constitution of The Republic of Serbia defines, among other things, the jurisdiction of the Republic in organization and providing the sovereignty, territorial integrity, security and its international position and relations with the other subjects of international politics. Accordingly, the Constitution regulates the issues related to safety and the principal jurisdiction of government bodies dealing with the issues of foreign policy, security and defense[2]. The Constitution specifies that the foreign policy of the Republic of Serbia shall be based on commonly accepted principles and rules of international law and ratified international agreements are directly applied as an integral part of the national legal order, with the obligation that they are in accordance with the Constitution[3]. The government, as the holder of executive authority, has powers relating to the establishment and implementation of the overall state policy, which has different aspects, from the foreign, through the security and defense policy, to economic, cultural, educational policy etc. It is engaged in the supervision and control of implementation of relevant policies and, if necessary, it can be directly involved in the work of certain ministries. Its operation, of course, should be carried out in accordance with positive legislative. If this is not possible, the government has the authority to propose new legislative acts and other general or individual legal documents to The National Assembly, as a legislative body[4].

2 Ustav Republike Srbije, Službeni glasnik Republike Srbije, br. 98/2006, članovi 97, 99, 112, 123, 139 i 194.
3 Ustav Republike Srbije, Službeni glasnik Republike Srbije, br. 98/2006, član 16.
4 Zakon o Vladi, Službeni glasnik Republike Srbije, br. 55/2005, 71/2005 - ispr., 101/2007, 65/2008, 16/2011, 68/2012-Odluka US, 72/2012, 7/2014-Odluka US i 44/2014, članovi 1-8 i Zakon o ministarstvima

The Ministry of Foreign Affairs is responsible for the overall implementation of national foreign policy, defined by the Government. The Law on Ministries specifies that all ministries have a right to implement international cooperation in their domain and to be engaged in the negotiation, signing and implementation of international agreements within their jurisdiction. The above mentioned provisions were adopted for a more efficient response of the State to accelerating flow of events at the international level and the need for inclusion of various ministries in the process of international cooperation. However, in order to centralize and monitor the growing number of international activities of state institutions, the Ministry of Foreign Affairs has retained jurisdiction of the central authority for the implementation of overall foreign policy and international cooperation. This should be realized by timely reporting on planned and implemented activities of relevant state bodies. At the same time, all communication of other state bodies with international subjects and own diplomatic and consular missions is implemented through the Ministry of Foreign Affairs, in accordance with the international agreements and / or diplomatic practice[5].

The Ministries of Defense and Internal Affairs have defined responsibilities within the Law on Ministries, which are specified in concrete within The Law on Defense[6] and The Law on Police[7]. At the national level there are no big problems in this context, and almost all possible jurisdictional problems can be solved at the government level. The same goes for the Security Information Agency, as an independent government agency that derives its jurisdiction from the Law on Security Information Agency[8]. It should be emphasized that the Law provides for that the Agency may take over a part of activities in domain of the Ministry of Interior. The possible conflict of jurisdiction should be decided by the Government of Republic of Serbia[9]. All possible problems in the particular jurisdiction and directing the activities of the elements of security system, since 2007, are resolved by the National Security Council, most often by the Bureau for Coordination of Security Services.[10]

The process of globalization, emerged as a result of the end of the Cold War world division, the victory of the neo-liberal concept of society and rapid technological development of all forms of communications, has led to an increase in interdependence of unprecedented proportions and creation of the phenomenon of "global village". At the same time, the developing trend of strengthening migration, which was initiated not only by socially positive ideas of progress, but also led to the strengthening of connections among organized crime and terrorist groups, as well as corruption, which take increasingly transnational character. Thus, simultaneously with the process of economic, cultural and political globalization, the security aspect of globalization was also developed. That ultimately led to the fact that nation-states were not able to independently guarantee the security of its citizens. Therefore, it became unquestionable that the nation states are forced to work together to counter the common security challenges, risks and threats.[11]

Although Ministry of Defense has the longest tradition and the established practice of engaging its own representatives within the diplomatic and consular missions abroad, the

Republike Srbije, Službeni glasnik Republike Srbije, br. 44/2014, 14/215, 54/2015 i 96/2015, članovi 1-28.
5 Zakon o spoljnim poslovima Republike Srbije, Službeni glasnik Republike Srbije, br. 116/2007, 126/2007 i 41/2009, članovi 1-5.
6 Zakon o odbrani Republike Srbije, Službeni glasnik Republike Srbije, br. 116/2007, 88/2009 i 104/2009.
7 Zakon o policiji, Službeni glasnik Republike Srbije, br. 6/*2016,*
8 Zakon o bezbednosno-informativnoj agenciji, Službeni glasnik Republike Srbije, br. 42/2002, 111/2009, 65/2014 – odluka US i 66/2014.
9 Zakon o bezbednosno-informativnoj agenciji, Službeni glasnik Republike Srbije, br. 42/2002, 111/2009, 65/2014 – odluka US i 66/2014, član 16.
10 Zakon o osnovama uređenja službi bezbednosti Republike Srbije, Službeni glasnik Republike Srbije, br. 116/2007.
11 Cooper Robert: *Slom država, poredak i kaos u 21. stoleću*, Profil, Zagreb, 2009, pp. 16-99.

other subjects of the security system of the Republic of Serbia do it more and more often. It is necessary to put efforts to specialized authorities in direct communication with foreign counterparts to engage in combating common security challenges, risks and threats such as transnational organized crime, corruption, terrorism, drug trafficking and human trafficking, proliferation of weapons of mass destruction, etc. The legal basis for the engagement of representatives of the Security System within the diplomatic and consular missions of the Republic of Serbia abroad are given in the Law on Foreign Affairs, which provides the possibility of giving diplomatic status to persons who do not work in the Ministry of Foreign Affairs, but are appointed on specific duties within the diplomatic and consular missions, but only while on this position. There are the same regulations in The Law on Ministries[12], The Law on Police[13], The Law on Defense[14], which predict international cooperation on a permanent basis.

The organizational structure of diplomatic and consular missions of the Republic of Serbia abroad does not differ from the diplomatic missions of other states because they are products of a similar diplomatic practice and customary law. Their work is usually based on more or less identical international agreements. Fundamental organization of diplomatic and consular missions is based on the principles of organization and function of the modern diplomatic service and is divided in accordance with the so-called labor sectors. The diplomatic and consular mission of the Republic of Serbia usually includes the following organizational elements:

- **The Head of the Diplomatic Mission,** which is the coordinator and issues orders to all sectors of the mission and is responsible for the overall organization and functioning of the mission to the Receiving State and to the Sending State;

- **The Political Sector**, whose core competence is to cooperate with the Government of the Receiving State, which is most commonly implemented through the ministry in charge of foreign affairs.[15] At the same time, the cooperation involves a certain level of communication with the political opposition. Of course, it's very sensitive and it implies a sense of behavior, which is reflected in the established diplomatic practice in the Receiving State. This sector also cooperates with the Parliament and other independent bodies and organizations in the Receiving State;

- **The Economic Sector** monitors the macro economic and financial indicators and communicates with the Sector for Economic Cooperation between the ministries in charge of foreign affairs, economy, foreign trade, chambers of commerce and other economic associations and institutions in the Receiving State;

- **The Consular Sector** is responsible for protecting the interests of its own citizens and legal entities in the Receiving State, wherein usually communicates with the ministries in charge of foreign policy, internal affairs and the prosecution;

- **The Press, Culture and Information** deals with media monitoring in the Receiving State, cultural events and processes in the Receiving State, giving information to the public of the Receiving State about the events in the country itself and the development of cultural cooperation;

- **The Military Attaché**, or put in modern vocabulary **defense attaché**, refers not only to the representative of Ministry of Defense but also to both police attachés and representatives

12 Zakon o ministarstvima Republike Srbije, Službeni glasnik Republike Srbije, br. 44/2014, 14/215, 54/2015 i 96/2015, članovi 11, 12, 13, 19 i 20.
13 Zakon o policiji, Službeni glasnik Republike Srbije, br. 6/*2016, članovi 7, stav 11, 19, 19a i 19b.*
14 Zakon o odbrani Republike Srbije, Službeni glasnik Republike Srbije, br. 116/2007, 88/2009 i 104/2009, član 14, stavovi 10-12, 20 i 23.
15 Under these are most often implies so-called high politics, officially notification the government of the Receiving State on a particular issue or event, the attitudes of our government, the transfer of the answer to the initiative or its starting, delivery protests, seeking information or opinions, etc.

of the Security Information Agency[16]. It is clear that defense attaché primarily communicates with the ministry in charge of defense, police attaché with the ministry in charge of internal affairs, and a representative of the Security Information Agency with their counterparts in the Receiving State;

- **The Administrative and Technical Service**, which performs all tasks without which the work of diplomatic and consular missions is unthinkable, includes administrative and technical affairs, finance, communications, functions secretaries, drivers, etc. [17]

The number of persons within the sectors of diplomatic and consular missions depends on the financial capabilities, the level of cooperation, the size and significance of the receiving state in the international arena etc.

## INTERNATIONAL LOW AND REPRESENTATIVE OF SYSTEM SECURITY ABROAD

The development of modern international law is moving in the direction of gradually codification of more and more fields of international relations. Areas of diplomatic, consular and contractual law are previously codified, that indicate their great importance in international relations, because by definition, codification of international law is a set of regional legal provisions, collected and arranged by subject, so as to enable the regulation of general interest in the international community[18]. After a long history of development diplomatic relations through by customary international law, it's dopted the Vienna Convention on Diplomatic Relations in 1961, which is an expression of the modern codification of diplomatic law.

The Vienna Convention on Diplomatic Relations, among other things, defines generally accepted functions of diplomatic representatives, which consist in particular:

(a) "Representing the sending State in the receiving State;

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

(c) Negotiating with the Government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations."[19]

As already stated, the military-diplomatic representatives are the first who positioned their place among all subjects of the security system in the world of diplomatic practice. Therefore,

16 In the past decades in the diplomatic practice of the Republic of Serbia other specialized bodies that are sending in the composition of the diplomatic and consular missions abroad appear as well. Considering that the military attaché in the composition of our diplomatic missions since the independence of the Principality of Serbia, after the Berlin Congress in 1878, it is no surprise they are adopted in our diplomatic theory and practice. They are still the most numerous members of our diplomatic missions abroad who are not from the Ministry of Foreign Affairs, so one can agree that the reasons for this classification are justified to some extent.

17 To see more: Petrović Slavoljub Đera: *Diplomatski praktikum – drugo dopunjeno i prošireno izdanje*, DTA Trejd, Beograd, 2004, pp. 65-91 and 215-220.

18 The Statute of the International Court of Justice, in article 38, paragraph 6, defines the legal customs as „evidence of a general practice accepted as law". Long before The Vienna Convention, in Serbia was published on that issues the views of Geršić Gligorije in 1898: *Diplomatsko i konzularno pravo*, Službeni list SRJ, Beograd, 1995, pp. 130-270, and between two wars also Kisovec Mirko: *Diplomatski predstavnici*, Beograd, 1939, pp. 119-140.

19 Bečka konvencija o diplomatskim odnosima, Službeni list SFRJ - Međunarodni ugovori, br. 2/64, član 3.

we will analyze their functions and position within the diplomatic and consular missions, and then point out the specifics of the functions and responsibilities of other representatives and their mutual relationship. As a confirmation of that stance, we can emphasize the fact that the functioning of the Defence Attaché and Military Representative Offices of the military missions is legally regulated, most notably in the Rulebook on Defence Attaché[20] and the Rulebook on the Military Representative Offices[21].

Military diplomacy must be analyzed in a historical context and as a part of overall diplomacy of councrite state. In ancient times until the end of the Middle Ages, military diplomacy was an integral part of overall diplomacy, and often even the most significant one. That era established practice of engaging high level of military leaders as a peacetime diplomatic agents of monarch[22]. Clearly, those were just certain institutes that today knows the diplomatic law, not diplomatic service in the full sense of the word. The institutionalization of military diplomacy appeared in the early nineteenth century, and most of the authors believes that Napoleon Bonaparte is the creator of military diplomacy. He appointed captain De Lagrange to position of the second secretary in the diplomatic mission in Vienna in 1806, with the strictly military tasks. The positive experience of engaging officers in diplomatic missions contributed that France soon aftwewards sent official military representatives to Austria and Prussia, and other European powers did the same, based on the principle of reciprocity. Soon after, the military diplomacy is institutionalized as a relatively specific segment of diplomacy. Over time, increases importance of military diplomacy, especially through the period between the two world wars and during the Cold War, until the fall of the Berlin Wall[23].

End of the Cold War marks the beginning of intensification of the process of globalization, which is the period of creating the conditions for evolution from military to defense diplomacy. Defence diplomacy, therefore, is a broader concept than military diplomacy, which primarily means the modern speaking military-military cooperation and includes the implementation of the overall state defense policy on the international level. [24]

Starting from the function of diplomacy one can define functions of defense diplomacy by using the analogies which are adapted to the specificities of the defense diplomacy. Most authors dealing with this issue have achieved a high level of agreement in the classification of defense diplomacy functions:

(a) Representing the Defense System of Sending State in the Defense System of Receiving State;

(b) Protecting the interests of the Defense System of Sending State and its members in the Receiving State, within the limits permitted by the international law;

(c) Negotiating with the representatives of the Defense System of the Receiving State;

(d) Ascertaining by all lawful means conditions and developments in the Defense System of the Receiving State, and reporting thereon to the Defense System of the Sending State; and

(e) Promoting confidence building, friendly relations and cooperation between the Defense and Security System of Sending State and the Receiving State, and developing their economic and scientific relations[25].

20 Pravilnik o izaslanstvima odbrane, Službeni vojni list Republike Srbije, br. 25/2009.
21 Pravilnik o vojnim predstavništvima, Službeni vojni list Republike Srbije, br. 13/2010.
22 See more about this in: Zečević Milan: *Vojna diplomatija*, Vojnoizdavački i novinski centar, Beograd, 1990, pp. 11-29; Karagaća Milan: *Odbrambena diplomatija*, Antologija tekstova IX Škola reforme sektora bezbednosti, ISAC Fond, Beograd, 2007, pp. 85-120.
23 Karagaća Milan: *Odbrambena diplomatija*, Antologija tekstova Škole reforme sektora bezbednosti, ISAC Fond, Beograd, 2007, p. 195.
24 Blagojević Veljko: *Funkcije odbrambene diplomatije u međunarodnom pravu*, Godišnjak Fakulteta bezbednosti 2015, Beograd, 2016, p. 28.
25 For a broader analysis compare: Ogorec Mirko: *Vojno-diplomatska praksa*, Golden marketing, Zagreb, 2005, pp. 46-52; Zečević Milan: *Vojna diplomatija*, Vojnoizdavački i novinski centar, Beograd, 1990, pp.

Using the same methodological procedure allows us to define functions of the police attaché in accordance with the responsibilities of the Law on Police of the Republic of Serbia, the Consular Section of the Ministry of Foreign Affairs and of equivalent state authorities of the Receiving State where the police attachés are accredited, as well as representatives of the Security-Information Agency.

Some authors who dealt with the functions of the Defence Attachés also added the function of principal advisor to the chief of diplomatic and consular missions on defence and security issues[26]. This clearly shows the significance of the role of the Defence Attachés within the diplomatic and consular missions. Priviously mentioned function is implemented periodically usually within the collegium of the chief of diplomatic and consular mission, but also upon demand or when it is necessary. It depends on the particular political and security situation in the Receiving State and the region in which the service performs, and can be implemented both by the request of chief of diplomatic and consular missions or Defence Attaché's sellf initiative. Some of the reasons for the initiative can be a natural disaster or other crisis situations in the host country or the home country, which are often the subject of interest of the diplomatic service.

The advisory function of the Defence Attaché should not be considered together with the aforementioned functions of defense diplomacy by international law. The reason for this lies in the fact that the internal organization and operation of diplomatic and consular missions are under the jurisdiction of the national legislative of the Sending States. Additionally, each state may regulate the jurisdiction of its own diplomatic and consular missions, in accordance with its own needs and interests, but they have to be in accordance with the provisions of the Vienna Convention on Diplomatic Relations and the established diplomatic practice. [27]

Significantly, the function of police attachés and representatives of the Security-Information Agency should not be brought into connection with the responsibilities and tasks of consular services. The Republic of Serbia is obliged to accept and implement in practice operation of consular missions defined by international law. Since Serbia accepted the Convention on Consular Relations, consular missions jurisdiction has priority compared to jurisdiction of police attaches, in accordance with the constitutional provision that ratified international agreements applies directly as an integral part of the national legal order[28]. The same applies to the obligations of diplomatic and consular missions when it comes to responsibilities with regard to international legal assistance.

## SPECIFICS OF JURISDICTION OF REPRESENTATIVES OF THE SECURITY SYSTEM OF REPUBLIC OF SERBIA ABROAD

127-141; Gocevski Trajan: *Osnovi na sistemot na nacionalna odbrana*, Filozofski fakultet, Skopje, 2005, p. 408; Vasić Dušan: *Preventivna diplomatija – teorijski koncept, normativni okviri i političke kontroverze*, Službeni glasnik, Beograd, 2010, p. 87.

26 Compare: Ogorec Mirko: *Vojno-diplomatska praksa*, Golden marketing, Zagreb, 2005, p. 52 i Vasić Dušan: *Preventivna diplomatija- teorijski koncept, normativni okvir i političke kontroverze*, Službeni glasnik, Beograd, 2010, p. 87.

27 Blagojević Veljko: *Funkcije odbrambene diplomatije u međunarodnom pravu*, Godišnjak Fakulteta bezbednosti 2015, Beograd, 2016, p. 28.

28 Ustav Republike Srbije, Službeni glasnik Republike Srbije, br. 98/2006, član 16.

If the diplomatic and consular mission has a representative of the Security Information Agency and / or police attaché, Defense Attaché has no obligation to be adviser to the head of mission on security and police cooperation issues[29] since these are maters within the jurisdiction of those institutions. This is not just about respect of the national legislation, but also on the legal system of the Receiving State. Namely, the question of how the government will treat the communication of the Defense Attaché with, for example, members of the Border Police when there is a police attaché accredited to The Ministry of Interior for cooperation in all areas within the jurisdiction of the Police. It is similar to the other issues of cooperation, and the head of a diplomatic mission plays a key role in defining jurisdiction among representatives of security system abroad.

The answer to this and other similar questions related to jurisdiction of the representatives of the security sector within the diplomatic and consular missions are necessarily considered in accordance with the provisions of the diplomatic and consular law, national legislation of the Republic of Serbia and the law system of Receiving State. Diplomatic and consular law and practice define the framework for accreditation of the representatives of our state authorities with the appropriate government authorities of the Receiving State. This provides the conditions for the start of cooperation in the areas for which both institutions are authorized in accordance with national legislation.

The problem may occur when the institutions mentioned do not have the same competencies. For example, the Republic of Slovenia kept the Sector for Emergency Management under the jurisdiction of the Ministry of Defense, as achievements of the good practices of the former Yugoslavia, while most of the Republics of the former state that sector transferred into the structures of the Ministry of Internal Affairs. That dilemma is easily manageable in the legal point of view, because in the accreditation process the Slovenian side stated that it accepted the Defense Attaché as the authorized person for cooperation with the partner institution in the Republic of Serbia. However, the question is why Defense Attaché would do that when these issues are within the jurisdiction of the relevant ministry that deals with internal affairs according to Serbian national legislation.

The solution for this dilemma, which proved to be a very real one during the severe flooding that occurred in Serbia in 2014, is to be sought in diplomatic practice and customary law. Specifically, it is recommended that in such cases requires the consent of the competent authorities of the Sending State, in this case the Ministry of Interior and Ministry of Defense, in order to obtain prior approval for the decision of the Head of Mission in a way that the problem of jurisdiction could be solved. Of course, correspondence needs to go through the Ministry of Foreign Affairs of The Republic of Serbia in accordance with The Law on Foreign Affairs[30].

An experienced head of mission will provide informal consent for their proposal from the relevant institutions of the Receiving State. The compromise solution for such a case in practice could be to organize a meeting between the competent authority of the Receiving State in charge of emergency situations and our defense and the police attaché. During the meeting, referring to concrete activity, should be also arranged the manner of communication of the police attaché with the sector responsible for emergency management of the Ministry of Defense of The Republic of Slovenia. One of the possible solutions, if the authority of the Receiving State does not accept the police attaché as a person for direct communication can

29 On jurisdictions of police attaches see: Kekić Dalibor i Subašić Dane: *Policijska diplomatija*, Međunarodni problemi, 1-2/2009, Beograd.

30 For more on the responsibilities of defense diplomacy in emergency situations see Veljko Blagojević: *Jurisdiction of Defence Diplomacy in Crisis Situations*, in Proceedings: Security and Crisisi Management - Theory and Practise, Regional Association for Security and Crisis Management, Belgrade, 2016, pp. 47-55.

be arranged by e-mail communication, as a compromise solution in order to avoid a double accreditation and ensuring continuity of cooperation.

Now days, representatives of the security services abroad are involved in plenty of issues that have not traditionally been the object of interest of specialized services. The era of globalization in security field increased this kind of engagement. It goes about, for example, environmental security or countering pandemics, as well as cyber-crime or mass migratory movements. This, relatively, new security challenges, risks and threats could be problematic in terms of jurisdiction.

However, it is considered that the real problem most likely occurred in diplomatic and consular mission regarding the jurisdiction, could be cooperation in combating international terrorism, organized crime and corruption. These issues are under the mutual jurisdiction of the Security-Information Agency, Ministry of Interior and Ministry of Defense. These security threats are observed and evaluated by Defense Attaché, and the other diplomatic representatives of the security sector, with intention to be in a position to implement segments of activities within their jurisdiction, related to international cooperation. The responsibilities and the capabilities of the Receiving State should especially be taken into account, because it is a sensitive issue related to national security. The methodology is similar to the previously described case. In these cases, one can ask for the stance of the National Security Council, under whose authority is the Bureau for Coordination of the Security Services responsible for guidance of specialized services. The establishment of high quality and professional relationship of representatives abroad with their colleagues from the Receiving State is of great importance. The establishing of necessary level of confidence could greatly help to resolve the problem of jurisdiction and create the conditions for overcoming any difficulties.

In addition, it is also necessary to emphasize the principle of reciprocity in diplomatic relations. It may be applied through the issues defining the principle rules regarding the communication of the representatives of security system of the Sending State with the institutions of the Receiving State. It is about the need to take into account respecting the balance between both legal systems. In other words, it's important to bear in mind the equality of respect of the law system of the Republic of Serbia and the Receiving State.

## CONCLUSION

In the Serbian / Yugoslav diplomatic practice the Military and later Defense Attaché was for a long time the only representative of the security system within the diplomatic and consular missions. As a result of the long duration of the institute of military attaché, today we have a fully legal set of organization of representation of The Defense System of the Republic of Serbia abroad. In such circumstances it was not possible to come to the conflict of jurisdiction, and there was no need to initiate such a question, because the military attaché was in charge of all issues related to defense and security, and he was the adviser to the chief of diplomatic and consular missions of the above issues. However, the appearance of police attachés and representatives of the Security-Information Agency appointed on the permanent base within diplomatic and consular missions of the Republic of Serbia abroad, the situation changed radically in two ways. The Head of diplomatic and consular mission could be in doubt about which one of representatives to assign the jurisdiction of the implementation of the specific task. On the other hand, as we have seen, there may be a problem with different state organization and legal regulation in the Receiving State. This issue requests to act carefully before making a concrete decision on jurisdiction of the representatives of the Security System of the Republic of Serbia abroad. Key determinants that influence the decision on

jurisdiction are the legal basis and established diplomatic practice, especially the practice in the Receiving State. It should be noted that in international relations there is a formal legal equality, but there is a difference between the so-called great powers and their position in international politics compared to the so-called medium and small states. After all, it is natural that small countries have more interest in cooperation with the great powers, which was reflected in the diplomatic practice of those states.

Jurisdiction of the representatives of security system within the diplomatic and consular missions of Serbia abroad have been defined in the context of national law, which is in compliance with the provisions of international law, more specifically diplomatic and consular law. The adoption of legal acts to regulate the matter of jurisdiction of representatives of security system abroad seems irrational because the potential problems that may arise are relatively rare in practice. Nevertheless, it is from great importance to identify them and propose specific modalities for their resolution in accordance with diplomatic theory and practice. This conclusion is not surprising if we know the fact that before the codification of diplomatic law, most of the diplomatic activities were regulated by customary law, as an obligation to act in accordance with the established international practice.

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# ILLEGAL MIGRATIONS AS A THREAT TO NATIONAL SECURITY – THE ROLE OF COMMUNITY POLICING

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**Abstract:** Illegal migrations are increasingly being perceived as a threat to the political, social, economic, and cultural security of a particular country. Illegal migrants are often associated with organized criminal groups and groups dealing with terrorism, smuggling and trafficking in human beings, as well as an increasing number of unrest and socially undesirable behavior, and they are perceived as a threat to the lifestyle and cultural pattern of the recipient country. Citizens of transit and destination countries mostly perceive illegal migrants as potentially dangerous persons and criminals and begin to show animosity and even uncovered hatred towards them.

Given that illegal migrants and new paths of their movement are becoming a major security problem that leads to the instability of states, transit and ultimate destination, and given the uncertainty of their citizens, there is a need to transform the security systems of many countries by establishing normative and institutional assumptions that will enable adequate response to the security challenges, risks and threats that illegal migrations carry with them.

In this paper, one of the answers to this type of security problem will be observed through the work of community policing. This is because experience unambiguously indicates that community policing can provide a tangible and lasting contribution to greater citizen security by establishing trust and cooperation between the community and the police through co-operation on wider security issues of relevance to them, including threats to security caused by illegal migrations. Concretely, ways to build and improve access through community policing against illegal migrations will be examined through concrete examples.

First, illegal migrations and its impact on national security will be exposed, then the basic orientation of community policing, and finally, it will be pointed to some of the postulates and modalities of community policing against compromising security caused by illegal migration.[1]

**Keywords:** illegal migrations, police, community policing, smuggling and human trafficking.

1 This paper is the result of carrying out the research project funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia (no. 179045) and implemented by the Academy of Criminalistic and Police Studies in Belgrade (2011-2017), titled Development of institutional capacity, standards and procedures for countering organized crime and terrorism in terms of international integration, and the result of the research on project: Management of police organization in preventing mitigating threats to security in the Republic of Serbia, which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade – the cycle of scientific projects 2015-2019.

# INTRODUCTION

Migrations have always existed, but they have been treated differently throughout history. There were desirable and designed, controlled and necessary migrations, but also those that had security implications. They are a complex social phenomenon that can be influenced by political, economic, religious and ethnic reasons.

Illegal migrations can be considered a threat to the political, social, economic, and cultural security of the state and its society. Illegal migrations are considered to violate the security of state borders and therefore constitute a threat to the national sovereignty of the state (political security). Also, they can have a negative impact on the structure of society and its economic well-being by influencing social order, and by increasing the unrest and causing higher crime rates (social security). In addition, illegal migrants are sometimes described as economic migrants, asylum-seekers which want to take advantage of social benefits or take jobs from the local population (economic security). Migrants are often portrayed as a threat to the lifestyle and culture of the recipient country. The arrival of migrants from the same ethnic or religious group can be considered as a cause of change in the state's racial structure and the weakening of its cultural identity.[2]

Political and humanitarian crises in third countries, in the previous period, resulted in the displacement of a large number of people in search of international protection in the countries of the European Union.[3] In these countries, migrants are perceived mainly as a security threat. Research shows that citizens of transit and destination countries predominantly have a negative or ambivalent attitude towards illegal migrants, and the feeling of insecurity and fear for their own security has overcome empathy. All migrants are projected as a threat and the fact that they were also victims was ignored. More and more openly, both politicians and official government authorities consider migrants are guilty of increasing crime, fear, insecurity and other social problems and perceived them as a security threat both in countries that are their ultimate destination, and countries that only allow their free passage. As a result, most of these countries introduce more restrictive policies towards migrants, beginning with sharper border controls and raising fences, making difference between political and economic migrants and tightening the process of resolving the status of asylum seekers, and establishing a more rigid legal framework for migrants.

Although there are many prejudices and largely unjustified fears of illegal migration, the fact is that they are a serious factor of jeopardizing security, because they are linked to smuggling and human trafficking, but also other punishable actions, ranging from minor offenses to serious criminal acts, as well as possible spread of various infectious diseases.

One of the main migratory routes towards the territory of the European Union crosses through Serbia, the so-called Balkan route. Although Serbia is not without experience in terms of migration, it is a fact that such an influx of illegal migrants presents a major challenge requiring coordinated cooperation between all relevant institutions, as well as the establishment of a special security policy.[4] Member States of the European Union, as well as other developed industrial states, have found themselves facing new challenges posed by the global migrant

2 Collins, A. (2007). *Contemporary Security Studies*. New York i Oxford: Oxford University Press, p. 118.
3 Talijan, M., Talijan, M. M., Ristović, S., (2015), Osmišljavanje efikasne granične bezbednost – Jedan strateški pristup, *CIVITAS, časopis za društvena istraživanja,* br. 2, Fakultet za pravne i poslovne studije, Novi Sad, p. 72.
4 For the last two decades, the Republic of Serbia faces all kinds of migrations: external (mainly by emigration) and internal (from village to city); forced (refugees, internally displaced persons and returnees on the basis of readmission agreements) and voluntary; legal and illegal, as well as labor migration.- Krstić, I., (2012), *Zaštita prava migranata u Republici Srbiji*, Beograd, Međunarodna organizacija za migracije, p. 11.

and refugee crisis, which has led to the need for an active and coordinated action against this security threat. As the confrontation with illegal migrations is a closed circle whose beginning and end coincide in prevention, it is obvious that the reform of the security system must be conditioned by the transfer of the focus from the previous repressive to preventive action.[5] One way to achieve this is to build and improve access though community policing.

## THE BASIC FACTS ABOUT ILLEGAL MIGRATIONS AND THEIR IMPACT ON NATIONAL SECURITY

Migrations can be defined as "the movement of persons, or groups of persons, across the international borders, or within the state. It is a population movement that includes any type of movement, regardless of the length of the road, composition and causes, and includes the migration of refugees, displaced persons, economic migrants and people moving for other purposes, including family reunification."[6]

Migrations can be classified into several types according to different criteria: necessity, i.e. are they a matter of personal choice or coercion, voluntary and forced; scope, individual and collective (group) migrations; basic causes, economic, non-economic and environmental; motives of migrants, the non-economic migration in order to seek opportunities and migration for survival; organization, organized and unorganized (spontaneous); time of formation or order, primary and secondary; the timeframe of migration, on temporary, occasional and permanent; direction of movement, on one-way or two-way; legality, to legal and illegal. If migrations take place within one state or across interstate borders, it is possible to distinguish internal and international migrations.[7]

The reasons that lead to illegal migrations can be divided into push and pull factors. Push factors are the reasons why migrants decide to leave their home, country, continent. Push factors are in fact all adverse circumstances that prevent a normal and safe life. Pull factors are the benefits and advantages that life provides elsewhere, that is, factors that attract people to come to the destination country.[8]

Migrations have become one of the most important security issues in the international community in recent years. This is because wars and military interventions in North Africa and the Middle East have caused a large number of migrants leaving their countries to escape violence and persecutions. In search of a new life, most of them go to the European Union. A growing number of migrants increased illegal entry into the countries that are on this road, including Serbia. "In many of these countries, immigration and the arrival of the increasing number of refugees and asylum seekers have become a top political issue for many state and non-state actors as well as the general public."[9]

Illegal migrations have different implications on national security. Because of their difficult and vulnerable situation, migrants are often pulled into various criminal activities, either as perpetrators or victims. In many transit or destination countries cases of violence, criminal offenses and misconduct committed by migrants have been reported.

5 Mijalković, S., Kriminalističko-obaveštajni rad u prevenciji međunarodnih organizovanih ilegalnih migracija, *NBP*, broj 1, Kriminalističko-policijska akademija, Beograd, 2007, p. 90.
6 International Organization for Migration (IOM) - Key Migration Terms, *http://www.iom.int*
7 More about division of migrations see: Mijalković, S., Žarković, M., (2012), *Ilegalne migracije i trgovina ljudima,* Beograd, Kriminalističko-policijska akademija, pp. 18–21.
8 More: Mijalković, S., (2009), *Suprotstavljanje trgovini ljudima i krijumčarenju migranata,* Beograd, Službeni glasnik i Institut za uporedno pravo, pp.77–81 i Mijalković, S., Žarković, M., *Opus citatum,* pp. 116–120.
9 Gibney, M., (2004), *The Ethics and Politics of Asylum.* Cambridge University Press, p. 2.

With the first bans and attempts to stop migrations by raising fences and closing migrant routes, migrants, in a desire for a better and safer life, accept the offers and conditions offered by organized criminal groups dealing with smuggling and human trafficking. This can lead to migrants' participation in various criminal acts, they can be deceived, robbed, become victims of traffic accidents, remain without financial means, work or sexually exploited, and even killed.

An even bigger problem of global security, in addition to smuggling and human trafficking, inextricably linked with this form of organized crime, is terrorism, which has intensified its activities on the European soil with the emergence of a large migrant wave.

Although smuggling and human trafficking, as well as terrorism, are security threats most talked about, large migrant waves are accompanied by other crimes or offenses. First of all, the illegal crossing of the state border and entry into the territory of a particular state, breaches the security of the border of a particular state and jeopardizes its territorial integrity. The big problem is also the fact that most illegal migrants do not have personal documents, so their identity cannot be determined, and therefore their security profile is unknown. Because of the desperate situation in which they find themselves, such as hunger and lack of money, cases of kidnapping, theft, looting and violent entry into the home of the domestic population by migrants have been recorded. Of particular concern is the growing number of committed or attempted crime of rape, in which there is a large number of minors among the perpetrators and the victims. The cases of murders that have caused the anger of the citizens of the countries on the path of migration, street protests and even more hatred towards migrants as a synonym of fear and insecurity of citizens of European countries are also recorded.

A large number of migrants moving unchecked and avoiding state institutions and healthcare, carry with them the danger of spreading various infectious diseases, causing a special fear and concern among the domestic population.

Not only the domestic population is vulnerable, but migrants themselves are often victims of criminal offenses. There are many examples of physical violence against migrants by police officers in countries which they are trying to enter or are already in its territory. Migrants may be victims of fraud, abuse, looting, sexual exploitation by the citizens of the country of transit or destination, but also by other migrants, among whom, because of the great tension due to exhaustion and uncertainty, there are mutual conflicts, fights, and even murders. All of this creates a bad security situation in a country and creates insecurity among its citizens.

## THE BASIC ORIENTATION OF COMMUNITY POLICING

Strategy to counter illegal migration[10] in order to achieve the overall goal, which is reflected in a significant improvement in effectiveness and increased efficiency in countering illegal migration, foresees two basic directions of action: proactive and reactive. This Strategy recognizes the Ministry of the Interior as the entity with the greatest scope of jurisdiction and responsibilities in countering illegal migration, stating that the cooperation of the police with citizens and the local community is realized through projects "police work in the local community" and through direct cooperation, information exchange and assistance, which has a special significance in the border area. There is a need for information and training about the problem of illegal migrations police officers who already take part in the project "Police in the local community", as well as officers of the Border Police Administration, in order to intensify direct cooperation with citizens in the border areas with the aim of preventing illegal migration.

10 "Službeni glasnik RS", br. 25/09.

Community policing, as a proactive concept with a focus on prevention, logically imposes itself as one of the indispensable approaches to countering illegal migration.

Community policing is not just a program, a new model of policing, but a completely new philosophy of police-civic cooperation with the aim of determining the problem, the needs of the community and harmonious work in identifying these needs.[11] It is a proactive concept focused on crime prevention, based on partnership with citizens (community) and problem-oriented policing.

Security threats which illegal migrations carry with them bring new challenges to the community policing concept. There are opinions that this mode of work is too mild in the fight against terrorism or smuggling and human trafficking as the most frequent and the most severe consequences of illegal migrations, and that priority should be given to the traditional way of policing recognizable per the repressive approach and the high degree of militarization of police officers. Instead of rejecting community policing, it is necessary to find out its qualities and recognize that this model of police work can become an advantage in the fight against these threats to national security. "The fact that the police alone cannot successfully control the crime and that community support is of key importance, must also be taken into account when it comes to preventing terrorism. ... It is far more likely that police and community relationships which built on trust and mutual respect will result in early warnings of terrorist acts."[12]

The classic concept of distant police activity which accesses the ethnic community as a unique collective that does not distinguish an individual suspected of a criminal act (e.g. a potential terrorist), but the entire community, can only exacerbate the security situation. This is because it creates a unique front against one another. On the one hand, the police, the majority public and the media see potential criminals and terrorists in the entire minority population, and on the other hand all members of the minority group feel that they are stigmatized, suspected, endangered. In this way, it is difficult to avoid confrontation or even "war" between us and them.[13]

By fostering a problem-oriented approach in working with illegal migrants, and "by showing the good will and the desire to help members of the minority community and their families, the police will easier gain trust from not-criminalized members of the community and encourage them to cooperation."[14]

In dealing with illegal migrants, police must strictly adhere to professional labor standards and "ensure the strong and efficient implementation of anti-discrimination regulations, and in particular to take steps to encourage reporting of crimes motivated by ethnic hatred and ensure that they will be fully resolved".[15] Community policing as a model of police work can contribute to improving relations and building trust between police officers and migrants through permanent presence, contacts and cooperation with migrants, improving protection mechanisms, providing assistance, or undertaking other activities aimed at achieving mi-

11 Compare: Nikač, Ž., (2014), *Policija u zajednici*, Beograd, Kriminalističko-policijska akademija, pp. 48–49.
12 Kešetović, Ž., (2008), Teroristička pretnja i koncept policije u zajednici, *Revija za bezbednost, Stručni časopis o korupciji i organizovanom kriminalu,* Beograd, Centar za bezbednosne studije, br. 9, pp. 40–41.
13 Simonović, B., (2007), Rad policije u multietničkoj zajednici, Pregled inostrane literature, moguća unapređenja u našim uslovima*, Revija za kriminologiju i krivično pravo,* Beograd, Srpsko udruženje za krivičnopravnu teoriju i praksu i Institut za kriminološka i sociološka istraživanja, br. 2, p. 88.
14 Simonović, B., (2007), Međunarodni standardi za rad policije u višenacionalnim zajednicama*, Pravni sistem Srbije i standardi Evropske unije i Saveta Evrope*, Kragujevac, Pravni fakultet Univerziteta u Kragujevcu, Institut za pravne i društvene nauke, p. 111.
15 *Ibidem,* p. 101.

grants' security. Special attention is paid to working with socially vulnerable groups, such as women, children, minors, sick people, the elderly, persons with disabilities, etc.[16]

Community policing cannot be effective if it acts independently, but must function as one of a series of proactive modalities undertaken against illegal migrations which can only have effects through synergy. This is because the problem of illegal migrations requires the resolution of a range of issues of political, social, economic and cultural character outside the jurisdiction of the police.

It should be noted that the community policing is only part of a comprehensive solution to the problem of illegal migrations. If implemented with appropriate planning and preparation, community policing can provide a tangible and lasting contribution to broader strategic efforts in preventing the most serious negative effects of illegal migrations, such as terrorism, smuggling and human trafficking. However, "policymakers and police leaders must have realistic expectations of the results that community policing can accomplish in response to what is often considered a problem of low frequency, high complexity and multi-dimensionality".[17]

## SOME POSTULATES AND MODALITIES OF COMMUNITY POLICING AGAINST ILLEGAL MIGRATIONS

In order to effectively and efficiently deal with illegal migrants through community policing, first and foremost the concrete threats to national security by illegal migration must be considered, as well as the roles of the police and ways to tackle these threats within this concept identified.

The basic principles of community policing can also be applied in the case of illegal migrants, and the key strategies for their implementation in practice include: the introduction of visible and easily accessible police officers and police facilities; the increased presence of police officers in the city, in the streets and in all other places where migrants are accommodated, where they gather, move or stay; introduction of a proactive approach to problem solving; visiting the migrants to the accommodation centers or the places where they gather in order to inform them on security issues; enhanced police control of vulnerable places; elaboration of rules and observance of procedures reflecting international human rights standards; involvement of all government agencies and services. Working with migrants requires a wider range of skills such as communication, trust building, mediation in conflicts, creativity in resolving security issues, human rights and gender equality awareness, the fight against stereotypes and the collection of information, etc.[18]

It is necessary to build trust not only between migrants and police officers, but also between migrants themselves, as well as migrants and the community. Building a relationship of trust with migrants can make it possible to establish contact with groups or individuals who are distrusted, marginalized or avoid contact with government structures and the public. This

16 Ristović, S., (2016), *The Public as a Condition for Establishing and Functioning of Community Policing*, International scientific conference „Archibald Reiss Days", Thematic conference proceedings of international significance, Tom II, Volume II, Academy of Criminalistic and Police Studies, Belgrade, p. 209.
17 *Sprečavanje terorizma i borba protiv nasilnog ekstremizma i radikalizacije koja vodi ka terorizmu: Pristup putem rada policije u zajednici*, Beč, Organizacija za evropsku bezbednost i saradnju, 2014. p. 91.
18 More: Ristović, S., Policija u zajednici i suprotstavljanje savremenim oblicima kriminaliteta, Zbornik sa naučno-stručnog skupa sa međunarodnim učešćem *„Suprotstavljanje savremenim oblicima kriminaliteta – analiza stanja, evropski standardi i mere za unapređenje"*, Kriminalističko-policijska akademija, Fondacija Hans Zajdel, Beograd, 2015, pp. 106–109 i *Sprečavanje terorizma i borba protiv nasilnog ekstremizma i radikalizacije koja vodi ka terorizmu: Pristup putem rada policije u zajednici, Opus citatum,* pp. 87–88.

is even more important if such people are witnesses or victims of problematic situations or even participants of illicit, violent events. The police must be ready to provide personal security to people who cooperate with it, and may be rejected by their community, or exposed to threats, intimidation and attacks. Such police activities must be "based on community knowledge and understanding of its dynamics, open and inclusive dialogue with different community members."[19]

The seriousness and diversity of the problems caused by illegal migrants require a multiagency approach as one of the modern forms of the community policing. A multiagency approach to problem solving is the operationalization of the basic idea of the community policing that the police cannot solve problems that often exceed its jurisdiction. Police officers are expected to have an initiative and be creative in solving the problem, which at the same time encourages partnership with other institutions and enables better utilization of their professional potentials. It must not be forgotten that illegal migrants are a heterogeneous group of people with different needs and as such require planned and tailor-made approach.

Police officers involved in work with illegal migrants must undergo additional, special human rights training related to this category of persons. Also, knowledge of national legislation and the existing policy related to illegal migration is necessary: understanding the phenomenon of migration, and especially illegal, criminal offenses of human trafficking and terrorism, then violent extremism, including the conditions leading to them, etc. Special education is preceded by raising the awareness of police officers on the rights of migrants and their needs. This presupposes not only a good knowledge of the provisions of the Constitution, international documents and human rights law, but also their adequate application in practice. The most important is that specialized training is focused on the operational approach, i.e. it is practically applicable.

In addition to the knowledge, skills and credibility necessary for a police officer to be part of a community policing team, knowledge of a foreign language, knowledge of culture, religion, customs, value systems and lifestyles of different ethnic communities belonging to illegal migrants is desirable, but possessing conflict management skills and various communication skills.

Given that migrants are far from their own country, frightened, distrustful, misinformed, establishing a communication with them requires a special commitment of police officers, who must demonstrate sensitivity, perseverance, communication skills, etc.

When communicating, police officers must be professional, interested and patient, and must act without prejudice. Only in this way the relationship of trust between police officers and the migrants will be established, which will condition the obtaining of security-relevant information. By increasing the number of contacts between the police and illegal migrants, police can obtain information about the persons who are the source of the problem or the persons who are in trouble. In this way, the police get the chance to react in the very moment of occurrence of danger or problems that can cause criminality. It is a more efficient way of accessing operational or strategic information than the classic forms of police intelligence activities, especially when it comes to illegal migrants who represent closed groups and where it is difficult to penetrate with the classical operational penetration measures.[20]

In preventing the threat of security by illegal migrants, it is necessary to increase the flow of information, especially in terms of quality and diversity, which migrants themselves will voluntarily deliver to the police in support of their actions. The system of exchanging and

19 Sprečavanje terorizma i borba protiv nasilnog ekstremizma i radikalizacije koja vodi ka terorizmu: Pristup putem rada policije u zajednici, *Opus citatum,* p. 104.
20 See: Simonović, B., (2007), Međunarodni standardi za rad policije u višenacionalnim zajednicama, *Opus citatum,* p. 111.

monitoring information between migrants and the police must be well established because it depends on them planning further measures and actions in the field of security. The police should, in the exchange of information or obtaining useful security data, include a large number of illegal migrants in terms of ethnic, cultural and religious affiliation, age, gender, etc. Channels and mechanisms for the exchange of information can be: determining patrols that regularly visit areas where they are moving or finding illegal migrants; organizing public meetings; sharing of informers, brochures, etc.; use of electronic and other media to provide important information to migrants; then, the Internet and social networks.

It is necessary to create a coherent system for collecting and analyzing data related to migrants, or obtained from the migrant. Policing based on intelligence and community policing are complementary, but different approaches. Intelligence can appear as a by-product of effective community policing where the public has gained confidence in the police.[21] "The obtained information through the analytical and statistical analysis must be transformed into the prognosis of further trends in illegal migrations, on the basis of which preventive and repressive activity can be planned, i.e., required normative, organizational, personnel, material and technical capacities."[22]

One way to reduce the fear in the community from migrants, as well as the destruction of prejudices and stereotypes about them, can be achieved through means of public media, printing brochures, informers, etc., which will be easily accessible or distributed in those places where the frequency of migrants is the largest and where citizens feel the most vulnerable. Media greatly influences the formation of public opinion, and is expected to promote tolerance, empathy, acceptance of diversity and encourage the exchange of information.

It is necessary to include a larger number of actors (both state and non-state) in aiding migrants, in particular victims of human trafficking and other crimes. Particular attention should be paid to creating support programs for women and children. When necessary, the police should send migrants in services, which can provide them with legal, medical, psychological or other assistance, and so on.

The concept of community policing cannot function independently in the fight against illegal migrations, but it can be effective if, with all its forms and manifestations, it is embedded in a comprehensive strategy for the management of illegal migrations.

## CONCLUSION

The concept of community policing has been recognized as a model of policing that can give good results in countering crime and is increasingly emphasized in the public and points to the importance of this type of policing. The advantages of this concept are also indicated when it comes to illegal migrations as a threat to national security. Community policing should be implemented independently of the current threats to endangering national security, in this case illegal migrations, and should represent the true implementation of the democratic work of the police. In addition, one should not forget that community policing is not a concept that can function successfully on its own. It should be part of a comprehensive, coherent strategy to combat crime, including its most seriously organized forms, which more and more are identified with illegal migrations.

Given that the solution to the migrant crisis is not visible, the security situation will continue to be unstable, with indications that it will worsen even further with the emergence of

21 Sprečavanje terorizma i borba protiv nasilnog ekstremizma i radikalizacije koja vodi ka terorizmu: Pristup putem rada policije u zajednici, *Opus citatum,* p. 106.
22 Mijalković,S., (2007), *Opus citatum,* pp. 90–91.

new migrant waves, and, in that sense, it is necessary to achieve the cooperation of all security factors and to make the most of the benefits offered by the community policing.

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# ESTABLISHING DEMOCRATIC AND CIVIL CONTROL OF SECURITY SERVICES

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**Abstract:** At the beginning of the 21st century, a change of global security environment in modern states has given rise to increase of threats, such as proliferation of weapons of mass destruction, terrorism, international organized crime, human trafficking and illegal trade of goods subject to control, mass migrations, money laundering, etc. These threats produce new challenges with regard to functioning of national security systems, and this naturally reflects on new complexities in establishing valid mechanisms for their control. In such circumstances security and intelligence systems must adjust to new situations to improve their efficiency.

This paper deals with the ways for establishing necessary mechanisms for democratic and civil control of security services.

**Key words**: state, democracy, national security, security services, security challenges, civil control

## INTRODUCTION

Terrorist attacks conducted at the beginning of the new millennium, especially those "from September 11 2001, have intensified discussions concerning tendencies leading to a decrease of transparency of security services and weakening of the already too obscure and unclear system of public control".[1]

Concerning the work they are doing, security services should be subjected to appropriate democratic and civil controls. The analysis of this complex social phenomenon quite justifiably raises the following question: Is there a universal, generally acceptable and applicable model for their control? Many researchers have tried to find the answer to this question. Still, almost all of them agree on one thing: there is no unique or generally applicable model for democratic and civil control of security services.[2] In principle, there are only general models and starting principles which may be common for all security services of the world.

For effective control and oversight, laws are not sufficient. Efficient and clear ways and procedures must be established for interpretation and implementation of adopted laws, as well as a defined relation between the normative and the real.

Regardless of the dominant form of control in democratic societies, most scientists and researchers agree that executive and judicial authorities control security services activities in most countries. Each control segment has its specific role and makes just a part of the system of control, responsibility, supervision and oversight, whose purpose is to ensure legality,

1 Andrzej Karkoszka, "Security Sector Reform - the Concept, Its Political Usefulness and Growing Importance", in: *Setting the 21st Century Security Agenda*, Peter Lang publ., Bern, Switzerland, 2003, p. 84.
2 More about this: *Intelligence Practice and Democratic Oversight - A Practitioner's View*, Occasional Paper 3, DCAF-Intelligence Working Group, Geneva, July 2003, p. 37.

proportionality and integrity of activities which security services by the nature of their work performed secretly.

Based on constitutional and legal powers, elected authorities are responsible for functioning of security services. The main problem appearing in this chain is the "transparency-secrecy relation". Hence the question: How to ensure efficient democratic and civil control over security services without violating the "principle of secrecy" as one of the main postulates their activities are based on?

Because of the very activities these services perform, which are of sensitive nature, responsible structures try to isolate them from political abuse, especially from abuse by executive authorities. Generally, solutions adopted by most democratic countries deal with this problem in two ways - first, by balancing of rights and obligations, and establishing of the system of responsibilities between security services and ruling political elites, and second, by creation of effective mechanisms and ways for control and checkup outside the domain of executive powers.

## PROCESSES WHICH CONTRIBUTED TO STARTING OF REFORMS

It could be reliably said that up until mid-70s of the 20th century there was no control over security services in most European countries, as well as the U.S.A., Canada AND Australia, by legislative and judicial authorities. Indeed, in almost all democratic countries of the time it was believed, and was so in practice, that that was the exclusive right of executive authorities.

Such services have in many countries, such as the U.S.A., Canada, Australia, Great Britain, FR Germany, France, and even SFRY, functioned based on enactments or decrees of executive authorities (most frequently of confidential character).[3]

For instance, the implementation of parliamentary oversight of national security services in FR Germany began in 1978,[4] while in most other West European countries (apart from Holland, where a kind of external oversight was introduced as early as 1952), as well as in Canada and Australia it was introduced in the 1980s, in Great Britain only in 1994.[5]

The end of the Cold War and the disappearance of bipolarity in international relations present a new phase in the development of control mechanisms and oversight of security services which began to be implemented in post-communist and post-conflict societies. It especially related to the countries which appeared through dissolution of the former Soviet Union. Many of them, especially those in East and South-East Europe, have reformed their intelligence and security services with encouragement and support by western democracies putting them, some of them for the first time, within legal framework under the oversight by executive, legislative and judicial authorities.

These processes brought about new dilemmas in redefining the concept of security, since they have moved security and security studies in Europe and the U.S.A. from the principal care for survival of the state (hard-line approach) to the care for economic welfare and overall prosperity and, most importantly, putting an individual in the centre of attention (soft-line

3 In SFRY that was the Regulation on the work of State Security Service.
4 Based on the Law on Control of Intelligence Activities and the Law on Control Bodies from April 11 1978. For more on this see: Andreja Savic, Mladen Bajagic, *World Security - From Secrecy to Public Character* (second amended and supplemented edition), College of Internal Affairs, Belgrade, 2005, p. 180-181.
5 *Intelligence Service Act 1994*, Chapter 13, 10, 26, May 1994

approach).[6] Asymmetric threats to security, such as terrorism and organized crime, i.e. social instability, economic problems, problems regarding migrations, environmental threats, pandemics of contagious diseases and other phenomena and processes have especially contributed to actualization of the "soft-line" approach to security; in the traditional concept of "hard-line" approach to security they were not recognized as security processes and phenomena.

In most East-European countries partial reforms[7] were implemented in extremely difficult circumstances of post-communist transitions. Newly established political regimes and institutions, as well as democratic values and norms which corroborate them were fragile. Comprehensive and speedily implemented political changes and the performed lustration processes mainly recruited non-professional staff not able to implement the started changes. A special focus in these processes related to loyalty to post-communist authorities and animosity toward the previous regime. In many cases this resulted in a loss of institutional capacity, internal divisions in security services and deep and often non-constructive politicizations among employees. In order to ensure legal basis, legal provisions were often copied in an uncritical, unsystematical and even contradictory way, or they were unprofessionally improvised from the legislature of developed democracies.[8] These problems were even more aggravated by the lack of a democratic culture. A number of previous members of security services who lost their jobs found jobs in private companies dealing with security activities. These phenomena resulted in forming a parallel security sector,[9] which created serious problems for newly-formed services in these countries.[10]

Transition was in process in post-communist countries of Central and East Europe in the late 90s of the 20th century, and one of its priorities was depolicitization of political power instruments and introduction of democratic and civil control of intelligence services. At the same time the processes linked with post-conflict stabilization and reconstructions were going on in the Third World countries, where attention was turned to issues concerning functioning of the system. A joint trait of such developments is the creation of structures and mechanisms via which legitimate political authorities should be able to govern security institutions.

The terrorist attack on the U.S.A. targets from September 11 2001 may be marked as another important moment for further development and reform of security-intelligence services. Because of the terrible U.S. experience, most countries had to reorganize their security systems including intelligence services according to new security threats (terrorism and the increasing organized crime, proliferation of weapons of mass destruction, human and drug trafficking, migrations). In such circumstances, security services were granted broader powers, especially in implementation of measures, methods and procedures which are in direct collision with the proclaimed principles of human rights and freedoms.[11]

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6 For more on this see: Richard Cohen and Michael Mihalka, *Cooperative Security - New Horizons for International Order*, George C. Marshall Center, 2005.

7 The term "Reform of the Security Sector" was first used in 1998 in the British Parliament by Clara Short, Labour MP and the Minister of Development. This concept was later elaborated by British scientists from the Royal College in London and the Bradford University (Michael Clark, Anthony Forster, Owen Green, Timothy Edmunds, Malcolm Chalmers, Dylan Hendrickson, et al.).

8 Baltic countries may be taken as an example, since they have taken over the model for full legislative solutions in the security sector from western democracies. Still, they had serious problems, since most of these solutions could not have been applied and fit into their national framework.

9 There were such examples in Bulgaria, Romania, Checkoslovakia and some countries from the former USSR.

10 This is also discussed, under para 63, in the Venice Commission`s Report, adopted at the 71st plenary meeting in Venice on June 1-2, 2007. It is available at: http://www.venice.coe.int/docs/2007/CDL-AD(2007)016-e.asp.

11 For instance, citizens of Switzerland, at the referendum held on September 25 2016, supported the law on eavesdropping and surveillance of electronic mail in that country, while German Bundeswehr adopted on October 21 2016, a set of laws relating to the reform of BND, and larger powers in surveillance of electronic communications, and also establishing of new control mechanisms.

Besides, many countries faced with the new forms of security threats and the fact that they cannot confront them in previous fashions were forced to start a broad exchange of operative intelligence data and information with countries from all over the world. International cooperation in the field of timely identification of potential security threats has, after the above mentioned terrorist acts, received a brand new and extremely important dimension. However, the data obtained through the cooperation with foreign partner services are subject to appropriate rules based on respect of adopted agreements and procedures on exchange of such data and information.[12]

If intelligence services are given too much power for acting in the interest of "ensuring peaceful and prosperous life and welfare in a certain social community", then quite justifiably, the need arises for establishing new and even more efficient procedures and mechanisms for control of such powers.

In order to be effective, services use secret means and methods. Democracy, however, strives for transparency in performing of public offices and requires strict respect of human rights and freedoms. "Although they exist to protect security and property of citizens and their political communities, in such circumstances there is a risk for the services themselves to become a potential source of threat".[13] In order to prevent this, the governing political elites establish a complex and complementary system of procedures and control mechanisms.

This is aimed at ensuring subordination of security services to civil authorities and the public interest. Such a system of democratic and civil control has today been accepted as a necessary attribute of a democratic regime. It is incorporated in constitutions of modern states[14], and relies, beside own legal acts among other things, on numerous international documents.[15]

## IMPORTANCE OF DEMOCRATIC AND CIVIL CONTROL

Through history there were many cases of power abuse by institutions of state authorities. Most often this relates to armed forces, as the strongest instrument of power which "broke away" from control. Modern age has brought about gradual strengthening of other institutions, such as the police, and especially security services. Parallel with this strengthening, there was a threat that the said institutions may perform abuses; for instance, violent overthrowing of governments is an extreme demonstration of mingling of power instruments into state functioning. There are also other typical cases, such as influencing the political life, discrediting of internal opponents, or realization of special financial or economic benefits.

12 For instance, thus obtained data may not be passed on to other security services. Their keeping is regulated by certain laws and by-laws. In some countries parliamentary boards for control of work of services are not allowed access to such data, such as in Canada and Australia. The members of the Security Services Control Committee of the National Assembly of the Republic of Serbia, based on the Law on Bases for Regulation of Security Services, cannot "ask for data and information obtained via exchange with foreign services and international organizations" from security services. For more on this see: The Law on principles of regulation of security services of the Republic of Serbia, "Official Gazette of RS", no. 116/07 and 72/12; Radojica Lazic, *Control of Security Services in Serbia*, National Security Academy, JP "Sluzbeni glasnik", Beograd, 2014, pp.88-91.

13 Hans Born, *Democratic and Parliamentary Oversight of the Intelligence Services, Practices and Procedures*, Working Paper Series, no. 20, Geneva, May 2002.

14 See: Article 99, para 1, item 6 of the Constitution of the Republic of Serbia.

15 See the review of the most significant international documents on this topic in: Hans Born, Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, DCAF, University of Durham, Parliament of Norway, 2005.

The dominant role of some institutions in the political system has given rise to social crises and spreading of negative phenomena such as corruption and "clientelism".

Democratic and civil control and public oversight of governmental bodies is a prerequisite for a democratic system and functioning of market economy. The first crucial task of these mechanisms is to prevent manipulation of power instruments by political groups trying to realize their particular interests. The second crucial task is to disable potential abuses of these institutions by their members or their heads and leaders. Based on these facts, civil society and democratic state create a complex of formal relations and informal rules in order to ensure accountable and transparent functioning of the total power apparatus. In traditional democracies and countries which are in process of democratic transformation, one rule applies - mechanisms of political control and public oversight of armed forces, the police and security services, are prerequisites for an efficient state governing and for the development of a civil society.

In the past forty years one question has constantly been raised: how to establish democratic and civil control of security services. In principle, there were two main reasons for these changes.

In countries of the so-called "old" democracies (North America, West Europe, and Australia), the principal incentives for changes of security services way of work were scandals involving their abuse of powers and rights. Indeed, this served as the motive for parliamentary and judicial enquiries, which have resulted in adoption of new laws and establishing of new mechanisms for control of national security services.

The most famous investigations of illegal activity and violation of powers by security services in this period were the U.S. Congress enquiries in 1975 and 1976.[16] They investigated the violation of powers by U.S. security services (primarily the FBI and CIA). They resulted in forming of (previously non-existent) new control bodies both in the Senate and the House of Representatives.[17] The similar situation had in Canada given rise to the enquiry (1977-1981) on illegal steps of the Canadian security agency (RCPM - Royal Canadian Mounted Police), which was entrusted to McDonald's Commission.[18] In Australia, because of abuses and the violation of powers which were shaking this country in the 80s concerning the work of the national security service (1976-77, 1984-85), parliamentary enquiries were conducted.[19]

16 The Board presided by senator Church (Church's Board) tried to apply the "criminal standard" on domestic intelligence work limiting investigations by a domestic intelligence service to situations where the Law is violated or is about to be violated. The U.S.A. adopted the criminal standard after Church's Board established there had been many cases when the White House instructed the FBI to investigate U.S. President's political opponents. The report was never presented to the public. Pike's Comittee (headed by senator Pike) was founded for the purpose of conducting public investigations on activities of the U.S. intelligence services relating to abuses and ommissions in work,. On June 19 1976, the Comittee had adopted conclusions relating to omissions in the work of security services.

17 In the Senate, through the Senate Select Committee on Intelligence (founded in 1976) and the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (founded on January 27 1975), and in the House of Representatives through the Permanent Select Committee for Intelligence Activities (founded on February 19, 1975).

18 The Commission was founded on July 6 1977. During its mandate (1977-81) the Commission made three reports: "Security and Information" (November 26 1979), "Freedom and Security according to the Law", 2 volumes (January 23 1981), and: "Certain R.C.M.P. Activities and the Question of Governmental Knowledge" (May 15 1981). The addition to the third report was published on January 30 1984. The Commission's reports recommend obliging the police to abide by the Law, and previous judicial authorization for opening of private correspondence and mail. Its main recommendation was to remove intelligence activities from the Royal Canadian Mounted Police and to form a new civilian intelligence service. This recommendation resulted in founding of the Canadian Security-Intelligence Service at the beginning of 1984.

19 The enquiries contributed to adoption of new laws and establishing of firmer mechanisms for control of legality in actions.

These investigations resulted in adoption of new laws (Canada and Australia), dissolving of an intelligence service within RCPM (Canada), forming of new parliamentary control bodies (U.S.A., Canada, Australia) and establishing of new procedures for control of legality of operations by parliaments, governments and courts. In some countries (e.g. Canada) this process also accelerated forming of some other control institutions (independent commissioner for enquiries of security services actions), etc.

In other parts of the world this move was central and sometimes painful aspect of democratization of the previous authoritative civil and military regimes. For instance, Franco's death in 1976 had accelerated the process of democratization in Spain, which also implied demilitarization of security services. Military government in Brazil ceased to exist in 1985, while its National Intelligence Service (SNI) was within the framework of continual demilitarization process replaced only in 1990. In addition, a radical transformation of security services was performed in the South African Republic in 1993 and 1994. Since 1989, the main examples of this transition have been countries of the Warsaw Pact.[20]

While scandals and processes of democratization were incentives for changes in regulating operations and control of security services, the main accent in reform processes was on achieving a higher degree of legality in work. In this sense, the focus was on obtaining effective intelligence, while the general direction of changes was toward better control and increased accountability of services. Thus, a danger was avoided for them to be, as they previously were, oriented toward surveillance of political opponents.[21]

Democracy in this case implies civil prevalence in governing "the institutions entitled to use force" - anything less than this determines it as incomplete democracy.[22] But what does democratic and civil control exactly mean and how can we define it? Generally speaking, we regard the state system of democratic oversight as the product of its governing system, its politics, history and culture. Besides, since there are many different cultures and political systems, there are also many different norms and practices of democratic control. "Accordingly, be it good or bad, there is not just one normative model of democratic oversight. There are several models, of which some seem to contradict others."[23] Bearing this in mind, a question arises quite justifiably: how can the democratic and civil control be defined in term and in substance?

## DEFINITION OF TERMS "CONTROL" AND "OVERSIGHT"

In the last 20ish years a lot of literature has appeared on democratic and civil control of intelligence services with many different approaches and interpretations in defining of terms, which indicate the role of governmental and non-governmental actors in intelligence services activities, and thus establishing of democratic and civil control. All these concepts, no matter

20 The Warsaw Treaty or the Warsaw Pact, officially named the Treaty on Friendship, Cooperation and Mutual Assistance, was a military organization of Central European and East European socialist countries. It was established on May 14 1955 to fend a potential NATO (created in April 1949) attack. Creation of the Warsaw Treaty was caused by inclusion of the again armed West Germany in NATO according to the Paris Pact. It was officially dissolved in July 1991. Its members were: USSR, Bulgaria, Romania, Hungary, Poland, Czechoslovakia, Albania (left in 1968), and DR Germany (left in 1990).

21 See about this in: Piter Gill, *Democratic and Parliamentary Accountability of Intelligence Services after September 11*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper No. 103, Geneva, 2003.

22 See: Edward N. Lutwak, *From Vietnam to Desert Fox: Civil-Military Relations in Modern Democracies*, Survival, volume 41, 1999, no. 1, p. 99.

23 See: Hans Born, *Democratic Oversight of the Security Sector: What Does it Mean?* DCAF, Working Paper no. 9, Geneva, April 2002, p. 1.

how different, contain the syntagm "democratic and civil" and relate to democratic and civil control of operations of the security sector, and thus the intelligence services.

Control in the broadest sense implies assessment of achieved results. In a narrow sense, control implies special activity of secret monitoring of realization of set tasks, and comparison of realized results with the set goal with a possibility of correction in case of deviation. Based on this, we can say that control presents a permanent activity of monitoring and assessing the work of others. With regard to control, the term oversight imposes in practice and presents a synonym for the term control, but these two terms are quite often used with different meanings.

The term *oversight* is most often defined as: supervision, taking care of someone or something, service and taking care of preserving of order, laws, performing of jobs, etc. In English language several terms are used for designating oversight - *supervision*, *custody*, *care*, but also the terms *control* and *inspection*.[24] In French language, several terms are also used for designating oversight - *surveillance*, *garde*, *controle*, *gardiennage*, *inspection*.[25]

Both oversight and control imply subordination of their executors. Both phenomena have a certain object and include influence of the supervisory, control body on the person under oversight, i.e. control.

In our theory and practice there is no unique stance which of these two terms is more correct for use. Because of that, quite understandably, it is acceptable to use both.

## INTERNATIONAL STANDARDS FOR DEMOCRATIC AND CIVIL CONTROL

Most countries from the area of East and South-East Europe started transition processes without having either democratic or social or politically established tradition of democratic and civil control of the security sector.[26] For this reason there were no sufficient or quite clear legal presumptions for reform of security services, of which democratic and civil control was just one but essential component. If we take into consideration the international law, it has not offered a lot either with regard to providing and defining of principal guidelines for defining and establishing of new mechanisms.

The earlier documents of the international character, starting from the UN Charter, the Council of Europe's documents, the OSCE, as well as numerous international agreements and various conventions do not mention democratic and civil control at all. True, the first such political document was adopted at the meeting of the OSCE member countries in Budapest on December 3 1994, entitled "The Code of Conduct of Politico-Military Aspects of Security".[27]

24 According to the dictionary of legal terms, *supervision* has three meanings: oversight, superintendence, monitoring, the term *custody* also has three meanings; safekeeping, guardianship and superintendence, while the term *care* designates safekeeping, observation and caring.

25 According to the dictionary of legal terms, *surveillance* has three meanings: custody, oversight, superintendence, the term *garde* also has several meanings: safekeeping, guardianship, superintendence, care; while the term *gardiennage* has two meanings: safekeeping and superintendence.

26 See: Valery Zorkin, "European Commission for Democracy through Law (Venice Commission)", *Comments on Democratic Oversight of Special Services in Eastern Europe, Strasbourg*, May 10 2007, Study no. 388/2006.

27 The document is political and binding for all member countries and its goal is, as stated in Chapter 7, para 21, that "at all times it ensures and maintains efficient leadership and control of its military, paramilitary and security forces, based on the constitutionally established bodies of authority which have a democratic legitimacy" and points out that "all participant countries are obliged to establish control mechanisms which shall ensure that the bodies of authority are fulfilling their constitutional and legal obligations", and that "they (the states) shall clearly define roles and tasks of these forces and their obligation to act exclusively within the framework of the constitution".

This document emphasizes the importance of establishing democratic and civil control over all institutions entitled by the law to use force and requires the member states to ""consider democratic political control of military, paramilitary and internal security forces, as well as intelligence services and the police, as a necessary element of stability and security".

At the time when interest for democratic and civil control of security services started to increase, there was no universal theoretical model for this. A multitude of literature on this topic appeared around the world in this period. At various gatherings, scientists and practitioners were trying to define the key actors, mechanisms and procedures for establishing civil control.

In theoretical sense, according to some researchers, the idea originates as early as from ancient Greek classical philosophers and the famous Plato's question: "But who will guard the guardians?". An important starting point could be in the study "The Soldier and the State" (1957) by Samuel Huntington,[28] who introduces division on subjective and objective civil control. General Karl von Clausewitz, in his famous work "On War", gave a theoretical explanation of civil control, i.e. that "a soldier must accept the standpoint that politics is a 'representative of all interests of the total society' and must obey it as such".

Moreover, the most important international institutions, such as "the Organization for Economic Cooperation and Development (OECD)[29], United Nations Development Program (UNDP), Organization for Security and Cooperation in Europe (OSCE), Parliamentary Assembly of the Council of Europe (PACE) and Inter-parliamentary Union (IPU), expressively and without exception, believe that intelligence services must be subject to democratic principles of accountability checks".[30]

Parliamentary Assembly of the Council of Europe got involved in establishing of legal standards in this field adopted in April 1999, an important Recommendation on Control of Internal Security Services in the Council of Europe's member-countries.[31] This document states that "internal security services must follow the European convention on human rights and basic freedoms", and that "each deviation of operative activities of security services from the Convention must be approved by the law". In this sense, there is a clear recommendation that "legislative authorities must adopt clear and comprehensive legal norms which set internal security services within the legal framework".

In February 2003, this institution had adopted the Proposal for Recommendation on Democratic Oversight of the Security Sector in the Council of Europe's Member-Countries;[32] and finally, it adopted the Recommendation on Democratic Oversight of the Security Sector in the Council of Europe's Member-Countries at the meeting in June 2005.[33] In addition, the European Commission for Democracy through Law (better known as the Venice Commission) adopted the Report on Democratic Oversight of Security Services in June 2007.[34]

28 This study was translated and published in Belgrade in 2004, under the title: *A Soldier and the State - Theory and Politics of Civil-Military Relations,* by the Center for Studies of South-East Europe, Faculty of Political Sciences and the Diplomatic Academy of the Ministry of Internal Affairs.

29 Guidelines and instructions by the Development Assistance Committee (DAC) titled "Security System Reform and Governance" from 2004 state: "Security system should be governed by following the same principles of accountability and transparency valid in the whole public sector, especially with greater civil control of security procedures".

30 See: Hans Born, Ian Leigh, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies*, op. cit., p.13.

31 See: Parliamentary Assembly of the Council of Europe, doc. 1402 from April 26, 1999.

32 See: Parliamentary Assembly of the Council of Europe, doc. 1712 from February 13, 2003 - Proposal for Recommendation.

33 See: 23rd meeting of the Parliamentary Assembly of the Council of Europe, doc. 1713 from June 23, 2005.

34 The Report was adopted at the 71st plenary meeting of the Venice Commission in Venice on June 1-2, 2007. The text is available on: http://www.venice.coe.int/ docs/2007/CDL-AD(2007)016-e.asp.

## PRINCIPLES OF DEMOCRATIC AND CIVIL CONTROL AND GOOD GOVERNANCE OF SECURITY SERVICES

As said previously, democratic and civil control of activities of national security services derives from the principles of respect of the rule of Law, based on the principles of constitutionality and legality.

The principle of constitutionality and legality is one of the basic principles based on which all forms of control mechanisms for security services function. States are organized on the principles of the rule of law. That is why behaviour of all subjects in performing of state authority is based on the constitution and the laws.

Legal framework for such control is provided in the Constitution of the Republic of Serbia as well (Article 99, para 1, item 6),[35] while special guarantees are contained (according to internationally adopted standards) in the provisions on human and minority rights and freedoms[36] and on organization of power.

Control and oversight of security services in the Republic of Serbia are implemented by parliamentary, executive and judicial authorities, but also by independent governmental bodies (Commissioner for Information of Public Importance and Personal Data Protection, Ombudsman, State Audit Institution, general inspectorates, budget inspections, etc.). Internal control of the legality of operations within the services is performed by internal bodies (security protection of employees, internal auditors and budgetary controllers, and the general inspector, in case of military services).

Special forms of control are realized by institutions of civic society (expert teams, non-governmental organizations, citizens associations, etc.) and the public.

Established control and oversight of security services operations may also be characterized as the prerequisite for "good governance"[37] for the rule of law. Today, it is defined as democratic and civil control of the security sector.

Good governance of security services relies on several factors of which the most important one is: efficient directions by executive authorities enabling a high degree of independence and operative independence in work in order to avoid potential politicization. Besides, "it relies on high professional standards and the awareness of their members that they should act within the framework of national interests, the rule of law and the highest democratic values and standards".[38]

Apart from this, functioning of democratic and civil control over security services is realized by following these principles: subordination and accountability of security services to elected authorities; impartiality; political and interest neutrality; obligation of security services to inform the public on performance of their tasks; obligation of controllers to inform the public on results of controls; professional responsibility and operative independence of members of security services in performance of set tasks; accountability of managers of services for the work of services; as well as competency, purposefulness and opportuneness of all types of control, etc.

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35 According to which the National Assembly of the Republic of Serbia "oversees the work of security services".

36 "Universal Declaration on Human Rights" was adopted and proclaimed by the Resolution 217 (III) from December 10 1948, of the UN General Assembly; the European Convention for Protection of Human Rights and Basic Freedoms, adopted by the Council of Europe in Rome on November 4, 1950, which came into effect on September 3, 1953, and "Framework Convention for Protection of National Minorities" adopted at the Ministers Committee of the Council of Europe on November 10 1994 in Strasbourg.

37 World Bank, *Management: World Bank's Exeprience*, Washington, 1994.

38 See: Radojica Lazic, *Control of Security Services*, National Security Academy, JP "Sluzbeni glasnik", *op.cit.*, p. 34.

## CONCLUSION

Democratic and civil control presents the key prerequisite in reforms of security services. It requires constant vigilance of numerous actors at the state level among the citizens and non-governmental institutions, as well.

Certain states or phases in the achieved level of democratic and civil control cannot be measured exactly, but can be described and analyzed. The question is if describing is proper, what is it based on, which facts were used and how were they collected and analyzed. The procedure is even more complex because in this type of research it is very difficult (i.e. almost impossible) to obtain exact data. In a way it is understandable, because this relates to the most sensitive part of states administrative apparatuses whose job is to work in secret.

A paradox of its kind is the strive to achieve a greater degree of transparency in security services as traditionally closed bodies, and also in the degree of professional discretion which is required by intelligence work in order for it to be efficient. Anyway, values and norms which are fundamental for democratic systems require security services to be subject to accountability, as well as to democratic and civil control in performing of security tasks.

Governmental institutions, such as legislative, executive and judicial authorities, and independent bodies play the formal and essential role in democratic and civil control of activities of security services. They can be limited in this because of generally accepted political conditions, lack of independence or inclination of some actors toward executive powers. This informal role is played by civic society organizations and the public.

There is no generally accepted international legal document or model for establishing of democratic and civil control. Although most important international organizations and institutions (UN, OSCE, Council of Europe, European Court for Human Rights) paid special attention to this issues and gave certain recommendations.

Significant European and world researchers dealing with this topic (like Hans Born, Peter Gill, Heiner Hanngi, Marina Caparini) point out that for control and oversight over security services it is necessary to find an appropriate model which would be applicable in the given country, with full respect of generally acceptable standards and principles, especially those relating to the guaranteed human rights and freedoms.

Hence, it is necessary to plan the recommendation that apart from a well founded and clear legal solution, so it could be successfully applied in practice. When adopting any legal act, this fact must be taken into account. If this is given greater attention, among other things, realization of democratic and civil control of security services shall have a greater effect.

Besides, regardless of the importance of adoption of a valid and applicable legal solution if there is no will for its implementation, there shall be no progress.

Thus, the normative and the real must permeate and have a very important link between them. Without that there shall be no democratic or civil control. Good laws and other legal norms are as good as they are applicable in practice.

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# THE PROCESS OF SECURITIZATION AS A POSSIBLE MEANS OF SECURITY POLICY

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**Abstract:** Securitization is the process by which securitization actor using speech act label an issue from natural, technical or social spheres as existential threat to vital community values. Securitization actor is a member of community who has the ability to influence other members of the community by marking off some problem as a priority security issue. If members of the community accept that speech act, then it results in a successful securitization. After that special measures are defined and enforced in order to eliminate danger to the protected value. The fact that the actor chooses an issue and presents it as a priority security issue, suggests that only some of the problems occur as the subject of securitization. Some security issues arise and disappear out of this process, which is confirmed by security reality. Which security issue will be the subject of securitization is a matter of political decision. As political decision has the same source - the authorities or some group in power - it can happen that the narrow interests of one social group are identified with the general interest. This way, all the resources of a society are mobilized by the ruling political party for particular interests.

**Key words**: globalization, securitization, existential threat, reference object, special measures.

## INTRODUCTION

The globalization of technology and communication brought a dynamic and intensive development of social relations and processes and thus making public space saturated with vast amounts of information.

The nature of the information is diverse, from tourist offers and job opportunities to terrorist attacks that happen worldwide. All of it created the perception that the world is the global village. In such surroundings it's quite normal that the information on suffering, wars, and other similar negative phenomena causes fear and panic, even among the citizens of the countries in which there's no direct threat of concrete menace. Citizens become aware of the existential threat of contagious diseases, famine, poverty, environmental destruction. In certain cases even some known forms of threats, such as terrorism for instance, are much more drastically presented - hence the change in the perception of security. Due to information overload in public space, some security issues sometimes emerge in public discourse as dominant security threats, while some other times they do not. This raises the question of the way an issue becomes a high priority security issue. The researchers in the Center for Advanced Security Studies (The Copenhagen School) tried to answer this question. They dubbed the

process of state actors transforming subjects into matters of security 'securitization' and the set of the scientific explanations of such process was called securitization theory.

The first half of the paper will be on the basic terms of the process of securitization, the very process and the types of securitization. The securitization process raises a lot of other questions which demand a dedicated approach and therefore the second half of the paper will be on the threats that are immanent in the securitization process - first of all, the possibility of abusing authority and presenting personal interests as public interests.

## THE BASIC TERMS OF THE PROCESS OF SECURITIZATION

In order to explain the process of securitization, the basic terms of the process should be defined in the first place. The basic terms of the securitization process are: securitizing actor, speech act, securitizing move, existential threat, referent object and special measures.

"**Securitizing actor** (hereinafter: actor) is an entity that has such a social status which enables them to make their statement about the existential threat to referent object accepted, as long as some other conditions are met. Social status can be defined as the position or rank of a person or group, within the society, depending on their share of target values, primarily wealth, power and social honor. The possibility of having impact on society is based on one's social status. The possibility of having social impact is given to government officials (the president, the prime minister, ministers and other high-level officials whose duty is to take care of the security within a community) or to people who have high reputation within the society (renowned journalists, authors, artists and athletes)."[1]

**The speech act** is the content of the statement of the existential threat to referent object. In order to achieve its goal, the speech act must meet two types of facilitating conditions: linguistic and social. Regarding linguistic conditions the speech act must contain words such as "existential threat, point of no return, and a possible way out – the general grammar of security as such plus the particular dialects of different sectors such as talk identity in societal sector, recognition and sovereignty in the political sector and sustainability in the environmental sector, and so on."[2] Social conditions refer to minimal public awareness of menacing effect of a threat as well as a certain level of the actor's social influence.

**The securitizing move** is an act of claiming that there is an existential threat to the referent object in order to convince the public special measures are necessary.

**The existential threat** is a form of threat which is claimed to have enough potential to question the existence of a referent object and even the whole society or state, in a specific case.

**The referent object** is a vital social value the existence of which is endangered in a particular situation. The basic values which are considered vital for social survival are usually listed in institutions, national security strategies, or some other legal and political documents.

**The special measures** are the acts which are taken to remove the existential threat to referent object and that cannot be considered to be regular security policy means.

## THE PROCESS AND TYPES OF SECURITIZATION

1 Mirković, V.: Specijalne mere kao posledica uspešne sekuritizacije na primeru terorizma u SAD posle 11. septembra 2001. godine – master rad, Pravni fakultet u Novom Sadu, Novi Sad, 2015, p. 8.
2 Buzan, B.; Waever, O.; de Wilde, J.: Security: A new framework for analysis, Boulder: Lynne Rienner, 1998, p. 33.

Politics, generally speaking, refers to human activity directed towards doing work which is in public interests. The basic precondition for life and development of every community is security, which is an instrumental social value. In other words, security does not produce material goods, but creates favorable conditions for production of material goods and their fair distribution. Nowadays, in the conditions of dynamic development of social processes and relations, security is also a strongly dynamic category. As a result of it, the basic task of those in power as well as all of those who can impact the public is to have a responsible and conscientious approach their own security and the security of a larger social community.

In different social areas, but in different natural and technical areas as well, there are phenomena and processes that can represent the source of a threatening issue which can be a subject of securitization. "Threat sources, as their etymology suggests, present the root, basis or origin of a future issue. Without those sources an issue cannot be created. So, the source of a (non-)security issue is the condition of its creation. The source (condition) is in the area of social, natural or technical sphere. However, the existence of that condition does not necessarily mean the creation of a (non-)security issue. For its existence there are some more conditions to be met such as: creation of a subject (organization) as carrier and its activity on implementation of its interest by force."[3]

The securitization process begins with the actor's decision (which is basically political), that a threat carrier's activity has such threatening intensity that in order to achieve security of community there is a need to take special measures that can remove the danger to the referent object. The actor claims that there is an existential threat to the referent object and at the same time claims that the community cannot be protected by regular means so the actor seeks public approval of taking special measures. The actor's claim about existential threat is securitization move. The claim about existential threat is exclusive because the community must choose between two extremes. Enforcing special measures and remove the existential threat or do nothing and suffer the consequences that can lead up to the destruction of the community. Such exclusive choice causes identification of opposing views or sides with general notions such as good and evil. This is how securitization brings moral into politics (though moral criterion does not appear as a formal condition for a successful securitization) which can eventually lead to disproportion between the choice of special measures and danger that represents an existential threat. If the conditions of a successful securitization are met, there is a great possibility that the public will accept the claim of existential threat and approve enforcement of special measures. However, since there are many existential threats in modern security environment which in many different ways threaten security, effective allocation of strictly limited resources demands focusing attention on only specific questions. The conclusion is that many threatening phenomena appears and disappears out of the securitization process, that is to say modern understanding of security cannot be reduced to the issues that are the subjects of securitization. This is how securitization becomes a means by which in a certain situation where there are many forms of threats, the one that is the greatest for society is identified.

"In essence, the interpretation of the Copenhagen School is here centered on the traditionalist/realist idea of security as a 'state of exception', which leads its members to claim that by uttering 'security' actors, usually state representatives or elites, characterize a particular case or development as 'extraordinarily important' and thereby move this case/development into a special field where 'extraordinary means' can be applied. Likewise, security is characterized in terms of a 'specific modality' marked by urgency, priority of action and the breaking

3 Stajić, Lj.: Osnovi sistema bezbednosti sa osnovama istraživanja bezbednosnih pojava, Pravni fakultet u Novom Sadu, Novi Sad, 2013, p. 53-54.

free of 'normal rules' of politics."[4] Because of all the things mentioned, the question of choice or the question of criterion by which an issue will be presented as top priority security issue is very delicate and important.

Depending on the issue, which is the subject of the securitization, representatives of the Copenhagen School distinguish two types of securitization. The first one is ad hoc, and the second one is institutionalized securitization. By ad hoc securitization a problem that hasn't been treated as a security issue becomes a security issue. The actor can at one point decide that a conflict of interests or some other threatening phenomena presents the existential threat to the referent object. The decision becomes claim that the community is endangered. The claim is directed towards the public which should be convinced that such threat exists. Claiming that the referent object is existentially threatened is not itself securitization, but the securitizing move. In order to talk about successful securitization it is necessary that the public accepts the claim about existential threat.

The other type of securitization is institutionalized securitization. Institutionalized securitization has two phases that can be called primary and secondary securitization. "If a given type of threat is persistent or recurrent, it is no surprise to find that the response and sense of urgency become institutionalized. The situation is most visible in the military sector where states have long endured threats of armed coercion or invasion and in response have built up standing bureaucracy, procedures and military establishments to deal with those threats. Although such a procedure may seem to reduce security to a species of normal politics, it does not do so. The need for drama in establishing securitization falls away, because it is implicitly assumed that when we talk of this issue we are by definition in the area of urgency."[5] Problems that are subjects of the institutionalized securitization appeared at a certain level of historical development, when the state was created as an expression of political unity of social community. In such conditions war, aggression, sovereignty threat and other threats to military and political security are understood as the existential threat to the state and thereby society (primary securitization); therefore, it's unnecessary to securitize certain issues in the ad hoc sense, but to convince the public that the old form of threat evolved into a different form of reaction.

Institutionalized securitization is the response to the existential threats that are repeated or are constantly present. Forms of threat to protected values are constantly changed. "Some appear, some disappear and some change (improve) regardless of having the same name and goal."[6] So, there is a possibility that the existing threat reaction system does not produce satisfying results. Since the existing reaction system is based on the assumed social consensus about the relation between public and private interest, in order to upgrade the system it's necessary that the actors again ask for vox populi. Then we have a case we can call secondary securitization.

"Successful securitization thus has three components (or three steps): existential threat, emergency actions and effects on interunit relations by breaking free of rules."[7] Accepting the claim that an issue is an existential threat is just the first step in successful securitization. If there's no approval, there's no securitization, but securitizing move. The second step is about special measures which don't demand approval of concrete special measures, but applying special measures in abstracto. The approval is only needed for the claim about existential

4 Stritzel, H.: Security, the translation, Security Dialogue 42/2011, 343-355, p. 343.
5 Buzan, B.; Waever, O.; de Wilde, J.: Security: A new framework for analysis, Boulder: Lynne Rienner, 1998, p. 27-28.
6 Stajić, Lj.: Osnovi sistema bezbednosti sa osnovama istraživanja bezbednosnih pojava, Pravni fakultet u Novom Sadu, Novi Sad, 2013, p. 53.
7 Buzan, B.; Waever, O.; de Wilde, J.: Security: A new framework for analysis, Boulder: Lynne Rienner, 1998, p. 26.

threat, and thus gaining enough support for the basis from which legitimacy of taking special measures or other steps can be derived. This "would not have been possible if the discourse hadn't taken the form of existential threat, point of no return or necessity."[8]

Enforcement of special measures should lead to removing existential threat to referent object and return to the state which existed before the process of securitization. After the existential threat has been removed, the social attention is directed to other issues. The discourse in which one issue is identified as the existential thereat ceases to be valid (this is called desecuritization process), and some other discourses emerge in which there are other issues that are presented as existential threats.

## POLITICIZATION AND SECURITIZATION

The representatives of the Copenhagen School in one part deal with the question "how to identify what is, and what is not a security issue, or put another way, how to differentiate between the politicization and the securitization of an issue."[9]

A certain community via its representatives has right and responsibility, in the name of its own survival, to identify all the threatening phenomena which might endanger the survival of the community and to take all the necessary steps to organize the security system which is directed against a concrete threatening issue. "As long as society exists in a political sphere, it must by itself, although only in the most extreme case – the existence of which is not decided by the society itself – determine the distinction between friends and foes. That's the basis of its political existence. There is no more ability and the society ceases to exist politically will for making such distinction. If a foreigner is allowed to determine its enemies and who they can or cannot fight against, then the society is not free any longer and it belongs or is subordinate to another political system."[10] The term enemy should be taken in its broadest sense, which means that the essence of security politics identifying the phenomena which endangers the survival of a community at a given moment. In that case securitization process can be an efficient means of security politics because thanks to it in the conditions of dynamic security environment the focus of the security system and society as a whole is most efficiently directed at top priority security questions.

However, "political is nowadays often considered equal to party-political"[11] The representatives of a community belong to a narrower social group, and when it comes to a state they belong to a political party. However, regardless of who they belong to, they govern everyone and represent all community members. That is why when one says 'political decision', it refers to the decision made to protect the community and all of its members. As political and party-political decision have the same source (those in power), there is a danger that on behalf of community they make decisions which protect only a small group or a political party interests. In such cases the authority of those in power is abused to present partial interest as general interest and based on that ask for additional legitimacy from community members to protect narrow interests. In this case we talk about politicization.

Politicization means using securitization process for daily- political purposes (gathering political support to win power or staying in power, discrediting political opponents or rivals and so on). Politicization can be detrimental, because securitization is based on the idea of

8 Ibidem, p. 25.
9 Ibidem, p. 19.
10 Šmit, K.: Pojam političkog. U Norma i odluka: Karl Šmit i njegovi kritičari, Filip Višnjić, Beograd, 2001, p. 34.
11 Ibidem, p. 22.

existential threat which makes one choose between survival or ceasing to exist. Such choice unavoidably leads to choosing inappropriate means in order to remove the threat. In ancient Rome there were proscriptions. In medieval time Christian community turned into a besieged town surrounded and attacked by infidels from outside, and threatened by heretics from inside. During French Bourgeois Revolution saying some unwanted words could lead to the guillotine, and all in the name of freedom, brotherhood and equality. Fascist regimes in Italy and Germany especially had the need to label their political opponents enemies of the state and people. Such practice was also common in socialist countries.

The problem and the need of making distinction between politicization and securitization are not just theoretical. Having in mind the consequences that can occur in reality due to securitization it's very important to establish clear criteria. The criterion of making the difference between politicization and securitization should be the threatening intensity of an issue which is evaluated through the objective criterion. Only the phenomena that can lead to the destruction of the value of a society should and can be securitized and only those issues justify mobilization of people and means to enforcing special measures. The phenomena which are not of such threatening intensity are the subject of politicization. Of course, application of this criterion depends on a series of circumstances. Firstly those that have the capacity of starting the process of securitization on a larger scale influence shaping public opinion through media which can cause confusion regarding identification private, party-political and public interest.

The way an issue becomes a security problem can lead to a situation where a referent object can be "everything from nuclear missiles and opposing armies to miniskirts and pop music. Such wide-ranging securitization stifles civil society, creates an intrusive and coercive state, cripples (eventually) the economy and maximizes the intensity of the security dilemma with neighbors that don't share the ideological project."[12]

"Do we choose to attach the security label with its ensuing effects? Actors can choose to handle a major challenge in other ways and thus not securitize it. The use of specific conceptualization is always a choice – it is politics, it is not possible to decide by investigating the threat scientifically."[13] Based on it one can conclude that security phenomena exist even out of securitization process, and that securitization makes a certain security problem a priority. "It is always a political choice to securitize or to accept securitization."[14]

The decisions made in the area of security and politics are inherently serious, dangerous and what's most difficult for the authority – unpopular. In a country with high standard of living and where industry had the capacity of employing all citizens or take care of them with social help, those in power can say that 3 % unemployment is a serious social problem. Knowing that they have conditions to relatively quickly and easily achieve social peace, it's not difficult for them to touch upon the problem of unemployment, even though it doesn't seem so dramatic observed from the undeveloped countries' point of view.

In a country steeped in corruption in which arrogant attitude of those in power leads to economic exhaustion and in which unemployment is over 40 %, underlining the problem of unemployment constantly would be bad for the interest of staying in power. A state or more precisely those who govern it should offer new job positions, open factories, and build a welfare state. Constant insistence on the problem of unemployment means admitting one's own guilt, which cannot be forgiven by the citizens (or at least it shouldn't be forgiven). It is easier to send the intimidating scenes of beheading and other atrocities, which are the features of international terrorism nowadays, to people's homes via media. The fear which governs people

12 Buzan, B.; Waever, O.; de Wilde, J.: Security: A new framework for analysis, Boulder: Lynne Rienner, 1998, p. 208.
13 Ibidem, p. 32.
14 Ibidem, p. 29.

will contribute to people giving support and legitimacy to the rulers to take all the necessary measures to resist threats which in reality don't exist on a country's territory or they are hardly possible. Even if a threat turns out to be real and someone gets hurt it's easy to move responsibility to the carriers of threat claiming that the government did everything they could.

For a person as a user of security it doesn't matter whether they die stabbed with a knife or because of famine. "However, that is not the same for those in power because they are responsible for both. They won't suffer political consequences for the first reason, but for the second one they might. In that sense the identification of a threat comes from those in power based on the consequences they might suffer and not the consequences the victim might suffer."[15]

All of this supports the claim "that different forms of security threats are classified on the basis of political and media's attitude and the interests of those who have the possibility to shape our opinion and attitude (powerful and big countries, political lobbies, alliances and so on) – therefore on the basis of biased and unscientific criteria."[16]

Social conditions of securitization imply that the existential threat must always be based on facts which exist in objective reality. However, the type and the size of the importance of those facts for a certain social community depend on social, cultural and other factors. It can happen that a threat for someone is not a threat for someone else. We can say that it is possible that the existential threat can really be an issue which might lead to destruction of the protected value, but since the process of securitization is a matter of political decision, that is not the main criterion. It's especially important to emphasize the importance of the media in the process of forming and conveying information.

Because of exclusive nature of the securitization process which gives a community a choice between only options (and related to it is often disproportional choice of special measures), a very important question is the choice of actor and the community it belongs to with general phenomena such as humankind, free world, democracy, good. Take for example humanity, which was repeatedly abused after the Cold War, as a referent object. Everyone can agree that the human species survival represents something every person is interested in. But "if a country fights against its political enemy in the name of humanity, than it is not a war of humanity, but a war for which a certain state, compared to its war enemy, tries to occupy a universal concept in order to identify with it, in a similar way that peace, justice, progress, civilization can be abused and considered as something that belongs to one state and doesn't belong to its enemy. Humankind is an especially useful ideological instrument of imperialist expansion and in its ethical-humanistic form it is a special tool of economic imperialism. Citing the word 'humankind', calling on humankind, catch hold of it – since such lofty words cannot be mentioned without certain consequences, all of it could manifest as a horrible demand to deny the enemy their human qualities and that he is declared hors-la-loi and hors-l'humanite, and thus lead the war to ultimate inhumanity."[17]

## CONCLUSION

Dynamic security environment has caused the emergence of many forms of threats, which in different ways threaten the stability and survival of society, state or individual. Some of these forms of threats are more common in public discourse, while others are less common

15 Stajić, Lj.: Neke nedoumice oko shvatanja bezbednosti u XXI veku. U Rizik, moć, zaštita: Uvođenje u nauke o bezbednosti, Službeni glasnik i Fakultet bezbednosti, Beograd, 2010, p. 335.
16 Ibidem, p. 334.
17 Šmit, K.: Pojam političkog. U Norma i odluka: Karl Šmit i njegovi kritičari, Filip Višnjić, Beograd, 2001, p. 36 - 37.

or not mentioned at all. Therefore, one may ask how come that terrorism or organized crime are priority security issues, despite the fact that more people in the world die from hunger, disease or in traffic accidents. The representatives of the Copenhagen School tried to answer this question. They called the process of extracting an issue as a priority security issue, the solution of which requires taking special measures, the securitization process.

Securitization process begins with the actor's claim that the referent object is existentially threatened by some kind of threat, which is why it is necessary to enforcing special measures in order to protect the referent object. Government representatives who express the public will or individuals who have great authority and influence among citizens can extract some of the existing conflicts and contradictions as a matter of existential importance. Special measures mostly present the measures that deviate from the usual way of resolving an issue in a community and that is why the support of the public is needed.

In order to convince the citizens, the claim has to have certain qualities. This is primarily related to the terminology that the social actor uses, but also the influence he can have on the public in a particular case. Citizens who are presented with a danger should answer whether they think the given danger can jeopardize their survival. The foundation on which the decision is based may not always be objective, that is, a real danger of a form of threat doesn't have to exist or does not exist to the extent and intensity that is presented. Citizens may feel that they are existentially threatened by something, even if the facts show something else. Thus, the role of the media that shape public opinion becomes extremely significant.

Depending on the subject of securitization one can talk about politicization and securitization. Politicization presents a negative phenomenon that involves the abuse of the process of securitization for daily-political purposes, while securitization is an important means of security policy because thanks to it the resources and capacities of the security system are efficiently and correctly directed to the issues that can really bring into question the survival of the community.

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# TRANSNATIONAL CRIME IN CHINA AND ASEAN AND CHINA'S COMBAT STRATEGY

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**Abstract:** Further economic integration in Asia and the Information Age have provided opportunities for criminals and organised crime groups to exploit transnational criminal activity that has increased in scale and extent and has become a complex threat to ASEAN (Association of Southeast Asian Nations) countries and China. This paper presented a comprehensive study on transnational crime in China and ASEAN with a particular emphasis on the control measures conducted by China law enforcement agencies. The study analysed the main types and the characteristics of transnational crime in China and ASEAN countries. It explained the challenges that China and ASEAN are facing in tackling transnational crimes such as the nexus of cybercrime and transnational crime driven by informatisation, poor information sharing among the states and lack of international cooperation mechanisms for combating informationised transnational crime. The existing China-ASEAN cooperation mechanisms on fighting against transnational crime were also summarised. Then problems hindering China to combat transnational crime were analysed including deficient legislation, problems with China-ASEAN criminal judicial assistance and limitations of China's boarder management system. Suggestions on enhancing China's capacity in combating transnational crime were therefore provided, such as strengthening legislation, improving China-ASEAN criminal judicial assistance, China-ASEAN extradition cooperation and China's boarder management system, establishing regular China-ASEAN information sharing mechanisms and strengthening China-ASEAN cooperation in fighting against transnational crime.

**Keywords:** transnational crime, types and characteristics of transnational crime in China and ASEAN, China-ASEAN cooperation mechanisms, combat strategy.

## INTRODUCTION

ASEAN (Association of Southeast Asian Nations) countries have continually enhanced political and security cooperation including cooperation in the area of non-traditional security in recent years, which has dramatically improved ASEAN's international standing. China is the near neighbour to the ASEAN and they are inextricably linked in terms of culture, history, geography, ethnics, economy and trade. With further ASEAN integration and the initiate of China-ASEAN Free Trade Area, China and ASEAN member states have increasingly expanded political, economic and cultural cooperation, which certainly will bring about dramatic development in that region. At the same time, there is a surge of transnational criminal activity such as smuggling, drug trafficking, human trafficking, money laundry and corruption. Joint efforts to cracking down on transnational crime is the primary approach to maintain social and economic stability in China-ASEAN Free Trade Area.

# TYPES AND CHARACTERISTICS OF TRANSNATIONAL CRIME IN CHINA AND ASEAN

China and ASEAN countries have been committed to increase economic, political and cultural cooperation in recent years and their efforts have enhanced rapid regional development. However, transnational criminal activity has increased in scale and extent and has become a complex threat to ASEAN countries and China.

**The main types of transnational crime in China and ASEAN countries**

*Smuggling*

China shares long land borders and sea area with neighbouring ASEAN countries. For instance, the border of Yunnan Province in southwest of China is 4,060 kilometres, twenty seven towns in eight cities out of total sixteen cites in Yunnan are bordered by Burma, Vietnam and Laos, and there are ten national ports and more than twenty transnational highways and ninety three border trade channels[1]. Due to geographic characteristics, smuggling between China and ASEAN countries has presented a 'conventional' problem drawing authority's persistent attention.

*Drug Trafficking*

Drug trafficking has been on the increase in group operation and professionalisation, and cullion between domestic and international drug criminal networks has developed 'one package service' of Production-Supply-Marketing.

*Human Trafficking*

Criminal syndicates control most of human tracking. Women and children are the majority of vulnerable victims and this notorious crime leaves the whole society traumatised.

*Money Laundering*

The prominent methods of transnational money laundering in China are mainly realized via underground money exchangers or the investment of international idle funds into China capital markets. Monetary assets from criminal activities such as drug trafficking, smuggling and terrorism attempt to be legalised through overseas investment and financial institutions.

*Cyber Crime*

Today's world is more interconnected than ever before. However, increased connectivity brings increased risk of fraud, theft and abuse. The cyber-crimes present in China and ASEAN countries include transnational internet pornography, transnational online gambling and transnational online economic crime and so on.

*Corruption*

Corruption is an obstacle for political, social and economic stability in any country of the world. It may infiltrate not only government officials but also public bodies. Fighting corruption is high on the agenda of China's leaders.

*Illegal Cross-Border Crime*

Illegal cross-border crime includes organising and transporting illegal migrants, or assisting in illegal border crossing, which violate one country's applicable laws and foreign countries' and incur social instability and public disorder. Illegal crossing border also provides fugitives with opportunities to evade legal punishment.

1 Wang, Junxiang. China-ASEAN cooperation mechanism on combating transnational crime. *Hebei Law Science*, 2008, 26(12):176.

## THE GENERAL CHARACTERISTICS OF TRANSNATIONAL CRIMES IN CHINA AND ASEAN COUNTRIES

The regions affected by transnational crimes in China and ASEAN countries have become broader following the initiate of China-ASEAN Free Trade Area. The transnational criminal activities are not restricted to certain nations but the whole trade cooperation zones and pose more challenges to criminal investigation. These crimes are more organised, the international division of labour among criminal networks is more rigorous, crime patterns are more complicated, criminal methods are much more ferocious and these criminal activities are more destructive. Transnational crimes infiltrate into both economic field and the field of politics.

*Affecting broader regions*

The whole China-ASEAN Free Trade Area has been under the impact of transnational criminal activities rather than in two neighbouring countries or among certain countries. Tremendous challenges are posed to criminal investigation. Criminals either hide in border regions or flee to foreign countries after multinational criminal activities take place, given loose border control in certain areas and dense forests in boarder regions, police and law enforcement agencies have great difficulty in carrying out criminal pursuit.

*Well-organised and rigorous international division of labour*

Compared with volume crimes, transnational crimes are well plotted in advance with clear targets, complicated criminal patterns and more ferocious modus operandi. The transnational criminal networks are much more structured and they are more specialised in division of labour during the conduct of a crime. First, the management of transnational crime organisations are getting formal. Nearly all transnational crime organisations have developed strict rules and management system. Moreover, the tasks of criminal acts are separated more precisely. Rapid development of information technology and globalisation have enabled transnational crimes with the characteristic of precise division of labour in terms of crime plotting, allocation of criminals, creating criminal tools and committing crimes.

*Infiltration into not only economic field but the field of politics for 'legitimate' cover*

As transnational crimes grow, transnational criminal organisations have been eager to 'legitimating' their acts. They corrupt government figures in the Customs, forces against smuggling and foreign affairs and so on, and infringe politics seeking for political shield

*Cullion between domestic and international criminal networks and interweaving with international crime*

Criminals in some ASEAN member states bordering to China develop closed business relationships with the criminals in China, with whom they jointly carry out transnational crime. They know well about geographical condition and have their connections so that they can engage in a range of crimes including firearms trafficking, murder, robbery, smuggling and drug trafficking. Some huge crime conglomerate with ample funds, advanced weapons and equipment recruit high-tech personnel and use cutting-edge technology and devices to evade police's surveillance and manhunt. China and ASEAN nations face unprecedented challenges in transnational crimes crackdown.

*Some types of transnational crimes typically occurring in certain regions*

Certain countries or regions are more likely to suffer certain types of transnational crime, i.e. transnational drug trafficking is of long history and a thorny problem in the border region of China's Yunnan Province and the Golden Triangle.

Certain type of transnational crime is also likely to be 'conventional' in particular areas in one country, for instance, Qingtian in Zhejiang Province and Fuqing in Fujian Province in China have drawn deep concern over the offences of human smuggling[2].

## CHALLENGES FACING CHINA-ASEAN IN TACKLING TRANSNATIONAL CRIME

The challenges faced by China and ASEAN in tackling transnational crimes are various such as special geographical condition, growing personnel exchanges, difference in the idea of rule of law among the nations, corruption and incompatibility of national laws with international legislation and so on. Moreover, criminal sanction and the governance of crime are getting even tougher in the Information Age, and in this regard, there are some new challenges that China and ASEAN countries are facing for their transnational crime crackdown.

## THE NEXUS OF CYBERCRIME AND TRANSNATIONAL CRIME DRIVEN BY INFORMATISATION

Transnational crime rates have been continually climbing with the arrival of globalisation and the Information Age. Informatisation accelerates the nexus of cybercrime and transnational crime, and transnational crime entres the phase of 'Informationised Transnational Crime'. The characteristic of non-boundaries of internet and modern communication technology make transnational crime like a duck to water. Information technology coupled with the complexity of transnational crime further increases the difficulty of criminal investigation and the cost of transnational crime is significantly cut down while the benefits increase dramatically. It is well known that it is more difficult to collect evidence in cybercrime compared to the evidence collection in ordinary criminal cases. Thus, involving internet in transnational crime produces more difficulties in combating and preventing transnational crimes and this is especially the case with transnational economic crime such as transnational IP crime, transnational telecommunication fraud and money laundry.

## POOR INFORMATION SHARING AMONG THE STATES

Intelligence plays a crucial role in fighting against transnational crime. However, poor information sharing is recognised as one of the greatest barriers to the prevention and control of transnational crime in China and ASEAN countries. First, there are huge gaps in each country's policing informatisation in China and ASEAN. Next, it is not only in China but also in all ASEAN states that data integration and information sharing within national agencies are still inadequate. Furthermore, China-ASEAN information sharing mechanism is incomplete. Some issues need to be addressed such as occasionally delayed response to information inquiries from other countries and not timely criminal intelligence sharing while conducting criminal investigation etc.

2 YU, Zhigang. Empirical analysis of transnational crimes committed by Chinese citizens. *Journal of National Prosecutors College*, 2014, 22(1):117.

## LACK OF INTERNATIONAL COOPERATION MECHANISMS FOR COMBATING INFORMATIONISED TRANSNATIONAL CRIME

Transnational crime investigation must trigger the conflicts of jurisdictions including positive conflict and negative conflict. Though there are many international conventions against transnational organised crime, they are mainly to counter some types of conventional transnational crimes such as drug trafficking, trafficking women and children and human smuggling etc. However, in the Information Age, all types of crime are impacted and even those conventional transnational crimes mentioned above are experiencing the 'Informationised Innovation'. Relying only on existing international conventions against transnational crime is apparently insufficient. There is an urgent need for new international cooperation mechanisms and platforms for combating informationised transnational crime.

## THE EXISTING CHINA-ASEAN COOPERATION MECHANISMS ON FIGHTING AGAINST TRANSNATIONAL CRIME

The existing China-ASEAN cooperation mechanisms on combatting transnational crime are as follows.

### ASEAN PLUS THREE MINISTERIAL MEETINGS ON TRANSNATIONAL CRIME (ASEAN+3, 10+3)

This framework is designed to promote cooperation between ASEAN and the three states (China, Japan and the Republic of Korea) in combating transnational crimes in the priority areas of terrorism, drug trafficking, human trafficking, money laundering, sea piracy, firearms trafficking, international economic crime and cybercrime. The biennial Ministerial Meetings have been held since 2002. By now, this meeting mechanism has achieved good results including clarifying the principal of 'Sincere, Unite, Practical, Negotiable', developing crime policy of 'Open, Cooperative, Equal, Mutually Beneficial' on preventing and combating crimes, formulating regulations for cooperation, confirming leading countries and cooperation regions, further strengthening the dialogue among the members and regulating contact methods, jointly discussing the scheme on combating transnational crimes and appointing the liaison officers by each member and so on.

### CHINA-ASEAN INFORMAL MINISTERIAL MEETING ON TRANSNATIONAL CRIME (10+1)

Since 2004, China and ASEAN have been holding the meetings and have made some progresses. China and ASEAN states are committed to consolidate and further enhance cooperation. There are more than two thousand ASEAN law enforcement officers attending training programmes in China until 2013[3], and China and ASEAN have jointly cracked a number of

3 Liu, Shengxiang, Xintian. National security and China-ASEAN security cooperation mechanism. *Journal of Jiangnan social college*, 2016(2):5.

cases ranging from transnational kidnapping, drug trafficking to transnational trafficking of woman and children.

## CHINA-ASEAN ATTORNEY GENERALS' MEETING

The China-ASEAN Attorney Generals' Meeting was inaugurated by China in 2004 in order to bring about concerted efforts among ASEAN countries' and Chinese procuratorates to fight against transnational crimes. The objectives are to improve the regular meeting mechanism among China-ASEAN attorney generals to address major issues, discuss anti-transnational crime strategy and the establishment of regular meeting, and direct cooperation among prosecutorial apparatus in boarder regions. It is an important judicial cooperation mechanism.

## CHINA-ASEAN COOPERATION MECHANISMS FOR ANTI-NARCOTICS

China and the member states of ASEAN have carried out close cooperation on combating drug trafficking. In 1993, China and ASEAN countries signed the MOU. China and ASEAN held a meeting in 2000 and passed 'Bangkok Declaration' and 'China-ASEAN Collaborative Operation Plan'. In 2001, China and most of ASEAN countries developed anti-narcotics partnerships and established anti-drug cooperation frameworks. China has signed the MOU on anti-drug with most of ASEAN nations.

## CHINA-ASEAN MARITIME COOPERATION ON COMBATING TRANSNATIONAL CRIME

The majority of AEAN members are maritime countries, and China and ASEAN are joined by ocean. China and ASEAN have been beset by the threat of piracy, smuggling, human smuggling, drug trafficking and arms smuggling. Maritime law enforcement agencies in China and ASEAN have established some effective cooperation mechanisms and platforms to jointly fight against maritime transnational crimes for local maritime security and stability.

In addition, China and ASEAN are devoted to enhancing other cooperation activities such as the China-ASEAN Legal Cooperation and Development High-Level Forum and seminars on the law enforcement of China-ASEAN transnational crime etc. to deepen the connections of the China-ASEAN officials specialising in transnational crimes.

## PROBLEMS HINDERING CHINA TO COMBAT TRANSNATIONAL CRIME

Except for factors such as special geographical condition, multi ethnic groups and multiculture, the problems facing China in tackling transnational crimes are complicated.

## DEFICIENT LEGISLATION

*Deficient legislation in criminal justice cooperation between China and ASEAN*

China has signed bilateral treaty on criminal judicial assistance with some members of ASEAN including Vietnam, Laos, Indonesia, Thailand and Philippines etc., and has signed extradition treaty with Thailand, Philippines, Laos and Cambodia. However, China has not had any kind of criminal judicial treaty with some ASEAN member states, and this can result in the refusal of assistance during criminal investigation. Besides, the signed bilateral treaties and legal instruments are mainly at macro level, yet have not come down to micro aspects and specific issues, which make them less operable and practical.

*Deficient China legislation*

There is no relevant regulation on criminal judicial assistance in China laws and some China laws contravene the criminal justice norms of international criminal law. Deficient China legislation has hindered the criminal justice cooperation between China and ASEAN. First, there is no legal ground for remedy when the provisions in China laws are incompatible with international treaties. Secondly, China only has relatively scattered regulations relating to international judicial assistance rather than a specific law formulated for regulating criminal judicial assistance acts. Thirdly, there is no particular provisions on international crimes in China laws. Though China has actively participated in various international conventions such as 'International Convention against the Taking of Hostages' and 'Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation' and so on, those international crimes have not been legislated comprehensively and explicitly in China laws. This brings about a difficult situation that China does not have the jurisdiction of these international crimes that are detected or take place in China, which can result in the setbacks of criminal justice cooperation for lack of legal grounds. Furthermore, the relevant provisions are inconsistent. For example, China criminal law provisions are incompatible with relevant international treaties; the provisions in different China laws are inconsistent; the provisions on criminal judicial assistance in China laws are not compatible with the criminal judicial assistance treaties that China has signed.

## PROBLEMS WITH CHINA-ASEAN CRIMINAL JUDICIAL ASSISTANCE

*Involving limited processes of criminal judicial assistance*

Criminal judicial assistance between China and ASEAN is only engaged in the limited processes of criminal proceedings in terms of criminal investigation and prosecution, but not trial and sentencing. By now, China-ASEAN criminal judicial assistance mainly centre on assisting in investigation and evidence collection. Moreover, the defined responsibilities of different China's authorities taking part in criminal judicial assistance are not explicit. The contact authority, competent authority and central body of China provided in various treaties are confused. Finally, judicial review is still left out or has disadvantages when China carries out criminal judicial assistance with ASEAN countries. Except extradition, judicial review is not in place in other types of criminal judicial assistance available, and judicial review of extradition is incomplete, China's procuratorial apparatus is not fully in function at this aspect.

*Problems with China-ASEAN extradition cooperation*

Extradition processes and agreements between China and ASEAN countries are stipulated in their bilateral treaties. China has signed bilateral extradition treaty with Laos, Thailand,

Philippines and Cambodia since 2008, which has offered the legal grounds for tackling transnational crimes. In spite of the progress on China-ASEAN extradition cooperation achieved in recent years, China has not had bilateral extradition treaties with another six ASEAN member states, it is lack of ground for their cooperation in extraditing fugitives, and the approaches to extradition cooperation are limited. Moreover, China-ASEAN extradition cooperation mechanism and exercising specific provisions during their extradition cooperation are still problematic[4].

a. The principle of non-extradition nationals

The principle of non-extradition nationals is recognised in China and is a rigid legislation in China's Extradition Law. According to the extradition treaties between China and some of ASEAN countries, the clause of extradition states 'being entitled to non-extradition of their own nationals', therefore, 'being entitled' in these clauses means that it is not inflexible to prohibit extradition of their nationals, which somehow impacts extradition law in China. On the contrary, the extradition treaty between China and Laos states explicitly that the principle of non-extradition nationals must be enforced, which limits the obligation of two countries under this principle. It can be seen that the principle of non-extradition nationals is not universally recognised by China and all ASEAN members, which is to the disadvantage of China-ASEAN criminal justice cooperation.

b. The principle of non-extradition to capital punishment

The death penalty is a legal punishment in China, whereas it has been abolished in ASEAN countries except Cambodia and Thailand is making amendments to it. Extradition treaties between China and ASEAN countries provide the justification for the refusal of extradition to death penalty, but wording in these treaties is vague, which can prove hurdle to China-ASEAN extradition cooperation.

c. Political offence exception to extradition

Non-extradition for political offences is explicitly stipulated in the extradition treaties between China and ASEAN members (Thailand, Cambodia, Philippines and Laos). As it is well known that defining political offence is complicated and problematic, different states can provide various definition. Therefore, this can turn to be an obstacle to China-ASEAN extradition cooperation.

d. Application of simplified extradition procedures

Simplified extradition procedures are not set out in China's Extradition Law, neither in the extradition treaties between China and those four ASEAN members. This calls for further improvements.

e. Obligation to 'Extradite or Prosecute'

In international extradition laws, 'Extradite or Prosecute' Obligation is universally recognised. It is the basis for exercising universal jurisdiction in general and is a necessary supplement to extradition policy. The 'United Nations Convention against Corruption' that China ratifies contains the clause of 'Obligation to Extradite or Prosecute for their own nationals', however, 'Extradite or Prosecute' Obligation is not yet stipulated in China's Extradition Law.

4 Jiangwei. The problems and countermeasures of China-ASEAN cooperation mechanism on tackling transnational crime. *Law and Economy*, 2014(2):47.

## LIMITATIONS OF CHINA'S BOARDER MANAGEMENT SYSTEM

At present, boarder management in China is of coordinative administration by multi agencies including boarder agency, police, foreign affairs sector, human resource department, education department and labour department. Different agencies function in accordance with various responsibilities in respect of boarder management, however, administration authority is decentralised, their responsibilities are overlapping and data and information in each agency are not well shared. Besides, frontier law enforcement agencies have the problem of manpower shortage, boarder areas lag behind in informatisation, and the locals are of less legal awareness. The limitations of China's boarder management system further add to the difficulties in combating transnational crimes.

## SUGGESTIONS ON ENHANCING CHINA'S CAPACITY IN COMBATING CHINA-ASEAN TRANSNATIONAL CRIMES

### STRENGTHENING LEGISLATION

*Signing judicial assistance agreements with all ASEAN members*

As China and some ASEAN countries have not signed bilateral criminal judicial treaties, it is urgent for China to actively negotiate with those ASEAN states to ratify and achieve obligatory bilateral treaties or agreements as early as possible.

*Strengthening China's laws on international judicial assistance*

Given the development of China-ASEAN judicial assistance, China should make amendments to current related laws and enact international judicial assistance laws. The provisions of international judicial assistance should be contained in the Constitution of P.R.China, Criminal Law of P.R.China and Criminal Procedure Law of P.R.China. China should also enact criminal judicial assistance law and criminal investigation assistance law and so on in order to establish China's basic stance on international judicial assistance and define statutory requirements. Besides, it is crucial to align China's laws. The criminal laws of China should be aligned with international judicial assistance laws of China, and China's international judicial assistance laws should be compatible with international judicial assistance treaties.

### IMPROVING CHINA-ASEAN CRIMINAL JUDICIAL ASSISTANCE

*Regulating the application of jurisdiction in accordance with different types of transnational crimes*

It can be foreseen that the adjustment of criminal policy on transnational crime will be a major area of combating crime in the next few years. Based upon the planning and adjustment of criminal policy, to adjust specific considerations in criminal jurisdiction and promote the drafting and enacting of international convention can be regarded as the effective acting point. As a matter of fact, conflict of transnational crime jurisdiction cannot be evaded, thus,

different criminal jurisdiction combinations apply to different types of transnational crimes and can prove effective approach to resolve this issue.

a. Jurisdiction combination of 'Informationised transnational crime': Referring to 'Territorial Jurisdiction' rather than 'Protective Jurisdiction'

It is widely recognised that jurisdictional disputes in cybercrime are increasingly intense. Cybercrime usually occurs across more than two countries, hence, resolving criminal jurisdiction of cybercrime can somehow provide a solution to jurisdictional disputes in 'Informationised transnational crime'. Some scholars argued that overexpansion of jurisdiction in transnational cybercrime will enable all nations affected by a cybercrime to have universal jurisdiction in it, and this will not only cause a severe violation of the offender's rights, but also have a huge impact on state judicial sovereignty. The principle of the criminal jurisdiction of transnational cybercrime should refer to territorial jurisdiction rather than protective jurisdiction[5].

b. Jurisdiction combination of 'Conventional transnational crime': Introducing 'Territorial Jurisdiction' plus 'Personal Jurisdiction' and 'Protective Jurisdiction'

Any country may feel powerless to tackle explosive growth in conventional transnational crimes alone by sticking to territorial jurisdiction. Therefore, it is suggested to take territorial jurisdiction as the principle and introduce personal jurisdiction and protective jurisdiction when necessary with regard to the jurisdiction of conventional transnational crime.

## IMPROVING CHINA-ASEAN EXTRADITION COOPERATION

China and ASEAN states can flexibly apply the principle of non-extradition nationals in accordance with bilateral extradition treaties, or they can refer to 'extradition upon later transfer of proceedings in criminal matters' in the 'UN Convention against Transnational Organised Crime'. As for the principle of non-extradition to capital punishment in China Extradition Law, mutatis mutandis, China can agree to extradition of the person extradited as long as requesting state pledges that the person will not get the death penalty. The clause of non-extradition for political offences in the extradition treaties between China and Thailand or between China and Cambodia can be used for reference, explicitly defining what acts are not political offences. In addition, China's judicial authority can make amendments to China Extradition Law in line with 'Extradite or Prosecute' Obligation.

## IMPROVING CHINA'S BOARDER MANAGEMENT SYSTEM

*Establishing a collaborative boarder governance system of law enforcement agency and other government sectors*

In order to strengthen boarder management in China, China should direct law enforcement agency along with other government sectors to establish a collaborative governance mechanism. Moreover, it is important to further improve coordination and cooperation among different law enforcement agencies in different regions of China.

*Innovation of boarder management*

China should be devoted to the innovation in respect of boarder management strategies and methods. Advanced technology such as multi-function auxiliary equipment with position,

5 YU, Zhigang. Empirical analysis of transnational crimes committed by Chinese citizens. *Journal of National Prosecutors College*, 2014, 22(1):121.

communication and navigation system should be widely employed in boarder control. As for patrol strategies on the boarders, variable interval inspection, expansion of patrolling areas as well as increase of patrol density and multi interception point can prove to be effective[6].

*Improving informationisation*

It is essential to improve informationisation on China's boarder areas. Efficient boarder management calls for effective data sharing and developing identification mechanism of dangerous people is a crucial task.

*Reforming Visa regime*

In view of economic and trade exchanges between China and ASEAN countries, China government can analyse the situation and reform visa policy, for instance, increasing the endorsement categories of boarder pass, making transnational labour exchange policy, which may help to prevent some types of transnational crimes such as illegal migrant, illegal border crossing and human smuggling.

*Raising the public's awareness*

The public order cannot be maintained without the public's participation. In boarder regions, it is of added importance to raise the locals' awareness of the impacts caused by transnational crime and secure the public's willing cooperation in voluntary observance of the law to prevent and control transnational crimes.

## ESTABLISHING REGULAR CHINA-ASEAN INFORMATION SHARING MECHANISMS

It is an urgent requirement for China and ASEAN countries to strengthen criminal intelligence collection and information sharing mechanism. China and ASEAN should be devoted to the improvement of transnational crime intelligence in terms of the collection, integration, storage and retrieval of criminal information and intelligence, the dissemination of criminal data and intelligence for further investigation as well as the provision of suspects' criminal records. In addition, China and ASEAN should establish a regular information sharing mechanism. It is also crucial to set up unified information exchanging criteria and specific information exchanging methods, train intelligence personnel and management personnel, and establish and share the lists of fugitives.

## STRENGTHENING CHINA-ASEAN COOPERATION IN FIGHTING AGAINST TRANSNATIONAL CRIME

*Establishing new China-ASEAN cooperation platforms and mechanisms on combating transnational crime*

In the light of conventional crime's multinationalisation and networked transnational crime, China should be devoted to establishing new international cooperation platforms and mechanisms on tackling China-ASEAN transnational crimes. With regard to the rapid growth of conventional crimes, China's strategy is to analyse the situation comprehensively and actively participate in sound international cooperation systems; concerning crime's mul-

6 Wu, Xiayi. China-ASEAN Investigation cooperation. *Journal of Jiangxi Public Security College*, 2012(5):39.

tinationalisation subject to informatisation, China should encourage the drafting and enacting of new international conventions.

*Strengthening China-ASEAN multi-agency international collaboration*

a. Setting up liaison offices

Liaison offices will enhance exchanges and cooperation between China and ASEAN countries and increase the efficiency of tackling transnational crimes cases. For instance, Dongxing (in China)-Moncay (in Vietnam) anti-narcotics liaison office was established in 2012, hereafter, several liaison offices were set up in China-Vietnam border regions including Pingxiang, Hekou and Laokai, which have significantly improved China-Vietnam cooperation in drug trafficking crackdown.

b. Appointing 'Justice Diplomats'

Police liaison officers are retained in most of overseas Chinese embassies and consulates, however, their responsibilities are limited to police affairs and police cooperation of two countries. Therefore, 'Justice Diplomat' can prove help to international judicial assistance and justice cooperation in criminal matters.

c. Establishing a specialised China-ASEAN counter-transnational crime cooperation agency

d. Establishing international joint operation mechanisms

Given the special geographical condition in China and ASEAN and the characteristics of China-ASEAN transnational crimes, law enforcement agency, the Customs, quarantine and inspection service should carry out joint operations in order to further boost China-ASEAN capability of combating transnational crimes.

In addition, boarder control agencies of China and neighbouring countries should establish real-time dynamic information sharing mechanisms as well as law enforcement collaboration and cooperative investigation mechanisms.

## CONCLUSION

Transnational crimes have become a complex threat to economic growth and political and social stability in China and ASEAN countries. China agrees with most of ASEAN states that these crimes are to be given priorities, and has been constantly strengthening its capacity in combating these crimes. This paper studied the main types and characteristics of transnational crimes in China and ASEAN countries, analysed the challenges facing China and ASEAN in tackling these crimes, described the existing China-ASEAN counter-transnational crime cooperation mechanisms, and discussed the pertinent strategies that can be employed by China for further fight against transnational crime. China constantly presents its determination to crack down on transnational crime and exercises its international power to build partnerships to solve this problem that no nation can solve on its own, which delivers significant results without doubt. Nevertheless, a consensus is that transnational crime will be a growing challenge. In addition to the above suggestions for China on its counter-transnational crime capacity building, China and ASEAN can introduce the China-ASEAN Arrest Warrant system like the European Arrest Warrant (EAW), and further strengthen personnel exchanges and training as well as technique cooperation.

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6. Wu, Xiayi. China-ASEAN Investigation cooperation. *Journal of Jiangxi Public Security College*, 2012(5):37-39.
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8. Zhangqi. ASEAN mechanisms on tackling transnational organised crimes. *Academic Exploration*, 2016(12):19-25.

# Topic VI

# FORENSIC LINGUISTICS AND LANGUAGE FOR SPECIFIC PURPOSES

# THE ROLE OF ENGLISH IN THE INITIAL COURSES OF GEOFORENSICS

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**Abstract**: The paper deals with questions relevant to the role of the English language and its use in the possible implementation of geoforensics as a scientific discipline at the Faculty of Mining and Geology, University of Belgrade. The intent is to encourage more meaningful consideration of the significance and role of English and its applicative models in the initial implementation of the abovementioned scientific discipline. Initially, the paper explores the existing definitions of geoforensics, considers its importance, actuality and its relevance regarding the modern needs of society. Following that, processes of acquiring vocational language knowledge are identified through two phases with the help of all existing language-learning tools and facilities within the Faculty. The first phase emphasises the parallel use of the learner's mother language and English whereby they translate select written materials with the aim of acquiring the relevant (untranslated) terminology more profoundly and systematically. After the first receptive phase, the paper deals with the model of the productive phase which seeks to facilitate the development of written and oral skills. The development of oral skills means that the learner acquires communicative competencies when speaking both with professional and non-professional speakers. Further, the paper draws attention to the importance of written skills such as the writing of reports, maps, notes etc. in both technical and colloquial registers. Finally, the paper presents an analysis and discussion of student stances toward the presented model of learning, gained via questionnaire. Conclusions to the paper underscore the importance of using the English language and the legitimacy of the two-phase model as clear and transparent means of implementing and teaching a new scientific discipline in tertiary education.

**Keywords**: geoforensics, interdisciplinary, two-phase model, English, communication skills.

## ON THE CONCEPT OF GEOFORENSICS

Geoforensics, Forensic Geology, and Forensic Geoscience also known as Criminal Geoforensics (sr. *geoforenzika, sudska geologija*) deals with trace records in the form of land, minerals and oil. As its name implies, its main application is in the criminal investigations. In other words, a forensic geologist can assist the police in those types of crimes such as murder, terrorism, abduction, serious sexual assaults, rapes, explosive and fire-arms incidents, which are related to rock fragments, micro-fossils, soils and sediments or artificial man-made materials derived from geological raw materials such as bricks, concrete, glass or plaster board. This interconnectedness between the Police and Geology is possible because many of the basic fundamental principles of geology along with geological techniques and methods are applicable to police investigations.

Additionally, geoforensics can be applied in the cases of fraud and theft. Namely, the first recent data on the use of geology in the investigation of a crime is about 150 years old and it is associated with the attempted theft of silver. Silver coins which were loaded in Leipzig, arrived in Berlin in the form of sand, which is a classic case of substitution. At that time a famous microscopist Hans Christian Ehrenberg was asked to analyse the sand which he compared to the sand along the route. He identified one location as comparable, and on questioning the station staff, the confession was obtained and the silver found.

Furthermore, with increasing impact of environmental human activity, the release of contaminants into hydrosphere, lithosphere and atmosphere, there has been an increased need for urgent legal action in this area which, in turn, has led to an increased amount of environmental legislation[1]. As a consequence, the application of geological techniques and analyses can be used in identifying and mapping the source and impact of waste materials, pollutants and contaminants in much the same way as it is used traditionally in the murder cases.

The lack of materials, which is more than evident on this subject, is due to the fact that despite the increasing activity in this area, the large scale employment of police staff or outside experts, the works and results were simply not published. This could be interpreted as a multidisciplinary hiatus or oversight among geology, judiciary and police, or simply the lack of willingness to establish the realm of new scientific practice and theory. It is more than evident that the newly-established sophisticated means and methods of analysis of soil, sediments, waters and air need to be supported by rigorous models both in sound science and legislation since several cases of "Expert Witness" evidence have been overturned and challenged as unsafe since the value of Earth Science in forensic investigations is still disregarded[2].

## ON THE IMPORTANCE OF ENGLISH AS LINGUA FRANCA IN GEOLOGY

In agreement with this subtitle, we perform a bibliometric analysis accomplished by Reguant and Casadellà stating that:"(A) English is the language most used in geological sciences; (B) its use by authors and journals from non-speaking English countries is progressively, but slowly, increasing; (C) the citing of non-English scientific literature by most English-speaking authors is scarce or non-existent. This suggests that they lack significant information, as pointed out by Reguant[3] in an advanced result of this work"[4].

Likewise, some years earlier, in a more general sense, Crystal stated: "Many people feel that the only realistic chance of breaking the foreign-language barrier is to use a natural language as a world lingua franca. The history of ideas already provides precedents, with Latin used as a medium of education in Western Europe throughout the middle ages, and French used as the language of international diplomacy from the 17th to the 20th centuries. Today, English is the main contender for the position of world lingua franca"[5].

1 Nanda V.P., & Pring. G., (2012). *International Environmental Law and Policy for the 21st Century*. Martinus Nijhoff Publishers
2 Pirriel, D., Ruffell. A., & Dawson. L.A., (2016). *Environmental and criminal geoforensics: an introduction*, Available at http://sp.lyellcollection.org/content/early/2013/09/09/SP384.20, accessed on 20.03.2017
3 S. Reguant. (1993). What lingua franca? *Nature,* 361, p. 107.
4 Reguant, S. & Casadellà. J., (1994). English as lingua franca in geological scientific publications. A bibliometric analysis. *Scientometrics*. 29 (3), p. 335.
5 Crystal, D., (1987). *The Cambridge Encyclopedia of Language*, Cambridge University Press. Cambridge, 1987, p. 357.

## INTRODUCTION TO THE PHASES

Since geoforensics is not currently being studied at FMG in either English or Serbian, this area of study is a didactic blank canvas of sorts. Nevertheless, any potential implementation needs to be considered carefully lest any initial enthusiasm for this science be lost due to an ineffective or uninspired course. Hence, with the situation being as it is, a two-phase system or approach has been proposed to ease students into a completely new scientific discipline more comfortably.

The initial phase, dubbed the receptive phase, would consist primarily of reading and translation exercises. Though there are many arguments both for and against the extensive use of the L1[6 7], due to the unique circumstances of any potential study of geoforensics we feel that, in this case, the advantages outweigh the disadvantages given. Most importantly, extensive reading of topical texts is a very effective way of introducing plenty of new vocabulary[8] as well as translation exercises, with extensive support from both the teacher and a specialized dictionary, facilitating the acquisition of difficult, technical vocabulary[9].

Following that would be the productive phase in which the focus would shift to areas more in line with modern teaching practice such as speaking and writing. The emphasis here would be on specific vocabulary acquired in the previous phase of study that needs to be activated through meaningful, practical application. There is no use in dutifully memorising lists of words and expressions if the same could not be applied in a real life scenario as described by Donnely[10] who talks about how geoforensic officers are often called upon to testify in court. When doing so, they often need to communicate complicated scientific procedures or principles in such a way as to be understood by most, if not all, of the members of court. Achieving this would be a daunting task for native speakers of English, let alone students studying geology parallel to English while at the same time practicing their communication skills to be able to deal with delicate situations they may find themselves in professionally.

## ON THE RECEPTIVE PHASE

The linguistic necessity that arises from the above mentioned is that if a teacher is to apply a scientific context in a classroom, he/she has to rely on a relevant dictionary as a point of support or departure, and then try to create equivalents in L1. Good English dictionaries are seen as necessity not because the reading activities are viewed as purely word-to-word translation ones or those with overly using dictionary in search for meaning. Quite contrary, dictionaries are tools for bridging the gap between the known and the unknown as well as for linking the L1 with the L2 in the most appropriate way. In order to achieve this, it is essential that the student has previously mastered everything that is taught in the fields of study, such as:

- Geology: stratification, mineralogy, geochemistry, weathering, erosion, soil creep, landslides;
- Geomorphology: elevation, topography, relief, slope, disturbances;
- Geophysics: electrical conductivity, microgravity, seismicity;
- Geotechnics: friction, cohesion, plasticity, diggability, bulking, shrinkage, swelling;

6 Ur, P. (1996). *A Course in Language Teaching*. Cambridge. Cambridge University Press., p. 216
7 Harmer, J., (2012). *Essential Teacher Knowledge*. Edinbrugh Gate. Pearson Education Limited, pp. 55-56
8 *ibid.,* p.122
9 *ibid.,* p.170
10 Donelly, L.J., (2009). The role of geoforensics in policing and law enforcement, Available at https://www2.le.ac.uk/departments/geology/hosted-sites/esta/downloadable-files/Emergency%20Global%20FINAL.pdf, Accessed on 25.03.2017

- Hydrogeology: connectivity, porosity, permeability, drainage, runoff, liquefaction, rainfall, flowpaths.

Only by profiting from the above-mentioned academic studies will the student be likely to establish a basic linguistic context and the order of events in the potential vital role in solving the crimes. The dictionaries relevant to forensic science are the next step and should include a wide array of relevant specialist terms from firearms, toolmarks, trace evidence, crime scene investigation, case history, forensic computing etc. Bearing in mind the advancement of technological equipment and recent scientific development, students are advised to create their own version of a dictionary with all the specificities that the forensic practice may encompass.

Reading activities in a geoforensic course are seen as being able to examine, interpret and reflect on factual texts containing increasing levels of difficulty. Being able to read also means processing and using varied information from footage, film, drawings, graphs, tables, globes and maps. For a student to understand and participate actively, it is also necessary to be able to read and collect information from reference books, newspapers and the internet, and to assess this information critically.

We discern two levels of readers:

- *Fluent reader* – is either a situation model or text model. When reading a text, new elements of meaning are continuously added to a network of ideas from the text. Some elements reappear often, while other are not considered as important and fades away from the reader's immediate attention. Those elements that remain are integrated into a text model of comprehension. This model represents the reader's linguistic comprehension of the text. When engaging with a text, however, the reader also brings a level of interpretation to the information processed, and as a result, builds a situation model of reader interpretation[11].

- *Proficient reader* – is also a strategic reader. According to Grabe[12] strategic readers "engage actively in reading, read far more extensively, and have the motivation to read for longer periods of time"[13]. Grabe also adds that strategic readers engage in difficult and challenging texts, using strategies that will help them manage the text. In order for students to develop their reading strategy use, they have to explicitly learn about strategy use, as well as be given the opportunity to implement strategies in their reading. (This will also require teachers to expand their own knowledge of strategies and how they can be taught and to focus more on strategies in their teaching).

## ON THE PRODUCTIVE PHASE

Since geologists are often asked to transfer or communicate results, advice and recommendations from their geological exploration to different recipients such as politicians, policy makers, the public, media, judiciary, it is of central importance for them to avoid failure to precisely communicate the message accurately and clearly. According to Donnely[14]: "if the correct message is not conveyed properly, or is misunderstood, or misinterpreted, the consequences can be catastrophic". It is noted that for geologists the communication of information

11 Grabe, W., & Stroller, F. L. (2002). *Teaching and Researching Reading*. Harlow, England: Pearson Education.
12 Grabe, W. (2009). *Reading in a Second Language. Moving from Theory to Practice*. Cambridge: Cambridge University Press
13 *ibid.,* p. 227
14 Donnelly, L.J. (2007). *Communication in geology: A personal perspective and lessons from volcanic, mining, exploration, geotechnical and police (forensic) investigations*, Available at http://www.ukgeohazards.info/Documents/Papers/Donnelly%202008%20Communication%20and%20geology.pdf, Accessed on 21.03.2017

can be more difficult than the investigation itself. This is because many of these investigations apply highly sophisticated scientific techniques, geological terminology and specific technical jargon, which when combined with cultural and language barriers, social, political, religious and economic constraints that often exist, put a geologist in a very difficult position. Namely, conveying the geological data for the recipient to understand means translating it into many "Englishes" or sublanguages that exist within the multilayered social strata.

During the study, geologists have either very modest or no training in communication skills. According to Donnely[15] "Spoken communication relies on interpersonal skills and the ability to convey information effectively, confidently and consistently." Thus, for language teachers and geological professors it may sometimes seem very challenging to organize or improvise interviews with media and the public. Supplementing talks and presentations with experts and judiciary are no less demanding. "A good communicator must also be a good listener, using silence, reflecting, paraphrasing and using non-verbal behavior. It is possible, there should be feedback from the targeted audience of individual[16].

Furthermore, the level of successful communication may vary depending on the education of recipients, in cases of experts' communication, it can be of a technical nature, but with a mixed audience, the appropriate level of non-technical vocabulary is difficult to attain, and should be considered carefully before the engagement takes place.

At other times however, it is the duty of forensic geologists to write or assist in the writing of reports, information leaflets, guidebooks, technical notes, letters, professional correspondence etc. which is why honing writing skills should definitely be an important area of focus in this course[17]. Only through proper guidance, practice and instruction can our students, the majority of whom have poor prior writing experience, learn how to be confident and independent users of the English language[18], and to learn how to deal with the specificities present in geoforensics.

The usefulness of writing practice could even said to be threefold as it facilitates students' English skills, as well as benefitting them academically and professionally. Taking into account that students are often called upon by their professors to produce writing whether in the form of scientific papers or essays or presentations, this form of writing instruction could have a favourable effect on their writing skills in general[19]. Combined with the fact that these writing skills will undoubtedly be used in their future work[20], as is the case with future forensic geologists, extensive practice and instruction of writing seem to be more than justified.

This paper in this respect relies heavily on not so ample body of literature and personal reports that it may purport to know the best way to bridge the gap of incomprehension of a professional and a layman (at least as far as geology may be concerned). Rather, it seeks to encourage educators to try to raise awareness of their students regarding this issue and that a more delicate, nuanced approach to communication by both sides is crucial for effective mutual understanding, especially in gravely serious situations that an expert of geoforensics may find themselves in.

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15 *ibid.*, p. 1
16 Donnelly, L.J. (2002). Finding the silent witness: how forensic geology helps solve crimes. All-Party Parliamentary Group for Earth Science. The Geological Society of London, *Geoscentist*, 12, 5, p.16
17 Donnelly, L.J. (2007). *Communication in geology: A personal perspective and lessons from volcanic, mining, exploration, geotechnical and police (forensic) investigations*, Available at http://www.ukgeohazards.info/Documents/Papers/Donnelly%202008%20Communication%20and%20geology.pdf, Accessed on 21.03.2017. pp. 4-5
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19 Kellogg, R.T. & Raulerson, B.A., (2007) Improving the Writing Skills of College Students. *Psychonomic Bulletin & Review* 14: 237. doi:10.3758/BF03194058
20 *ibid.*

## RESEARCH: METHODOLOGY, RESULTS, DISCUSSION

Taking into account the novelty of geoforensics and the unique role that English has to play in familiarising our students with the key concepts and ideas of this interdisciplinary science, it was deemed crucial to assess their attitudes toward its teaching. We considered a quantitative questionnaire the most useful research tool for this purpose, namely assessing attitudes towards the study of a new discipline directly by means of a foreign language.

The students who responded to the questionnaire are currently attending their first year at the FMG and are well into their second course of English. As far as their English language ability is concerned, it ranges from beginner to intermediate in most cases with several advanced students. In order to ensure that the feedback was as accurate as possible the language used in the questionnaire was Serbian. 93 students in total participated in the survey.

The questionnaire itself is of a Likert-type and is made up from 8 statements assessing student attitudes toward geoforensics, English and their opinions regarding the parallel study thereof. The questions could be divided into four categories according to their statements:

- General attitudes towards geoforensics.
- Students' stance towards the role of English in the study of geoforensics.
- Statements regarding the receptive phase of study.
- Statements regarding the productive phase of study.

In the statements regarding the receptive and productive phases of geoforensics the students had to signify to which degree they agreed with the statements by choosing a number from 1 to 5. 1 denoted complete disagreement whereas the number 5 denoted complete agreement with the statement.

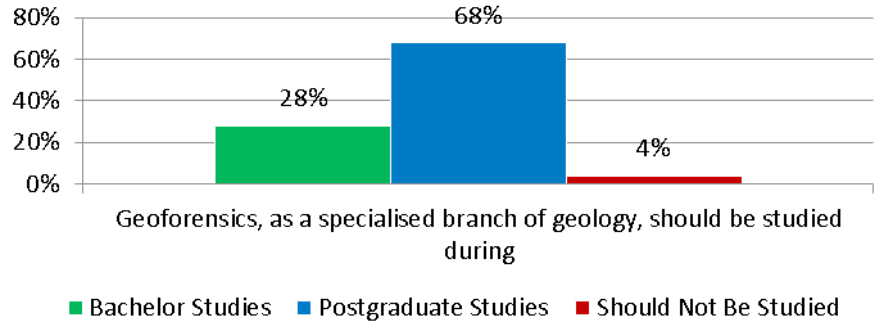


**Table 1**: General attitudes towards geoforensics

Regarding student attitudes as to when geoforensics should be studied, if at all, the results were overwhelmingly in favour of introducing the subject. Just 4% of students deemed the study of geoforensics unnecessary. What is curious though is that most (68%) would prefer to study geoforensics at a postgraduate course, not during their Bachelor studies.

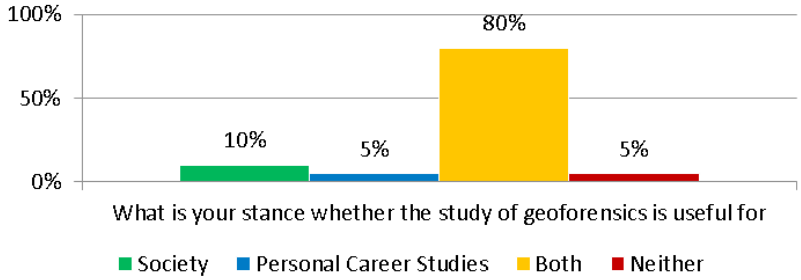


**Table 2**: Usefulness of geoforensics study

In terms of usefulness and its benefit to society, once again most (79%) felt that geoforensics was dually beneficent, benefitting society on one hand by providing another method of gathering evidence and so serving justice, as well as offering a unique career opportunity that many had never thought to consider before – a career in law enforcement.

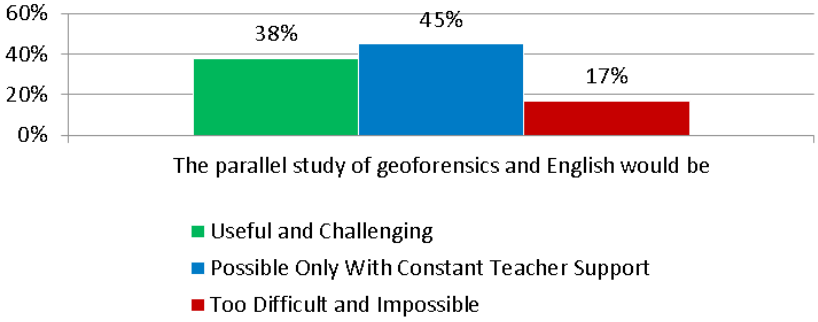


**Table 3**: Students' stance towards the role of English in the study of geoforensics

When it comes to the parallel study of English and geoforensics i.e. learning geoforensics primarily through English, a not insignificant portion of students (17%) had misgivings about the idea. This may be attributed to the generally weak level of English exhibited by most students, combined with the radical notion, from their point of view of course, of learning a new subject wholly via English. That being said, it bears repeating that despite these odds, the willingness to learn and challenge oneself prevails, with the remaining 83% of students opting for a positive answer.

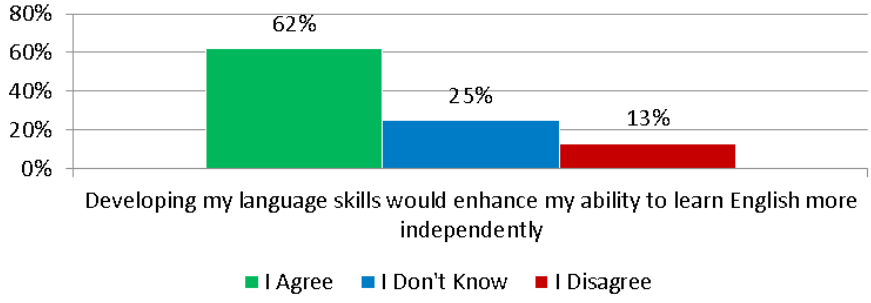


**Table 4**: Students' stance towards language skill enhancement

The majority of students do feel that developing their English skills would make them more independent learners. Given the situation that we are currently in, with a new scientific discipline untranslated into Serbian, making our students more independent learners would better prepare them to deal with these situations in the future. Therefore, we must make every effort to promote student independence language-wise.

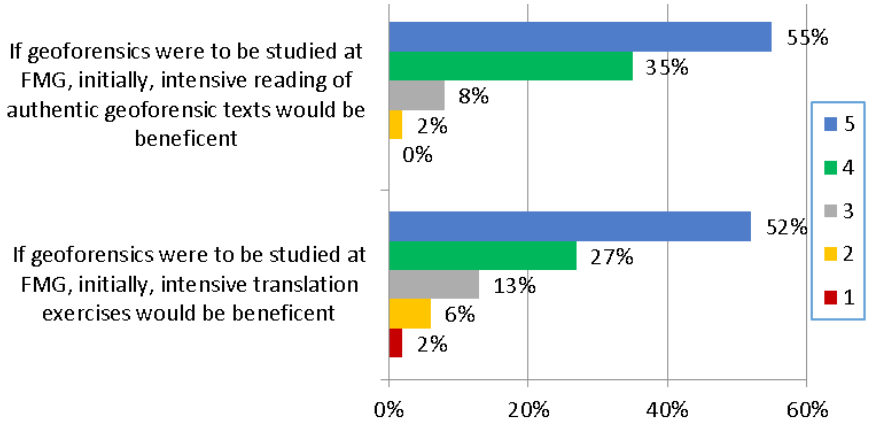


**Table 5**: Questions concerning the receptive phase

When it comes to the receptive phase, the majority of students seem to recognise the importance of building up a passive vocabulary from scratch, both through reading and translation. It does seem that translation is a slightly less popular method though the difference in preference is not marked.

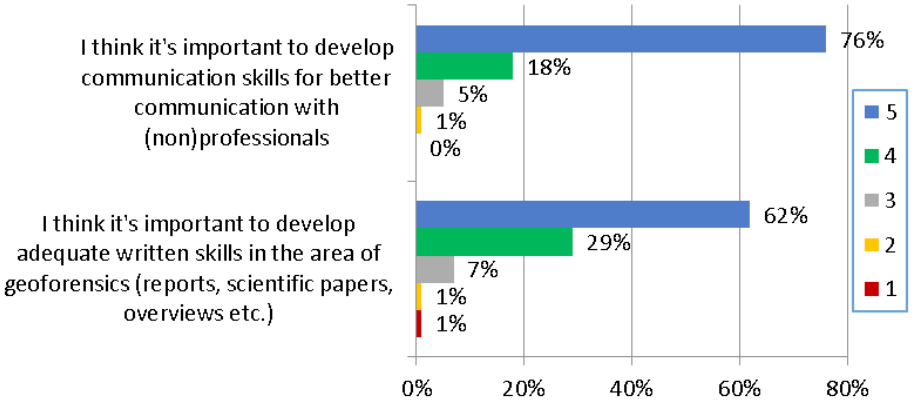


**Table 6**: Questions concerning the productive phase

Student responses in the productive phase are even more positive than in the receptive phase with writing skills being considered slightly less useful than communication skills. This small dichotomy might stem from the fact that students might be able to more easily see the practical and direct applications of their communication skills as opposed to producing writing. That is why it is important to reinforce the idea of the importance of writing in regards to their future academic success, professional career and the development of English skills.

## CONCLUSION

This paper has discussed the concept of geoforensics and its relevance to modern day society. Geoforensics is an emerging, interdisciplinary scientific field that offers a whole new perspective to young geological engineers, offering unique employment opportunities previously unthought of.

Since geoforensics is not a subject currently taught at the Faculty of Mining and Geology in Belgrade, we have proposed a way in which English and ELT might be used to successfully implement the study of geoforensics at FMG.

To that end, a two-phase system of study has been devised consisting of an initial receptive phase focusing on extensive reading and translation and a later phase which puts more emphasis on more meaningful and practical language production through speaking and writing dubbed the productive phase. We felt that in this way students would be given enough time to acclimate to the new vocabulary, especially that from the area of forensic science.

As our survey has shown, we may tentatively conclude that interest for the study of geoforensics does exist although it will still take some time to see how it could be best integrated into the existing curriculum. More specifically, the greatest point of contention could be whether or not the subject should be studied during the initial four years of Bachelor studies or potentially become part of a postgraduate course.

Nevertheless, given student interest, especially regarding future career opportunities, the possible study of geoforensics at FMG could be a great boon to the students at the Faculty, the Faculty itself and Serbian geology. Whether or not English, and the study thereof, has a place in that process remains to be seen, however, it is our hope that we have shown how an interdisciplinary approach such as this one, integrating language, geology and forensics, may serve to everybody's benefit.

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# ACOUSTIC PARAMETERS OF SPEECH AS FORENSIC MARKERS FOR SPEAKERS OF PRIZREN-TIMOK DIALECT[1]

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**Abstract:** The present research paper presents the results of the acoustic analysis of speech of the Prizren-Timok dialect speakers with the aim to obtain data that can serve as significant forensic markers in legal proceedings. That is why the acoustic parameters of duration, tone and intensity in the speech of urban speakers from the Prizren-Timok area were investigated by applying the methods of experimental phonetics (PRAAT, version 6.0.14, BOERSMA & WEENICK 2016). The research included twenty participants originally from Niš (the Prizren-South Morava subdialect) and Svrljig (the Svrljig-Zaplanje subdialect) – the towns which are close in terms of distance (approximately 30 km), but distant in terms of subdialects spoken there. The corpus consisted of disyllabic words with the stress on the initial syllable of approximately the same syllable structure (all the stressed syllables are open, whereas the post-stressed syllables are either open or closed), placed in the neutral sentence context. The obtained parameters were processed quantitatively using SPSS, and the statistical analysis included both descriptive statistics and the comparison of values via t-tests and ANOVA.

**Key words:** forensic markers, the Prizren-Timok dialect, duration, tone, intensity, Serbian.

## INTRODUCTION

Forensic phonetics,[2] defined as a linguistic discipline, i.e. as a "subspecialist area of applied linguistics" (Kašić, Đorđević 2009a), deals with the recognition and identification of speakers based on their speech. Two major tasks in the forensic analysis of speech and its application are *forensic profiling* and *speaker or voice comparison*. The former task involves determining the regional, social or ethnic affiliation of speakers based on their voice, while the latter involves a comparative analysis of samples from the acoustic point of view.

When it comes to speaker recognition, the entire process can be observed through the identification and verification of the speaker. Identification is concerned with determining the speech of the speaker among a number of possible speakers, while verification presents

1 The study was conducted within the project *Dialectological studies of the Serbian language region* (no. EDB 178020) funded by the Ministry of Education, Science and Technological Development of the Republic of Serbia.

2 "Forensic phonetics is a relatively new branch of phonetics which originated in the 1920s with the technological development of voice recording, and it has developed more progressively in the last few decades" (Varošanec Škarić, Kišiček 2012: 90).

a more specific process in which a number of participants are shortlisted and then the claim of identity is either accepted or rejected. Varošanec Škarić and Kišiček (2012: 90) suggest that the major difference lies in the number of possible answers, which means that "in the process of identification, the number of possible solutions is the same as the size of the entire population, whereas in the process of verification, there are only two options – to either accept or reject the claim of identification, regardless of the population size". Forensic identification of speakers is part of forensic phonetics.[3] In the process of speaker identification, there are two types of markers in forensic practice:[4] the first type of markers is composed of non-linguistic features of the speaker's voice, while the second type of markers includes the linguistic features of voice. The first group depends on the anatomic and physiological characteristics of the phonator, resonator and articulator of each speaker, since these differ across different speakers according to the listed parameters. The second group is used in profiling, identifying and verifying of speakers.

One of the main types of the second group (in addition to the markers of *social status*) includes the so-called *regional markers* (Kašić, Đorđević 2009b). Based on these markers,[5] the following traits can be successfully identified: geographic origin of the suspect, his/her current place of residence, influence of another language variety (if the speaker has spent some period of his/her life in some other part of the country) or language (if the speaker has lived abroad). Kašić points out that "this type of forensic analysis opens up a new research field within urban dialects. That field would involve the investigation of ways in which the representatives of certain regional dialects accept the standard orthoepy or the speech expression from another region. When using the standard base, the representatives of some dialectic regions produce some speech elements in a novel way which could lead listeners to wrong conclusions about the speaker's origin. In forensic practice, there can be situations in which the participants are led to wrong conclusions when listening to a person from East Serbia who has substituted his/her regional syllabic accent with the standard system consisting of four accents. Relying solely on their perception, non-experts could assess such speakers as foreigners, i.e. speakers whose mother tongue is not Serbian" (Kašić, Đorđević 2009b).

The present paper deals with the acoustic parameters[6] of speech as prominent regional markers of speakers from the Prizren-Timok area. Keeping in mind that this area has not yet been sufficiently investigated from the perspective of acoustic phonetics, the obtained data may be of use as one of forensic markers in the expert analysis of speech samples.

3 According to Kohler 2000; Laver 2000; Ohala 2000, forensic phonetics is described as an applied branch of phonetics. Rose (2002) suggests that phonetics and forensic phonetics are complementary disciplines: phonetics deals with human speech and its acoustic side and perception, whereas forensic phonetics, in addition to identification, also includes forensic profiling, content identification – if there is some pathological disorder in speech or a foreign accent, as well as determining the authenticity of a recording – in case the recording is suspected to be falsified.

4 In terms of the phonetic capacity, the identity is most often determined based on the forensic markers in the voice quality, articulation quality, articulation features of some speech segments, pitch of the primary tone, prosodic characteristics and automatism of the regional characteristics of the articulation basis (Kašić, Đorđević 2009a).

5 For the reduction of unstressed syllables as important regional markers for one part of the Serbian-speaking territory see Ivanović, Šešum 2009.

6 In addition to technical procedures and auditory speaker identification, one of the methods in forensic voice identification is the acoustic analysis of voice (Varošanec Škarić 2008).

## BASIC REGIONAL MARKERS OF THE SHTOKAVIAN DIALECT – ACCENTUATION PERSPECTIVE

Serbian accentuation is based on the prosodic system of the Neo-Shtokavian dialects on the basis of which the modern literary language was based in the 19th century, which has been taken as the foundation of the contemporary standard language. Contrary to most Indo-European and Slavic languages, whose accent is materialized as a vocal burst, Serbian has a polytonic accent characterized by the rising or falling movement inside the stressed syllable. In terms of the typology of accentuation systems (Clark, Yallop 1995), where languages are divided into stress-accent languages, tone languages and pitch-accent languages, Serbian accentuation system belongs to the third group. Škarić (1991) suggests that pitch-accent languages (including Croatian) are also called "dynamic tone languages".

Due to the territorial stratification, the Serbian language has been divided into several different varieties and dialects whose unique characteristics are evident at all linguistic levels – phonetic, prosodic, morphological, syntactic, etc. One of the main dialectological criteria for the categorization of dialects of one language is accentuation and, based on the classification given by Ivić (1985), all Shtokavian dialects can be divided into four major types:

1. The oldest type is exemplified by the three-accent system (two falling accents and a preserved acute accent /~/); it offers the widest variety of accentuation possibilities and is typical of the Posavina Ikavian speech, as well as the Slavonian Ekavian speech (Ivić 1985: 61);

2. The Old-Shtokavian accentuation was formed by removing the acute accent /~/ with the tendency to equate it with the long falling accent (in favour of the latter); it is characterized by two (three) accents and is typical of the Ikavian in Istra, Zeta-Sjenica, Smederevo-Vršac, and Kosovo-Resava dialects (Ivić 1985: 61);

3. The Neo-Shtokavian accentuation emerged as a result of transferring the falling accents from the internal syllables towards the word initial positions (14th and 15th century) in accordance with metatonia, where "the rising intonation appears at the new place of accentuation;" it is typical of the more recent Ekavian, Šumadija-Vojvodina and East Herzegovina dialects;

4. In the Prizren-Timok area, there is only one accent which resulted from the elimination of all quantitative differences.

Having in mind the accentuation disparity of Serbian described above, a forensic phonetician has to be familiar with Serbian dialects and unique features of different sub-dialects from the same area in order to successfully identify or create a profile of the suspect by combining perceptual and acoustic methods. Moreover, considerable migrations of people from rural to urban areas lead to mixing of speech characteristics of different areas and formation of urban dialects that include different elements. A forensic phonetician has to find the best ways to determine the characteristics of urban dialects, i.e. to discover the urban markers until "reliable linguistic data about speech in big cities are determined" (Kašić, Đorđević 2009).

## RESEARCH

The primary aim of the present paper is to investigate the acoustic characteristics of speech of the Prizren-Timok territory that could prove to be important regional forensic markers in the expert analysis of a speech sample. The research included twenty participants originally from Niš and Svrljig, the cities which are close in terms of distance (approximately 30 km), but distant in terms of subdialects spoken there – the former belongs to the Prizren-South Morava subdialect, and the latter to the Svrljig-Zaplanje subdialect. With regard to the meth-

odological uniformity and obtaining relevant data, all participants were female, between the age of 18 and 25 – all young, urban speakers.

The list of words for investigating accent realization consisted of 30 examples belonging to the four normatively expected categories in disyllabic words, without the unstressed length, which have been verified in the Dictionary of *Matica srpska* (*Rečnik Matice srpske*): LF: LR: SF: SR:[7] *farsa, testo, firma, gužva, doba, doboš, stado, baka, seka, pismo, Boba, tuga, peta, dete, petak, tata, tetka, kiša, koža, kuća, bitka, soba, tikva, tašna, dugme, sestra, kosa, bogat, biser, koza*. Keeping in mind that the precision of vocal segmentation is crucial for obtaining accurate values, the present research relied on the guidelines from relevant sources (Ladefoged 2001, 2003, 2006; Gudurić 2004). The recording was conducted in quiet conditions, with the microphone *Combat Gaming Headset G 500*, directly in PRAAT (version 6.0.14, Boersma & Weenick 2016), which was used both for the phonetic analysis and the measurement of acoustic parameters. Considering the fact that the stress placement and the number of syllables in a word may affect the intonation form of the stressed syllable, all selected words are disyllabic with the stress on the initial syllable, with approximately similar structure of syllables (all the stressed syllables are open, whereas the post-accentual syllables are either open or closed). The target words were placed in carrier sentences, and participants were asked to read the sentence aloud using as natural sentence intonation as possible. Such methodological framework has been adopted from previous research (Škarić 1991, Smiljanić 2004, Pletikos 2008). Bearing in mind the fact that such an approach based on carrier sentences may add certain focal characteristics to the stressed word (higher intensity, higher pitch, higher tone, greater tone range), the narrow focus perspective was selected since, in this position, "accents are more diversified than in the wide focus"[8] (Smiljanić 2004). Škarić (1991: 219) also claims that "prosodic […] features of syllables in a word are better realized only in the word which carries the intonation nucleus, whereas in other words those features are less, more or completely neutralized".

The recording was performed in an acoustic room, with the microphone, (*Combat Gaming Headset G 500*), using the *Sound Forge* software, and the recordings were saved as audio files in '.wav' format. The acoustic parameters of duration, tone and intensity of the stressed and unstressed vocal were analysed in the software package for speech processing PRAAT (version 6.0.14, Boersma & Weenick 2016). All data were processed quantitatively through the software for statistical data processing – SPSS (version 20.00). The statistical analysis included descriptive statistics where the minimum, maximum and average value of vocal duration were calculated, as well as the standard deviation. The data were assessed for normal distribution using the Kolmogorov–Smirnov test. Considering the fact that all *p*-values were higher than 0.05, it can be concluded that the data in all groups met the condition of normal distribution. Therefore, parametric tests could be used for comparison – specifically, ANOVA. The data were presented in tables and accompanied by charts (*Microsoft Office Excel 2016*).

7 LF – long falling, LR – long rising, SF – short falling, SR – short rising.

8 In addition to this method, we also recorded individual words or one-word sentences (e.g. *Goodbye*) in a falling nucleus, i.e. in intonation units uttered in a non-expressive manner. However, the disadvantage of this method was that it was difficult to calculate the tone of the syllable following the stressed one, since there was a considerable decrease in intensity, so those results were only used as control results, and were not taken into account for the final statistical analysis. In some cases, the voice turned from "modal phonation type" into whisper. Lehiste and Ivić (1986: 54) discuss the features of final intonation, i.e. *laryngealization*.

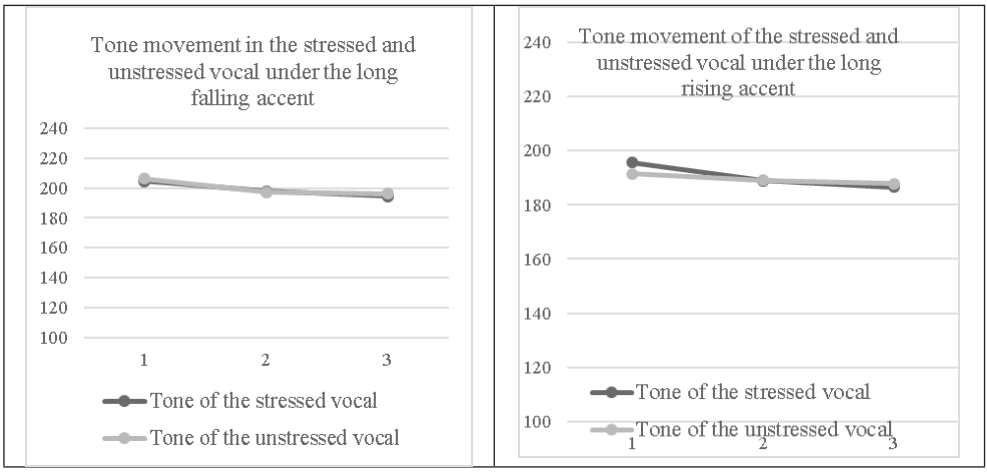
## RESULTS AND DISCUSSION

The following tables present the results of the average statistical values of duration (given in milliseconds), tone pitch movement (given in Hz) and intensity (given in dB) for the stressed and unstressed syllable. The first column shows the results for the stressed syllable, while the second column shows the results for the unstressed syllable. The initial, middle and final position in tone movement were marked by the numbers 1, 2, and 3.

***Table 1.*** *Average values of acoustic parameters in Niš*

| Accent | Syllable | Duration | Tone pitch movement | | | Intensity |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | |
| long falling | 1 | 115.12 | 204.60 | 198.00 | 194.44 | 76.85 |
| | 2 | 63.08 | 206.08 | 197.00 | 196.28 | 70.42 |
| long rising | 1 | 109.33 | 195.68 | 189.01 | 186.60 | 75.80 |
| | 2 | 61.08 | 191.56 | 189.08 | 187.92 | 71.97 |
| short falling | 1 | 106.38 | 197.52 | 190.56 | 188.28 | 76.05 |
| | 2 | 59.43 | 190.40 | 191.00 | 188.98 | 72.44 |
| short rising | 1 | 113.13 | 181.10 | 175.50 | 177.90 | 76.21 |
| | 2 | 54.62 | 189.20 | 188.60 | 185.90 | 71.59 |

The tone line of stressed vocals is characterized by a slight fall in the range of 4 to 10 Hz. The tone peak in all four accentuation patterns is always realized in the first point of the unstressed syllable. The unstressed vocal tone movement is falling in all the examined accentuation categories.



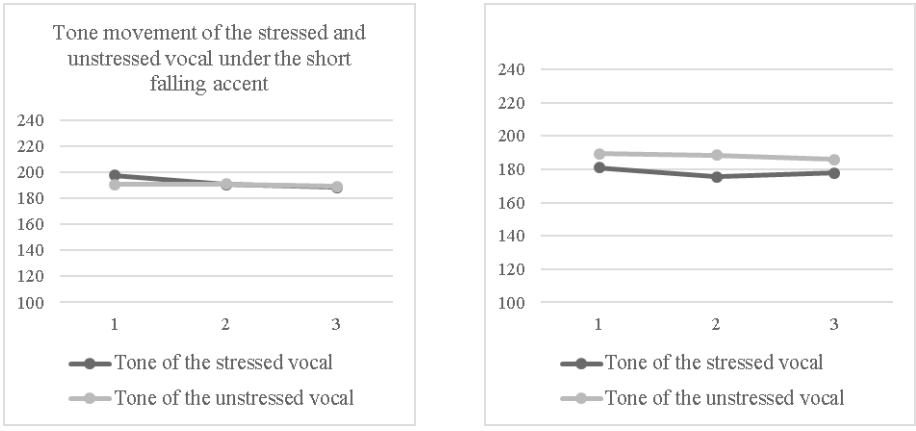



***Figure 1.*** *Tone movement of the stressed and unstressed vocal* ***in four groups*** *(Niš)*

The average quantity of the stressed vocals equals around 110 ms (the average vocal duration under the long accents equals 112 ms, and under the short 109 ms), whereas the average duration of the unstressed vocal equals 59 ms (the average duration of unstressed vocals in the words with long stressed vowels equals 62.00 ms, while the average duration of the unstressed vowel in the words with short stressed vowels equals 56 ms).[9] The statistical analysis results (t-tests) indicate that there is a statistically significant difference between the stressed and unstressed vowels in all four positions – in the words which contain four normative accents (p. 000), and that there is a statistically significant difference in the duration of stressed vowels: long (p. 081 when vowel duration is compared under the long falling and long rising accents) and short (p. 073 when vowel duration is compared under the short falling and short rising accents).[10]

The average intensity values of the stressed vowel equal 75 dB and 71 dB for the unstressed. Statistical analysis indicates that intensity is the same in all four groups, i.e. there are no sta-

9 With regard to the stressed syllable duration, Peco (1985: 14) offers measured time intervals in which certain accents appear: "There is no strict boundary between the average duration of short and long vowels for all languages, not even for all the speakers of one language, however, the approximate duration, i.e. the average duration of some vowels, may be determined. Based on the experiments conducted in different areas of our speaking territory, including the speech investigation involving speakers from different areas of the Shtokavian dialect, it can be claimed that in Serbo-Croatian, in its standard pronunciation, the lower boundary of the duration of long stressed vowels with rising intonation varies between 13 and 16ss, and the longest duration reaches 33ss. Short vowels with rising intonation have the average duration of 9.5ss-14.06ss. Long vowels with the falling intonation have the lower boundary at 19.5ss, whereas the longest duration reaches 32.08ss. Short vowels with the falling intonation last between 8 and 14ss on average. Long unstressed vowels last 16ss on average, whereas the short ones last half of their duration".

10 While investigating the Croatian contemporary (produced by speakers when they intend to speak the standard variety), Pletikos (2008: 212) concluded that there are two different accent systems – the dynamic system and the tone system, as well as the transitional one which includes accents which have originated from the other two systems. The author states that "the dynamic system has only one accent pattern: the high and flat stressed word syllable, followed by a low and flat unaccented post-accentual syllable. In the dynamic system, many speakers differentiate between long and short stressed syllables, so the accents occurring in this system were named dynamic short and dynamic long, respectively. Some speakers reduce the difference in duration (by shortening long stressed vowels), while others completely neutralise them into short stressed vowels. In the dynamic system in which there is only one accent, it is realized as a short one, and it is not acoustically different from the short falling accent from the tone system."

tistically significant differences in the stressed vowels ($p > 0.05$), but that there is a difference between the stressed and unstressed vowels ($p < 0.05$).

***Table 2.*** *Average values of acoustic parameters in Svrljig*

| Accent | Syllable | Duration | Tone pitch movement | | | Intensity |
|---|---|---|---|---|---|---|
| | | | 1 | 2 | 3 | |
| long falling | 1 | 98.80 | 169.52 | 162.33 | 155.41 | 46.64 |
| | 2 | 51.60 | 152.68 | 148.76 | 143.16 | 37.56 |
| long rising | 1 | 90.76 | 173.76 | 168.20 | 160.36 | 45.76 |
| | 2 | 49.20 | 147.76 | 141.08 | 135.80 | 39.20 |
| short falling | 1 | 85.76 | 173.72 | 167.48 | 159.24 | 45.44 |
| | 2 | 51.72 | 143.52 | 138.40 | 132.16 | 38.16 |
| short rising | 1 | 86.01 | 168.45 | 163.05 | 155.05 | 45.55 |
| | 2 | 52.35 | 139.25 | 132.55 | 125.70 | 37.85 |

The tone line of stressed vowels is characterized by a steeper fall when compared to the previous group of speakers, with the range of about 14 Hz. The tone peak in all four accentuation patterns is achieved in the third point of the stressed vowel. The unstressed tone movement is falling in all the examined accentuation categories.

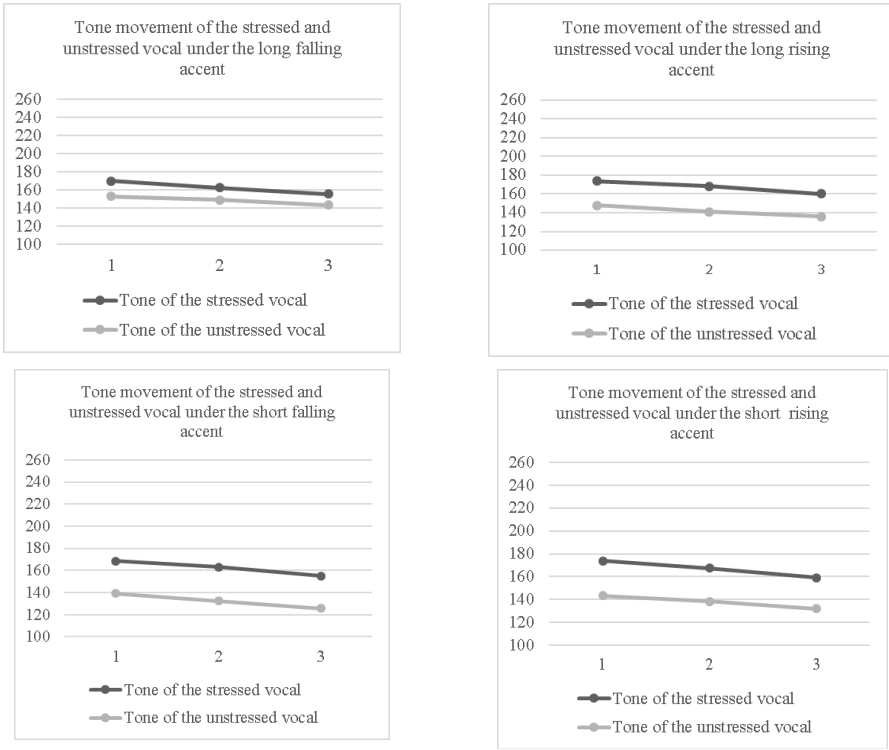



***Figure 2.*** *Tone movement of the stressed and unstressed vowel* ***in four groups*** *(Svrljig)*

The average quantity of stressed vowels equals around 90.33 ms (the average vowel duration under the long accents equals 94.78 ms, and under the short ones 85.88 ms), while the average duration of unstressed vowels equals 51.21 ms (the average duration of unstressed vowels both in words with long and short stressed vowels equals 51.00 ms). Statistical analysis shows a significant difference between the stressed and unstressed vowels in all four positions (p. 000). Statistical significance is present in the duration of stressed vowels under the long accents (p. 074 when vowel duration is compared under the long falling and long rising accents), but there is no statistical significance in vowels under the short accents (p. 954 when vowel duration is compared under the short falling and short rising accents).

The average intensity values of the stressed vowel equal 45 dB, and for the unstressed 38 dB. Statistical analysis again indicates that intensity is the same in all four groups, i.e. there are no statistically significant differences in the realization of intensity between stressed vowels ($p > 0.05$).

## THE COMPARISON OF ACOUSTIC PARAMETERS AS REGIONAL MARKERS OF THE PRIZREN-TIMOK AREA

After presenting the obtained data for both groups of speakers and analysing the average values of all parameters, one-way analysis of variance (ANOVA) was performed. Individual differences in the achieved prosodic realizations of participants from Niš and Svrljig were examined via *PostHoc* analysis and *LSD* test. The obtained results and average statistical values of the duration of stressed vowels are given below.

***Table 3.*** *Statistically (in)significant differences in the duration of stressed vowels in all four accentuation patterns*

| Dependent variable | City 1 Niš | City 2 Svrljig | Standard error | Statistical significance |
|---|---|---|---|---|
| long falling accent | | | 6.18414 | **.018** |
| long rising accent | | | 6.35350 | **.010** |
| short falling accent | | | 5.15617 | **.001** |
| short rising accent | | | 5.04182 | **.000** |

Comparison of the duration of stressed vowels in all examined patterns in both groups of participants showed that vowels have longer duration in the speech of participants from Niš than in the speech of participants from Svrljig, and this difference reached statistical significance (see ***Table 3***). The longest duration was recorded in the vowels which have a long falling accent in the standard language, whereas the vowels realized as short falling were the shortest in terms of length.

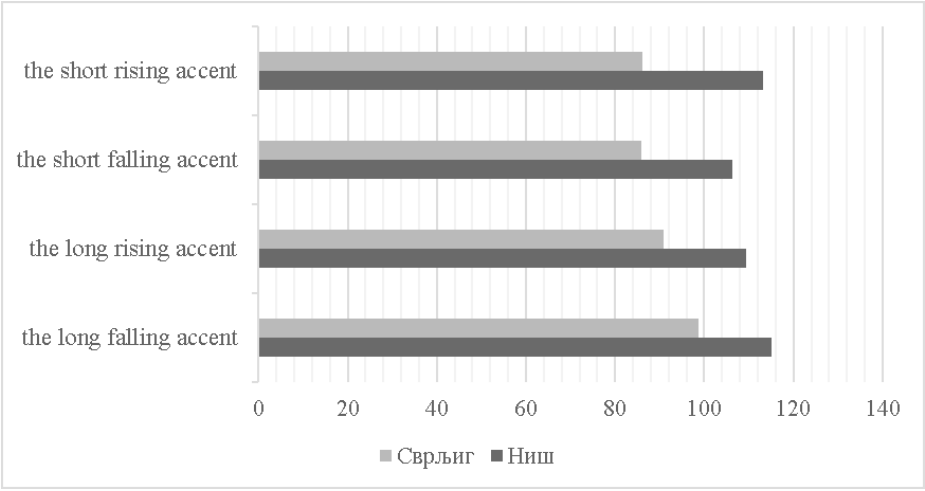



***Figure 3.*** *Duration of stressed vowels in the compared varieties*

***Table 4.*** *Statistically (in)significant differences in tone movement – the third point of the stressed syllable and the first point of the unstressed syllable*

| Vowel dependence due to the supra-segmental level | Niš | Svrljig |
|---|---|---|
| | T3 : T1 | T3 : T1 |
| long falling accent | .242 | .444 |
| long rising accent | .125 | **.014** |
| short falling accent | .808 | **.023** |
| short rising accent | **.007** | **.040** |

When comparing tone lines of the stressed and unstressed vowels, two elements were examined: the third point in the stressed vowel (T3) and the first point in the unstressed vowel (T1). In the speech of the participants from Niš, there is no statistically significant difference between T3 and T1 values, except for the vowel in which the accentuation pattern of the short rising accent is expected. On the other hand, in the speech of the participants from Svrljig, there is a statistically significant difference in T3 and T1 values, except for the vowel in which the accentuation pattern of the long falling accent is expected.

As far as intensity is concerned, the results also indicate that there is a statistically significant difference in intensity in the speech of participants from both Niš and Svrljig in vowels for all four accentuation patterns, as well as in unstressed vowels ($p < 0.05$).

## CONCLUSION

It is known that the greatest number of typical regional characteristics of the Shtokavian dialect is related to the lexical accent. In the articulation base of native speakers of central dialects, there is a four-accent system which is considered as a norm in standard orthoepy, whereas in the Prizren-Timok dialect, from the prosodic point of view, there are only two types of syllables: stressed (short) and unstressed (also only short). In contrast to the previous research which states that "stressed syllables have neither rising nor falling intonation, but

are only characterized by a more intensive articulation" (Kašić, Đorđević 2009b), the present paper has contributed to the existing knowledge of the realization of the dynamic prosodeme in the Prizren-Timok area in terms of duration, tone movement and intensity.

Based on the perceptual and acoustic analysis of the accentuation corpus in this paper, it has been observed that the dynamic accentuation system in the Prizren-Tomok area is not unique and stable. If the accentuation patterns of speakers from Niš and Svrljig are compared, based on the obtained results, it can be concluded that there are differences in duration, tone and intensity. The central accentuation unit with participants from Niš is characterized by an average duration of around 110 milliseconds, a specific pattern of tone movement of the stressed vowel which is transferred identically to the unstressed vowel and the average intensity values of 75 decibels of the stressed vowel and 71 decibels of the unstressed. This accentuation pattern, which has certain tonal characteristics, is most similar to the short rising accent in the standard language (which raises the question of the influence of the tone system on the dynamic system).

The basic prosodeme with the participants from Svrljig is characterized by a much shorter duration, the average value of 90 milliseconds, a steeper decline of the tone, and a considerably different intensity, whose value equals 45 decibels for the stressed vowel, and 38 decibels for the unstressed. Such accentuation pattern is most similar to the short falling accent in the standard language.[11]

Based on the obtained results and analysis, in which the basic acoustic features of speakers from the two regions of the Prizren-Timok dialect were discussed, it can be concluded that the obtained values represent significant regional markers in profiling and identifying of speakers.

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# USE OF FOREIGN LEGAL TERMINOLOGY IN CRIMINAL LAW – EXAMPLE OF "ORGANIZED CRIME"

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**Abstract**: In the light of the internationalization (science) of criminal law, foreign legal terms and phrases are becoming more and more prevalent in domestic terminology. This phenomenon has been particularly evident in the last couple of years in the EU accession procedure through the process of approximation and harmonization of legislation. This significantly affects the conceptual and categorical apparatus which explains, systemizes and classifies the research topic. In fact, it can be said that the problem of translation of foreign legal texts, scientific and technical, and their use in domestic legal terminology today represents a challenge to the science of criminal law. Respectively, the correct understanding and interpretation of the meaning of a foreign word is crucial for its use in the target language. However, the above requires expertise and a lot of effort, which is very hard today with the presence of modern technologies and Google Translate. This paper emphasizes the complexity and difficulties of the use of multitude of synonyms, homonyms, loanwords and abbreviations for the term "organized crime" in the criminal law context. The term is also important because organized crime is the subject of many international documents, which are being introduced to domestic legislation through norms and provisions of laws and by-laws. On the other hand, they are the perfect example of the complexity of the issue because the same words translated correctly in a formal sense do not imply the same legal content or they generate meanings unfamiliar to the foreign language. In addition, the use of foreign words and phrases influences the syntax of the language itself. This is how for instance the literal translation of the English phrase "organized crime" into "organized criminal offence" can be interpreted in a wrong way.

**Keywords**: foreign word, terminology, syntax, translation, organized crime, criminal law.

## INTRODUCTION

Every science, including criminal law, uses language as conceptual and categorical apparatus to clearly and precisely express, systemize, classify and explain its research subject. That is to say, language specificity is something that is necessary to understand the context in which particular symbols, terms and language resources are used. However, due to the internationalization of criminal law and criminal law science[3], seen in the establishment of universal

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3 Hirch, H.J. (2005) Internacionalizacija kaznenog prava i kaznenopravne znanosti. *Hrvatski ljetopis za kazneno pravo i praksu, Zagreb*, No. 1, pp. 157-172

criminal law or the implementation of international legal documents in domestic legislation, foreign legal terms have become prevalent. In this regard, numerous synonyms, homonyms, loanwords and abbreviations pose a problem to the language development of this science, among which it is necessary to find the terms adequate to relevant concepts and their practical correlates. Likewise, another problem that has to be taken into consideration is a frequent change of terms, respectively these terms have to be precisely defined. Finally, with respect to other semantic criteria, it is also important to consider the criteria of literary and technical language so as to keep the intended meaning of the term and its place in coherent conceptual and categorical apparatus of this science[4].

Foreign legal terminology in law, including criminal law, represents one of the oldest and most important legal instruments in the law-making process. According to Orlić in the Prelude to Glossary of Legal Terms[5], presence of foreign words in legislation and legal theory is neither a coincidence nor a mere tendency of lawyers to 'embellish their thoughts'. It was through the reception of foreign law and its acculturation that history played a huge part in which foreign words would constitute the making process of modern legal system[6]. Nevertheless, it seems that the translation and use of foreign terms still remains a neglected area in legal studies[7], which is somewhat of a paradox considering that, according to Šarčević, translation is a means of communication in national, supranational and international law[8]. It is precisely because of this that she advocates and encourages translators to rely on the functional approach as opposed to the traditional one. Šarčević thus states that "the basic unit of legal translation is the text, not the word"[9]. Functionalist translation theories, particularly the skopos[10] theory, placed great importance on function, in the sense of the intended purpose of the translation and on its cultural embeddedness. Therefore, their most important principles – the priority of the skopos, the translator as an intercultural expert, the importance of a clear translation task and, finally, the translation as cultural transfer – provide an adequate basis for the translation of convention-and-culture bound texts such as application documents[11]. Therefore, the skopos partially overlaps with the term functional equivalence and is equated with it only if there is functional constant in the original and the translation, but they cannot be equated if there is a change of function in the translation[12].

The authors have chosen to examine the phrase "organized crime" since it has been the subject of international law and introduction of international legal standards to domestic laws for long. Also, this is the first term to be defined for harmonization in criminal law by the European Union, and shall serve the same purpose in the domestic criminal law. "Organized crime" has been discussed widely and the fact that it lacks a unique definition speaks for itself. In the light of the phenomenon, the authors propose two different types of translation: *first*, translation of scientific and technical literature for comparative purposes and *second*, translation of international legal documents (conventions, resolutions, directives, decisions) that the domestic criminal law draws upon.

4 Read more in: Šikman, M. (2011). *Organizovani kriminalitet*. Banja Luka: Visoka škola unutrašnjih poslova.
5 Orlić, M. (2002). Predgovor u Rečnik pravnih termina. U. Jovanović, J., Todorović, S. (2002). Rečnik pravnih termina – srpsko, englesko, francuski, Beograd: Savremena administracija, str. 7.
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8 Ibid.
9 Šarčević, S. (1997). *op.cit.*, p. 5.
10 Grk. σκοπός = aim, purpose, intention.
11 Kučiš, V. (2014). Translating reference letters in the light of skopos theory, *Jezikoslovlje*, 15(1), p. 28.
12 Prunc, E. (2012). *Entwicklungslinien der Translationswissenschaft*, Berlin: Frank & Timme Verlag, p. 152-162.

# TRANSLATION OF FOREIGN LEGAL TEXTS AND DOCUMENTS

In the broadest sense, as stated by Brislin, translation is a general term used to convey thoughts and ideas from one language to another, regardless whether a language is written or spoken, if the given languages are orthographic or not, whether one or both languages use signs, such as a sign language[13]. Catford regards translation, science and theory of translation (translatology), as a change of textual material from one language with the equivalent material to another language[14]. Wilss defines this transmission process as the "transformation of the source language text (SLT) to the optimal target language text (TLT) that draws upon syntactic, semantic and pragmatic understanding of the analytic processing of the source language"[15]. In the same spirit, Vermeer says that translating may be defined as transcultural acting, action being understood (as it "is") as teleological (skopos-oriented, prospective) behaviour[16]. Translation is never (as comparative linguistics might prefer to say) a transcoding of a source text into a target language[17].

Catford thus claims that the "central problem of translation practice is finding TL translation equivalents"[18]. Nida differentiates between formal and dynamic equivalence; while the former embodies the form and content in the source and target language, the latter deals with the same effect on the recipient of translation[19]. By analyzing the elements which impact translators during the translation process, it is clear that they transcend pure linguistic considerations and draw upon social, cultural, ethnographic and individual characteristics. It is precisely because of this that Omazić and Šoštarić regard translation equivalence a superior concept that is not a mere sum, but rather relies on a set of different types of sub-equivalences[20]: lexical, formal, semantic and pragmatic, whose interrelations bring about to translation equivalence[21]. As they put it, equivalence is not just a necessary "commonality" or "complete correspondence"; it is also a form of "similarity" at the cultural and cognitive level[22]. In terms of translation equivalence, Koller asserts that the relations between the source text and the translation can be better defined by taking into account specific frameworks and conditions as follows: "There is equivalence between the source text and the translation if the translation can meet certain requirements relating to the given conditions"[23]. Based on the conditions

13 Brislin, W.R. (1976). *Translation: Application and Research*. New York: Gardner Press Inc, p. 1.
14 Catford, J.C. (1965). *A Linguistic Theory of Translation*, London: Oxford University Press. Noted in: Omazić, M., Šoštarić, B. (2005). Metonimija kao strategija prevođenja kulturoloških pojmova, *Život i škola,* 14(2), 7-16.
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21 The authors also add to the set of sub-equivalences cultural equivalence and conceptual equivalence that include correspondence at the cultural and conceptual level. See more: Omazić, M., Šoštarić, B. (2005). Metonimija kao strategija prevođenja kulturoloških pojmova, *Život i škola,* 14(2), p. 9.
22 Omazić, M., Šoštarić, B. (2005). *op.cit.* p. 9.
23 Koller, W. (1989). Equivalence in translation theory. In A. Chesterman (ed.) *Readings in Translation Theory.* Helsinki: Finn Lectura, (99–104). Noted in: Stojičić, V. (2011). Prevodna ekvivalentnost na nivou leksčkih obrazaca, *Philologija* 9(9), str. 30.

that determine equivalence, Koller makes a distinction between (a) denotative equivalence defined by the meaning of the text, (b) connotative equivalence defined by the choice of words, (c) textual and normative equivalence defined by language norms or a type of language, (d) pragmatic equivalence defined by non-linguistic factors and (e) formal equivalence defined by formal and esthetic characteristic of the original language using stylistic devices[24]. However, this concept started to change with the introduction of the functional approach, which today is regarded as the dominant way of translating. There are three text types – informative, expressive and operative. Informative texts primarily focus on informing the reader. Expressive texts emphasize the esthetic aspect over the informative one. In operative texts form and content are subjected to appellative function, which in return puts emphasis on the kind of reaction the text will evoke on the reader[25]. Reiss and Vermeer, noted in Matijašević, take a step further in terms of text function and devise the skopos theory[26]. Vermeer views the translation process as an action which, like any other action, has a purpose. The entire skopos theory relies on this notion. Vermeer, noted in Matijašević, puts forward the skopos rule: "to translate means to produce a text in the target setting for the target purpose and target users in the target circumstances[27]. According to the theory, the skopos is negotiated between the translator and the commissioner. Therefore, any form of action, including translation itself, may be conceived as a purposeful activity – the end justifies the means that is the skopos. The purpose of the translation process is translation, which is determined by many factors relating to the reception of the target text. Hence, the focus shifts from the source text (the original) onto the target text (the translation), where the former is seen only as a source of information open to many interpretations in different situations[28]. Nord, quote taken from Matijašević, differentiates between two translation types by function: documentary and instrumental translation. Documentary translation "serves as a document of a source culture communication between the author and the source text recipient". Instrumental translation shall serve for communicative function in the target culture without making the recipient aware of the fact that the text had already been used for another communication purpose[29].

Translating foreign legal texts and documents, among other, is bound by the specificity of legal language. Legal language (language law) is one of the most important running themes of the philosophy of law, which investigates legal terminology and phraseology[30]. Language as a basic tool of communication has a fundamental role in the establishment and application of general legal norms[31]. Within the complex law-making process, the formulation of legal

24 Ibid.

25 According to: Nord, C. (1997). *Translating as a Purposeful Activity. Functionalist Approaches Explained*. Manchester: St Jerome. Citirano u: Matijašević, M. (2014). Pravno prevođenje u svjetlu teorije skoposa, *Hieronymus*, 1(2014), p. 107.

26 Matijašević, M. (2014). Pravno prevođenje u svjetlu teorije skoposa, *Hieronymus*, 1(2014), p. 107.

27 Vermeer, H. (1987). What Does it Mean to Translate?. *Indian Journal of Applied Linguistics*. 13(2), 25–33. Noted in: Matijašević, M. (2014). Pravno prevođenje u svjetlu teorije skoposa, *Hieronymus*, 1(2014), p. 107.

28 Unlike the traditional theory of translation, the functional theory of translation does not insist on the equivalence of functions of the source and target text but rather finds them to be (but not necessarily) different. The fact that a change in function can take place during the translation process represents the turning point in the history of the theory of translation. Translating is not simply decoding, i.e. finding proper equivalents, it is so much more than that, because equivalents should serve a purpose, and in other words, they need to be adequate. In: Zobenica, N. (2015). Funkcionalni pristup prevođenu imena u dečijim knjigama Mihaela Endea, *Filolog*, 6(12), 126.

29 Nord, C. (1997). *Translating as a Purposeful Activity. Functionalist Approaches Explained*. Manchester: St Jerome. Noted in: Matijašević, M. (2014). Pravno prevođenje u svjetlu teorije skoposa, *Hieronymus*, 1(2014), p. 107.

30 Matulović, M. (1986). *Jezik, pravo, moral*, Rijeka: Izdavački centar Rijeka.

31 Savić, S., Konstantinović Vilić, S., Petrušić, N. (2006). Jezik zakona – karakteristike i rodna perspektiva U: *Pravo i jezik: Zbornik referata sa naučnog skupa održanog 4. maja 2006*., Kragujevac : Pravni fakultet, str. 55.

norms is a subject to numerous rules and requirements, generated by legal and technical methods of law-making, out of which clarity, precision and flexibility are the primary goals set for the law to fulfill its social function[32] . In order to avoid any ambiguity, legal texts often repeat words, phrases even entire clauses. Language is also impersonal (the government is addressing the citizens); it lacks expressive lexicon, there are no personal views and pronouns, expect for the third person. One of the basic syntactic characteristics of a legal text is the use of the timeless present tense which designates that the law is in function (it is being implemented) at the time of reading, i.e. quoting[33]. Legal translation is often more difficult than other types of technical translation because of the system-bound nature of legal terminology. Unlike scientific or other technical terminology, each country has its own legal terminology (based on the particular legal system of that country), which will often be quite different even from the legal terminology of another country with the same language[34]. Legal translation bears the added burden of taking into account legal aspects that are not found in other texts. Legal translators must work not only between two languages and two cultures but between legal systems that are very different due to the strong sociocultural and historical influence exerted on them[35].

The terminology in legal texts must be unambiguous and precisely defined[36]. At the same time, legal texts are regularly subjected to different interpretations. Sometimes this is possible despite the legislator's efforts to be as precise as possible, and sometimes this is the result of deliberate vagueness and ambiguity of the legal text. In terms of translation, the question arising here concerns how should the translator deal with imprecise terms[37]. Accordingly, Šarčević states that translators must be able to "understand not just the meaning of the words and sentences, but what kind of legal effect they bear and how to convey that legal effect to another language"[38]. Šarčević takes a step forward and creates a list of specific competences necessary in legal translation. The list includes: knowledge of legal terminology, in-depth understanding of logical principles, logical reasoning, the ability of problem-solving, the ability of text analysis and the knowledge of the target legal system and the source legal system[39].

## TERMINOLOGY ISSUES RELATING TO ORGANIZED CRIME

Terminology issues relating to organized crime are terminological dilemmas found in the Serbian literature on organized crime. In principle, these are technical issues which do not necessarily cover the essence of organized crime[40]. In defining organized crime, authors and institutions deploy four terms found in the literature. Furthermore, some authors differentiate

32 Lukić R. (1979). *Metodologija prava*, Beograd: Naučna knjiga, str. 166.
33 Savić, S., Konstantinović Vilić, S., Petrušić, N. (2006). *op.cit.*, str. 56-57
34 Dumitrescu, E. (2014). Difficulties And Strategies In The Process Of Legal Texts Translation, *Management Strategies Journal* 26(4), 503.
35 Way, C. (2016). The Challenges and Opportunities of Legal Translation and Translator Training in the 21st Century*, International Journal of Communication* 10(2016), p. 1012.
36 Terminology mistakes in the translation of legal documents may have serious repercussions, such as losing a case or causing liability issues. Legal terminology and phraseology is the major concern for the legal translator as he/she may bring to a common two or more legal systems which are sometime extremely diverse and culture-bound. In: Dumitrescu, E. (2014). *op.cit*., pp. 504-505.
37 Matijašević, M. (2014). *op.cit*., p. 108.
38 Šarčević, S. (2012). Coping with the Challenges of Legal Translation in the Harmonization Process. In. Baaij, Jaap (Ed.) *The Role of Legal Translation in Legal Harmonization*. Alphen aan den Rijn: Kluwer Law International, pp. 70-71
39 Šarčević, S. (1997). *op.cit.*, pp. 13-14.
40 Šikman, M. (2011). *op.cit*., str. 22.

between these terms and some see them as synonyms. These are: "mafija", "organizovani kriminalitet", "organizovani kriminal" and "organizovani zločin"[41]. Škulić rightfully asks if these terms are completely or partially different or if this is just a case of misuse of terminology on the same thing[42]. One thing is clear – they all put emphasis on the word "organized", which on the other hand points to the phenomenological and to some extent etiological essence of the criminal activity it defines[43].

The term "mafija" is used in everyday speech as a synonym for organized crime in general. This, on the one hand, is an example of how one type of criminal organization, due to its influence, extends its original meaning. On the other hand, such terminological implication is just another example of misuse of terminology on organized crime. "Organizovani kriminal" is a layman term, especially because the word "kriminal" is not common in the academic and technical milieu, but is more used in everyday speech, i.e. jargon. The term "organized crime" is mostly found in American criminological and criminal law terminology and it is always used or translated literally from the Anglo-Saxon literature (organized crime – organizovani zločin)[44]. In addition, Škulić considers the term to be inadequate since it does not embody all its features, rather, in terms of its grammatical and logical sense; it defines it as a criminal offence which is organized, a characteristic shared by many planned offences, including some forms of complicity[45]. In its fundamental and technical sense, the term "crime" in the American literature conveys a connotative meaning in addition to the denotative one. In other words, it stands for an offence committed by an organization, making it immediately a social (criminological) and legal form of organized crime. This definition, however, is used to refer to one delict and organized crime implies repeatedly committed offences[46].

"Organizovani kriminalitet" is the most proper term because it brings together the term "kriminalitet", which denotes a set of offences, and the attribute "organizovani", which gives them a common and distinct feature unlike other forms of criminal behavior[47]. Namely, the term "kriminalitet" comes from the Latin word "crime", meaning a criminal act or offence. It is a series of activities determined by place and time that pose a threat to the society, because they are not in accordance with positive legal norms and as such are treated as offences with appropriate sanctions[48]. The term "organizovani" is multifaceted; it comes from the words "to organize" and "organized". "Organizovati" means to organize somebody or something, connect into a specific system, community, establish desired mutual relations for specific goals, secure the positive outcome of something or carry out, execute and prepare mutual organization, get involved in the organizing process. The term "organizovan" is a characteristic, feature or condition of what is being organized[49]. By combining the two words "organizovani" and "kriminalitet" one can derive the etymological meaning of the term "organizovani kriminalitet" as a sum of negative social occurrences (crimes) generated by the actions of mutually connected groups of people into a system (organization) that commit crimes at a specific time. Of course, if we add to this the characteristics of modern crime, such as the profession and specialty of crime perpetrators, abuse of technological advances, secret organization and

41 Read more in: Šikman, M. (2011). *op.cit*., str. 22-24: Škulić, M. (2015). *Organizovani kriminalitet – pojam, pojavni oblici, krivična dela i krivični postupak*, Beograd: Službeni glasnik, str. 103-106.
42 Škulić, M. (2015). *Organizovani kriminalitet – pojam, pojavni oblici, krivična dela i krivični postupak*, Beograd: Službeni glasnik, str. 105.
43 Ibid.
44 Škulić, M. (2015). *op.cit*., str. 106.
45 Ibid.
46 Ibid.
47 Ibid.
48 Krivokapić, V. (1996). *Kriminalistika taktika* I, Beograd: Policijska akademija, str. 15.
49 Matica Srpska. (1971). *Rečnik srpskohrvatskog književnog jezika*, Novi Sad: Matica Srpska, pp. 183–184

action, transnationalization, violence, and, above all, the desire to gain profit by organizing continued economic (illegal and legal) activities, we will come closer to the definition of the term "organized crime"[50].

## APPROXIMATION AND HARMONIZATION OF LEGISLATION IN COMBATING ORGANIZED CRIME

The issue of approximation and harmonization of EU legislation is a standard issue which concerns the difficulties of translating and using foreign legal terminology. Namely, in the EU theory and practice the term harmonization is twofold: one, it denotes one of the policies implemented by the European Community and two, it denotes the technique for harmonizing regulations of the EU Member States with the *acquis communautaire*[51]. The former describes the way of achieving political agreement between the Member States in order to realize the goals from the Treaty establishing the European Community, among others, and implement previously harmonized internal regulations. The latter describes the process which deploys different techniques and methods to replace the existing ones or to introduce new regulations to Member States that have the same or harmonized solutions[52]. In addition to *harmonization*, the EU legal terminology recognizes the term *approximation* too, which is used in official EU documents[53]. Some authors differentiate between the intensity and extent of the processes within them, with approximation being more intense in the integration process, unlike harmonization[54], while others regard them as synonymous[55]. Hence, translating is not simply a skill of finding the right words but the use of proper techniques too. This is why the Directorate-General for Translation (DTG) implements unique translation tools as a support to translators during the translation process. Thanks to modern language technology and translating memory, the DGT provides translators with a unique service: avoiding repeating already translated texts and their availability and accessibility. Information and communication technology plays a key role in EU everyday translations[56]. Furthermore, during the decision-making process in translating, translators are faced with a decision where they have to differentiate between the EU terms and concepts and those in their own national law and to know when and where it is appropriate to use national terms[57].

The importance of translating and interpreting legal regulations in the process of harmonization and approximation of legislation is evident and indisputable. In that regard, the EU came to recognize the importance of the growing problem of translating legal acts and proscribed the two directives[58]: Directive 2012/13/EU on the Right to Information in Crim-

50 See more: Šikman, M. (2011). *op.cit*., str. 22-24
51 Vukadinović, R. (2009). Upotreba i zloupotreba harmonizacije domaćeg prava sa pravom EU, Tematski zbornik radova *"Pravo Republike Srbije i pravo Evropske unije – stanje i perspektive*". Niš: Pravni fakultet Univerziteta u Nišu, pp. 1-19
52 Harmonization is a broad term, an ongoing phenomenon and process in non-member states. The so-called foreign harmonization process has been used in the countries of Central and Southeastern Europe in the last coupe of decades with somewhat different goals compared to Member States. Finally, harmonization also stands for a process of voluntary harmonization of internal law, separate from the EU accession, which aims to create a compatible and recognizable legal setting used in everyday communication with the world. Vukadinović, R. (2009). *op.cit.,* pp. 1-1).
53 *Mitsilegas*, V. (2009). *EU Criminal Law*, Oxford and Portland, Oregon: Hart Publiching.
54 Lasok, K. (2001). *Laws and Institutions of the European Union*, London: Butterworths.
55 *Mitsilegas*, V. (2009). *op.cit*.
56 Kučiš, V. (2010). Prevodilački alati u funkciji kvalitete prijevoda, *Informatol*. 43(1), p. 24.
57 Šarčević, S. (2012). *op.cit*.
58 Way, C. (2016). *op.cit*., p. 1012.

inal Proceedings[59] and Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings[60]. Namely, taking into account the need for mutual recognition of court verdicts and decisions, police and judicial cooperation in criminal matters concerning cross-border affairs[61], including safeguarding given rights to suspected or accused persons in criminal proceedings (e.g. the right to interpretation and translation for persons who do not speak or understand the language of the criminal proceedings concerned, pursuant to Article 6 of the ECHR), the European Parliament and Council proscribed Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings. The Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant. The same applies for the right to interpretation (Article 2) and the right to translation of essential documents (Article 3). Right to interpretation implies that the Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications. Right to translation of essential documents implies that the Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment. Directive 2012/13/EU on the Right to Information in Criminal Proceedings lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights. This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. Interpretation and translation implies that "If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary."

Approximation and harmonization of criminal legislation[62] of Member States with the EU law is mostly evident in combating organized crime. One can say that the EU is a pioneer

59 Directive 2012/13/EU on the Right to Information in Criminal Proceedings, Official Journal of the European Union L 142/1

60 Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings, Official Journal of the European Union L 280/1

61 Article 82 paragraph 2 of the Treaty on the Functioning of the European Union prescribes setting minimum norms implemented in the Member States in order to facilitate mutual recognition of court verdicts and decisions, police and judicial cooperation in criminal matters concerning cross-border affairs.

62 Still, the policy of the EU on harmonization and approximation of criminal law has caused a lot of

in the development of legal response to the criminal phenomenon[63]. On the other hand, this process is faced with numerous challenges and difficulties[64], which undoubtedly affect their implementation in both Member and Accession States. This is why this field needs to be examined to determine the current status of the level of approximation and harmonization of criminal legislation among Member States[65]. This is particularly important in terms of combating organized crime, especially in Member States whose legal systems cannot measure up to this social phenomenon[66]. The main subject of harmonization is the incriminating act of taking part in a criminal organization, for which the EU has deployed different mechanisms for more than 20 years[67]. The first norm to address this issue was adopted at the Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organization in the Member States of the European Union[68]. Definition of a criminal organization as a structured association established over a longer period by more than two persons to commit an offence with the purpose of financial gain is one of the first definitions of organized crime group in international law[69], and it largely influenced the definition of organized crime group by the Palermo Convention[70]. Now, ten years after this process is still being carried out through the norms of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime[71], which as law-binding act aims to improve the join potential of the Union and Member States in combating transnational organized crime. This Decision provides a sophisticated framework of criminal participation in a criminal organization, reflecting the synergetic approach between the EU and international organizations, such as the United Nations, in the development of global standards in combating organized crime. This, however, requires improvements in terms of legal security and its scope and the level of harmonization achieved by these standards[72] .

Here the authors examine the terminology used in the abovementioned Framework Decision and its harmonization with the current legislation in Bosnia and Herzegovina[73]. According to the Decisions "criminal organization" means a structured association, established

controversy and debate. Not only are these terms not clear enough and often misinterpreted, but the EU tools (legal means and methods of harmonization and approximation) have proved to be insufficient too. This can be seen in the lack of independent systematic and comparative research on the measurements of harmonization and approximation. Calderoni, F. (2010). *Organized Crime Legislation in the European Union*, London: Springer-Verlag Berlin Heidelberg, p. 21.

63 Mitsilegas, V. (2011). *The Council Framework Decision on the Fight Against Organised Crime: What can be done to strengthen EU legislation in the field*?. Policy Department C - Citizens' Rights and Constitutional Affairs. European Parliament, Brussels

64 Calderoni, F. (2010). *op.cit*., p. 21

65 Ibid.

66 What is more, Member States have fundamentally different approaches to the issue in their national criminal laws, some do not even treat this phenomenon as a separate criminal offence at all. Scherrer, A., Mégie, A., Mitsilegas, V. (2009). *The EU Role In Fighting Transnational Organised Crime*, European Parliament, Brussels.

67 Šikman, M. (2016). Harmonizacija krivičnog zakonodavstva u oblasti suzbijanja organizovanog kriminaliteta. Zbornik radova *Evropske integracije i kazneno zakonodavstvo (poglavlje 23 – norma, praksa i mere harmonizacije)*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu, (236-254).

68 Joint action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, 98/733/JHA, Official Journal L 351 , 29/12/1998 P. 0001 - 0003

69 Calderoni, F. (2010). *op.cit*.

70 Scherrer, A. et. al., (2009). p. 8.

71 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, Official Journal of the European Union L 300/42

72 Mitsilegas, V. (2011). *op.cit*.

73 Namely, by singing Stabilization and Association Agreement Bosnia and Herzegovina immediately had to harmonize its legislation with the EU acquis, i.e. EU legislation, which is one of its goals. The Agreement between the EU and its Member States on the one side and Bosnia and Herzegovina on the other was signed on 16 June 2008 and it came into force on 1 June 2015.

over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit (Article 1 paragraph 1). Likewise, "structured association" means an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure (Article 1 paragraph 2), which is identical with the definition of "organized group" in the Convention. It is clear that both these definitions do not differ in any way from the definitions of "organized criminal group" and "structured group" according to the Palermo Convention in 2000[74]. "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit, while "structured group" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure. One notices that different terms have been used here. Accordingly, in the Criminal Law of Bosnia and Herzegovina[75] "organizovana grupa" shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure (Article 1 paragraph 21) and "grupa za organizovani kriminal" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years (Article 1 paragraph 21). Here is where the process of translation comes into question. The dilemma is whether to use "kriminalna organizacija" as proposed by the European Union or "organizovana kriminalna grupa" and "strukturisana grupa" as suggested by the United Nations. Another thing, the Criminal Law of Bosnia and Herzegovina deploys two more terms with the same meaning "grupa za organizovani kriminal" and "organizovana grupa". Although they fall under language and terminological interpretations, we find them to be identical in meaning and therefore adequate and compliant with the orthography of the Serbian language. At the same time, this way of translation is consistent with the functional approach to translation, which is definitely considered to be an acceptable method of translating legal documents.

## CONCLUSION

Foreign legal terminology is not a new concept in domestic law, on the contrary. Many "domestic" legal terms are actually foreign terms which were introduced into the domestic legislation and are widely used as such. There are many reasons for this and two stand out in particular. These include the internationalization of criminal law and the process of harmonization and approximation of legislation to the EU acquis. The first focuses on internationalization as a dominant form which manifests itself through the introduction of norms of international legal documents into domestic legislation (not through the science of criminal law), while the second stresses the process of harmonization of domestic legislation with the EU supranational law. Translation and interpretation of legal provisions plays a key role in

74 United Nations Convention Against Transnational Organized Crime And The Protocols Thereto, (2004). New York: United Nations

75 Krivični zakon BiH, Službeni glasnik Bosne i Hercegovine No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15.

these processes with special emphasis on the type and purpose of the translated legal regulation. This means that the translation must be equivalent to the source text, paying attention that the foreign legal terms have their counterparts in the domestic language. This is undoubtedly very hard to achieve especially when difficult terms such as "organized crime" are involved. Organized crime shares both criminal and legal features and as such is very hard to understand in the domestic language, especially in terms of its legal context. Coupled with the complex international legal framework one comes to realize just how elaborate this issue is. The analysis of the three documents (EU Framework Decision, United Nations Convention against Transnational Organized Crime And The Protocols Thereto and Criminal law of Bosnia and Herzegovina) validates this. Thus, six different terms are deployed to define the two key concepts that determine organized crime: criminal organization, structured association, organized criminal group, structured group, group of organized crime and organized group. Although synonyms, these terms are different in form nevertheless. The influence of translation certainly plays a major role too in the way how some words combine and form the so-called syntax, which, on the other hand, can lead to its misinterpretation.

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# THE APPLICATION OF FORENSIC LINGUISTICS IN CRIMINALISTICS

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**Abstract:** In the contemporary world, crime has assumed the most complex and sophisticated forms, which may only be counteracted by equally sophisticated instruments for combating crime. In this regard, crime detection and identification of individual perpetrators of criminal offences calls for a multidisciplinary approach. Forensic linguistics has a prominent position among numerous sciences and scientific disciplines which are significant for the development of criminalistics. Language is the essential means of human communication. The perpetrators of varied crimes often use highly specific jargon and terminology to conceal their criminal activities. For this reason, criminal slang is frequently the focal point of criminological research, which may significantly contribute to detecting crimes and criminal offenders. Forensic linguistics is a point of intersection of linguistics and criminalistics. The author analyzes the possible application of forensic linguistics in crime detection, investigation and identification of criminal offenders, which are the basic tasks of criminalistics. In Serbia, the expert knowledge of forensic linguistics is seldom used in practice and discussed in theory. The paper aims to underscore the need for a wider application of linguistic knowledge in criminalistics, and point out to the possible course of development of forensic linguistics in the Republic of Serbia.

**Key words:** criminalistics, forensic linguistics, slang.

## INTRODUCTION

The development of speech and abstract thinking contributed to the man's evolution into a perfect human being. Language is worthy of scientific study because it represents one of the fundamental characteristics of human beings: a man without a language would not be human.[2] Communication of messages through language has led to the incredible and eventually limitless development of mankind. On the other hand, the development of language has also enhanced the opportunities for association and cooperation among people prone to antisocial conduct, who use it for their own purposes in pursuit of their criminal intentions. Thus, language becomes their safest refuge.

With the development of forensic linguistics, the study of language has been put into the service of all those experts who are actively involved in uncovering criminal offences and their perpetrators. Forensic linguistics is, therefore, a necessary response to the (mis)use of language by criminal offenders. Sophisticated linguistic forms used by criminals worldwide should be counteracted by even more sophisticated linguistic knowledge. Therefore, this pa-

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per is an attempt to consider the possibilities of using forensic linguistics in criminalistics. In order to evaluate the current stage of development of forensic linguistics in Serbia and point to its possible applications in crime detection and investigation, including the security purposes, the paper will (wherever possible) refer to the data from the relevant Serbian criminal law and criminalistic literature, given a relatively small number of papers written on the subject matter of forensic linguistics. Foreign literature will be used for the purposes of highlighting the examples of good practice in this area. This is very important because the forensic literature in the Republic of Serbia at the beginning of its development. This will point to the need for a wider application of linguistic knowledge in criminalistics and forensic linguistics, which has not been adequately used in our country thus far.

Considering that the detection of crime and its perpetrators calls for a multidisciplinary approach to this issue, the paper is a kind of homage to all scientific and professional efforts aimed at including a range of experts, not only from the area of law and criminology but also from from other scientific disciplines, who can contribute to crime detection and prosecution of perpetrators. In that context, experts in forensic linguistics have a special role and a prominent position in that process.

## SCOPE OF APPLICATION OF FORENSIC LINGUISTICS IN CRIMINLISTICS

It is well known in literature that criminalistics includes three areas of study: criminalistic techniques, criminalistic tactics and criminal investigation methodology.[3] Criminalistic techniques is a branch of criminology that deals with finding, studying, improving and applying the most appropriate methods and instruments of both natural and technical sciences in the process of collecting and securing material evidence on the crime and the offender.[4] Although linguistics is a social science, there is a clear link between criminology and forensic linguistics as the evidence on the crime and the offender can be obtained by analyzing the linguistic expressions used by offenders; moreover, there are cases where the language itself can be an instrument for committing the offense. For example, insult is a typical crime committed by the use of language.

Unfortunately, the potentials of this scientific discipline are insufficiently used in Serbia. There are many reasons for this. The most important one is the fact that in our country there are very few experts in this field; moreover, according to the information available, it is not a subject matter of study, as a specialized course, at any Law Faculty in the Republic of Serbia. The fact that forensic linguistics still does not have its rightful place in the legal, criminalistic and police theory and practice in Serbia speaks for itself. The lack of specialists in this field in the police is a consequence of the inability to acknowledge the systemic problem pertaining to the progress of modern police activities. Introducing modern methods of combating crime necessarily requires the recruitment of specialists in forensic linguistics. The process of transcribing or describing the intercepted electronic form of communication on paper, which is done by officials of other profiles rather than by a forensic linguist, contributes neither to the efficiency of crime detection and investigation nor to the effectiveness of the criminal procedure.[5] In all these areas, the work of forensic linguists is of great significance to the police, the

3 Đurđić, V. *Osnovi kriminalistike* (Introduction to Criminalistics), Centar za publikacije Pravnog fakulteta u Nišu, Niš, 2012, p. 2.
4 *Ibidem*.
5 Manojlović, D, Nikolić-Novaković, L. Forenzička lingvistika-uporednopravni i kriminalistički aspekti (Forensic Linguistics: comparative and criminal law aspects), *Strani pravni život, no.*3, 2009, pp. 109-128.

prosecution and courts in the process of combating increasingly sophisticated forms of crime, such as various forms of organized and cyber crime.[6] When it comes to the scope of application of forensic linguistics in criminalistics, the main questions that should be addressed are: what kind of crimes the forensic linguistics knowledge may be most applicable in, and in what stages of the criminal procedure it may be most adequate to use the forensic linguistic competences.

Thus far, forensic linguistics has been mostly applied in the pre-trial (preliminary) proceedings. It is especially important in the modern world, where messages and letters are not written by hand, but electronically. The subject matter of analysis are also SMS messages, threats sent by e-mail, blackmail and ransom notes, witness intimidation, extortion, etc.[7] The forensic handwriting expertise is another important element in the detection of some of the aforementioned forms of criminal behavior.[8] Forensic linguists' expertise is also valuable in detecting threats and blackmails, especially if they are made in writing.[9] Moreover, forensic linguistics knowledge can be extremely useful in detecting crimes such as: terrorism, forgery and counterfeiting, organized crime, etc. Forensic linguistics certainly has its place in trial proceedings, where a forensic linguist may act in the capacity of an expert witness, especially in cases where it has to be proven that the disputed document or a video recording has been authored by the defendant.

Forensic linguistics has been used in many European countries for quite a long time. In England, interviews with the suspects began to be recorded on tape in 1984, when Police and Criminal Evidence Act (PACE)[10] was adopted. Previously, police officers had to write down everything the suspect said word for word, and they could note two types of evidence: an interview with the suspect (during which they had to write down their questions and the suspect's answers), and the suspect's testimony (during which the police officers were not allowed to ask questions but only to write down the version of events as dictated by the suspect). However, this method of taking testimony resulted in various abuses. Suspects often claimed that police officers kept asking questions, and then recorded the dialogue as a monologue. Such practices were changed by introducing tape-recorded interviews with suspects. Today, tape-recordings are also used for checking the veracity of all kinds of allegations (for example, when the defendant claims that his confession was coerced).[11]

In the Anglo-Saxon legal system, linguistics has a prominent place in shedding light on criminal matters and the knowledge of forensic linguistics is a valuable instrument of truth-finding. This is demonstrated by the case of Timothy Evans, who was found guilty of murdering his wife and child, and sentenced to death in 1950. The punishment was death by hanging. The main evidence against Evans was his testimony given to the London Police on 2 December 1949, in which he confessed to the murder of his child and wife. As Evans was almost illiterate, the statement was given orally and taken by police officers on the record. During the trial, the defense was based on his allegations that he had nothing to do with the

6 Mirić, F. Drug Addicts' Slang through the prism of Forensic Linguistics, in: „Archibald Reiss Days ", Thematic conference proceedings of international significance, Academy of Criminalistic and Police Studies, Vol.2, 2016, pp. 556-561.
7 Newspaper article: *I govor otkriva ubice (Killers disclosed by linguistic analysis),* http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:196189-I-govor-otkriva-ubice, Accessed 11.03.2017.
8 For signature and handwriting expertise, see more in: Đurđić, V., op.cit., pp.109-114.
9 See more: *Sveučilište u Zadru: Forenzička lingvistika, hvatanje ucjenjivača analizom pisma* (University of Zadar: Forensic Linguistics: detecting blackmailers by letter analysis), http://www.unizd.hr/Portals/32/medijska%20pracenost/2010_17_velj%20Unizd_%20Forenzi%C4%8Dka%20lingvistika,%20hvatanje%20ucjenjiva%C4%8Da%20analizom%20pisma.pdf, Accessed 17.03.2017.
10 *Police and Criminal Evidence Act (PACE),* http://www.legislation.gov.uk/ukpga/1984/60/contents, Accessed 11. 03.2017.
11 Manojlović, D, Nikolić-Novaković, L., op.cit, p.118.

murders, that he was not aware of what he was saying, and that he was afraid of being subjected to police torture if he did not confess to the murder. The case triggered public debate and subsequent inquiry. Linguistic analysis showed that the part of the statement pertaining to the murder confession significantly differed both linguistically and stylistically from the other parts of Evans's testimony. As the forensic findings confirmed the defence claims, Evans was posthumously pardoned in 1966.[12]

Forensic linguistics has developed as a scientific discipline within the framework of relevant institutes. An example of good practice is the Forensic Linguistics Institute in the United Kingdom, which was established in 1995. Experts involved in this Institute successfully applied the principles of forensic linguistics in solving many criminal cases, some of which are murder, terrorism, all kinds of assault, influencing witnesses, analysis of farewell letters, etc.[13] In addition to activities within the Forensic Linguistics Institute, this scientific discipline has been studied and applied in the analysis of documents relevant to criminal proceedings (such as: testimonies, all kinds of written evidence, etc.). This approach has led to the rapid development of forensic linguistics, especially in the United States. Thus, the FBI Forensic Laboratory includes a Department for document analysis, where forensic linguists perform the linguistic analysis of collected evidence.[14]

There are many other fields in criminalistics where forensic linguistics can be implemented. *Inter alia*, a subject matter of study in criminal linguistics is slang used by criminal offenders. By definition, slang is a colloquial deviation from the standard linguistic usage, which is often imaginative, lively and inventive in its construction. The perpetrators of varied crimes often use highly specific jargon and terminology to conceal their criminal activities and/or to distinguish themselves from other groups. Criminal slang is a direct result of this desire as it makes it impossible or at least difficult to detect the crime and prosecute criminal offenders.[15] For this reason, criminal slang is frequently the focal point of criminological research, which may significantly contribute to detecting crimes and criminal offenders. From the criminal procedural standpoint, the study of criminal slang in each specific case takes the form of expertise which is performed by experts in criminal linguistics.[16] The expertise implies procedural actions of evidentiary nature, which are regulated by the criminal procedure code, and whose results may be the factual grounds of the final judicial decision. Expertise is ordered when the process of establishing or evaluating some important facts calls for obtaining an expert opinion of a person who has the relevant expertise and skills in the specific area.

The knowledge of forensic linguistics may be applied in all stages of criminal procedure: pre-trial (investigative) proceedings, trial proceedings, and post-trial (appeal) proceedings.[17] In pre-trial proceedings, the role of a forensic linguist is compatible with the police activities aimed at criminal investigation and detecting the perpetrator. In the trial proceedings, the role of a forensic linguist is to assist the court in determining the facts (related to both spoken and written language) which are relevant for adjudication. In the post-trial proceedings (on appeal or other legal remedies), the role of a forensic linguist to assist the court in assessing the adduced evidence and the trial court judgment. Then, forensic linguists may have the procedural status of an expert witness or an expert person.[18] The Criminal Procedure Code of

12 Case cited after: Kristal D. *Kembricka enciklopedija jezika (*Crystal D., Cambridge Encyclopedia of Language), [edited by Hlebec G., Terzić B., Jovanović M., *et al.*], Nolit, Beograd, 1987, p.69.
13 See more: Forensic Linguistics Institute http://www.thetext.co.uk/cgi-bin/view_texts.pl, Accessed 18.03.2017.
14 See more: FBI Services – Questioned documents, https://www.fbi.gov/services/laboratory/scientific-analysis/questioned-documents, Accessed 22.03.2017.
15 Mirić, F, op.cit, str.557.
16 Mirić, F, op.cit, p.557
17 Olsson J., *What is Forensic Linguistics,* http://www.thetext.co.uk/what_is.pdf, Accessed 13.03.2017.
18 According to Article 114 of the Criminal Procedure Code ("Official Gazette of RS", No.72/2011 ...

the Republic of Serbia provides many opportunities to engage forensic linguists in criminal proceedings but, to our knowledge, their expertise has not been used in practice. Ultimately, it has a negative impact on the possible development of forensic linguistics as a scientific discipline in Serbia, which will be discussed further on in this paper.

## OPPORTUNITIES FOR DEVELOPING FORENSIC LINGUISTICS IN SERBIA

Unfortunately, forensic linguistics in Serbia is just at the beginning of its development. It has not yet been established either as a theoretical or a practical discipline, whose results could significantly contribute to criminalistic practice and security sciences. Forensic linguistics provides us with knowledge and skills on how to recognize a maze of security phenomena in the security milieu; it reveals methods and finds instruments for such action.[19] It provides answers to contemporary security threats that often draw huge public attention, which is, unfortunately, short-lived. The examples of such behavior are many, such as the event in 2009, when a man with a bomb-grenade entered the Serbian Presidency and handed a letter containing specific demands for the President of Serbia; after a few hours, the offender surrendered to the police.[20] This kind of events shows the need for analyzing such letters from the aspect of forensic linguistics, in order to determine their authenticity and prevent unforeseeable consequences that may arise to the security of the state and society. Yet, forensic linguistics in Serbia is insufficiently applied, which contributes to the lack of appropriate experts. This distressing state of affairs gives rise to a new problem: the role of forensic linguistics in the system of higher education.

Forensic linguistics is underrepresented in the university and faculty curricula in Serbia. To our knowledge, forensic linguistics is taught as a subject only at the Faculty of Philology in Belgrade, as an elective course in the third year of academic study.[21] Another positive example of introducing forensic science in the educational process is the establishment of the Center for Forensic Training at the Police Academy in Belgrade, in 2014. The Center houses the up-to-date equipment for general and special forensic training.[22] The International Scientific Conference "Archibald Reiss Days" has also significantly contributed to the development of forensic linguistics as a science, given the fact that researchers in forensic sciences are provided an opportunity to exchange their knowledge and expertise in sessions specifically dedicated to this field of science. This leads to the promotion of forensic linguistics as a science, particularly in terms of its application in criminology and criminalistics. The establishment of the Forensic Linguistics Institute in Serbia, similar to those that exist in the UK and the US, would greatly contribute to improving the efficiency of combating crime. The expertise of forensic linguists may be of great assistance to criminal investigators, judges, lawyers, criminologists and other experts in crime detection and prosecution of criminal offenders.

55/2014), an expert is a person who possesses the necessary expertise to establish or evaluate certain facts in the criminal procedure.

19 Manojlović, D. Forenzička lingvistika u bezbednosnoj teoriji i praksi (Forensic Lingustics in Security Theory and Practice), Revija za bezbednost, vol. 3, br.11 (2009), p. 49.

20 Newspaper article: Sa dve bombe trazio pravdu kod Tadića (Seeking justice from Tadić with bombs), http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:240500-Sa-dve-bombe-trazio-pravdu-kod-Tadica, Accessed 22.03.2017.

21 See more: *Filološki fakultet u Beogradu – Izborni predmeti na katedri za opštu lingvistiku* (Faculty of Philology in Belgrade, Elective Courses, General Linguistics), http://www.fil.bg.ac.rs/wp-content/uploads/studProg/opstaLingvistika/izborni_predmeti_OL.pdf, Accessed 25.03.2017.

22 See more: Center for Forensic Training, http://www.kpa.edu.rs/cms/akademija/vesti/848-centar-za-forenzicku-obuku.html, Accessed 25.03.2017.

One of the possible courses of development of forensic linguistics in Serbia certainly implies expanding the jurisdiction of the technical forensic centers and the application of forensic linguistics in court expertise. The necessary prerequisite is to provide relevant education and training for forensic staff and experts. Therefore, in addition to the existing educational profiles in the field of linguistics, it is essential to introduce new educational profiles in the field of forensic sciences. The introduction of forensic linguistics in Serbian law schools would contribute to a wider and more comprehensive education of future lawyers, and improve their professional capacities to actively participate in crime detection and prevention.

## IN LIEU OF CONCLUSION

Forensic linguistics is a point of intersection of linguistics and criminalistics. The knowledge of forensic linguistics can contribute to shedding light on the many crimes. In addition, the knowledge of slang used by criminals is a significant factor not only in detection of criminal offenses but also in the process of determining relevant treatment for the purpose of their socialization during the imprisonment. We should not disregard the importance of expert analysis of different documents in court proceedings, which also falls within the scope of forensic linguistics. Taking all these processes into account, it is clear that forensic linguistics and criminology and other criminal law disciplines have much more in common than it may be assumed.

Finally, although forensic linguistics is still at the beginning of its development in the Republic of Serbia, it can be concluded that the enthusiasm of all those involved in theoretical study and practical application of this scientific discipline provides reasonable grounds to believe that forensic linguistics will be developing alongside with other criminological and criminal law disciplines. There is no doubt that the process of combating crime and efficient crime prevention call for a multidisciplinary approach to the study of crime, crime detection and investigation. Forensic linguistics can significantly contribute to these efforts.

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CIP – Каталогизација у публикацији
Народна библиотека Србије, Београд

343.85(082)
343.9(082)
351.86(082)

**INTERNATIONAL Scientific Conference "Archibald Reiss Days" (2017; Beograd)**
Thematic Conference Proceedings of International Significance. Vol. 1 / International Scientific Conference "Archibald Reiss Days", Belgrade, 7-9 November 2017 ; [editor-in-chief Biljana Simeunović-Patić] = Tematski zbornik radova međunarodnog značaja. Tom 1 / Međunarodni naučni skup "Dani Arčibalda Rajsa", Beograd, 7-9. novembar 2017. ; [glavni i odgovorni urednik Biljana Simeunović-Patić]. - Belgrade : Academy of Criminalistic and Police Studies = Beograd : Kriminalističko-policijska akademija, 2017 (Čačak : Univerzal). - XII, 495 str. : ilustr. ; 24 cm

Tiraž 200. - Preface: str. VIII. - Napomene i bibliografske reference uz tekst. - Bibliografija uz svaki rad.

ISBN 978-86-7020-378-5
ISBN 978-86-7020-190-3 (niz)

a) Криминалитет - Сузбијање - Зборници b) Криминалистика - Зборници
c) Сектор безбедности - Зборници
COBISS.SR-ID 249244684