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

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

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MEĐUNARODNI NAUČNI SKUP
INTERNATIONAL SCIENTIFIC CONFERENCE

„DANI ARČIBALDA RAJSA“

“ARCHIBALD REISS DAYS”

Beograd, 1-2. mart 2012.
Belgrade, 1-2 March 2012

TEMATSKI ZBORNIK RADOVA
MEĐUNARODNOG ZNAČAJA

THEMATIC CONFERENCE PROCEEDINGS
OF INTERNATIONAL SIGNIFICANCE

TOM I
VOLUME I

KRIMINALISTIČKO-POLICIJSKA AKADEMIJA
Beograd, 2012
ACADEMY OF CRIMINALISTIC AND POLICE STUDIES
Belgrade, 2012

INTERNATIONAL SCIENTIFIC CONFERENCE "ARCHIBALD REISS DAYS"
THEMATIC CONFERENCE PROCEEDINGS OF INTERNATIONAL SIGNIFICANCE

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

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Computer Design
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Impression
200 copies

Print
SCANNER STUDIO, Belgrade

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

ISBN 978-86-7020-190-3
ISBN 978-86-7020-217-7

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TEMATSKI ZBORNIK RADOVA MEĐUNARODNOG ZNAČAJA

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200 primeraka

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ODRŽAVANJE SKUPA I ŠTAMPANJE OVOG ZBORNIKA
PODRŽALO JE MINISTARSTVO PROSVETE I NAUKE REPUBLIKE SRBIJE

ISBN 978-86-7020-190-3
ISBN 978-86-7020-217-7

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PREFACE

In front of you is the Thematic Proceedings of the International Scientific Conference "Archibald Reiss Days", which was organized by the Academy of Criminalistic and Police Studies, with the support of the Ministry of Interior of the Republic of Serbia and the Ministry of Education and Science of the Republic of Serbia, and held at the Academy of Criminalistic and Police Studies.

This International Scientific Conference is held for the second time in the context of initiated reforms of the security services and police education, and also in memory of one of the founders and directors of the first modern police high school in Serbia, Dr. Rodolphe Archibald Reiss, after whom the Conference was named.

The Thematic Conference Proceedings contain 76 papers by eminent experts in the field of law, security, criminalistics, forensic sciences, medicine, members of national security system or participants in education of the police and army, as well as other security services. Each paper has been reviewed by two competent international reviewers, and the Thematic Conference Proceedings in whole has been reviewed by four competent international reviewers.

The papers published in the Thematic Conference Proceedings contain the overview of contemporary trends in the development of police educational system, development of the police and contemporary security, criminalistic and forensic concepts. Furthermore, they provide us with the analysis of the rule of law activities in crime suppression, situation and trends in the above-mentioned fields, as well as suggestions on how to systematically deal with these issues. The Thematic Conference Proceedings 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 Thematic Conference Proceedings contributes to improving of mutual cooperation between educational, scientific and expert institutions at national, regional and international level.

Finally, we wish to extend our gratitude to all authors and participants at the Conference, as well as to reviewers: Mr Mykhail Tsymbalyuk, PhD, Mr Janko Jakimov, PhD, Mr Vid Jakulin, PhD and Mr Miodrag Simović, PhD. We also wish to thank the Ministry of Interior of the Republic of Serbia on its support in organization and realization of the Conference, as well as the Ministry of Education and Science of the Republic of Serbia, for its financial support in publishing of the Thematic Conference Proceedings.

Belgrade, July 2012

Programme and Organizing Committee

P R E D G O V O R

Poštovani, pred Vama je tematski zbornik radova učesnika međunarodnog naučnog skupa „Dani Arčibalda Rajsa“, koji je u organizaciji Kriminalističko-policijske akademije, a uz pomoć Ministarstva unutrašnjih poslova i Ministarstva prosvete i nauke Republike Srbije, održan na Kriminalističko-policijskoj akademiji.

Međunarodni naučni skup se održava drugu godinu za redom u kontekstu započetih reformi službi bezbednosti i policijskog školstva, a istovremeno u znak sećanja na jednog od osnivača i direktora prve moderne visoke policijske škole u Srbiji, prof. dr Rudolfa Arčibalda Rajsa, po kome skup i nosi ime.

Tematski zbornik sadrži 76 radova čiji su autori eminentni stručnjaci iz oblasti prava, bezbednosti, kriminalistike, forenzičkih nauka, medicine, pripadnici nacionalnog sistema bezbednosti ili učestvuju u edukaciji pripadnika policije i vojske, kao i drugih službi bezbednosti. Svaki rad su recenzirala dva stručna međunarodna recenzenta, a celokupan zbornik četvorica recenzenata.

Radovi objavljeni u tematskom zborniku sadrže prikaz savremenih tendencija u razvoju sistema policijskog obrazovanja, razvoja policije i savremenih koncepata bezbednosti, kriminalistike i forenzike, kao i analizu aktivnosti pravne države u suzbijanju kriminala, zatim prikaz stanja i kretanja u tim oblastima, kao i predloge za sistemsko prevazilaženje postojećih problema u njima. Tematski zbornik radova predstavlja značajan doprinos postojećem fondu naučnog i stručnog znanja iz oblasti kriminalističke, bezbednosne i kaznenopravne teorije i prakse. Izdavanje ovog zbornika doprinosi uspostavljanju i unapređivanju međusobne saradnje obrazovnih, naučnih i stručnih institucija na nacionalnom, regionalnom i međunarodnom nivou.

Na kraju, želimo da zahvalimo svim autorima i učesnicima skupa, kao i recenzentima, uvaženim prof. dr Mykhailu Tsymbalyuku, prof. dr Janku Jakimovu, prof. dr Vidu Jakulinu i prof. dr Miodragu Simoviću. Takođe zahvaljujemo Ministarstvu unutrašnjih poslova Republike Srbije, koje je podržalo organizaciju i održavanje skupa, kao i Ministarstvu prosvete i nauke Republike Srbije, koje je finansijski potpomoglo izdavanje ovog tematskog zbornika radova.

Beograd, jul 2012. godine

Programski i Organizacioni odbor

S A D R Ž A J

UVODNA IZLAGANJA

OBLAST I
PRAVNA DRŽAVA, POLICIJA I SUZBIJANJE KRIMINALA

UVODNA IZLAGANJA

UDC 341.217:351.74/.75(4-12)

INTERNATIONAL POLICE REFORM EFFORTS IN SOUTH EASTERN EUROPE

Snezana Nikodinovska-Stefanovska
Faculty of Security – Skopje, Macedonia

Abstract*:* Multiple international actors pursue internal security sector reform (SSR) initiatives in South Eastern Europe. Nearly every single large international or regional organisation has civilian SSR missions and projects on the ground in the Western Balkans. These include the United Nations (UN), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe (CoE), the Stability Pact and the European Union (EU), which are all involved in reforming police institutions and in building up police capacity. In addition, there are numerous bilateral assistance arrangements taking place in parallel. One example is the US International Criminal Investigative Training Assistance Program (ICITAP), which assists the Balkan states in creating modern and democratic police institutions.

With so many different national and international actors with sometimes rather similar mandates, operating very closely, coordination is essential if assistance efforts are not to be duplicated. Particularly in view of the new complexity of civilian and military peace - building and post-conflict reconstruction efforts, the need to coordinate activities is very important. Failure to do so would have an adverse effect on the prospects for creating stable, democratic and sustainable security institutions in South Eastern Europe.

Who is involved in police reform activities in South Eastern Europe and what types of assistance policies do these actors implement? The article addresses the competences and activities of the UN, EU, OSCE, and CoE. It compares their individual programme focus and policy tools as well as the scope of their involvement in the region. Also a variety of police reform programmes that have been implemented in Macedonia in recent years will be considered.

Key words*:* internal security sector reform, UN, EU, OSCE, CoE, South Eastern Europe, Western Balkans.

INTRODUCTION

The post-1989 transitional countries of South-Eastern Europe, namely, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Serbia-Montenegro, from early 1990s became involved in an effort at reforming their security sector. These reforms were the beginning of the long lasting process of transforming or establishing new security institutions, including the army, police, judiciary, border services and intelligence agencies, and their parliamentary oversight and civilian control.

The goal was to create a functioning democratic state and society. The transition process itself, the legacy of pre-1989 socialist regime and the implications of the armed conflicts that occurred in the period of 1991-2001 in the region, however, damaged the normal functioning of the security institutions and attempted efforts to reform them.

Police reform has become one of the most important intervention areas for the international community in the Western Balkans (WB). The UN police mission in Bosnia (IPTF) and Kosovo (UNMIK-Police), as well as the EU operations in Bosnia (EUPM) and Macedonia (Proxima, EUPAT) and the EU rule of law operation in Kosovo exemplify this trend.[1]

1 Juncos E.A. & Celador C.G., *Security Sector Reform in the Western Balkans*, available at: http://www.nottingham.ac.uk/shared/shared_icmcr/Docs/juncos.pdf (all websites in this essay were last checked on 20 January 2012).

Multiple international actors pursue internal security sector reform (SSR) initiatives in South Eastern Europe. Nearly every single large international or regional organisation has civilian SSR missions and projects on the ground in the Western Balkans. These include the United Nations (UN), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe (CoE), the Stability Pact and the European Union (EU), which are all involved in reforming police institutions and in building up police capacity. Also, there are numerous bilateral assistance arrangements taking place in parallel.[2]

These actors very often have similar mandates. Also, they operate in close proximity. Because of that coordination is essential if assistance efforts are not to be duplicated. Cooperation and coordination are the best types of interactions between intergovernmental organisations.

The article will present the activities of OSCE, EU, ON and their formal cooperation and coordination of the activities on the ground. The Republic of Macedonia will then be used as a *case study* to assess the interaction between organizations – their cooperation, coordination or competition in implementing projects and missions.

ACTIVITIES OF INTERNATIONAL ORGANIZATIONS IN THE POLICE REFORM IN THE WESTERN BALKANS

In the Balkans, the various international actors have played a consistent role in police reform and other civilian security sector assistance activities. With so many different national and international actors with sometimes rather similar mandates, operating very closely, coordination is essential if assistance efforts are not to be duplicated. Who is involved in police reform activities in Western Balkans and what types of assistance policies do these actors implement?

The role of the Organisation for Security and Co-operation in Europe (OBSE)

The OSCE plays important role in internal security sector reform (SSR) in the Western Balkans. Part of its activities in the region OSCE has focused on addressing the challenges to stability and security posed by organized crime and weak criminal justice systems. The Istanbul European Charter for Security (1999), the Maastricht Strategy to Address Threats to Security and Stability in the Twenty-First Century (2003) and the decisions taken at the Ljubljana Ministerial Council (2005) are examples of the OSCE's proactive approach towards internal security challenges.[3]

The Istanbul Charter for European Security' signed in November 1999 laid the basis for OSCE Police-related Initiatives. In Section 44 of the Istanbul Charter it is stipulated that the OSCE *"will work to enhance its role in civilian police-related activities as an integral part of the Organization's efforts in conflict prevention, crisis management and post-conflict rehabilitation*". Such activities may comprise:

1. Police monitoring, including with the aim of preventing police from carrying out such activities as discrimination based on religious and ethnic identity;
2. Police training, which could, *inter alia*, include the following tasks:

- Improving the operational and tactical capabilities of local police services and reforming paramilitary forces;

2 One example is the US International Criminal Investigative Training Assistance Program (ICITAP), which assists Balkan states in creating modern and democratic police institutions.
3 OSCE, Annual Report 2006 (Vienna: OSCE, 23 April 2007).

- Providing new and modern policing skills, such as community policing, and anti-drug, anti-corruption and anti-terrorist capacities;
- Creating a police service with a multi-ethnic and/or multi-religious composition that can enjoy the confidence of the entire population;
- Promoting respect for human rights and fundamental freedoms in general.[4]

In the Balkans, the OSCE has played a consistent role in police reform and other civilian security sector assistance activities. The role of the OSCE police assistance is to help in police recruiting and restructuring. It aims to hinder trans-national crime, encourage community policing and improve donor coordination.

The OSCE Mission to Albania was established in Tirana on April 3, 1997. Working in close consultation and co-operation with the Government of Albania, the OSCE presence provides assistance and expertise in the following areas:

- Legislative and judicial reform, including property reform;
- Regional administrative reform;
- Electoral reform;
- Parliamentary capacity-building;
- Anti-trafficking and anti-corruption, including supporting the implementation of relevant national strategies;
- Development of effective laws and regulations on the independent media and its Code of Conduct;
- Promotion of good governance and targeted projects for strengthening of civil society;
- Police assistance, in particular training for border police, within a co-ordinated framework with other international actors in the field.[5]

The OSCE Mission to Bosnia and Herzegovina was established on 5th Meeting of the Ministerial Council, in Budapest in 1995.[6] The tasks of the Mission are outlined in the Budapest Ministerial Council Decision MC (5). Dec/1, either directly or through reference to the Peace Agreement[7], in the OSCE Lisbon Summit Declaration, the Conclusions of the Paris Ministerial Steering Board Meeting, the London, Bonn and Madrid Peace Implementation Conferences, as well as, in the PC Decision No. 145. According to this Decision, they consist of the following elements:

- *"Taking into consideration the role of the High Representative as defined in the Peace Agreement and in the conclusions of the Paris Meeting as well as the need to co-operate with other international actors, the Mission concentrated on providing assistance for the preparation and conduct of municipal elections in 1997 and on providing assistance in the establishment of a permanent election commission, in accordance with Annex 3 of the Peace Agreement, with respect to the elections scheduled to close the consolidation period.*
- *To assist in democracy building and be active in human rights promotion and monitoring, in particular in support of the Ombudspersons throughout Bosnia and Herzegovina;*
- *To continue assisting the Parties in implementation of regional stabilization measures;*
- *The Head of Mission will co-ordinate closely with the Chairperson-in-Office and report to the Permanent Council regularly, at least every two months*."[8]

4 Art. 44 The Istanbul European Charter for Security (1999), available at: http://www.unece.org/fileadmin/DAM/trans/osce/osceunece/istachart99e.pdf .

5 *Survey of OSCE Field Operations,* sec.gal/171/11/corr.1*) October 28, 2011, p.10, available at: http://www.osce.org/node/74783.

6 The Budapest Ministerial Council Decision MC (5). Dec/1.

7 See paragraph 9 of that Decision: *Establish a Mission to Bosnia and Herzegovina [...] to carry out its tasks as requested by the Parties to the Agreement.*

8 *Survey of OSCE Field Operations*, sec.gal/171/11/corr.1*) October 28, 2011, p.11, available at: http://www.osce.org/node/74783.

The Mission to Bosnia has focused on monitoring criminal law reforms and war crimes cases, and additionally provided technical and legal support in the fight against human trafficking.

The OSCE Mission to Croatia fulfilled its mandate in the area of police reform in 2006. Aimed at supporting the establishment of an accountable and democratic police service, the mission's police affairs unit gradually moved from monitoring tasks to advising the Croatian Ministry of Internal Affairs. The mandate of the OSCE Mission to Croatia expired on December 31, 2007, and was replaced by the OSCE Office in Zagreb.[9] The Office started working in Zagreb on January 1, 2008.

The OSCE Mission in Kosovo (OMIK) was established effective from July 1, 1999.[10] The Mission in Kosovo constitutes a distinct component, or 'pillar', within the overall framework of the United Nations Interim Administration Mission in Kosovo (UNMIK). The OSCE police instructors were supposed to provide the basic police training at the Kosovo Police Service School (KPSS) run by the OSCE Mission in Kosovo.[11] The OSCE's Kosovo mission carries out activities in the following main areas: human and community rights, monitoring and promotion, support to democratic institutions and good governance, and public safety and security.

The OSCE Mission to Serbia was established as the OSCE Mission to the Federal Republic of Yugoslavia in January 2001.[12] In 2003, it was renamed to the OSCE Mission to Serbia and Montenegro[13] and to the OSCE Mission to Serbia in June 2006[14]. In the beginning the OSCE was engaged in training and deployment of multi-ethnic police officers in Southern Serbia with 27 international police instructors. The mission should provide the necessary assistance to modernize the police service in both Serbia and Montenegro in accordance with international and democratic principles. Also the mission should provide assistance in the fight against organised crime enhancing the border management capacities. The mission in Belgrade has also become involved in reforming Serbia's police, and it has a number of offices around the country focused on this task. Since 2006, it has been involved in the creation of a new basic policy training school in Sremska Kamenica, and plays a role in efforts to combat organized crime, working both with the Serbian authorities and NGOs. The mission has also supported the government conduct war crimes trials, an initiative coordinated with the similar OSCE activities across the region. The mission will continue to assist, *inter alia*, in restructuring and training of law enforcement agencies and the judiciary.[15]

9 The OSCE Office in Zagreb was established by Permanent Council Decision No. 836 of December 21, 2007, replacing the OSCE Mission to Croatia, (DECISION No. 836 ESTABLISHMENT OF AN OSCE OFFICE IN ZAGREB, PC. DEC/836, 21 December 2007, available at: http://www.osce.org/pc/30280.

10 Permanent Council Decision No. 305, July 1, 1999.

11 Thorsten Stodiek, *The OSCE and the Creation of Multi-Ethnic Police Forces in the Balkans*, CORE Working Paper 14, Hamburg 2006, p. 18.

12 Permanent Council Decision No. 401 of January 11, 2001.

13 Permanent Council Decision No. 533 of February 13, 2003

14 Permanent Council Decision No. 733 of June 29, 2006.

15 "As stipulated in its mandate, the OSCE Mission to Serbia, acting in close co-operation with the host Government, will provide assistance and expertise to the authorities at all levels, as well as to interested individuals, groups and organizations, in the fields of democratization and the protection of human rights, including the rights of persons belonging to national minorities. In this context, and in order to promote democratization, tolerance, the rule of law and conformity with the OSCE principles, standards and commitments, the Mission will also:
- Assist and advise on the full implementation of legislation in areas covered by the mandate;
- Monitor the proper functioning and development of democratic institutions, processes and mechanisms;
- Assist in restructuring and training of law enforcement agencies and the judiciary;
- Provide assistance and advice in the field of the media;
- In close co-operation with the Office of the United Nations High Commissioner for Refugees, provide advice and support in order to facilitate the return of refugees to and from neighboring countries and from other countries of residence as well as of internally displaced persons to their homes within the territory of Serbia." Survey of OSCE Field Operations, sec.gal/171/11/corr.1*) October 28, 2011, p. 14, available at http://www.osce.org/node/74783.

The OSCE Mission to Montenegro was established in 2006[16]. The OSCE Missions to Montenegro and Serbia were originally one operation, founded in 2001, but split in two when the countries divided in 2006. The mission in Montenegro is relatively small (with 13 international staff compared to 34 in Serbia) but works in similar areas. It is also involved in a police training school, and supports rule of law initiatives and democratization. Significant challenges remain, especially in combating Montenegro's organized crime networks.

The decision to establish a CSCE Monitoring Mission in the Republic of Macedonia was taken in mid-1992 in the context of the efforts to extend the European Community Monitoring Mission (ECMM) to neighbouring countries of the Federal Republic of Yugoslavia to help avoid the spread of tension to their territories. "Articles of Understanding Concerning CSCE Spill-over Monitor Mission" were exchanged on November 7, 1992 by means of a letter from the Macedonian Minister of Foreign Relations, Mr. Denko Maleski, to the Chairperson-in-Office of the Council of Ministers of the CSCE.

The CSCE Spill-over Monitor Mission to Skopje started its work with the OSCE fact-finding visit to Skopje on September 10-14, 1992. On December 16, 2010, the OSCE Permanent Council decided to change the name of the OSCE Spill-over Monitor Mission to Skopje to "OSCE Mission to Skopje".[17] In the field of police reform, the OSCE police advisers were deployed to the sensitive areas, concurrently with the phased redeployment of the national police. *"They will have no executive authority and are not to be seen as replacement for the national police or other lawful security forces in the host country. Their role would be to assist in ensuring a phased and co-ordinated redeployment by the national police. The police trainers will assist in the implementation of the Police Academy project."*[18] The strength of the OSCE Spill-over Monitor Mission to Skopje was later increased to approximately 300 international staff at the beginning of 2002 to cover its three main areas of activity: monitoring; police training and development; and other political activities related to the implementation of the Ohrid Framework Agreement.[19] According to the provisions in Annex C of the Framework Agreement, and based upon various PC Decisions (including Decision 457 of December 21, 2001), the Mission was called to assist in a number of specific areas, which were added to the initial mandate [20] such as, *inter alia,* redeployment of police to the former crisis areas, police training, establishing community policing, expert assistance and training in the fight against organised crime/OK and terrorism.

European Union - ESDP police missions and security sector reform (SSR)

The EU is heavily involved in police reform activities both through its European Security and Defence Policy (ESDP) and through the Commission's long-term assistance and accession policies in the region. In the war-torn Western Balkans

16 Permanent Council Decision No.732 of June 29, 2006.
17 Permanent Council Decision No. 997 of December 16, 2010.
18 Survey of OSCE Field Operations, op.cit., p.20.
19 Following a seven-month conflict, the Ohrid Framework Agreement was signed on August 13, 2001. It outlines the steps to be taken to ensure the functioning of democratic structures, the advancement towards Euro-Atlantic institutions and the development of a civil society respecting ethnic identity. The implementation of this objective is clarified, largely, in the Agreement's three annexes focusing on constitutional, legislative and implementation/confidence building tasks. (The English version of the Ohrid Framework Agreement is available at: www.president.gov.mk/eng/info/dogovor.htm.)
20 The original mandate called on the Mission to monitor developments along the borders with Serbia and in other areas which may suffer from spillover of the conflict in former Yugoslavia, in order to promote respect for territorial integrity and the maintenance of peace, stability and security; and to help prevent possible conflict in the region.

region, the EU's 'soft power' alone has not been enough to induce the same transformation as in Central and Eastern Europe. The region has been the site of the first EU security missions under ESDP.

ESDP police missions are one of the instruments of the civilian dimension of the European Security and Defence Policy. This aspect was developed at the European Council of Feira in June 2000. Member states agreed upon four priority areas where the EU should become an actor in civilian crisis management: police, strengthening the rule of law, civilian administration and civilian protection.[21] Following the adoption of a Police Action Plan at the Goteborg European Council in 2001, the EU established a 5,000 police officers force for international or autonomous EU police mission in 2003.[22] In the meantime, the Political and Security Committee (PSC) dealing with all Common Foreign and Security Policy (CFSP) and ESDP issues, was given the political control and strategic direction of crisis management operations, including the civilian aspects. A new body, the Committee for Civilian aspects of Crisis Management (CIVCOM) was created in the Council Secretariat as a coordination mechanism, fully interactive with the Commission services.[23]

Police missions are at the forefront of the operationalization of the civilian component of ESDP, not only by the number of personnel on the ground but also by the number of ongoing missions.[24] The first ESDP crisis management operation – the European Union police mission in Bosnia and Herzegovina (EUPM) was established in 2003, quickly followed by a second EU police mission in the Republic of Macedonia (PROXIMA), replaced in December 2005 by an EU police advisory team (EUPAT). In 2007, Kosovo was the next destination in the Balkans for the European policemen.[25] These missions provide short-term assistance in the fields of police training and capacity building.

The EU Police Mission to Bosnia (EUPM) is part of the Union overall support to the rule of law sector in Bosnia and Herzegovina. Since the signing of the Dayton Peace Accords (1995), the EU has had a key supporting role in the stabilisation of Bosnia and Herzegovina. European Police Mission in Bosnia and Herzegovina which followed on from the UN's International Police Task Force, is part of a broad effort undertaken by the EU and other actors to address the whole range of rule of law aspects.

The EU Police Mission to Bosnia was launched on January 1, 2003 for an initial period of three years. EUPM was the first mission launched under the European Security and Defence Policy (ESDP). Following an invitation by the Bosnia and Herzegovina authorities, the EU decided to continue the mission with a modified mandate and size.

The EUPM mission is to establish a sustainable, professional and multi-ethnic police service in Bosnia *"in accordance with the best European and international practice."*[26] Comprising of about 200 police experts collocated with local police at medium and senior level in around 30 locations across the country the mission has

21 Santa Maria da Feira European Council, Presidency Conclusions, June 19-20, 2000, available at: http://europa.eu/european_council/conclusions/index_en.htm .

22 Göteborg European Council, Presidency Conclusions, June 15-16, 2001, Annex I, available at: http://europa.eu/european_council/conclusions/index_en.htm.

23 Council Secretariat, Progress Report on Civilian Aspects of Crisis Management, 15625/03, December 2, 2003, p. 53.

24 Merlingen, Michael, and Rasa Ostrauskaité, ESDP Police Missions: Meaning, Context and Operational Challenges, in: European Foreign Affairs Review (Volume 10), Kluwer Law International, 2005, pp. 215-235.

25 In 2006 an EU planning team (EUPT Kosovo) was established regarding a possible EU crisis management operation in the field of rule of law.

26 *Council Joint Action of March 11, 2002 on the European Union Police Mission* , 2002/210/CFSP, OJEU L70, March 13, 2002, at p. 6. Amended by *Council Joint Action of November 24, 2005 on the European Police Mission (EUPM) in Bosnia and Herzegovina (BiH)*, 2005/824/CFSP, OJEU L307/55, November 25, 2005.

no executive mandate. Given the persistence of organized crime and the unresolved problem of police reform, the mandate of the EUPM was renewed until December 31, 2007. The mission statement of the EUPM II heavily emphasizes the objective of fighting organized crime and clarifies its relationship with the EUFOR: *"Under the direction of the EUSR, the EUPM will take the lead in the coordination of policing aspects of the ESDP efforts in the fight against organized crime. It will assist local authorities in planning and conducting organized crime investigations."* [27]

The EU Police Mission primarily supports law enforcement agencies in Bosnia and Herzegovina in the fight against organized crime and corruption, notably focusing on state level law enforcement agencies, on enhancement of the interaction between police and prosecutor and on regional and international cooperation, as well as on contributing to ensure a suitable level of accountability. In 2010 the mission refocused its mandate on the support to the fight against organised crime and corruption. Shortly, the EUPM seeks to create sustainable policing structures under Bosnian ownership through training, mentoring and monitoring activities.

Similarly, the already completed ESDP police missions to Macedonia – Proxima and EUPAT – were mandated to consolidate law and order and to support the fight against organised crime by advising and training the Macedonian police. On September 16, 2003, the authorities of the Republic of Macedonia invited the EU to assume responsibility for an enhanced role in policing and the deployment of an EU Police Mission. The European Union established an EU Police Mission in the Republic of Macedonia, EUPOL PROXIMA in line with the objectives of the Ohrid Framework Agreement of 2001. The Proxima mission should, in close partnership with the Ministry of Internal Affairs and other relevant institution/authorities contribute towards the police reforms required within the implementation of the Ohrid Framework Agreement 2001.[28]

The Mission, code-named EUPOL PROXIMA, was launched on December 15, 2003[29] for the 12-month period (from December 15, 2003 to December 14, 2004). Council[30] extended EUPOL Proxima for the 12-month period (from December 15, 2004 to December 14, 2005). This operation was completed on December 14, 2005.

Proxima police experts supported Macedonian police through the monitoring, mentoring and advising thus helping:

- The consolidation of law and order, including the fight against organized crime, focusing on the sensitive areas;
- The practical implementation of the comprehensive reform of the Ministry of Internal Affairs (MoI), including the police;
- The operational transition, and the creation of a border police, as a part of the wider EU effort to promote integrated border management;
- The local police in building confidence within population;
- Enhanced co-operation with neighbouring states in the field of policing. [31]

During consultations with the EU, the Government of the Republic of Macedonia has indicated they would welcome, under certain conditions, an EU Police Advisory Team bridging between the end of EUPOL Proxima and a planned project funded by CARDS aiming at providing technical assistance in the field.

27 *Council Joint Action of November 24, 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH),* 2005/824/CFSP, OJEU L 307/55, November 25, 2005.
28 See http://www.consilium.europa.eu/uedocs/cmsUpload/ProximaBrochure.pdf.
29 Council Joint Action 2003/681/CFSP.
30 Council 2004/789/CFSP.
31 European Union Police Mission, PROXIMA, Fact Sheet, p. 1, available at: http://www.consilium.europa.eu/uedocs/cmsUpload/ProximaBrochure.pdf.

The successor of the Proxima was the EU Police Advisory Team – the EUPAT. The priority of the EUPAT was to support the development of an efficient and professional police service based on European standards of policing. The EUPAT experts were tasked to monitor and mentor the country's police on priority issues in the field of border police, public peace and order and accountability, the fight against corruption and organised crime. The EUPAT was focused on overall implementation of police reform in the field, police - judiciary cooperation and professional standards/internal control.

After the Dayton agreement the EU has formulated new approach towards the region. The EU's policy for the Western Balkans is stabilisation through integration. In 2000 the Stabilisation and Association Process (SAP) [32] was launched. This offered the countries of the region the 'perspective' of the possible EU membership. At the Thessaloniki EU-Western Balkans summit in June 2003, it was declared that 'the future of the Balkans is within the European Union.'

The methods and instruments of the SAP are modelled on the experience of enlargement to Central and Eastern Europe, including Stabilisation and Association Agreements (SAAs)[33], European Partnerships, and Annual Progress Reports, all driven forward by conditionality.[34] The EU's Stabilisation and Association Agreements (SAAs) form the overarching political framework for its relations with most states in the region and are supposed to lead to their EU membership. And since progress in the areas of police restructuring, establishing the rule of law and fighting organised crime are preconditions for the possible accession of South Eastern European states to the European Union, the Stabilisation and Association Process is possibly the most powerful policy tool the EU currently has at its disposal.

In terms of funding, the EU regional and national assistance was supported by the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme. From 2007, the Instrument for Pre-Accession (IPA) replaces CARDS. Further, the majority of European Community assistance projects – i.e. in Serbia (including Kosovo), Montenegro and Macedonia – were managed by the European Agency for Reconstruction (EAR), an independent EU agency that phased out its activities in 2008.

United Nations

The United Nations is another international organization which has capabilities and experience in the area of police reform. In the Western Balkans, the UN civilian police missions have been active in several states. Already completed civilian police missions include the UN mission to Croatia in 1998 that monitored police performance in the Danube region. A larger police mission, the UN Mission to Bosnia and Herzegovina (UNMIBH, 1995-2002) and its International Police

32 The process helps the countries concerned build their capacity to adopt and implement EU law, as well as European and international standards. See more athttp://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/index_en.htm

33 The centrepiece of the Stabilisation and Association Process is the conclusion of a Stabilisation and Association Agreement which represents a far-reaching contractual relationship between the EU and each Western Balkan country, entailing mutual rights and obligations. Such an association has high political value. It is based on the gradual implementation of a free trade area and reforms designed to achieve the adoption of EU standards with the aim of moving closer to the EU. A Stabilisation and Association Agreement embodies the choice for Europe made by the Western Balkan countries and the membership perspective offered to them by the EU.

34 SAAs have been signed with Croatia, the Republic of Macedonia, Serbia, Bosnia and Herzegovina (BiH), Albania and Montenegro.

Task Force (IPTF), was authorised to monitor, inspect, train and advice local law enforcement forces. The UNSC Resolution 1088 expanded the IPTF's mandate, allowing it to investigate police misconduct and charging UNMIBH with assisting in the setting up of effective police institutions. In addition, UNDP has emerged as a strong player in the field of civilian SSR. The agency has, for instance, been involved in implementing a comprehensive approach to Albanian community-based policing since 2004.

In police reform and policing support in Kosovo, the UN involvement is particularly strong. Effectively, Kosovo has been under the UN administration since 1999, with the UN Mission in Kosovo (UNMIK) in charge of law enforcement functions. The mandate of UNMIK was established by the Security Council in its resolution 1244 (1999) [35]. The Mission is mandated to help the Security Council achieve an overall objective, namely, to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the Western Balkans.[36]

UNMIK has been divided into four sections which it calls "pillars." These are:

- Pillar I: Police and justice (United Nations-led)
- Pillar II: Civil Administration (United Nations-led)
- Pillar III: Democratization and institution building (led by the Organization for Security and Co-operation in Europe)
- Pillar IV: Reconstruction and economic development (European Union-led)

Responsibility for enforcement of Pillars I and II has now been transferred to the institutions of provisional self-government in Kosovo. The UN, however, still monitors this enforcement.

Following the creation of the European Union Rule of Law Mission in Kosovo (EULEX), on December 9, 2008, UNMIK ceased the bulk of its rule of law operations and reconfigured its justice operations into a Rule of Law Liaison Office (RoLLO), and the Office of the Senior Police Advisor. RoLLO monitors activities in the area of rule of law and continues to fulfil certain necessary functions that neither EULEX nor the Kosovo institutions are able to exercise. [37]

United Nation Development Programme (UNDP), in close cooperation and dialogue with UNMIK, supports capacity building within the Kosovo Police Force (KPS) and provides immediate administrative support and technical assistance.

Council of Europe

The CoE's assistance programmes in the region fall under its general mandate of consolidating democratic stability in Europe by backing political, legislative and constitutional reform. Its Programme against Corruption and Organisation Crime in South-Eastern Europe (PACO) and Lara Project target the South East-

35 The mission was established on June 10, 1999 by Security Council Resolution 1244 (UN Security Council, Distr. GENERAL S/RES/1244 (1999) June 10, 1999, RESOLUTION 1244 (1999).

36 According to the Resolution 1244, UNMIK is to:
-Perform basic civilian administrative functions;
-Promote the establishment of substantial autonomy and self-government in Kosovo;
-Facilitate a political process to determine Kosovo's future status;
-Coordinate humanitarian and disaster relief of all international agencies;
-Support the reconstruction of key infrastructure;
-Maintain civil law and order;
-Promote human rights; and
-Assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo. (http://en.wikipedia.org/wiki/United_Nations_Interim_Administration_Mission_in_Kosovo).

37 See http://www.unmikonline.org/Pages/rollo.aspx.

ern European region and offer technical and legal assistance to police and justice bodies involved in the fight against organized crime, corruption, trafficking in human beings and money laundering.

The CARDS Regional Police Project – CARPO (2004-2007), was a joint regional project with the European Commission. The objective of the project was to strengthen the capacities of the Balkans countries to develop and implement regional strategies against serious crime, based on the *acquis* of the European Union and other European standards and practices.[38]

This project used training, seminars, mentoring and visits to foster regional cooperation in criminal matters, to develop a regional strategy on serious crime and enhance local actors' competences in handling trafficking in human beings, smuggling and illegal migration as the specific field of crime.

COORDINATION, COOPERATION OR COMPETITION – CASE OF THE REPUBLIC OF MACEDONIA

Several international organizations pursue parallel police reform projects in the Balkans. What type of interaction is between them? Are there formal cooperation agreements between them and coordination on the ground or is there a competition?

EU-UN interactions in civilian police reform missions build on the Declaration on EU-UN Co-operation in Crisis Management (2003).[39] Operational cooperation in the policing field in the Balkans was initiated in early 2003 with the handover of the UN's IPTF police reform mission in Bosnia to the European Union's first ever police mission (EUPM). In June 2007, a second 'Declaration on Cooperation' emphasized the increasing scope of EU-UN cooperation, particularly in the Balkans, Africa and Middle East, and called for its intensification.[40]

In the Balkans, the UN has also cooperated closely with the OSCE. In particular, the OSCE mission deployed to Kosovo in 1999 represented a new step in bilateral relations between the two organisations. For the first time, an OSCE mission became an integral part of an operation led by the United Nations.[41] The Kosovo OSCE mission forms a distinct component of the UN Interim Administration Mission (UNMIK) and is mandated to carry out institution and democracy-building tasks and to foster the rule of law. The two organisations have had a division of tasks in the area of police reform. UNMIK police had the task of providing temporary law enforcement and assisting with police administration, while the OSCE trains police officers on international human rights and community-based policing standards.

Further instances of cooperation are joint programmes established by the European Commission and the Council of Europe (CoE). Since 1993, shared general aims have led the CoE and the EU to establish a tight network of relations, including the implementation of joint EU/CoE programmes. In South Eastern Europe, joint programmes have been established in Albania, Moldova, Serbia, Bosnia and Herzegovina and Macedonia. Aimed at facilitating and supporting legal and institutional reform, programmes are in most cases co-financed by both organisations.

38 See http://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/projects/CARPO/CARDS_Project_Summary.pdf
39 http://www.eu-un.europa.eu/articles/en/article_2768_en.htm.
40 http://www.consilium.europa.eu/uedocs/cmsUpload/EU-UNstatmntoncrsmngmnt.pdf.
41 OSCE, OSCE Handbook, Third Edition (Vienna: July 2002).

Cooperation in the area of Justice and Home Affairs is particularly advanced; an example in the field of police reform is the CARDS Regional Police Project (CARPO), a Council of Europe/European Commission regional project aimed at assisting the fight against serious crime in South Eastern Europe. Launched in March 2004, CARPO was mandated to provide the participating states with tools and comprehensive training for dealing with trafficking, smuggling, illegal migration and economic and organised crime. It was completed in summer 2007.

As in other Balkan states, many international organizations are active in the Republic of Macedonia. International actors, namely the OSCE (since 1992) and the UN (1993–99), have been present in Macedonia since the country's independence in 1992 to monitor the borders and policing activities on the border with Kosovo. The reform of the police began in 2000 through a law-enforcement development programme of the US International Criminal Investigative Training Assistance Programme (ICITAP), which included technical assistance and 'training of trainers' programmes.

Besides setting the framework for domestic reforms, the Ohrid Framework Agreement has also provided the international community with a mandate to organize international assistance. Specifically, the OSCE, the EU and the United States are explicitly named as actors in the reform of the Macedonian police force. As a result, a variety of police reform programmes have been implemented in Macedonia in the last decade.

In the field of police reform, the Ohrid Framework Agreement signed in 2001 invites the OSCE, the European Union and the United States to increase the training activities and assistance programmes for the police. Immediately following the signature of the Framework Agreement, the OSCE moved beyond police monitoring to engage in the restructuring of the Macedonian police force. In August 2001, it established a Police Development Unit (PDU) in the OSCE Spill-over Mission in Skopje.

The initial task of the PDU was to assist in the training and redeployment of police in the former crisis area following the conflict in 2001. Further assistance was provided in line with the Law on Police in 2006 and Ministry of Internal Affairs' Strategic Plan. Main priority was given to police reform, community policing and specialized training. With the new Law on Internal Affairs (2009), Police Development Department's (PDD) aim is to sustain an efficient human resources management system and to further professionalize the police service. The PDD assists, advises and co-ordinates with the Ministry of Internal Affairs in developing a community service-oriented police force that is in line with democratic principles and international human rights standards.[42] An EU special representative (EUSR) has been appointed to help ensure, inter alia, "the coherence of the EU external action" and "coordination of the international community's efforts".[43] Both the EUSR and OSCE Head of Mission are members of a "principals committee," which also includes the US ambassador and NATO's headquarters in Skopje, left in place after the transfer of peacekeeping duties to the EU in 2003. The committee, chaired by the EUSR, makes frequent joint statements on Macedonian affairs.[44]

Concerning the EU, the ESDP short-term police missions – EUPOL Proxima and the smaller follow-up EU police advisory team EUPAT – were deployed be-

42 See htpp://www.osce.org/skopje/43343.

43 See Council of the European Union, Joint Action 2002/963/CFSP of 10 December 2002 amending and extending the mandate of the Special Representative of the European Union in the Former Yugoslav Republic of Macedonia, OJ L 334/7, December 11, 2002, pp. 7–8.

44 See for example: "Joint statement by the EU Special Representative, the NATO HQ Skopje Commander, the Head of the OSCE Mission to Skopje and the US Ambassador." OSCE Website, August 12, 2010, available at: http://www.osce.org/item/45757.html.

tween 2003 and 2006. Their mandate was to assist the Macedonian police forces in their reform efforts. Proxima monitored, mentored and advised the Macedonian police, but had no executive mandate of its own. The European Commission's longer-term projects, on the other hand, pursue the goal of bringing Macedonia closer to EU membership. As a member of the Stabilisation and Association Process, Macedonia has received the European Community (EC) police reform assistance since 2002. Through its EC Justice and Home Affairs Project (ECJHAT), the EC Police Reform Project (PRP) and a series of bilateral twinning arrangements with the EU Member States, the European Commission has continuously advised Macedonia on issues of police strategy development, integrated border management and the fight against crime.[45] These activities had been funded through the EU CARDS programme while implementation had been managed by the European Agency for Reconstruction in Skopje.

As a result of the two distinct approaches to police reform within the European Union, coordination agreements in the field have been very important. They have not only been relevant for the interactions between different organisations, but also for intra-EU relations. Political coordination among the EU institutions took place at weekly informal meetings of all the EU agencies involved – the EU presidency, the Commission delegation, the EAR, Proxima, the EU monitoring mission and the ECJHAT coordinator- led by the EUSR. In this way, contacts with the Macedonian government relating to the EU police efforts were synchronized and agreed upon by all the EU actors concerned.[46] Despite this EU inter-institutional cooperation, coordination on the ground suffered greatly because of competition among the EU missions. [47]

Also the cooperation among the international organisations active in Macedonia has proved to be equally difficult. Particularly in the case of EU-OSCE relations, tensions have been presumably unavoidable since both actors have pursued very similar aims. In April 2003, a formal mechanism for coordination in the field of police, the Police Experts Group was created to facilitate operational coordination among the different actors involved in police reform.[48] Chaired by the police adviser of the EU Special Representative, it regularly brought together the EUPOL head of mission and the ECJHAT/ECPRP coordinator, the European Commission Delegation, the EAR, EU member states, the OSCE, ICITAP and other international actors actively engaged in supporting the transformation of the Macedonian police. But these meetings only included international actors involved in the national police reform efforts and not regional ones. According to International actors who participated in the Police Experts the forum was "inefficient in coordinating efforts, because of the formality of the event, which led actors to defend their mandates".[49]

Despite the establishment of a new forum - a Police Experts Group to facilitate operational coordination among the different actors involved in police reform inter-organisational tensions have persisted. One example of this is provided by the relationship between the OSCE Spill-over Mission to Skopje – on the ground

45 European Agency for Reconstruction, EU support to the Police and Border Management sectors in the former Yugoslav Republic of Macedonia: Projects managed by the European Agency for Reconstruction, Fact Sheet (Thessaloniki: March 2007).

46 See Council of the European Union, Coordination Aspects of Proxima, 13532/1/03 REV 1, COSDP 590, Brussels, October 16, 2003(b), p. 3.

47 For a discussion of intra-EU coordination difficulties, see Isabelle Ioannides, 'Police Mission in Macedonia', in Evaluating the EU's Crisis Missions in the Balkans, eds. Michael Emerson and Eva Gross, 97f (Brussels: Centre for European Policy Studies, 2007).

48 OSCE, Annual Report on OSCE Activities 2003. Security and Co-operation for Europe (Vienna: October 1, 2004), p. 173.

49 Isabelle Ioannides, 'Police Mission in Macedonia', op.cit.p.105.

since 1992 – with other actors in the field. This mission, originally established to avoid conflict spill-over from the former Socialist Federal Republic of Yugoslavia, has long-standing capacities in police reform. Its police development unit has assisted the government in developing and implementing a national police reform strategy and trained the Macedonian police forces. With the mandate of EU Proxima following similar aims, the OSCE mission felt that it had been marginalised by the EU's ESDP mission.[50] In addition, the European Commission's police reform projects also clashed with those of the OSCE mission established earlier. An EU implementation report dealing with the coordination of EU and OSCE law enforcement activities outlined that despite a memorandum of understanding signed by both parties and notwithstanding the deployment of EU liaison personnel to the OSCE mission, cooperation had at times been less than optimal. It found that "the inherent difficulties in co-ordinating policy-inputs from different international actors have on occasion weakened the effectiveness of efforts to make progress in the reforms".[51]

A lack of exchange of information on the efforts underway between the international actors led to programs and initiatives being duplicated. This consequence has been particularly true for regional programmes in police cooperation and integrated border management, including projects to deal with organised crime, the drug trafficking, human trafficking, immigration and asylum. In addition, regional initiatives usually do not build on other international efforts. The Council of Europe, for example, carried out numerous 'end of programmer' evaluations in the 1990s pointing out the shortcomings of the Ministry of Internal Affairs, which were identified yet again by Proxima and the European Commission's projects.[52] These led to a lot of time being lost and resources being wasted, while much-needed training in other areas has not been undertaken.

CONCLUSION

The post-1989 transitional countries of South-Eastern Europe, namely, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Serbia-Montenegro, from early 1990s became involved in an effort at reforming their security sector. These reforms were the beginning of the long lasting process of transforming or establishing new security institutions, including, the army, police, judiciary, border services and intelligence agencies, and their parliamentary oversight and civilian control. The goal was to create a functioning democratic state and society. Today, two organizations have prominent political missions in the Balkans the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU).

The activities of the international organizations involved in internal security sector reform (SSR) in the Balkans have to be integrated making sure that the proposed programs, projects or actions are harmonized and are not overlapping. Therefore, through cooperation and exchange of information all international organizations have to be connected and aware of all the projects in the region. Also, the states from the region should consider not getting involved in new projects that have similar results with ongoing initiatives. Through communication, synergy and cooperation of the main actors involved, overlapping and harmonizing in internal security sector reform initiatives in the Western Balkans will be avoided.

50 See more: Ibid.,p. 108.
51 European Commission, Rapid Reaction Mechanism End of Programme Report Former Yugoslav Republic of Macedonia (Brussels: November 2003), 11.
52 See http://www.coe.int

The Western Balkans has been a testing-ground for a huge range of political missions (including missions involved in internal security sector reform) since the early 1990s. Yet the rationalization of the international political presence in the Western Balkans is incomplete.

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UDC 340.5

FUNCTIONAL NATURE OF THE COMPARATIVE SCIENCE OF LAW (in the context of police officers' law awareness level)

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Abstract: The functional nature of comparative science of law in the context of modern world orderliness is determined, and also the theoretical and practical functions of science are pointed out. The comparative science of law theoretical functions, namely, discloses the following functions: cognitive, informational, analytical, of law systems deideologization, of propagandist, critical, educational and scientific law awareness development. Special attention is paid to the analysis of practical functions of comparative science of law, namely integrative and conversional functions. While the foregoing functions analysis the police officers' level of law awareness development is particularly taken into consideration.

Key words: comparative science of law, functions of comparative science of law, functional nature of comparative science of law, the goals and functions of comparative science of law, theoretical functions of comparative law, practical functions of comparative law.

INTRODUCTION

Problem statement. It should be admitted that the subject of any science including comparative science of law should be considered (investigated) through the categories of science function. It would be reasonable to investigate previously mentioned considerations in the context of theoretical and practical functions of law. The problem of qualitative development of the scientific knowledge for a law subject should be referred to theoretical functions, namely the increase of police officers' law awareness level with the help of such a functional nature of comparative science of law as epistemological and informational functions, analytical and function of law awareness development, propagandist and critical, and also special attention should be paid to the function of law systems deideologization.

The problem of practicality and functionality of the comparative science of law in the context of the modern globalization process acquires relevance, where special attention is paid to the integrativity and convergence of law during the postmodern process.

The Purpose of the article is the analysis of comparative law functional nature.

The stage of research. Considerable attention was paid to the research of functional nature of comparative science of law problems by scientists-theoreticians of law, among which one should point out the following: Behruz Hashmatulla, David R., Luts' L., Marchenko M., Osakve K., Saidov A., Tyhomirov O., Leger R., Zweitgert K. and others.

Description of major positions. The functions of any science, including comparative science of law, help us understand the subject and purpose of a research better. Also with the help of goals setting and functions determining we can broaden the subject of a research, as a set goal accompanies scientific researches, delineates an hypothesis and helps to get new results. The functions and purpose actually broaden the subject of the research of the comparative science of law.

With the help of functions and goals, the processes and phenomena in legal sphere can be conceived better, one can understand the volume and character of "outer" legal impact better as well as the forms and scale of foreign legal experience use [18, c. 35–36]. On the contrary, ignoring and underestimating the considerable potential of comparative science of law under contemporary circumstances is inadmissible. It would bring about artificial closeness, absence of legal information that could cause legal, economic and political mistakes.

The western comparativists, taking into account the diversity and functionality of comparative science of law, *concentrate on the relationship and aims of cause and effect.* In particular F. Stone enumerates the following reasons among those which encourage authors from different countries to take up the research of not only problems of national, but also comparative law:

1. The desire to know and understand the system of laws not only of his motherland, but also of the others.
2. The desire to learn in the process of different systems of laws comparing how can similar legal problems be solved in the national system of laws and beyond its limits.
3. The acknowledgement of theoretical and practical necessity of comparative analysis of methods of similar problems in different countries solving.
4. The desire to reveal and bring to light the main principles of the construction and functioning of different systems of laws. [7, c. 157]

Here one should focus on the theoretical (purely intellectual) aspect of comparative science of law as well as on the practical one, i.e. one can observe the expedience of other systems of laws achievements use in a national legal family.

Western comparativist H. Gutenrich, while studying the problem of comparative science of law main aims, believes, that they should lie most of all in the establishing of the facts, why and to what extent has the existing systems of laws diversity the relationship of cause and effect and constant character, and when random one; secondarily the scientists are interested in determining the reasons which lie in the basis of existing divergences as well as their correlation with the general systems structure in which they are manifested; and thirdly - speaking about the norms and institutes of law – the formation of the opinion of their positive and negative sides taking into consideration specific circumstances of their existence and application [7, c. 157].

P. Cruz does not draw line between functions and aims of comparative science of law and as a kind of symbiosis formulates these functions and aims as fields of science and education, in the process of legislative and law enforcement activity and also while carrying out law reforms; in the process of formulation, interpretation and deep understanding of legal norms, as well as in the sphere of law unification and harmonization [7, c. 157-158].

Actually and at the empirical level the aims and functions should be identified. To our point of view, the understanding of comparative science of law functionality by such western comparativists as K. Zweigert, H. Kyotts, R. David, P. Eminescu should be characterized more in detail.

In K. Zweigert's opinion, the broadening of knowledge field is the paramount function of comparative science of law. If to understand the legal science not only as an interpretation of national law, legal principles and norms, but also as a research of models for overcoming and resolving social conflicts, it becomes clear that comparative science of law is endowed with wider range of typical solutions than national closed legal science. That's why the solutions contained in the systems of laws of the world are more versatile and richer as to their contents because of the

objective necessity than those made within national system of laws. The comparative science of law resembles "the school of truth", it widens and enriches with "solution set" and gives a critically prepared researcher the possibility to find the optimal solution for the given time and place [20, c. 28].

In general the researchers discern three functions of comparative science of law, which have special practical meaning:

1. the providing of useful material for the enrichment of a legislator's potential;

2. serving as an instrument for interpretation of a legislation;

3. the role of the comparative science of law in the law unification [7, c. 27–28].

R. David, K. Zhoffre-Spinozy in their work "Main systems of laws of the today" admit, that the comparative science of law is a means of different systems of laws cognition, a kind of theoretical jurisprudence basis and at last a factor that helps «understand the outlook of others and explain others our own outlook, to create proper conditions for harmonious coexistence and the progress of our civilization.» These very researchers pay attention to the international law unification as a means of overcoming the differences among nations [2, p. 10-14].

In our view, the outlook of Russian comparativists who determine the main functions of comparative science of law is worth focusing on. In Russian comparativism, they usually distinguish *theoretical and pragmatic functions* of comparative science of law. The theoretical functions facilitate the development and increase qualitative knowledge. Pragmatic functions are directed to the contemporary tasks of a legal practice solution [1, p. 22].

It follows from this that to the theoretical functions of comparative science of law one should refer as the following: a) cognitive; b) informational; c) function of law doctrines, theories, law systems deideologization; d) function of law awareness development; e) propagandist; f) scientific; g) educational.

To the pragmatic functions of comparative science of law one should refer the following: a) integrative; b) function of convergence; c) function of law unification.

And now the theoretical and pragmatic functions of comparative science of law should be properly characterized.

a) Epistemological (cognitive) function of the comparative science of law.

The contemporary comparativist J.A. Tihomirov uses the term "cognitive function", whereas B. Hashmatulla speaks of "epistemological function".

In our opinion these two approaches should be identified. According to philosophical encyclopedic guides, the theory of cognition (epistemology, gnoseology) is a part of philosophy where the nature and possibilities of cognition, their limits and validity are analyzed [9, p. 47].

As J. Tihomirov points it out, the comparative science of law always focuses on deep and extensive study of law phenomena. Their analysis and evaluation as to the state of internal development will be more profound and objective on condition that the general and specific reasons for law phenomena will be studied, as well as temporary and stable law situations in foreign countries, their impact, factors that cause changes of foreign legislation, adoption and changes of legal acts, conditions that facilitate or terminate the law realization. The scientist pays attention to the fact that investigation and correlation of the level of law awareness and law culture in his own country and other countries helps him understand the mechanism of legal behavior of citizens in the given period and gives him a better perspective as to when other legal norms will be valid. Comparative analysis of law providing mechanisms is also of considerable significance (activities of court, justice, law enforcing and legislative bodies) [18, p. 37].

Cognitive function, first of all, focuses on the whole range of the legal activities cognition, comprising all structural aspects of a system of laws (normative, functional and ideological).

H. Behruz points out that the comparative science of law is always oriented not towards the mere addition of knowledge about law phenomena and studying the dynamic aspects of law objects cooperation, not towards only one or another law element manifestation, but towards the maintenance of structurally constant system of laws, as well as cognition of new legal elements of different institutes within national political and economic conditions [1, p. 22].

b) Informational function of the comparative science of law.

The given function is closely connected with the cognitive aim (function), as it is its consequence. J. Tihomirov distinguishes informational aim (function) as a means of reaching the cognitive aim (function) and as an independent function. It focuses on getting materials on functioning and development of foreign systems of laws, state institutions, and their connection with each other, data about legal situations and tendencies of legal development in terms of regional and world scale. The information about cognition, evaluation, reaction of citizens to changes which happen in the national system of laws is also of great significance. Any isolated development in modern period is inadmissible [18, p. 37].

The informational function of comparative science of law is reached by using a whole range of means. Firstly, it is the preparation of reference materials about foreign legislation development, informational overview of foreign legislation. They are usually studiously prepared according to separate fields, subfields of legislation, legal institutes.

Sometimes branch and area-studying approaches are connected and it leads to effective systematization of these or other materials for effective lawyers', legislators', civil servants', students', and postgraduate students' work [18, p. 38].

J. Tihomirov exemplifies the following overviews of information and abstract information prepared by the Institute of legislature and comparative science of law in recent years: "The professional teaching of the workers and police officers" (1993), "International unification of family laws collision norms" (1993), "The organization and activities of counting chambers" (1993), "Medical insurance (UK, France, Germany, Sweden, Switzerland)" (1993), "The legal regulation of employment in the countries of Eastern Europe" (1993), "The Government in foreign countries" (1993), "Unfair Rivalry" (1993), "The legislation of the European Economic Community about the users' rights protection" (1994), "Tax misdemeanors and felonies" (1995), "Commercial representation" (1995), "The legislation of foreign countries about the bail" (1995), "Labor contract" (1995).

The abstract information was prepared in 1994: "Economic activities of foreigners and foreign investments protection", "About collective agreement in the budget sphere", "About the circulation of short-term state securities", "About banks and other financial bodies", "The changes in legislature about bankruptcy" [18, p. 38]. These information overviews have specialized character and are designed for solution of comparative science of law tasks which refer to comparison with native legislation. For more detailed analysis and concrete tasks solution one usually uses short guides about foreign acts, their place in a system of laws, structure and contents. The knowledge about juridical regimes of different kinds of activities is also important [18, p. 38].

The researcher indicates here that there exist wider guide materials prepared as overviews, guides, and articles in scientific and other collections. The data included give us a sound picture of the foreign legislature. Foreign overviews of a legislature are empirical material for the subjects, which operate in the fields of legislation, lawmaking and law interpretation, as they usually help us see and understand the drawbacks of a national law.

c) Analytical function of comparative science of law.

The researches indicate that analytical aim (function) of comparative science of law is a function of higher rank. A comparativist using this function tries to find the roots, sources of legal phenomena in foreign systems of laws. The comparing is held in the very process of reaching of this aim. Most frequently the native system of laws and a foreign one serves as an object of it [18, p. 39]. In the given case it would be useful to use the other countries legal experience for the native system of laws. The existence of analytical aim (function) is held in the process of cognitive aim reaching and with the use of informational aim results. Ignoring or weak consideration of the given aims causes substitution of the analytical aim and in this case it will be solely descriptive activity [18, p. 39]. It follows from here that the analytical aim (function) of comparative science of law is dialectically dependent on the informational and cognitive functions. Analytical thinking is an integral element of legal reflexion in the process of comparison, it requires most of all legal axioms use and demands of the comparative science of law, a high level of global abstraction.

d) Function of law system deideologization.

This function anticipates an objective scientific approach towards main state law phenomena studied within the comparative science of law and unbiased treatment of them because of political and ideological opinions and interests [1, p. 23].

The given methodological approach is complemented by K. Osakve, who states that comparison of systems of laws requires intellectual objectivity, and that is why there is no place in the comparative science of law for religious or cultural prejudices against one or another system of laws or a nation [12, p. 14].

e) Function of the law awareness development.

The realization of this function leads to fact that juridical outlook will be based on general civilizational approaches, i.e. to the understanding of law as a generally civilizational process [1, p. 23].

Iljin states: "The first thing for us to know and master is the fact that we constantly need law awareness and use it and that law awareness is a creative source of law, the live organism of the rule of law and political life" [3, p. 37].

Civilizational approach towards law, which is held by means of a function of the law awareness development, should be based on natural scientific, phenomenological, and hermeneutic argumentation [4, p. 27].

The law awareness should be oriented towards humanistic generally civilizing aspects of development.

We should also add **propagandist and critical functions of the comparative science of law** to the theoretical functions which provide development and qualitative increase of knowledge that we have examined so far.

f) Propagandist function of comparative science of law can be characterized by the fact that every state is interested in the protection of its system of laws and in the propaganda of its advantages. The state bodies, scientific institutions, mass media resort to exaggerating of the meaning of national system of laws separate sides trying to reach this aim. The advantages of other systems of laws are ignored and the comparison is presented in their favour [18, p. 41]. The propagandist function is actual, as for such international formations as EU, European Council, Northern Council, each of national systems of laws tries to propagandize its own usefulness for others, its effective lending of their achievements to others, though it cannot be reduced to a cult.

g) Critical function of comparative science of law has a rather long history in the domestic science of law and is predetermined by both objective and subjective factors. During the Soviet period, the subjective factor dominated as the achievements of socialistic way of life and everything connected with it were declared. The critical function of comparative science of law is reduced to the demonstration of discontent of one country as to another in the sphere of constitutional, trade, customs, bank, migratory legislation.

It can be solved as in general political evaluation, as in negative evaluation of separate laws provision that humiliate the interest of foreign countries or include differences from international documents.

Such a critical direction is rather dynamic and depends first of all on the dynamics of social situation inside one country or within the international community [18, p. 40-41].

We should separately perform the analyses of pragmatic functions of comparative science of law which are focused on the contemporary tasks of the law practice solution, - ***integrative ones and the ones of convergence.***

a) The integrative function of the comparative science of law is determined by the state course, interstate formations towards the harmonization and rapprochement of national legislations, this aim has an exact orientation towards the harmonization and rapprochement ways development in their practical use and also in the series of consecutive state actions in the direction of that aim [1, p. 40]. In this case the correspondence of common interests of the interested countries in the commonly agreed legal development, the consensus as to the problems of the legal regulation, the manifestation of the divergences in national legislatures and possible ways of their overcoming are the criteria for the comparison and evaluation of national legislatures. The favorable political and socio-psychological climate for the negotiation, discussions, agreement reaching is supplied. The necessary legal conditions are created –an information exchange and the access to data banks, the system of comparing legal classifiers is formed, vocabularies and concepts, "round tables" are organized and held, seminars and so on [18, p. 40].

So, the comparative science of law should fulfill the function of various systems integration provision. According to A. Chernokov this very function should be complemented by the following directions of integration: 1) rapprochement of legislations; 2) harmonization of national legislation; 3) model legislative acts implementation; 4) unification of legislation [21, p. 14].

b) The function (aim) of convergence of the comparative science of law.

The comparative science of law plays its role in the stimulation of convergence processes in different legal and political systems. The theory of convergence, which was rather widespread in 60-80-th of last century in academic and liberally set circles, fo-

cused on the process of rapprochement of different as to their type and character political and systems of laws. The expansion of connections between different countries (capitalistic and socialistic most of all) should have lain in the basis of the rapprochement [7, p. 161]. In our modern outlook the function of comparative science of law focuses on the convergence approach, the search of ways of rapprochement of Roman Germanic and Anglo Saxon families, especially in the sphere of law sources as well as on the formation of similarities in the process of their combination [8, p. 246-270].

The very process of convergence depends on the globalization which is understood in our contemporary world as a complicated and multidimensional process which presupposes the intensification of interstate economic, political, social, cultural and legal connections, the transformation of world economy and global market formation and hence the expansion of western system of liberal democratic values which cause the formation of the only law source [5, p. 7-8]. The borders between countries are actually being erased in our contemporary world and the convergence of different systems of laws is held.

Therefore the functions of comparative science of law are the setting of main directions of law impact upon the whole system of one or another national (or international) system of laws so as to form positive theoretical and pragmatic results in the process of comparing.

Educational function of the comparative science of law constitutes the epistemological basis for the whole range of other functions. It undoubtedly gives birth to a number of hypotheses, namely the ones which concern their essence and contents, the correlation of comparative science of law with legal sciences and an education system. A question arises, what impact this function has on the level of legal stuff preparation and the whole system of juridical education.

In the West the comparative science of law is taught at Universities for more than a year and a half. Besides, in France and Great Britain there are corresponding developments in this field, though there are also unsolved questions as to the denomination and importance of the discipline. One should admit the availability of powerful centers on comparative science of law practically in all European countries.

For the domestic juridical science this sphere is rather important as in the Soviet times there could be observed the absence of a comparative research. The narrow approach towards the comparative science of law dominated in that period, namely the clarification of the juridical geography of the world, the place of a socialistic legal family among other contemporary systems of laws, as well as the separation and investigation of the critical function of the comparative science of law. The criticism of contemporary systems of laws was taken into account and the supremacy of socialistic legal family over the others was indicated.

In the West the development of the comparative science of law is assisted by the ties extension between different countries at the end of 19-th – at the beginning of 20-th century as well as by the accumulation of the first positive experience in teaching and studying of the comparative science of law by this time, the stimulation of the comparativists from these countries to further development and deepening of the process of comparative science of law studying. Their activeness in this direction has become especially conspicuous after the First International Congress of Comparative Science of Law, Paris, 1900 [18, p. 171].

With the increase of the process of quick economic development of world countries, increases the demand of close economic ties. It generates the educational function of comparative science of law.

What regards comparative science of law, an outstanding American jurist R. Pound briefly and accurately stated in 1934 that the studying of comparative science of law becomes more effective on condition that the teachers will clearly imagine the possibilities of the discipline and will be able to realize them. The researcher pointed out that in future the teaching of law will be based on the comparative law method. It will be constantly proposing different ways of national law problems solutions similarly to the way, in which problems in Anglo American system of laws are resolved by means of discussion. The comparativist has foreseen that a teacher will show a student on concrete examples that none out of national systems of laws, no doctrine, concept, norm or constitution will be able to propose adequate solutions to all the problems which are constantly arising in our everyday life. In other words R. Pound believed that for the professional level increase one should study the comparative science of law after having heard the course of lectures on national law except the cases when the graduates after profound familiarization with the civil law start specializing on its specific problems studying [20, p.40].

As M. Marchenko points put the World War II has undoubtedly had negative impact on the development of comparative science of law and its educational function what has largely put back its development [7, p. 172]. In the contemporary world after the World War II quick development of economy, economic, trade, cultural and other kinds of ties is held. All these cause the revival of the comparative science of law and its educational function.

In 1948 at the juridical conference where professors and teachers from USA and a number of other countries took part and which was dedicated to problems of studying of the international law and comparative science of law, the necessity of attention increasing to the given disciplines was pointed out and it was ascertained that the international law and comparative law teaching are rather important parts of the contemporary juridical education [7, p. 172].

The study of the comparative science of law broadens and enriches layers' knowledge, he learns to respect a self-dependent law culture of other nations, deepens the understanding of the native law, starts understanding how to use critical ideas for the law constructions improvement, gains knowledge about the social conditionality of legal norms and goes deeper into the process of legal institutes formation. Herewith the application of comparative science of law in practice emanates from the very nature of scientific knowledge. In this regard the usefulness of comparative science of law for the international private law can be mentioned, as well as for the interpretation of international treaties in the activities of international courts and arbitrations, international authorities and at last for the unification of law [20, p.36].

K. Zweigert and H. Kyotts foreknew that the following generation of jurists would probably come into unprecedented "internationalization" of legal life. The reducing of the threat of war will lead to the ideological rapprochement of capitalistic and socialistic countries and the same will happen to North and South. Hereby the developed countries will pay more and more attention to help the countries in the legal world which are in the process of development. The jurists will be made responsible for other important problems too, such as the improvement of the environment, elimination of racism, social justice strengthening. These questions can be successfully resolved only providing the cooperation of nations and states and not in the conditions of national isolation.

But the most important meaning under these conditions acquires the value of active studying of comparative science of law – it indicates unlike positivism, dogmatism and limited nationalism the whole comprising law value by means of wider categories of effective generalizing legal thinking which arms a critical mind with 'solutions set' where the whole experience of the world is concentrated [20, p. 36].

R. David points out that the studying of the comparative science of law helps nonetheless understand own system of laws better [2, p.9].

The Russian comparativist M. Marchenko adds that it gives the possibility so to say to look at a system of laws from aside and with some distance [7, p. 174].

He also points out that in the process of such a consideration it can be revealed that those out of numerous legal norms and institutes which were earlier perceived as inherent to all civilized societies and systems of laws in reality ensued because of historic and geographic factors only within the only, its own system of laws and that all the rest world systems of laws or most of them normally function without these norms and institutes. So the problems which arose in a society or a system of laws can be resolved with the help of its own norms and institutes and probably can be resolved more simply and effectively with the help of other norms and institutes.

On the other hand while the studying of the comparative science of law a situation can arise where these important theoretical and practical institutes, which were traditionally supposed to be local and present only in one given system of laws, root out of other systems of laws [7, p. 174].

The studying of comparative science of law facilitates not only the widening of student-jurists outlook but also helps to work out a critical approach to law and different phenomena of legal life, the development of sense of responsibility for what is being held in the contemporary world, moral values accumulation and mastering real common to mankind ideals by them.

The system of juridical education which presupposes the studying of narrowly specialized and closely connected with it historic, philosophic and comparative-law disciplines is able to prepare a professional, learned, self-dependent politically and juridically thinking specialist. Otherwise narrow thinking and spiritual emptiness will be the product of a juridical education [7, p. 175].

We should give further detailed consideration to the way in which comparative science of law is taught in the West and in our own national system of laws. As an American professor of law J. Winterton indicates, on this very stage the course of lectures in comparative science of law are given practically in all juridical higher educational establishments and universities in the world. The enlisting of this course in all curriculums of juridical higher educational establishments is a natural educational process of juridical education after the World War II [7, p. 176].

As German comparativists indicate, there exist different educational establishments where more or less is taught the comparative science of law. The course 'Introduction to comparative science of law', where the tasks and methods of this discipline are examined as well as its place among other international legal disciplines and the overview of the main systems of law is given, is taught almost in all universities in the world. Most profoundly is presented the comparative analysis of legal institutes. Randomly are defined the fields of law, for example inheritance law and the responsibility of manufacturers in all or most systems of laws. There are no examinations in this discipline [20, p. 37].

In the USA the comparative science of law was included into the curriculum of jurists preparation together with the creation of schools and institutes of comparative science of law affiliated to Harvard, Yale, Columbian and Chicago universities. The activities of these establishments were directed towards the development of investigation and teaching of foreign and international private law. Nonetheless before the World War II there was no national school of comparative science of law in the USA [15, p. 80]. The American institution of comparative science of law was created in 1951 (New York), the aim of which was to propagandize the teaching of comparative science of law in American universities and the edition of "American journal of comparative science of law" [1, p.16].

The courses of comparative science of law are taught practically in all juridical establishments in the Netherlands. For example at the faculty of law in the Leiden University beside the special courses of lectures in German private law, international private law, Anglo-American private law, elementary Russian law, law and administration in Indonesia other disciplines are taught within comparative civil process, comparative science of law and so on. In the annotation to the course of lectures in comparative private law it is indicated that there is taught only the material which regards the structure and main characteristics of different systems of laws, history of its establishment and development, the role of comparative science of law in the process of modernization of national systems of laws of European and other countries -7, p. 178].

Concerning Japan, before the beginning of World War II there was no formed faculty of comparative science of law or any created specialized institute. The studying of comparative science of law was limited here by English, French and German law [15, p. 80]. After the World War II started its quick development, in particular there was created a lot of specialized institutions in comparative science of law investigation and teaching. In 1948 was created Japan institute of comparative science of law affiliated to the Toyo University, since 1958 – institute of comparative science of law affiliated to the Waseda University, Bureau of comparative science of law and politics affiliated to Tokyo University, Institute of law archives and foreign law affiliated to the Meiji University, Institute of comparative science of law affiliated to University of Kota, the Centre of archives in comparative science of law and international law affiliated to Tokyo University [10, p. 249-255]. Here are actively given courses in comparative science of law which are grouped according to their research direction and also the archive databases are separated. The whole system of laws in Japan is based on the borrowing of law ideas mainly from Roman-Germanic type of law. In 1891 French jurist professor Buassonad drafted project of civil code for Japan similarly to the civil law of France.

The commercial code of Japan was drafted in 1899, the criminal code in 1882. The process of borrowing ended when Japan adopted the Constitution in1946, which was run in place in 1947 (it was drafted on the basis of the constitutions of European countries) [14, 815-820].

The process of institutionalization of comparative legal ideas as a discipline in England is connected with 1869, when there were created faculties of comparative science of law in Cambridge and Oxford, though the recommendation as to their creation (as well as the faculty of international, administrative and English law) was adopted by the Special committee of the House of Commons in 1848 [23, p.13].

The first head of the faculty of comparative science of law in Oxford University was its professor G. Main. Only 25 years after in 1894 was created analogous faculty of history of law and comparative science of law. The special activation of the development of the comparative science of law was held after World War II.

Among the disciplines which are taught at the faculty of law at Leiden University (Germany), - "Main course of European competition law", "Legal protection in European Community", "Equality and the problem of gender equality in Europe", "Economical analysis of European employment market and social aspect of the countries of universal welfare", "European integration and international law", "External connections of the European Community", "Commercial law of the European Community", "Tax Law of the European Community", "Human rights", "The Law of intellectual property of the European Community" and others [7, p. 178].

The project which is believed to be the most successful is the one of Strasbourg University in France, which started in 1961, namely it was the creation of International faculty of comparative science of law teaching, where a few thousand of PhD

and doctoral thesis were defended [7, p. 179]. It was the first educational establishment which united specialists in the sphere of comparative science of law in order to bring the knowledge to the students form different countries. Here studied the students from above 50 countries of the world [7, p. 179].

R. David indicates that the studying of comparative science of law is the sphere of cognition for those few, who aspire to higher level of professionalism and lawful culture, namely this sphere is the sphere of high level and intellectuality [2, p. 14].

K. Zweigert and H. Kyotts do not exclude it, that in the nearest future the comparative science of law as well as the history, sociology of law will be meaningful only for narrow specialists and they indicate that the fate of the elitist discipline of comparative science of law will have to be the achievement for intellectuals and not for average students because of the complicacy [20, p. 38].

Together with this K. Zweigert and H. Kyotts with confidence prove the necessity of comparative science of law inclusion in the number of necessary disciplines to learn. We are talking here about all the students of juridical educational establishments without exception, and not only about the most talented and prepared ones [20, p. 182].

They traditionally take as an example the International faculty of comparative science of law in Strasbourg which presupposes three relatively independent cycle trainings.

Within the first cycle ("Introduction into the studying of comparative method and main legal families of the world") are taught such disciplines as "General introduction into international private law" and "General introduction into:

1. Anglo-Saxon (general) law;
2. Roman-Germanic (continental system) law;
3. Socialistic law;
4. Islamic system of laws;
5. Scandinavian systems of laws;
6. Israeli system of laws.

In these cycle is given the course of lectures in the introduction into the general comparative studying of juridical procedures.

The second cycle is dedicated to the studying of main tendencies of the development of fields of law of different legal families. It is divided into two main parts: the section of public and private law.

Within the first section they teach the comparative studying of the problems connected with administrative contracts, state responsibility in the sphere of commerce, administrative procedures (on the example of a range of cases), executive state power, civil rights and freedoms in different countries, with methods of constitutional control, trade unions in different countries and so on.

Within the second section are also studied in the comparative aspect inheritance law, contract law, corporate law, the practice of foreign legislature in different countries appliance and so on.

The third cycle of the comparative science of law concentrates the students' attention on the detailed and deeper studying of similar legal problems which evolve in different countries. The training is usually done in the form of a "round table" on the examples form the practice of concrete cases.

The notice of the meetings of the "round table" varies from session to session. The questions which are rather frequently discussed usually concern for example

the procedure of corporations creation, juridical liability of firms, the procedure of inheritance from international private law, the deduction of taxes from private funds, legal status of private funds, procedures of labor disputes resolution in the legislation of different countries [18, p. 184].

This is the program-maximum the successful carrying out of which can provide only separate elitist higher educational establishments because it presupposes the availability of highly qualified staff, namely the faculty.

To our point of view, the necessity of the inclusion of the comparative science of law into the curriculums of the higher educational establishments of Ukraine and any other country as a compulsory discipline is beyond any doubt. It is conditioned by its theoretical as much as by its practical significance. The teaching should be realized on the basis of general and special parts.

We should refer to the general part the following: concept, subject, the place of the comparative science of law in the system of juridical and social sciences; objects and principles of comparative science of law, its categories and methodological tools; functionality; comparative science of law and national law; comparative science of law and European law; comparative science of law and international law; theoretical aspects of national systems of laws classification; practical importance of the comparative science of law in the process of harmonization and unification of law; theoretical aspects of interstate systems of laws.

We should refer to the special part the following: concept, subject and tasks of the course "Contemporary systems of laws"; overview of legal families: Roman-Germanic; Anglo-American; mixed (Scandinavian and Latin American); religious and customary (Hindu, Muslin, Jewish, canonic); philosophic traditional (Japan, China); customary communal (the countries of Africa and Madagascar).

We can also single out the applied part of comparative science of law: the comparative constitutional law; the comparative civil law; the comparative labor law; the comparative family law; the comparative criminal law and so on.

THE SCIENTIFIC COMPARATIVE SCIENCE OF LAW

The fact that on the basis of comparative science of law are conducted investigations in different spheres of juridical activities remains undisputed.

M. Marchenko indicates that the comparative science of law as interdisciplinary and at the same time multidisciplinary juridical scientific discipline facilitates not only the development of the generally theoretic or historic investigation, but also has the impact on the scientific investigation in the sphere of branch juridical sciences, what is indicated by different scientific works (monographs, scientific articles, tutorials and textbooks as well as different scientific articles)[7, p. 185]. We can also single out directions of research. For instance O. Tihomirov "Juridical comparativism: philosophical and methodological problems" [16]; L. Luts' "Interstate systems of laws: the Europe Council, the Europe Union" [6]; J. Tihomirov "Law-national-world-self-development" [18]; M. Marchenko "Practical importance of the comparative science of law in the life of a society and a state (comparative science of law and national and international law; unification and harmonization of law; the characteristic of legal families of the world)" [7]; P. Glen "National legal tradition" [13], which is being investigated by J. Oborotov in accordance to national system of laws (traditions in law, innovations in law, legal inheritance) [11].

The scientists indicate three stages of the development of comparative science of law as relatively self-dependent fields of knowledge. One of the members of the editorial board of "American journal of the comparative science of law" B. Kozoljchuk indicated in the 70th of the 20thcentury that for the biggest part of the works on comparativism prepared on the first stage of the development of comparative science of law as scientific discipline (since the end of last century and until the end of the World War II) was inherent mainly "taxonomic" cognitive character. The comparativist were demanded to distinguish only in common features "continental law" from "general" one, religious norms from non-religious ones as well as discern legal institutes, which were called socialistic and capitalistic.

The second stage comprises the period from the middle of the 40th of the 20th century till the end of the World War II, the third – till our days. The works in the sphere of comparative science of law gained the academic and investigative character. Unlike the first stage of the development of the comparative science of law when the authors in their statements "extremely rarely went beyond legislative and doctrinal texts and very rarely reached the level of comparative analysis of concrete matter – separate fields, norms of law and institutes", on the second stage a lot of researchers concentrated their attention on such spheres of law realization in different countries as trade, finance, banking, investments [7, p. 186]

Because of the intensification of economic, financial, commercial and other interconnections among different and most of all western countries in the postwar period, sharply increased the demand in the comparative analysis of judicial and administrative practice and in comparative investigation of these countries' normative material [7, p. 186-187].

At the contemporary stage of the development of comparative science of law as a scientific discipline the western authors-comparativists concentrate most of their attention not only on the comparative analysis of empirical material as concrete norms, fields of law and institutes, but also on the search of theoretical, conceptual and doctrinal aspects of its development again [7, p. 187].

The combination of different empirical material is successful in scientists' opinion. The combination includes general (global) and corporate (local) norms that constitute the system of norms of the municipal and other fields of law which are in sight of contemporary researchers with fundamental theoretical material, what helps us form full idea as about the character as about the tendencies of the comparative science of law development [7, p. 187].

The third period can be characterized by the complex cognition of comparative law matter in the interconnection with the process of lawless matter study.

In the process of investigation in the sphere of comparative science of law an investigator-scientist should properly master foreign languages and also know the history, economics, and politics perfectly in order to understand national and other traditions, understand the cultural tendencies of the lawful development. For instance while the analysis of mixed kind of law, namely the system of laws in Sweden; one should study out the history, culture, economic development of this country, which would intensify the comparative legal investigation more deeply.

The national comparativist O. Tihomirov indicates that in new geopolitical, ideological, economical and other conditions, on the post classical stage of the science development there should be forming another interpretation of the comparative science of law. In particular the emphasis in this sphere should be put on the comparative investigation with the use of socio-humanitarian science, that would intensify comparativist investigation and cause prognostication of law on another ideological basis [17, p. 68].

The juridical comparativism is a method, a science, a science about method, interdisciplinary investigation within juridical sciences, the investigation of the connection of non-juridical sciences. And finally it illuminates pluralism of the sciences as to the law and dependent on it phenomena on the basis of one out of generally scientific methods and ways of ideology – comparative.

Having interdisciplinary nature, the juridical comparativism underlines the necessity to recognize the actuality of problematic structure of sciences, the search of the subject of the comparativistic investigation not only on the level of subjects of special and branch juridical sciences and theory of law, the history state and law etc., but also in whole spectrum of the lawful reality: from the rule of law of the world, human rights (universal law) to lawful space of social groups, communities, the immediate life of a concrete subject of law.

The juridical comparativism is characterized not only by integration and differentiation of sciences (scientific investigations) of comparativist direction, their disciplines and problems, distribution and association, but also the synthesis of scientific investigation, practice and other forms of ideology of an immediate human life [13,p.68].

Among the tendencies of scientific cognition of comparative legal matter at the contemporary stage there should be pointed out the following:

1. *The subject of an investigation* are the general features and peculiarities of not only the norms of law of different compared between each other systems of laws, but also other components of lawful matter (law awareness, law understanding, law culture, law politics and ideology);
2. Legal norms of compared countries are explored not so much in all-in-one form, but in a socially differentiated manner, depending on the hierarchy of norms and their belonging to different branches and institutes of law;
3. Taking into account the complexity and variety of the sources of law of different systems of laws and detection of similarities and differences among them;
4. Taking into account the undeniable fact that on the contemporary stage of society development the different legal families because of rising economic, political, commercial and other connections become closer to each other as well as penetrate into its separate aspects.
5. Taking into account relative character of the division of the whole legal massif into different integral parts or groups of legal systems-families, extraction of different levels of comparative legal investigations [7, p.189].

The western comparativists also indicate that beside the named tendencies on the temporary stage can be tracked a tendency of organic connection of conceptual analysis with and empiric pragmatic one.

As a result of it in our sight get not only systems of laws as an integral creation, but also its components (law culture, law institutes; roles, which are played be participants of a law process; criminally-lawful, administratively-lawful and civilly-lawful processes; primary (general, global) and secondary (local) norms of law and so on) [7, p. 189].

M. Marchenko singles out the following problems of the contemporary comparative science of law:

1. The problem of planning, coordination and systematization of scientific comparative law investigation, which are conducted on the international level and in separate systems of laws. On the international level this problem is seen to by the International faculty of comparative law in Strasbourg, where are constantly congresses and scientific forums held.

In national systems of laws these problems are seen to by the leading western universities (Sorbonne in France; Leiden University in Netherlands; Oxford, Cambridge in England) and also specialized academic institutes [7, p. 192]. It is appropriate to take in this case systems of laws of Germany, Austria, France, England and Russian Federation as a basis.

2. The elaboration and improvement of the conceptual apparatus of scientific and educational discipline of comparative science of law [7, p. 193].

The given point of view is also supported by A. Saidov: the deep clarification and mastering as well as scientific argumentation of conceptual apparatus of the comparative science of law is a rather actual problem which needs special attention and special consideration [15, p. 8]. H. Behruz indicates that the elaboration of the conceptual apparatus is a long and complicated process, but the absence of elaboration and sometimes even negligence in the application of the concepts and terms creates big impediments for the real processes understanding [1, p. 39].

It is impossible to speak about the formation and development of an academic discipline if it does not have its own scientific and methodological tools and does not rely on the categories and concepts within contiguous fields of knowledge [7, p. 193].

The researchers indicate that the conceptual apparatus of the comparative science of law consists of two kinds of categories and concepts:

1. Inherent to the very comparative science of law;

2. Borrowed by it from other juridical sciences.

To the first group of categories and concepts belong the concepts of comparative science of law, the concepts of legal family, legal map of the world, legal geography, national system of laws, the concept of comparison, comparative method and other.

To the second group of categories and concepts belong all these which ensue within branch and other juridical sciences and which attend to most of all these juridical disciplines. These are the concepts of law, system of laws, legal custom, legal norm, legal institute and many other [7, p.193].

It should also be admitted that the comparative science of law provides the branch and generally-theoretical disciplines with new to them concepts and categories, namely: hypothec, leasing, legal precedent and its forms and so on.

The conceptual apparatus of the study discipline of the comparative science of law is formed together with the given academic discipline and according to the establishment and improvement is constantly developing. In particular it was stipulated by the variety of law interpretation in one or another system of laws. On this basis the concept of law and legal category in different systems of laws is modified.

The American researcher L. Freedmen in his work "Introduction to the American law" indicates that law is simultaneously formal and public (acts passed by the Congress or by the Government are public; and the formal law is "real life law" which is created by the society and enforced by the juridical and administrative precedent) [19, p. 25-26].

Undeniable is the fact, that the rules of research procedures will be improving the conceptually-categorical apparatus of the comparative science of law and innovate into the sphere of scientific investigation.

There also arises a problem the most complete and optimal level of comparative legal investigation, the establishment of their character and kinds. Speaking about the importance of the right choice of the level of conducting of comparative legal investigation, we should keep in mind first if all the micro level which is associated with the study and resolution of concrete problems concerning separate integral

parts of a system of laws and the micro level which presupposes the resolution of one or another general problem on the level of a system of laws in general [7, p. 196].

Their connecting in the process of comparative law investigation conducting is possible only providing the right approach. We should also give special consideration to synchronic, asynchronic and binary comparing; diachronic and synchronic; normative and functioning; intertype and internally family and so on. Special attention needs methodology of the comparative science of la, methodological techniques in particular which help reveal the compared legal phenomena at the macro- and micro levels.

The traditional for every juridical science question of organic combination of developed theory and practice as well as specific problems concerning limits of acceptability (without any damage to the quality) of the investigation of national systems of laws in their connection with other parallel systems of laws [7, p. 197].

In American jurist J. Gordly's opinion at the end of the 20th century for the deep understanding of the legal matter of one or another country simple learning of it is not enough. For that it is indispensable to go beyond its limits, to look at it from historic perspective, from the point of view of the past [7, p.198].

Beside above mentioned problems in the process of comparative law investigation evolve other problems, namely: correlation of the comparative science of law as a science with a comparative method, the place and role of the comparative science of law as an independent field of knowledge in the structure of legal theory and so on. [7, p. 198]

The given enumeration of the scientific functions of the comparative science of law should be complemented by the investigation of methodology of the comparative science of law, namely its multilevel (comparison, general, generally scientific, concrete scientific methods, special methods, methodological techniques (approaches) - about 16 concepts) and studying of the structure of the comparative scientific method, concepts and kind of their comparison, demands of the comparative analysis, methodology of the comparative analysis of the legislation.

To the scientific problems one should refer: correlation of the comparative science of law and the national law (their interplay); European law and comparative science of law (integration approach); comparative science of law and international law (self-development); the identification of the system of law of Ukraine with the Roman-Germanic type of law; the concept and the structuring of contemporary systems of laws: Anglo-American, Roman-Germanic, mixed (Scandinavian and Latin American), religious-customary (Hindu, Muslin, Jewish, Canonical), philosophic-traditional (Japan, China), customary traditional (the countries of Africa and Madagascar).

The special attention is deserved by the scientific researches of interstate system of laws (EU, Europe Council). The so called binary comparison cannot be left out of consideration (e.g. Japan, Germany, Sweden and so on).

One of the tasks of the comparative science of law is the activation of comparative legal investigations at the level of branch and applied sciences.

So the foregoing considerations raise the level of police officers law awareness in the contemporary globalizing world.

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UDC 174:351.74/.75

ETHICAL DIMENSION OF POLICE PROFESSION[1]

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Abstract: Professional morality is created in the police profession since its performance is firmly organized. Also, it is a profession that is extremely important for users, and whose members can learn very important and sensitive information whose disclosure could harm users. What will the morality be in this case depends on many factors, especially: moral relations in the wider society, goals and tasks of the police in a given society, specific conditions of life and work, the very practice of police organizations, the personal qualities of individual officer. In this profession moral codes are created which regulate in detail not only relations to the profession and its conduct, but relationships with customers, and also the behavior of police officers in their private life, or outside the profession. The main purpose of these codes is not to create morality (which is uncontrolled, spontaneous and relatively long process), but, above all, in its clear and precise presentation that contributes to the formulation of the proper performance of duties and use of legal powers.

Key words: morality, ethics, profession, professional moral, professional ethics, police, ethical code

GENERAL NOTE ON PROFESSIONAL ETHICS

Certain areas of social life (the most important for the survival of society, but not just them), are directly regulated by specific - concrete moral norms that accurately determine the behavior of people in a given moral situation. Such areas, according to the Professor Radomir Lukić (Lukić, 1974:538-539), among others, include professional ethics (ethics of interest)[2], i.e., specific moral norms that apply in certain occupations[3], which are generally stricter and more precise than general moral norms.

1 The work was created as part of the projects financed by the Ministry of Education and Science, the Republic of Serbia: The development of institutional capacities, standards and procedures to counter organized crime and international terrorism in terms of integration of 179 045, Academy of Criminalistic and Police Studies and the School Safety Project No. 47017 Security and Protection of organizing and functioning of the education system in Serbia (basic principles, protocols, procedures and resources) within the cycle of research projects 2011-2014.

2 In this paper the notions of morality and ethics will be used as synonyms. Also, we will deal with definitions of morality, ethics, and deontology and business ethics. For more detailed terminological demarcation in Milašinović, S.: Some indicators of policing in the function of ethical competence - the research results, Place and role of police in crime prevention: current situation and possibilities for improvement, Belgrade, Academy of Criminalistic and Police Studies, 2007, pg. 349-367. Some issues related to ethics of administrative workers, security 3 / 96

3 Occupation, or profession is "the set of the same or similar business activities, whose basic social and economic characteristics are that they are:
1) represented by a specialized activity that is clearly separated into a separate unit within the existing technical and social division of labor;
2) performed in a relatively permanent stable way, with certain resources, and with purpose of production of certain items or providing useful service to others;
3) the only or at least the main source of income which ensures the existence of economic and social position of individuals or groups who perform it, and
4) based on the possession of special knowledge, skills and education that is expressed through the possession of certain qualifications " (Sociological lexicon, 1982:750).

It is considered that there is relatively little interest in the society taken as a whole for the phenomenal value of professional ethics[4] which is dealt with separately:

1. Relations within the profession among its members (solidarity, mutual assistance, ceremonies, etc.), and
2. The manner of functioning (understood in the broadest sense), and especially its relationship to other people, especially the users of its products or services, but also to the members of other professions and society as a whole. (Pusić, 1981)

The main purpose of rules of professional ethics is to direct those who are engaged in certain activities and to protect them from possible deviations, if something is unsafe. In a certain way it also forms a member of occupation and provides him with a moral strength. Value judgments are integral for professional life and ability to make reasoned and informed choices among conflicting values is a vital skill for professional survival.

Professional morale is created within the professions that are very important for its users, whose employees can learn a very important and sensitive information whose disclosure could harm its users (lawyers, clergy, medical doctors), as well as within the professions involving a careful and precise performance, in which the external control, as a rule, is ineffective (engineers, some craftsman), so the service users have to rely primarily on the moral consciousness of a professional. Upon its creation the organization of respective professions may exert influence (therefore, a tightly regulated profession will sooner create professional ethics), as well as their relative class independence (occupations that are not tightly integrated into any particular class, and do not have strong class morals, create a stronger professional moral).[5]

Members of certain professions (judges, doctors, members of the armed forces, in some countries police officers and others) take a special oath, that is, give a public statement that they will perform their duties conscientiously and in accordance with the regulations. It primarily has a moral sense, it represents a statement of loyalty (to monarchy, nation, state) given in a certain form, according to the established ceremony in the symbols of the festive atmosphere, or holy community (emblem, flag, holy book). The time required for interiorization of certain regulations of professional ethics is different. The rules that stem from ideological commitment shall be adopted relatively quickly and can easily be lost. On the other hand, the rules closely related to the profession itself are adopted slowly, but are much more durable.

Professional ethics does not only represent a general ethical order applied to the specific case, but is an ethical reflection articulated through specific goals and ideals constituent to a particular profession. The character of these rules is relative, unreasonable and uncritical acceptance and mechanical exaggeration in their implementation which can have counter-effects. Thus, the consequences of complete identification with a professional organization or association are tightness, autarchy and recklessness (even intolerance) towards the environment.[6]

Professional ethics is certainly closely connected with the ruling system of morals and values of the respective companies, i.e. it begins with the basic norms of general social morality. However, for its part, it may in turn influence and modify itself, as well as the general state of society.

4 See Popovic, 1982:178. However, this does not mean that society is not interested that profession follows in touch with the current events, that is, some professional activities are to be performed so that they fit the broader social interests, so they do not put a certain pressure on professional ethics.

5 More detail in Z. Kešetović (1996). "Some issues related to professional morality of administrative workers", Security, no. 3 / 96, p. 347-365.

6 For more details see: Milašinović, S., Kešetović, Ž. (2009)."Social Changes and Modern Crisis – Challange for Theory and Managerial Practice", *NBP - Journal of Criminalistics and Law,* Vol XIV, No 1. pp. 117-132.

There is no doubt that the police profession[7] meets substantially almost all of these criteria, and that accordingly, and within it creates professional ethics. What will it turn out to be in a concrete case depends on many factors, especially:

- Moral relations in the wider society;
- Goals and objectives of the police in a given society;
- Actual living and working conditions;
- Practice of the very police organizations, and
- Personal qualities of each police officer.

The problem of police morale is very complicated and complex. It includes general theoretical (and philosophical) questions of moral basis (foundation) of the police work and, within that, the professionalism, the role of police ethics and the professions.

The second layer of problems concerns the personal (individual) ethics of officers or police (sub) culture and the individual character of the individual police officer; issues that are directly related to the performance of services (police discretion, the use of force, use of deception and organization of pitfalls, corruption, etc.), and the behavior of police officers in his private life in the context of their public role.

The third group of problems relates to the segment of the very police organization and its ethics, that is, questions of authority and responsibility, of its morality expressed in the appropriate code, and ethical challenges that are placed in front of the top management (management) of the police. From the wide range of problems presented, as an object of this paper we singled out the question of ethical codes of police organizations, in awareness of the fact that its treatment isolated from the above mentioned and from the wider social context, necessarily carries with it certain disadvantages and ambiguities.[8]

For police instructors (educators) ethic is another tool to build the character a good policeman needs. The virtues, which had recently become philosophicaly fashionable, are seldom more important to society than in the guardian of the state. Police ethics reemphasise the significance of honesty, loyality, integrity and obediance. Indeed, such values are more than useful: in many situations they are a matter of life and death. The first goal of police ethics can be to sensibilize line officers and upper-level administrators to the moral dimensions of their work. Typically police officers approach problems as legal, political, economic, institutional or personal. However, moral point of view is mostly neglected. Also, police ethics can teach them the language of morals. Basic moral terms „right“ and „wrong“ are not just legal terms and ther meaning needs to be carefully delineated and sharpened in contrast with everyday discourse. Besides this, teaching police ethics can help identify and appraise moral arguments and articulate principles for clear moral reasoning, Not only do the canons of formal and informal logic need to be stated and explained, but the fundamental principles of alternative ethical frameworks, as well. Finally, police ethics can unravel complex moral issues and locate an optimal solution grounded in an ethical theory and social analysis of the role of the police in a democratic society (Ellinston and Feldberg, 1985). It should also be noted that some authors express certain doubts in the ability to learn ethical behavior for the people that had not built ethical standards before joining the police (Champion and Rush, 2003).

7 The truth is it that there is still no general agreement whether the policing profession acquired attributes of a profession. In addition to it, generally speaking, despite the fact that the professionalism is considered essential characteristic nowadays, today it is generally difficult to talk about professions in the classical sense. Professions are socially more powerful, but changed.

8 Hegel's conclusion - the truth is a unity, applies here.

Police ethics is also necessary for effective police administration. A police chief must set and implement policy, taking into consideration the requirements of law, the traditions of his department, the changing attitudes of the community, the preferences and concerns of local politicians, and the dictates of his own conscience. Moral reasoning enables him to navigate among these complementary and sometimes conflicting principles, to identify the fundamental values at stake, and to assess the arguments put forth from different quarters. (Ellinston and Feldberg, 1985)

Police ethics is and should be a concern to the public at large. As taxpayers support the police and, indirectly all they do. Through their elected representatives they typically have a say in the policies of the police departments, and more directly as victims, violators, or suspect, they suffer the consequences of police conduct and misconduct. Understanding the moral issues in police work enables the public to support more enlightened policies, advocate reform measures persuasively and critique outdated or inefficient practicies more intelligently.

THE CODIFICATION OF PROFESSIONAL ETHICS

Some specific and particularly important professions have very elaborate moral codes[9] that regulate not only relations close to the profession and its conduct, i.e. relationships with its users, but also the behavior of its members even in private life, or outside the profession. Some professions have a long tradition of moral codes (medical doctors, lawyers, judges), while others are more recent, either because the profession itself emerged relatively late (journalists, psychologists, social workers), or because it was caused by the development of social relations (scientists, police officers).

In the last hundred years, especially in the early second half of the twentieth century, associations of engineers, accountants, financial planners, insurance agents, football coaches, journalists, social workers, psychologists and public relations managers, as well as organizations such as hospitals, department stores, chains, etc. composed and published their own codes of ethics. In the public statements they tried to articulate standards that (should) be characterized by their membership and operations, in connection with the provision of certain goods or services.[10] This was affected by various factors, primarily: technological progress, increased specialization, autonomy occupations, the growing corporatism, population growth and increasing urbanization and the like. "We are forced to trust people and organizations that can significantly threaten and injure us, and over which we are able to achieve relatively minor control. It is, as we learned, fragile confidence, easily and too often let down. The formation of associations of interest, or profession, whose members are bound by code of ethics, was a partial response to this social breakdown. These associations offer their audience, or consumers some assurance that the services which consumers depend on, will be provided in an appropriate manner, where the organization will not use the advantage of its position and vulnerability of the client "(Kleinig, 1996:234).

The primary purpose of a moral code is not the creation of morality (which is uncontrolled, spontaneous and relatively long process), but, first and foremost, in

9 Moral Code (Code) is "more or less systematized, and a relatively complete set of moral standards precisely formulated by one moral, determined, by rule, by a written act put together by elected or otherwise determined representatives of people who adopt respective morality." (Sociological lexicon, 1982:373)

10 It is emphasized that the moral of members of certain state professions (of the army, administrative workers, judges and others.) is stronger in relation to professional ethics in other areas of social work, for example, in the economy. See Popovic, 1982:178

its expression and precise formulation. Codes as records of moral norms contribute to the proper exercise (lege artis) of duties and powers of a profession, not only in terms of expertise, but also in relation to the validity criteria, which is the essence of moral behavior (Kobe, 1978:213.). The practice, in fact, showed that codified moral norms are stronger, i.e. exert stronger binding to the members of the profession, easier to apply and more completely put in practice those diffuse or scattered.

POLICE CODES OF ETHICS

In today's world we are witnessing universalization of morality, including professional ethics, as a result of highly technical and industrial orientation of social development. (Moor, 1970). Thanks to the progressive reorientation of managerial techniques, skills and attributes, some believe that the police or the services they provide can, in terms of ethical requirements involved, be treated as well as organizations from the world of business (Kingshott, 1996:163-166). In our opinion, that statement, however, given the specificity of the police work, cannot fully be accepted. Specifically, the police (besides the army) are the only state agency authorized for community use of force in the regulation of social conflicts, and to act in various types of "emergency" situations,[11] and this is its differentia specifica. In many modern societies they have (preventive and repressive) role that leads to numerous contradictions. Also, unlike most corporate organizations audience or target of the police is the widest public - the general public.[12]

Besides the general conditions that influence the creation of professional codes of ethics, Cox states that the emergence of the police code of ethics affects two specific problems faced by police officers:

1. The fact that they are authorized to use force or coercion, and
2. The authority to use lie and deception in performing their duties (during covert operations, test the suspect, etc.).

In addition, the need for specific standards of conduct is necessary due to the fact that police officers, historically, have been engaged in activities which many morally sensitive people would not approve of. (Cox, 1996:56)

Historically, the seeds (some elements) of the first police codes coincide with the emergence of the modern police. Those were, in fact, the instructions given to the members of the Metropolitan Police by their founder, Sir Robert Peel in 1829. A code of ethics of the police in the United States was created almost a hundred years later, in 1928, when the protégé of the founder of the movement for the formation of professional policing in America, Augusta Vollmer O. Wilson was appointed chief of police departments in Wichita, Kansas. Faced with numerous problems of the departments and imbued with the spirit of professionalism, Vollmer published code of departments, among many other projects, primarily in order to convince citizens of Wichita that largely criticized police existed and worked in their interest.

In 1937, the Federal Bureau of Investigation (FBI) announced the police Testament, printed it in poster format and distributed to police agencies across the United States. Police Research Association of California - PORAC adopted in 1955

11 Bitner particularly insists on this (Bittner, E. *The Functions of the Police in Modern Society*: Oelgeschlager, Gunn & Hain, Publishers, Cambridge, Massachusetts, 1921.)

12 Ethic codes of police organizations should be distinguished from cop`s code as an informal set of behavioral guidelines. It is a charter for action, a set of shared understandings, that, while not written or codified, are understood by all members of the precinct and limit the degree of variability of behavior permissible for individuals. More on cop`s codes in Punch,1983

the Code of Ethics, which was by the following year also adopted by the National Conference of Police Associations, and in 1957 by the prestigious body - the IACP - International Association of Chiefs of Police. Police code of ethics is accepted and still valid without modification in many U.S. police departments and overseas departments. [As for IACP it was partly changed in 1991, and now reads:

"My fundamental duty as a police officer is to serve the community, to protect lives and property, to protect the innocent from deception, the weak against oppression or intimidation, the peaceful from the riots and violence and to respect the constitutional rights of all people to freedom, equality and justice.

I will guide exemplary private life and act in a manner that does not discredit me and my agency, I will be brave in the event of danger and calm in the case of contempt and ridicule; I will develop self-control, and constantly bear in mind the welfare of others. Honest in thought and deed, in private life and in the service, I will give an example in respect of my country's laws and regulations of my department. All items of a confidential nature that I see and hear and all that is entrusted to me as a police officer, I will keep forever secret unless disclosure is necessary to carry out my duties.

I will never act intrusive or allow personal feelings affect my decisions, prejudices, political beliefs, aspirations, animosities or friendship. Without compromise to crime and by prosecuting criminals relentlessly, I will apply the law courteously and appropriate, without fear or favor, malice or hatred, never using unnecessary force or violence and never accepting gratuities.

I understand my official badge as a symbol of public faith and accept it as a public trust, and I will wear it as long as I comply with ethical police service. I will never succumb to corruption, nor receive bribes and condemn such acts of other officers. I will cooperate with all agencies established by law and their representatives in the administration of justice. I know that I am only responsible for the quality of my professional work, and I will use every available opportunity to expand and improve my knowledge and competence." (Kleinig, 1996:236)

In addition to this, in the U.S. law enforcement agencies there are countless ethical codes and the similar documents that are called variously "statement of values", "principles of conduct", "canons of professional responsibility," "standards of practice," the oath, maxims, declarations, etc.[13]

Over the time a number of other countries have also developed their own codes of ethics. In addition to the mentioned IACP dominated by Americans, primarily due to the larger and heavier tasks of police - combating transnational crime in particular, a number of other international initiatives for the formulation of police code of ethics appeared. One of the most important is the Police Code of Conduct adopted by the United Nations in 1979, which served as a basis for drawing up of police codes in several countries. About the same time the European Council formulated the Declaration on the Police with the Resolution[14] that included police deontology, the statute and the statute of police functions and police during the war and other emergencies. Kleinig states that parts of this Declaration are criticized and that in the Member States they have never been accepted to the expected extent. Authors are primarily criticized that they avoided honor as a moral category, and paid little attention to police abuses and the like.[15]

13 Kleinig believes that the codes and standards of conduct are more regulatory (actually regulate the specific behavior), and statements and oaths are more aspirational (express ideals and aspirations - aspirations) (Kleinig, 1996:238). In addition to this, statements of values are broader than purely ethical statements, and both are considerably more general than the behavior or codes of practice. An interested reader can find the declaration of several U.S. police departments in Leonard, VA, Moore, WH, 1993.

14 The text of the Declaration is available in Bolle, P.H, "Deontology, and the statute of Police", Izbor, No. 3 / 1980, pp. 176-184

15 A. Makar, Deontology and ethics in the work of Ministry of Internal Affairs – A contribution to considerating and solving problems, Manual, br.3/83, p. 230

The main objective of this effort was to improve the status, organization and professionalization of the police and, also, security and stability of the police officers. This contributed to the trend of opening the police socialization process safety functions to the public[16].

In its essence, these codes represent public commitments by the police that in the course of their work and services to the citizens they will keep certain standards. One of the open issues of ethical codes, due to their quasi-contractual nature, is whether they are binding to all members of the profession notwithstanding if they are members of appropriate professional associations and organizations and whether they have personally signed a "statement of acceptance of values" or not. It seems that they primarily have intention to reflect and express, not to create a public commitment on the performance of the profession. Therefore they are inseparable from the professional honor and in the moral sense they are generally binding for all its members. In terms of public accountability, it is not only important what members of the profession promise and what they are committed to, but also what society really and reasonably expects of members of a profession.

Interiorization of provisions of police ethical codes (the acceptance of their standards as their own, autonomous, not heteronymous) is a process in which training and education of police officers have significant roles. Cox said that many authors point out that the part of the training related to ethical values is deficient in many police academies, despite general agreement on its great importance. (Cox, 1996:56)

Kleinig in his analysis of the purposes and functions of the police code of ethics finds:

1. External functions

- **Trust.** People in meeting their needs, i.e. providing goods and services, sometimes significantly depend on others. This provision is sometimes linked with the risk and sacrifice of privacy, certain resources and so on, so the need for reliability is quite understandable. In the case of the police this requirement is even more pronounced because of huge social power transferred to it. This need is further emphasized by the mass media stories about police abuse and corruption.
- **Improvement of public relations (PR).** Organizations and associations, including the police, often see the publication of a code of ethics as a means of improving their public image. Also it is associated with holding the status of profession, which is very important for self-evaluation, and acceptance by the company of certain occupations.
- **Limitation of Liability.** To the extent that sets certain standards in the performance of police duties, police code of ethics restricts unreasonable demands on the police and represents a fence of responsibilities for failures for which the police could possibly be charged. Moreover, if the code is associated with the appropriate mechanisms for monitoring and enforcement, it reduces the need for external control of police work.

2. The inner (internal) functions

- **The personal standard.** From the standpoint of employee, a code of ethics is a minimum commitment - a standard of conduct that service users can ask for, and which the police must follow.
- **The organizational ethos.** Codes of ethics do not make individual statements, but they are product of the organization or association, which should unite the

16 A. Makar, Ibid, p. 228

producers of services through the creation and improvement of an organizational ethos. Group relationships and organizational cohesion require a certain degree of shared cultural values, i.e. appropriate ethos which contributes to the creation of a code of ethics.[17]

- **Organizational rapper.** Codes that are primarily dedicated to creating and promoting organizational ethos are usually aspirational, that is they proclaim ideals more than they establish mandatory standards. But they have a regulatory function - serve as a benchmark, and therefore according to them a moral minimum is determined. In the function of rappers they can also serve to maintain quality of the organization so that members who behave unethically are excluded; they can be used as a means of political control over the police, as a source of internal discord, but also the means of their resolution.
- **A tool for learning.** Among other things, ethical codes are used for ethics training in medical and law schools, but also in the police academies. Mainly because of legal, rather than ethical approach, these codes are used as a tutorial, primarily, to keep professionals out of trouble, and not to make them more responsive to the moral sense.

Ethical codes of police organizations do not necessarily need to have all of these functions. And even when they have them all, the significance of each of them can be more or less pronounced. In addition, it should be noted that all these functions are not always compatible code, but under certain circumstances cannot contradict one another.

DILEMMAS RELATED TO POLICE CODES OF ETHICS

Creating and using police codes of ethics can be linked with specific problems which can be overcome by appropriate measures. Kleinig (Kleinig, 1996:249-253) tried to create, as he admits somewhat artificial, classification of these problems. According to him, they are split into dependent (contingent) and endemic.

Contingency issues according to him are:

- **Applicability**. In some codes there is a need for sanctioning unacceptable behaviors and establishing a procedure for their imposition.[18] The problem is that, as we have already pointed out, members of police organizations (similar to other professions, for example medical doctors, but also in groups with strong ideological cohesion) do not support their application. There is a pervasive lack of will and willingness to report violations or to testify against violators.[19] Therefore, the code that causes the strong loyalty to the group also promotes ineffectiveness.
- **Cynicism**. Some police codes of ethics either due to their provisions which impose unreasonable and unnecessary requirements to the police, either because of the way they are introduced (the creation of top management was made without any consultation and dialogue within the organization), or even because of the moral hypocrisy of the leadership ("do as I say, not as I do") can result in police cynicism.[20]

17 This, however, in the case of some organizations with strong organizational ethos, and the police in particular, can lead to a conflict of loyalty to colleagues - members of the same organization and loyalty to service users (citizens). Therefore, there are rare cases when a police officer is to testify against a colleague who has violated a code of ethics or committed other abuse in the service.

18 In some codes, sanctions and procedures relating to them are contained in a (separate) file.

19 This is consistent with solidarity as an element of the police subculture, which, as stated by Sckolnik, Reiner and other writers, is a consequence of authority and risk. V. Reiner. The Politics of Police, pp. 85-111

20 Cynicism is also one of the characteristics of the police (sub) culture.

- **Risk of minimalism.** Although aspirational codes tend to require self-sacrificing dedication to the ideal of service, the regulatory ones can completely rule out the sacrifice of professional life. Practitioners may feel that as long as they act properly under the terms of such code, they do all they are expected to. Police officers are not encouraged to give more than what is absolutely necessary.

Endemic problems faced by the codes of ethics are more deeply rooted and are a permanent danger:

- **Emphasis on behavior.** A characteristic of a number of ethical codes is to focus on results. Their emphasis is on action, the specific treatment of policeman (how), not on their attitudes and moral virtue (why - the motive of action).[21] The emphasis on the ethical code of behavior is understandable, given their purpose. Finally the public interest is to meet certain needs, i.e. services and some general statements that relate to the character. However, the question of why someone is doing something is the central moral importance in the overall efforts for the professionalization of police calls.
- **Promotion of inauthenticity.** In moral action it is important that one manages its behavior in one direction due to certain reasons in accordance with moral values adopted. It is his own decision. Codes, in contrast, encourage externalization of the behavior that is not an authentic expression of subjectivity of the person who behaves in this way.
- **The risk of ossification.** Current codes typically do not exhaust all legitimate moral options, and sometimes even prescribe illegitimate. Even though the provisions of the Code reflect a widely accepted opinion, there is no guarantee that they are correct. So it is better to understand them as recommendations, not as absolute commandments that always and everywhere apply no matter what. Many formulations of the codes are just absolute ("I will never let ...," I will always ... "etc.). With so many different and unpredictable situations that social life in this case imposes, a discretionary assessment not to comply with some (concrete-detail) regulation of the Code may be commendable, or at least open to discussion. It is this absolute diction of the code that reduces its value in the eyes of police officers.
- **Failure to identify priorities.** Although codes sometimes give precise instructions to be followed in certain situations, and assist police officers with no work experience, they are often of little help in cases where assistance is most needed, i.e. where it is difficult to measure and compare the individual and social interests and make the correct discretionary review. The officer in this case may decide to enforce the law or not to enforce it (for example, do not punish a colleague for smaller traffic violation). In addition, law can be applied in many different ways. Codes only list the goals and standards without the designation of priority or code of practice when the provisions of the Code are in conflict. They fail to give warning of priorities, exceptions, and situational factors. This is understandable, given the nature and function of codes. If they were more detailed and focused on the specific problems they would cause more controversy within the police and the public, which would be counterproductive.

The trouble with some police codes is that they turn into platitudes, their imprecision of standards and guidelines of conduct of its members. They promote and support abstract values such as honesty, integrity, decency, fairness, etc., without closer definition of how they are expressed and applied in specific activities of ev-

21 The opposite of Kant's ethics of pure duty.

eryday police work.[22] Myron notes that many authors argued that policing has so many "gray areas" that providing clear and unequivocal ethical guidelines is simply impossible. He also believes that there is a number of police behaviors that are absolutely unethical, such as threats and brutal violation of human and civil rights, planting evidence, the retroactive provision of a search warrant, extortion of confession, lying in official reports, the courts and in consulting the police by the competent authorities, stating that no offender is that important that the police should violate the Constitution or laws (Cox, 1996:58).

Perhaps having these and similar problems in mind, Kingshott believes that the basic problem of the police service is not in the adoption of written codes of ethics that by themselves prevent unethical behavior, but in the implementation of an effective system in handling complaints and encouraging disclosure and indications of abuse within the police organization, no matter how opposite it could be to the police solidarity. The officer - an individual - will have the power to alter his behavior and raise standards, so that unethical behavior will no longer be accepted euphemistically as part of the police culture. "This behavior will no longer be considered acceptable or unimportant. Code of Ethics will mean little to those who already comply with it, but the adoption of appropriate procedures to ensure against improper practices and to comply with the rules of minorities" (Kingshott, 1996:165-166).

Too often, codes of ethics are static, the outcomes, i.e. the end products (fixed determinants) rather than active expressions of community's self-awareness (organizations) within a broader society. The existence of these problems regarding police codes of ethics does not mean their redundancy and/or needlessness. Moreover, many of them can be reduced and even completely eliminated, and the alternative (no codes) would be also problematic. "Necessity code of ethics comes from at least two reasons. First of all, there is a constant interest in the police work done at the level of the profession. And secondly, particularly from the countries where criticism of abuses of police authority comes from, the demands for improving police standards come as well, which should be especially respected, because the internal abuse leads to the loss of public trust" (Krivokapic, Krstic, 1995:374).

CONCLUSION

Professional codes of ethics, including the police ones, carry certain values, but also danger. They remind us of the fact that the performance of public office involves a certain degree of social cooperation, shared values and experiences, and that it must be done so as to meet the needs of people and spread an atmosphere of trust. At the same time, these codes, like social barometers, register social pressure oscillations and reflect the major concerns and preoccupations of society, or association which provides certain types of services. Setting the Code is one of the means by which manufacturers of certain types of services understand what they are actually responsible for, gain a deeper insight into various aspects of their organization, and enable them to focus their efforts and resources in that direction. It is also an opportunity for the community to question whether its expectations from the police are reasonable and realistic. Any such code should be treated primarily as a hypothesis that individuals and organizations follow and apply, i.e. not as a mechanical application of codified rules, but as a set of management principles

22 It should be noted that there are a lot of detail codes that represent a solid landmark for proper, i.e. moral acting of a practitioner in a pluralistic and increasingly complex operating environment.

to creatively apply and adapt the changed social environment and unpredictable situations imposed by life itself. Formulated rules should only help a police officer who understands and accepts them, applies them by following them, and in specific cases brings an authentic decision. Loyalty and devotion to standards related to the objectives of police profession are not necessarily inconsistent with the critical involvement of police officers in their articulation in specific circumstances. Accepting the code of ethics, officers express their willingness to enter the culture of their profession which is defined by certain goals and standards. What justifies this code is the importance which the ethos or the culture has for duties of the police service. The professional code of ethics is also an important instrument in preventing human rights violations by police officers. In terms of relations of the police and the relationship of the police organization and the public it serves, it is essential that there is a framework of mutual understanding and trust.[23]

Bearing in mind all the shortcomings and potential problems discussed, there is no doubt that the rules containing a code of ethics of the police have a raison d'ȅtre, as compared to the police as an organization that provides moral force and police officers whose actions are directed in the case of moral dilemmas, but also in relation to the general public as users of police services who know what can be expected. Given the crucial moments in which our society and the police exist, one should consider creating a police code of ethics that would include regulations based on humanitarian and moral obligations necessary for the performance of police activities. It would certainly be our contribution to the escape of our society from the crisis, particularly the crisis of moral, and catching up with modern, developed and democratic societies and their highly professionalized police.

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23 One of the important issues of the police professional ethics is the issue of ability and moral character of police top management (Krivokapic, Krstic, 1995:376). About the ethical challenges that are put in front of police management, see in more detail (Kleinig,1996:256-279)

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UDC 343.132

COLD CASES INVESTIGATION: EVALUATION MODEL AND STRATEGIES

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Abstract: Investigation of unsolved homicide cases is one of the most interesting and exciting forms/tasks of criminal investigation. We talk about a »cold case« when all investigative leads have been exhausted and investigators do not know where else to turn for information or evidence.Usually, after some time, these cases and their files end in the department's archives and are not touched anymore (unless some unexpected information comes around). There is sometimes simply not enough time to be dedicated to such cases, which is much needed for current investigations.

However, the question is: Should we really give up all hopes, stop investigation and never find the killer, or perhaps try new strategies and solve the case? If it is the latter, what kind of strategies and who should work on them? Should a special »cold case« squad be organized within criminal investigation department? Yet another question is then: Can all cases be solved? The answer: In principle (theory) yes, but in practice not. How do we know then, which cases to investigate and which not? There is no absolute answer to this, but there are ways to evaluate the possibilities for successful investigation of cold cases and there are follow up strategies suggested.

In our paper we will present the model which was developed at Henry C. Lee Institute of Forensic Science at the University of New Haven, Connecticut, and discuss experiences of »cold case squad« within Department of Criminal Investigation, General Police Directorate, Ministry of the Interior, the Republic of Slovenia.

INTRODUCTION

Why this topic?

Investigation of usolved homicide cases is one of the most exciting and demanding forms of criminal investigation. It deals with finding any kind of information or evidence that would lead to an unkonwn suspect or to a conviction of a known suspect. It is a mystery solving activity that needs a lot of creativity, knowledge, persistence and luck to be successful. The topic is often covered in detective novels, books or movies and attracs a lot of public interest, yet in professional literature it is not sufficiently covered. Therefore, more research and study is needed in this field of criminal investigation/criminalistics to be more successful in organization and investigation of cold cases.

Unsolved homicide cases have become quite a serious problem in the US-Awhere, since 1980 there have been almost 185,000 unsolved homicides (Adcock and Stein, p. XIII). It is a problem, however, of other countries as well. In Slovenia, for example, the problem is not as serious; however, we also have unsolved homicide cases that need further attention of investigators. We have started a new approach to this problem which we would like to present and evaluate in this paper.

Goals of the paper

In our paper we will briefly present and discuss the situation and problems around investigation of unsolved homicide cases in general, as well as presenta new approach and organization of cold cases investigation in Slovenia and in the United States of America. We will try to evaluate the effectivness of unsolved homicide investigation in Slovenia, present the evaluation model and strategies of investigation in the USA and give some new ideas about the future. Our main goal is to stimulate more research and scientific attention to this problem and open discussion about possible solutions. This is just an invitation to more writing about cold cases investigation.

Definition of a »cold case«

What is actually a » cold case«? In general, we could say that a cold case is an unsolved criminal case, a case where the suspect is not known at all or where there is not enough evidence for the police or a prosecutor to continue their investigation or prosecution. Usually the expression is used in relation to unsolved homicide cases but it can also be used for other unsolved serious criminal offences. A case becomes cold »when all investigative leads have been exhausted and we know not where to turn« (Adcock and Steiin, p. 3). When there are no leads or clues to continue the investigation, detectives and investigators have to deal with »hot« cases and have no time to bother with the old ones. After some time the interest for the case decreases and so do the possibilities to find new information and evidence. The file is placed in the archives and nobody else bothers with it. Unless there is new information or evidence, it stays unsolved forever.

However, there are also other possibilities for a case to become »cold«. For example, misinterpretation of a homicide case as a suicide, accident or natural death, etc. or when investigators do not even know that a crime has actually been committed. Special problems arise sometimes with missing person cases when it is difficult to find clues and evidence for a homicide, so it is classified just as a missing person case and no investigation is carried on.

HOW TO INVESTIGATE COLD CASES?

General about organization

The basic problem with the investigation of cold cases is usually that there are no »hot« information, leads, clues or evidence and no time for additional investigation due to the lack of time. Detectives and investigators must respond to new homicide cases and have no time to work on older ones. If the case is not very interesting or attractive for the media (because of a victim or circumstances of the case) or if there is not much chance to solve the case (no information), or if it is easier for it to be simply called a suicide, an accident or just a missing person case, then nobody in the police bothers with it anymore. With time even detectives in the homicide department forget about it or move to other positions while new investigators do not even get to know the old unsolved cases.

There is, of course, a possibility that relatives of the victim continue pressing the police to do something to solve the case, hire private detectives to do that or even ask psychics to help them find the body of a missing person. This can sometimes help to solve the case.

Cold case squads

The other possibility is to stimulate investigation of unsolved homicides within police department by different means: authorize one or two detectives from homicide department to regulary check old cases and write reports about them; to supervize the work on unsolved cases; to invite retired detectives to work on such cases; to put more information to the media and ask for help and information; to organize a special squad to investigate cold cases.

Organization of special cold cases squad seems very promissing. There are, however, many questions and problems regarding such solution: who should work in this group? How should it be financed, organized and supervized? Is there enough political will to have such a group within the police? How to measure its effectivness? Experiences in some countries (also in Slovenia) have shown promissing results and we will also try to present them in this paper.

SITUATION IN SLOVENIA

General about the situation

In Slovenia, there are on average between 20 to 40 homicide cases per year. In 2010, there were 10 homicide cases (in 2009 - 13) and all of them were solved, thus the clearance rate was 100% (Kolenc i dr.). There were also 31 attempted homicides (in 2009 – 38) and all of them were cleared. So, in the last two years there were no homicide cold cases. Yet, since the independence of Slovenia in 1991 around 30 homicide cases still remain unsolved. These are the »cold cases«.

On the other hand, the Slovenian police also deal with 200–400 cases of missing persons per year. According to some foreign research 3 – 5% of missing persons are actually homicide victims. In Slovenia, the police assume that there are around five missing persons cases per year that might be actually a homicide case. Since 1957 there are still around 200 unsolved missing persons cases (Predlog, p. 2)

Working group and the results

A need for a specialized unit for investigation of unsolved homicide and missing persons cases has been first noted in the working plan of the police for 2003 and then again for 2005. In 2005 a project »Unsolved homicides and cases of missing persons« has been prepared (Projekt). In 2007 a »Working group for investigation of most serious homicide cases and missing persons« was also established by the Director General of the Police and its mandate was for two years, untill the end of 2009 (Sklep). In its final report the group proposed that a special group for unsolved homicide cases and missing people's cases be established but due to some administrative barriers, the group has not been astablished yet. However, Director General approved the working group to continue its work until further decisions.

The group consists of five persons: head of the group (Darko Delakorda), his deputy and three members (two specialists for homicides investigation and an analyst). Their task is to lead, harmonize, plan and execute activities in the field of unsolved homicide and missing people's cases. In last four years they have solved three homicide cold cases and helped with many hot cases investigation. Organizationaly, the group is set within the Criminal Police Directorate.

In four years of its existence the group solved two very complicated cold homicide cases in the town of Litija and the perpetrators have been sentenced in 2009 to long prison sentences. One of such cases was a homicide case of a girl who was reported missing on September 15, 2002. Her body was later found in the Sava River but the case was considered a suicide. Later, the working group discovered that she was tortured and murdered, and found three perpetrators who committed the offence. The group also discovered another homicide that was committed by three offenders. It was a case of a young man who was reported missing by his parents after one year of his dissapearance.

Beside this, the group helped clear several homicide cases to the point that suspects were found, but there was not enough evidence for prosecution. The group also helped with the investigation of several complicated hot homicide cases and was quite succesfull (Delakorda, 2012).

Their working methods are the following: first, the group gets the whole file of unsolved homicide case and study and analyze it in details. All existing material evidence is checked and re-checked at the National Forensic Laboratory. Then the interviews witht the detectives and police officers who were involved in the case are conducted. After that the work plan is made and discussed with the State prosecution. Finally, the team is organized in conection with local criminal investigation units and starts with work (Delakorda, 2012).

EVALUATION MODEL AND STRATEGIES (AMERICAN PERSPECTIVE) (ADCOCK AND STEIN)

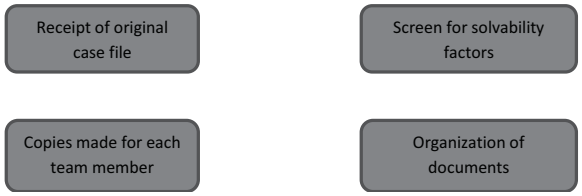
General

The methodology of investigation that the group for cold cases in Slovenia has been using in its work is in some ways similar to the strategies that are suggested and presented in the recent book »Cold Cases: An Evaluation Model with Follow-up Strategies for Investigators« (2011, Adcock and Stein). The book is the result of the work of Henry C. Lee Institut of Forensic Science at the University New Haven, Conn. USA, cold case training for law enforcement and Adcock and Stein introduction of forensic science graduate students to serve as unpaid cold case evaluators in 2006 (Adcock and Stein). The main difference in comparison with our model is that they are using civil persons (graduate students) and not police officers for case evaluation and strategy building.

Their evaluation model is devided in four phases which we will briefly present.

Phase one

Phase one consists of :



1. Receipt of the original case file; it is very important to receive the original case file in its entirety. Sometimes it is necessary to approach the original investigators to get all documents and information;
2. Screening for solvability factors; it is important to see if the case has a possibilty to be solved; are there circumstances to allow for potentional new information and new evidence? For this purpose the propose nine primary solvability factors that influence the resolution of the case, which are:

Solvability and prioritization factors (Gannon in Adcock and Stein, p.33)

No.	Solvability Factor	If yes, Add	if No, Add
1.	Has the death been ruled a homicide?	+1	-9
2.	Can the crime scene be located today?	+1	-9
3.	Has the victim been identified?	+5	-3
4.	Is there significant physical evidence ti find suspect?	+5	0
5.	Is the evidence still preserved and available?	+1	-5
6.	Can any evidence be reprocessed to yield new clues?	+5	0
7.	Are the critical witnesses still available?	+7	0
8.	Are there leads documented in the last 6 months?	+2	0
9.	Are there named suspects in the file?	+5	0

3. Copies made for each team member; a copy of all documents of case file must be made for each team member so that he/she can get familiar with all information about the case and to analyse the situation from his/her own point of view and expertise.
4. Organization of documents to different categories; all documents from the case file must be organized and categorizated by each team member. The most common categories are: police reports, official documents, information about the victim, statements, physical evidence, records, handwritten notes, media reports, etc.

Phase two

During the phase two there are regular group discussions about the evidence, victimology, witnesses and timeline. There should be regular meetings of team members twice a week lasting 2-3 hours each.

Regular Group Discussions: (Adcock and Stein)

At these meetings team members present and discuss different points of view and expertise the physical evidence that is available and possibilities to get further forensic examination and results; they study victims and their life styles and cir-

cumstances of victimization; it is very important to check all witnesses, their history and possible new information they could provide; a timeline must also be constructed about events before, during and after the offence. For these purposes computer programs such as the i2 Analyst's Notebook can be used.

Phase three

Regular group discussion continue also through phase three and touch relationships, suspectology, logic tree and interview strategies.

Regular Group Discussions: (Adcock and Stein)

In this phase, it is very important to first construct relationship charts. They show relationships of victim, suspects, witnesses and other persons who might be important for the case. There might be new ideas, new relationships, new persons and new information found in this analysis.

Then, the logistic trees must be constructed. What are logistic trees? In American perception these are different scenarios of the crime, while at the Continent we talk about versions or hypotheses about golden questions of criminalistics. Older versions have to be analysed and criticaly evaluated and new ones formulated.

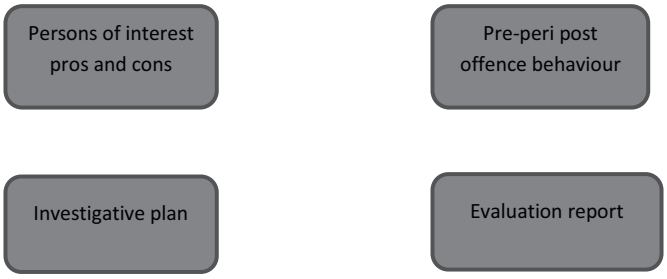
Suspects must also be analysed (just as victims have been) and new relationships and information gathered.

At the end of this phase the creation of interview strategies must be made. As Adcock and Stein point out, »the creation of well organized, comprehensive, and individualized interview strategies is absolutely essential« (p. 73).

Phase four

This is the final phase of the evaluation model where all previously created charts and documents are compiled into a cumulative evaluation report to gude the follow up investigation« (Adcock and Stein, p.75). In this phase, persons of interest are discussed (pros and cons), pre-peri and post offence behavior is analysed, investigative plan is made and evaluation report is finalized.

First, all persons who might be suspects should be identified. This includes possible motives, oportunity, physical location at the time of the crime, connection to the victim, incriminated actions following the crime, means available to the individual, etc. For each suspected person a large sheet of paper should be used and put on a wall for better view. Photographs, sketches, links could be added and a group discussion follows.What are the elements that indicate that a person could be a perpetrator and what are those that put a doubt that he is a suspect?



In the second phase the behaviour of each suspect before, during and after perpetration of crime is analyzed. There might be differences in behaviour that were not known at the time of first investigation and could be indicative of guilt.

Next, a comprehensive investigative plan should be developed. It can be broken down to the same cathegories as in the analyses of the case file: records and documents, physical evidence, interviews, use of media, etc.

Last phase is a cumulative evaluation report. It should contain all documents that were analysed, diagrams, skeches, links, versions, suggestions and opinions. The report is then discussed with people from the investigative agency that will continue the investigation of the case. With this the work of the evaluation group is completed.

CONCLUSIONS

»Every contact leaves a trace« is a famous principle set by Edmond Locard. Every event, also criminal offence, leaves traces and information and in principle can be detected and reconstructed.There are no perfect crimes which are »unreacheble as perpetuum mobile«, there are only unperfect investigators« (Aleksić, p. 4). So, in principle, all homicide cases are »solvable« if there is enough work, intelligence, intuition and sometimes good luck.

We know that in reality some homicides stay undetected, that offenders are not found or that there is not enough evidence for prosecution or conviction. There are many reasons for this, one among them is also not enough knowledge on how to organize and conduct the investigation of cold cases. In this paper we tried to stimulate more interest to study and research methods of investigation of cold cases and to suggest some of them. Beside the classical criminal investigation methods and teams, new forms of organization can be introduced, such as special cold cases groups within criminal investigation department (as we have in Slovenia). Other examples could include special groups of graduate students (specialy Ph.D. students of criminal investigation, investigative psychology and forensic science) at faculties of criminal justice or law faculties, possibilities to use private detectives and their skills (Eriksen), media, psychics, etc. We have proposed the use of psychics to find missing persons – not only by victim's relatives but also by police – quite some time ago (Maver, 1983, 2004). Their help might be crucial sometimes – as demonstrated by one of them in Slovenia who solved more than 20 cases of missing persons and described them in a book (Milka Petrovec Koprivica).

Homicide cases that are unsolved at first have potential to be successfuly investigated after some time. There are new scientific and technological discoveries that can help find evidence which were not avaible in early investigation. People

change and those who were not willing to talk before (fear, close relationship with the offender etc.) might provide information – if only we ask them. Perpetrators also change and confess the crime or brag about the murder to others (like in the case in Litija). Last but not least, new team of investigators can be more objective in evaluation of information and evidence and avoid »observer effects« and »examiner bias« (Chisum and Turvey) which can lead to new discoveries. There are many ways to gather new information or evidence; we just have to use them.

On May 16, 1986 a young girl Maja Vojvoda dissapeared in Ljubljana when she went from the appartment to pick up her little brother who was playing in a playground near the building, and was never seen again. All investigation has so far been in vain. Can we still find her after so many years? Can we find the killer? I believe we can! But we must never quit. Cold cases group is the possibility that she will not be forgotten.

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OBLAST I

PRAVNA DRŽAVA, POLICIJA I SUZBIJANJE KRIMINALA

UDC 342.515/.517(73)

THE POSITION OF PRESIDENT IN THE PRESIDENTIAL SYSTEM OF THE US AND HIS POWERS IN THE SPHERE OF SECURITY AND COMBATING TERRORISM[1]

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Abstract: The paper first analyzes the way in which the US president is elected, the duration of his term of office, as well as the issues of his political and legal accountability. Special attention has been given to the analysis of presidential powers, defined by the constitution and law, focusing in particular on the changes in their nature and scope following the 9/11 terrorist attacks against the US. The paper points out to a latent tendency of disturbing the balance between the legislative and executive power to the detriment of the former, especially with regard to powers pertaining to combating terrorism, implying that this practice actually introduced the state of emergency in the US through the back door.

Key words: preside, the US presidential system, term of office, constitutional powers.

The system of government in the United States of America is based on the idea of separation of powers. Powers are divided among three branches: legislative, executive and judicial. The division of power is not absolute; the three branches are interconnected by a network of mutual competencies that ensure the balance of power and the unity of the government system.

Executive power is monocephal and entirely vested upon the President of the United States of America. According to Burdeau, originality of American democracy, viewed from the aspect of the constitutional formula, lies in the institution of the president.[2] The creators of the Constitution conceived the president as a fusion of the status and dignity of a king and the prime minister.[3] The president is at the same time the head of state, chief executive, foreign minister, and commander-in-chief of armed forces.

PRESIDENTIAL ELECTION

According to the constitution, the election of the president does not result directly from the will of the voters, but indirectly, by selecting the delegates who elect the president. The reasons for this are manifold. The first reason is the commitment to a stricter model of the division of power which implies independent executive power. The second reason is the desire to leave the final decision on the election of the president to the delegates, who are to serve as a filter or a barrier and to prevent the choice of a person for whom there is reasonable doubt that he would not perform his duties in the spirit of the constitution. The third important reason

1 This paper is the result of the realisation of the Scientific Research Project entitled „Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations". The Project is financed by the Ministry of Science and Technological Development of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011-2014). The leadr of the project is Associate Proffesor Saša Mijalković, PhD.

2 Quoted in: Р. Марковић, *Извршна власт, Београд 1980*, p. 215.

3 Ibid.

to leave the final decision on the election of the president to the Electoral College derives from striving to achieve a double compromise: firstly, with the advocates of the idea that the president should be elected by Congress, and secondly, with the advocates of the confederate orientation, who do not want the president to be elected either by the citizens or by Congress, as an organ of the federal state, because both of the solutions were federalist.

A compromise has therefore been found in this solution: the president is not elected by the citizens or Congress, but by the Electoral College, which is similar to Congress. At that, the citizens participate in the election of the president by choosing the delegates for the College. The adopted solution, just like the one regarding the bicameral structure of Congress, presents part of the 'great compromise' between the federate and confederate orientations. According to this third, middle-ground solution, the president is elected by neither Congress nor citizens, as demanded by the advocates of the federal orientation, nor by state representatives, as advocated by the representatives of the confederate orientation. The construction of the Electoral College shows a significant concession to conservative fears that oppose the idea of making the choice of the president entirely democratic by leaving it to the citizens, as well as a concession to the advocates of the idea that the president should be elected by Congress. The president is thus not elected by Congress, but by an organ that is very similar to it, which presents a noticeable confederate element. In the beginning, before the parties gained some strength, the Electoral College was independent in its choice of the president. Today, the Electoral College is largely limited by views of parties and the citizens.

LENGTH OF THE PRESIDENTIAL TERM OF OFFICE

Following a long discussion regarding the optimal duration of the term, the Constitutional Convention declined the proposals for the term of office of 20, 15, 11, 8, 7 or 6 years and adopted the duration of four years, which was the shortest proposed term of office at the time. The convention changed its opinion several times on whether to allow re-election of the president. The final solution, which combines a commitment to a shorter term of office with the possibility of unlimited re-election should be seen as a certain compromise between the supporters of longer and shorter terms of office.[4] The number of re-elections was limited only in 1951 by Amendment no. 21. Supporters of the shorter term (who feared a powerful president and possibly a strong union) were pleased, but the supporters of the longer term were also given a concession, because the term of office could be extended by unlimited successive re-election. The first President, George Washington, refused a third nomination, so that immediately after the adoption of the Constitution a custom was established that the president could not run a third time. This custom was observed until the time of F. Roosevelt, who, due to the outbreak of the Second World War, was re-elected for the third and the fourth time. In order to prevent repetition of this precedent, Amendment no. 21 was adopted in 1951. In practice, presidents are re-elected as a rule, so that the term of office of one president usually lasts for eight years, which is in keeping with the views of those who support the longer term.

4 R. Dahl on the Constituional Convention quoted in: A. Lijphart (editor): *Parlamentarna ili predsednička vlast*, Zagreb 1998, p. 56

POLITICAL AND CRIMINAL ACCOUNTABILITY OF THE PRESIDENT

Considering the fact that according to the Constitution executive power is vested in the president, the president shall determine the policy independently. Congress has no right to interfere in the policy, while the secretaries in charge of policy implementation are personally responsible to the president. During his term of office, the president is not politically accountable to Congress, which is the reason why there is no institution of vote for the confidence in the government in the US. However, due to the fact that the elections for the House of Representatives are held biannually, which means in the midst of the presidential term (mid-term elections), they at the same time represent an expression of opinion regarding the policy of the president's party and indirectly the president himself. If the president's party loses the elections for the House of Representatives, the president can find himself in a situation where his program cannot obtain the legal form. During the term of office, the president is only subject to criminal liability and may be subject to a proceeding before Congress known as impeachment.

The same situation existed earlier, before the introduction of political responsibility in England. Although impeachment involves a difficult and lasting procedure, it bears a certain potential to evolve towards parliamentary accountability, which is what happened in England. This potential stems from the fact that there is a rather broad and vague transitional zone between purely criminal and purely political accountability. The first unsuccessful attempt at impeachment against President Johnson largely determined the origin of *the Constitutional Convention's restrictive understanding of criminal liability of the president*. In addition, the two-party system in which the president's party almost invariably has at least one third of members in the houses of Congress, presents a significant obstacle that hinder the evolution of criminal liability of the president into his political accountability.

Legal limits for the president – Given the shortness of the US Constitution, a large number of constitutional issues are not specifically regulated, which gives Congress and the Supreme Court ample room for legislative and judicial extension. History of constitutional and political relation in the United States of America shows that the legislative extension, on a number of occasions, took place in the circumstances of tense relations with the president, in which Congress tried to use its legislative powers to restrict the power of the president. The presidents responded to such attempts using veto and the existence of at least one third of members of the president's party in one of the houses of Congress was the fact that ensured the efficiency of the veto, i.e. the impossibility of its rejection by a two-third majority vote. Given the two-party system, the party from which the president is elected almost always has a third of votes in at least one of the houses. The situation would be significantly different if the system evolved towards a multi-party one. In such a system, it would be rather common for the president's party not to have a third of seats in the houses of Congress, which would significantly enhance the chances for passing laws aimed at weakening the president's position.

Generally speaking, it could be stated that Congress used to be the dominant constitutional factor until the Great Depression and the election of F. Roosevelt in 1933. One of the causes of the president's weakness could be seen in the absence of administrative infrastructure[5]. Roosevelt's promotion of the New Deal led to a strong legislative initiative of the president and the creation of economic and social

5 J. Hartman, *Politički sustavi Velike Britanije, SAD i Francuske*, Zagreb, Politička kultura, 2006, p. 95

bureaucracy. Earlier liberalism was drastically changed and imbued with the principle of intervention. This changed role of the president was institutionalized in 1939 with the establishment of the Executive Office of the President, which means setting up a special form of bureaucracy subordinated exclusively to the president.

World War Two and the Cold War further strengthened the position of the president. The National Security Council was founded as a body for harmonizing and managing foreign affairs and security policy. During the Cold War era, many decisions were left to the president and the military-security establishment. The need for secrecy and the nuclear war threat meant that numerous questions reached neither Congress nor the public. Those circumstances rather contributed to the United States' engagement in the war against Vietnam in 1964, as well as to many public and covert operations of assisting putschists and dictators in the Third World. This situation was described by A. Schlesinger in 1973 as the emergence of imperial presidency which outstrips control of both Congress and the public.

Early 1970s saw the reaction of Congress to the war in Vietnam and the ensuing situation. Congress passed the War Power Resolution (1973) which envisaged the necessity of congressional approval for deploying the US armed forces abroad. In 1974, Congress passed the new Budget and Impoundment Control Act which was vetoed by the president, but the veto was overruled. The Act provided for the introduction of the Congressional Budget Office, responsible for producing draft budgets for Congress as an alternative to the presidential draft budget. The law also envisaged budget committees in both houses of Congress that would control the implementation of the budget.

In 1975, Congress adopted the Arms Export Control Act which provides that the president must seek approval for the export of military equipment. Then, in 1976, the National Emergencies Act was adopted, outlining and restricting the presidential powers related to declaring the state of emergency.

Starting with President Hoover (1929-1933) there was a practice that, prior to enacting the laws on the powers of the executive authorities (habilitation), Congress retains power to evaluate and annihilate some measures of the executive power (the so-called legislative or congressional veto).

This solution has been entered in more than 200 laws, but its use was stepped up and it was incorporated in significant acts only as a response of Congress to the imperial presidency. Although the constitution provides that Congress makes its decisions based on the consent of both houses, practice showed that either of the houses or even a legally-authorized committee could reverse the measures of the executive authorities that had previously been empowered to adopt the said measures. In the well-known Chadha decision (Chadha, 1983), the Supreme Court qualified as unconstitutional the already common practice of the legislative (congressional) veto, which considerably weakened the position of Congress in its opposition to the president. According to the ruling of the Supreme Court, the decisions of the houses to annul executive authorities' measures present legislative acts and therefore have to be adopted by both houses of Congress and signed by the president. Yet the overall effect of the Chadha decision was not fatal for the practice of legislative (congressional) veto. Congress continued its practice and declarations of unconstitutionality of legal provisions regarding control of measures taken by executive authorities were infrequent following the Chadha decision. Although this decision partly stopped the offensive of Congress, the period of imperial presidency belongs to history, as well as the period of Congress rule. The president and Congress, according to the constitution, depend on each other too much, so that their cooperation is inevitable.

Results of elections for President and Congress 1950-2004

Year	President		House of Representatives		Senat	
			Winner	Score	Winner	Score
1950			D	235 : 199	R	49 : 47
1952	Ajzenhauer	R	R	213 : 221	R	47 : 48
1954			D	232 : 203	D	48 : 47
1956	Ajzenhauer	R	D	233 : 200	D	49 : 47
1958			D	282 : 154	D	64 : 34
1960	Kenedi	R	D	263 : 174	D	65 : 33
1962			D	258 : 176	D	67 : 33
1964	Johnson	R	D	295 : 140	D	68 : 32
1966			D	247 : 187	D	64 : 36
1968	Nixon	R	D	243 : 192	D	57 : 43
1970			D	255 : 180	D	55 : 45
1972	Nixon	R	D	245 : 190	D	57 : 43
1974			D	290 : 145	D	62 : 38
1976	Carter	D	D	291 : 134	D	62 : 38
1978			D	292 : 143	D	61 : 38
1980	Regan	R	D	276 : 159	D	58 : 41
1982			D	269 : 166	D	54 : 46
1984	Regan	R	D	253 : 182	D	47 : 53
1986			D	257 : 177	D	55 : 45
1988	Bush s.	R	D	261 : 174	D	56 : 44
1990			D	267 : 167	D	56 : 44
1992	Clinton	D	D	261 : 173	D	56 : 44
1994			R	204 : 230	R	47 : 53
1996	Clinton	D	R	206 : 228	R	45 : 55
1998			R	210 : 223	R	45 : 55
2000	Bush	R	R	211 : 220	D=R	50 : 50
2002			R	205 : 229	R	48 : 51
2004	Bush	R	R	201 : 232	R	44 : 55

Presidential Bureaucracy

Some administrative services are not included in the departments (secretariats) and are directly subordinated to the president. Jurisdiction of these services concern, primarily, foreign policy and budgetary issues. The 1939 Reorganization (of Executive Powers) Act concentrated these services within the Executive Office of the President. The number of employees varies, currently being about 1,000, and at the time of the imperial presidency, during Nixon's term of office, it reached the number of 1,500 associates. The president's closes associates belong to the department called the White House Office. It comprises the Congress Relations Service and Public Relations Service.

The Executive Office of the President incorporates the National Security Council (NSC) as the main coordinating body for foreign policy and the Office of Management and Budget (OMB), which distributes the funds among the federal government departments. OMB can be compared to the ministry of finance in parliamentary systems, whereas the Department of Treasury has a lower, predominantly executive status. The Executive Office of the President is an essential element of institutionalization of monocratic presidential power.

Presidential powers with special reference to powers in the fields of security and combating terrorism

The Constitution provides rather vaguely that the responsibility of the president is to "take care that the Laws be faithfully executed." The president may convene meetings at which some of the department secretaries or all of them may take part. The meeting between the president and the secretaries of all departments gradually became the institution of the Cabinet (which should be distinguished from the British Cabinet). There is no mention at all of the Cabinet in the Constitution, and other laws refer to it only sporadically. It is, therefore, almost informal, operational, and advisory work of the president and the secretaries.

In addition to the Cabinet meetings, the president often has meetings with one or more ministers, depending on the questions on the agenda. The president appoints and dismisses the secretaries taking into account the opinion and agreement of the Senate. The practice recognizes *the constitutional custom of the Senate rarely denying approval for appointment and dismissal of the secretaries and other officials*. Only nine such cases have been recorded so far. In recent past, it was in 1989 that the Senate rejected the proposal of President George Bush to appoint John Tower the Secretary of Defense. That was the first time ever that the president's proposal was rejected at the beginning of a new presidency. But in addition to cases of formal rejection of the presidential proposals for the appointment, there have undoubtedly been more cases in which the president gave up in advance on the intention to appoint someone, bearing in mind the predictable reaction of the senatorial majority. In connection with the president's right to appoint candidates, the constitutional convention of 'senatorial courtesy' should be mentioned, according to which the president must consult the senators of certain states when appointing officials in these states. If the president does not consult the senators, the solidarity which exists among the senators, regardless of their party affiliation, may block his candidacy.

It is believed that the constitutional tradition to grant the president discretionary rights in the selection of administrative officials derives from the principle of the division of power. If all the administrative power is vested in the president, he must be granted the right to select personnel in charge of the implementation, and for which he is responsible himself. However, *the Constitution does not mention the dismissal of administrative officials*. George Washington, as the first president, managed to impose the principle that secretaries, as soon as they are appointed with the approval of the Senate, further depend only on the president, who can freely dismiss them. According to F. Lovo, this is an important moment because "an orientation of the development towards parliamentarianism is immediately removed"[6] in this way.

The brevity and ambiguity of the US Constitution still leave sufficient room for different interpretations in case of circumstances varying in terms of political powers. Tense situation in the relations between Congress and President Andrew Johnson escalated to the point of initiating impeachment specifically with regard to the president's right to replace secretaries at his own discretion. In 1867, Congress adopted the Tenure of Office Act which prohibited any removal of a secretary without the consent of the Senate, in the name of strict application of the principle of parallelism. Since President Johnson nevertheless suspended Secretary Stanton, Congress seized the opportunity to launch the impeachment procedure.[7] Upon the final vote regarding eleven charges, a single vote was missing to obtain the two-third majority required for the president's removal from office. F. Lovo points out to the

6 Ф. Лово, *Велике савремене демократије*, Сремски Карловци-Нови Сад, 1999, p. 132.

7 Ibid. p. 133.

great significance of this precedent: "... if the president had not exposed himself to judgement until the very end, i.e. if he had resigned by way of prevention, as Lord North did in England and as President Nixon had to do in 1974, a breach would undoubtedly have been made towards parliamentarianism." [8] It was only in 1926 that the Supreme Court declared the disputable act to be unconstitutional (*Myers v. United States*). Later developments of the Supreme Court practice specified that the president's independence may still be limited by law for non-executive functions, such as, for example, regulatory commissions, or for function that do not depend directly on the executive authorities. Congress may pass laws that provide for the prerequisites for appointment to certain administrative positions and thus restrict the president's free choice of candidates. F. Lovo states that "following the death of Garfield, who was murdered by a rejected candidate for a federal position, Congress in 1883 passed the *Pendleton Act*, which laid the foundations of the impartial system of appointment (the merit system) and introduced the Civil Service Commission for the Supervision of Administration." [9] Nowadays, the president has power to freely appoint candidates in about 3,000 managerial positions.

The division of power according to legal functions is much more consistent in the presidential system than in the parliamentary one. In general, Congress is the holder of legislative power and the president of executive power. However, the use of the corrective principle of 'balance and counterbalance' leads to certain departures from the principle of the division of power. Certain discrepancies are inevitable because without them, coordinated functioning of the government would be impossible.

Although Congress is the holder of legislative power, the president has the right of veto that he can use against an adopted law. Veto only has the suspending effect because if the law is passed repeatedly in both houses of Congress by a two-third majority vote, the disputed law takes effect. However, since the president's party usually has more than one third of seats or senators in the houses of Congress, it is virtually unlikely to achieve the two-third majority in the houses of Congress. As a result, the presidential veto, depending on the composition of the houses of Congress, usually has an absolute character. Considering this fact, it can be concluded that the president has a powerful means of exercising influence on the legislative activities of Congress. In fact, he has negative legislative power since he can prevent any act of law from coming into effect.

Initially, the presidential veto was used only exceptionally, which probably was the intention of the constitution makers. It was only in late 19th century that the use of veto became regular and usual. President Cleveland used veto 684 times; F. Roosevelt used 631 vetoes; Truman 250; Eisenhower 181. Kennedy and Johnson rarely used veto, while Nixon and Ford did so more often, and so did Reagan.

However, the president has no positive legislative power, since he cannot make the draft he supports becomes a law. Such a situation is only possible if the president's party has majorities in both houses of Congress. Formally, according to the Constitution, the president has no right to propose a draft law.

According to the Constitution (Article II, Section 3), the president "shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient." In practice, written messages have grown into a legislative initiative. There are several types of messages. Gradually, it has become customary that the State of the Union Message to Congress is submitted annually. It is always read by the president

8 Ibidem.

9 Ibid, p. 176.

himself. Presidents G. Washington and J. Adams read their messages before both houses of Congress. This practice was later abandoned for an entire century, only to be reinstated again by W. Wilson. Since then, it has been used unevenly, depending on the personality of the president. The president often submits other messages pointing out to specific problems and the ways in which they can be solved. The message is frequently accompanied by the text of the draft law proposed by the president. These messages are often read by their secretaries.

Although neither the constitution nor the law provide for the president's right to pass bylaws and other normative acts, the belief has gradually set in that these acts, by their nature, present an integral part of law enforcement activities. These acts are passed as *executive orders, executive agreements, and proclamations*. In addition to executive bylaws, the president is empowered by Congress to pass acts with the force of law regardless of emergency situation. According to the Supreme Court, Congress is authorized to delegate its legislative authority to the president if the Law on Empowerment defines the limits and extent of the president's actions (United States v. Rock Royal Cooperative, 1939; Hood and Sons v. United States, 1939).

Analogue to the means of influence at the disposal of the president with regard to legislative authorities in accordance with the principle of 'balance and counterbalance', the legislative authorities have the means of influence over the president. Thus the Senate participates in exercising executive power by giving opinion and approval for the appointment of ambassadors, diplomatic representatives and consuls, as well as all other officials of the United States of America, including the secretaries of departments. The Senate also gives its opinion and consent in relation to international agreements concluded by the president. The Senate decides by a two-third majority.

The implementation of the division of power in the presidential system means the absence of fundamental means of influence between the legislative and executive authorities that exist within the parliamentary system. In the presidential system, Congress cannot vote on confidence to the president and the government, nor can the president dissolve Congress. Such mutual relations between Congress and the president are conditioned by the principle of the division of power according to which both Congress and the president have independent sources of power among the people. Since the citizens choose both Congress and the president, the two being mutually independent, there can be no responsibility of the president before Congress nor can the president dissolve Congress.

In accordance with the principle of the division of power, the functions of the president and the secretary are incompatible with the function of the deputy. Ministers have no access to or the right to address the houses of the representatives, but can attend and address the sessions of legislative and other committees.

The presidential powers that are defined by the Constitution and the practice of functioning of the most prominent state institutions in the US are indicative of a system that is rightfully referred to in theory as the system of strict division of power, in which legislation, administration, and judiciary are strictly and accurately separated as distinct and rather independent institutions. However, the terrorist attacks against the US on September 11th significantly disturbed this delicate balance among the three main branches of government because they served as a pretext for strengthening the position and influence of the US president. This resulted from a series of legal regulation which were passed in order to broaden the powers of the president and the entire security system to such an extent that many of them have even become undemocratic. The first step towards this was the creation of the so-called anti-terrorist legislation in the US as early as seven days following the terrorist

attacks. Thus on September 18, 2001, the US Congress adopted the Resolution[10] which empowered the US president to use all necessary and required force against those nations, organizations or persons found to be planning, acquiescing, committing or assisting terrorists in the attacks of September 11. The power also applied to individuals providing protection to such organizations or persons. The aim was to prevent future terrorist activities against the US.

The phrasing of the resolution endowing the US president with the power to decide on the identity of the terrorists and the persons providing assistance, a conclusion can be drawn that the granted powers are rather broad. This resolution gave the president the right to issue executive orders in order to resolve issues that had previously been within the jurisdiction of Congress. The president was given the authority to use military force not only against nations, but also against organizations or persons perceived as enemy. Two types of war were conceived: one against the nations and one against the terrorists. No states or terrorists were specified. The entire world has become a potential battlefield.[11]

In November 2001, the US president issued the Military Order, the provisions of which would apply to persons who are not US citizens and whom the president believes to be members of Al Qaida involved in terrorist activities. The act provides for detention of foreigners in facilities outside the US territory, who are court marshaled without any guaranteed of basic rights, envisaged not only international law, but also US law (non-existence of *habeas corpus* and other rights and procedural guarantees for the suspects). This practice was additionally reinforced by the *Military Commissions Act* of 2006, which more closely defined the jurisdiction of military commissions trying cases against *alien unlawful enemy combatants*, whereas the trial of US citizens remained within the jurisdiction of regular courts. However, experts have warned that deprivation of liberty (arrest and detention) of persons who live outside the US or who are not US citizens in any other way (by means of abduction or illegal transportation) apart from extradition or arrangement with the country concerned, can hamper international relations between the US and other countries and even jeopardize interests that are more significant that the interests of justice and prosecution of individuals.[12] Example of such practices are abundant, ranging from prisons in Afghanistan in the period of US intervention and later, to Guantanamo, and criticism mostly concerns the treatment of prisoners accused of being members of global terrorist networks or their assistants.[13]

This act envisages that such persons are to be detained at an appropriate location outside or within the United States, as well as to be tried by military commission which has the power to impose life imprisonment or death penalty. The military commission is established by the Secretary of Defense, who prescribes the rules regarding procedure, as well as the type and admissibility of evidence. The audit of the procedure and the final decision in the procedure are the responsibility of the US president or Secretary of Defense.[14]

Opinions have been voiced claiming that this act in fact introduced the state of emergency, although it has never been formally declared, because many of its elements are present, such as the absence of following the rules of evidence typical

10 Section 2(a) of the AUMF Resolution dated September 18, 2001 authorising the President to use Military Force.
11 Chaskalson A. *The Widening Gyre: Counter-Terrorism, Human Rights and the Rule of Law,* Cambridge Law Journal, 67 (1), 2008, pp. 78-79.
12 Perl, R., (Foreign Affairs, Defense, and Trade Division), Terrorism, the Future, and U.S. Foreign Policy (Issue Brief for Congress), 2003.
13 Chaskalson A. *Ibid*
14 Further reading: Зекавица, Р. Кесић, Т. *Владавина права, полиција и антитерористичко законодавство*: Правни живот, бр. 8/2008, pp 715-727.

of regular court proceedings, as well as practice of individuals being tried before military courts although civil courts have not been suspended. [15]

The US Patriot Act (***U**niting and **S**trengthening **A**merica by **P**roviding **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism – P.L.107-56,* signed by the former US President George Bush on 26th October, 2001) served as legal grounds upon which the US institutions of executive power (especially president) have significantly stepped up their operative strategies in the prevention of terrorism, especially in the US territory. For instance, the US Department of Justice, whose major task is the prevention of future terrorist acts against the US, concluded that the Patriot Act has a crucial role in the protection of Americans against terrorism. Basically, the Act is a more extensive and more strict version of the *Anti-Terrorism and Effective Death Penalty Act of 1996, P.L. 104-132*, which served the United States as means of legalizing the policy of intimidation and punishing the states which sponsor terrorism and through which the new legal category was introduced – *Foreign Terrorist Organizations / FTOs;* the act prohibits financing such organizations, granting visas to their members or providing any other type of material assistance, and it also rehabilitated the death penalty.[16] Speaking of the Patriot Act, from the point of view of analysis of investigative and criminal procedural actions related to uncovering and prosecution of persons suspected of having committed acts of terrorism, Chapter 10 is of particular importance, because it defines 146 various acts which facilitate the work of federal investigative organs and judicial bodies in preventing and detecting terrorist activity.[17] Soon after it was passed, the patriot Act faced numerous criticisms, especially in its Chapter 2 which deals with measures of surveillance and possibilities for mutual exchange of gathered intelligence among the judicial system bodies which, at that, need not be relevant for the criminal proceedings. Doubts were voiced most loudly with reference to the extended powers of American security intelligence agencies (members of the 'intelligence community') providing for surveillance of the US citizens.[18] The Act allowed arbitrary detention of immigrants, secret search of premises, wherein the law enforcement officials could search the premises in the absence of the owner or his awareness thereof, and it also leads to the increased use of the so-called *National Security Letters*[19] against US citizens and foreigners even where there is no reasonable doubt that they have committed the specific criminal act.

Most criticisms of the Patriot Act came from the non-government sector and primarily concerned the below listed powers entrusted to FBI by this statute:

- Control of the Internet traffic (web page analysis and e-mail control) and other communications on the basis of a secret court warrant against all persons that have ever been suspected of terrorism for whatever reason;
- Interrogating persons without court warrants purely on the basis of indications that they may have connections with terrorists or that they assist terrorist either materially or in any other way;
- Entering private premises (apartments or offices) on the basis of secret war-

15 **Further reading: Аврамовић,** Д. *Кад ванредно стање постане редовно*, Правни живот, 14/2008, pp. 509-526

16 Perl, R., Ibid

17 Bullock, J. A., Haddow, G. D., Coppola, D., Ergin, E., Westerman, L., Yeletaysi, S., *Introduction to Homeland Security* (Second Edition), New York: Elsevier, 2006.

18 White, J.H. *Terrorism and Homeland Security*, Thomson Wadsworth, USA. 2006.

19 *National Security Letters* are a type of orders issued by the FBI in order to gather information from private subjects for the purpose of criminal prosecution. They were introduced in 1978 and normally require the existence of reasonable doubt and are subject to court supervision.

rants and secret search thereof, as well as taking away document of persons for whom there are indications that they may have connection with terrorism or other forms of serious crime;

- Detention of immigrants and foreigners who can be charged with violation of the Immigration Act and Visa Regimen. In the case of the decision of deportation, if the native states refuse to let such a person back in, such a person may be kept in detention endlessly, or for as long as the investigative organs (the FBI, e.g.) find it fit.[20]

General conclusion of expert audience and human rights organizations is that the Patriot Act presents unbelievable ignoring of federal law. Criticisms essentially concern powers that the Patriot Act gives to the investigative and criminal justice organs in the US, the exercising of which violates fundamental human rights and freedoms, most of all the right to freedom of speech and confession, right to privacy, right to a defence counsel in the course of a legal proceeding, the right to equal protection before the law, protecting from arbitrary investigations and arrests, etc.[21]

Changes in the strategy of national security were somewhat expected, bearing in mind the devastating effects of the terrorist attack on the US and the fact that the methods of perpetration, motives, consequences and goals of this terrorist attack gave a new dimension and meaning to contemporary terrorism and made it a global phenomenon. Provisions of the so-called counterterrorist legislation have to a great extent modified and widened the scope of operation, jurisdiction and methods of intelligence and security agencies in a way which, on the one hand, promotes more efficient combating of terrorism, but, on the other hand, questions the justification of such provisions, especially for the aspect of the existing international standards related to protection of fundamental civil rights and freedoms. The ensuing heated debate does not appear to be calming down and it is particularly intensive with respect to the nature and scope of legal powers vested in the security intelligence services, their justification and possible threat to civil rights and liberties. Numerous criticisms that were addressed to some of the solutions in the anti-terrorist legislation primarily pointed out that the implementation of such provisions had initiated the practice of seriously eroding the basic rights and freedoms and the practice of giving priority to national security in such a way as make the requirement for consistent protection and respect of basic civil rights and freedoms appear relative. On the other hand, another danger of such practices was noticed, and that is a latent need to regard such a state of affairs as normal. In other words, there is a tendency to legalize arbitrary actions of security services and police that is to turn their extensive legal powers, introduced with a general purpose to efficiently oppose the current terrorist threat, into a model for future practice of security intelligence agencies. The critics of counterterrorist legislation draw our attention to the fact that even new terminology is used to that effect (resembling Orwell's 'newspeak'), thus giving new names to certain measures which, from the point of view of international law are undoubtedly unacceptable, so as to conceal their true nature. Thus, for example, kidnapping becomes '*extraordinary rendition*', whereas the use of torture, cruelty and inhumane treatment is referred to as '*coercive interrogation*'. Furthermore, the conflict with terrorism becomes a war, leading to the use of corresponding terminology.

Besides, it was pointed out that most of these acts were typically passed in exceptionally short periods of time, without the necessary debate that should

20 Compare: Patriot Act Perspective – (The American Civil Liberties Union/ACLU Files against Patriot Act, From Kevin Bohn, CNN Washington Bureau, July 30, 2003. – In: Jane A. Bullock, at all, ibid
21 Bullock at all, *Ibid*

have preceded them and bypassing the gradual lawmaking procedures.[22] Numerous scholarly and scientific debates among authors have also provided a pretty clear picture of the essential problem stemming from specific solutions provided for in the anti-terrorist legislation. For instance, P.A.J. Waddington has emphasized that criticisms offered by liberal authors and advocates of civil rights frequently lacks firm grounds, that their fear of counterterrorist legislation is ungrounded, and that their pessimism is inspired by potential danger, and not actual practice. Besides, according to him, civil liberties were violated on a number of occasions in the past due to the need that states respond with more repression to various threats, but that did not lead to serious jeopardizing of basic rights and freedoms that would derive from normalization of such practices.[23] Waddington's claim that experiences from the past inspire optimism is, however, based on an analysis of experiences limited to the phenomenon of the so-called domestic terrorism.

Contemporary societies, according to Dirk Haubrich, are facing a new phenomenon, the so-called transnational terrorism. The terrorist attacks of September 11 present the first case of transnational terrorism in which a state was attacked by non-state subjects. Aims of this form of terrorism are clear. They involve mass destruction, large numbers of civilian casualties and spreading fear.[24] The reaction of some states to the outburst of transnational terrorism was very fast and thus adversely influenced the existing practice of civil rights and freedoms protection. The adoption of numerous regulations related to counterterrorist activities lead to a very realistic threat, not a latent one, according to Waddington, affecting fundamental civil rights and freedoms. Besides, the implementation of such provisions in practice gave devastating results. Haubrich gives alarming information that in the 2001 – 2005 period, 895 persons were arrested on the basis of suspicion that they were connected with terrorism or terrorist organizations. Out of this number, only 23 were convicted, whereas 496 were set free with no charges against them.[25] Violation of international standards in the sphere of protection of basic rights and freedoms has thus become practice brought about by certain provisions of counterterrorist acts, which has been confirmed by examples given by many authors, including the one offered by Haubrich. It suffices to be reminded of the shocking video recordings of the US soldiers torturing prisoners in AbuGhraib in Iraq, showing utterly inhumane and inhuman cruelty and ill treatment. Comparatively mild reaction of the US authorities following the publication of these recordings (suspension of the soldiers involved in torturing the prisoners) did not give an impression of determination to oppose such practices in an adequate manner. Furthermore, numerous decisions of the US president, as well as those made by the most senior representatives of political and military establishment, directly encouraged the practice of coercive interrogation and denial of obligations imposed by international law, thus supporting the practice an extreme instance of which was manifested in the torture used against the inmate of the Abu Ghraib prison.[26]

Legitimacy of counterterrorist legislation was not questioned only because of obvious violations of international law norms protecting civil rights and freedoms. Its legitimacy can also be considered questionable with respect to its efficiency in

22 Haubrich, D. *September 11, Anti-Terror Laws and Civil Liberties: Britain, France and Germany Compared*, Government and Opposition, Vol. 38, Issue 1. 2003
23 Waddington, P.A.J. *Slippery Slopes and Civil Libertarian Pessimism*, Policing & Society, Vol. 15. No. 3. 2005.
24 Haubrich, D. *Anti-terrorism Laws and Slippery Slopes: A Reply to Waddington*, Policing & Society, Vol.16. No.4. 2006.
25 Ibid
26 Paust, J. *Beyond the Law - The Bush Administration Unlawful Responses in the "War" of Terror*, Cambridge University Press, Cambridge, 2007.

combating terrorism. In other words, with respect to its basic motive, the reason and purpose of adopting such counterterrorist acts. This leads us to the military base of Guantanamo in Cuba and the practice of Bush administration in this facility which gave rise to a lot of criticism, controversies and debates. It is a common knowledge that the US authorities have turned this military camp into a detention center for aliens arrested under suspicion of being connected with terrorism. Over the past few years, during Bush's 'war against terrorism', a little more than 800 people were detained in this camp. The practice of the US authorities confirmed the absence of the prisoners' elementary rights (no right to defence, absence of *habeas corpus* and other procedural rights and guarantees), the use of torture, inhumane and degrading treatment of the prisoners and absence of time limits for their detention without pressing charges upon them. Such measures are not only seen by many as disputable from the points of view of ethics and international legal norms that prohibit such conduct, but also from the point of view of the efficiency of their use. According to Foley, the US policy applied in Guantanamo (and in other detention camps) was basically completely inefficient because, due to the guidelines that it was based upon, it ended up with a too extensive definition of terrorism and lead to inhumane treatment in the course of investigation and forced confessions on the basis of which many innocent people were detained, and the very investigation of terrorist threat rendered utterly imprecise.[27] The rules were not introduced to prevent abuse, torture and inhuman treatment. On the contrary, such practices derived from these rules and were encouraged, so it became the very purpose of the Guantanamo camp to ensure that the detainees are kept as far as possible from all the principles underlying the rule of law, as far as possible from any legal protection, at the mercy of the victorious arbiters. Some optimistic feeling, however, stems from the fact that one of President Barac Obama's first decisions in January 2009 was to close down the Guantanamo base.

CONCLUSION

Finally we can ask ourselves: what is the concept of a presidential system by the U.S. Constitution? As we have already said, the US Constitution is a very short text, it is not always explicit, and allows various options. The election of the President is not unconstitutional, but it is certain that the constitution-makers were surprised by this situation, because it is one of the extremes that they wanted to avoid. So what is the genuine presidential system? The one which was created by the constitution-makers or the one which is in place today? It is obvious that there is a possibility of different presidential systems, as well as a possibility of different parliamentarism. At present, the relevant model is the one that works now, as it is an expression of the spirit of its time. This model is a spontaneous, almost accidental development which is not strictly determined by conditions, but is largely a matter of determination of the relevant factors. In any case, the contemporary US presidential system is both an expression and a consequence of democratization that has occurred in the United States shortly before the mid-19th century and it is quite far from the concept of a presidential system and the founding fathers.

27 Foley, B. *Guantanamo and Beyond: Dangers of Rigging the Rules*, The Journal of Criminal Law & Criminology, Vol. 97, No 4, 2008.

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UDC 343.988:343.431

COMPENSATION FOR VICTIMS OF HUMAN TRAFFICKING AND ITS REALISATION IN CRIMINAL PROCEEDINGS[1]

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Abstract: A growing interest in the status of crime victims, including the victims of human trafficking, has appeared relatively recently. It has been reflected in, among other things, adoption of relevant international documents and defining of standards for the treatment and protection of victims in general, and in criminal proceedings in particular. The rights guaranteed to crime victims include the right to compensation. Certainly, the issue of compensation in civil and criminal proceedings is closely connected with the risk of secondary victimization. The testifying on suffered harm presents, for a crime victim in general, and particularly for the victim of human trafficking, an additional terrifying experience that, in the absence of legislative opportunity to resolve compensation (in whole or in part) in a criminal proceeding, unavoidably leads to a further victimization. Difficulties associated with the resolving of compensation claim in criminal proceedings are not as hard as those faced by an already traumatized victim, who will be, after suffering again from the publicity of the trial and the presence of perpetrators in the courtroom, referred to realize her/his compensation claim in civil procedure. The public interest is not fully satisfied in a criminal proceeding unless the victim's interest is satisfied, too. Thus, the courts should be obliged to decide on human trafficking victims' compensation claims in the criminal procedure.

Key words: victims' compensation, human trafficking victims, criminal procedure, Serbia.

INTRODUCTORY REMARKS

An interest for the position of a victim in criminal proceeding is a rather new phenomenon. For a long time, a defendant had occupied the central position in criminal procedure legislation, while the criminal procedure theory had been engaged with the issues relative to improving of his/her procedural position. A victim, or the injured party, had been treated as a source of knowledge and useful evidence of the crime committed. Other issues related to legal position of a victim had been neglected by the criminal justice.

Crime victims were treated in this manner until 1970s, when the development of victimology induced certain changes in terms of raising attention of victimologists to the position and needs of crime victims, irrespective of their contribution to the crime occurrence and apart from the offender.[2] Soon after, the activities for

1 This paper is the result of the realisation of the scientific research project entitled "Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations". The Project is financed by the Ministry of Education and Science of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011–2014). The leader of the Project is Associate Professor Saša Mijalković, PhD.

2 Nikolić-Ristanović, V.: Međunarodni dokumenti o zaštiti prava žrtava krivičnog dela, *Temida*, 2/01, p. 45.

developing of international documents setting the standards of treatment and protection of crime victims have come into focus.

The first international documents treating the issues of crime victims, that is, their legal position in criminal proceedings and necessary forms of protection, assistance and support were adopted in the middle of 1980s. The most important document from that period is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereinafter: Declaration).[3] The Declaration defines the notion of victim of crime and abuse of power and specifies the most important victims' rights. According to this document, "victims" means natural "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power" (para. 1). The Declaration stipulates that any person may be considered a victim, "regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the victim", while "the term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization." (para. 2).

In literature, the notion of "victim" (la victime) means a person who is personally harmed by the commission of a crime,[4] while the notion of "injured person" (le lésé) relates to a person who has suffered property damage.[5] In the current domestic victimology theory the notion of crime victims in narrower sense is defined as (natural) persons whose goods or rights have been directly harmed or endangered by the commission of a crime or by violating the internationally recognized human rights norms. In wider sense, the notion of crime victims covers natural persons and other entities (social groups, collectives, societies) whose goods or rights have been directly or indirectly harmed or endangered by the commission of a crime or other punishable acts, or by violating the internationally recognized human rights norms.[6]

Although the term "victim" has been used in domestic (substantive) criminal legislation, it still has neither been defined nor recognized as a general institute.[7] Along with the notion of "victim", the Serbian Criminal Code[8] uses the notion of "injured party" which meaning is also undefined. The definition of "injured party" is given in the Article 221, para. 6 of the Criminal Procedure Code[9] (hereinafter:

3 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,* adopted in 1985 by the United Nations General Assembly (A/RES/40/34).

4 M. Franchimont, A. Jacobs, A. Masset, *Manuel de procédure pénale*, Collection scientifique de la Faculté de droit de l'ULg et Éd. du Jeune Barreau de Liège, Liège, 1989, 111; G. Cornu (publié sous la direction de), Vocabulaire juridique, 4e édition, Quadrige, Presses Universitaires de France, Paris, 2003, 928.

5 *Ibid*., 520.

6 Ignjatović, Đ., Simeunović-Patić, B.: *Viktimologija*, Belgrade, 2011, p. 20

7 "Victim" is mentioned: in the Article 54 of the Criminal Code which stipulates general rules on determining the penalties ("the court shall determine a punishment.... taking into account ... and particularly his attitude towards the victim of the criminal offence..."); within the regulations on protective supervision (in the Article 72 – "when pronouncing a suspended sentence, the court may order protective supervision of the offender if, considering his ... and particularly his attitude towards the victim of the offence..."; in the Article 73 - "protective supervision may comprise one or more of the following obligations: .... eliminating or mitigating the damage caused by the offence, particularly reconciliation
with the victim of the offence"); in the Article 77, para. 4 ("In deliberating whether to pronounce a judicial caution, the court shall... particularly take into consideration .... and specifically his attitude to the victim of the offence ..."); in the Article 388, para. 8 ("who has known or might have known that the person is a victim of trafficking in human beings...").

8 *Official Gazette of the RS*, Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/09

9 *Official Gazzette of the FRY*, Nos. 70/2001 and 68/2002, and the *Official Gazzette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 49/2007, 20/2009, 72/2009 and 76/2010

CPC) as follows: "Injured party is a person whose personal or property right or rights have been violated or threatened by a criminal offence".

Along with the victim defining, international documents stipulate a set of basic victims' rights, including the right to the access to justice and fair treatment which, among other things, includes "taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation" (para. 6 (d) of the Declaration). One of the most important rights is the right to restitution, financial compensation from the State in particular cases, and the right to use judicial and administrative mechanisms established to enable victims to obtain redress for harms suffered, through expeditious, fair, inexpensive and accessible procedures.

The right to compensation is the most important original right of crime victims.[10] Compensation, restitution and reparation are often used to refer to the same or very similar concepts, that is, the compensation to someone for the loss, injury or harm suffered, especially through the proper payment.[11] The term compensation covers the entire concept of paying to a victim for his/her losses, irrespectively of the source of paying, mechanisms used, or types of losses suffered. Compensation encompasses those financed by the State, as well as those that may be obtained through criminal and civil procedures, or in labour disputes. The term "damages" relates to the "sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong".[12]

Crime victims may suffer pecuniary and non-pecuniary damages. Pecuniary damage relates to financial losses, like as medical, hospital and funeral expenses, the loss of future earnings and benefits for employees, unpaid salaries,[13] as well as damages caused to property. The definition and scope of pecuniary damage in national legislation are regulated by the law and differ from country to country. Some compensation mechanisms enable submitting of compensation claims for all forms of pecuniary damages, while in other countries it is limited only to certain categories. Non-pecuniary (moral) damages relates to any non-financial loss, such as physical pain, mental stress and suffering, loss of reputation or honour, loss of enjoyment of life, loss of society, loss of consortium.

In the text below, upon presenting the recommendations and solutions contained in relevant international documents as well as the current situation in Serbian legislation relevant to the crime victims' compensation, particular attention will be paid to the issue of compensation of human trafficking victims in criminal proceedings.

RELEVANT INTERNATIONAL DOCUMENTS

The issue of compensation of crime victims (including the victims of trafficking in human beings) is the subject of several important international documents – from already mentioned Declaration, across the Rome Statute of the International Criminal Court[14] and the European Convention on the Compensation of Victims

10 Mrvić Petrović, N., *Ostvarivanje prava na naknadu štete prouzrokovane porodičnim nasiljem*, Pravom protiv nasilja u porodici, Niš, 2002, p. 111.
11 According to *Chambers 21st Century Dictionary*, 2004
12 Gahan, F., 1936, according to Garner, B.A. (Ed. In Chief) *Black's Law Dictionary* (8th ed.), 2004, p. 416
13 It should be noted that unpaid saleries fall under financial damage. It is possible that in some labour disputes, where only the paying for salaries is claimed in charges, legal compensation may be called "unpaid salaries".
14 The Rome Statute of the International Criminal Court was brought into Serbian legal system in 2001. *Official Gazzette of the FRY - International Treaties*, No. 5/2001

of Violent Crimes,[15] to the United Nations Convention against Transnational Organized Crime with additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children[16] and the Council of Europe Convention on Action against Trafficking in Human Beings.[17]

The Declaration contains provisions providing victims the right to be informed of compensation and the mechanisms of its obtaining. "Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible" (para. 5). The responsiveness of the judicial and administrative procedure to the victims' needs is ensured by fulfilling the following conditions: (a) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) providing proper assistance to victims throughout the legal process; (d) taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims (para. 6). A particularl emphasis has been put on the utilization of informal mechanisms for dispute resolution, including mediation, arbitration and customary justice or indigenous practices, where it is appropriate to facilitate conciliation and redress for victims (para. 7).

The Rome Statute of the International Criminal Court stipulates the obligation of the Court to establish principles relating to victim reparation, including restitution, compensation and rehabilitation. On this basis, in its decisions, the Court may (either upon request or on its own motion in exceptional circumstances) determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting (Article 75, para. 1). The Court is entitled to make an order directly against a convicted person specifying appropriate victim reparation, including restitution, compensation and rehabilitation (Article 75, para. 2). Where appropriate, the Court may order that the award for reparations be made through the Trust Fund, which is under jurisdiction of the International Criminal Court and established for the benefit of crime victims and their families. The material resources for financing of the Fund may be collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund (Article 79, paras. 1 and 2).

Among regional documents, of particular importance is the European Convention on the Compensation of Victims of Violent Crimes (hereinafter: European Convention), which obliges the state on which territory the crime has been committed to develop schemes for the compensation of the victims when compensation is not fully available from other sources. The compensation is guaranteed to the victims who suffered grievous bodily harm or impairment of health directly resulting

15 *European Convention on the Compensation of Victims of Violent Crimes*, adopted in 1983 (CoE / ETS No. 116). Serbia has not yet ratified this document.

16 *United Nations Convention against Transnational Organized Crime* and its protocols, adopted in 2000. Into Serbian legal system it was brought on 27.6.2001. *Official Gazzette of the FRY – International Treaties*, No. 6/2001

17 Adopted in Warsaw on 16 May 2005. Into Serbian legal system it was brought in 2009. *Official Gazzette of the RS,* No. 19/09

from an overt crime of violence, as well as the dependants of persons who have died as a result of such crime. In such cases, the compensation shall be awarded even if the offender cannot be prosecuted or punished (Article 2). Compensation covers at least: loss of earnings, medical and hospitalization expenses and funeral expenses, and regarding dependents, the loss of maintenance (Article 4). The European Convention foresees several situations in which compensation may be reduced or refused. These refer to the financial situation of the applicant of a compensation claim, as well as on account of the victim's or the applicant's conduct before, during and after the crime, or in relation to the injury or death (Articles 7 and 8(1)). Compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organized crime or his membership in an organization which engages in crimes of violence, or if an award or a full award would be contrary to a sense of justice or to public policy (Article 8, paras. 2 and 3).

Notably important international instrument dealing with the position of crime victims is the UN Convention against Transnational Organized Crime with additional protocols. This Convention pays much attention to the development of adequate criminal-procedural and practical mechanisms of protection of witnesses in criminal proceedings, especially in the case of victim-witnesses. The Convention explicitly stipulates the states' obligation to establish adequate procedure for ensuring the right to compensation and restitution for the victims of offences covered by the Convention[18] (Article 25, para. 2). It also foresees the possibility of funding the victims' compensation from the confiscated proceeds of crime or property (Article 14, para. 2). The authors particularly emphasize the states' obligation to, in accordance with the national legislation, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense (Article 25, para. 3).

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Anti-trafficking Protocol), supplementing the UN Convention against Transnational Organized Crime guarantees, among other things, providing of protection and assistance to the human trafficking victims, while the states are obliged to ensure that its domestic legal system contains measures that offer victims of human trafficking the possibility of obtaining compensation for damage suffered (Article 6, para. 6).

The Council of Europe Convention on Action against Trafficking in Human Beings also deals with the issue of compensation of victims. This Convention guarantees to the human trafficking victims access to information on relevant judicial and administrative proceedings in a language they can understand, and the right to legal assistance and to free legal aid. A particularl stress has been put on the right of victims to compensation from the perpetrators, while the compensation through a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims is also foreseen (Article 15). The mentioned fund and programmes may be funded by the assets resulting from the confiscation of proceeds of criminal offences or from property, the value of which corresponds to such proceeds (Article 15, para. 4 and Article 23).

Besides above mentioned, many other international documents define principles and procedures of protection of crime victims. Thus, for instance, in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by United Nations General Assembly

18 These are offences connected with the organized and transnational crime, including offences connected with the trafficking in human beings.

resolution 60/147 of 16 December 2005, it is underlined, among other things, that victims of gross violations of international human rights and serious violations of international humanitarian law have the right to, as provided for under international law: equal and effective access to justice; an adequate, effective and prompt reparation for harm suffered, and the access to relevant information concerning violations and reparation mechanisms (Section VII). Reparation should be proportional to the gravity of the violations and the harm suffered. If a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided the reparation. States should endeavor to establish national programmes for reparation and other assistance to victims if the parties liable for the harm suffered are unable or unwilling to meet their obligations. Victims should, in accordance with domestic and international law, as appropriate and proportional to the gravity of the violation and the circumstances of the case, be provided with full and effective reparation including the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, including: physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage, and costs required for legal or expert assistance, medicine and medical services, and psychological and social services (Section IX).

There are also several recommendations relating to crime victims adopted by the Committee of Ministers of the Council of Europe - 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, Recommendation No. R (97) 13 concerning intimidation of witnesses and rights of the defense, Recommendation Rec (2006)8 on Assistance to Crime Victims, etc. The Recommendation on assistance to crime victims insists on respecting the victims' needs and providing victims with adequate information, protection and support. States are obliged to take the necessary steps to ensure that victims have effective access to all civil remedies, as well as to institute procedures for victims to claim compensation from the offender in the context of criminal proceedings. Advice and support should also be provided to victims in making these claims and in enforcing any payments awarded (para. 7). In addition, states are suggested to adopt a compensation scheme for the victims of crimes committed on their territory, irrespective of the victim's nationality. The compensation should be granted without undue delay, at a fair and appropriate level (para. 8). This compensation should be provided for treatment and rehabilitation for physical and psychological injuries. States are also suggested to consider compensation for loss of income, funeral expenses and loss of maintenance for dependants, as well as compensation for pain and suffering as well as the means to compensate the damage resulting from property crimes.[19]

COMPENSATION FOR CRIME VICTIMS IN COMPARATIVE LEGISLATION

In the comparative legislation victims may get compensation in various ways. The current solutions differ with regard to types of losses that may be compensated, the mechanisms, procedures and criteria used to establish the conditions for the

19 State compensation has a subsidiary character – it will be awarded to the extent that the damage is not covered by other sources such as the offender, insurance or state funded health and social provisions (para. 8(9) of the Committee of Ministers of the Council of Europe's Recommendation Rec(2006)8).

access to compensation, as well as with regard to methods used to determine the amount of compensation payment.[20]

Some countries have established the schemes of financial support for the victims of particular crimes, including trafficking in human beings – for instance, Belgium[21] and France.[22] In France, the compensation schemes were established in 1990 for the victims of intentionally committed violent crimes, and for their family dependents. In order to be allowed to submit a compensation claim, a victim has to report the crime to the police, but there is no imperative that offender has to be identified or convicted. It is also not necessary to either wait for the criminal proceeding to be finished, or to file a civil lawsuit against the perpetrator. It has turned out that this compensation scheme has some deficiencies with regard to compensation of human trafficking victims, especially when the prosecutor has not qualified the offence as specific violent crime – then the victim of human trafficking has to prove that he/she had suffered the criminal violence resulted in death or permanent work disability, or disability that lasted more than a month. Another significant limitation arises from the fact that compensation can be paid only to legal residents in France - the human trafficking victims often do not fit this criterion.

In the United Kingdom there is a compensation fund for the damages suffered by the victims of violent crimes, managed by the Criminal Injuries Compensation Authority. The enjoyment of this right does not depend on the conviction of the offender. However, the victim has to report the offence to the police, and to possess appropriate medical documentation. The victims have to be willing to cooperate and assist in the crime investigation and prosecution.[23]

A special compensation programme for the victims of terrorist acts and organized crime was established in Italy in 1990 (Norme a favour della vittime del terrorismo e della criminalita organizzata),[24] which supplemented and partially amended the former legal regulations. By new legal provisions from 1998 and 2000 it introduced compensation for injuries that resulted in up to 25% reduced work ability, as well as for dependent family members of the victim of violent act that resulted in victim's death. In 2004, the compensation practice was significantly broaden, with particular attention to the victims of terrorist acts and related crimes - now, any level of work disability is sufficient for granting disability pension. The victim's relatives also have the right to compensation. The medical and compensation committee decides on this form of compensation, and the final decision is made by the Minster of the Interior.

20 Upon analyzing the situation, written and published sources and the questionnaire responses of the respondents from non-governmental organizations, inter-governmental organizations and governments in Albania, France, Moldova, Romania, the Russian Federation, Ukraine, United Kingdom, and the United States of America within the special study, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has drawn the conclusions with regard to the actual situation concerning the access of human trafficking victims to compensation and developed recommendations for improving of compensation mechanisms for these victims. It has been concluded that a right to compensation in the case of human trafficking victims is mainly limited to compensation from the trafficker/exploiter. It applies to compensation from the state only in limited circumstances of violent crime causing physical and mental injury. This report also stresses that international standards have developed the principle that the profits made by traffickers through their exploitative activities should be used to benefit the trafficked persons either individually or collectively. *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE/ODIHR, Warsaw, 2008, pp. 20-21.

21 The Article 3 of the Law of Belgium of 17 March, 2001.

22 Since July 6, 1990 the victims of intentionally commited violent crimes as well as their family dependents enjoy a special status and are qualified for the "national solidarity" in the form of compensation payments from the Guarantee Fund for Victims of Terrorist and Other Criminal Acts *(Fonds de Garantie des victimes des actes de terrorisme et d'autres infractions)*.

23 More in: *Compensation for Trafficked and Exploited Persons in the OSCE Region*.

24 Act No. 302. Alvanou M., *The Right to Compensation for Victims of Terrorist Attacks and in Italian Legislation*, Italian Team for Security, Terroristic Issues and Managing Emergencies, www.itstime.it (7.9.2011).

CRIME VICTIMS COMPENSATION IN DOMESTIC LAW

A victim suffered pecuniary loss has the right to its reparation, by the re-establishing of the situation existing prior the damages occurrence, or by payments of indemnity in money.[25] Victims have a right to be awarded with equitable damages for physical pains suffered, for mental anguish suffered due to the reduction of life activities, for becoming disfigured, for offended reputation, honour, freedom or rights of personality, for death of a close person, as well as for the fear suffered. The court shall, upon finding that the circumstances of the case and particularly the intensity and duration of pains and fear provide a corresponding ground thereof – award equitable damages, independently of redressing the property damage, even if the latter is not awarded (Article 200 of the Law of Obligations Act).

Crime victims in Serbia may obtain the compensation (from the person liable for damages/offender) in both the civil and criminal proceedings. Deciding on victims' compensation claims in criminal proceedings is particularly facilitated by introducing certain criminal-law and criminal procedure institutes in national legislation. Certainly, these new solutions are markedly inspired by the idea of restorative justice and are the result of accepting the victim-offender mediation and settlement as the one of significant alternatives to criminal sanctioning. In this way, the possibilities for the (fast) compensation of victims by the offenders are considerably broadened.

More precisely, in the Criminal Code, Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal-Legal Protection of Minors[26], there are several institutes that stimulate perpetrators to compensate the victims. Although, considering the severity of crime of human trafficking and the sentences proscribed for this crime these institutes are not applicable in the cases of trafficking in human beings, it should be noted that their introduction to domestic legislation and judicial practice is highly significant.

As the basis for the remittance of punishment, the Criminal Code foresees the true repentance and the settlement between the offender and the injured party. The court may remit from punishment the perpetrator of a criminal offence punishable by imprisonment of up to five years if, following the commission of the offence but before learning that he/she has been revealed, the perpetrator eliminates the consequences of the criminal offence or compensates damages resulted from it (Article 58, para. 3). The court may also remit from punishment the perpetrator of a criminal offence punishable by up to three years' imprisonment or a fine if he/she has fulfilled all his obligations from an agreement reached with the victim (Article 59). Further, it has been noted that the Code stipulates that the court shall, when determining upon a punishment for a criminal offender, particularly take into account his/her attitude towards the victim of the criminal offence (which includes, among other things, the issue of compensation).

Within the institute of deferring criminal proceedings, proscribed by the Criminal Procedure Code (Article 236), it has been foreseen that a public prosecutor may defer criminal proceedings for criminal offences punishable by a fine or a term of imprisonment of up to three years (with the approval of the court, the public prosecutor may also defer criminal proceedings for criminal offences punishable by terms of impris-

25 A person liable for damages is oblidged to re-establish the situation existing before the damages occured, and if this fails to eliminate damages completely, he/she is obliged to pay an indemnity in money to cover for the rest of damages. If the restitution is not possible, the court shall order a person liable for damages to pay to the person suffering loss an adequate sum of money as compensation (Article 185 of the Law of Contract and Torts – *Official Gazzettee of the SFRY,* Nos. 29/78, 39/85, 45/89, 57/89, *Official Gazzettee of the FRY*, Nos. 31/93, (22/99, 23/99, 35/99, 44/99).

26 *Official Gazzette of the RS*, No. 85/05

onment of over three years, and up to five years), if the suspect agrees to carry out one or more of measures, including some measures of reparation/compensation of the injured party - rectifying the detrimental consequence resulting from the criminal offence and compensate the damage caused, and the fulfilling pending support obligations (Article 236, para. 1(1,4)).[27] To fulfillment of obligations set out in the Article 236, para. 1 of the CPC the accused person may be also obliged, under particular conditions, through the agreement on the admission of guilt (Article 282b, para. 4). Giving that conclusion of an agreement on the admission of guilt is possible when criminal proceeding is conducted for a single criminal offence or for a concurrence of criminal offences punishable by imprisonment of up to 12 years (Article 282a, para. 1 of the CPC), it is applicable in some human trafficking cases, i.e. when the criminal proceeding is conducted for the crime of trafficking in human beings from the Article 388 paras 1, 2, 8 and 9 of the CC. The prosecutor should care for, and try to optimally satisfy the interests of the injured party (victim) because the court will take the injured party's interest into consideration without fail when deciding on the agreement on the admission of guilt. The obligations of the accused towards the injured party may have different forms – the legislator foresees only the indemnification claim as the subject of the agreement, but the inclusion of other obligations is generally possible.[28]

The solutions relating to the hearing for deciding on the agreement reflect the care for protection of victims' rights, including the right to compensation. Namely, when schedule the hearing for ruling on an agreements on the admission of guilt, which shall be attended by the public prosecutor, the accused and defense counsel, the court will notify the injured party and his legal representative about the hearing (Article 282v, para. 5 of the CPC). When judging on legality and acceptability of the agreement from the point of public interest and rights of the injured party, the court shall investigate, and then judge whether the agreement on the admission of guilt violates the rights of the injured party or is contrary to the reasons of fairness. CPC/2011 contains a simillar provision, but requires agreement on the indemnification claim, if it is submitted, before the conclusion of the agreement on the admission of quilt (Article 314 para. 1 (4)). The public prosecutor is obliged to invite authorized persons to submit indemnification claim before concluding an agreement on the admssion of quilt (Article 313 para. 6 of the CPC/2011).[29]

The Law on Juvenile Criminal Offenders and Criminal-Legal Protection of Minors foresees the possibility to condition the application of opportunity principle against a juvenile offender by imposing him/her to fulfill some obligations (to realize diversion orders), including, among other things, the settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be fully or partly alleviated (Article 7). One of the alternative sanctioning measures[30] for juvenile offenders is "providing compensation for the damages caused, within his personal capacity" (Article 14 para. 2(2)).[31]

27 The Article 237 of the CPC foresees the possibility that the public prosecutor may, if according to the circumstances of the case he finds that imposing a criminal sanction would not be fair, dismiss the criminal complaint for the criminal offence punishable by up to three years' imprisonment or a fine, when the suspect has due to true repentance, prevented the occurrence of damage or has already completely indemnified the damage.

28 The legislator foresees three types of indemnification claims that may be decided on in criminal proceedings – compensation of damages, recovery of objects and annulment of a certain legal transaction. In the case of compensation of damages, it is best to specify in the agreement the amount of money that accused has to pay for damages to the injured. However, if the agreement on the amount of payment cannot be reached, the decision should be left to the court – in that case, the clause that accused is obliged to pay to injured party the amount of money specified by the court according to criteria developed in court practice, should be inserted into the agreement. Đurđić, V., Subotić, D.: *Procesni položaj javnog tužioca i efikasnost krivičnog postupka*, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, Beograd, 2010, p. 82.

29 *Official Gazzette of the RS*, No. 72/2011, 101/2011

30 Alternative sanction measures are the type of criminal sanctions for juvenile offenders and falls into the educational measures (measures of warning and guidance).

31 When pronouncing this measure, the court shall determine the amount and manner of compensating

According to the Article 201 of the CPC, the indemnification claims arising out of the commission of a crime will be considered in criminal proceedings on a motion of authorized persons, unless it would unduly prolong the proceeding. The indemnification claim motions shall be submitted to the authority to whom the criminal complaint was submitted or to the court conducting the proceeding, no later than the conclusion of the trial before the first instance court. In so doing, a person authorized to file the motion shall specify the claim and submit supporting evidence (Article 203). The court conducting the proceeding will question the accused on the facts specified in the motion and explore the circumstances of significance for determining the indemnification claim. The court is obligated to collect essential evidence and explore actions necessary for deciding on the motion even before its submitting. If exploration of indemnification claims would prolong the criminal proceeding substantially, the court shall limit itself to the collection of facts whose establishment later would not be possible, or would be much more difficult (Article 205).

The indemnification claims are decided upon by the court. The court may, in a judgment convicting the accused, award the authorized person completely or in part, and refer the authorized person to civil litigation for the remainder. Where the data of criminal proceeding do not provide reliable basis for full or partial adjudication, the court shall inform the authorized person to assert his indemnification claim in full in civil litigation (Article 206 paras 1 and 2 of the CPC). Almost identical solution containing the CPC/2011 guarantees a better position of the injured party as it recognizes the right to appeal against the award of idemnification claim (Article 50 para. 1 (1,10)). Unfortunately, in spite of current legal possibilities and efforts made to specify the indemnification claims of the victims of human trafficking as properly as possible, the adjudication on them within the criminal proceedings is extremely sparse.

The provisions of the Law on Seizure and Confiscation of the Proceeds from Crime[32] are also of great importance for considering possibilities for victim compensation. This Law regulates requirements, procedure and authorities responsible for tracing, seizing, confiscating and managing the proceeds from crime. According to the Article 49 of the Law, pecuniary funds obtained by sales of permanently seized assets shall be paid into the budget of the Republic of Serbia (and allocated in the amount of 20% each to finance operations of courts, public prosecutor's offices, the Unit and the Directorate), but only after deduction of managing costs in respect of seized assets and the payment of damages to the injured party. The remaining pecuniary funds will be used for financing social, health, educational and other institutions, in accordance with the Government Act. The above provision opens a possibility of establishing a special fund for victims,[33] i.e. allocation of the resources for assistance, rehabilitation and reintegration of victims.[34]

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the damages through the work of the juvenile that may not exceed 60 hours during three months duration of this sanction, but in such a way that will not interfere with schooling or employment of the juvenile (Article 14, para. 5 of the Law on Juvenile Criminal Offenders and Criminal-Legal Protection of Minors)

32 *Official Gazzette of the RS*, No. 97/2008

33 As a road sign in searching for optimal solutions concerning victim compensation, we may use the solution adopted in Croatian Criminal Procedure Law. This Law in the Article 202 defines crime victim as "a person who suffers the psysical and mental consequences, the property loss or damage, or substantial harm of fundamental rights and freedoms resulting from the criminal offence". By numerous provisions, the Law sets up victim's special status in criminal proceedings. Thus, for instance, the Article 16 in paras 3 and 4 foresees that a victim who suffers serious psychophysical damages or serious consequences of criminal offence has a right to free expert assistance of a counsel for the purpose of giving a statement in criminal proceeding, as well as that victim of a serious crime of violence has a right to compensation from the state's budget resources (the resources are collected through fines and seized material gain obtained by criminal offence, in special fund).

34 More on initiative for amending the Law on Seizure and Confliscation of the Proceeds from Crime

CONCLUDING NOTES

The building of an effective concept of crime victim compensation in general, including the compensation of human trafficking victims, means to develop several models intended for different types of victims. Besides those that include establishment of state compensation funds for crime victims, judicial practice of many countries, including the Republic of Serbia, have models of obtaining compensation in criminal proceedings, or in specific proceedings conducted independently of it. The issue of obtaining compensation in civil and criminal proceedings is in connection with many other aspects of the situation faced by crime victims, including the risks from secondary victimization. Generally, charges against perpetrators require active participation of victims in court proceedings, including the giving of verbal and written testimony related to injuries, losses and damages suffered. For victims, this may mean one more terrifying, unpleasant experience which can last very long. In addition, proving the damages by submitting the evidence of victimization, as well as titles and definitions of some categories of damages (as "loss of honour"), may also traumatize the victims. Of course, the problems generally faced by victims of human trafficking usually are intensified and multiplicated in the case of child victims.[35]

Undoubtedly, a legislative solution that would introduce obligatory decisions of the court on indemnification claims in criminal proceedings would much improve the position of human trafficking victims, but also the efficiency of criminal procedure, as well as the seizure and confiscation of the proceeds from crime. Deciding on indemnification claims of human trafficking victims in criminal proceedings is not only the matter of realization of victims' right to protection by the state – it is also the matter of adequacy of state's response to victim's suffering and possible willingness to testify and come through distressing experience again in order to contribute to the delivery of proper court decision in criminal matter that marked her life with pain.

Challenges faced by the court when considering indemnification claims in criminal proceedings are certainly not as hard and serious as those faced by already traumatized victim, injured over and again in the publicity of the courtroom and in the presence of perpetrators, who will be, at the end of a day, referred to submit indemnification claim in the civil lawsuit. By acting in this manner, the criminal court contributes to the further devastation of victims' self-respect and prolongs their agony, instead of protecting them after they have helped the state to "settle accounts" with criminal offenders, and thus save the honour of all those in whose name the judgemnets have been passed.Public interest cannot be fully satisfied without satisfying the victims' interests. Only when a court adjudicates on indemnification claim, all that had been done by the police, prosecutor, court, other state agencies and civil society organizations have full sense, while the chances for protection and recovery of crime victims rise significantly.

in: Žarković, M., Dragičevićević- Dičić, R., Nikolić-Garotić, S., Jekić-Bradajić, G., Majić, M., Vitorović, M.: *Sveobuhvatna studija o krivičnopravnom sistemu i sudskoj praksi u oblasti borbe protiv trgovine ljudima u Srbiji,* Zajednički program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, Belgrade, 2011, pp. 77-78.

35 *Compensation for Trafficked and Exploited Persons in the OSCE Region*, pp. 3-4.

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UDC 343.85:[343.9.024:336.7

THE WAYS OF DISCLOSING THE EXISTENCE OF THE CRIMINAL ACT OF TERRORISM FINANCING AND ITS COMBATING

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Abstract: In this paper we give a review of the ways of finding out about the existence of the crime of financing terrorism, which is different from traditional crimes and there is a great difficulty in its detection because of the secret methods used by terrorist organizations for money to get to the end users. Terrorist organizations are directly dependent on the funds, which represent a driving force for the successful implementation of all phases of their action. For that aim, the system for preventing the financing of terrorism and the prevention strategy against this evil will also be discussed in detail.

Scientific understanding of this problem should contribute to enable improvement and development of system solutions for active combat against terrorism financing, in the field of its repression and its prevention.

Key words: financing of terrorism, terrorist organization, opposing, terrorism, strategy, combat.

INTRODUCTORY REMARKS

Financing of terrorism is a term used to describe the identification, analysis and monitoring of the financial transactions which can be directly linked to terrorists, terrorist activities and terrorist organizations. Furthermore, it is a fundamentally simple concept expressed through financial support, in any form of terrorist activities, or those who encourage, plan or be involved in their implementation. As an important stage in the planning and implementation of terrorist activities is the provision of funds for implementation and dissemination of their ideology, as well as maintaining terrorist organizations themselves. They strive to achieve maximum results through minimal spending their resources.

Although it is assumed that the terrorist act is inexpensive, there are hidden costs. Most funds are spent on:[1]

- Delivery and storage of weapons, ammunition, explosives and other explosive materials;
- Recruiting new members;
- Establishing and maintaining terrorist training camps for members of the terrorist organization;
- Providing a 'safe haven' - a secret place to store weapons and other means;
- Transportation of members and weapons to the place of execution of the terrorist act;
- Providing false identification and travel documents;

1 More on this topic: Мединге р, Ц., Перење пари - водич за кривични иследници, Скопје, 2009 година, стр. 369 - 374

- Means for bribery of public officials;
- Means of communication and other related activities.

The funds represent a driving force that depends on terrorists' activities. It can best be described as an octopus with tentacles that span over a broader territory where more religious, social, economic and political organizations are included. The terrorist activities are a necessary access to funds at all stages, starting from planning, to the execution of the attack.[2] Terrorist organizations and their global networks can successfully implement their deadly agenda without financial resources.

WAYS OF DISCOVERING ABOUT THE EXISTENCE OF THE CA FINANCING OF TERRORISM[3]

When it comes to sources of knowledge about the existence of preparation and financing of terrorism offense, it should be particularly noted that in this initial process information is very difficult to obtain because it comprises clandestine (illegal) activities with a high degree of conspiracy and discretion in their execution. For this purpose, the prosecution authorities and their activities should focus on getting information about various activities that are provided and illegally collected funds for terrorist purposes.

The discovery of terrorist financing in a different part of the discovery of other classic crime where the consequences are obvious and there is obviousness and better opportunities for finding the initial information. Information obtained from various sources need to be subjected to control and depth analysis, based on a more organized approach and cooperation between institutions responsible for combating this type of crime, in order fully to establish the authenticity and accuracy of their claims[4].

An important source for obtaining knowledge about the existence or preparation of terrorist financing is the operational activity of the authorized officials. The bodies of prosecution operating all the time can access the source for providing information and fundraising, and ways of their transfer to the terrorist organization.

Besides the application of criminal - tactical methods in detecting and elucidating this work, they give a significant contribution reports and findings of suspicious activities by inspection, audit services and the economic entities. Prosecution authorities cooperate daily with a range of services. Bearing in mind their powers, the powers at their disposal, and other circumstances that characterize their work, it can be concluded that to be in a position to be quite an important factor, as in detecting individual sources for financing of the terrorism, and in their providing proof and evidence. Within the economic entities they can also perform a variety of suspicious activities that can gain knowledge about the staff, responsible persons and so on. In such situations, for crimes or reasonable suspicion it is of great importance to notify the competent authorities, particularly the organs of Internal Affairs.

2 Димовски, З., Илијевски И., Меѓународен тероризам, Факултет за безбедност, Скопје, 2011 година, стр. 112

3 Кривичен законик на Република Македонија, Сл. Весник на РМ бр. 19/04 од 30.03.2004, 81/05 од 26.09.2005, 60/06 од 15.05.2006, 73/06 од 14.06.2006, 7/08 од 15.01.2008, 139/08 од 04.11.2008, 114/09 од 14.09.2009.

4 Pieth, Mark, Financing Terrorism, from http://books.google.com/books?id=kQYqAxpb7WoC&printsec=frontcover&source=gbs_slider_thumb#v=onepage&q&f=false [accessed on the 10.06.2011] p. 238

As a not so present, but a useful way of obtaining knowledge of the existence of this kind is the way of getting notifications through mass media - mass media[5] - print (newspapers, magazines, shows, etc..), Television, radio, electronic mediators (Internet) and more. Through them, one can publish calls for support of a particular ideology and donating funds to help the organization and implementation of its activities. Such calls are veiled form, the kind of call to help a charity, voluntary donations, sponsorships, etc. And behind their form hides the financing of terrorist activities.

The most common way we found out about the existence of CA financing of terrorism[6]

	F	%
operational activities of authorized officers	21	60,1
reports of suspicious activities from inspections, audit services and business entities	6	17,1
joint operational activity by the authorized officials through reports of suspicious activities of inspections, audit services and business entities	6	17,1
mass media	2	5,7
other	0	0
unanswered	0	0
Total	**35**	**100**

The review of the most common ways about finding out about the financing of terrorism is shown in this table. Most respondents, 21 or 61% give priority to operational activities of the officials as the most common way of acknowledging of this CA, 6 of the respondents or 17.1% think that reports of suspicious activities of inspection, auditing and business services subjects are important for understanding the financing of terrorism. Just as respondents considered that the joint activity of the operational employees and other stakeholders are of great importance to the acknowledging of this CA. Only 2 respondents or 5.7% felt that way when we found out how significant mass media - mass media.

SYSTEM FOR PREVENTION OF THE CA FINANCING OF TERRORISM

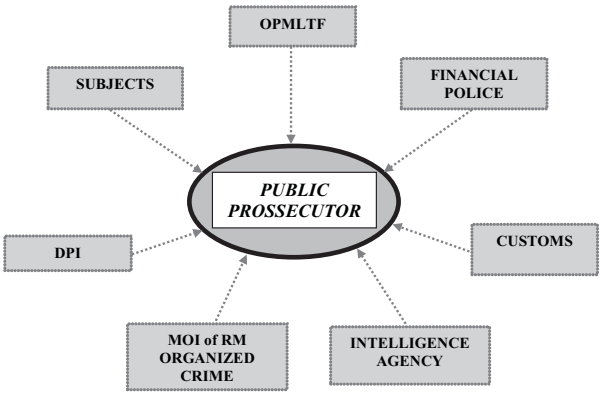
For detection, proving and preventing the financing of terrorism as a serious form of crime, and one of the necessary steps to carry out terrorist activities and threats to the functioning of the state requires the existence of specialized institutions in the fight against this evil. Such institutions need to have proper human, technical and material equipment if they want to achieve remarkable results in the detection and prevention of this crime. Effectiveness in preventing the financing of terrorism can only be achieved if there is high awareness of all institutions involved in this system the seriousness of this offense and the risk they are exposed to. Also, it is necessary to establish such institutions of between-institutional mechanism of cooperation and coordination, and international cooperation.

5 For this method more with Ангелески, М., Оперативна криминалистика, Скопје, 2005

6 The data are a part from the research conducted for the purpose of the master thesis Sources of financing the terrorism- criminal, criminological and criminal-lawful characteristics, by Ice Ilijevski, at the Faculty of Security - Skopje, on 01.06.2011

As authorities and entities responsible for prosecuting the perpetrators of the crime of financing terrorism in the Republic of Macedonia are stated the following: the Ministry of Interior Affairs, Financial Police, the Office for Money laundering and terrorist financing, the Customs Administration, the Intelligence Agency, the special departments in banks and other entities[7].

Central authority in the system to prevent financing of terrorism shall be the prevention of money laundering and terrorist financing (hereinafter OPMLTF). The Office has the authority under the Ministry of Finance as a legal entity. Its Office had jurisdiction and authority to perform in the manner and conditions prescribed by the Law to prevent money laundering and other proceeds from crime and terrorist financing[8]. Fulfilling its responsibilities, OPMLTF acts as an intermediary between entities that take measures and actions and supervisory bodies and institutions competent to prosecute perpetrators of crimes. Work in the Office had been organized into two sectors, or eight units working civil servants. As the most important department in the fight against terrorism financing department stands to prevent financing of terrorism.



Competent authorities for combating terrorism

MI – MINISTRY OF INTERIOR OF THE REPUBLIC OF MACEDONIA

The Ministry of Interior Affairs is the authority of state administration. The responsibilities and powers are regulated by the Law on Internal Affairs[9], the Law on Police,[10] and the Law on Criminal Procedure[11]. The Ministry of Internal Affairs of the Republic of Macedonia is responsible and accountable for taking certain measures and activities necessary to detect the perpetrator of the crimes, helpers, and accomplices participating in the prevention of detection of crime or helping perpetrators to hide or to escape. Also revealed and provided are clues and items that would serve as evidence and providing information about the criminal proceedings.

7 Министерство за финансии, УСППФТ, Прирачник за спроведување на мерки и дејствија за спречување на перење пари и финансирање на тероризам од страна на субјекти, Скопје, 2010, стр. 54
8 Закон за спречување перење пари и други приноси од казниво дело и финансирање тероризам, Сл. весник на Р.М. бр. 04/08.
9 Закон за внатрешни работи, Сл. весник на Р.М. бр. 92/09, 118/09.
10 Закон за полиција, Сл. весник на Р.М. бр. 114/06, 06/09.
11 Закон за кривична постапка, Сл. весник на Р.М. бр. 15/97, 44/02, 74/04, 83/08.

Terrorism as a criminal phenomenon began to be treated several years ago under the Security and Intelligence as well as an organizational unit directly that fell under the jurisdiction of the minister.[12] The Office of Security and Intelligence according to its organizational structure consists of seven administrations, the second administration deals with the protection of constitutional order and is responsible for preventing terrorist activities and actions, while the fifth administration is responsible for the application of special investigative measures and actions which can also be applied to detect terrorist financing. The Security and Intelligence comes to terms with the detection of terrorist financing in cooperation with the Public Security Bureau and other relevant institutions.

In terms of measures and actions related to detecting terrorist financing, the Financial Crime Unit is in charge to combat organized crime within the Public Security Bureau and the Central Police Services.

OPMLTF communicates with MOI so that request is sent in encrypted form through the National cryptography provided by the MOI, and the communication is "Lotus mail client ".

For the purpose of detecting the crime Ministry of Interior Affairs is authorized to apply special investigative measures that were new in 2004, which will later be analyzed separately, which enables the collection of qualitative evidence for criminal proceedings. These measures provide increased performance at work and efficient detection of offenders.

FP – FINANCIAL POLICE OF THE REPUBLIC OF MACEDONIA

Financial Police Authority is operating within the Ministry of Finance as a legal entity that is responsible for implementing financial control, taking pre-research measures and other measures when there are grounds for suspicion of committing criminal acts in the field of finance. Financial Police is based in Skopje, and has jurisdiction over the entire territory of the country and it runs Officer. According to the organizational structure, it consists of Administration and the offices. Under the Criminal Procedure, Financial Police has all those powers which are the Ministry of Interior during the preliminary investigation and investigation. Financial Police also controls the application of tax, customs and other regulations, implementation of proactive financial investigation, monitoring trail of money from crime, enforcement procedure for determining the origin of property and money, prosecute financial crime, including financing Terrorism in Macedonia.

Competent authority for investigating terrorism financing department is proof of tax evasion, fraud, and money laundering that as part of the Department of integrated financial investigations and international cooperation, work on collecting, processing, and documentation of data and knowledge of criminal acts.

Financial police is exercising its statutory powers if it is necessary to cooperate with all relevant national and international bodies who are directly involved in combating terrorist financing.

12 Лабовиќ, М., Власта корумпира, Де Гама, Скопје, 2006, стр. 376.

CUSTOMS ADMINISTRATION OF THE REPUBLIC OF MACEDONIA

The Customs Administration is a body within the Ministry of Finance of the Republic of Macedonia, which is a legal entity. It has its Headquarters in Skopje, and has jurisdiction throughout the state and it is run by Officer. Customs authorities are controlling the import or export of foreign and domestic currency, cheques, and monetary gold. It also implements control, investigative and intelligence measures to prevent and detect offenses and crimes. Authorized persons by the Customs have powers to collect evidence for criminal prosecution of offenders and detect crime.

The Department for fight against economic crime which is within the Department of Investigation in the Control and Investigation conducted investigations in cases of terrorist financing.

The need for recording and monitoring of the physical transfer of cash and securities at entry and exit border as one of the possible ways of financing of terrorism, which is referred to in Recommendation 9 of the Special Recommendations of FATF, the Customs Administration is obliged to register each import and export of cash or securities across the border in Macedonia. This is done if the money or securities exceeding the law or other regulation allowed a maximum of 10,000 Euros. When recording the Customs Administration implement measures and actions to prevent the financing of terrorism by taking concrete actions regarding the identification of the person, identifying the owner of funds or securities, the identity of the end user, the amount and currency of cash or securities , the origin and intent to import or export them.

In all situations the Customs Administration shall electronically or by means of telecommunications or other written forms report to the Administration to prevent money laundering and financing terrorism importing or exporting of cash or securities, within 3 working days of registration. Also, the application shall be submitted in all those situations where there is reasonable suspicion of terrorist financing, regardless of amount.

The Office has direct access to data in the database of duty provided through highly sophisticated and secure way of communication. The entire flow of traffic goes through high security tunnel that connects two networks.

Customs Administration has the legal authority to require admissible information and assistance from other state bodies and institutions, as well as achieving cooperation with customs administrations of other countries in order to prevent offenses and crimes.

THE INTELLIGENCE AGENCY OF THE REPUBLIC OF MACEDONIA

The Intelligence Agency is an autonomous agency - Central Intelligence Service, which means that within the system of state administration, it is treated as a separate body with a managing director. The responsibilities of the Intelligence Agency are defined in Article 2 and Article 6 of the Act enabled by the Intelligence Agency:

- Collects data and information relevant to the security and defence of the Republic of Macedonia and to the economic, political, and other interests of the state.
- Performs analysis and research data and information and informs the President of the Republic of Macedonia, the Macedonian Government and other public bodies on issues relevant to their scope.

- Collaborating with government authorities on issues is of common interest. The achievement of mutual cooperation, the Agency and state authorities are obliged mutually to submit data, reports, information and coordinate actions within the competence of the Agency.

The Intelligence Agency in its organizational structure and special materials section performs research work aimed at collecting data and information about the activities of international organizations and structures, through the activities of smuggling, money laundering, suspicious financial transactions, and transfer of criminal capital, provide tangible assumptions for the financing of terrorist activities.

It also explores the links to the terrorist threat with illegal transfer of weapons, drugs, and people who could be sources of financing of terrorism and smuggling of radioactive, chemical, and biological materials suitable for making weapons of mass destruction. To achieve the goals within their powers to perform research activities of individuals, groups, organizations and institutions related to financing activities with signs of terrorism.

THE MINISTRY OF JUSTICE

The Ministry of Justice has a special role in the system for prevention of terrorism financing. The role and importance of this ministry comes from his jurisdiction to propose legislation in the field of criminal and procedural right, take care to provide the general conditions for performing function of public prosecution, judiciary, public Attorney and Notary, to collect statistical data criminal proceedings, to carry on administrative supervision etc. Within the ministry, there is the Department for International legal aid, with three departments which play a key role in international legal assistance in acting as a central authority. According to the Criminal Procedure, the Ministry of Law is responsible for delivering the requirements of domestic courts for judicial assistance in criminal cases to foreign courts, and to receive foreign letters and requests to transfer to the domestic courts.

To meet the standards prescribed by the International UN Convention on the Suppression of the Financing of Terrorism In 1999, it is the alignment of relevant laws maintaining the accuracy of comprehensive statistical data for international legal assistance in criminal cases of terrorism financing, establishing a fund of seized assets previously set goals, absence of arrangements with other countries to coordinate activities for revocation and seizure of property and more.[13]

PUBLIC PROSECUTOR OF THE REPUBLIC OF MACEDONIA

The Public Prosecutor is unique and independent state authority prosecuting the perpetrators of crimes and other legally defined offenses. For crimes that are prosecuted ex officio the public prosecutor manages and coordinates the work authorized Officials at the Ministry of Interior and other competent authorities to take necessary measures finding the perpetrator, the perpetrator or accomplice to hide or escape, discover and provide traces of criminal offense and objects which may serve as proof.

In cases where executive terrorist act or an act connected with terrorist act (preparation, assembly, etc.), Criminal-technical processing coordinate competent

13 Стратегија за спречување на перење пари и финансирање тероризам, Цетис - принт, Скопје, 2008, стр. 31.

public prosecutor, which according to their responsibilities required by the Law on Public Prosecution[14] take the necessary measures to collect data relevant to the initiation of criminal proceedings.

The amendments are expected to make the LCP in the future provides the public prosecutor to take over the role of the investigating judge and that he has the central role in the investigation. This fact would increase the powers and responsibilities, but of course the responsibility of the public prosecutor as a persecutor of the perpetrators of crimes. Also, the prosecutor would have the authority in clarification of certain criminal offenses to form teams of professionals and experts to be engaged by certain public authorities to have the role of investigators.[15] This new role of the public prosecution should enable it to grow into an independent body that will be capable of professional, vocational and effectively manage the pre-criminal and criminal procedure.

OPMLTF – OFFICE FOR THE PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM OF THE REPUBLIC OF MACEDONIA

Central authority in the system to prevent financing of terrorism shall be the prevention of money laundering and terrorist financing (hereinafter OPMLTF). Office had a body within the Ministry of Finance as a legal entity. Their competences Office had performed in the manner and conditions prescribed by law to prevent money laundering and other proceeds from crime and terrorist financing.[16] The Office had been a follower of the Directorate for Money Laundering Prevention, which was established in 2001. In January 2008 it transformed its charter and title. The main objective is to collect, process, analyze, store and deliver data on money laundering and terrorist financing obtained by the subjects. In this regard, the Office had tasked promptly identify attempts of financing terrorism and to prevent it.

Fulfilling their responsibilities OPMLTF acts as intermediary between entities, takes measures and actions, performs surveillance of the bodies and institutions responsible for prosecuting perpetrators of criminal acts. For its operations OPMLTF is accountable to the Government of the Republic of Macedonia and the Minister of Finance or, in order to fulfil its legal obligations and inform on the achieved results, OPMLTF is obliged to report annually on matters within its competence, as well as to make draft work plan for next year.

The Office carries out the following activities:

- Collects, processes, analyzes, stores, and delivers data;
- Collects financial, administrative and other data and information necessary to carry out their responsibilities;
- Prepares and submits a report when there are grounds for suspicion of committing a criminal offense of money laundering and terrorist financing to the competent authorities;
- Issues written order for the temporary retention of the transaction;
- Refers to a request for proposals for an interim measure until the public prosecutor steps in;

14 Закон за јавно обвинителство, Сл. весник на Р.М., бр.38/04.
15 Лабовиќ, М., Николовски М., Организиран криминал и корупција, Факултет за безбедност, Скопје, 2010, стр. 417.
16 Закон за спречување перење пари и други приноси од казниво дело и финансирање тероризам, Сл. весник на Р.М. бр. 04/08.

- Refers to a request to initiate criminal proceedings before a competent court;
- Collaborates with the subjects and the competent institutions and international bodies to combat money laundering and anti- financing of terrorism;
- Arranges international cooperation agreements and exchanges data and information;
- Makes oversight entities;
- Initiates initiatives proposing laws and regulations;
- Assists and participates in professional development responsible persons;
- Confirms lists of indicators for risk analysis and recognition of suspicious transactions in collaboration with entities and bodies supervise their work and
- Makes other acts determined by law.

OPMLTF has the right, under its statutory powers, after receiving a report of a suspicious transaction, to open the subject and perform collection of additional data from their subjects at home, and when there is need for international institutions and the financial intelligence units of other states that have signed memorandums of cooperation. After the prepared the analysis and reasonable suspicion of financing terrorism, OPMLTF had prepared a list of suspicious transaction report and submits it to the prosecution, because no authority to initiate pre-trial proceedings. It may be noted that OPMLTF had tasked to detect terrorist financing and all the intelligence data to provide to law enforcement for their further treatment.

To disable the illegally acquired property to hide and make available for judicial authorities, the Office had a power to stop the transaction and for a period of 72 hours. It issued an order to block the transaction and prepare a request for taking measures for the seizure of property or money.

DEPARTMENT FOR PREVENTION OF FINANCING OF TERRORISM

Work in OPMLTF had been organized into two sectors, or eight units working civil servants. As the most important department in the fight against financing of terrorism stands department to prevent terrorist financing.

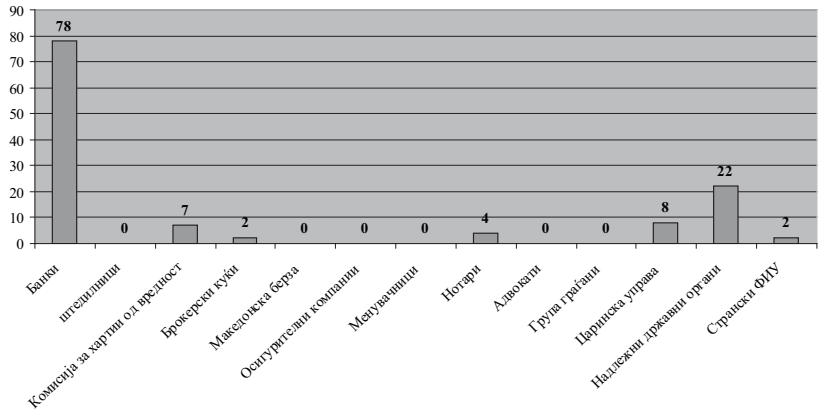
Reports of suspicious transactions suspected related to terrorist financing, and submitted subjects and the competent authorities are analyzed by this department. It opens items and take all activities providing all the information for quality analysis submitted initiative to the public prosecutor to file a proposal for an interim measures implemented obligations Law on international restrictive measures of acting, receiving, processing and submission to the debtor entities on lists of terrorists and terrorist organizations drawn up by the relevant international organizations. This department cooperates with the debtor entities competent authorities; participate in training indebted entities to implement measures to prevent financing of terrorism and recognition of suspicious transactions. Also participates in developing typologies of methods that are commonly used to finance terrorism, participation in the preparation of lists of indicators for identifying transactions related to terrorist financing, participates in drafting the annual report of activities of OPMLTF and preparing manuals or instructions, keeping statistics for the prevention of financing terrorism and more.[17]

17 Стратегија за спречување на перење пари и финансирање тероризам, Цетис - принт, Скопје, 2008, стр. 11.

Overview of submitted suspicious transactions by the entities to the Office had in 2008

	Regular in 2008	Suspicious in 2008	Total in 2008
Banks	95.112	78	95.190
Savings	41	0	41
Commission Securities	0	7	7
Brokers houses	0	2	2
Macedonian stock market	0	0	0
Insurance companies	0	0	0
Exchange offices	0	0	0
Notary public	192	4	196
Lawyers	0	0	0
Group of citizens	10	0	10
Customs	1.954	8	1.962
Competent authorities	0	22	22
Foreign FIU	0	2	2
Total	**97.299**	**123**	**97.422**

Chart: Overview of submitted suspicious transactions by the entities to the Office had in 2008



SYSTEM FOR FIGHTING FINANCING OF TERRORISM

Financing of terrorism is a global problem and the threat that comes from it must always be considered inevitable. Terrorists today introduce versatility in terms of sources of financial flows, reducing the risk of detection. Running a successful strategy to combat the financing of terrorism requires a comprehensive, centralized, focused and proactive approach to terrorist financial matters. The strategy should include methods for identifying, investigating, prosecuting and dismantling of all the sources from which terrorist organizations draw funds. The forms of financing of terrorism often appear in conflict zones and regions and the challenges that are closely related to different locations vary and are hidden under suspicious economies of communities.

Identifying, monitoring and elimination of the financial structure supporting terrorist groups is critical to running a successful fight against terrorist financing

and preventing future terrorist attacks. Locating and transfer of money plays a key role in identifying those involved in criminal activities, the relationships that exist between them and the terrorist organization and gathering evidence for their activity[18]. The monitoring of financial transactions and links to terrorist activities and their identification is only a small part of the mission and the key is in the use of operational information to identify the unknown terrorist cells and their plans. The development and evolution of a number of sophisticated and efficient processes and mechanisms to combat the financing of terrorism is the task of the law enforcement units. Also, these authorities must raise public awareness and the private sector which must be educated about their possible role in the financing of terrorism. Many individuals unwittingly provide services to terrorists and their accomplices have become, and that is because insufficiently familiar with the origin of funds, suspicious transactions and activities of their customers.

If the Law enforcement agencies want to conduct a successful strategy to combat terrorist financing, they must begin to fight the centrality of law enforcement activities and their connection with the financing. In the past, terrorism and organized crime are examined as separate phenomena and ignoring important warnings derived from criminal activities of terrorist organizations. It is possible for the sources of terrorism funding to be sought only in certain predominant forms of crime, but a high priority must be given to the analysis of the versatile range of criminal activities that fund[19].

The struggle against this evil should encourage investigations of terrorist financing to include prosecutions of individuals and organizations with high social status. In this criminal activity, a great number of bankers, accountants, salesmen, directors of private companies and others are involved that must be blamed for their role in the process. Few investigations of terrorist financing are limited to one field or one state, so it should be guided by experienced financial investigators and operational workers. Such investigations should be effectively coordinated to ensure the implementation of necessary expertise and priority should be given to global strategies to combat terrorism.

International cooperation is one of the important activities in the strategy to combat terrorist financing. Continued support of international investigations and exchange of operational information and training programs should include a number of state agencies and a specific profile of the opposition. It is internationally supported to perform equipping and training of law enforcement and agencies and their staff. International training should include: performance in handling evidence in the intensive financial investigations, management of forensic tools and methods in the prevention of financing terrorism. It is also necessary to create and maintain a database of government and NGO sector where one can store and exchange data.

Effectiveness in preventing terrorist financing is achieved only if there is high awareness of all institutions involved in this system and the seriousness of these offenses, and the risk they are exposed to. In this respect it is very important to intensify all activities to increase public awareness and raising the quality and level of recognition of cases of financing of terrorism.

18 Стратегија за спречување на перење пари и финансирање тероризам, Цетис - принт, Скопје, 2008, стр. 31

19 Combating Money Laundering and the Financing of Terrorism, A Comprehensive Training Guide, The World Bank, Washington, 2009, from http://books.google.com/books?id=Y6Gv12AoEaYC&printsec=frontcover&source=gbs_slider_thumb#v=onepage&q&f=false [accessed on the 02.06.2010] p. 229

Republic of Macedonia in the fight against terrorist financing has adopted a strategy to curb money laundering and financing terrorism. By implementing the strategy the following objectives are to be achieved[20]:

- Legislation to be coordinated with the European Union regulations and relevant international standards for preventing money laundering and terrorism financing;
- Institutional Building;
- An effective system for international cooperation;
- Strengthened international cooperation and
- Raising public awareness about the necessity of taking measures to prevent money laundering and financing terrorism.

PREVENTING FINANCING OF TERRORISM

From the above mentioned, it can be concluded that financing of terrorism is a complex problem that is associated with many organized criminal activity and its detection and prevention proves to be difficult to a large extent. Besides the application of modern measures and actions by instruments of the law enforcement, established preventive policy is needed. To achieve such a preventive policy that would be effective, each country should make maximum use of its facilities and resources at its disposal.

Preventive action in the suppression of terrorist financing is needed before detection and identification of those factors that allow uninterrupted occurrence of such a criminal activity and provide an opportunity to pursue terrorist activities.

The preventive plan in which each state prepares a prevention strategy that lists all the measures and activities to be undertaken for successful elimination of such factors that promote terrorism financing. However, such factors are not only encroached in a specific social sphere, but spread in many of them, the necessity to engage in preventive strategy despite the criminal prosecution authorities and certain public and private financial and banking institutions and certain entities from the NGO sector. The joint actions of all competent authorities and those entities that may be directly involved in financing terrorism used provides greater caution and monitor all suspicious activities that may be related to the financing of terrorism. To this end, indicators that are being developed which would recognize the activities of terrorist financing and to inform all parties for the successful prevention of this first phase of terrorist activities.

The importance of a preventive strategy against terrorist financing stems from the fact that one can disable access to transportation and financial resources of terrorist organizations themselves, and thus indirectly acts to prevent the execution of terrorist activities. Bearing in mind that money is the driving force or the lifeblood of any terrorist organization, the termination of the funds would be brought under question in a successful action. Preventive policies concerning the financing of terrorism can largely be equated with prevention being taken to combat organized crime, because it can be seen that many of the sources of financing terrorism are organized criminal activity. If these sources are disabled, or find links between terrorist organizations and criminal groups, then indirectly it is acted upon the financing of terrorism.

20 Стратегија за спречување на перење пари и финансирање тероризам, Цетис - принт, Скопје, 2008, стр. 32

International cooperation occupies a pivotal role in guiding preventive policy against financing of terrorism, the possibility of swift and smooth exchange of information and experiences. The membership of countries in international organizations and committees FIU allows such operational information exchange and personnel training by organizing various seminars, conferences, workshops and so on. The international community has adopted international documents related to the financing of terrorism, which each State should implement, because they contain minimum standards and recommendations that need to adhere to the States in preparation of preventive strategies and policies.

CONCLUDING OBSERVATIONS

Terrorism is a global threat to all humanity, which leaves particularly negative and harmful consequences. Terrorist organizations have their own ideology and their objectives that they seek to achieve in every possible way. For this purpose they recruit, train and involve smarter and appropriate members of their organization, whose main features characterize the Islamic fundamentalism and radicalism. Terrorist activities peformed by members of the terrorist organizations in the pursuit of their goals frequently invovle acts aimed to induce fear and insecurity among the population, in public, destruction of civil order, and thus extort a certain behavior by the government, which in turn enables them to achieve their political, religious or ideological purposes. In order for all this to be realized, funds are required to be used for various purposes: training, logistics, shelter, weapons, ammunition and so on. It means that terrorists are dependent on funding. They in turn provide funds in various ways and from different sources. Frequently, the money originates from illegal activities - trafficking or other criminal forms of security funds, but it may also originate from legitimate activities, such as NGOs, religious organizations, states that act as sponsors, charities and so on.

Combating terrorist financing is an important front in the war against terrorism. The terrorists and their support structures need funding in some form in order to exist and operate. Whether funding and financial support are legitimate or illegitimate, they are intended for destruction of the constitutional order and security of a country. When studying the scientific and professional literature in the fight against financing of terrorism many times was emphasized that terrorist activities could be prevented by preventing the financial assets of terrorist organizations. Many authors impose the need to end this "bloodshed" or "driving force", which actually represent money for terrorists. By taking adequate measures, the authorities responsible for combating the financing of terrorism will not only prevent CA from doing this, but will disable the execution of terrorist activities.

To discover the ways of transferring money, a more detailed study is more than necessary, which will enable the establishment of an effective system of detection, proof and clarification of these phenomena, the establishment and improvement of system solutions, through the institutions responsible for detection and control of these illegal events.

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UDC 343.359.2(497.11)
336.225.68(497.11)

CRIMINAL LAW PROTECTION OF PUBLIC REVENUES IN THE SERBIAN CRIMINAL LAW

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Abstract: A system of taxation may encourage taxpayers to conceal and falsely represent their activities. Taxpayers, in order to achieve the bigger income and in that way more quickly and easily increase their own capital, seek to reduce basis for calculating the tax liability. Measures of tax policy and the system of tax revenue collection should be adapted to the economic capacity of taxpayers. By reducing the burden of payment within reasonable limits, there is less resistance to the tax payment obligation, and this can be achieved by expanding the taxable base and lowering their rates. In an effort to prevent tax evasion, countries have taken some preventive measures. However, despite these measures, countries are forced to take repressive measures. Each country in its legislation incriminates certain activities of avoiding paying taxes, which gives them the character of socially dangerous activities, and appropriate sanctions are provided for their perpetrators.

Key words: tax evasion, smuggling, tax policy, tax system, budget, taxes, contributions.

THE NOTION OF CRIMINAL OFFENCES RELATED TO PUBLIC REVENUES

In each country, a larger number of offences related to public revenue are committed, more than it is shown in the official statistical analysis, because a significant number of these offences remain undiscovered. Each country in its positive legislation incriminates activities related to avoidance of public revenues payment.[1] In the Republic of Serbia, tax-related criminal offences have been incriminated in the Criminal Code[2] and the Law on Tax Procedure and Tax Administration. The Criminal Code provides for criminal offence of tax evasion (Article 229), and non-payment of withholding tax (Article 229a). The Law on Tax Procedure and Tax Administration, as auxiliary criminal legislation, provides for four criminal offences: unfounded presentation of the amount for tax return and tax credit (Article 173a), endangering tax collection and tax control (Article 175), illegal trade in excise goods (Article 176) and illegal storage of goods (Article 176a). In this paper, we will point out to some criminal offences of the Criminal Code of Serbia.

TAX EVASION

Criminal offence of tax evasion has been provided for in the Article 229 of the Criminal Code of Serbia. This offence is committed by a person who with the intent to fully or partially avoid payment of taxes, contributions or other statutory dues, gives false information on legal income, objects and other facts relevant to

1 G. Milošević, Teorija i praksa finansijskog prava, Belgrade, 2011. p. 337.
2 The Official Gazzette of the Republic of Serbia, No. 85/05, 88/05, 107/05, 72/09 and 111/09.

determination of such obligations, or who with the same intent, in case of mandatory reporting, fails to report lawful income, objects and other facts relevant to determination of such obligations or who with the same intent conceals information relevant for determination of aforementioned obligations, and the amount of obligation whose payment is avoided exceeds one hundred and fifty thousand dinars. This offence is punishable by imprisonment of six months to five years and a fine.

This criminal offence has two aggravated forms. The first aggravated form occurs if the amount of the liability specified the payment of which is avoided exceeds one million five hundred thousand dinars. The punishment for this form of offence is imprisonment of one to five years and a fine. The second aggravated form occurs if the amount of the liability the payment of which is avoided exceeds seven million five hundred thousand dinars. The punishment for this form of offence is imprisonment of one to eight years and a fine. These aggravated forms represent greater social danger, which is manifested in perpetrator's intent to embezzle greater amount of tax or income.

The fact that there is liability to pay taxes and contributions makes taxpayers adapt their behaviour in order to avoid or reduce the payment, before the liability for payment sets in. This can occur when a taxpayer shows his business or state of the property such that the calculated duties are lower, or as if he did not do business or own property at all, although the factual situation is different, to the detriment of the general interest.

In order to determine the true meaning of the provision that defines a criminal offence, one should separately analyze all constitutive parts of the disposition, i.e. all specific elements of criminal offence. Specific elements of criminal offence are those elements that are not common to all criminal offences, but they are characteristic for specific criminal offences and distinguish one criminal offence from another. These elements are also called characteristics of criminal offence.[3] For the criminal offence of tax evasion, there are several constitutive characteristics related to the object of criminal law protection, commission, guilt, consequence, perpetrator and objective condition for incrimination.

Object of criminal offence is a good or interest against which the criminal offence is directed. Every criminal offence is directed against a specific object. In this case, object of criminal law protection is the law and fiscal interest of the country and its funds, which are manifested through duties of its citizens, legal persons and other organizations to fulfil these obligations. The nature and content of these obligations is determined by other, non-criminal provisions, which gives this criminal offence the blanket character.[4] The same principle applies as in criminal law that there is no criminal offence or punishment without the law, there is no taxation without law. Therefore, the taxation is allowed only if provided by the law.

The disposition of this criminal offence is of a blanket nature. In order to apply it, it is necessary to determine whether a taxpayer has violated legal and other provisions in the field of fiscal legislation. Therefore, it is necessary to know the tax rules that regulate the matter of taxation of natural and legal persons.

With the criminal offence of tax evasion, all forms of public revenues are being protected. In order for this criminal offence to exist, a taxpayer has to undertake an action in order to avoid the payment of public revenues to the social community. These public revenues are as follows: income tax; tax on income from agriculture and forestry; tax on income from self-employment; tax on income from copyright;

3 N. Srzentić, A. Stojić, Lj. Lazarević, Krivično pravo Jugoslavije: Opšti deo, Belgrade , 1996, p.p. 164-165.
4 Lj. Lazarević, Krivično delo poreske utaje, Priručnik oporezivawa i poresko pravo, Belgrade, 1998, p. 423.

rights related to copyright and industrial property rights; tax on income from capital; tax on income from immovable property; tax on capital gains; tax on other income; annual income tax; corporate profit tax; property tax; inheritance tax and gift tax; transfer tax; VAT; excise taxes; contributions under the pension and disability insurance; health insurance and insurance on the basis of unemployment; compensation taxes; local public revenues, and other public revenues. Specific tax laws govern these public revenues.

The core of the criminal offence of tax evasion is in false representation of facts relevant to the determination of tax liabilities. The substance of criminal offence of tax evasion includes **three acts of commission**, as follows: *giving false information* on facts that are important for determining tax liability, *not reporting* such facts, and *concealment* of information relevant for taxation, and the amount of liability whose payment is being avoided exceeds one hundred fifty thousand dinars. In order for this criminal offence to exist, it is sufficient that one of these actions was committed.

(1) The criminal offence of tax evasion is committed by giving false data on facts relevant to determination of tax – a perpetrator files a report based on which his tax liability should be determined, but enters false data in that report. The data are false when they do not match the objective real situation in terms of legally obtained incomes, or in terms of other facts, that are of significance for establishing the final tax liability.

By false presentation of facts, a perpetrator misleads the responsible authorities in terms of the amount of tax base for determining tax liability, and in that way, this criminal offence obtains a character of special form of fraud. This criminal offence is not committed by just any false reporting of data; it is necessary that these data are relevant for determining tax liability. For example, if an employer gives a false piece of information on the name of his employee, this criminal offence will not exist, but if he gives false information in terms of amount of legally obtained income, this criminal offence will exist.

In order for this criminal offence to exist, it is not important how and in what form the false tax return was filed. It can be filed in writing or orally and entered into report, or by subsequent providing of information requested by tax authority. Information provided have to be false, which means that they do not match the real incomes of a taxpayer or other facts of relevance for tax return or tax credit.

(2) The criminal offence of tax evasion can also be committed by not reporting the facts that are important for determining the tax with the intention that perpetrator or someone else avoid full or partial payment of those obligations. All taxpayers are required to report the facts relevant to the assessment of tax. By failing to report, the perpetrator does not act according to that obligation, because he does not file a tax return or does not enter data in tax return that serve as the basis for the tax assessment. Any omission of information from the application does not mean that the conditions were fulfilled in order for this criminal offence to exist. It is necessary for the data relevant to tax liability assessment to be left out. The obligation to report income, objects or other facts that are important for assessing the tax liability arises when the real-life event occurs that can be subsumed under the legal description of the factual tax state. The time when this obligation occurs is determined for each tax form separately.

The obligation to report income refers to legally earned income, objects or other facts relevant to the assessment of tax and contributions liability, which is understandable, because the illegally acquired property cannot be taxed. Therefore, this criminal offence will not exist if one does not report income from an unlawful activity - the commission of the offence, economic offence or criminal offence.

(3) This criminal offence can also be committed by concealment of the data relevant for taxation. This may include concealing facts or incorrect calculation of tax liabilities, the false balancing of individual positions, the infringement of regulations regulating tax liability and other duties which represent public revenue and similar.

In order for this criminal offence to exist, it is necessary for a perpetrator to have intent to obtain illegal material gain.[5] If such intent does not exist, then this criminal offence cannot exist, but eventually economic violation or misdemeanour.

In order to prove this criminal offence, the existence of intention to avoid the payment of taxes, completely or partially, must be determined. For criminal responsibility of the perpetrator of the criminal offence of tax evasion, **premeditation** is required, because intent, by its very content, excludes the negligence and directly implies the existence of premeditation. Since this criminal offence is committed with special intention, this can be only direct premeditation – with act of commission that has the highest level of consciousness and will.[6] This act is directed towards precisely a defined goal, and the motive and goal cannot exist one without the other. Motive appears as a cause, while goal appears as a consequence of action. The perpetrator has to be aware that he is providing false information on the facts of influence to assessment of the right to tax return or tax credit, i.e. that he is not providing the facts relevant for that cause.[7]

Guilt in this criminal offence includes the awareness of circumstances by the perpetrator, under which the commission of act is concretized, then the awareness of consequence and awareness of causal relation between act and consequence. Awareness of the circumstances by which the act of commission is concretized includes awareness of the act of commission, i.e. presenting false data on the fact relevant to the tax assessment, failure to report these facts and the concealment of the data relevant to taxation, and the amount of obligations the payment of which is avoided exceeds one hundred fifty thousand dinars.

Awareness of consequences consists in the awareness that these activities are aimed at full or partial tax evasion and causing damage to the budget and funds. Awareness of the causal relationship between actions and consequences is reflected in the awareness of the offender that his act of commission is the cause of the consequence, i.e., that due to action by which he intends to fully or partially avoid paying taxes, will cause certain damage.[8]

Without the awareness of the existence of the above-mentioned circumstances, there would be no existence of direct premeditation, that is intent as one of the elements of this offence, and therefore, criminal offence of tax evasion would not exist.

Each offence must have a **consequence**, because without consequences there is no socially dangerous offence, and therefore no criminal offence. The consequence of a crime, i.e., its impact in a form of change or state in the outside world consists of some damage done to the object of that offence. In criminal offence of tax evasion, the consequence is not particularly emphasized in the description of the offence. This criminal offence is committed by the very act of filing false information, or when the deadline for filing a report is due, i.e. when tax liability or obligation are not determined or when the amount of tax liability assessed is lower than prescribed. At this point, this is completed criminal offence, which means that consequence has occurred. Therefore, the consequences of the criminal offence occur at the time of commission of action of this offence.[9]

The consequence of this criminal offence is connected with an objective condition. To be specific, criminal offence will exist only if a perpetrator undertakes the

5 M. Kulić, Poreska utaja i krijumčarenje, Belgrade, 1999, p. 171.
6 M. Kulić, op. cit., p 151.
7 N. Srzentić et al., op. cit, p. 554.
8 M. Kulić, op. cit, p. 152.
9 M. Kulić, *op. cit*, p. 147.

act of commission in order to avoid payment of taxes in an amount that exceeds hundred and fifty thousand dinars. By undertaking the act of commission, the budget and funds will be endangered. In order for this criminal offence to exist, it is not necessary that the perpetrator succeed in his intention to, by misleading the tax authority, have his tax liability assessed in a lower amount or not assessed at all[10]. It is sufficient enough that the perpetrator, in order to fully or partially avoid tax payment, has given false information on the facts of influence for establishing these obligations, that is, that in the case of mandatory tax return he did not report income or other facts, i.e., that he concealed some information relevant to taxation.

The perpetrator of criminal offence of tax evasion is every person who gives false information on the facts relevant to tax assessment, i.e. every person who does not report facts relevant to the assessment of that liability, as well as every person who conceals information relevant for taxation. The perpetrator of this criminal offence can be legal representative, trustee, custodian, co-owner, or any other person who on behalf of another person files a tax return with false data, with a consequence of avoiding tax payment. This can be a physical person, as well as responsible person in tax debtor. Responsible person can be owner of the company or other organization, as well as a person in a company, institution or other organization, which, given his function, invested funds or based in authorization, is entrusted with a scope of activities in management of property, production or some other activity or in supervising them, or is entrusted with performing certain jobs.

The scope of authority given to the person responsible is determined by regulation or some internal act. The essence of powers of the responsible person is determined by nature of the work he performs. In order to have the status of an authorized person, it is necessary that this person be empowered to undertake certain activities. This authority may be derived from the investments, the function he performs, or may be constituted in some other way.

In order to determine a responsible person for this offence, as well as its perpetrator, it is necessary to perform two activities. First, it should be determined whether a person, who is suspected to have committed this offence, is a responsible person or not. Second, when it is determined that a person is actually a responsible person, it should be determined whether this person in a specific case, given his powers, can be the perpetrator of this criminal offence.

In the criminal offence of tax evasion, all possible forms of accomplice are also possible, which means that it is possible that two or more persons commit this offence, or incite someone else to commit this offence, or help them in that.[11] For larger amounts of evasion of taxes and contributions, as a rule, there are accomplices.[12]

	Number of convicted persons		Imprisonment						
Year	Total	Women	Total	From 2-3 years	From 1-2 years	From 6-12 months	From 3-6 months	From 2-3 months	Up to 2 months
2007	193	27	29	-	2	10	12	2	3
2008	279	25	38	1	9	9	11	6	2
2009	293	43	49	2	9	15	14	8	1

Table 1: Overview of the number of persons convicted of tax evasion under the Article 229 of the Criminal Code of Serbia in the period 2007-2009[13]

10 N. Srzentić et al., *op. cit*, p. 554.
11 M. Kulić, *op. cit*, p. 146.
12 M. Kulić. G. Milošević, Fiskalni kriminalitet u Srbiji, Industrija, No 4, Belgrade, 2011, p. 298.
13 Bilten Republičkog zavoda za statistiku Republike Srbije- punpletni učinioci krivičnih dela – prijave, optuženja i osude za 2003-2009 godinu.

NON-PAYMENT OF WITHHOLDING TAX

Criminal offence of non-payment of withholding tax is stipulated in Article 229a of the Criminal Code. This offence is committed by a responsible person in legal person – tax debtor, as well as entrepreneur, a tax debtor who, with the intent not to pay tax, does not pay the amount calculated for withholding tax to a proper public revenue account

The Paragraphs 2 and 3 provide for aggravated form of criminal offence of non-payment of withholding tax, which differs from the main form only in the fact that for its existence, it is necessary that the amount of obligation whose payment is avoided exceed one million five hundred thousand or seven million five hundred thousand dinars. This aggravated form of offence contains greater social danger, which is manifested in perpetrator's intent to charge greater amount than the one calculated for the withholding tax. For committed criminal offence of Paragraph 2, the punishment is imprisonment of 6 months to 5 years and a fine. For the criminal offence of Paragraph 3, the punishment is one to ten years imprisonment and a fine.

In Paragraph 4, security measure of ban on performing private business, profession, activity or duty for a period of one year to five years was prescribed for entrepreneur and the responsible person in tax debtor, the security measure of ban on performing private business, profession, activity or duty is prescribed.

This criminal offence is a kind of fraud, "because the amount which is on behalf and for the tax debtor calculated based on withholding was not paid to the appropriate public revenue account".[14] In this case also, the object of criminal law protection are the right and the fiscal interests of the state and its funds to collect taxes and contributions, which are manifested tax debtor's obligation to "to calculate and upon withholding pay the prescribed tax on such income, on behalf and for a tax debtor, to the appropriate revenue account."[15]

The disposition of this criminal offence is of a blanket nature. The act of commission consists of non-payment (full or partial), to the appropriate public revenue account, the amount calculated for withholding tax.

The criminal offence of not payment of withholding tax is committed by a tax debtor who does not pay the calculated tax withholding. At the time of income payment, tax debtor is obliged to calculate and pay tax to stipulated revenue account. If the payer of income pays net income to the tax debtor, and does not pay withholding tax, this offence will exist. This offence will also exist if the amount of tax paid to public revenues account is lower than calculated.

The offence is completed when the offender performs the calculation of withholding tax, retains determined amount of tax, pays net income to the tax debtor, and calculated and withheld tax is not paid to the public revenues account. [16] In order for this criminal offence to exist, it is not necessary that the perpetrator determines lower amount of tax liability than stipulated, but it is sufficient that a perpetrator, with the intent to avoid tax liability fully or partially, does not pay tax to the prescribed revenue account.

In addition, in order for this criminal offence to exist, it is necessary that the perpetrator have intent not to pay tax. If there is no such intent, then this criminal offence will not exist. In order to prove this criminal offence, one must establish the

14 D. Popović, Nauka o porezima i poresko pravo, Belgrade, 1996, p. 252.
15 Article 12. Paragraph 3. **oof the Law on Tax Procedure and Tax Administration,** *No. 80/2002, 84/2002, 23/2003, 70/2003, 55/2004, 61/2005, 85/2005, 62/2006, 61/2007, 20/2009, 72/2009, 53/2010*
16 D. Popović, *op. cit.*, p. 252.

existence of the intent of full or partial non-payment of tax. The criminal responsibility of the perpetrator of the criminal offence of non-payment of withholding tax must comprise the awareness of the circumstances of criminal offence, awareness of its consequence to the budget and funds and awareness of causal relation between the act and the consequence.

SMUGGLING

1. The content of the notion of smuggling is treated by criminal legislation of Serbia as a criminal offence, providing that the offender is engaged in moving goods across the customs line, avoiding measures of customs control, i.e. that he is armed or works within an organized network.[17] This criminal offence under the Criminal Code of Serbia is as follows:

(1) Whoever takes goods across the customs line evading customs control measures or who takes goods across the customs line evading customs control while armed, in a group or using force or threat, shall be punished by imprisonment of six months to five years and fined;

(2) Whoever engages in sale, distribution or concealment of goods not cleared through customs or organises a network of dealers or middlemen for distribution of such goods, shall be punished by imprisonment of one to eight years and fined;

(3) The goods that are subject of the offence specified in paragraphs 1 and 2 of this Article shall be seized;

(4) A vehicle or other means of transportation the hidden or secret places of which were used for transport of goods subject to the offence specified in paragraph 1 of this Article, or which is intended for committing such criminal offences shall be impounded if the owner or user of such a vehicle was aware or should have been aware or was obliged to be aware of it, and if the value of goods that are subject of the offence exceeds one third of the value of such vehicle at the time of commission of the offence.

Import, export and transport of goods, and crossing of people through the customs line, is done through the customs border crossings, which comprise the place designated for the import, export and transit of goods, as well as the crossing of persons and vehicles through the customs line at the border crossing.[18] Customs control includes measures to prevent unauthorized handling of customs goods and the provision of its safety until the customs procedure is done. These measures include in particular: customs inspection and storage of goods, transport of customs goods, placing custom features, taking samples, brochures, photographs or other data to ensure safety of the goods, examination and search of transportation means and driving staff and crew, and search of baggage and personal searches of passengers. Customs goods, passengers and crew, and driving personnel are subject to a customs control.[19]

All goods that are imported, exported or transported across the customs line, or that are brought or taken out of the free trade zones or duty free shops, must be reported to the border, or other competent tax office according to the procedure and in the manner specified by the customs regulations. Documents to be submitted during the registration of customs goods must be completed properly and accurately. Customs clearance of imported goods is performed by the customs office

17 M. Bošković, Kriminalistika metodika II, Belgrade, 1996, p. 162.
18 Article 8 of the Law on Customs, Official Gazette of the Republic of Serbia, No.73/2003 and 61/2005
19 Article 10. of the Law on Customs, Official Gazette of the Republic of Serbia, No. 73/2003 и 61/2005

where the goods were declared for customs clearance. This can be input customs, but also customs in some other place, which is indicated in the transport documents accompanying the goods.[20]

	Number of convicted persons		Imprisonment						
Year	Total	Women	Total	From 2-3 years	From 1-2 years	From 6-12 months	From 3-6 months	From 2-3 months	Up to 2 months
2007	107	9	12	-	-	1	6	2	3
2008	90	1	12	-	1	2	8	-	1
2009	111	4	22	-	2	4	6	2	8

Table 2: Overview of the number of persons convicted for criminal offence of smuggling under Article 230 of the Criminal Code of Serbia in the period 2007-200921

2. Object of protection of this criminal offence is customs and other import duties. Customs are public service and represent obligation of the owner of the goods to pay prescribed amount of money to the state budget when he reaches the borderline. Customs are specific form of duties, which are charged when the goods are imported from abroad or exported. Customs, as public revenue is nothing more than consumer's tax paid on the border.[22]

The object of this criminal offence is the goods transferred across the borderline. This includes all goods, no matter whether its traffic is permitted, prohibited or restricted. However, it should be noted that the object of this criminal offence can only be movable property, items that can be physically transferred across the customs line. The object of this criminal offence can be products whose production, in order to preserve public order, protect human health, the prevent livestock and plant diseases, protect public morals or other legitimate reasons, is prohibited or strictly limited, and any item whose turnover, import, export or transportation is prohibited or restricted.

3. This criminal offence has four main forms, namely:

a. Moving of goods across the customs line, by avoiding measures of customs control;

b. Transfer of goods through the customs line armed, in a group or by using force or threats, avoiding measures of customs control;

c. Dealing with resale, distribution or concealment of goods not cleared through customs, and

d. Organizing a network of dealers or intermediaries for distribution of the goods not cleared through customs.

(1) The first form of this criminal offence exists when a person tries to move goods across the customs line, by avoiding measures of customs control, and when this person tends to engage again in such an activity. The expression "engage" should be understood as something that is repeating. In the literature, there is disagreement over the question whether this offence exists only when the act of commission is done repeatedly, or when it is done only once. We believe that this type of offence from Article 230 of the Criminal Code cannot exist when the act of commission is

20 D. Popović, op. cit., p. 860.
21 Bilten Republičkog zavoda za statistiku Republike Srbije- punpletni učinioci krivičnih dela – prijave, optuženja i osude za 2003-2009 godinu
22 J. Lovčević, Institucije javnih finansija, Belgrade, 1975, p. 129.

committed only once, but that it is necessary to undertake these activities at least twice (transferring goods across the customs line, avoiding measures of customs control). For completion of this criminal offence, it is not important whether the transfer of goods through the customs line by avoiding measures of customs control is carried out through customs (border) crossings or other crossings (illegal border crossing).[23] In addition, it is of no importance in which way the goods are transferred.

(2) The act of commission of the second form of this criminal offence consists in transferring goods across the customs line by an armed person, in a group or by using force or threats, while avoiding measures of customs control. The difference between this act and the previous one is that it is not done by "engaging" and that for the existence of this form of crime it is necessary for the offender to be armed. In order for this criminal offence to exist, it is sufficient that the perpetrator was armed, i.e. that he, while moving goods across the customs line, by avoiding measures of customs control, had a weapon, which was suitable for attack, if necessary. For the existence of this crime, it is not relevant whether a weapon was used or not.

(3) The act of commission of the third form of this criminal offence consists in engaging in the sale, distribution or concealment of goods not cleared through customs, by avoiding measures of customs control. The same as with the first form of this offence, this form is done by "engaging", but in this case in selling, distribution, or concealment of goods not cleared through customs.

(4) The act of commission of the fourth form of this offence consists in organizing a network of dealers or intermediaries for distribution of goods not cleared through customs. The act is committed by several persons. These persons may be differently organized, and the role of individuals within an organized network can be completely different. The network is organizing a number of persons displaced in a particular area, which play specific role in the implementation of a common goal. The intermediary in terms of this offence is a person who engages in the chain of intermediaries, between the people who organized the entry of goods by avoiding measures of customs control and the consumer, with the aim of gaining profit for the organizers and for themselves. [24] Reseller under this offence is a person who buys goods not cleared for the purpose of its further sale, and sells these goods at a price greater than purchased.

The network of dealers or intermediaries exists when there are more people in the wider area who purchase goods not cleared through customs for selling it, or perform mediation in trading activities of goods not cleared through customs on behalf of the offender. The network of resellers or intermediaries should be organized in such way that it operates for the perpetrator, and not as selling or buying of goods not cleared through customs to each other. Thus, it cannot be considered that there is such a network if more offenders mutually sell or buy goods without legal permission, in their own name and to their benefit, within their independent shops.25 The objective of the organizers in creation of network is the distributing goods not cleared through customs. In order to be considered as that offence, it is considered sufficient that organized network includes at least three resellers and agents.

In this type of action, consequence is not particularly emphasized in the description of the criminal offence. The consequence consists of organizing the very distribution of not cleared goods through a network of resellers or intermediaries.

23 M. Kulić, *op. cit*, p. 187.
24 M. Kulić, *op. cit*, p. 193.
25 M. Kulić, *op. cit*, p. 194.

Through organizing of such a network the budget is threatened because the turnover of goods is performed and the income is realized which was not taxed.

Criminal liability of perpetrators in this type of criminal offence exists only if they acted with premeditation. Premeditation involves awareness of the offender to organize a network of dealers or intermediaries for distribution of goods for which customs duties were not paid, and the awareness that it is through this network the distribution of goods on which customs duties were not paid is performed.

4. The consequence of this criminal act consists in harm for the budget due to avoidance of paying of customs and other taxes on importation of goods and services.

The perpetrator of this crime could be any person. Most often these are customs payers who comprise the recipient of goods, owner of the goods or their authorized representative, the person on which the starting document is stated, the person to whom the rights are transferred from the transport document, the person who enters the goods into the customs territory[26] or carries out outside the customs area, as well as other persons who are obliged to pay customs as provided by law.

With this criminal offence, all forms of collaboration are possible. Offence is most often performed by several persons. When more persons agree to be engaged in transport of goods across the customs line by avoiding measures of customs control, complicity exists.

5. This criminal offence has two aggravated forms. The first aggravated form under Paragraph 1 exists when a basic form of the offence is carried out by armed persons, by force or threats. Force is the use of physical, mechanical or other forces, but also the application of hypnosis and intoxicating substances, in order to bring someone against their will to unconsciousness or disable for resistance.

Other qualified form is contained in Paragraph 2. It exists when a perpetrator is organizing a network of dealers or intermediaries to carry out the basic form of the offence. Organization of a group means the creation and organization connecting at least three or more persons. Connecting these people is done in order to achieve a common goal. The aim is to transfer goods across the customs line, avoiding measures of customs control. This protects the crime and trafficking as a form of economic activity that is performed by buying and selling of goods and other assets intended for use and consumption.

INSTEAD OF A CONCLUSION

Criminal offences related to public revenue represent great social danger, which is why through criminal justice protection of public revenues each country protects its economic function. Execution of these criminal offences may disturb the economic system and create the economic chaos that favours performance of various other offences.

Our country is greatly affected by these criminal offences. However, in practice, these offences are rarely revealed. Activities on the detection of these crimes are based on the rules of crime-investigation methods and tactics, which are valid for the detection of crimes in the area of economic crime. Prosecution and punishment for these crimes depends not only on work of the prosecuting authorities in charge, but also depends on the attitude of a society toward taxpayers who attempt to avoid tax liability.

Detection of these criminal offences requires a long, persistent and patient work.

26 M. Kulić, *op. cit*, p. 189.

Good knowledge of tax regulations, ways of keeping business records, and especially of tax records is required. To prevent the destruction and concealment of business documentation, it is necessary to secure quickly this kind of evidence and in some cases to confiscate them temporarily.

Prevention of tax crimes is not only in criminal protection of public revenue, but also in removing and disappearance of all those causes that favour the execution of these crimes. It is recommended that by preventive engagement of employees of tax administration, all the possible new forms of tax evasion should be eliminated, which are always present at each change of tax regulations.

The tightening of the penal policy in the field of public revenue would contribute to a certain extent in suppression of tax evasion. However, no matter how harsh the penal policy is, it cannot eliminate tax evasion, because the taxpayer, for the most part is affected by the relationship between the expected benefits of non-payment of taxes and other public revenues and cost that the taxpayer may have, if discovered and punished. In this respect, penal policy should be built in such a way that the imposed fine exceeds the amount of embezzled tax.

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UDC 343.983:657.632

APPLICATION OF FINANCIAL INVESTIGATION METHODS IN CONTEMPORARY CRIME-INVESTIGATION PRACTICE[1]

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Abstract: Financial investigations are one of the most important segments of strategy to oppose property-motivated crime, particularly organized crime considering that they enable identification of traces of unlawfully acquired money and its tracking or location. In this paper the authors point out the importance of using indications to follow *financial traces*, as well as modalities of application of financial investigation methods in contemporary crime-investigation practice. They provide for the detection and tracing of the assets which were acquired by illegal crime activities and establish a foundation to motion procedures for confiscation of these assets. The application of financial investigation method is of particular importance in suppression of organized but also of other forms of property-motivated crimes, considering that illegally acquired assets represent an economic lever of power of both criminal organizations and individuals.

Key words: criminal processing, financial investigation, indicators of abuse in economic activities, financial investigation methods, organized crime.

INTRODUCTION

Under both the contemporary conditions and at the global level the focus of the fight against property-motivated crime is on the confiscation of assets acquired by unlawful criminal activities and preventing these assets to infiltrate the legal financial flows. In mid-1980s there was a global shift in strategic approach to fighting property crime, organized crime in particular, which directed the majority of activities towards confiscation of criminally-acquired assets and prevention of these assets to enter legal financial flows (Ehrenstein, 1999:652).

From an abstract point of view, in order to achieve its goals every organization even a criminal one needs financial assets – they are acquired through certain activities (legal or illegal), then entered into records, invested and transferred, whereas such financial activities result in "paper" trails in the form of various documentation.[2] Such traces can be discovered using investigation techniques which essentially "originate" from financial administration and accounting.

There are certain situations when some external manifestations might influence the degree of grounded suspicion that a property-motivated crime has been committed, and the consequence of this is that material benefit resulting from the commitment of a crime has an effect on the perpetrator. These external manifestations might serve as indications to establish different versions on the committed crime

1 This paper is the result of realization of scientific research project Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Condition of International Integration. The project is funded by the Ministry of Education and Science of the Republic of Serbia (No. 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011–2014). The leader of the project is Saša Mijalković, PhD.

2 More details in: – Ehrenfeld, R. (1992). *Evil Money: Encounters along the Money Trail.* New York: Harper Collins Publishers.

(change of behaviour, spending money, purchasing expensive things, and similar). The basic measure applied in such cases is the financial investigation of a suspect, which, among other things, includes the estimation if his life style suggests an "honest living". There are two modalities to conduct such an investigation – the first one is known as the Net Worth Method and it is used in cases when a suspect possesses property which attracts attention, while the other one is defined as the Expenditure Theory, i.e. the analysis of sources and use of assets and it is used when the suspect has clearly expressed consumer habits (Richards, 1999:215).

Originally, the methods of financial investigation have been taken over from the procedures of tax services which are undertaken in order to trace unreported income and tax evasion and as such they could be adjusted to the requirements of the fight against property-related crime. From historical point of view, the most famous example of the application of the financial investigation methods in processing a felon is related to Al Capone in 1931, when this method was officially accepted by the American courts (Manning, 2005:81).Wider application of the financial investigation methods in the fight against organized crime in the USA started with the passing of Racketeer Influenced and Corruption Organization Act – RICO in 1970, which accepted these methods as important means in the fight against organized crime, primarily in proving illegal income (Bourgeois, 2000:875).

The following text will highlight the importance of using indications to follow the *financial trails*, as well as manners of application of financial investigation methods in contemporary crime-investigation practice. The application of these methods enables to detect the existence and to locate illegally gained assets, which creates basis to launch the procedure of their final confiscation and forfeiture.

INDICATIONS IMPORTANT FOR FOLLOWING FINANCIAL TRAILS

Indications, reasonable doubt[3], or ground for suspicion are the facts suggesting the existence of a crime and close or distant relationship between an offence and an individual, based on which it can be concluded with more or less probability if the criminal offence was committed or not, what is the connection between a certain person(s) and the crime, as well as some other circumstances important for clearing the criminal matter (Vodinelic, 1984:188). Therefore, we can say that clues can guide us towards the existence or non-existence of a certain criminal offence, towards the perpetrator or circumstances related to the offence or perpetrator. The clues can manifest as material changes (traces, objects) in the external world which are related to the criminal offence commitment as well as psychological changes in the behaviour of the perpetrator caused by psychological influence of an act on the perpetrator (change of his behaviour, habits and attitudes). All of them together represent the entire event, both its external and internal side. Without the former the case is wrongly determined, without the latter it remains unexplained (Vodinelic, 1984:189). The indications represent traffic signs in crime-investigation which by proper analysis and interpretation can lead to determining the objective truth about the crime and its perpetrator.

The successful detection of property crimes includes also constant monitoring of manifested manners of these crimes in practice, as well as adequate analysis

3 The *suspicion* arises in a dialectical thinking process as a result of inconsistency between ignorance or insufficient knowledge about a criminal act and the role of a certain person and newly established facts, which do not fit into the version of inexistence of a criminal act and a perpetrator (Vodinelic, 1985:78).

of revealed crimes. Thus the indication basis is created to observe some forms of property-related crime, which enables due planning of operative activities on their clearing and proving. In other words, in the course of financial investigation we can come to the clues which can point to the misuses in various fields of economic activity, which originated from the intention to hide the origin and purpose of illegally acquired assets. This is determined by the analysis of documentation which is common for economic-financial business, and refers particularly to the following:

- Double book-keeping
- Destroying books and records;
- Getting loans from companies headquartered in the countries known as off-shore financial centres;
- Large and frequent financial transactions within the company whose business is not cash-intensive;
- Falsifying sales receipts;
- Deposits in the bank whose source cannot be detected by following the money;
- Falsifying the purchase receipts;
- Giving loans with high interest rates to the employees or individuals under very favourable conditions;
- Payments made to "shell" companies or inexistent individuals;
- Payment of personal expenses from company assets;
- Payment of loans to financial institutions headquartered in off-shore financial centres;
- Hiding property/assets;
- Using the services of intermediaries, and similar.

Creating indication basis (indicators) which suggest to the reasonable doubt that illegal financial transactions are being carried out should be the result of the work of all competent authorities. Namely, analytic units in charge should analyse, unite and disseminate such information to all law-enforcement services. A good example of such a concept is a list of indications which suggest to possible misuse in the field of banking made by the USA Office of the Controller of Currency (Richards, 1999:119). This Office identified the following situations or activities as indications of possible banking misuses:

- Activity which is inconsistent with the client's basic business, such as: huge money transactions on a joint account, purchase of cash payment orders, large deposits paid through payment orders or telegraphic transfer, large sum transactions, exchanging small bills for large ones, owners of small-scope business making deposits in several different branch offices on the same day, and receiving and sending money telegraphically without the existence of business-related reasons;
- Uncharacteristic activities related to the accounts, such as opening account by the client having residence outside the area of the particular bank, frequent access to safe deposit box, or opening the account in the name of exchange office;
- Attempt to avoid regulations on reporting and recording transactions, such as a situation when a new client asks to be put on a free business list (free-from-reporting transactions list) before his bank history guarantees that, and
- Certain forms of fund transfers, such as telegraphic transfers and deposits on several accounts the amounts of which are below the reporting limit and then transferring them to the main account.

In the field of insurance, the International Association of Insurance Supervisors – IAIS made some guidelines for reporting of suspicious transactions in the field of insurance and identified the following indications which can suggest the misuses of this sector for criminal purposes: [4]

- Unusual early withdrawal of an insurance policy;
- Withdrawal of insurance policy which results in client's losses;
- Using proxy companies in the course of a common financial activity in the field of insurance;
- Using cash payments in the field of insurance, and
- Making insurance-related financial transactions where the services of offshore financial centres are used.

Then, in the field of stock market, the indications important for following the *financial trails* may be:

- Unusual requests for protection of privacy, especially related to the data of client's identity, activity, property or business;
- Transformation of transactions into several individual transactions in order to avoid determining identity;
- Client is not interested in commission, other costs and risks of the transaction;
- Making transactions as an authorized person, whereas the client on behalf of whom is participated is not identified, especially when the client has residence or headquarter outside the territory of the state where the transaction is made;
- Existence, without valid reason, of several client's accounts under the same name, or several sub-accounts under different names;
- The client has an account in the country marked as risky, since the standards from the field of detecting and preventing money laundering are not applied;
- Transactions are not consistent with financial status and business activities of the client;
- Showing special interest in the purchase of securities for large amounts without special analyses or advises by financial experts, and such a transaction has no clear financial purpose or it is made under extraordinary circumstances;
- Purchase of securities from several accounts with the banks where cash was previously deposited, especially of the funds deposited amount less than the amount which is subject to reporting;
- Transfer of money or securities from account to account, none of which is connected with the customer;
- Sudden inflow of funds, especially if the customer's account has been inactive by that time, or payments which are not consistent with his financial standing;
- Presenting large inflows of money, while there are no transactions at the securities account;
- Creating an image of true trade in securities, while fictive or simulated trade in securities is performed;
- Investment into first-class and rather perspective stocks, but not showing interest in the results or these actions are sold suddenly and without any reason;
- Frequent change of broker companies with the intention to hide the scope of business and financial standing;

4 Review of IAIS principles, standards and guidelines. Intenet: http://iaisweb.org/framesets/ about.html.

- Trading in securities with planned loss, when the client frequently purchases securities and then sells them below their true value;
- Trading in stocks which were pledged on the basis of loans to the stock owners;
- Announced block trades in stocks at the prices lower than the market prices, when the buyers appear to be either unknown or newly-founded companies, especially companies registered in off-shore financial centres, and so on.

The Basel Committee for Banking Supervisions in the document titles the Basel Principles on Customer Due Diligence for Banks presents the principles on customer due diligence, where it gives indicators suggesting the possible misuses for criminal purposes:[5]

1. General indicators
- Assets are withdrawn immediately upon their having been deposited to the account;
- The account which was inactive for a long time suddenly becomes active without explanation;
- Large amount of assets owned by the customer are inconsistent with the information referring to customer's business;
- Customer gives false or falsified information or refuses to submit the required information to the bank, and
- Transactions suggest illegal purpose or are economically illogical.

2. Indications referring to cash transactions
- Frequent cash deposits disproportionate to the information referring to the customer and his business;
- Money deposits followed by immediate issuing of cheques or transfers on the accounts opened with other banks either in the country or abroad;
- Frequent cash withdrawals without apparent connection with customer's business activity;
- Frequent exchanges of big denomination bills for small denomination bills or other currency, and
- Frequent cash transactions in the amounts lower than the limit for reporting financial transactions according to certain legal acts.

3. Indications related to transactions at deposit accounts
- Closing the account followed by opening of new accounts in the same name or in the name of the customer's family members
- Purchase of securities using the assets transferred from abroad or immediately upon depositing cash on the account;
- Issuing guarantees (pledges, bonds) without apparent reasons;
- Transfers in favour of other banks without any data on the final user of the assets;
- Unexpected return, without a plausible reason, of the loan the payment of which was late, and
- Depositing cheques on large amounts which are not proportionate with the data on customer's business.

The stated examples represent one systemic approach to the suppression of crime based on the creation of the system which would enable to observe misuses

5 Basel Principles on Customer Due Diligence for Banks of the BCBS (The Basel Committee for Banking Supervision). Internet: http://bis.org/publ/bcbs30.pdf.

in various segments of economic and financial business dealings, by reporting suspicious and unusual transactions based on the indications of to misuses, which is of crucial importance for successful financial investigations.

FINANCIAL INVESTIGATION METHODS

Financial investigation is carried out through two basic modalities – the Net Worth Method and the Expenditure Theory, which analyse the facts referring to financial transactions of a suspect. They are applied in both tax-related and other financial investigations, whereas it should be noted that in cases of tax-related investigations unreported income is determined, while in other cases the subject of investigation are illegal proceeds. Historically, organized application of these methods appears in late 1930s, when the law enforcement agencies in the USA did not have success in their attempts of criminal prosecution of various mafia bosses who were involved in organized crime.[6] In cases when the police would arrest some of low-level members of criminal organizations, they refused to cooperate or testify against their bosses, most often out of fear of revenge. On the other hand, the bosses of some gangster families were very rich thanks to organized criminal activities which yielded huge profits, especially during the Prohibition. Illegally acquired proceeds were spent variously or invested into other legal or illegal business activities which resulted in profit.

Indirect or circumstantial methods of proving illegal activities were first developed by the USA IRS (Internal Revenue Service) special agents for the purpose of criminal prosecution of organized crime leaders for violation of tax laws. Using these methods, based on the documentation, they proved that the proceeds of crime organization members were sufficiently high for obligatory tax reports, i.e. that the criminal organization members did not report all proceeds. In this way the gangster family bosses went to prison, not because of murders, blackmails or other criminal offences, but primarily because of income tax evasion. There are opinions that the sentence of Al Capone for tax evasion in 1930s influenced considerably the expansion of using perfidious money laundering methods (Richards, 1999:44). Thus Mayer Lansky, having been experienced by the Al Capone events and aware that he and his associates would meet the same destiny if they do not hide or show their illegal proceeds as legal conceived one of the first ways to launder money using the concept of loans from Swiss banks to which "dirty" money was previously deposited so that it would later be returned to the USA through loans to various companies which were actually owned by criminal organizations.[7]

The Net Worth Method measures the increase or decrease of net value of assets available to an individual, whereas all increases for which there is not a corresponding documentation are classified as unreported, in other words illegal proceeds, depending on the nature of investigation. The Net Worth Method bases on the fact that a person who owns the money can spend it, invest it or keep it (so called secret stashes), taking into account all these possibilities and analysing them. This method enables to calculate how much money certain person has spent, how much has been invested into certain business deals and how much has possibly been kept

6 More details in: Albanese, J. S. (1996), Organized Crime in America. 3rd Edition, Cincinnati: Anderson Publishing.

7 Money laundering is a kind of property-related crime aimed at hiding the existence and origin of illegally acquired proceeds by their infiltration into legal financial flows by means of transformations, transfers, exchanges, hiding their purpose by mixing with legal funds or in any other way through which in addition to its illegal origin the criminal activities are also hidden and the ultimate goal of money laundering achieved – undisturbed use of criminal activity proceeds and avoiding the penalty for crime committed (Bošković, 2005:23).

for a certain time period. These amounts are then compared with the known value of property/assets that the person had in a certain year, whereas the possible excess of property/assets is considered unreported, i.e. illegal proceeds, depending on the type of investigation.

This method is used in cases when direct evidence on unreported or illegal proceeds is lacking, or the books (records) are inappropriate or incorrect, whereas it is evident that the property of a suspect increases. The successful application of the Net Worth Method depends on the reliability of information on the starting net value of a suspect, which includes all assets and all obligations (that is all income and expenditures) at a certain point of time. The starting net value is the foundation (starting point) from which the future changes of assets or obligations will be calculated. In the course of application of the Net Worth Method it is particularly important to determine the exact net value of property/assets of the suspect at the beginning, i.e. in the basic or starting year.

The Net Worth Method requires the application of mathematical operations determined by the formula for calculation of net value (Manning, 2005:98). The formula for calculation of net value is as follows: *property and assets less liabilities equals net value, less net value of the starting year equals increase (or decrease) of net value, plus personal expenses, plus personal losses, equals total income, minus legal income, equals unreported taxable income*.

Property and assets most usually include cash, money deposited on the accounts, cheques, securities, cars, investments into real estate, personal items, antiquities, equipment and assets used in business deals, and so on. Financial obligations include credits, loans, due payments, account history (red), mortgages, accumulated payment rates, and so on.

Depreciation costs include investment into means of production or assets for some other practice. In order to determine the initial net value of a suspect, all items grouped as property and assets should be analyzed in detail, using the available documentation. One of the possible problems in the course of determining the initial net value can also be determining the amount of cash owned by the suspect. When using the indirect method of proving one of the most important elements to be determined is the amount of cash. This includes talking to the suspect and potential witnesses during examination of documentation, by application of technique of the source and using the source of assets, and similar.

After the cash, all other property is included in the formula in order to decrease the possibility to make a mistake. The final balance on the accounts until the certain date is calculated for each existing bank account, which includes savings accounts, credit accounts, the accounts in credit unions, cash held with broker companies and every other form of savings. Such a balance must correspond to each deposit or cheque which passed through the account. The documentation on the final balance on the accounts at the end of the year includes the statements from the given accounts, as well as any other form of settlement which was applied. Also, the ownership of the given bank accounts must be proven, which is done either through the sample of the kept signature or through the application for account opening.

The value of any of the securities is calculated in relation to the value at the end of the year, while the value of stocks, as all other material things, is determined according to their price at the time of acquisition, not according to the market price. The market prices at that do not influence determining the tax amount. The price of the vehicle at the time of purchase is added at the end of the accounting year. If the credit used for the purchase of a vehicle is insured, the remaining amount of the credit which is not paid off is put into the column of debts in the final formula. As

for vehicles, the price of real estate at the time of purchase is calculated at the end of the year. As in the previous case, if the credit for the purchase of the real estate was insured, it is separately calculated in the debt column. Documentation on the real estate should include purchase price, the proof of obtaining of the loan (if there was a request for it), and the manner of payment and the legal status of the real estate. In addition to the documents which prove the purchase of the real estate, it should also obtain evidence on continued ownership of the real estate, checking the annual tax payment for the real estate. [8]

The next step in the formula for calculation of net value of the property includes liabilities. As in the case of property and assets, the amount owed at the end of the year is included in the formula. The liabilities include every obligation of the subject, including the obligations related to the personal loan, loans for the purchase of equipment, liabilities for the loan acquired for the real estate, debts on the credit card or any other form of obligation.

The net value includes only the cash spent on the purchase of assets or decrease of liabilities. A person spends money for personal living expenses, which include purchases of food, payments of utility bills, tuition fees, insurance, tax payments, gasoline and other needs. These items must also be taken into account when determining the total of spent assets. Personal expenses reduce a part of the difference up to illegal or unreported proceeds. Also, non-inclusion of personal losses into the formula for net value will disturb the already calculated data and will not represent the entire amount of non reported or illegally acquired profit. Personal losses may be capital, then the losses occurring in the course of selling personal items, and similar. Determining of the proceeds from the known sources then follows. The loans here are not considered as known sources, taking into account that in the course of calculation the net values are marked as liabilities.

Cash can be determined as financial proceeds in the possession of an individual. These assets can be in the individual's apartment or office; they can be committed to a third party or put in a safe deposit box. Cash does not include the money deposited on any account with financial institutions. The financial analysis is directed to the cash that a person has available on a certain date in the previous year, or the year before the investigation began (the basic year) and the cash the person has available on the same date of the current year when the crime-investigation is carried out (Kitchens, 1993:13). In the course of determining the amount of cash the person had at his disposal in the basic year or the years included in the investigation, personal and material evidence should be collected.

The Net Worth Method has originated and is widely applied throughout the USA. In order for the law enforcement services of this country to apply such an investigation method, it is required that three requests be fulfilled determined by the Supreme Court. [9] The first one is the reliable determination of the initial net value for the basic year. The second is to negate reasonable explanations of a suspect refuting his guilt. Third one is to determine if the net value growth is the result of taxable income, which can be taxed according to the valid regulations, or it is a result of illegal activities. The Net Worth Method is based on direct evidence and represents a primary method of proving unreported and illegal income which is applied when the method of investigation of specific items cannot be applied or when the insight into the books or records is not provided and it is obvious that the suspect is accumulating property and assets.

8 More details in: Duyne, P.C., & Levi, M. (1999), "Criminal financial investigation: a strategic and tactical approach in the European dimensions", in Viano, E.C. (ed.). Global organized crime and international security. Ashgate: Aldershot.

9 These requrests are included in the sentence by the American Supreme Court Holland, 348 U.S. at 132,135,137 (Manning, 2005: 88).

The Expenditure Theory is indirect method of proving unreported or illegal income and is basically similar to the Net Worth Method. Namely, both modalities represent certain variations to the procedures resulting from financial administration and accounting. The Expenditure Theory is applied when an individual spends the majority of his income, i.e. he/she has pronounced consumers habits, while the Net Worth Method, as we have seen, is applied when an individual accumulates a considerable quantity of property within a certain period of time.

Basic theoretical assumptions of this method are explained in a court proceeding before an American court, where it was said that the application of the method starts with the evaluation of condition of tax payer's net value at the beginning of tax period (Richards, 1999:215). To that effect, he cannot own either much or nothing of property/assets. If in the course of the observed period his expenses exceed the amount of the reported income, and its net value at the end of that period remains the same as at the beginning (i.e., if the registered accounts do not cover entirely the amount of difference between the income and expenditures), it can be concluded that his tax report shows the income which is not realistic, in other words lower than the real one.

The method was applied for the first time in the cases of income tax of the tax payers whose basis was cash, where the tax payers had legal source of assets (either a company or a salary) or they were without visible sources, while today it is applied for both the investigation of cases of income tax evasion and financial investigations of property-related crimes. Considering that this is an indirect method of proving, its application is used when (Richards, 1999:98): the suspect does not keeps books and records; the books and records are not available; the books and records are incomplete and the suspect withholds or obstructs insight into the books and records.

Accounting is based on the concept that the value of property or assets equals the sum of financial obligations and ownership capital.[10] The Net Worth Method of proving bases on the change of the value of ownership capital from year to year, implying the determination of the balance on each account and property and expenditures at the end of the basic year, as well as all these years which are being investigated. The Expenditure Theory is applied when the majority of income is spent instead of accumulated, or used to decrease financial obligations.[11] For instance, the assets can be spent for purchase of drugs, travelling, purchase of gifts, gambling, personal living expenses, and similar. In cases when crime investigation successfully proves all legitimate sources of income, or assets (including loans, gifts, inheritance, etc.), there remains the only one source of income – illegal activities.

Requests for the application of the Expenditure Theory, which is applied within the American legal system, are similar to the requests referring to the application the Net Worth Method. In cases when the Expenditure Theory is applied it should first and with reasonable reliability determine the starting net value of property/assets of a suspect. In the course of application of this Theory it is not necessary to present the exact amounts for each individual account respectively at the side of income and expenditure for the basic year or for the years under the investigation. However, it should include all accounts from which it is possible to determine the withdrawn financial amounts. The next step is to determine the probable source of excessive assets. The investigation should give evidence documenting that in the course of the period the investigation refers to the suspect was involved in an illegal

10 More details in: Medojević, M., Samardžić, I. (2009), *Finansijsko računovodstvo: primena Zakona o računovodstvu i reviziji*, Beograd: Beogradska poslovna škola visoka škola strukovnih studija.

11 See: Pheijffer, M. (2000), "Financial investigation and crime-money", in van Duyne, P. C. Ruggiero, V., Scheinost, M. (eds.). Cross-border crime in a changing Europe. Tilburg: Tilburg University and JKSP.

activity. The evidence includes testimonies related to the involvement of the suspect in illegal activities. Then, it is very important to verify all evidence in cases pertaining to the concrete criminal act and which prove the legal sources of proceeds of the suspect. The Expenditure Theory is based on indirect evidence so that if some form of legal source of proceeds is not included this will influence the validity of the results reached by its application. The foundation of this Theory is to compare the source of property/assets with their use,[12] whereas it should be mentioned that there are several different sources of property/income of the suspect during a year. In cases when the value of property/assets decreases, this could mean that the property or assets are turned into cash. Also, when there is an increase of financial obligations (expenditures), this means that the assets had been taken as loans from financial institutions, individuals or third persons, which were then deposited to other accounts or spent.

Property/assets can be either legal or illegal, i.e. either taxable or non taxable. The specific data relating to the property/assets may suggest the decrease of property, increase of expenditures and legal proceeds. Decreasing of property implies decreasing of cash, balance on the accounts, supplies, balance on the debit accounts, equipment, and other. The decrease of financial obligations/expenditures may be caused by the increase of credit principal amount, increase of due invoices and other. Legal proceeds may be salaries, business profit, rental for real estate, profit based on selling personal property, gifts, inheritance, and insurance policy pay-offs and credits. Spending the assets includes the money that a suspect spent for a year. Increase of property most often refers to the increase of assets, balance on the accounts, and increase of supplies, outstanding debts, business equipment, real estate and personal property. Decrease of financial obligations most often refers to decrease of payable invoices and pay-off of credit principal amount.

The procedure of cost analysis is carried out in three main stages. The first one includes classification of all transactions into the category of either use/spending or the source of proceeds. The second stage means determining the overall costs and known sources of proceeds for every year which is being investigated. In the third stage the total known sources of proceeds are deducted from the total expenditures for the observed period, and the value of unreported or illegal gain are acquired. To this effect, the formula for the cost analysis is as follows: Unreported or illegal gain equals the difference of total costs and known sources of proceeds (Manning, 2005:98).

The Expenditure Theory is also based on indirect evidence. It is a primary method of proving illegal assets and unreported taxable income, which is applied when the investigation body does not have books or records available while the suspect spends his assets and does not accumulate property.13 In such cases it should compare the spent values with the known sources of assets. It should first determine the starting point, then determine the probable source of income and then research the traces and statements by the suspect in order to get to the relevant information. It is recommended to use graphic and tabular representations of financial information in certain stages of investigation in order to better understand the methods applied and prove more easily the facts relevant for the criminal procedure.

12 **See: Levi, M., ed. (1995),** *Investigating, Seizing and Confiscating the Proceeds of Crime.* Police Research Group Paper 61, London: Home Office.

13 **See: Evans, J. (1994),** *The Proceeds of Crime: Problems of Investigation and Prosecution.* Paper presented to the United Nations International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach, Mont Blanc: Courmayeur.

CONCLUSION

The need to fight various property-motivated criminal activities suggests the use of contemporary achievements of forensic science in practical activities of the competent state institutions. One of the powerful modalities are methods of financial investigation, which provide for detection of organized crime financial operations, location of illegally gained assets and creation of the basis to start the procedure of confiscation of illegally gained assets. The efficient system of confiscation measures of illegally gained assets prevents the infiltration of criminal organizations into financial institutions and control of political and economic flows of "dirty" money. Illegally acquired assets are most often used for corruption in public services and financial sector, as well as in other areas of economic and non-economic activities.

Forensic investigations of organized, but also of other property-related crimes, can be improved by selective use of various methods of financial investigations, which as contemporary achievements of forensic science lead to: the information on investment of illegally acquired assets into legal business flows; the information on dummy companies used for criminal activities; the additional reliable evidence contained in the documentation accompanying economic activities of criminal organizations; finding evidence on the existence or hiding of illegally acquired property; finding evidence on previously known business activities of criminal organizations or individuals; uncovering previously unknown witnesses, individuals and companies involved in criminal activities; the information related to commitment of other crimes which might help clear the wider criminal activities of both individuals and criminal organizations; uncovering of international financial ties and operations among criminal organizations located in various countries; uncovering of high-quality evidence contained in various financial documentation based on which it is possible to determine manners of transfer, time of transfer and locations of investments of illegally acquired assets; the information which would provide for the identification, tracing and evaluation of property which may be subject of confiscation; the information which provide for the assets to be frozen in order to prevent any kind of action, transfer or safekeeping of illegally acquired property, and other information relevant for forensic processing of cases of organized or property-motivated crimes.

The development of the system for identification of indications suggesting the misuses in various fields of economic business activities and the use of these indicators to observe suspicious and unusual transaction is the condition to prevent these misuses and efficiently follow the paper trails important for financial investigation. Using such a concept of reporting and analysis of suspicious and unusual transactions the conditions are created to identify misuses in various fields of economic activities, which helps collect essential information to conduct financial investigation. By the efficient application of financial investigation methods in forensic processing of property-related crimes the grounds are established to detect and trace criminal profit and motion the procedure to confiscate these assets, which destroys the economic resources of criminal structures important for their existence.

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UDC 343.98:351.754

ADMINISTRATIVE MEASURES OF POLICE IN MAINTAINING PUBLIC ORDER AND PREVENTING VIOLENCE
A General Overview

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Abstract: The paper points out that, in addition to their regular operative actions, the police also take other measures in the performance of their duties and tasks. In order to maintain stable public order, peace and prevent violence, the police take certain administrative measures and pass various legal acts. The first part of the paper gives a brief overview of the doctrinal and normative concepts of administrative measures that the police are entitled to by the law. The central part of the paper focuses on the administrative measures of police in exercising police powers with respect to maintaining public order and preventing violence in the community. The closing part contains suggestions *de lege ferenda* for improving certain solutions in the administrative legislation, especially in the context of the application of Serbia for the EU membership.

Key words: public order and peace, police, administrative act, actions and measures, Serbia, EU.

INTRODUCTION

It is well known that after the fall of the Berlin Wall some important changes in the architecture of the international community and international relations have taken place. The member states of the former socialist bloc embarked upon the process of transition which is still in progress, while some of these countries have gone even further and joined the European Union (Hungary, Romania, and Bulgaria). Following the dissolution of the former SFR Yugoslavia, new independent states took the same course and the most successful among them was Slovenia, which was admitted to the EU.

At the beginning of the new millennium, Serbia also entered the process of transition and began the long-awaited process of democratization and reform in all areas of the society. The most important political goals included: development of market economy, establishing institutions, a stable legal system, international cooperation, admission to the European Union, etc. In the context of our country's application for the EU membership, harmonization of legal norms has been initiated, along with a public administration reform, reorganization of public services and other issues. The project entitled *The European Administrative Space* has been an extremely important source for all these since it includes, among other things, "a comparatively harmonized set of principles and minimal standards governing the organization, operational and functioning of the state administration organs based on the *Acquis Communitairre*." [1]

1 See: *Kavran D., Evropski upravni prostor, reforma i obrazovanje državne uprave, Kopaonička škola prirodnog prava „Pravo i kulturne razlike", časopis „Pravni život" br.9/04, Bgd. 2004,* pgs. *1059-1076.*

Accordingly, our country initiated a reform of the sectors of justice and home affairs, the first step of which was to separate the RDB (National Security Agency) from the Ministry of the Interior (MI) and establish BIA (Security Information Agency) as a specialized agency for the protection of the constitutional order. [2] Important strategic documents[3] have also been adopted along with the new Law on Police[4] of the Republic of Seribia based on which we have embarked upon the transformation of the RS MI and reorganization of the police, by developing a modern organization which is a public service ("the service of the citizens") and which works following the universal model of 'community policing.' [5]

The jurisdiction, duties, and tasks of the RS MI and the police - as the most important operative part of the Ministry - are set by the Law on Ministries, the Law on Police, certain criminal laws and other regulations. Thus Section 5 of the Law on Ministries provides, among other things, that "the Ministry of the Interior is responsible for ***state administration actions*** which pertain to: *the protection of life, personal security of citizens and their property*; prevention and detecting criminal offences and finding and arresting the perpetrators of such *criminal acts* and bringing them before responsible organs; maintaining public order and peace; providing assistance in emergency cases; securing public assemblies; securing certain persons and facilities, including foreign diplomatic and consular missions in the territory of the Republic of Serbia; safety and control of road traffic; security of the state border and border control, as well as movement and residence in the border zone; residence of foreigners; trading in and transportation of weapons, ammunition, explosive and other hazardous substances; testing handguns, devices and ammunition; fire protection; citizenship; personal identification numbers of citizens; permanent and temporary residence; identity cards; travel documents; international assistance and other forms of international cooperation in the field of home affairs, including readmission; illegal migration; asylum; personnel training; administrative decisions in the second instance based on the regulations on refugees, as well as other duties prescribed by the law." [6]

In performing their duty related to maintaining public order, prevention of violence and other responsibilities, the police take both regular *operative* measures and actions and acts that are *legal* in their nature and character. The acts passed by the police are not only formally legal, but above all material. Unlike administrative acts as form of exercising administrative authority, the *material acts* are legally relevant (or irrelevant), but they do not have direct and independent legal effect. These acts and actions are very different and range from simple material actions to acts regulated by the law, but do not have direct legal effect. Some authors point out that "legal effects must occur directly based on the act itself or otherwise they are not direct." [7] In legal theory such acts are referred to differently and the terms most frequently used are the following: material (Duguit), individual non-legal (Debbash), single-sided with no legal effect (Vedel), and natural (Eisenmann). [8] Domestic legal theory uses terms such as: material acts, administrative actions, specific acts outside the administrative act, etc., while the existing legislation most often uses terms like individual acts, actions and measures. [9] The theory of law and legislation refer to administrative measures, which, unlike administrative acts, have not been given sufficient attention.

2 *Zakon o BIA, „Sl. gl. RS" br.42/02, 111/09, Bgd. 2002.*
3 „*Vizija i misija", oficijelni dokument MUP RS o strateškim pravcima razvoja policije, Bgd. 2002.g.* /Reports by R. Monk and J. Slater, recommendations of OSCE and CoE/.
4 „Službeni glasnik RS" br.101/05, 63/09, Bgd. 2005.
5 See: Nikač Ž., Policija u zajednici, III izdanje, KPA, Bgd.2010.
6 „Sl. glasnik RS" br.16/11, Bgd. 2011.
7 Forsthoff E.,, Traite de droit administratif allemand, Bruxelles, 19., p. 313
8 Stassinopulos M,, Traite des actes administratifs, Paris, 1954., p.75, The author also refers to these as inapplicable decisions.
9 Milkov D., Pojam upravnog akta , doktorska disertacija, PF, Novi Sad, 1983., pp. 289-292.

For these and other reasons the paper will try to provide more information about the very notion of administrative measures, focusing on the measures taken by the police with a view to protecting the public order and preventing violence.

THE CONCEPT OF ADMINISTRATIVE MEASURES

The term 'administrative measures' is encountered in the literature, but without a clear definition of the concept and without sufficiently clear distinction with respect to the concepts such as administrative acts, administrative actions, etc. Therefore some authors state that "coercive and restrictive measures are as a rule taken by state authorities (home affairs, national defence, courts, by pronouncing the sentence of imprisonment and other sentences) ... and that the implementation of coercive and restrictive measures is mostly achieved by specific acts, as well as administrative actions." [10]

Other authors emphasize that performing the actions of law enforcement is always regulated by legal provisions – whether they are taken against the will of the subject in question or not. The conclusion is that the *administrative actions* are *a form of law enforcement actions* "which consist of the application of ***coercive and restrictive measures*** against certain subjects based on the laws pertinent to the given cases." [11]

The existing legislation also recognized the term administrative measures. Thus the Constitution of the Republic of Serbia (Section 202) envisages that following the declaration of the state of emergency or war, departures from the rights of citizens and minorities granted by the Constitution are allowed but only to the extent that is necessary. Derogation measures must not result in discrimination based on race, sex, language, religious confession, national or social origin. Measures of departure/derogation from human and minority rights are exceptional and cease to be effective upon the termination of the state of emergency or war and do not apply to certain guaranteed rights (Sections 23-28, 32, 34, 37, 38, 43, 45, 47, 49, 62, 64, and 78). [12] According to Section 12 of the RS State Administration Act, state authorities draft bills regulations and general acts for the Government, propose the development strategy and other measures that shape the Government's *policy*. The same law envisages inspection and supervision (Section 18, paragraph 1) by which the state authorities monitor law enforcement and implementation of regulations, primarily through direct insight into work and actions of natural and legal persons and, depending on the results of their inspection, order measures within their powers. According to Section 19 of the same law, it is stipulated that the state authorities are to ensure that public services work in keeping with the law, so that they perform tasks and take measures in this context as authorized by the law. [13] The Law on Police (Section 2, paragraph 1) also provides that the police take measures within the jurisdiction of the Ministry of the Interior in order to ensure public security. With reference to this we remind the readers of the *regular measures* that the police take in protecting public order (Section 10, paragraph 1, item 5), as well as *special measures* which are exceptional and take form of orders (Section 15). [14] Legal analysis of the above mentioned solutions indicates that there are a lot of these and similar examples in the norms of positive law. The general conclusion is that the legislator

10 Popović S., Upravno pravo (opšti deo), Bgd. 1995., pp. 332-334.
11 Dimitrijević P., Osnovi upravnog prava, Bgd. 1989., p. 276
12 „Sl. glasnik RS" br.98/06, Bgd. 2006.
13 „Sl. glasnik RS" br. 79/05, 101/07 i 95/10, Bgd. 2005.
14 Op. cit., Footnote 4

used the term 'measures' in a broad meaning, not precisely and with no intention to make an attempt at defining it. In addition to this, the notion of administrative measures was more frequently used in regulations and practice of administrative organs than in professional expert papers. ***Practical needs*** call for studying the concept and contents of administrative measures, planning, goals, and activities taken, responsibilities and accountability, as well as legal, tactical and other rules relevant for their implementation. From the legal aspect, it is important to make sure that there are legal grounds for all activities related to administrative measures, including the decision to take them. On the other hand, the appropriateness of the implementation of such decisions is also important, and it depends on the quality of available information, successful appraisal of the situation, transferring the information into decisions, and other factors. With respect to the assessment of the situation, the legal aspect of the problem is to be restricted to the most important issues – scope, contents, and range of the available powers vested upon the administrative authority, their applicability, and effectiveness in the given situation. Problems arise with respect to principles on which a successful administrative measure is based, then with respect to management methods used in the realization of measures in the specific situation, and, finally, with respect to evaluation of results of the measures taken in the context of the objectives and activities of the state administration.

An administrative measure is a category that is functionally inseparable from *administrative acts* and *administrative actions*. Furthermore, the administrative measure is most often imposed by a specific administrative act and is enforced by performing administrative actions or immediately follows on the basis of the law. Administrative measures are specific activities of the state administration organs which are aimed at achieving objectives by carrying out tasks and duties within their jurisdiction, and the objective is achieved by passing an administrative act or performing administrative activities, and sometimes by both of these. Procedural, administrative measures should be viewed through simultaneous application of a number of administrative actions in the specific situation in order to achieve a certain objective and in keeping with the law. Implementation of several administrative activities within an administrative measure should, just like an individual application of one measure, lead to the actual goal for which it is taken. In addition, a manifestation of the administrative measure cannot be independent from and above the *legal form* and its *effect* is actually more important than the legal grounds. Measures typically include legal activity of the administrative body, i.e. the passing of relevant legal acts and implementation of certain material acts.

Administrative measures understood in this way are characterized by a number of important ***elements***.

Firstly, administrative measures are strictly *legally envisaged*, regulated and based on the law. With respect to contents, the lawfulness of administrative measures is primarily related to legal prerequisites for their implementation and compliance with specific lawful purposes. Otherwise, if the measure aims at achieving a goal that is not envisaged or is even prohibited, then we have misuse of right to take the measure. The formal side of lawfulness of administrative measures applies to clear and precise legal competence for performing them, as well as to legality of the procedure and the manner in which the implementation unfolds.

Secondly, administrative measures serve the purpose of *law enforcement*, that is, of achieving the set public goals in a lawful way. This does not necessarily mean the final enforcement of the law, but also the preparation of conditions for the creation of law.

Thirdly, administrative measures are characterized by authoritativeness inherent to the administration as a function of the state government. True, authoritative-

ness of administrative measures may be more or less manifest, they can be taken for preventive reasons, but this does not imply absence of authoritativeness.

Fourth, administrative measures are taken in accordance with a certain number of *principles* and *tenets*. The principle of *lawfulness,* as a fundamental one, is probably the most important and it means that administrative measures are taken in keeping with the law. The principle of *proportionality* presumes that the administrative organ has a range of legally possible and suitable measures among which it chooses the one that will achieve a specific purpose (goal) with the fewest adverse consequences, especially to the subjects to which it is directed. The principle *time limitation* of an administrative measure means that its duration is constrained to the optimum time necessary to achieve the purpose for which the measure is taken. In accordance with the principle of *independence*, the state authority takes necessary, the most appropriate and legally possible measures bearing in mind the tasks and duties within their jurisdiction and in keeping with the function it performs in the government.

ADMINISTRATIVE MEASURES OF POLICE IN THE FUNCTION OF PROTECTING PUBLIC ORDER AND PREVENTION OF VIOLENCE

As stated above, administrative measures are taken by the administrative authorities primarily for the purpose of performing duties within their jurisdiction. In this context, the activities of police as an organ of executive power should be viewed in the same way and the administrative measures they take and they have the powers to take in performing duties within their scope of work.

The list of duties and tasks within the inherent jurisdiction of the police, besides combating crime, includes ***protection of public order and prevention of violence***. These police operations are performed in particular through prevention, but also through repression against unlawful conduct in public places and other socially punishable offences which are characterized as violations (arguing, yelling, threatening, indecent behaviour, insulting, abuse, violence, provoking a fight and participating in it, prostitution, begging, vagabondism, etc.). This, of course, implies organized and continuous activity of the police aimed at ensuring stable public order and thereby optimal state of security in this area. [15]

The following ***activities*** should be distinguished in the process of protecting public order:

a) Monitoring and analyzing the state of public order;

b) Estimating and forecasting the state of public order;

c) Making decisions on measures for the protection of public order and planning such measures;

d) Preparation and organization of the planned measures;

e) Supervision, coordination and control of the realization of the planned measures;

f) Information, analysis, and documentation of phenomena and events as well as of measures taken.

In the continuation of the paper we shall briefly refer to the activities of police listed as items c to f and are related to the above mentioned measures.

15 Vasiljević D., Osnovi prekršajnog prava sa zaštitom javnog reda i mira, Beograd, 1998, p.102 and on.

Making decisions on measures for the protection of public order and their planning

The legal and police doctrine and practice mainly recognize the division of measures taken by the police within the scope of their duties and tasks into preventive and repressive ones. An identical approach has been taken with respect to basic police duties, such as combating crime, protecting the public order, preventing violence, and other tasks within their jurisdiction. From the aspect of origin (etiology), the purpose of these measures is to eliminate the causes and prerequisites for crime and socio-pathological phenomena, certainly taking into account the phenomenological and victimological dimensions of the problem.

Preventive measures of the police, in the context of public order protection, are primarily aimed at *preventing* certain phenomena and events that threaten security. They are believed to be primary measures because the main goal of all security-related activities, including the protection of public order, is the prevention of phenomena threatening security and risky incidents. The police implement these measures through various forms and types of activities, such as: constabulary and patrol duties, continuous duty service, operational security control of persons possibly interesting from the aspect of endangering the public order (multiple recidivists, alcoholics, mentally ill persons, etc.), operational control of facilities, potentially criminogenic environments and places in which public order violations are likely to occur (restaurants and other catering facilities, schoolyards, railway stations, bus terminals, busy streets and squares, public transportation means, etc.), separate or joint activities with other state agencies and institutions (inspection bodies, educational and cultural institutions, social welfare centres, health centres, etc.) which, besides their main function, also have a preventive role with regard to maintain stable public order.

Repressive measures of the police, in the broadest sense, are those that comprise effective civil and criminal prosecution of perpetrators of violations and criminal acts against public order, as well as adequate *penal policy* of competent authorities in civil and criminal proceedings. The repressive police measures include a large number of activities, but we shall here focus only on specific actions, strictly limited in time and space (raids, blockades, stepped-up control of persons and facilities, and the like). [16]

In the process of deciding on the type and extent of measures to be implemented, law enforcement agencies start from the initial information, the results obtained from surveillance, assessment, and forecasts regarding further developments of security issues related to the protection of public order.

A concrete *decision* on the implementation of measures aims at protecting public order contains specific elements, particularly regarding the *type* and *scope* of the measures to be taken. Accordingly, the senior police officer in charge decides on the type of measures to be applied in a certain area bearing in mind the scope, *intensity* and other relevant matters. It should be noted that every decision is subject to modification and that it primarily depends on the security situation, changes in the circumstances and other factors. However, frequent changes and additions are not good because they indicate some shortcomings in the monitoring and assessing of the situation. For instance, law enforcement officers working in urban areas will opt for 24-hour constabulary duty occasionally combined with patrolling in keeping with security assessments. On the other hand, a raid, stepped-up control or some other operative measure or activity may be performed on a vulnerable spot or facil-

16 See: Žarković M., Kriminalistička taktika, KPA, Beograd, 2010

ity at some point of time. In rural areas, patrol duties will be planned as a rule and constabulary beats can be assigned on a permanent or temporary basis depending on the security assessments. [17]

On the basis of the decision on the type and scope of measures to be taken in a specific area, the measures are planned. ***The plan of measures*** is aimed at specifying the decision and its practical implementation in practice, in terms of time, space, forces, and resources that are to be engaged in the protection of public order. Depending on the security situation and other relevant factors long-term planning may apply to constabulary or patrol activities, operative control of certain categories of persons and facilities, while certain, mostly repressive measures are planned depending on the tendencies and developments of security issues on a short-term basis, most often weekly or monthly. The plan of measures is also subject to modifications in keeping with the development of the security situation, new circumstances, etc.

Preparing and organizing the implementation of the planned measures

The implementation of the planned measures calls for high-quality preparatory activities and organization. The preparations are primarily related to the preparation of human resources that are to be engaged, then the material and technical resources, etc.

The preparations of ***human resources*** include: providing timely information on the contents of the planned measures, the objectives to be achieved and the modality of implementation of the planned measures, immediate tasks and deadlines. What follows further is verification of the qualifications of police officers for good-quality and efficient implementation of the planned measures, examination of their health, mental and physical condition, then special preparation for the commanding officers, managerial staff in responsible positions, etc.

The preparation of ***material and technical resources*** includes the checking of all police equipment in order of its importance, primarily vehicles, gear, weapons, and means of communication. Efforts to achieve the optimal level of equipment utilization are of utmost importance and the prerequisite for this is their flawless functioning.

Following the properly performed preparations for the implementation of the planned measures, the organization of the implementation will take place. The organization involves the division of specific duties and assignments clearly defined in terms of deadlines, the schedule – daily, weekly, and monthly – if possible, the organization of proper instruction and sending to the execution of tasks and other elements.

Supervision, coordination and control of the realization of the planned measures

Supervision of the police officers' activities in the implementation of the planned measures is a significant segment of managerial duties. The objective of supervision is to make sure that the officer in charge is directly and continuously assured of the ***quality*** and dynamics of the realization of the planned measures. Supervision ensures the timely evaluation of the quality and scope of the realization and possibilities for the corrections of the plan and changes of the decision where necessary.

17 See: - Pravilnik MUP RS o načinu obavljanja policijskih poslova, „Sl.glasnik RS" br. 27/07, Beograd, 2007 - Pravilnik MUP RS o policijskim ovlašćenjima, „Sl.glasnik RS" br. 54/06, Beograd, 2006

Supervision is performed in several *ways*: a system of constant and *direct* reporting and *insight* into other documents created in the working process (civil and criminal charges, official note, etc.); direct *communication* with police personnel and the exchange of spoken information, assessments and conclusions; at regular and specially scheduled *briefings* and meetings; within the *regular system of informing* as well as through the realization of the control plans.

The *coordination* of the process of realization of the planned activities implies harmonizing the activities of different organizational units which are deployed or different parts of the same organizational unit. The coordination ensures unified actions by all organizational parts of the engaged structures and the rational use of forces and resources within as short a time as possible. In the process of coordination, necessary expert assistance is given to the engaged forces and there is a possibility of modifying action plans when the need arises. At the state level, there is the ***National Security Council*** of the RS, headed by the President of the Republic, the members of which are the most senior leaders in the field of security – ministers and representatives of the MI, military, national security agency (BIA), and other, responsible – among other things - for the protection of public order against large-scale violations. [18]

Control of realization of the planned measures is a planned activity aimed at ensuring direct insight into the quality and scope of performed duties and tasks of each engaged police officer. [19] It is done according to the plan which defines the objectives of control, the object of control, time and the persons in charge. Daily insight in the contents of reports, civil and criminal charges, official notes, and other documents produced in the process of work presents a special form of control. The RS MI practice makes use of regular managerial control and peer control, as well as specialized internal control performed by the Internal Control Sector (ICS).

Information, analysis, and documenting phenomena, events, and implemented measures

The realization of planned activities related to the protection of public order must be accompanied by an efficient ***information system***. This system is first normatively and practically developed in the line of work at the RS MI Headquarters and then systematically incorporated into the organizational units of the Ministry of the Interior and further developed through all the phases of realization of the planned activities. [20] It should be noted that recent novelties in the organization of the RS MI included a separate Sector for Analytics, Telecommunications, and Information Technology. [21]

As regards the analysis, it must be completely objective, which means that all elements of the working process have to be critically evaluated. The evaluation must be based on accurate and meaningful reports and discovered weaknesses must not be concealed or ignored, but should help detect possible causes of failures, so as to serve as a *corrective means for acting* in future activities.

18 See: - Zakon o osnovama uredjenja službi bezbednosti RS, „Sl. glasnik RS“ br.116/07, Beograd, 2007 - Odluka o Savetu za nacionalnu bezbednost RS, „Sl. glasnik RS“ br.50/07., Beograd, 2007

19 Specialized lines of work have been established within the Police Directorate of the RS MI and they are responsible for internal control of police work at all levels of territorial organization, starting from police departments to police stations. For instance, the senior officers in the Police Headquarters are in charge of internal control (regula and specific) of police departments in Belgrade and all other departments in the territory of the Republic.

20 There is a special set of instructions in the RS MI providing for this topic (Uputstvo o obaveznom obaveštavanju i izveštavanju), which is classified.

21 See the official website of the RS MI: www.mup.gov.rs

The analysis comprises: the quality of monitoring and observing the security situation; the quality of security assessment; appropriateness of the decision and the quality of the activity plan; preparatory activities, mode of organization and implementation of measures; coordination, management and functioning of the information system.

Documenting phenomena and events as well as the implemented measures is performed in accordance with the existing normative acts (regulation books, instruction, etc.). Namely, there are regulations on the manner of documenting each of the segments, as well as on the distribution and storage of documents. It should be pointed out that the data kept on the RS MI records and the records of other security services are very sensitive and of utmost importance, so that special attention and lawful work of officials are required in all stages of the proceedings. [22]

CONCLUSION

The paper presents a brief overview of police measures related to the protection of public order and the prevention of violence, as distinguished from other police activities, which are numerous and complex. These are ***administrative measures*** which must have valid legal grounds and framework, i.e. they can be taken only in accordance with the regulations; they are of authoritative character; they serve the purpose of law enforcement and are taken in keeping with certain principles and standards.

However, these measures should be distinguished from the *operational* ones, which frequently are not explicitly standardized and do not have to be, but which are also present in the daily work of police. Thus, for example, we can have a record of *readiness of police forces* on the occasion of major sporting events, public meetings and events, especially if there are possibilities for security risks and large-scale violations of public order. In such a case, it is important to establish contacts between the police and the representatives of the public assembly organizer, particularly with the persons responsible for maintaining order at the gathering, then to take measures aimed at informing the citizens, protecting the community against possible criminal acts, as well as to take other measures and actions. [23]

Furthermore, because of the nature and character of police operations without which successful activity of police is impossible, certain police measures cannot be perceived at all. These are *special measures* and actions of police taken secretly within the scope of special investigative activities and techniques and, as a rule, are regulated by special legal framework. Of course, this does not mean that there are no legal grounds for such measures in the ordinary course of work, because the laws of most countries contain either explicit or more or less implicit provisions regarding them. Despite the fact that the operational measures and special (investigative) measures and actions in particular are extremely important, it should be noted that the administrative measures taken by the police are also extremely important for the protection of public order and the prevention of violence. [24]

22 The Police Act in the RS provides for the data that the police are entitled to gather and store, the way in which they are handled at personal requests of the citizens and the requests of responsible bodies, courts, etc. The Law on the Protection of Personal Data is of particular importance since it emphasizes the principle of privacy.

23 It should be noted that numerous activities have been envisaged in the recently adopted Law on Sport and the previously adopted Law on the Prevention of Violence at Sporting Events and Public Manifestations, as well as in other regulations.

24 The RS Law on Criminal Procedure envisages special investigative measures and techniques and so does the law pertaining to combating organized crime. Both theory and practice refer to various measures and actions, such as the use of protected witness, undercover investigator, simulated services, controlled deliveries, etc.

The administrative measures of police, independently or combined with other measures, undoubtedly contribute to the completion of important missions of the police in the community and should therefore be improved ***de lege ferenda*** and *de facto* developed in keeping with practical requirements.

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UDC 343.4/.7(497.11)(083.41)

CRIME STATISTICS IN STATISTICAL DATA OF THE STATISTICAL OFFICE OF THE REPUBLIC OF SERBA

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Abstract: One of the main contemporary tendencies in the research of social phenomena is extensive use of statistical data in the analysis. This trend can also be perceived in criminalistics, where the use of statistical data enables quantitative analysis and statistical inference in different areas of criminalistics. Statistical data on crime are important because of the political and social importance of prevention of and the fight against crime where they are widely used. The paper presents statistical data about criminal offences published by the Statistical Office of the Republic of Serbia. This institution is the main source of the official statistical data about criminal offences in the Republic of Serbia. The Statistical Office of the Republic of Serbia collects and publishes data on juvenile and adult perpetrators of criminal offences and on responsible and legal persons – perpetrators of economic offences. Those statistical data enable quantitative analysis of the level, trend and structure of the criminal offences committed in Serbia. The paper presents methodology of data collection, together with the most important definitions and classifications. Some examples of using data in analysis are given and the main statistical findings derived from the available data are also presented in the paper. Comparisons with European statistical practice in the area of crime statistics has been made, which has pointed out to the further courses of research and development in this area of statistics.

Key words: statistical data, criminal offences, crime statistics, Serbia.

INTRODUCTION

One of the main contemporary tendencies in research of social phenomena is the application of quantitative, mathematical and statistical methods and extensive use of statistical data in analysis. This trend can also be perceived in criminalistics, where the use of statistical data enables quantitative analysis and statistical inference in different areas of criminalistics. Statistical data on crime are important because of the political and social importance of crime as socially negative phenomena. Statistical data on criminal offences are used in quantitative analysis of the level, trend and structure of the criminal offences committed. They are used when analyzing the number and the structure of criminal offences committed and in evaluating the progress in the fight against the crime.

Statistical data about criminal offences in Serbia are compiled and published by the Statistical Office of the Republic of Serbia. The Statistical Office of the Republic of Serbia compiles and publishes data on juvenile and adult perpetrators of criminal offences and on responsible and legal persons – perpetrators of economic offences. Collected data are classified and published by sorts of criminal offences, sex, age and criminal sanctions. There are some other sources of data about criminal offences in Serbia, such as the Ministry of Justice and the Public Prosecution. The Ministry of the Interior has its own database on criminal offences and perpetrators but this is

an internal data source not available to the public. Therefore, the Statistical Office of the Republic of Serbia is the main source of the official statistical data about criminal offences in Serbia.

This paper describes how the national statistical office – The Statistical Office of the Republic of Serbia collects and publishes data on criminal offences in Serbia. The paper presents statistical data about criminal offences published by the Statistical Office of the Republic of Serbia, the sources and methods of data collection together with the most important definitions and classifications. Some examples of using statistical data in analysis are given and some statistical findings derived from the data are presented in the paper.

There is also one important source of statistical data about crime in Serbia, which not many researchers in Serbia are familiar with yet. Eurostat, the statistical office of the European Union, provides statistical data on crime for the European Union's member states, but also for other countries that are not members of the European Union. Eurostat publishes statistics on crime and criminal justice systems from 1950 onwards for the total number of recorded crimes, and from 1993 onwards for a set of specific offences. The data on Serbia for the total number of criminal offences and for the specific criminal offences are available for the period from 2000 onwards, and some of those data will be presented in the paper.

Statistical data of Eurostat and the method of presenting data in the electronic database of Eurostat provide numerous possibilities of use in the analysis. Those possibilities have been presented in the paper. Comparison with European statistical practice in the area of crime statistics has been made, which has pointed out to the further courses of research and development in this area of statistics for Serbia. Some of them such as increasing the length of time series and improving the availability of data and ways of presenting data are specific for Serbia. The others concerning overall improvements of crime statistics are common for Serbia and the European Union, where the development of crime and criminal justice statistics, according to their own words is still in its infancy, and where more efficient and internationally comparable system of collecting and presenting data on crime is in the process of being developed.

STATISTICAL DATA ON CRIME IN SERBIA: MAIN DEFINITIONS AND CLASSIFICATIONS

The Statistical Office of the Republic of Serbia compiles and publishes data on juvenile and adult perpetrators of criminal offences and on responsible and legal persons – perpetrators of economic violations. Data are classified within statistical area of justice administration called "Judiciary".[1] In the publications of the Statistical Office of the Republic of Serbia, criminal offences are sorted and presented by criminal offences' groups according to the *Classification of Criminal Offences* determined by the Statistical Office of the Republic of Serbia and applied from 2006. Economic violations are presented by sort of violations, according to the *Classification of Economic Violations,* also established by the Statistical Office of the Republic of Serbia.

Adult perpetrators of criminal offences are persons who were 18 and over at the time when a criminal offence was committed, against whom the proceedings pursuant to crime report and preliminary proceedings were closed, the accused persons against whom criminal proceedings were closed and decree absolute rendered, and

1 An overview on the area can be found on the internet page: http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=146

the persons sentenced. *Juvenile perpetrators of criminal offences* are persons who at the time when criminal offence was committed were between 14 and 18 years of age, against whom proceedings by crime report were not instituted (crime report rejected) or preparatory proceedings were suspended, against whom a charge motion for pronouncing sentence-measure was submitted to the juvenile court, criminal proceedings at the juvenile court suspended and who were sentenced to sanctions.[2]

Reported person - known perpetrator is an adult perpetrator of criminal offence against whom proceedings by crime report and preliminary proceeding were closed by a decision: charges rejected, investigation suspended; investigation terminated; or charge sheet submitted. *Reported person - unknown perpetrator* is an unknown person against whom crime report was submitted to public prosecutor's office, and who was not identified within one year after the crime report was submitted. *Accused person* is an adult against whom indictment, charge sheet, summary charge or private suit were instituted at court, and against whom criminal proceedings were closed by court decision rejecting private charge; proceedings were suspended or a charge dismissed; perpetrator acquitted of charges; charges rejected, security measure passed without stating sentence or a perpetrator pronounced guilty. *Sentenced person* is a convicted adult person who was pronounced guilty and sentenced to penalties: punishment, conditional sentence, judicial-admonition, security measure, corrective measure, as well as a person pronounced guilty but discharged, is considered to be a *sentenced person*.

Responsible persons - perpetrators of economic violations are persons responsible for certain number of assignments in economic and financial operations in a legal entity, who have violated the rules related to economic and financial operations, against whom the crime report for economic violation has been rejected, charge submitted, and proceeding closed by legally binding court decision by which proceedings were suspended or terminated, charge sheet dismissed or denied, perpetrator acquitted of the charge, pronounced responsible but discharged, or pronounced responsible sentenced to sanctions. *Legal entities that violated the rules relating to economic and financial operations,* against which proceedings for economic violations were closed, in the manner stated above, are considered *legal entities - perpetrators* of economic violations.

SOURCES AND METHODS OF DATA COLLECTION AND DISSEMINATION

The Statistical Office of the Republic of Serbia collects and publishes the data on criminal offences of perpetrators (reported, charged and convicted) and on responsible and legal persons – perpetrators of economic violations according to the following classification criteria: by sorts of criminal offences, by sex and age; by the type of decision of the Public Prosecutor's Office (Crime report rejected, Investigation suspended, Investigation terminated, Submitted charge sheet-summary charge sheet), by decision of the court (Pronounced guilty, Not pronounced guilty – Private charge rejected, Criminal proceedings terminated, Acquittal of charge, Charge denied, Security measure passed without sentence pronounced), by the type of criminal sanctions – pronounced criminal sanction, and finally, by specific criminal offences. The data are collected in regular statistical surveys based on individual questionnaires completed by the competent Senior Public Prosecutor's Offices and Courts. The pe-

2 All these definitions can be found in "Statistical Yearbook of the Republic of Serbia" and also in other publications of the Statistical Office of the Republic of Serbia.

riod of observation is one calendar year. The research is in an annual periodicity but the data are collected monthly. The main sources from which the data are taken are final decisions of the Public Prosecutor's Offices or the final verdicts (court orders).

The coverage of criminal offences by the Statistical Office of the Republic of Serbia is complete, since the statistical surveys comprise: a) all adult and juvenile perpetrators of criminal offences (including criminal offences made by unknowns as well); and b) legal entities and persons in charge – perpetrators of economic violations, against whom a report was submitted to public prosecutor's office and against whom proceedings were conducted and legally closed (absolute decree rendered) with authorized public prosecutor offices and courts.[3]

Statistical data on criminal offences are published in complex publications of the Statistical Office of the Republic of Serbia, in statistical releases and in statistical bulletins. Those complex publications are the following: the Statistical Yearbook of the Republic of Serbia, the Statistical Pocketbook of Serbia, the Municipalities and Regions in the Republic of Serbia, Trends. The statistical releases are: Legal and responsible persons, perpetrators of economic violations in the Republic of Serbia (SP10), Adult perpetrators of criminal offences (SK12), Minor perpetrators of criminal offences in the Republic of Serbia (SK11), Responsible persons and legal entities – perpetrators of economic violations (SP10), Minor perpetrators of criminal offences (SK11). [4] The publications usually contain main definitions and basic methodological notes necessary for proper understanding and use of data.

In addition to these publications, the data on juvenile and adult perpetrators of criminal offences and on responsible and legal persons – perpetrators of economic violations are stored in the Statistical Office's Electronic Database. The database of the Statistical Office of the Republic of Serbia is available for the public via Internet.[5] The data on criminal offences can be found under the area "Administration of Justice". Within the area, the data are listed according to perpetrators. The data in the Data on the perpetrators are classified "according to crime" that is, according to a specific criminal offence, as they follow: serious bodily injury, light bodily injury, negligence and maltreatment of a minor, theft, banditry, domestic violence. The first available data in the database is for the year of 2004 and the latest is for the year of 2009 (the data for the year of 2010 can be found in different statistical releases and bulletins).

SOME STATISTICAL FINDING

The data on adult perpetrators of criminal offences in the electronic Database of the Statistical Office of the Republic of Serbia are classified by crime: serious bodily injury, light bodily injury, negligence and maltreatment of a minor, theft, banditry, domestic violence. There are no data in the Database for other types of criminal offences. The data on juvenile perpetrators are classified by sex and by the type of criminal sanctions.[6] There are no data for the perpetrators of economic violations (they exist as a theme, but selection of indicators in the process of generating report is not possible). The database is not updated with the latest data for the year of 2010.

3 There is one exception: starting from 1999 the data for AP Kosovo and Metohija are not included in the coverage for the Republic of Serbia (total).

4 Numbers in parentheses represent the code of the publication. Publications are available in electronic version on: http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=146

5 Access to Database is possible over the internet: http://webrzs.stat.gov.rs/WebSite/Public/ReportView.aspx

6 Considerable lack of the data on juvenile perpetrators in database can be compensated with the data from the publication: Minor perpetrators of criminal offences in the Republic of Serbia (SK11).

In Table 1 and Table 2 we present some data from the Database of the Statistical Office of the Republic of Serbia. The data on registered adult perpetrators of criminal offences by crime for the period 2004-2009 are given in Table 1. The data on convicted adult perpetrators are given in Table 2. The data are presented as they are generated by Database.

Table 1: Reported adults perpetrators by crime, the Republic of Serbia, 2004-2009

	2004		2005		2006		2007		2008		2009	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Reported adult perpetrators by criminal offences												
THE REPUBLIC OF SERBIA												
Total	88453	100.0	100536	100.0	105701	100.0	98702	100.0	101723	100.0	100026	100.0
Murder	330	0.3	291	0.3	303	0.3	390	0.4	337	0.3	348	0.3
Serious bodily injury	1713	1.9	1635	1.6	1651	1.6	1520	1.5	1517	1.5	1423	1.4
Light bodily injury	2534	2.9	2547	2.5	2407	2.2	2426	2.5	2468	2.4	2255	2.3
Raping	154	0.2	114	0.1	127	0.1	164	0.2	142	0.1	177	0.2
Negligence and maltreatment of a minor	64	0.1	148	0.1	102	0.1	86	0.1	93	0.1	118	0.1
Domestic violence	1009	1.1	1397	1.4	2191	2.1	2550	2.6	3276	3.2	3384	3.4
Non payment of alimony	1073	1.2	1009	1.0	1074	1.0	1234	1.3	1524	1.4	1742	1.7
Theft	29296	33.1	35655	35.5	38209	36.1	32027	32.4	31357	30.8	31552	31.5
Banditry	1924	2.2	2208	2.2	2467	2.3	3461	3.5	3343	3.3	3464	3.5
Human trafficking	69	0.0	68	0.0	50	0.0	51	0.1	51	0.1	50	0.0

Source: Statistical Office of the Republic of Serbia

Table 2: Convicted adults perpetrators by crime, the Republic of Serbia, 2004-2009

Convicted adult perpetrators by criminal offences												
THE 7												
Total	34239	100.0	36901	100.0	41422	100.0	38694	100.0	42138	100.0	40880	100.0
Murder	165	0.5	160	0.4	191	0.4	176	0.5	197	0.5	198	0.5
Serious bodily injury	941	2.7	1011	2.7	1168	2.8	1012	2.6	1008	2.4	838	2.0
Light bodily injury	1950	5.7	2121	5.7	2287	5.5	1873	4.8	2050	4.9	1833	4.5
Raping	50	0.1	68	0.2	67	0.2	71	0.2	88	0.2	77	0.2
Negligence and maltreatment of a minor	67	0.2	63	0.2	55	0.1	56	0.1	39	0.0	38	0.1
Domestic violence	374	1.0	574	1.6	1059	2.6	1312	3.4	1681	4.0	1850	4.5
Non payment of alimony	655	1.9	741	2.0	651	1.6	863	2.2	987	2.3	1193	2.9
Theft	5547	16.2	5215	14.1	5349	12.9	5006	12.9	5538	13.1	5779	14.1
Banditry	492	1.4	584	1.6	573	1.4	641	1.7	723	1.7	665	1.6
Human trafficking	2	0.0	10	0.0	13	0.0	14	0.0	12	0.0	20	0.0

Source: Statistical Office of the Serbia

The data in the publications of the Statistical Office of the Republic of Serbia (complex publications, statistical releases and bulletins) are much more detailed than those in the electronic database. They provide information on every relevant criterion of classification: on demographic characteristics of perpetrators, on specific criminal offences, type of sanctions imposed, type of decision of prosecutions

and courts. The only problem is that sometimes you have to search several publications in order to complete one consistent time series for a longer period of time. For example, the data *for the specific criminal offences* (armed robbery, homicide, fraud, terrorism…) for the period 1995-2004 have been published in the Bulletin 452: "Adult perpetrators of criminal offences - reports, charges and convictions, 2004" while the same data for the period 2004-2010 are published in several different bulletins (one for each year of the period). And once you have completed time series, you can apply different statistical methods in analysis, estimate trends and calculate indicators such as different quotas of crime and the Crime Clock.[7]

In Table 3 we present the data on crime reports against adult perpetrators by sorts of criminal offences for the period 2001-2010, extracted from the publication "Adult perpetrators of criminal offences in the Republic of Serbia, 2010" (type of publication: Bulletin).

Table 3: Reported adult perpetrators by sort of criminal offences, the Republic of Serbia, 2001-2010

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
	93431	**104061**	**95733**	**88453**	**100536**	**105701**	**98702**	**101723**	**100026**	**74279**
Criminal offences against life and limb	5637	5425	5043	5784	5610	5547	5364	5364	4912	3381
Criminal offences against civil freedoms and rights	1174	1048	1058	1043	1062	1147	1188	1357	1501	1786
Criminal offences against electoral rights	24	21	44	47	21	53	15	57	29	22
Criminal offences against labor law	256	294	257	399	342	226	147	220	279	165
Criminal offences against honor and reputation	235	288	319	369	412	179	85	57	85	115
Criminal offences against sexual freedom	386	400	408	472	479	374	455	405	448	387
Criminal offences against family and marriage	883	1372	1944	2450	2836	3680	4257	5250	5617	4657
Criminal offences against intellectual property						602	255	292	294	161
Criminal offences against property	57152	64127	53704	43242	52411	56050	48113	47437	47343	31618
Criminal offences against economy	5628	6047	5405	5255	4721	2868	2663	3099	3131	2479
Criminal offences against human's health	1037	1177	2053	3257	4435	4260	4440	4895	4490	4052
Criminal offences against environment						2009	1831	1895	2081	1568
Criminal offences against public safety of	998	1045	1139	1065	1131	1158	1244	1399	1354	807
Criminal offences against safety of public traffic	7398	7105	6435	6775	6654	7000	7639	8677	8140	5265
Criminal offences against safety of computer						23	8	25	45	20
Criminal offences against constitutional order	77	133	37	67	98	88	107	100	87	87
Criminal offences against public administration						1537	1531	1593	1414	758
Criminal offences against jurisdiction	60	688	676	641	680	959	1211	1068	993	793
Criminal offences against public peace and	4744	6176	7234	7363	6957	6631	7072	8055	7628	5984
Criminal offences against official duty	4640	5312	5535	5356	5253	4343	4244	4140	4073	3209
Criminal offences against humanity and other properties protected by international law	3	6	14	6	5	57	95	63	70	99
Criminal offences against the Army	1	7	1	4	967	580	307	636	478	553
Other criminal offences (particular laws)	2558	3390	4427	4858	6462	6330	6431	5706	5564	6313

Source: Adult perpetrators of criminal offences in the Republic of Serbia, 2010 (N°546)

In comparison with the data obtained from the electronic database, the data in publications allow a detailed analysis of the level, trend and structure of the criminal offences committed in Serbia during the period 2001-2010. For example, we can see from the publication "Adult perpetrators of criminal offences in the Republic of Serbia, 2010" (Table 3) that the total number of reported adult perpetrators of criminal offences in 2010 decreased by 26% in comparison to 2009. As for the structure of criminal offences committed by adults, the largest number goes to criminal offences against the property: 42.6% for the perpetrators reported. The data for the perpetrators who are accused and convicted also can be found in the same publication.

The total number of criminal offences by perpetrators reported, accused and convicted for the period 2001-2010 is presented in Chart 1. [8]

7 More details on the use of statistical methods in criminalistics can be found in: Ignjatović Dj. (2005).
8 Source: Adult perpetrators of criminal offences in the Republic of Serbia, 2010 (N°546) (type of publication: Bulletin)

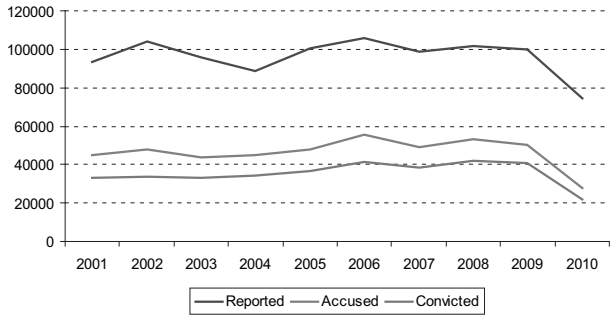

Chart 1: Adult perpetrators by criminal offences – reported, accused, convicted, total, the Republic of Serbia, 2001-2010

As we can see in Chart 1, the number of criminal offences for the perpetrators reported, accused and convicted in the period 2001-2010 remains approximately at the same level year by year, except for the year of 2010, when it finally decreases, probably as a result of continuous efforts in fighting against crime during all previous years.

CRIME STATISTICS IN THE EUROPEAN UNION

Eurostat publishes statistics on crime and criminal justice systems from 1950 onwards for the total number of recorded crimes, and from 1993 onwards for a set of specific offences. In addition, the database also includes statistics for prison population from 1987 onwards and the number of police officers from 1993 onwards. There are considerable differences between countries in systems of legal and criminal justice, in methods and in definitions used in covering and reporting crime, and this should be taken into account in analysis. Eurostat is now in the process of development comparable statistics on crime and criminal justice: "While the development of crime and criminal justice statistics admittedly is still in its infancy, a more comparable system is in the process of being developed."[9] The statistical data on crime are disseminated through different Eurostat publications, (the most important publication is "Crime and Criminal Justice") and also through electronic database for crime and criminal justice which is publicly available via Internet.[10] The database provides possibilities of data selection by crime, country and time. The database also contains the data for all European countries, as well as for many other countries such as the United States, Australia, Canada and Japan.

There were estimated 29 million crimes recorded by the police in the European Union in 2008. The total number of criminal offences recorded by the police in the European Union is decreasing since 2002. Until 2002, the trend was upwards. The total number of criminal offences for the EU member states for the period 1998-2008 is presented in Chart 2.[11]

9 See : http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Crime_statistics#Database

10 Access to the database is possible over the Internet: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_gen&lang=en . Publications can be found on page: http://epp.eurostat.ec.europa.eu/portal/page/portal/crime/publications

11 Source of the charts for the European Union: Eurostat, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Crime_trends_in_detail

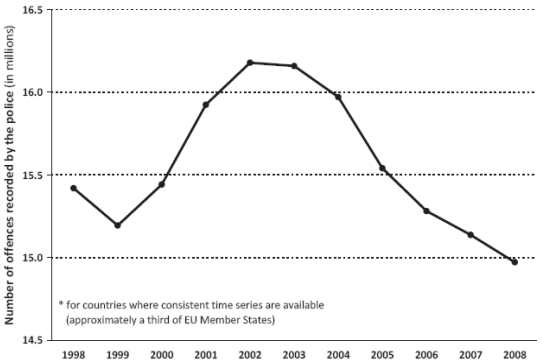

Chart 2: Trend for total crime, the European Union, 1998-2008

Underlying the total crime trends, there are different tendencies for specific types of offences. For the EU as a whole domestic burglary and drug trafficking have remained almost unchanged since 2005, while violent crime (including robbery) and thefts of motor vehicles have fallen. The type of recorded crime which showed the most substantial decrease was theft of motor vehicles.

Criminal offences in the European Union recorded by police, presented by the type of recorded crime, for the period 2005-2008, are shown in Chart 3.

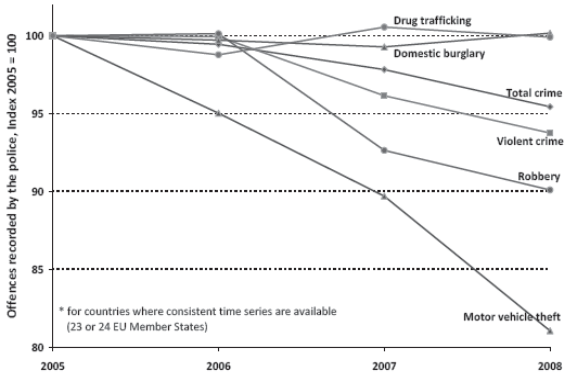

Chart 3: Criminal offences recorded by the police, the European Union, 2005-2008, 2005=100

The data for Serbia for the total number of criminal offences and for the specific criminal offences are available in the Eurostat database for the period from 2000 onwards. The latest available data for Serbia are for the year of 2009. The data for perpetrators in the database are sorted "by crime" that is, according to specific criminal offences, as they follow: total (all recorded offences), homicide, violent crime, robbery, domestic burglary, motor vehicle theft, drug trafficking. There are no data for other specific criminal offences. Also, there are no data for Serbia for the period before 2000. Nevertheless, some comparisons concerning specific criminal offences and the total number of offences are possible. We can use the data from the database of Eurostat to compare Serbia with other countries, the members of the European Union and the European Union as whole. For Serbia, the comparison with coun-

tries in the region could be interesting even more, and the database provides the data on crime for Croatia, Montenegro, Bosnia and Herzegovina, and for Kosovo (under the United Nation Security Council Resolution 1244/99). [12] Besides, we can compare the data from the database with the ones from the domestic sources (publications of the Statistical Office of the Republic of Serbia).

The latest available data in the Database of Eurostat for the total number of crimes recorded by the police in 2009 for Serbia is 102369.[13] We can see from the Database that the total number of criminal offences in 2009 decreased in comparison with 2008 (106031). This is in accordance with the decreasing trend in crime in the European Union (Chart 3) and maybe related with such overall trend for the European countries. And for specific offences, for example, for the criminal offence of drug trafficking, we can also compare the data for Serbia with those of the European Union. As an example of analysis by the specific criminal offence, the data on drug trafficking for Serbia for the period 2000-2009 are presented in Chart 4.[14]

Chart 4: Number of criminal offences of drug trafficking in Serbia, 2000-2009

The number of drug trafficking offences in Serbia in the period 2000-2008 increased from 885 in 2000 to 5500 in 2009 (you would have to search several publications of the Statistical Office of the Republic of Serbia in order to complete one time series of the same length for that specific criminal offence). At the same time, in the European Union drug trafficking first slightly increases in 2007, then decreases in 2008 remaining as a result approximately on the same level.

CONCLUSIONS

The coverage of criminal offences by the Statistical Office of the Republic of Serbia is complete, since the statistical surveys comprise all adult and juvenile perpetrators of criminal offences (including criminal offences made by the unknowns as well), and legal entities and persons in charge – perpetrators of economic violations. Those statistical data enable detailed analysis of the level, trend and structure of the criminal offences committed in Serbia. In the publications of the Statistical Office of the Republic of Serbia, the data are classified according to the following classification criteria: by sorts of criminal offences, by sex and age; by the type of a decision of Public Prosecutor's Offices, by court decisions, by the type of pronounced criminal sanction, and finally, by specific criminal offences. The publications of the Statistical Office of the Republic of Serbia are rich in data. However, it is impossible to find data by specific offences for the longer period of years in only one publication. It takes a lot of time and effort to complete one time series for a specific offence in the whole period 2000-2010.

Concerning the electronic database of the Statistical Office of the Republic of Serbia, access to data is rather complicated. In comparison with the Eurostat database, the process of generating report is rather slow. The data in the database are available only for the period 2004-2009. The database is not updated with the latest data. There are no data for the perpetrators of economic violations. The data on adult perpetrators of criminal offences are classified by specific crime: serious bodily injury, light bodily injury, negligence and maltreatment of a minor, theft, banditry, domestic violence. There are no data in the database for other specific criminal offences. The data

12 Comparisons of crime statistics should focus on trends over time, rather than directly comparing levels between countries for a specific year, given that the data can be affected by a range of factors.

13 For the same year, the data from the domestic source is 100026 (see Table 3). Obviously, there are some differences in the coverage or in the methodology of data collecting.

14 Source of the data in Chart 4: Eurostat, Crime and criminal justice database.

on juvenile perpetrators are classified only by sex and by the type of criminal sanctions, so there is considerable lack of data on juvenile crime.

The Eurostat database provides the data for longer period (2001-2010) and for the limited number of specific offences: total number of offences (all recorded offences), homicide, violent crime, robbery, domestic burglary, motor vehicle theft, drug trafficking. There are no data for other specific criminal offences. However, the Eurostat statistical data and the method of presenting data in the Eurostat electronic database provide numerous possibilities of using in the analysis.

The comparisons with European statistical practice in the area of crime statistics has pointed out to the further courses of research and development in this area of statistics for Serbia. The most important of them certainly are: increasing the length of time series for Serbia and improving the availability of data and way of presenting the data within the electronic database of the Statistical Office of the Republic of Serbia. The same can be said for the database of the Ministry of the Interior, where "It is necessary to revise the method of collection, storage and access to information, and ensure that criminal intelligence information from all lines of the Ministry intersect in one central database."[15] The other courses of development, concerning overall improvement of crime statistics, are common for Serbia and for the European Union, where more efficient and internationally comparable system of collecting and presenting data on crime is in the process of being developed.

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15 Interior Ministry's 2011-2016 Development Strategy, p. 17.

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TRAUMATIC SYMPTOMATOLOGY AND COPING STRATEGIES IN CSIS

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Abstract: Crime Scene Investigators (CSIs) are often exposed to traumatic events and/or their consequences as part of their work. Such indirect exposure to trauma may evoke responses very similar to post traumatic stress disorder and it is therefore captured in the term secondary traumatic stress disorder. The purpose of the paper is to present a part of a larger research on secondary trauma in CSIs: to determine the prevalence of post-traumatic symptomatology and the prevalent coping style. Past research in the field of post-traumatic stress within police work shows presence of post-traumatic symptomatology, but not so severe to significantly impair functioning. The present study suggests similar findings in crime scene investigators and identifies coping strategies that help dealing with work related traumatic experiences.

Key words: CSI, traumatic stress, secondary trauma, coping, police.

INTRODUCTION

People experiencing or witnessing natural disasters and/or human violence may suffer from psychological trauma. Post-traumatic stress disorder (PTSD) is perhaps the most common psychiatric disorder that occurs in response to trauma (Yehuda, 1998).

For a PTSD diagnosis three main criteria are described in DSM IV TR (American Psychiatric Association, 2000) including:

- The causal or etiological prerequisite of having experienced traumatic event(s) (e.g. the person was involved in a car accident that posed a serious threat to his/her life).
- The phenomenological requirement of experiencing some or all of the symptoms.
- Sufficient duration (more than one month) and clinically significant impairment in life functioning (the person is not able to perform usual tasks at work and has difficulties in social relations).

Three clusters of symptoms constitute the phenomenology of PTSD (McFarlane, 2008):

- Intrusive re-experiencing. The person re-experiences the event through unwanted and involuntary memories that may recur spontaneously or can be triggered by real or symbolic stimuli.
- Avoidance and numbing of emotional experience. The person avoids all situations that are reminiscent of the traumatic events and is in a state of emotional blunting.
- Increased arousal. It is indicated by sleep disturbance, difficulties with memory and concentration, hyper-vigilance, irritability and an exaggerated startle response.

However, a single traumatic event alone is not enough to cause post-traumatic symptomatology since most people do not develop PTSD after exposure to a sudden, high-magnitude stressor (Breslau, 1998). Many factors are found to be significant in determining the development of PTSD: individual characteristics (e.g. biological

tendencies, developmental level, past trauma exposure), aspects of high-magnitude stressors (e.g. severity, intentional or accidental nature, duration), and post-traumatic life experiences and resources (e.g. social support, medical and psychological support, post-traumatic life stress) (Carlson, Dalenberg, and Muhtadie, 2008).

POLICE AND TRAUMATIC STRESS

Post-traumatic symptomatology is experienced by firsthand victims of traumatic events. However, persons exposed to consequences of violent or disastrous events, shocking images and/or traumatic affects or survivors of such events can experience post-traumatic symptoms as well. Indirect exposure to trauma may evoke responses very similar to PTSD; because it is "indirect" the term *secondary traumatic stress disorder* (STSD) is used. Its symptoms are nearly identical to PTSD, with the exception that STSD symptoms are an affective response to someone else's traumatic experience. There are a number of terms that describe this concept: compassion fatigue (Figley, 1995), vicarious traumatisation (Pearlman & Saakvitne, 1995), work-related burnout (Pearlman & Saakvitne, 1995) and critical incident stress (e.g. Paton, 2006). For the purpose of this paper secondary traumatic stress seems appropriate – while police officers may experience stress that is direct and primary, much of the day to day stress they experience is secondary and derives from being witnesses to others' trauma.

There is no need of additionally accentuating the stressfulness of police work - people of this profession are exposed to different traumatic events and their consequences. However, the nature of police jobs differs and therefore the possible psychological consequences as well. Being a child sexual abuse investigator, for instance, who is confronted with specific cases that deal with (intentional) human violence/abuse and that he/she follows for a longer period of time differs considerably from being a police officer in traffic control who is present on the site after a car accident.

The onset of post-traumatic symptomatology is expected to a certain degree (van Patten and Burke, 2001; Stephens and Long, 2000) and the prevalence of PTSD and depression among police officers is expected to be higher than in the general population (Darensburg, Andrew, Hartley, Burchfiel, Fekedulegn and Violanti, 2006). It may be possible that police officers are more vulnerable to secondary trauma because they and their families live with the knowledge that they may experience primary trauma any day in the course of their work (M. Wilkinson, personal communication, November 27, 2010).

Results of studies in similar professions that involve trauma work has also been undertaken, for example on fire fighters (e.g. Beaton, Murphy, Johnson, &Nemuth, 2004), criminal law solicitors (Vrklevski & Franklin, 2008), fire fighters and paramedics (Regehr, Hill, Goldberg, & Huges, 2003), rescue personnel (Ben-Ezra, Essar, & Saar, 2006), aid workers (Jones, Müller, & Maercker, 2006) and body handlers (Solomon, Berger, & Ginzburg, 2007). Results of these studies suggest the likelihood of secondary trauma stress reactions in such high-risk groups, manifested in depersonalization, exhaustion, subjective distress, depression and higher rates of mental health stress leave. The disposing factors that increase the individual's vulnerability when exposed to traumatic events were already mentioned and police workers are no exception. In police research the factors identified include genetics, personal characteristics, current state of health, family pressures (Waters and Ussery, 2007); previous trauma exposure, pre-existing symptoms of traumatic stress and lower levels of social support (Regehr, LeBlanc, Jelley, Barath and Daciuk,

2007). Even though clinical understanding of stress related occurrences is not often mentioned, post-traumatic symptomatology does require clinical analysis and eventually clinical intervention as well.

POLICE: COPING WITH TRAUMATIC EXPERIENCES

Effective coping is indisputably an important protective factor when speaking of (traumatic) stress. One of the most often cited definitions of coping was written by Lazarus and Folkman (1984, pg. 141) and it understands coping "... as *constantly changing cognitive and behavioural efforts to manage specific external and/or internal demands that are appraised as taxing or exceeding the resources of the person.*" Lazarus and Folkman (1984) distinguish two coping styles: problem- and emotion-focused. Problem-focused coping includes defining the problem, finding, assessing and choosing among alternative solutions, and acting, while emotion-focused coping is directed at regulating emotional response to the problem and among others encompasses avoidance, minimization, distancing, selective attention and finding positive outcomes in negative situations. Lazarus and Folkman (1984) also state that a person's coping style also depends on the individual's resources (health, energy, beliefs, problem-solving and social skills, social support and material resources) and on the constraints that may mitigate the use of resources (e.g. personal and environmental constraints).

Research shows that police officers prefer *problem-focused strategies that lead to direct action* (Biggam, Power, and MacDonald, 1997; Bishop, Tong, Siew-maan, Yong-peng, Enkelmann, Khader et al., 2007). Biggam et al. (1997) link such styles of coping to the specific police culture, its training and socialization since unpredictable and uncontrollable situations are frequent in this occupation. Nevertheless, it was already stressed that the nature of police jobs does differ and so do coping strategies. For example, an exploratory study of Internet Child Exploitation teams described their coping strategies and general resilience (Burns et al., 2008). These teams are constantly exposed to disturbing imagery and the study found that what helped in coping was also adequate mental preparation to seeing traumatizing images and deliberate dissociation from the content of the images (e.g. shutting down the emotions, pretending the victims were not real children). They also accentuated some mitigating factors, such as personal characteristics, having superiors that understood the nature of their work, sense of control (how, when and where to view) and organizational, social and psychological support.

Social support plays an important role in diminishing stress consequences: when police officers find their social support satisfying they tend to show less psychological distress (Bishop et al., 2007). However, there are differences: younger officers rely on it more than older ones and female officers more than their male co-workers (Biggam et al., 1997). A specific aspect of social support is sharing traumatic events with people who had a similar experience (Stephens and Long, 2000) and many post event interventions are based on this premise (e.g. "peer to peer" hotlines, debriefing). It seems that an important part of preventing or mitigating the effects of traumatic work lies in a relational approach, because as Lewis, Amini, and Lannon (as cited in Dales & Jerry, 2008:305) point out, "people do not learn emotional modulation as they do geometry or the names of state capitals"; rather they learn it implicitly from "the presence of an adept external modulator". "Trauma can be transformed and its effects neutralized or counteracted through just one relationship in which one person understands the problems of other person." (Fosha, 2003 in Wilkinson, 2010: 3).

Clearly there are variations between officers and the coping strategies they utilize. Some studies examined the relationship between coping styles and personality. Officers with more positive personality traits such as conscientiousness (organized, thorough), extroversion and openness adopt positive reappraisal and coping strategies that are more effective. Officers with high levels of neuroticism and low on conscientiousness choose less effective strategies that involve avoidance (Bishop et al., 2007). Avoidance, defined by behavioural disengagement, mental disengagement and denial, was also linked to sleeping difficulties, depression and somatization disorder. In a study where 31 % of participants were police officers (it was a study of emergency workers), individuals with more adaptive personality traits had a minor use of avoidant coping strategies, meaning they disclosed their traumatic experiences more easily and were more willing to be exposed to places and situations connected to the traumatic incident (Marmar, Weiss, Metzler, & Delucchi, 1996).

WHY IS THIS IMPORTANT?

Regular exposure to traumatic events, whether low or high impact, may slowly break down an individual's psychological adaptive capacity. The consequences of this can be felt at work and in job performance and also in the officer's sense of well-being, relationships, and family life. Some employees are at risk for suffering from stress-related problems that can become mental health disorders that are chronic and impair performance of key life roles (Whealin, Ruzek, & Southwick, 2008). Moreover, traumatic exposure can have serious effects not only on an individual, but on his/her co-workers and eventually on the whole organization as well (Hormann & Vivian 2005). In an institution such as the police, the importance of having psychologically and physically healthy persons cannot be overestimated, because workplace well-being is important and the commissioning of appropriate research facilitates this necessity (Pavšič Mrevlje, 2011).

METHOD

PARTICIPANTS

As a part of a larger study on secondary trauma and coping strategies of crime scene investigators (CSIs) all Slovene CSIs (about seventy-five) were invited to participate. Sixty-seven people participated and the results of sixty-four participants are used in this paper. The results of female participants were excluded because of ethical and methodological reasons.

The participation in the study was entirely voluntary. The average age of the sample was forty (SD = 12.68) and the average length of experience as a CSI was almost thirteen years (M = 12.67; SD = 8.47).

INSTRUMENTS

In this paper, the results of two instruments are presented: Detailed Assessment of Post-traumatic Stress (DAPS) and Coping Responses Inventory (CRI).

DAPS was used to assess post-traumatic symptomatology (Briere, 2001). It is a 104-item test of trauma exposure and post-traumatic response, designed for the use with individuals who have undergone a significant psychological stressor. It has

two validity scales and evaluates a range of trauma-relevant parameters: lifetime exposure to traumatic events, immediate cognitive, emotional and dissociative responses to a specified trauma, the symptoms of post-traumatic stress disorder and acute stress disorder defined by DSM IV TR (American Psychiatric Association, 2000) and three associated features of PTSD - post-traumatic dissociation, suicidal thoughts and substance abuse.

CRI - Coping responses inventory (Moos, 1993) was used to assess coping strategies. It is the measure of eight different types of coping responses to stressful life circumstances: *logical analysis, positive reappraisal, seeking guidance and support, problem solving, cognitive avoidance, acceptance or resignation, seeking alternative rewards, emotional discharge*. The first four strategies are approach-oriented whereas the last four are avoidance coping responses. The questionnaire also differentiates between cognitive coping methods (*logical analysis, positive reappraisal, cognitive avoidance, acceptance or resignation)* and behavioural coping methods *(seeking guidance and support, problem solving, seeking alternative rewards, emotional discharge).*

PROCEDURE

The implementation of the study was approved by all relevant offices and afterwards presented at a meeting of heads of CSI departments of each Police Directorate.

Research was implemented during working hours.

The researcher came to CSIs' premises, explained the purpose of the study to CSIs. The questionnaires were applied in a group setting.

Participants were given feedback on their results based on their request. Feedback was given individually.

RESULTS DAPS

The DAPS questionnaire includes two validity scales. One of them is *Positive bias (PB)*. Respondents with high scores are likely to be especially defensive or avoidant, oppositional regarding test taking, or otherwise unwilling to endorse commonly endorsed items (Briere, 2001). The other scale is *Negative bias (NB)* and may reflect an attempt to present a person as more symptomatic, which can invalidate DAPS results. Figure 1 shows the number of non-avoidant (42; 67.2 %) and avoidant (high score on PB, NB or both – 21; 32.8 %) participants on the DAPS scale. It is recommended that protocols of persons with scores over the cut-off point on one or both validity scales are considered invalid.

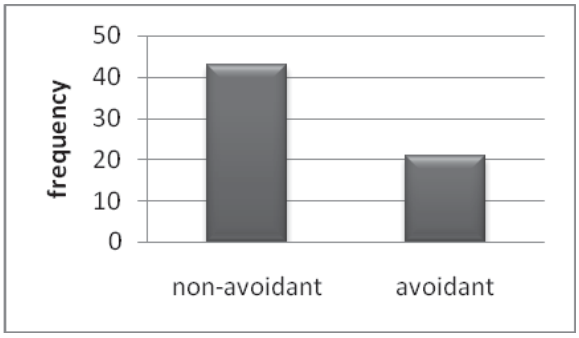

Figure 1: Number of non-avoidant and avoidant participants on DAPS (Detailed Assessment of Posttraumatic Stress) validity scales.

The participants were consequently split into two groups; their DAPS results are shown in figure 2. Higher T scores indicate greater degrees of symptomatology: T scores between 60 and 65 show elevated traumatic stress that may or may not be clinically meaningful and T scores above 65 are considered clinically significant. Scores of both groups are in the average range on all DAPS parameters. The highest score is on re-experiencing.

The scores of both groups show a very similar picture; a lower score of the "avoidant group" can be noticed on the subscales of peritraumatic distress and avoidance only. However, the differences of the two groups are not statistically significant (table 1).

Table 1: Statistical significance of differences between avoidant and non-avoidant group on DAPS (Detailed Assessment of Posttraumatic Stress).

	T scores for both groups		
	non-avoidant	avoidant	p value
relative trauma exposure	48	48	,98
peritraumatic distress	55,5	50	,06
peritraumatic dissociation	54	53	,79
re-experiencing	60	59	,84
avoidance	49	56	,56
hyperarousal	55	54	,67
post-traumatic stress total	57	57	,97
post-traumatic impairment	57	57	,96
trauma specific dissociation	52	53	,69
substance abuse	49	50	,45
suicidality	49	48	,86

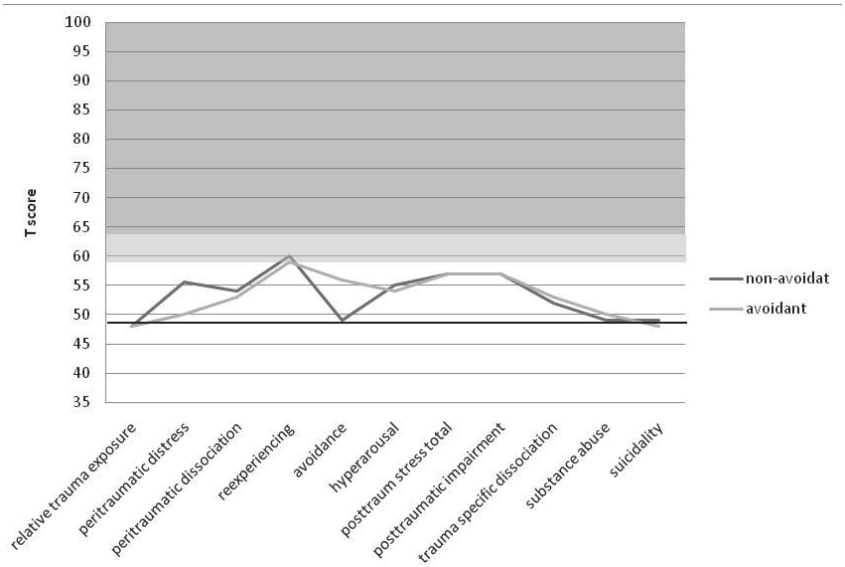

Figure 2: DAPS (Detailed Assessment of Posttraumatic Stress) parameters for the avoidant and non-avoidant group.

According to DSM IV TR there are 5 criteria for PTSD diagnosis: If each of the five criteria is met, PTSD is probably present. The sum of PTSD criteria met by the participants with *non-avoidant* DAPS protocols is presented in figure 3. Three participants (7 %) reach the important PTSD threshold.

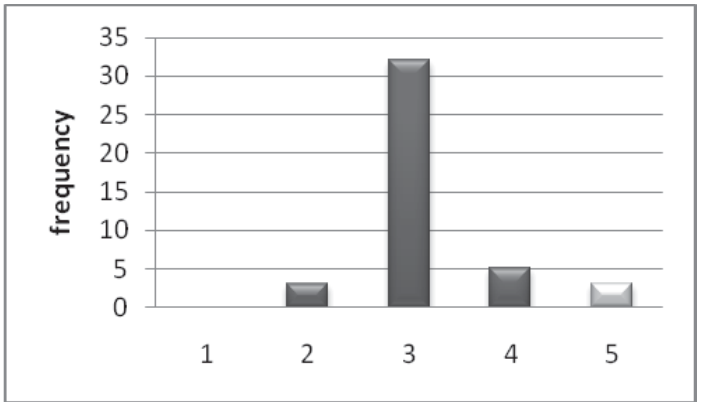

Figure 3: Sum of PTSD criteria met by the CSI's.

As already noted above, the differences of the two groups (non-avoidant and avoidant) are not statistically significant so in further data analysis all the participants are included. The groups, however, were formed regarding the level of traumatic stress (on the *post-traumatic stress total* scale): average (T scores up to 59), elevated traumatic stress (T scores between 60 and 65) and clinically significant (T scores above 65) (Figure 4).

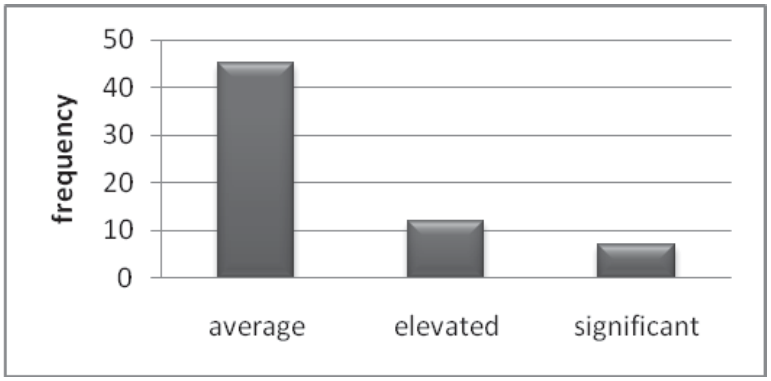

Figure 4: Participants regarding the level of traumatic stress.

CRI

Before answering the questions about managing important problems that CSIs encounter at work, they briefly described a case/situation they have experienced at work and which they found emotionally disturbing (e.g. attending an autopsy or working on the location of a severe accident). Descriptions were given by forty-eight (75 %) participants and were categorized as shown in Table 2. Some descriptions included different data (e.g. death by overdose, decomposed body) and were therefore categorized in more groups (the example mentioned was categorised

in *death – adult* and in *decomposed body*). The table shows that working on cases involving death (working on crime scenes, attending autopsies etc.) are most disturbing, even more so when minors are involved. Some participants additionally pointed out the stressful effect of the state of the body (decomposed or disfigured).

Table 2: Most stressful emotional situations described by the CSI (more answers possible).

	frequency	%
death – adult	22	45.83
death - minor	29	60.42
disfigured body	5	10.42
decomposed body	7	14.58

Figure 5 shows the participants' coping profile. Raw scores were converted to T scores (M = 50; SD = 10). T scores between 46 and 54 are considered average scores. T scores in the range from 41 to 45 show a below average use of a coping strategy and T scores between 35 and 40 show a well below average use of that coping strategy – in comparison to the normative group.

Results show that the participants rely more on avoidance coping. More specifically: when confronted with emotionally disturbing working situation, participants most often cope with it by *seeking alternative rewards, emotional discharge* and with *cognitive avoidance*.

Approach coping (*logical analysis, positive reappraisal, seeking guidance and support, problem solving*) is used less often, also in comparison to the normative group of adults (below average). Among approach coping strategies the one used the least is *seeking guidance and support*.

(T scores between 35 and 40).

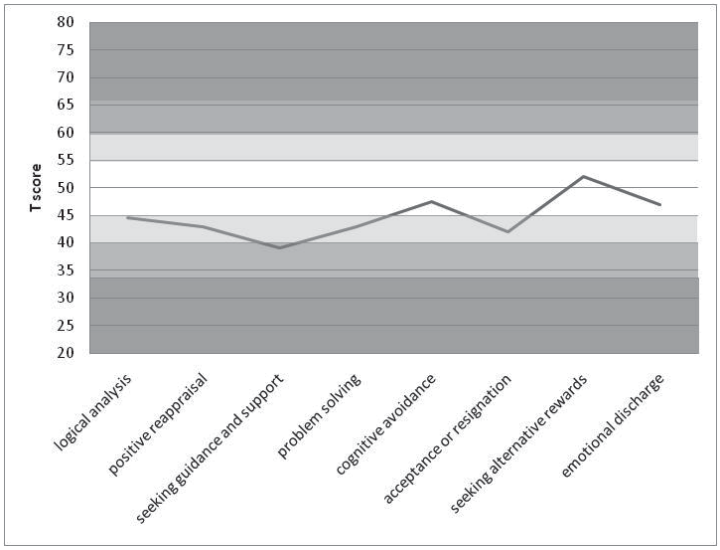

Figure 5: Scores on CRI (Coping Response Inventory) scales.

The differences in coping strategies among groups with different levels of traumatic symptomatology are presented in table 3 and show statistically significant differences in the following coping strategies: *seeking guidance and support, acceptance or resignation, seeking alternative rewards* and *emotional discharge*.

Table 3: Statistically significant differences (raw data) between symptomatology groups

	traumatic symptomatology						
	average		**elevated**		**significant**		**p value**
coping strategy	**M**	**SD**	**M**	**SD**	**M**	**SD**	
logical analysis	8,43	3,91	10,27	2,45	11,71	3,77	,056
positive reappraisal	6,73	4,15	8,09	2,66	10,43	2,23	,051
seeking guidance and support	4,34	2,34	5,27	1,68	8,00	3,37	,001**
problem solving	7,20	4,39	9,64	3,88	9,00	3,96	,188
cognitive avoidance	5,11	4,11	6,73	3,47	8,57	2,70	,070
acceptance or resignation	3,48	2,60	4,55	3,08	7,00	1,63	,005**
seeking alternative rewards	5,61	4,11	7,91	3,27	9,14	2,79	,036*
emotional discharge	1,98	2,16	2,64	2,16	6,43	2,30	,000**

*p<0,05 **p<0,01

*p<0,05 **p<0,01

DISCUSSION

DAPS validity scales identify a person's tendency to deny usually endorsed symptoms and/or over endorsed unusual symptoms (that are rarely significantly endorsed) (Briere, 2001). From a clinical standpoint it is important to consider high scores on these validity scales when establishing a diagnosis and planning the treatment – therefore this validity measure is particularly regarded when speaking of PTSD criteria. However, for further statistical processing, the purpose of this paper, and additionally because the two groups are not statistically significantly different, this is not necessary. Therefore, the first part takes into account the differences between groups and the last one does not.

The average DAPS scores of CSIs show that traumatic symptomatology is in the average range. Only the *re-experiencing* scale reaches the boundary of "elevated stress". *Re-experiencing* includes intrusive sensations, thoughts, memories, dreams etc., which may trigger a sense of re-living the original traumatic event and respondents with high re-experiencing scores are usually undergoing significant post-traumatic stress (Briere, 2001). When giving individual feedback on test results, CSIs themselves recognized and reported re-experiencing as a phenomenon related to past disturbing work situations. However, re-experiencing is not so intense as to affect the general PTSD status, because the *post-traumatic stress total* is in the average range and so is the *post-traumatic impairment* – in other words: some traumatic stress symptomatology is present, but not to the extent to affect one's professional and private life.

The "avoidant" group shows two interesting differences in symptomatology in comparison to the "non -avoidant". Both groups manifest very similar symptomatology, even though the "avoidant" group was formed mainly by participants that avoid recognising even the lowest levels of symptoms that most people would endorse – even those without traumatic life experiences. One could therefore specu-

late that the "avoidant" true scores are higher than those presented. An additional confirmation of this is their higher score[1] on *avoidance* which speaks of deliberate attempts to avoid a) places, people, and situations that may trigger intrusive re-experiencing, and b) attempts at thought suppression and avoidance of feeling. Very likely the effect of such avoidance is lower *peritraumatic distress:* being able to endorse feelings of being afraid, helpless, upset, and so forth during the traumatic situation. It seems both groups endure a similar range of traumatic experiences, but the avoidant group tends to deny it, also by negating their efforts to do so.

Considering the "non-avoiding" group only, three (7%) participants show a probable presence of PTSD. However, non-negligible is the fact that thirty-two CSIs (74.4%) meet three and additional five CSIs (11.6%) meet four out of five criteria for PTSD.

A similar picture is obtained when all the participants are included: almost a third (29.7%) show elevated or even clinically significant traumatic stress. It is not an alarming result, but it corroborates the previously ascertained finding of a present symptomatology that is not life impairing.

According to CSIs' reports the most traumatic and emotionally difficult work tasks involve death. Working on death cases of minors is even more disturbing than in cases of adults. A decomposing or disfigured body is an additionally difficult factor to bear.

When speaking of traumatic experiences, many factors contribute to the fact that some people develop post-traumatic symptomatology, even PTSD, and some do not. Coping is one of them. Effectively coping with traumatic situations means less or no traumatic consequences manifested in different symptoms.

A general view on coping strategies used by CSIs shows that they rely more on avoidance coping. Whenever there are disturbing images, cases and situations at work, they cope with them by getting involved in substitute activities to create new sources of satisfaction (e.g. sports, music), by intentionally avoiding thinking realistically about these cases (e.g. "When I come home, I switch off whatever happened at work.") and by behavioural attempts to reduce this tension by expressing negative feelings (e.g. involve in risky behaviours, "letting off steam"). Avoidance usually does not lead to coping behaviours that favour successful adaptation after traumatic events. We must, however, take into account that some experiences may be overwhelming (e.g. seeing dead people, being exposed to horrible odours) and healthy avoidance is a defence against re-experiencing the traumatic event. Alternating between re-living an acceptable level of traumatic memories and then later avoiding them is actually essential for an integration of the event's meaning into the memory structure and may hence reduce the psychological distress (Pavšič Mrevlje, 2011). But the emphasis is on *healthy* avoidance – avoiding the re-experiencing only to a certain degree.

It is more interesting, however, to look at strategies that CSIs use very rarely. Seeking information, help or support from other people when feeling distressed is very rare, possibly because of the strong police subculture. Their use of attempts to understand and mentally prepare for a stressor and to take action to deal directly with the disturbance is also below average. All this speaks of more avoidant behavioural and cognitive mechanisms: not dealing directly with the disturbance (e.g. by not trying alternative solutions) but avoiding it by releasing it and getting satisfaction in other activities. Certainly, CSIs' working tasks include extremely disturbing

1 In comparison to the »non-avoidant« group.

imagery and dealing with it directly is more often than not impossible, e.g. expressing rage toward an unknown killer when investigating a body on a crime scene of a murder. In these cases cognitive attempts to react by accepting it can be functional; however, the use of this strategy is below average as well.

Our interest was also directed toward possible differences between groups of CSIs that show different levels of traumatic symptomatology. The more prominent traumatic stress is, the more often a person seeks support and help, tries to accept the reality of the situation, relies on alternative sources of satisfaction and vents negative emotions. Thus, the group with significant traumatic symptomatology reports the highest frequency of these behaviours. However, even though relying on social support and accepting the disturbing reality they encounter at work is the highest in this group, it still only reaches the average level. It is the venting of negative emotions and seeking alternative gratifications that is above average. This group seems to rely on these two coping mechanisms somewhat too often and this does not bring the relief and/or emotional elaboration of distress, since the symptoms are so prominent. What is surprising is the fact that the group that shows the least traumatic symptomatology reports a below average reliance on most of the coping strategies. The interpretation why this is so might be found in the limitations of the study; this paper includes the results of a part of a larger study so that a more detailed analysis could have been presented. Furthermore, traumatic consequences are a domain of clinical psychology. However, using a clinical instrument to measure secondary trauma might have been too general for the type of traumatic experiences CSIs encounter at work. And finally, while the sample of participants does include the majority of Slovene CSIs (85.3%), it is, however, a small sample from a statistical point of view.

CONCLUDING WORDS

The potential traumatic nature of police work has been proven many times and this paper, presenting a study on secondary trauma in CSIs, shows compatible results. Most of CSIs do not manifest traumatic consequences; however, a minority is more vulnerable to these experiences, some even to the extent of reaching a PTSD diagnosis. The results are about avoidance, an often used coping strategy, which is usually regarded as a less functional coping behaviour. It is very likely that it also influences the recognition and reporting some of the traumatic consequences. Even so, a healthier aspect of avoidance - helping that prevent re-experiencing to a certain degree, should not be excluded.

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UDC 232.151(73)"18"
347.951(73)"18"

AN HISTORICAL REVIEW OF NORTH CAROLINA CORRECTIONS: CASTE, CLASS, RACE & SEX FACTORS

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Abstract: A study of North Carolina's history of socially-sanctioned modes of punishment provides a window to race discrimination within the United States' criminal justice system in the South up until the federal Civil Rights Acts of the 1960s forced a more equitable judicial standard throughout the country. Our study covers the pre-Civil War (1861-65) or Antebellum era, the county chain gangs, as well as the *de facto*, extra-legal practice of lynchings – the killing of Black-Americans, mainly by hanging, without benefit of either *due process* or *habeas corpus.* We cover the issues of race, sex, class and caste and the resulting disproportionate punitive practices, while providing details of research studies and media coverage of these events during the times of their occurrence.

Key words: corrections, punishment, caste, class, race, sex factors, lynching

INTRODUCTION

Any historical look at prisons and punishment needs to involve an analysis of race, gender and class in the South including its antebellum past, the era of reconstruction and the post-Civil Rights period. A study of North Carolina not only addresses these factors, it provides unique insight into the nature of early penal research, mostly at the University of North Carolina, of these topics which otherwise were generally taboo in the South. While once among the most repressive and punitive societies, over the past thirty years North Carolina has transcended its past emerging today as a model of the progressive South. This paper looks at the prisons and punishment in the South from the perspective of North Carolina research – from the antebellum era through the reinstatement of the death penalty in the United States in 1976. Evident in this analysis are examples of race, class (caste during the antebellum era), sex, and religious biases that clearly factored into the legal criminal justice system. Absent is a look at the quasi-legal era of lynching that occurred from the time of emancipation until passage of the Civil Rights Acts of the 1960s.

THE ANTEBELLUM ERA

North Carolina has compiled a rich history of its prisons and punishment largely due to the quality of research conducted at the University of North Carolina (UNC), the oldest public university in the United States chartered by the General Assembly in 1789 and graduating its first class in 1795. In October, 1925, the Institute for Research in Social Science at UNC embarked on an investigation of "Negro" crime in the South with particular focus on North Carolina. This report provides a vivid picture of the correctional system prior to the Civil War.

Prior to the Civil War there were comparatively few prisoners in North Carolina. There was no state prison. The only prisons for the punishment of offenders were the common jails of the counties. There was no provision for employing prisoners at any sort of labor except that in certain cases a free Negro might be hired out to pay fines and costs. The advisability of the establishment of a state penitentiary had begun to be discussed by the state legislature as early as 1816. In 1846 the proposition of establishing such a state prison had been submitted to the vote of people and they had voted against it. Instead of imprisonment there were the pillory and the whipping post and even the branding iron, while the death penalty was inflicted for many offenses which are now punished by imprisonment. The Revised Code of 1855, the last codification of laws prior to the Civil War, enumerates as many as seventeen offenses for which the death penalty might be inflicted. Bigamy was punished by branding with a hot iron the letter B upon the cheek. For manslaughter, if the first offense, an M was burned upon the "brawn of the left thumb." In case of perjury in connection with a capital offense, the law required that "the offender shall instead of the public whipping, have his right ear cut off and severed entirely from his head, nailed to the pillory by the sheriff, there to remain until sundown."

Specific terms of imprisonment were prescribed for twenty-two offenses. These terms were usually short. In only four cases were the prison terms more than one year and in a fifth the law reads "not less than one year." The longest term of imprisonment prescribed was three years, except that in case of injury to railroads, plank roads, turnpikes, or canals, the offender who was unable to "find surety" for his future good behavior might be imprisoned for a term not exceeding seven years. There were, of course, many additional misdemeanors for which one might be imprisoned at the discretion of the court (Steiner & Brown, 1927:11-12).

Specific data on race of offenders is difficult to ascertain during the antebellum era given that slavery represented a caste system in the South where slaves were considered property and not citizens. Punishment doled out to slaves was a private matter and would not likely make it into any public record. Corporal and capital punishment during the antebellum era was for "citizens" – including "free blacks."

Masur (1989) in his book, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865,* noted that American society was moving away from public corporal punishment with the advent of the penitentiary system throughout the country. This movement, however, did not include the concept of public executions. The penal philosophy reflective of this transformation from public punishment to incarceration, according to Masur, was: "The penitentiary delved into the prisoner's mind or soul, whereas public punishments operated primarily on the criminal's body)." On the other hand, the thinking during this transitional period in American corrections was that the death penalty was reserved for those offenders deemed beyond redemption hence public executions, licit and illicit, were associated with the deterrence and retributive values of capital punishment (Masur, 1989:95).

PUNISHMENT DURING RECONSTRUCTION: CHAIN GANGS, LYNCHINGS, AND THE EMERGING PRISON SYSTEM

The economics and demographics of the chain gang

Barnes and Teeters (1959) provided some of the early works on penology and punishment. They note that the chain gang was a Southern phenomenon, a prison road camp where prisoners were often leased to private contractors working in construction gangs, on plantations, in turpentine camps and sawmills. In this system contractors tended to exploit the prisoners. The chain gang involved severe punishment doled out in the form of shackles and chains, whippings, the sweat box and other forms of corporal punishment – some cases so severe that they resulted in prisoner's death. Barnes and Teeters state that at first the prison road camps were for lower-class white offenders ("crackers") convicted of misdemeanors. But as time went on, the prison road camps were reserved for black offenders and as these demographics changed so did the severity of conditions within these camps. Moreover, the chain gang was often a county jail function and people were convicted of simple misdemeanor crimes merely to provide cheap labor for the chain gang.

Hitchhikers have been arrested and sent to a chain gang merely to supply the county with cheap labor. Sick prisoners have been beaten into insensibility and even into death because the overseers have accused them of malingering. Men have been clandestinely buried in quicklime with no death certificate recorded so that their names and presence might be obliterated from the scrutiny of prying official eyes. Human degradation has fallen to lower depths in the chain gangs than any other form of penal treatment in America (1959: 380).

Steiner and Brown (1927) noted that during the Reconstruction North Carolina revised its constitution in 1868 stating that the only *legal* forms of punishment sanctioned by the state are the death sentence (for murder and rape), imprisonment, with or without hard labor, and fines. The harsh corporal punishments of mutilation, whipping or use of the pillory were no longer legal methods of punishment. Previous offenses formerly punished by death were now to be replaced with imprisonment in the state penitentiary for terms ranging from 6 months to ten years and by fines between one hundred dollars to ten thousand dollars. These restraints imposed during the Reconstruction era led to the emergence of a dual system in the South, including North Carolina. One was the state system with the penitentiary while the other was the less regulated county system. And following the end of the Civil War, a new population of citizens fell under state and local laws – the freed men.

For a number of years the great majority of prisoners in both the state and county prison systems were Negroes. At the present time [1927], especially the county chain gangs, the Negroes still furnish a quota greatly out of proportion to the part which they form of the population. Some figures for the State Prison of North Carolina will give an idea of the proportion of Negro to white prisoners. Accurate figures for county chain gangs of the earlier period are not available. In 1874, of 455 prisoners in the state prison, 384 were Negroes and 71 white. In 1875, of 647 prisoners, 569 were Negroes and 78 white. In 1878, there were 952 prisoners under the control of the state prison board. Of this number, 846 were Negroes, 105 were white, and one was an Indian. These are the proportions that were found in a state where the Negroes form somewhat less than one-third of the population (1927:14-15).

The county chain gang actually predated the revised North Carolina constitution of 1868 when the legislature of 1866-67 authorized justices of the peace and superior court judges the discretion to sentence offenders to chain gangs for non-capital felony offenses. Chapter 113, Public Laws of 1874-75 extended the law to include any criminal offense in any court hence extending the chain gang punishment to misdemeanor offenses. Steiner and Brown describe the typical living quarters for the chain gang.

One of the most common types of movable prisons still in use in many counties is the wooden or steel structure mounted on wheels which is popularly spoken of as the cage because of its resemblance to the cages in which wild animals are sometimes confined. In size, these so-called cages are usually 18 feet in length and 7 to 8 feet in height and width, designed to provide sleeping quarters for eighteen men. When constructed of steel, the roof, floor, front and rear ends of the cage consist of solid steel of sufficient thickness to provide security, while the two sides are enclosed by a close network of flat steel bars, thus providing plenty of ventilation. In bad weather, the sides of the cage are covered with a tarpaulin which gives protection against rain and cold, but interferes with ventilation and leaves the interior in darkness. The cage is entered through a solid steel door in the rear made secure by a padlock on the outside. The interior of the cage is fitted up with three three-decker bunks on either side of a narrow passageway about two feet wide. A small stove is crowded usually in the front end or middle of the cage and a kerosene lantern is swung from the ceiling. Each bunk is provided with blankets and a cheap mattress ordinarily not covered with a sheet. A night bucket and a pail of drinking water complete the equipment. When the cage is filled to capacity, there is no place for the men except in their bunks which are too low for a sitting position. Since the men are locked in these cages not only at night, but on Saturday afternoons, Sundays, and on days when bad weather makes work impossible, it is obvious that such cramped quarters are particularly objectionable (1927: 55-56).

Steiner and Brown cited the recent (1924) works of the noted criminologist/penologist at the time, Frank Tannenbaum, and his criticism of the Southern chain gang as a cruel and brutal system. Tannenbaum (1924) alluded to the widespread use of non-judicial corporal punishment administered at the discretion of the white guards. In their study, Steiner and Brown note a number of cruel devices and methods used at the discretion of the guards for the alleged purpose of maintaining discipline: flogging, chains, single shackle (metal band riveted on the left ankle fastened to a three foot chain attached to the prisoner's belt), double shackles (metal band of both ankles with a twenty inch chain attached to restrict movement), spike (sharp pointed iron instrument riveted around the angle with two ten inch prongs bent slightly upward pointing front and back hindering movement both day and night), hanging by the thumbs and use of the hot box (a small enclosed container without ventilation and covered with tar paper where the prisoner is forced into in a crouched position and left out in the heat of the day). These punishments could be administered for "insolence toward the guard," malingering, using profane or vulgar language, smoking, wasting food, trading with other prisoners, etc. The most questionable punishment was that of being hunted down and shot for escape. This practice raised considerable outcry given that most of these prisoners were sent to the chain gang for misdemeanor crimes. When a prisoner was killed by a guard, it was the guard's word that was taken relevant to an escape attempt.

The North Carolina chain gang study noted that the blacks that committed crimes against the whites were guaranteed a strict sentence in either the State Penitentiary or on the chain gang while the same crimes committed against the fellow

blacks were often settled out of court without any time served. Religion was another contributing factor to a black man's conviction and incarceration in prison or the chain gang. Steiner and Brown noted that blacks who practiced a Hoo Doo, a local version of Voo Doo were considered deviant and were often punished by being sentenced to the chain gang. As early as 1935, the American Prison Association Congress, at its annual meeting held in Atlanta, Georgia, unanimously adopted a resolution condemning the chain gang as "utterly inconsistent with dictates of humanity" (New York Times, November 3, 1935).

LYNCHINGS

Lynching, capital punishment executed via mob vigilantes, represented a sordid period of non-judicial punishment and vengeance in the American history. Clearly, the brutality and sadism associated with this public form of racial prejudice represents the intensity of racial conflict following the U.S. Civil War. One contributing factor was the aftermath of the Reconstruction in the South. Here, the furor of federally imposed sanctions was directed to the newly created class of freedmen – the former slaves emancipated following the Civil War. While incidents of lynching occurred throughout the United States, most were carried out in the South. Given the non-judicial nature of lynchings, no accurate record exists regarding the number of people executed via this method. However, Ginsburg (1962) conducted a meta-analysis of newspaper accounts of lynchings. Here, he documented 44 lynchings in North Carolina between 1888 and 1941 with 4 occurring during the 1880s, 16 in the 1890s, 15 in the first decade of the 1900s, seven between 1910 and 1919 and one each in 1930 and 1941 (1962:266).

Included in the newspaper articles is one from the *Memphis Commercial-Appeal* of August 5, 1913, providing an economic rationale for ending lynching.

LYNCHING BAD FOR BUSINESS

"The killing of Negroes by white people in order to fatten an average ought to be stopped, and killing Negroes just because one is in a bad humor ought also to be stopped. Two apparently inoffensive Negroes, good farm hands, real wealth producers, were assassinated near German-town a few days ago. The Negroes furnished no possible motive for the deed. So far as anyone knows they were quiet and orderly, as country people of their class usually are. They worked and played and loafed, just like other country Negroes. Now, the Negro is about the only dependable tiller of the soil in these parts. Competition for existence is not keen enough to force many white people into the harder word. The Negro also is very useful as a distributor of money. About all he gets goes through his fingers. Commercially, then, he is a very valuable asset. It is not good business to kill them…" (Ginsburg, 1962: 82).

Ginsburg offers a flavor of lynchings in North Carolina with the following news items:

Montgomery Advertiser **March 13, 1913:**

"Negro Mother and Child Killed" Henderson, N.C., Mar. 12 – Two Negroes, a woman and a child, were killed and two Negro men probably fatally wounded early today when unidentified persons after pouring kerosene on the home of Joe Perry, a Negro living ten miles from this place, set it on fire, and poured a fusillade of bul-

lets into the blazing structure as its occupants attempted to escape. The dead are Joe Perry's wife and her child and the wounded Joe Perry and his brother John. There are no clews. Sheriff Royster has gone to the scene.

New York Mail **July 8, 1920:**

"Lynching in Churchyard" Durham, N.C. – Edward Roach, Negro prisoner, age 24, held on a charge of attacking a 13-year-old white girl, was taken from the country jail at Roxboro by a mob of more than 200 masked men and hanged yesterday from the limb of a tree in rural Negro churchyard.

Baltimore Afro-American **August 19, 1921**

"Mob respects Woman's request to move lynching from lawn" Winston, N.C., Aug. 18 – A mob estimated at from 1,500 to 2,000 hung Jerome Withfield, Negro, suspected of having assaulted the wife of a white farmer. When Withfield got word early that he was suspected of the crime, he made an attempt to escape. Blood hounds tracked him down, however. He was brought to the assault victim's home in an automobile. The woman expressed doubt that he was her assailant. The mob deemed the track-down of the hounds as conclusive evidence, however, and Withfield was hanged. The request of the farmer's wife that Withfield not be hanged on her front lawn was heeded. After handing him a mile down the road, the Negro was riddled with a thousand bullets, hundreds of them lodging in his flesh and bone. Undertakers who cut down the body said that it weighed twice its normal weight.

New York Herald-Tribune, **March 27, 1933**

"Doctor rescues Negro lad" Lowell, N.C., Mar. 26 – A physician here today saved a Negro from a lynch mob by hiding him in his cellar. A twenty-year old youth stealthily approached the home of Dr. James W. Reid and told him that a mob was searching for him, having accused him of attempting to assault Miss Kathleen Jenkins, a 16-year-old white girl. The Doctor hid the youth in his basement as the mob combed the neighborhood around his house. After they left, the Doctor drove the Negro to Charlotte for safekeeping in the Mecklenberg County jail.

These forms of non-judicial killings finally ended with passage of the Civil Rights Bill of 1964 effectively ending the *Jim Crow* era of racial separatism sanctioned by the U.S. Supreme Court in 1896 in *Plessy v. Ferguson.* Nonetheless, questions remained concerning the fairness of the judicial process in the South.

RACE, GENDER AND SEVERITY OF JUSTICE IN NORTH CAROLINA:

Gastil (1971) in an article on murder in the United States posited that violence is more prone in the South due to its cultural attributes. Here, he concludes from his data analysis that: "*Southerness* in the culture of the population of the states accounts for more of the variation in homicide rates than do other factors such as income, education, percent urban, or age. It is suggested that high homicide rates in the United States today are related primarily to the persistence of Southern cultural

traditions developed before the Civil War and subsequently spreading over much of the country (1971:412)." Clearly, Gastil's research was influenced by Wolfgang and Ferracuti's recent (1967) concept of reciprocal antagonism inherent in violent subcultures. Gastil perceived a violent subculture developing during the antebellum feudal system in the South prior to the Civil War where both the lower class whites and the black slave caste were forced to compete for scarce resources for their survival. These conditions only worsened following emancipation hence the enculturation of violence among members of these groups. While many studies support the thesis of a higher incident of violence among groups in the South, they do not address the disproportionate justice doled out by race for these social transgressions. Clearly, the lower class blacks are subject to harsher penalties especially if the victim is white.

Garfinkel (1949) conducted an eleven-year study of the adjudication of murderers in North Carolina during the 1930s. His analysis of the socially sanctioned discretionary process in the study reflects four judicial protocols long used in the South from the Reconstruction until the post-U.S. Civil Rights era. The protocol for situations where both the victim and offender are white is to adhere to the prevailing judicial ideals. And the protocol for situations where both the victim and offender are black, minimal judicial interference is exercised. The implication here was that society is better off with fewer blacks and the offender obviously helped society in this endeavor. Fines or minimum sentences were the norm here. In the third scenario, where the victim was black and the offender white, the protocol was to seek some legal justification for the offense with no stigma to the offender. Non-judicial solutions were sought in lieu of a criminal trial. The last scenario, where the victim was white and the offender was black brought out the most severe reaction – that of retribution in the form of the death sentence. Garfinkel noted that the demand for severe retribution included framing another black if the alleged perpetrator could not be found and brought to justice.

An analysis of the Epsy file (French, 1987) bears out discriminatory patterns against the blacks in the South. The Epsy file covered executions in the United States (including the Colonial Era) from 1608 to 1985. The overall executions by race and region clearly show a statistically significant difference with a disproportionate number of the blacks being executed in the South over time. When comparing those states with 500 or more executions this pattern continues to be born out. The Epsy data also indicate a statistically significant difference regarding race and age with more blacks executed at a younger age. Interestingly, the data also showed that the fewer blacks were executed as they reached middle and old age in comparison to the whites. And when looking at sex and region over time, there were no significant differences according to region and females accounted for less than 3% of the total executions from 1608 to 1985 (French, 1987).

The history of North Carolina executions from the time the State took over this task from the Counties (1910) up until the reinstatement of capital punishment in the U.S. in 1976 shows that 706 individuals were sentenced to death while only 362, or slightly more than a half, were eventually executed. This post-trial attrition process favored white offenders. Of those executed 282 (78%) were black males, 73 (20%) were white males, 5 (1%) were American Indian males, and 2 (1%) were black females (French, 1979). At the time of the 1972 *Furman v. Georgia* case forcing a nation-wide moratorium on the death penalty in the United States, North Carolina led the nation with the most people on death row with 122 condemned offenders. This represented a third of all death row inmates in the United States and 51 % of the condemned offenders in the South at that time (French, 1987).

North Carolina also played a role in the effort to reinstate the death penalty in the United States. The U.S. Supreme Court stuck down both North Carolina's (*Woodson v. North Carolina,* 1976) and Louisiana's (*Roberts v. Louisiana,* 1976) efforts to reinstate the death penalty because both states wanted the ultimate punishment as a *mandatory* sentence for certain crimes thereby obviating the dual mitigating versus aggravating process hinted in the 1972 *Furman v. Georgia* decision. However, Georgia (*Gregg v. Georgia,* 1976), Florida (*Proffit v. Florida,* 1976), and Texas (*Jurek v. Texas,* 1976) were successful in redrawing their death penalty statutes to meet the requirement outlined by the U.S. Supreme Court in *Furman v. Georgia.* Hence began the reintroduction in the United States with the execution of Gary Gilmore on January 17, 1977 by firing squad in Utah. Another restriction on the death penalty was decided with *Coker v. Georgia* in 1977 when the high Court restricted to murder eliminating its use for non-lethal rape. States have since added the non-lethal rape of a minor to its death penalty statutes but that argument has not yet been decided. Today, 38 states plus the federal government have reinstated the death penalty. The current moratorium ended with the April 16, 2008 U.S. Supreme Court decision rejecting the lethal injection "cruel and unusual" argument. In a 7-2 decision, the U.S. Supreme Court noted that the arguments presented in *Baze v. Rees* did not demonstrate a sufficient violation of Eight Amendment rights. With the restart of executions in the United States, North Carolina ranks sixth with a death row population of 166 individuals. Of this group, 89 (54%) are black (one female), 64 (38%) white (two females) and 12 (8%) are of "other" ethnic origin with 9 being American Indians (one female). California tops the list with 639 condemned inmates followed by Texas with 447 and Florida with 382 on death row. Pennsylvania and Ohio are also ahead of North Carolina in death row statistics (Del Carman, et al, 2005). Since its reintroduction in 1976, over a thousand inmates have been executed in the United States with Texas leading with 379 executions.

RACE AND PUNISHMENT IN NORTH CAROLINA

At the time of the *Furman v. Georgia* case, North Carolina had the second highest incarceration rate (207/100,000) in the United States. The North Carolina correctional system consisted of 77 facilities at this time: one maximum security unit, Central Prison; three closed custody units, including the Correctional Center for Women (Women's Prison); 23 medium security unites; and fifty minimum custody facilities. North Carolina also had a two-year maximum penalty for misdemeanor sentenced twice that of the national average. In this system there were over ten thousand inmates at any given time. The state population at this time was slightly over five million people. Still on the statutory books was Statute GS 14-181, miscegenation, a felony. In addition, judges could declare an escaped convict from any of these 77 facilities as being an *outlaw* thereby allowing citizens to pursue them bringing them back dead or alive, even if they were incarcerated for a misdemeanor crime (French, 1978, 1983).

North Carolina also had a poor record regarding the treatment of female inmates, the vast majority of whom were black. There were complaints of sexual abuse by guards and about compulsory pelvic examinations. These issues precipitated the June 15, 1975 riot at the Women's Prison where a third of the inmates went on strike over their living, working and treatment conditions.

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UDC 159.922.4(=163.41)
316.4(497.11)

TOPICAL QUALITY OF ARCHIBALD REISS'S WORK "ECOUTEZ, LES SERBES!" AT PRESENT DAY[1]

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Abstract: The paper considers the topicality of the messages of Archibald Reiss, a great friend of the Serbian people, which he sent to the Serbs just before he died and which he had written in his book "Ecoutez les Serbes!". The messages refer primarily to the destruction of the very essence of the Serbian society social composition of that time, to the destruction of the Serbian statehood and independency, defended with so many difficulties during the World War I, through social, political pathology in which the Serbian (actually Yugoslav) society between the two wars fell. Corruptive affairs, system corruption, factiousness, phenomenon of "captive state", all these are elements of political pathology in the period of the Kingdom of SCS existence and unfortunately the phenomena of the contemporary Serbian society in transition. However, Serbia moves progressively in facing these problems, slowly and with discontinuity, where something better results have been achieved and more resoluteness has been manifested during the last four years.

Key words: Archibald Reiss, "Ecoutez les Serbes!", social and political pathology, system corruption, phenomenon of "captive state", contemporary Serbian transitional society.

Domination of politics over the complete humane and national life, immoral, selfish and factiousness politics, is long and unfortunate tradition of Serbian politics since the beginning of creation of modern Serbian state.
Dobrica Ćosić[2]

INTRODUCTORY NOTES

Archibald Reiss (Rudolph Archibald Reiss)[3] became a "friend in arms" of the Serbian people. He was German-born, who made his scientific career in Switzerland by winning the doctorate in chemistry when he was 22, to become a professor of criminalistics at the University of Lausanne on 1906, where he became a well-known expert for this area. Believing in the future of criminalistics as the science, he founded the Institute for technical police and criminalistics in Lausanne in 1909. As such an expert, the government of the Kingdom of Serbia invited him in 1914, as an independent expert from the neutral Switzerland, to document Austrian-Hungarian, German and Bulgarian atrocities over the Serbian population during the World War I. He retreated with the Serbian Army across Albania, was with the

1 The paper is the result of the research within the project III 47023 "Kosovo and Metohija between national identity and Euro-integrations", financed by the Ministry of Education and Science of the Republic of Serbia
2 Dobrica Cosic, "Rajsova opomena", epilogue to the book of Rudolf Archibald Reiss Čujte Srbi (Gornji Milanovac: Decije novine; Beograd: Istorijski muzej Srbije, Savez udruženja ratnika oslobodilačkih ratova od 1912-1920 i potomaka), 100
3 Born in Hechtsberg, in German province Baden, on 8 July 1875, died in Beograd in 1929 and buried at Topcider cemetery with state honors. His heart was preserved in an urn at the chapel at Kajmakcalan.

Serbian Army at Thessaloniki front and at Kajmakcalan battle and entered liberated Beograd. His reports, which he was sending mostly to the Swiss magazine Gazette, influenced public opinion against German propaganda on the Serbs as wild people. After the ending of the World War I, he stayed to live in Beograd, considering practically new creation of the Kingdom of SCS as his third native country.

As he was reporting during the war about the crimes performed over the Serbian people with great preciseness, exactness and guided by the need for truth to become cognized and justice to win, he was also urged near the end of his life to write a small study about moral stagger of political and intellectual elite of the newly established state, about what would be classified in the domain of social-political pathology, system and party corruption, factiousness and, what would be said with contemporary terminology, the phenomenon of "captive state". That is how the work "Listen, Serbs" (Ecoutez les Serbes!) was born, representing the political testament of Reiss. It was written on 1 June 1928, and was published after his death according to his wish. In integrum[4] in Serbian language it appeared only during the existence of the third, the Federal Republic of Yugoslavia, in 1997[5], almost seven decades after it had been written. However, the topicality of Reiss's findings of that time is great. By reading the study, not only one can gain a reliable impression on the decay of the society of that time, substantiated also by later historical works and historical sources of the first grade, but also a parallel with the current situation in the Serbian society is imposed.

STIGMATIZING SOCIAL-POLITICAL PATHOLOGICAL PHENOMENA IN THE WORK OF ARCHIBALD REISS "LISTEN, SERBS"

Social-political pathology is the most firmly connected with party pathology, although it is, of course, a wider phenomenon that cannot be reduced only to it. However, the most important aspects of social-political pathology fall under the domain of party pathology, where we understand a "system, party corruption, widespread in the first Yugoslav state. However, this phenomenon cannot be reduced only to the system, party corruption, but it comprises also all actions and practices of political parties that are directed to elimination of political opponents from the political life, without using political but some other means (e.g. political assassinations, reasonable threats to integrity of person and property, misuse of public power for disabling political opponents and similar), as well as attempts of parties to provide the most strict, unquestioning discipline in implementation of party decisions, which again questions the institution of free mandate as the basis of parliamentary democracy".[6]

4 Zdenko Levental published parts of this work in the book *R. A. Reiss: Švajcarac na Kajmakčalanu*, published in 1984 (Beograd: Prosveta) and in 1993 (Gornji Milanovac: Decije novine; Beograd: Den Orfelin) in Serbian language and in 1992 in French language. The book was published in French under the name *Rodolphe Archibald Reiss, criminaliste et moraliste de la Grande Guerre* (Lausanne: L`Age d`homme).

5 The first, complete edition in Serbian language was published jointly by "Decije novine" from Gornji Milanovac, Istorijski muzej Srbije and Savez udruženja ratnika oslobodilačkih ratova od 1912-1920 i potomaka, and was edited by Milic F. Petrovic and Sladjana Bojkovic, while the text from the French original, in possession of his descendants, was translated by Dragan Kobeljic. Since then this book had many editions, including the recent audio edition published by "Sluzbeni glasnik Republike Srbije" (2011).

6 Uros Suvakovic, "Partijsko-politički život na Kosovu i Metohiji između dva svetska rata u naučnom delu akademika Bogumila Hrabaka" in *Zivot i delo akademika Bogumila Hrabaka*, ed. D. Malikovic, M. Atlagic, D. Elezovic (Kosovska Mitrovica: Filozofski fakultet Univerziteta u Pristini, 2011), 560

Factiousness

In his complete work, Reiss deals just with the problem of "factiousness" or "partisanship"[7] and consequences that party keenness brings along. He also has the term that he uses only in pejorative meaning, "factious politicians". Therefore, they are different from the "politicians-statesmen". This difference is reflected in party keenness but from lucrative reasons. It is about professional politicians who "create profession from exploitation of your [Serbian. Reiss in his text addresses directly Serbian people, remark U.S] affection for party politics… Now you have professional politicians who earn their living on that. What am I talking about – they hoard up a fortune. If you had politicians before the war that, in their already deformed mental structure, had in mind only what they considered to be good for the country, the parliament was already overwhelmed with people who were only looking for their personal benefits in those political passions".[8]

Reiss slashes "factious politicians" who, escaping from obligation to defend fatherland, "continued party disputes in the countries where they found sanctuary",[9] even trying to disavow Reiss himself by intrigues because he had come into Serbia upon invitation of Nikola Pasic – the radical. Writing these sentences, as if Reiss was looking at behavior of emigrated politicians during the World War II, who were constantly changing composition of the Yugoslav royal government, although without any influence on actual events in the country, but actually he was describing Serbian politicians and their factiousness during the World War I, which he clearly stigmatized as amoral. He especially stigmatized representatives by talking about the National Assembly as of a "parliament of truants", considering it completely "useless, at least after retrieving across Albania". Questioning the role of representatives "truants" and in this regard if "they at least tried to relax the lack of courage and patriotism by performance of a useful job only for the benefit of the country and forgetting private and despite party interests"[10], Reiss determined that they did not, but behaved on the contrary. "As the war lasted, they again were falling in party disputes. At first in Nis, then in Corfu, they presented to the world a pitiable show of usurpation of politicians for ministry chairs, while their fatherland was bleeding from all veins and while their soldiers were heroically dying at the battle field".[11]

Reiss factiousness ascribes to Serbian mentality, establishing that Serbs were exhibiting their bellicosity in the struggle for freedom, and when it came "your people, so used to fighting, if without disputes with outer world, was trying to satisfy this bellicosity in the country. It has found the way in the politics and devoted to it with soul and body. However, according to the old convention of warriors to fight for their supreme leader, internal politics was factiousness for you, i.e. connecting to the faith of a person, leader or group… Therefore, your people are great admirer of political or, better to say, party disputes"[12]. Unlike him, academic Radomir Lukic indicates that it is the characteristic of some political parties, which he defines as "narrowness of party politics". "In stern party disputes, the parties only care for their success, i.e. power… Instead of conducting state politics, parties run down to demagogy. In this regard, their great favoritism is being pointed out, going all the way to effrontery… There is no lie that a party, so to say, will not use against its rival,

7 From *les partisans* (Fr.) – supporters, usually in the sense of supporters of some party, political current. This term was used in our older literature, but after World War II, it is being avoided in order not to mix the term and idea with the name of Tito's people's liberation antifascist army.
8 Rudolf Archibald Reiss, *Cujte, Srbi!* (Beograd: Beogradska knjiga, Partenon, 2006), 54
9 *Ibid*, 56
10 *Ibid*, 55
11 *Ibid*
12 *Ibid*, 53

sometimes using also other means – even violence, i.e. homicide. From Ostrogorsky to De Gaulle, everyone writing about political parties emphasize that they do not bring to power people with statesman abilities, of strong character and similar, but some small petty-politicians, struggling for the narrow party interests and without courage or power to confront the interests of the country to the interests of the party"[1314].

The factiousness being either the consequence of the Serbian mentality characteristics or narrowness of party politics of some parties, it is certain that Reiss has made a correct conclusion. Selection of political staff performed only according to criterion of factiousness is fatal and produces "people without any value. That is the reason why your political staff is pettifogging."[15]

Cronyism

Cronyism represents appointing positions on basis of friendships. In Great Britain, it is mostly referred to friendships from school days, from studies or from neighborhood, while in Serbia, except for this basis that must not be regarded as irrelevant[16], appointing positions may be noticed on basis of "godfather", "brothermate", or on basis of membership to Masonic or Rotarian organizations[17], etc.

However, undoubtedly the most distinct form of cronyism – although this phenomenon should not be reduced only to that as Gredelj does it – is "privileging according to party membership"[18]. Exactly such a kind of cronyism Reiss stigmatizes in his last addressing of Serbs. "Unfortunately, your politicians are almighty. Politics interferes with everything and manages everywhere. If a position of authority appears, no matter whether it is important or moderate, the choice is not influenced by merits of the candidate, but political connections. He may be the greatest ignoramus, the most dishonest person, if he is a 'protégé' of a factious politician of the party in power, he will triumph over even the most qualified person, with respect to both professional and moral aspect… Yet your factious politicians dared to appoint that man on that very responsible position since he was the godfather of a potentate of that time and he had in his wallet membership cards of two political parties: radical and democratic. As if it was impossible to be otherwise, he was constantly making jurisdictional mistakes, adjudging innocent and releasing guilty"[19].

A special chapter, in which he treats the appearance of Cronysm with the youth, Reiss named with "Race for functions". Here he indicates that "the youth of both genders very well know that in your country no knowledge or ability is required for somebody to become a clerk, it is only required that a representative, a minister or an influential factious politician pushes him/her. For them, clerks are staff of their electoral army and they do not care if they perform well the job for which they are paid by the state. They only care if they work as their electoral agents. However, the

13 Radomir D. Lukic, "Političke stranke", *Sabrana dela*, Vol. 11 (Beograd: Zavod za udzbenike i nastavna sredstva, BIGZ, 1995), 240

14 See as illustration for political violence and political homicides about which Lukic writes: Uros Suvakovic, „Vek separatistickog nasilja kosovskih Albanaca nad Srbima i drugim gradjanima nealbanske nacionalnosti (1912-2012)", in *Political violence*, ed. D. Malikovic, U. Suvakovic, O. Stevanovic *Kosovska Mitrovica: Filozofski fakultet Univerziteta u Pristini, 2011), 143-166

15 Rudolf Archibald Reiss, *Ibid*, 27

16 Slobodan Antonić, „`Mreža školskih drugara` u političkoj eliti Srbije", *Nacionalni interes*, 6, No. 3 (2010), 329-350

17 Uros Suvakovic, „Korupcija i političke stranke u Kraljevini Srba, Hrvata i Slovenaca", *NBP*, XVI, No. 1 (2011), 60

18 **Stjepan Gredelj, "Korupcija", in** *Socioloski recnik*, ed. A. Mimica, M. Bogdanovic (Beograd: Zavod za udzbenike, 2007), 261

19 Rudolf Archibald Reiss, *Ibid*, 60-61

number of clerks has increased to the maximum".[20] Reiss explains also the reduction of wages for bureaucrats by this increment of bureaucracy, who is then trying to compensate that by "creating that humiliating convenience of bribery, if they cannot directly take from the cash box entrusted to them by the state".[21] Politicians, as Reiss notices, keep quiet about that, "since they have bought an electorate agent-clerk with that permission to obtain money by all means". Regarding the described phenomenon, Reiss does not make conclusion only on the need for struggle against bureaucratic corruption. He goes further and from the moral-ethnical standpoint indicates that survival of such a mechanism spoils the Serbian youth, since they try "to live carelessly with the least possible work"[22].

Party police

Reiss writes about how factious politicians "have placed in the police the people punished for steeling and other crimes. Your police officers, especially in southern Serbia, were steeling from people and plundering money. I have reported that to your authorities, but those policemen-criminals, who were also factious party members, were not punished, and I was so much offended that I was forced to resign… good policemen have no influence in your Ministry of Internal Affairs. Party members are the bosses there, often very dishonest people"[23].

It might be said that the bad situation in the police, about which Reiss writes, is an impressionistic conclusion of a professor, that there are no historical sources of the first level that confirm Reiss's words. It is about the report that Punisa Racic, one of radical leaders who later became famous for killing Radic brothers and who himself was deeply corrupted, submitted to Nikola Pasic regarding the situation in Kosovo and Metohija on 17 May 1921. He did that after the personal surveillance of the terrain, on Pasic's order, and Bogumil Hrabak published the integral report itself under the title "One radical report on situation in Kosovo from 1921". It is written in the report: "Gendarmes situated in groups of 10 to 15 in gendarmeries often make more damage than benefit. They consist of various elements, without enough qualification and love for the service and the state, it happens that they plunder, kill without any reason, brutally and harshly offend… Police bodies are mixed. There are very good and correct officials – really popular people – but they are not well looked after. They are neglected, morally not gratified, they are discontented and their entire wish to work is killed. Others are incorrect, real purse cutters, but they expertly tie to party people, so that they hold good and make a lot of damage to the general cause. There is no control over them, nor it is worth to complain against them to anyone; nobody may complain against them, since it will be even worse after that"[24].

Therefore, it is clear that these statements completely substantiate Reiss's findings about party character of the police of that period. It should be noticed, however, that Reiss was a criminologist of the world reputation and that he has made a suggestion for modern organization of the police of the first Yugoslav state, establishing bases also for police education of the Kingdom of SCS[25]. That is why his

20 *Ibid*, 79
21 *Ibid*
22 *Ibid*, 80
23 *Ibid*, 61
24 Bogumil Hrabak, „Jedan radikalski izveštaj o stanju na Kosovu 1921. godine", *Godisnjak Arhiva Kosova* IV-V/1968-1969 (1971), 213-233
25 Sreten Jugovic, Darko Simovic, Dragutin Avramovic, "Actuality of Riess's Principles of Modern Police"; Ivana Krstic-Mistridzelovic "Archibald Reiss and the First Police School in Beograd"; Svetlana Ristovic, "Establishing Police Education in Serbia and Contribution of Archibald Reiss", in *Archibald Reiss Days*, Vol. One, eds. Z. Nikac, S. Milasinovic, D. Simovic, G. Boskovic (Beograd: Kriminalisticko-policijska akademija, 2011), 69-76; 165-172; 173-180

warning has a special specific gravity: it does not come from someone who does not understand the importance of professionalism and political neutrality of the police. On the contrary, the warning comes from the one who knows the best what it means to misuse the police for party cause, engaging "purse cutters" in the police according to "party line" and similar. Such things damage the bases of this classical state function performance.

Collapse of parliamentarianism and misuse of elections

Reiss has a negative opinion regarding the parliamentarianism as a manner of organizing powers. He considers that parliamentarianism and its deformation reached by the time have led to depravity of the essence of its idea, and those Yugoslav politicians of that period kept it because just as such depraved "old fashioned and rotten served in the best way to their personal ambitions".[26] Guessing the very essence of the problem – power of parties over representatives – Reiss writes that after elections a representative "represents all electors from his area and as such he must protect interests of all, not only of those who had given him the vote. He may have only one chief who orders him: that chief is his own consciousness".[27] The Swiss indicates that already with establishment of modern parliamentarianism "the representatives have grouped according to their apprehension of duty and needs of the state. These groups were established by political parties that no constitution – and the constitution is the basis of a state – knows".[28] It should be indicated here that Reiss was right regarding the constitutional-legal position of parties. In his time, in the period when the text "Listen Serbs" appeared, neither in the valid Vidovdan constitution of the Kingdom of SCS, nor in any other constitution existing before it in the Kingdom of Serbia, political parties were mentioned.[29] The position of parties was regulated by laws, which were being changed together with the changes of political climate in the state. Therefore, more severe or more liberal laws also treated parties.[30] Regardless of all that, due to their intermediary role in the election process, a situation appeared to which Reiss indicates that "all parliamentarians, or almost all, today belong to political parties, so that they have become extremely powerful. They primarily introduced an iron discipline for their membership in order to keep them in hands. Not a single representative, who belongs to a party, may vote according to his consciousness. The party defines his vote, and the party bears in mind only one thing: to stay in power if it has it, or to get it if it does not have it. No minister can perform any reform that he considers necessary if it is not approved by the party. A party has a president, who often has more real power than the chief of the state".[31], [32] Of course, the consequence is that the party interest is the one that

26 Archibald Reiss, *Ibid* , 62
27 *Ibid*
28 *Ibid*, 63
29 Political parties enter into Serbian constitutionalism only with enacting the Constitution of the Republic of Serbia in 1990, while they entered into Yugoslav constitutionalism a little before – with enacting Octroyed Constitution in 1931, it was forbidden to associate "on religious or tribal or regional basis for party-political purposes" (Article 13). See: Uros Suvakovic: „Političke partije u političkom sistemu koncipiranom donošenjem Ustava Republike Srbije 2006. godine", in *Ustav Republike Srbije iz 2006. – neki elementi novog politickog sistema*, ed. Uros Suvakovic, M. Jovanovic, Z. Obradovic (Beograd: Institut za politicke studije, Treci milenijum, 2007), 123-124
30 Uros Suvakovic, „Društvene promene i regulisanje položaja političkih partija u Kraljevini Srbiji i prve dve jugoslovenske države", *Srpska politicka misao* No. 3 (2010), 317-332
31 Archibald Reiss, *Ibid*, 63
32 According to findings of Yugoslav historian Bogumil Hrabak, today so much actual blank resignations" of representatives are not the invention of contemporary Serbia, but these were introduced into practice in the Kingdom of SCS on initiative of Acif Ahmetovic, exposed at the Congress of Dzemijet in Skoplje in 1923. See Uros Suvakovic, "Partijsko-politički život na Kosovu i Metohiji …", in *Zivot i delo akademika Bogumila Hrabaka*, 572

prevails when passing laws and bringing political decisions, and not an interest of general welfare. Reiss actually, when studying political-party life of the Kingdom of SCS, only confirmed what Robert Michels had noticed a few decades before him formulating his famous "iron law of oligarchy" – when I say organization, I say oligarchy. "Organization is the mother of *power of chosen* over voters, warrantees over warrantors, delegated ones over the ones who had delegated them"[33]. Michels considers that this is a basic sociological law to which political parties are unconditionally subordinated!

In his political testament, Reiss also talks about the collapse of the idea on general right to vote, that "great principle". It happened due to the political practice of buying votes, false electoral promises of "the sun and the moon" or misuse of the police that uses "the force, arresting and all other forms of abuse"[34] in order to impose election of the ruling party candidate. We find confirmation of such Reiss's allegations with numerous Yugoslav and Serbian historians, who were studying this period.

Grabbing for power and party corruption

Archibald Reiss writes with a special contempt about grabbing for power of politicians "who had no limits for their selfish ambitions". That struggle for power was not for gaining power for the sake of power and mightiness, but firstly for the sake of getting the position that provides personal acquisition. "It was the dance of ministerial portfolios that were bringing a fortune to those who got hold of them. The best way to become rich fast is to become a minister. Since the war until today (1928), I have seen at least fifty ministers and all of them, with rare exceptions, became rich".[35] Reiss witnessed indicating as examples, here and in other places in the book, by names current or already former ministers of that time Nincic, Stojadinovic, Boza Maksimovic, priest Janjic, Velja Vukicevic, Laza Markovic and the very – Nikola Pasic and his son Rade. Indicating that this acquisition of politicians sometimes was "not at least by honest means", Reiss pointed out that "politics for them is only the mean for fast acquisition of big money".[36]

Reiss's indication to systematic character of the corruption has the special importance. Corrupters were not only ministers, but also "politicians-representatives who follow their example. The most flagrant corruption rage among them, and it entangled officials that depend on politicians".[37] Reiss says that it looked "natural" to him when an industrial or a merchant bribes a chief of railway station in order that a wagon with his goods leaves the station as soon as possible, when a litigant bribes in portfolio for speeding up his procedure, when money is given to state officials for faster issuing of passport, etc. Historians and political-sociologists who were later dealing with research of corruption in the Kingdom of SCS established that "corruption was ever less treated as something odious and compromising that degrades people and disqualifies honest society".[38] Actually, "although a great deal was written about corruptible affairs in the newspapers of that period, with very strong critics of the bearers of the highest state functions of that period, although parliamentary debates and investigations were performed on that occasion, it has never happened

33 Robert Michels, *Sociologija partija u suvremenoj demokraciji: istrazivanja o oligarhijskim tendencijama u zivotu skupina*. (Zagreb: Informator, Fakultet politickih nauka, 1990), 318
34 Archibald Reiss, *Ibid*, 65
35 *Ibid*, 58
36 *Ibid*, 59
37 *Ibid*
38 Zvonimir Kolundzic, *Politika i korupcija u kraljevskoj Jugoslaviji* (Zagreb: Stvarnost, 1968), 21

that a high state official was prosecuted for corruption".[39] That is because, as the Swiss metaphorically concluded, "wolves do not eat each other".[40]

Reiss further notices that parties – rigorous opponents – when discovering corruption mutually "were taking good care not to go too far, since they knew very well that corruption was not an appanage of one party but of all of them. Therefore, your factious politicians could peacefully continue to get rich on behalf of individuals and state. And they were grabbing by both hands".[41] Among numerous corruptible affairs that were shaking the first Yugoslav state, with participation of prominent politicians, the affair "Teokarevic" in 1924 had a special importance. Dr. Lazar Markovic, one of the prominent radicals, was accused in this affair. However, since ministerial responsibility was being established in the National Assembly, the party did not allow a court procedure. Therefore, 117 against 67 representatives voted for suspending court procedures against him[42].

Reiss dedicates one of the sections of his monograph to Nikola Pasic and his son. He pays compliments to him admitting that he did a lot for Serbia, as he was "one of those who did the most", but Reiss considers that it was because of that "his personal interests coincided with the interests of the state. If the interests were opposite, he would use his great intelligence – in its great part woven from cunning and spontaneous intuition – against you".[43] Reiss disapproves three great things to Pasic: 1. personal acquisition, illustrated by Pasic's inheritance[44] by which he "the son of ordinary and poor peasants left one of the greatest fortunes in the country". Reiss reprehensibly determines that "a man who devotes himself only to a general cause, and Pasic was only the politician throughout his life, and who has in mind only that general cause, he does not become rich but, on the contrary – he sacrifices even what he could have had";[45] 2. relation with his son Rade, who has avoided, with blessing of his father, to serve to his Fatherland during the war, who "caroused in Paris" and was making various other scandals, among which was that "at Corfu, with his luxurious limousine, he ran over Serbian heroes who saved themselves up from hostile Albanian mountains",[46] he was entering into debts regularly settled by his father, etc; 3. Pasic's environment consisting of "people of poor spirit, but corrupted". Profiteers and mischief-makers to whom he allowed to get rich on condition they served his interests… Old Pasic served as the example to your current factious politicians. They are carved according to his example. He has created those unscrupulous politicians, profiteers who consider the state to be a milking cow whose milk they use for nutrition. He has personally established that system of ingratitude that has brought and still brings so many evil to your country";[47] Reiss evaluates Pasic's mentality as the "realistic", illustrating that with his own example of relationship between him and Pasic. When a joint friend has mentioned something with reference to Reiss, Pasic responded "Well, what does this man want? I offered him money three times, and he refused!".[48] Such an evaluation of Reiss completely confirms the later conclusion of the historian Bogumil Hrabak that Pasic was a "distinct representative of oriental mentality"[49] was always making his political-party trade "on account of the state".

39 Uros Suvakovic, "Korupcija i političke stranke…", 63
40 Archibald Reiss, *Ibid*
41 *Ibid*
42 Goran Antonic, "Afera Teokarević", in *Korupcija i razvoj moderne srpske drzave*, ed. A. Bulatovic, S. Korac (Beograd: Centar za menadzment, Institut za kriminoloska i socioloska istrazivanja, 2006), 81-84
43 Archibald Reiss, *Ibid*, 68
44 Nikola Pasic died on 10 December 1926
45 Archibald Reiss, *Ibid*, 68
46 *Ibid*, 69
47 Archibald Reiss, *Ibid*, 69, 70
48 *Ibid*, 69
49 Bogumil Hrabak, „Partijsko-politicki zivot na Kosovu, u Metohiji i Raskoj 1919-1923. godine", *Novo-*

FINAL CONCLUSSIONS – ARE REISS'S WARNINGS STILL ACTUAL TODAY?

With his work "Listen Serbs", Archibald Reiss not only sent a moral warning to friendly Serbian people, with which he became a "brother in arms", and he considered the Kingdom of SCS as his "third fatherland", but also simultaneously made, by his skilled hand and scientific precision of the University professor and scientist, an extraordinary study on social-political pathological phenomena in the Yugoslav society of that period. The main phenomenon he marked as "factiousness", considering – correctly – that all other evils characterized in the contemporary sociological literature as "system corruption" arise from it.

Has Reiss spared someone in his unsparing critics of the political establishment of the period? Yes, the King Alexander. Reiss criticizes political parties, "factious politicians", parliamentarianism as system that suits them for its own "rottenness", but he does not see, and we would rather conclude that he does not want to see, the simple fact that the regime inaugurated by Vidovdan Constitution in 1921 established such an organization of central power authorities by which the constitutional principle of parliamentarianism was "deformed, and essential characteristics of parliamentary regime negated".[50] The fact that out of 23 governments changed from establishment of the Kingdom of SCS until establishment of 6 January dictatorship, only two were relieved by the will of the National Assembly and all others by the will of the ruler,[51] characterizes this. Though, when introducing 6 January dictatorship, Alexander accused, just like Reiss, parliamentary system to lead the country into the collapse. However, this does not deny the fact about his prevailing political influence regarding the other political subjects, including also political parties. Besides, the same remark that Reiss enounced regarding Pasic's acquisition might be enounced also to the King Alexander. The Swiss keeps silence about this – probably respecting Alexander's war achievements – only that sometimes silence is louder than any scream.

Our intention was not to "add in writing" to Reiss with this observation regarding the role of the King Alexander, but to indicate where was the seat of political power. These were not political parties,[52] but primarily the ruler, although the role of other political subjects, like political parties, should not be neglected. Keeping in mind all those negative characteristics that Reiss has given in his socio-political analysis, but also the supplement that is absolutely correct and which he "overlooks", and considering that "system corruption" primarily based on "party corruption" is its main characteristic, we may conclude that the system of "captured state" existed during the period of the Kingdom of SCS existence. Although this term is used in the literature only in the recent period,[53] it is certain that a suitable term is in question for the content of the system that existed in the first Yugoslav state. Namely, the concept of "captured state" represents understanding the difference between "system" from ordinary, "administrative" corruption. The first one refers to a coupling of political elites, political establishment and rich people, which enables exchange of fortune for

pazarski zbornik, 24 (2000), 151

50 Ratko Markovic, *Ustavno pravo i politicke institucije* (Beograd: IP Justinijan, 2003), 133

51 **Branko Petranovic,** *Istorija Jugoslavije 1918-1988 I* (Beograd: NOLIT, 1988), 132

52 **See Dragi Malikovic, Aleksandar Rastovic, Uros Suvakovic** *Parlamentarne stranke u Kraljevini SHS-Jugoslaviji I-II* (Kosovska Mitrovica: Filozofski fakultet Univerziteta u Pristini, Beograd: Treci milenijum, 2007-2008)

53 Joel S. Hellman, Geraint Jones, Daniel Kaufmann, *Seize the state, seize the day: state capture, corruption, and influence in transition* (Washington, DC: World Bank, World Bank Institute, Governance, Regulation and Finance Division, Europe and Central Asia Region, Public Sector Group, European Bank for Reconstruction and Development, Office of the Chief Economist, 2000)

services, in the sense of "trading with influence", buying enactment of laws in the parliament,[54] generally bringing certain political decisions in favor of those who have money and are willing to spend it for that purpose. In a way the state becomes "captured" since instead of taking care of the interests of the people, protecting its citizens and general interest, it protects interests of small groups, even individual interests. Another, "administrative", is the usual corruption, about which Reiss was writing, but which is not so dangerous as the "system" corruption, although it surely represents the "worm that bites the healthy tissue". The danger of "system corruption" and on it based "captured state" is because they negate the very principle of the ruling of right. Everything is subordinated to group and individual interest.

Reiss's criticism is harsh, but friendly. He does not criticize for fault-finding; he does not need that. He could return to Switzerland and continue his University career, where the World War I interrupted him. Maybe it would have been better for him, if he had done it. He would remember the heroism of Serbs in the struggle for freedom, not their excellence in the "race for functions". However, Reiss was a little bit of an idealist. He wanted to help to newly established state and its development; therefore, he decided to stay in Belgrade. If he had not been an idealist he would not conclude that, with reference to Pasic's acquisition but not only for that, "the struggle for idea, ideal, costs".[55] His idealism can be seen in his indicating that for representatives, who were elected as party candidates, the chief should be "their own consciousness". His criticism of parliamentary system is equally harsh as is the criticism of social-political deviations about which he writes. He considers that there is a "party dictatorship" in the Kingdom of SCS and therefore he pleads for the new form of organization of power based on technocratic principle. His opinion was that the principle of efficiency would be accomplished by that and simultaneously the condition would be avoided where it would be "the end of the madness of inventing ministers when a priest becomes a minister of traffic to move locomotives with help of Saint Maria and push wagons together with Holly Ghost, or when a physician-dentist becomes minister of post office to cure teeth above vignette in postal stamps".[56]

However, in some aspects of his work "Ecoutez les Serbes!" a strong conservatism is obvious, especially regarding the role of women in science, as well as regarding mutinies, students' strikes to which he was opposed, characterizing them as "party politics"[57].

Unlike these statements that would be surely unacceptable nowadays, Reiss's messages have permanent moral and ethical actuality. Reiss clearly informs what the values and anti-values are, confronting them in his work and telling that, according to his acknowledgement, the society can reckon with anti-values. Problems of social-political pathology he analyzes in his work, did not disappear with his death or the passage of time, but in some cases they have just got new forms, considering the overall social changes that have taken places in a period of more than eight decades in our territory. Transitional processes only made them more visible, more noticeable, not only in Serbia, but also in all other countries from the former Yugoslav territory, as well as other former real-socialist states. Regarding the former Yugoslav countries, according to the research of the "Transparency International", expressed in Corruption Perception Index (CPI) for 2011, all of them are between

54 Zivojin Djurić, Dragan Jovacevic, Mile Rakic, *Korupcija izazov demokratiji* (Beograd: Institut za političke studije, 2007), 76
55 Archibald Reiss, *Ibid*, 68-69
56 *Ibid*, 66
57 *Ibid*, 82-83

35th and 91st place, out of 183 researched states.[58] According to this research, the least corruption is present in Slovenia, which is placed on 35th place in the world, then in Croatia and Montenegro on the 66th place, then follows Macedonia on 69th place (e.g. together with Italy and Samoa), Serbia is on 86th place (e.g. together with Bulgaria, Panama, Sri Lanka and Jamaica) and Bosnia and Herzegovina on 91st place (e.g. together with Liberia, Trinidad and Tobago and Zambia).

In addition, we can agree that in the last four years, generally speaking, growing determination of the competent authorities of Serbia in the confrontation with the phenomena of social and political pathology has occurred, which is the result of the implementation of European standards in this area.

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UDC 343.85:343.431

THEORY OF PUSH AND PULL FACTORS: A NEW WAY OF EXPLAINING THE OLD

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Abstract: Globalization, economic crises, political instability, conflicts, wars, ethnic cleanings, social inequality, market economy, discrimination, and the wider processes of transformation, especially in the last ten years were and still are the main reasons for an even bigger wave of migration. Having such a suitable ground, trafficking in human beings became an important "player" in the world of suffering, money and crime.

The theory of push and pull factors makes a synthesis of conditions that exist into the two "worlds" – the poor and rich countries. The push and pull factors are the faces of a same coin, showing how living conditions, human rights, society and many other parts of the mosaic can influence common lives.

Knowing these factors and their influence on the process of trafficking in human beings is of a very big importance for future police and other instutions measures. In every part of criminal work, roots and factors are the starting point in finding "cure" for it.

This paper aims to give a short, but useful view of this theory and to try to explain how modern slavery uses its benefits.

Key words: etiology, factor, push and pull factors, theory, trafficking in human beings.

INTRODUCTION

From the moment of its creation, a man was trying to impose his will over the will of others. Slaves have existed since ever . Human history is filled with examples of countries that were founded on slavery, countries that believed that exploitation of slaves is not exploitation; they are inferior to others and deserve their situation. As Aristotle himself in his work "Politics" said "it is clear that some people are born as free, while others such as slaves, and that for the latter ones their condition of slavery, is justice and profit."[1]

Carl Marx for the Transatlantic slavery, said that it was "the driving machinery of the Ancient World" and "the profit attained by the work of African slaves was the basis of the accumulation of capital needed for the beginning of the industrial revolution", as noted Eric Williams.[2]

Kevin Bales says that if we make a parallel between the slavery of the past and the present, modern slavery, the latter one is being characterized by very low cost of slaves, very high profits for traffickers, a short time relation between the slave and the trafficker, a large number of potential slaves and irrelevance of ethnic differences.[3] Attributes of modern slavery are: invisibility, mobility and the international criminal organizations.[4]

1 Aristotle. *Policitcs* (Skopje: Slovo, 2006), p.15
2 Giuseppe Paccione, *La Trata di Persone nel Diritto Internazionale*, p.1, available at http://www.diritto.net/index.php?option=com_content&view=article&id=4174&catid=37:diritto-internazionale&Itemid=71
3 Kevin Bales, Disposable people: New slavery in the global economy (Berkeley and Los Angeles: University of California Press, 2004), p.15
4 Natasa Petrovic – Mrvic, "Trgovina ljudskim bicima kao specificna forma zenske migracije" *Spisanie Temida, br.1 (2002):* 13

Different theorists attribute different factors to the causes of trafficking depending on their theoretical approach to the issue of trafficking itself. A migration-based approach, for example, will focus on such issues as policies on migration and migrant labor, availability of work opportunities in various countries, globalization of the economy and development strategies. A criminal justice based approach focuses on legislation and its implementation, policing strategies, impediments to prosecution, and the involvement of organized crime. A human-rights based approach acknowledges the importance of criminal justice, but will situate the causes of trafficking in issues such as the abuse of power, corruption of authorities, discrimination, and state failure to protect civil, political, economic and social rights. Most feminist analyses encompass elements of all these approaches but situate inequalities of sex, race and class, and the power that this gives to some to abuse others, as central to any detailed analysis of the causes of trafficking. In this analysis trafficking is viewed in terms of exploitation of women and the harm it causes them. Feminist theorists in particular tend to situate male demand as the primary cause of trafficking.[5]

Structural factors help us to understand the reasons for becoming vulnerable, which condition leads to trafficking in human beings, although we must conclude that those are not the only ones that influence on the phenomenon. The process of trafficking of human beings is also connected to the, so called, proximate factors, which deepen the understanding of modern slavery.

Structural factors include issues of economic deprivation and market downturns, the effects of globalization, attitudes to gender, the demand for prostitutes and situations of conflict. Proximate factors include lax national and international legal regimes, poor law enforcement, corruption, organized criminal entrepreneurship and weak education campaigns.[6] The overarching argument is that the interaction between structural factors or variables (such as economic deprivation and market downturns, social inequality, attitudes to gender, demand for prostitutes) and proximate factors (such as lax national and international legal regimes, poor law enforcement, corruption, organized criminal entrepreneurship, weak education campaigns) is key to understanding why some individuals are vulnerable to trafficking through the use of deception and coercion. It is this conjunction of factors which helps to explain where and why vulnerability occurs. An understanding of the structural context – and its relationship to proximate factors – is thus vital for addressing the problem at both the site of origin and destination and the international level.[7]

Through the next pages of our paper, we will try to explain the newest theory in the lane of ways and theories that are trying to understand and explain why modern slavery exists among us. The theory of push and pull factors makes a strong link and connection between the situation in countries of origin and the one in the countries of destination. Also it gives an important place to migration (the international and domestic) into the center of the labyrinth of factors and opportunities.

THEORY OF PUSH AND PULL FACTORS

Globalization, economic crises, political instability, conflicts, civil wars, ethnic cleanings, social inequality, the development of market economy, gender discrimination, the wider processes of transformation, especially this last ten years, made a

5 Lara Fergus, *Trafficking in Women for Sexual Exploitation.*(Melbourne: Australian Centre for the Study of Sexual Assault, 2005), p.8
6 Sally Cameron, Edward Newman.*Trafficking in humans – Social, political and cultural dimensions.*(Hong Kong: United Nations University Press, 2008), p.21
7 Ibid

solid soil for huge wave of migration in the world, and for its mutated form – trafficking in human beings.[8]

Globalization has changed the way many people see the world. As people become more aware of living standards and lifestyles in other parts of the world, for example through television or the stories (and sometimes wealth) of returning expatriates, their understanding of their "relative" poverty has increased and their expectations have changed. This motivates people to migrate to secure greater income. There is also evidence that young people in particular consider migration because they want to escape the drudgery of subsistence living and see "the bright lights of the big city".[9]

After the end of the Second World War the number of Earth inhabitants was dramatically increased. In 1945 it was 2 billion of people, today it is 7 billion. Most of the countries that had the biggest increase of their population today are the countries where trafficking in human beings has founded its "home".

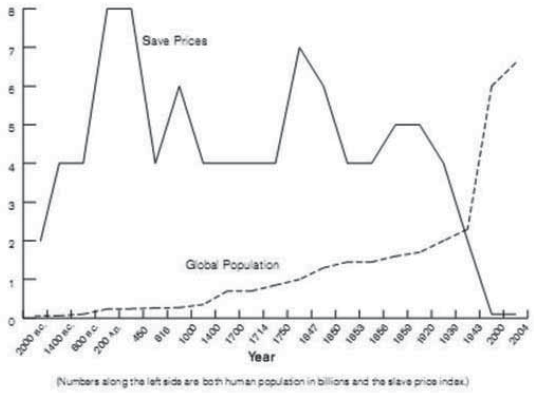

Figure 1. World population and the price of slaves, 2000 B.C. to A.D. 2004. The Y-axis represents both the global population in billions and the Slave Price Index, which is composed of equivalency measures for oxen, land, or agricultural wages and which varies from 0 to 8. The irregularity of the years along the X-axis is due to the lack of any regular data on slave prices; the years given reflect those years in which slave price information can be obtained.

Figure N.1[10]

After the fall of the Berlin Wall, the pressure in the Soviet Block was increased. Revolutions in many communist countries got an epidemic form.

Joseph Stiglitz, a Nobel Prize–winning economist, defines globalization as the closer integration of the countries and people of the world which has been brought about by the enormous reduction costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders.[11]

Also we must mention the opening of borders in the Eastern countries, which was an alarm for the European Union, so called the Fortress Europe. The closure of borders was like a building a wall for the legal migration, but opening a door for its antipode – the illegal one. Many poor people tried to find a better life using illegal measures to cross borders with the help of criminal networks.

8 Sanja Copic, " Putevi trgovine ljudime u Evropi" Spisanie Temida, br.4 (2008): 50
9 Sally Cameron, Edward Newman.Trafficking in humans – Social, political and cultural dimensions. (Hong Kong: United Nations University Press, 2008), p.26
10 Kevin Bales, Ending slavery: How we free today's slaves. (Berkeley and Los Angeles: University of California Press, 2007), p.15
11 Siddharth Kara, Sex Trafficking: Inside the Business of Modern Slavery.(New York – Chichester: Columbia University Press, 2009), p.24

Contemporary international migration is both a manifestation and a consequence of globalization, and while many migrate safely, others find themselves subjected to trafficking abuses and other forms of exploitation. The forces of economic globalization described above foster strong push factors in migrant's countries of origin, such as economic dislocation and increased absolute and/or relative poverty rates. These hardships motivate millions of persons to seek economic opportunities abroad in order to maintain or regain their economic positions. In addition, high levels of economic and political instability and the experience of economic crises provide an incentive for families to reduce their overall economic risk by diversifying their sources of earnings across multiple countries. At the same time, destination countries exhibit important pull factors, such as significantly higher wages and a demand for migrant workers to perform low-wage (or otherwise undesirable) jobs. This is true in both developed countries and relatively wealthier developing nations, such as Thailand and Mexico, many of which serve as major countries of origin and destination for migration. In addition, the demand for migrant workers is often exacerbated by demographic changes, as declining birth rates in developed countries lead to shrinking populations with a growing ratio of elderly to working-age people.[12]

The structural changes made after the Cold War, not only in many communist countries, although in the other parts of the world, helped the "free" trafficking of human beings.[13]

Those factors appeared on both sides, in the countries of origin and in the countries of destination. In the countries of origin those factors are called **push factors**, and in the countries of destination **pull factors.** In both types of countries we speak for the same factors, but the social conditions in the one group of countries are favorable, and in the other one are not. They are connected through the economic, political and war relations of the countries of origin and destination.[14] At the same time the root causes of migration - both licit and illicit - lay in the unstable political, social, and economic conditions in countries or origin. Other causes include rapid growth of the population, high unemployment, abject poverty, internal conflicts resulting in civil disorder and widespread violence, unstable or oppressive political regimes, and grave violations of human rights.[15]

Vesna Nikolic – Ristanovic for the groups of factors says that they are "bridge" between the two groups of countries. Mapping the main canals of trafficking in human beings movement we may conclude that this phenomenon always is market oriented, moving from countries with offer to countries with even bigger demand: East - West, East – East or from developing countries to developed ones, from war torn countries to developed ones, from poor to less poor countries, even from poor to war torn countries.[16] How can we explain the phenomenon of trafficking between two or more poor countries? First of all, very important is the difference among countries in one poor region. Secondly, some of the countries, especially those in Southeast Asia, have good tourist connections with Western countries, which make them destinations of sex tourism.[17]

12 Sally Cameron, Edward Newman.Trafficking in humans – Social, political and cultural dimensions. (Hong Kong: United Nations University Press, 2008), p.26
13 Vesna Nikolic – Ristanovic, " Trgovina zenama u Srbiji i okolnim zemljama: obim, karakteristike i uzroci" Spisanie Temida, br.1 (2002): 9
14 Ibid
15 Alexis A. Aronowitz, Human Trafficking, Human Misery: The Global Trade in Human Beings. (Westport – London: Praeger, 2009), p.12
16 Vesna Nikolic – Ristanovic, " Trgovina zenama u Srbiji i okolnim zemljama: obim, karakteristike i uzroci" Spisanie Temida, br.1 (2002): 9
17 Филип Рајкел, Прирачник за транснационален организиран криминал и правда. (Скопје: Датапонс, 2009), стр.204 - 205

The push factors are a result of the society's changes in the countries of origin. They are economic, social, political, cultural factors, factors connected with militarization and war conflicts.[18] Their framework includes the disintegration and falling apart of the multicultural countries, religious and ethnic conflicts, natural disasters, economic situations, uncontrolled increasing of the population, wide differences between the economic possibilities of the countries and the number of its inhabitants. The pull factors, as we earlier mentioned, are antipode (a positive one) of the push factors. They include lack of workers, good social measures, positive economic situation, democratic system, political and social stability, historic connections between the countries, common language.[19]

Finally, to complete the picture it is necessary to underline that some facilitating factors exist, such as globalization of labour and markets, the modernization of travel systems associated to the reduced costs of travelling, the boost in international migrations, the spread of new technologies are all elements that can help us understand the reasons why, in the last decades, human trafficking has become such a serious issue that, as a virulent disease, is infecting every country of the world.[20]

ECONOMIC FACTORS

Economic factors are directly addressed in the Protocol of Palermo, which mentions poverty, weak development and lack of equal possibilities for everyone as one of the roots of modern slavery. Economic vulnerability, also mentions the unemployment and the lack of job opportunities as some of the reasons for an increased migration movements.

In the depths of the Great Depression, John Maynard Keyes wrote: "The decadent international but individualistic capitalism in the hands of which we found ourselves after the war is not a success. It is not intelligent. It is not beautiful. It is not just. It is not virtuous. And it doesn't deliver the goods".[21]

In many developing countries, the economy has been in a state of depression since the 1970s without an end in sight. As a consequence, trafficking in women and children from developing countries to more advanced countries for the purposes of prostitution, housekeeping, housemaid services, babysitting, child pornography, slave labor, and sexual slavery became an alternative, illegal moneymaking mechanism. In more advanced countries, greed drives the rich and powerful to get richer by utilizing the cheap labor of illegal aliens and that of women and children, by housing girls twice or thrice their age as personal sex slaves, and by providing apartments hidden from their wives for these young girls.[22]

The primary institution that takes care for the economic globalization is the International Monetary Fund (IMF). This organization after the fall of the Berlin Wall gave a severe formula for faster change from communism to capitalism for the countries of the Soviet part. These countries had to accept new fiscal measures

18 Vesna Nikolic – Ristanovic, " Trgovina zenama u Srbiji i okolnim zemljama: obim, karakteristike i uzroci" Spisanie Temida, br.1 (2002): 9

19 Филип Рајкел, Прирачник за транснационален организиран криминал и правда. (Скопје: Датапонс, 2009), стр.204

20 Silvia Scarpa, "Fighting Against Human Trafficking for Commercial Sexual Exploitation: The Actions in Western Europe". 10th Specialization Course in International Criminal Law – Human Trafficking for Commercial Sexual Exploitation, ISISC (2010), p.4

21 Siddharth Kara,Sex Trafficking: Inside the Business of Modern Slavery.(New York – Chichester: Columbia University Press, 2009), p.25

22 Obbi Ebbe N.I. and Dilip K. Das. Global trafficking in women and children. (Boca Raton: CRC Press, 2008), p.33

and to decrease the state costs for health, education, and social help. The prices at the market had to be controlled by the market actors, not the central government. The liberalization of the market, it's opening for foreign investments, fast privatization, selling of the state companies to the private sector.

The IMF's prescription of shock therapy to former Soviet republics in the early 1990s yielded cataclysmic results. Most Soviet republics suffered precipitous economic collapse, which, coupled with IMF- mandated cutbacks in social protections, led to unprecedented levels of destitution and poverty. In the former Soviet Union, total gross domestic product from 1990 to 1998 fell by 44 percent while during the same period it increased by 11 percent and 18 percent in the United Kingdom and United States, respectively. In 1998, matters for the former Soviet Union worsened when the price of oil crashed to less than $10 per barrel, thanks in part to IMF-imposed conditions on East Asia. Because oil was Russia's stop export commodity, the Russian economy collapsed, deepening recessions throughout East Asia and Latin America. Capital markets across the globe careened to multiyear lows and hundreds of millions of people fell below national poverty lines, resulting in severe levels of economic degradation, social upheaval, and historic levels of global unemployment. Not even the United States was spared, as the Dow Jones industrial average suffered its top three steepest one- day point declines in the ten months from October 1997 to August 1998. [23] Also there was a decreasing of the number of inhabitants of some of those countries. For example, Moldova suffered an inhabitant decrease from 16.5%, half of which were trafficked. In 1990, Moldova didn't have any loans. Till 2006 those loans increased to 2.1 billion American dollars. In 1990, 23 million people from the soviet republics lived with less than 2 American dollars.

Privatization in the industry opened an even bigger gap between women and their situation in society, because after the end of the process, many spots when women have been working did not exist anymore. The economy liberalization, the change of the centralized economy with a market one, brought the illegal activity, because with liberalization, governments lost their control on the activities in the economy, which resulted with even bigger activity in this area.

Poverty strikes those in seemingly stable, relatively affluent situations. For example, in parts of Asia and the countries of the former USSR, economic crises have had a dire effect on many people's living standards. Conversely, given fortuitous circumstances, people can make their way out of poverty, which is almost uniformly the goal of those who find themselves trafficked. Poverty encourages families to identify means to secure additional income. It also encourages them to find ways to reduce costs, for example reducing childcare costs by sending children away. Poor families may employ their children in the fields because they need additional labor, they do not see the benefits of education or the opportunity cost of sending a child to school is too high. Absence of education, a direct result of poverty (sometimes in combination with other factors, such as gender discrimination), can lead to greater vulnerability to recruitment by traffickers.[24]

The global financial system has resulted in monetary crises of greater severity and frequency. The global crisis that began in 2008 is especially severe, but it is unfortunately not unique. There have been serious national and regional crises since the 1980s that have had a visible and direct impact on human trafficking. The wealthy in the developing world can usually weather these financial crises, but the

23 Siddharth Kara,Sex Trafficking: Inside the Business of Modern Slavery.(New York – Chichester: Columbia University Press, 2009), p.26 - 27

24 Sally Cameron, Edward Newman.Trafficking in humans – Social, political and cultural dimensions. (Hong Kong: United Nations University Press, 2008), p.27

poor often face disaster as the cost of basic necessities multiplies, leading to starvation or untenable debt, conditions ripe for exploitation by human traffickers.[25]

Also, economic insecurity may cause political instability, corruption and bad management, and we all know that those are the basic problems that push people in search of better life in another place.[26]

SOCIAL FACTORS

Social exclusion has always been connected with the lack of respect to social rights and inability to gain the guaranteed social benefits and protection. Marginalization of some groups comes out from other more complex factors, as gender, ethnic origin and the status of some groups in the society. It includes discrimination in the area of education, job opportunities, and unavailability of medical services, social protection and information. This kind of exclusion is very important, especially in cases of prevention of re-victimization and re-trafficking. Victims of trafficking in human beings have many obstacles when they'll go back in their countries of origin.

Two important demographic forces have contributed to human trafficking – population growth and the increasing imbalance between the numbers of men and women in many countries. In the last forty years, the world's population has nearly doubled with the growth confined almost entirely to the developing world. Unemployed or underemployed youth and street children in the teeming cities of the third world are exploited by traffickers for labor and sexual exploitation. In Asia, the epicenter of human trafficking, women represent less than 50 percent of the population of China and all South Asian countries. In China, there are fewer women than men because many female fetuses are aborted because of the one-child policy and society's preference for males. Other forces explain this discrepancy in Nepal, India, Bangladesh, and other South Asian countries. "The negative sex ratio can be attributed to excess mortality of women and girls resulting from both direct and indirect discrimination in the provision of food, care, medical treatment, education, and above all physical and sexual violence." In these countries, the gender imbalance is both a cause and a consequence of human trafficking. Women are trafficked from other Asian countries as wives for Chinese men. In South Asia, many trafficking victims die prematurely.[27]

Building changes between the roles men and women have in society, does not affect only some states, it affects the whole world. Namely, in China, the roles and the perception of the different roles of the different gender had an impact of the marriage market for trafficked women.

This has resulted in part from the highly distorted gendered perception of boys and girls intrinsic value, which might be more accurately understood as men's responsibility in later life to provide for their parents and continue the family line. The highly distorted sex ratio at birth and the millions of "missing women" that resulted from the "one-child" population policy and strong son preference leading to widespread abortion of female fetuses have meant a lack of women available as marriage partners. Additionally, many of the women who have moved from rural to urban areas to work (often as waitresses or domestics – again highly gendered industries) want to stay in the cities. As a consequence, many rural men cannot find a local wife to carry on the family line.[28]

25 Louise Shelley, Human Trafficking: A Global Perspective, (Cambridge: Cambridge University Press, 2010), p.44
26 Совет на Европа и Меѓународна организација за миграција. Нелегална миграција и криумчарење мигранти во регионот на Западен Балкан. (Стразбур – Женева: 2006), стр.26
27 Louise Shelley, Human Trafficking: A Global Perspective, (Cambridge: Cambridge University Press, 2010), p.52
28 Sally Cameron, Edward Newman.Trafficking in humans – Social, political and cultural dimensions. (Hong Kong: United Nations University Press, 2008), p.27

Small-scale agriculture cannot compete in a global economy. Combined with explosive population growth in rural areas, small family plots can no longer support the enlarged families. Family members choose different paths for survival. Some seek any opportunity to emigrate abroad whereas others migrate from rural to urban areas. Just as rural to urban migration was conducive to the growth of crime and prostitution in the nineteenth century; it has contributed to the growth of human trafficking in the late twentieth and early twenty-first centuries. In their urban communities, formerly rural families lose their traditional ways of life just as they did in earlier periods. Long-held social and cultural values can be weakened by exposure to mass media, promotion of materialism, and the daily travails of survival in overpopulated cities. Families may adjust badly to the impoverished conditions they face in quickly growing and overcrowded cities. Family homelessness, familial breakdowns, parental illness, divorce, death of a parent, and abandonment by the father often follow rural to urban migration. Alcohol abuse often becomes more common within families, including violence and sexual exploitation of women and children who often run away. Familial exploitation often becomes a steppingstone to abuse by traffickers.[29]

Even when families do not deteriorate so severely, poor migrant families often have limited capacity to take care of their children in large cities. Children may run away or become street children. Both groups are vulnerable to traffickers. Men often migrate alone to cities within their countries or move abroad. Far from their families or unable to afford marriage, they add to demand for the services of prostitutes. This is evident in the slums of India, among Mexican laborers in the United States, and in Chinatowns around the world.[30]

POLITICAL FACTORS

In addition to economic, social and cultural factors, political instability, war and conflict may contribute to trafficking in persons. This is particularly the case in transitional societies where civil unrest, loss of national identity and political instability may create a favorable environment for organized crime, including trafficking in persons. In such cases, the disruption of traditional community life, along with its protective framework, and the resulting displacement of persons make people extremely vulnerable to exploitation.[31]

The end of the Cold War contributed to the rise of trafficking by increasing the number and duration of intrastate and regional conflicts. These conflicts, as will be discussed, impoverished and displaced many. They eliminated families and communities, leaving individuals vulnerable to traffickers. The post-Communist transitions were particularly hard on women and children.[32] Millions of fugitives from territories torn apart from war depended from the help of international organizations. Many of them have tried to escape to more secure countries, paying to others for them to be smuggled, but everything they got was a place in the labyrinth of modern slavery.

Peacekeeping missions increasingly deployed in the last two decades to police conflicts have all too often exacerbated the problem of trafficking. These missions are large and expensive, representing 25 percent of the UN budget and significant

29 Louise Shelley, Human Trafficking: A Global Perspective, (Cambridge: Cambridge University Press, 2010), p.52-53
30 Ibid, p.53
31 United Nations Office on Drugs and Crime. UN Global Initiative to Fight Human Trafficking. UN Handbook for Parliamentarians. Vienna: UNODC, 2009, p.66-67
32 Louise Shelley, Human Trafficking: A Global Perspective, (Cambridge: Cambridge University Press, 2010), p.49

sums from other multilateral organizations and individual nations. Numerous youthful male soldiers placed in dangerous conditions far from their homelands, without adequate oversight, become ready customers for the brothels filled with trafficked women that spring up as soon as peacekeepers arrive. With the governing military philosophy of these different peacekeeping forces all too frequently being "boys will be boys", the abuse of women in the bars and brothels around the missions is routine. Commanding officers of peacekeeping missions place primary attention on maintaining order. The fact that the prostitutes who serve the peacekeepers are trafficked women is ignored or seen as a peripheral concern.[33]

The US State Department in 2009 estimated that 12 million people in the world are stateless (does not have a citizenship) and cannot be registered, can't educate, get health care, work or legally travel. They cannot be legally protected from state institutions.

Corruption is a fact of life in Latin America, Africa, Eurasia, and many countries of Asia and the Middle East as evidenced by Transparency International surveys. Corruption results in distorted economic policies that benefit the elites and limit economic development. Civil servants such as border guards, police, and customs officials will facilitate trafficking by taking bribes to augment their low salaries, often not sufficient to provide a living wage. But in the cultures of corruption that prevail in many countries, trafficking rings are also able to bribe higher status officials such as consular officers, judges, and prosecutors without whom their businesses could not function. Labor trafficking is also facilitated by corruption of labor and health inspectors, particularly in developed countries. Moreover, without corrupt health officials, a trade in organs could not persist in hospitals.[34]

CULTURAL FACTORS

Certainly women exist in male dreams and nightmares: the narratives warn that women seduce, dispossessed of a penis they cannot know pleasure except through male energy, hence they constantly wish to seduce the male from his reasoned pursuit of sensibility, from the progressive tasks of modernity. In Politics and the Arts, Rousseau warns that 'never have a people perished from an excess of wine; all perish from the disorder of women'. While wine just renders men stupid the 'disorder of women' contains a host of vices which can bring all government to an end. In Civilization and its Discontents, Freud warns that women are hostile to and stand in opposition to civilization. Woman cannot achieve the sublimation of the passions which the task of civilization requires. In the 18th century, Hegel criticized the actions of Antigone in the classical Greek drama for opposing the right of the state with her own subjectivity; Hegel warned that the community created an enemy for itself within its own gates with women. Specifically, when women hold the reins of political power the state is at once in jeopardy. Thus, the wise men warned: women must be kept separate from the creative sites of modernity. Women are the negative of the dominant male: the empty space of patriarchy's other, constitute by factors opposing the progressive. Women are the body which the mind disowns yet needs (materialism), the purity which contrasts to the necessarily active role of construction (the virgin), the nature which serves as the fertility for culture (materialism, menstruation), the night that comes after day offering rest (the non-thinking) and sensuality (the whore), the bringer of madness to reason (the site of hysteria).[35]

33 Ibid, p.50-51
34 Ibid, p.47
35 Wayne Morrison, Theoretical Criminology: from Modernity to Post – modernism, (London – Sydney: Cavendish Publishing Limited, 1995), p.383 - 384

"To have a daughter is like having a toilet in your front yard." "A woman is only worthy when she has a husband." "Women are buffaloes. Men are humans." [36]

These sentences are only a small part of many other traditional words, not only from Buddhism, but from many other religions, that directly show the women's position in society.

Injustice that women suffer can be seen through the vertical connections of power, constructed as binomial. With their help we can conclude how connections of power that differ women from men – gender, white race from others – the skin color, the countries from North from those on South, the grownups from children, are identified. They are characterized with vertical usage of power from one subject to another, which in some societies gives to men more power and rights from women or right to discriminate and domination over the other races.[37]

The essential point here is not only that globalization changes traditional class relations across the world, but also that it is a deeply gendered phenomenon, structuring and being structured by the unequal power relations between men and women, and between poor and affluent women – a point that tends to be overlooked in the prevailing globalization theories.[38]

In a capitalist economy, market forces determine the value of goods, services, and labor, all of which are commodified; their value to society is based on their economic worth. Society, however, generally does not commodify the person performing the labor. Commodification of the human body is the reduction of a human being into an article of exchange, an object or product that is valued only for its economic usefulness and/or profit-generating potential where there is no distinction between the labor performed and the person who performs it. Hollywood stars are human bodies that are commodified. For example, society does not usually recognize a division between the stars' labor—acting—and the stars as people. The commodification of the female prostitute body predominates in modern culture, particularly on the Internet and in the reality show, rap/Hip-Hop, heavy metal, and dance club scenes. Images of prostitutes as product, to be purchased and/or traded, fuel a mainstream market that takes advantage of the modern desire for instant ownership and stimulation. These images work to fuel male desire for possession and control of a female prostitute, and, in some instances, work to reinforce nostalgia for an earlier era when the complete control of women was a natural male right. Throughout human history, women were routinely commodified, bought, and sold in the marriage arena, rarely allowed autonomy outside their ownership by a husband or a male relative. The commodification of prostitutes and prostitute images is in some instances marketed to reinforce patriarchal structures. In modern society, and particularly the Internet age, sex products, including prostitutes both male and female, have become a desirable commodity. Sex is the ultimate cultural opiate and is vigorously marketed to the populace as a panacea for individual isolation, which has been one result of the Internet age. In capitalist economies, widespread commodification of the prostitute to sell products, particularly clothing, shoes, and jewelry, has worked to normalize the image of the female prostitute, rendering her doubly commodified in the sense that as a physical object/commodity she is literally purchasable for sex, and as an image that is reproduced into various other com-

36 Siddharth Kara, Sex Trafficking: Inside the Business of Modern Slavery.(New York – Chichester: Columbia University Press, 2009), p.172 - 173

37 Organizacion Internacional para las Migraciones. Valores, Conceptos y Herramientas contra la Trata de Personas: Guia para la Sensibilizacion. (Bogota: OIM),p.11

38 Katja Franko Aas, Globalization and crime. (Los Angeles, London, New Delhi and Singapore: SAGE Publications, 2007), p.42

modities, becoming numerous fragments (such as articles of clothing or jewelry) that are then widely marketed to the public.[39]

Feminization of poverty as result of the long process of transition resulted with women marginalization in society[40], which increased their vulnerability, especially as victims of trafficking in human beings. The result is the fact that 70% from 985 million people that live in extreme poverty are women.[41]

There are a number of reasons why women comprise an increasing proportion of the world's migrants. One is that the demand for foreign labor, especially in more developed countries, is becoming increasingly gender-selective in favor of jobs typically fulfilled by women – services, healthcare, and entertainment. Second, an increasing number of countries have extended the right of family reunion to migrants – in other words allowing them to be joined by their spouses and children. Most often these spouses are women. Changing gender relations in some countries of origin also mean that women have more independence to migrate than previously. Finally, and especially in Asia, there has been a growth in the migration of women for domestic work (sometimes called the maid trade); organized migration for marriage (sometimes referred to as mail order brides), and the trafficking of women into the sex industry.[42]

Also we can mention some factors which are consequence of today's system, starting from the dispersion of power to decide, gender prejudices in writing laws, gender differences in requesting and being protected.[43] The women's wish for economic independence, for being free from patriarchal family chains[44], is a result of the period of patriarchate, whose changes are active almost two centuries. Women slowly, but surely get their place in the public sphere, but the private situation still is a status quo in many parts of the world, and worse is that still there are no signs that something will change soon.

According to the UN, up to 70% of women experience physical or sexual violence from men in their lifetime - the majority by husbands, intimate partners, or someone they know. Worldwide, one in five women will become a victim of rape or attempted rape in her lifetime. In the USA, a woman is raped every 6 minutes and a woman is battered every 15 seconds. In North Africa, 6000 women are subjected to genital mutilation / cutting every day. The Mexican border town of Ciudad Juárez, is experiencing a pervasive pattern of sexualized murders of women. From 1993-2007, over 430 women have been murdered in Juárez. This number does not include those who are missing and the true count is most probably significantly higher. It is estimated that more than 60 million women are demographically "missing" from the world as a result of sex selective abortions and female infanticide in China, South Asia and North Africa.[45]

In Australia, Canada, Israel, South Africa and the United States, 40 to 70 per cent of female murder victims were killed by their partners, according to the World Health Organization. In Colombia, one woman is reportedly killed by her partner or former

39 Melissa Hope Ditmore, Encyclopedia of Prostitution and Sex Work, Vol. 1&2. (Westport-London: Greenwood Press, 2006), p.114-115

40 Елда Багавики Бериша, " Сиромаштијата и војните во Југозападна Европа – импликации за трговијата со луѓе" Родова перспектива на трговијата со луѓе (2004): 200

41 Siddharth Kara,Sex Trafficking: Inside the Business of Modern Slavery.(New York – Chichester: Columbia University Press, 2009), p.31

42 Khalid Koser, International Migration: A Very Short Introduction. (New York: Oxford University Press Inc., 2007), p.7

43 Елда Багавики Бериша, " Сиромаштијата и војните во Југозападна Европа – импликации за трговијата со луѓе" Родова перспектива на трговијата со луѓе (2004): 200

44 Оливер Бачановиќ, Жртви на трговијата со луѓе, Организиран криминал – Проект на програмата на ТЕМПУС и КАРДС.(Скопје, 2002), стр.158

45 http://abusehelplines.org/wp-content/uploads/2011/04/Violence-Against-Women-Around-the-World.pdf [12.12.2011]

partner every six days. In the Democratic Republic of Congo approximately 1,100 rapes are being reported each month, with an average of 36 women and girls raped every day. It is believed that over 200,000 women have suffered from sexual violence in that country since armed conflict began. The rape and sexual violation of women and girls is pervasive in the conflict in the Darfur region of Sudan. Between 250,000 and 500,000 women were raped during the 1994 genocide in Rwanda. Sexual violence was a characterizing feature of the 14-year long civil war in Liberia. During the conflict in Bosnia in the early 1990s, between 20,000 and 50,000 women were raped.[46]

Also in many societies, rape victims, women suspected of engaging in premarital sex, and women accused of adultery have been murdered by their relatives because the violation of a woman's chastity is viewed as an affront to the family's honor.[47] Honor killings occur when women are put to death for an act that is perceived as bringing shame to their families; this can mean killing as punishment for adultery or even for being the victim of rape. In Pakistan nearly 500 women a year are the victims of honor killings. In a study of female deaths in Egypt, 47 percent of female rape victims were then killed because of the dishonor the rape was thought to bring to the family. In 2002, 315 women and girls in Bangladesh endured another form of violence against women, acid attacks. In 2005, even after the introduction of more serious punishments for the crime, over 200 women were attacked.[48]

Trafficking most frequently occurs in societies where women lack property rights, cannot inherit land, and do not enjoy equal protection under the law. Yet trafficking also occurs on a significant scale in Eurasia, where women have legal rights and access to education but face discrimination in obtaining jobs, decent wages, and access to capital. During the 1990s, many job advertisements in post-Soviet countries read "only the young and the willing need apply." This requirement forced women to provide sexual services in exchange for employment. In contrast, in many societies in Africa, Latin America, and parts of Asia, fewer resources are provided for the education, medical care, or overall welfare of female children. Females are the first to be pulled out of school in financial crises such as occurred in the late 1990s and again starting in 2008. As a consequence, female children have fewer options. Frequently, girls and women can obtain employment only in sectors where they are most vulnerable to labor and sexual exploitation, including as domestic servants, carpet weavers, and child care providers. In some countries, the route to prostitution is more direct as girls are viewed as a means for a family's economic advancement. Trafficking their daughters is one way that Southeast Asian families generate funds to make capital improvements to their home and their land.[49]

Close with gender discrimination is the discrimination based on ethnic origin, and in some countries on caste affiliation. These people are without basic economic and educational possibilities, health care, social rights, and many other basic human rights.

FACTORS CONNECTED WITH MILITARIZATION AND THE WAR CONFLICTS

Political crises and a war, especially on the territory of ex – Yugoslavia, influenced the emigrational processes which were caused by the social and economic situation in that time and on the non respect of the basic human rights and free-

46 http://www.un.org/en/events/endviolenceday/pdf/UNiTE_TheSituation_EN.pdf [15.12.2011]
47 Ibid
48 http://www.advocatesforyouth.org/storage/advfy/documents/gender_bias_fact_sheet_2010.pdf [15.12.2011]
49 Louise Shelley, Human Trafficking: A Global Perspective, (Cambridge: Cambridge University Press, 2010), p.54

doms in the migrant's countries of origin.[50] War conflicts, the criminalization of the paramilitary and state security troops "gave birth" to new investments, sponsorships, and direct role into many criminal networks.[51]

The majority of uniformed service members and civilian contractors working in peacekeeping operations do so honorably. They risk their lives to repair the damage and the destruction of war. Tragically, however, international organizations and activists have documented a disturbing correlation with these deployments. Human rights groups, the International Organization of Migration (IOM), and various agencies within the United Nations have reported that in and around these same regions, where one finds established, long-term, international deployments, one also sees a dramatic rise in the number of trafficked women and girls. For example, spikes in the number of trafficked females followed the deployment of United States, North Atlantic Treaty Organization, and the United Nations forces in Bosnia and then later in Kosovo. Trafficking, especially the enslavement of women and girls for forced prostitution follows market demand and, in post-conflict situations, that demand is often created by international peacekeepers.[52]

The presence of the UN peace missions and international humanitarian organizations, opened new possibilities for increasing the number of newly registered "restaurants" and bars, in which on many ways of entertainment, on a latent way, the local sex industry had been flourishing.[53] Peacekeeping produces conditions for violence against women and girls in the sex industry by creating a lucrative market of buyers in highly paid militarized men.[54]

The obvious question in relation to the prostitution of trafficked or local women and girls by peacekeepers is 'Whose peace are they keeping?', because though they may prevent some kinds of violence, they institute an abusive régime for many women. In conflict zones women and girls become vulnerable to prostitution as a result of being separated from families and being reduced to penury by displacement and destruction of subsistence. This vulnerability is easily exploited by 'peacekeepers' to add a new dimension of harm through sexual exploitation in return for survival. In some cases these gatherings of men create prostitution industries in areas where they have been barely in existence before their arrival, such as in Bosnia-Herzegovina and Kosovo. In other cases where some form of prostitution industry already existed they have transformed this local practice into large-scale industries which require the trafficking of girls and women to provide supply. In some cases the peacekeepers, as in the Balkans, have been involved in trafficking themselves.[55] For example, on October 5, 2005, the UN police (CIVPOL) and the local Kosovo Police Service (KPS) arrested an international policeman suspected of human trafficking; less than a week earlier, two local police officers were also arrested on human trafficking charges in Northern Kosovo.[56]

Many experts point to the locations and names of the bars as evidence that traffickers not only target but also respond to the demand of international peacekeepers.

50 Зоран Филиповски, " Криминолошки и кривично – правни аспекти на трговијата со луѓе во Република Македонија " Родова перспектива на трговијата со луѓе (2004): 133
51 Vesna Nikolic – Ristanovic, " Ilegalna trzista, trgovina ljudima i transnacionalni organizovani krimalitet" Spisanie Temida, br.4 (2003): 8
52 Sarah E. Mendelson, Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans (CSIS Report). (Washington D.C.: CSIS, 2005), p.1
53 Зоран Филиповски, " Криминолошки и кривично – правни аспекти на трговијата со луѓе во Република Македонија " Родова перспектива на трговијата со луѓе (2004):145
54 Sheilla Jeffreys, The industrial vagina: The political economy of the global sex trade. (New York: Routledge, 2009), p.121
55 Ibid, p.121
56 Obbi Ebbe N.I. and Dilip K. Das. Global trafficking in women and children. (Boca Raton: CRC Press, 2008), p.27

While SFOR was stationed in Bosnia, activists claimed that one could drive through Bosnia and know which international contingent had responsibility for the region by the names on the brothels. The UN Trafficking and Prostitution Investigation Unit (UN/TPIU) list of off-limits locations in Kosovo as of May 1, 2003, reflects this trend. In the U.S. sector, the establishments have such names as Liberty Restaurant, Malibu Club, Mexico Café Bar, Monroe Club, and Spaghetti. In the French Sector, one finds Café Bashta, Café Sale, Café San Bar, Picasso, and Rendezvo. The August 2004 list of off-limits places issued by UNMIK (UN Mission in Kosovo) shows that brothels are clustered around international deployments. The May 2004 IOM Report, based on interviews with law enforcement and criminal informants in Bosnia from January through March 2004, maintains that "especially close to military bases the most frequent customers of trafficked victims have been foreigners and in particular NATO/SFOR members. For example near the 'Eagle' NATO Base there are dozens of night bars and the most frequent customers are SFOR members.[57]

In many cases, in post conflict society's women are the only source of incomes for the family, because their husbands or fathers have been killed or injured in the war. Mothers who were left alone and without an employment are possible victims of trafficking in human beings[58], because sometimes the only way out from their hard situation is finding a job abroad.

Through the great migrations of women and the industrialization of the developing world, the globalizing process has clearly created numerous employment opportunities for women across the world. While economic restructuring processes, particularly in the West, substantially reduced the numbers of male manufacturing jobs, there has been a trend towards feminization of employment. This has made women more visible and active participants in the public life of many countries and has partly destabilized traditional gender roles. Furthermore, not only individual households, but also communities and governments increasingly depend on Third World women as the main breadwinners. Since female labor, including migrant and sexual labor has become a vital 'circuit of survival' in a number of developing countries, points out that this has led to 'feminization of survival' in the developing world. However, due to this economic dependence on migrant remittances, many Third World governments encourage emigration and are unwilling to take up the issues of its negative effects. Migrant women tend to live isolated and concealed from public view and are thus more vulnerable to exploitation. Due to their economic and social dependence on their employers they are in greater danger of becoming victims of domestic violence, sexual abuse and economic exploitation. If domestic violence in general tends to be an overlooked and under-reported phenomenon in most criminal justice systems, this is even more the case when it comes to domestic violence against nannies, maids, sex workers, 'imported' wives, and other migrant women and children. These themes, however, tend to be overlooked in the 'modern day slavery' debates, where only the 'extravagant abuses' associated with trafficking are politicized, while other aspects are 'normalized', suppressed, and made invisible.[59]

Wars in Asia, Africa, Eastern Europe, Middle East and South America, and some natural disasters in many regions around the world from 1960 till 1990 were the reason many children to become orphans in Indonesia, Cambodia, India, Africa, Middle East etc. Those children later became an object of possible adoption. That's why many traf-

57 Sarah E. Mendelson, Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans (CSIS Report). (Washington D.C.: CSIS, 2005), p.11

58 Елда Багавики Бериша, " Сиромаштијата и војните во Југозападна Европа – импликации за трговијата со луѓе" Родова перспектива на трговијата со луѓе (2004): 202

59 Katja Franko Aas, Globalization and crime. (Los Angeles, London, New Delhi and Singapore: SAGE Publications, 2007), p.43

fickers started their "business" in this area. In Southeast Asia, especially in Thailand, the number of orphans is so high, that many of them are on the streets and that's how they become an easy prey for the traffickers. Also, this territory is known as one of the poorest in the world. For example, Cambodia is one of the countries with lowest GDP in the world, with 280 American dollars per capita a year. Most of the women there, work in the factories for GARMENT, are between 18 and 25 years of age, and their monthly salary is 40 American dollars. When we are going to add the loneliness, long working days, poor life conditions, we can freely conclude why these women believe so easily to the traffickers, who recruit them with stories of how their life will drastically change (to better) if they go to work in some of the developed countries.

CONCLUSION

Trafficking in Human Beings has always been connected to migration. It doesn't matter if it's transnational or internal, modern slavery and its traffickers in regulation methods has always taken advantage of people's wish for a better life abroad.

The theory of push and pull factors explains some of the roots of trafficking, although the core of modern slavery should be looked and connected with the one of trafficking in slaves. Through the many factors that influence on the trafficking process, we can see the close connection between every area of society. They are not the main ones that are "guilty" for trafficking resurrection, but surely they give their contribution on the crime.

Using this theory, countries of origin can detect which are their weaknesses and try to find solutions for those problems and build long time policies for trafficking suppression and prevention. On the other side the countries of destination, which in most of the cases are rich countries, using this theory can detect in which areas migrants are most wanted working force and try, not to stop migrants from entering in their countries, but to try to improve their status on their soil and to build new strategies that will improve law enforcement's and other organizations work with trafficking prosecution, it's prevention and its victims protection.

It is important to conclude that this theory is not the only way for explaining why trafficking in human beings exists in XXI century. It is only a small part of the etiology mosaic, but a very important one. Using it science gets precious "weapon" in the phenomenon's suppression.

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UDC 351.9:351.74/.75
351.941

EFFECTIVE MECHANISM FOR CONTROL OF THE POLICE

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Abstract: The paper deals with old dilemma "*quis custodied ipsos custodies*" in the view of European Convention on Human Rights (ECHR). The State is obliged to take appropriate steps to safeguard the lives of those within its jurisdiction (*L.C.B. v United Kingdom*), and in certain well-defined circumstances even to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (*Osman v United Kingdom*). However, the authorities must exercise their powers to prevent crime in a manner which fully respects the rights and freedoms of individuals, including the right to respect for private and family life (Article 8 of the ECHR).

In this regard, the author examines two main issues based on the jurisprudence of the European Court of Human Rights: striking a fair balance between the positive obligation of the state to protect life and respect for private and family life of the individuals; establishment of the effective mechanism for control of the police. At the same time, the author assesses the compatibility of Macedonian system for control of the police with the requirements of the ECHR.

Key words: European Convention on Human Rights, fair balance, human rights, police, control.

INTRODUCTION

As Foster argues "the modern state's claim to a monopoly of legitimate violence makes the individual highly dependent upon it for protection".[1]"Legally restricted in the steps we can take to defend ourselves, we look instead to government to ensure our safety."[2]The State is obliged to take appropriate steps to safeguard the lives of those within its jurisdiction. However, as Le Sueur et al. note "demands that public authorities act on our collective behalf to make us secure and safe from harm may also sit uneasily with the competing desire for personal freedom." [3]If we give the guard too great a freedom, who will then protect us against the guard? Foster concluded that "liberty can exist only when both citizens and the state accept certain responsibilities."[4]For instance, (according to Foster), citizens must avoid using their liberty in ways which, accidentally or otherwise, harm the interests of others and secondly, Government must establish how best to regulate liberty, both in the interests of equality (that is, that one person's exercise of freedom does not intrude unreasonably on that of others) and public order.[5]However, it is only the state that has the legitimate right to use force.

In a contemporary state, the primary responsibility of protecting an individual lies with the police.The main functions of the police are:

1. protection of human rights;
2. prevention and detection of crime;

1 Steven Foster, The Judiciary, Civil Liberties and Human Rights, Edinburgh University Press, 2006, p. 104.
2 Ibid.
3 Andrew Le Sueur et al., Principles of Public Law, Cavendish Publishing Limited, London, 1999, pp. 21-22.
4 Steven Foster, op.cit. p. 4.
5 Ibid.

3. maintenance of public order;
4. provision of assistance to the public; [6]

In performing their functions, the police are granted the authorization to interfere with human rights and people's lives. Therefore, it is necessary for the state to set up an efficient legal and administrative framework which can vouch that the police use their power[7] in public interest and that each and every overstepping and abuse of the authorization shall be sanctioned. The international law has established certain standards aiming at professional and accountable police. They, generally, could be classified as follows:

- the police must respect human rights and freedoms;
- police's operations should be planed and conducted in accordance with the national law and international standards accepted by the state;
- the police may use force only when absolutely necessary and only to the extent required to obtain a legitimate objective;
- police's operation is subjected to internal and external control;
- an independent and effective police complaints system should be established.[8]

Hence, in the essence of the international human rights standards is the need to prevent impunity of the police. As de Rover observes "individual responsibility and individual accountability must be recognized as key factors in the establishment of correct law enforcement practices."[9]

In this regard, the main issue of this paper is how to prevent the state from turning from life protector into its controller and usurper in the view of the ECHR.

POSITIVE OBLIGATION TO PROTECT *V.* RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

The Article 2 of the ECHR "enjoins the state not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction."[10] The scope of this obligation is a matter

6 See for example: Recommendation Rec(2001)10of the Committee of Ministers on the European Code of Police Ethics; Cees de Rover, To Serve and to Protect: Human Rights and Humanitarian Law for Police and Security Forces, International Committee of the Red Cross, Geneva, 1998, p. 146; Handbook on Police Accountability Oversight and Integrity, UNODC, Vienna, 2011, p. 5.

7 According to de Rover "Essential in connection to the use of any power or authority are the questions of legality, necessity and proportionality: does the power or authority used in a particular situation have its basis in national law; and is the exercise of that particular power and/or authority strictly necessary, given the circumstances of the respective situation; and is the power or authority used in proportion to the seriousness of the offence and the legitimate law enforcement objective to be achieved?" In addition he concludes that "only in situations where all three questions can be answered in the affirmative will the use of a particular power or authority be justifiable." See: Cees de Rover, op.cit. p. 147.

8 See for example: Recommendation Rec(2001)10of the Committee of Ministers on the European Code of Police Ethics; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990; Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169,1979; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Resolution 1989/65; Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,1984; Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 2002; Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 1999, Guidelines for the Effective Implementation of the Code of Conduct forLaw Enforcement Officials, adopted by the Economic and Social Council inits resolution 1989/6, endorsed by the General Assembly resolution 44/16,1989; European Convention for Protection of Human Rights and Fundamental Freedoms,1950.

9 Cees de Rover, op.cit. p. 150.

10 L.C.B v United Kingdom, no. 23413/94, 6 June 1998, para. 36, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.

of dispute in the theory and practice. However, such positive obligation has been found to arise in a range of different contexts examined so far by the European Court of Human Rights (ECtHR).[11]Thus, for example, and as regards policing, the ECtHR has noted that "the authorities are under a duty to protect the life of an individual where it is known, or ought to have been known to them in view of the circumstances, that he or she was at real and immediate risk from the criminal acts of a third party."[12]The case-law of the European Court of Human Rights points out that for an applicant it is sufficient to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge in view of all the circumstances of any particular case.[13]

The specific operational preventive measures that the state needs to undertake with the purpose of protecting the person(s) against criminal acts by a third party depend on the circumstances in each individual case. When determining the measures that need to be undertaken according to Article 2 of ECHR the state enjoys a certain degree of discretion. "The choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the State's margin of appreciation."[14] [15]However, the ECtHR is quite clear that the police must exercise their powers to control and prevent crime in a manner which fully respects the due process, and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in the Article 8 of the ECHR (right to respect for private and family life).[16]

Mill defined privacy "as a circle around every individual human being which no government ought to be permitted to overstep [and] some space in human existence thus entrenched around and secured from authoritative intrusion."[17]Le Sueur et al. observe that "this broad notion of privacy has come to be known as the 'right to be left alone 'that entails not only a negative obligation on the State–not to interfere with the private zone of its citizens–but a positive duty to prevent private parties from interfering with each other's privacy."[18] Griffin identified three forms of privacy for consideration: informational privacy, the privacy of space and life, and the privacy of liberty.[19]The Article 8 of the ECHR provides that everyone has the right to respect for his private and family life, his home and correspondence. According to ECtHR the private life is broad term not susceptible to exhaustive definition.[20]Namely, the Court notes: "*Article* 8 *is not limited to the protection of an "inner circle" in which the individual may live his own personal life as he chooses and*

11 Ciechońska v Poland, no. 19776/04, 14 June 2011, para.61, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database

12 Ibid.

13 See paragraph 116 of the Judgment of the European Court of Human Rights in the case Osman v United Kingdom, no. 23452/94, 18 October 1998.

14 Ciechońska v Poland, no. 19776/04, 14 June 2011, para 65, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database

15 According to Greer the "margin of appreciation, typically described as a 'doctrine' rather than a principle, refers to the room for manoeuvre the Strasbourg institutions are prepared to accord national authorities in fulfilling their Convention obligations." In addition he argues that "where the exercise of a Convention right and a public interest conflict, the Court's main responsibility is not merely to permit a national balancing exercise, but to ensure that the priority-to-rights principle has been properly observed by national judicial and non-judicial authorities, according to the terms of the Convention provision(s) at issue." See: Steven Greer, European Convention for Human Rights: Achievements, Problems and Prospects, Cambridge University Press, New York, 2006, pp. 222; 226.

16 Osman v United Kingdom, no. 23452/94, 18 October 1998, available www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database

17 John Steward Mill, Principles of Political Economy in Andrew Le Sueur et al., op.cit., p. 37.

18 Andrew Le Sueur et al., op.cit., p.437

19 James Griffin, On Human Rights, Oxford University Press, New York, 2008, p. 234.

20 *Shimovolos v Russia*, no. 30194/09, 21 June 2011, para. 64, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.

to exclude there from entirely the outside world not encompassed within that circle. It also protects the right to establish and develop relationships with other human beings and the outside world. Private life may even include activities of a professional or business nature. There is, therefore, a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life."[21]In this regard, the researchers argue that "the Article 8 is one of the most open-ended provisions of the ECHR."[22]

The Article 8 of the ECHR enjoins the State not only a negative obligation not to interfere arbitrarily with a person's private and family life, but also a positive obligations inherent in an effective respect for private and family life (that extend even in the sphere of the relations of individuals between themselves).[23]There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (para.2 of Article 8 of ECHR). The state enjoins wide margin of appreciation where the positive obligations under Article 8 or the interference with a person's private life are in issue. "The margin of appreciation accorded to the competent national authorities will vary according to the nature of the issues and the importance of the interests at stake." [24]Based on the case law of the ECtHR it could be concluded that the Court accept that "in the light of the state's positive obligation to take preventive operational measures to protect an individual whose life is at risk, it might have been expected that the authorities, faced with a suspect known to have a criminal record of perpetrating violent attacks, would take special measures consonant with the gravity of the situation."[25] These measures, that interference with private life could include searches (of the home or professional premises), secret surveillance, interception of communications, telephone tipping or pursuance of the criminal prosecution against perpetrators of violence even when the victim withdraws her/his complaint.[26]However," domestic margin of appreciation goes "hand in hand" with a European supervision."[27]A fair balance[28] should be struck between general interest of the community and the requirements of the protection of the individual's fundamental rights through the application of the principle of proportionality. As Arai-Takahashi argues "there must be existed a reasonable relationship between the means employed, including their severity and duration, and the public objective to be sought."[29]

21 Ibid.
22 Clare Ovey, Robin White, The European Convention on Human Rights, Oxford University Press, New York, 2006, p.241.
23 See: Ursula Kilkelly, The Right to Respect for Private and Family Life, A guide for implementation of the Article 8 of the European Convention on Human Rights, Council of Europe, 2001, pp. 20-22; Clare Ovey, Robin White, op.cit. pp. 241-245.
24 Rytchenko v Russia, no. 22266/04, 20 January 2011, para. 38, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.
25 Opuz v Turkey, no. 33402/02, 9.06.09, para.148, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.
26 Ibid.
27 Ursula Kilkelly, op.cit. p. 7.
28 Considering the principle of fair balance Mowbray in the one of its papers concludes that "the principle has been utilized by the Court as a basis for assessing the proportionality of respondent States' interferences with the Convention rights of applicant and for determining when States are subject to implied positive obligations under the Convention, thereby demonstrating its value to the Court as a multi-functional tool."In addition he argues that "when assessing if a fair balance has been achieved in specific cases the Court has had to take account of a myriad of competing individual and community interests asserted by applicants and respondent States. Furthermore, the Court has also taken cognizance of additional factors, including the numbers of persons in a similar situation to the applicant and any reprehensible conduct by either or both of the parties, when applying the principle." See: Alastair Mowbray, A Study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights, Human Rights Law Review, 10:2 (2010), 289-317, p. 315-316.
29 Alastair Mowbray, A Study of the Principle of Fair Balance in the Jurisprudence of the European Court

The interference with an Article 8 right should be in accordance with law (based on precise, clear law, foreseeable, accessible to person concerns, that contains a measure for protection against arbitraries) and it should serve a legitimate aim. According to ECtHR, "in some instances, the national authorities' interference with the private or family life of the individuals might be necessary in order to protect the health and rights of others or to prevent commission of criminal acts."[30] However, there has to be a reasonable suspicion that the person(s) pose(s) a threat against the rights/life of others or against the juridical system, that is, the state needs to have relevant and sufficient reasons to interfere.Thus, in the case *Osman v United Kingdom* (where the applicant' husband was killed by the teacher of her son) the ECtHR held that the national authorities cannot be criticised for attaching weight to the presumption of innocence or failing to use powers of arrest, search and seizure because they lacked at relevant times the required standard of suspicion to use those powers or that any action taken would in fact have produced concrete results.[31] Hence, the interference with an Article 8 right should be necessary in a democratic society–to fulfill a pressing social need and to be proportionate to the legitimated aim pursued. The authorities should strike a fair balance between the State's obligation to protect and the need to respect for right to private and family life of the concerned persons. As Kikelly notes" it is clear that the more far reaching and severe the interference, the stronger the reasons required to justify it."[32]

In the case *Shimovolos v Russia* the ECtHR recognized that "the systematic collection and storing of data by security services on particular individuals constituted an interference with these persons' private lives; even if that data was collected in a public place or concerned exclusively the person's professional or public activities."[33]Thus, it should be done in accordance of law which is accessible to the person concerned, who must, moreover, be able to foresee its consequences for him.[34]Secret surveillance, which is carried out without any control by the public, represents a serious danger to the privacy and family lives of individuals (and opportunity for abuse), especially today in the time of a highly developed technology. Therefore, according to the ECtHR, it is essential to have clear, detailed rules on the application of the measures of secret surveillance. Namely as the ECtHR noted: "*the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any measures of secret surveillance and collection of data.*"[35]At the same time, a secret surveillance should be necessary in a democratic society. In this regard, the ECtHR required the state to provide the following minimum safeguards in national legislation to avoid abuses: the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national la*w*.[36]Hence, as Gordon and Ward conclude regarding secret surveillance "the central issue is generally whether there are adequate safeguards to prevent abuse.[37] Having regard-

of Human Rights, Human Rights Law Review, 10:2 (2010), 289-317, p. 308.
30 Opuz v Turkey, no. 33402/02, 9.06.09, para.144, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database
31 Osman v United Kingdom, no. 23452/94, 18 October 1998, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database
32 Ursula Kilkelly, op.cit. p. 32.
33 Shimovolos v Russia, no. 30194/09, 21.06. 2011, par. 64, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/.
34 Ibid
35 Shimovolos v Russia, no. 30194/09, 21.06. 2011, par. 64, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database
36 Ibid.
37 Richard Gordon, Tim Ward, Judicial Review and Human Rights Act, Gavendish Publishin, London, 2000, p. 125.

ed the above considerations it is understandable that the ECtHR in the case *Shimovolos v Russia* where the creation and maintenance of the Surveillance Database (for the applicant) and the procedure for its operation are governed by ministerial order that is not published and is not accessible to the public found the violation of the Article 8 of the ECHR.[38]The ECtHR in this case in particular, criticizes the domestic law because "it does not, as required by the ECtHR's case-law, set out in a form accessible to the public any indication of the minimum safeguards against abuse."[39]

EFFECTIVE INVESTIGATION UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS

The national authorities must establish system of adequate and effective safeguards against abuse of power and arbitrariness of the police. At the same time, ECHR imposes an obligation on the states to pursue an efficient investigation in cases of serious incidents involving the police (death,[40] torture, abuse, misconduct).[41] The investigation under ECHR (Article 2 and Article 3[42])[43] should be capable of leading to the identification and punishment of those responsible.[44] ECHR does not establish a precise standard form of investigation. Nor does the Courtin the particular cases feel the need to decide what form such an investigation should take and under what conditions it should be conducted. In this context, in the case *Velikova*

38 Shimovolos v Russia, no. 30194/09, 21.06. 2011, par. 69, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database.

39 Ibid, para. 70.

40 The European Court of Human Rights in the case McCann and others v United Kingdom stated: "the obligation to protect the right to life under this provision (art. 2), read in conjunction with the State's general duty under Article 1 (art. 2+1) of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alias, agents of the State."(McCann and others v United Kingdom, no. 18984/91, 27 September 1995, para. 161).See also: Bazorkina v Russia, no. 69481/01, 27 July 2006; Akpinar and Altun v Turkey, no. 56760/00, 27 February 2007; Hugh Jordan v United Kingdom, no. 24746/95, 4 May 2001; Brecknell v United Kingdom, no, 32457/04, 27 November 2008; Kelly and others v United Kingdom, no. 30054/96, 4 May 2001, Tekdag vTurkey, no.27669/95, 15 January 2004.

41 For example in the case Jasar v Republic of Macedonia the European Court of Human Rights noted: "the Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation.. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity." (Jasar v Republic of Macedonia, no. 69908/01, 15 May 2007, para.55); See also: Assenov and others v Bulgaria, no. 90/1997/874/1086), 28 October 1998; Dzeladinov and others v Republic of Macedonia, no.13252/02, 10 April 2008; Khashiyev and Akayeva v Russia, no. 57942/00 and 57945/00, 24 February 2005; Maslova and Nalbandovv Russia, no. 839/02, 24 January 2008.

42 Regarding the State obligation under Article 2 and article 3 of the ECHR to undertake effective investigation Mowbray argues that "the obligation, under Article 3, to undertake effective investigations into arguable claims of serious ill-treatment by state agents (e.g. Assenov) is, however, narrower than the corresponding obligation under Article 2 (as the latter requires effective investigations to be undertaken into all killings irrespective of the status of the perpetrator; e.g. Ergi v Turkey) and we have discovered that the Court's application of the Article 3 obligation is more uncertain." See: Alastair Mowbray, The Development of the Positive Obligations under European Convention on Human Rights by the European Court of Human Rights, Hart Publishing, Oxford, Portland, Oregon, 2004, p.

43 As Akandji-Kombe observes "in cases of violent or suspicious death, the authorities are required to act ex officio once the facts are brought to their attention, without waiting for a formal complaint by the relatives. Conversely, (according to him) under Article 3, it is settled case-law that they are not obliged to act until the point in time when they are in receipt of allegations of ill-treatment by the victim or close relatives. It is further required that these allegations be justifiable" See: Jean-François Akandji Kombe, Positive Obligations under the European Convention on Human Rights, A guide to the implementation of the European Convention on Human Rights, Council of Europe, 2007, p. 33.

44 See for instance Jasar v Republic of Macedonia, no. 69908/01, 15 May 2007.

v Bulgaria the ECtHR considered that: "*further considers that the nature and degree of scrutiny which satisfies the minimum threshold of the investigation's effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria*."[45]However, the Court has developed certain principles for effective investigation:

1. Independence (persons responsible for and carrying out the investigation to be independent from those implicated in the events. That means not only a lack of hierarchical or institutional connection but also a practical independence. The Court in number of its judgments notes the recommendation of CPT that "the creation of a fully-fledged independent investigating agency would be a most welcome development.");
2. Effectiveness/Adequacy (the investigation must also be effective in the sense that it is capable of leading to identification and punishment of those responsible. The authorities must take all the reasonable steps available to them to secure the evidence concerning the incident, *inter alia* eye witness testimony, forensic evidence, autopsy etc.);
3. Promptness (investigation must be conducted promptly[46]);
4. Public scrutiny (investigation or its results should be open and transparent in order to secure accountability in practice as well as in theory);
5. Involvement of the victim (next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interest[47]).[48]

MACEDONIAN SYSTEM FOR THE CONTROL OF POLICE

The Law on Internal Affairs of the Republic of Macedonia provides for both internal and external control over the operations by the Ministry of Interior. The internal controls conducted by a special organization unit within the Ministry of Interior – Sector for Internal Control and Professional Standards (SICPS). SICPS implements procedures that assess the lawfulness of actions by a Ministry of Interior employee.[49]The external control over the Ministry of Interior operation is conducted by the Assembly of the Republic of Macedonia (by way of a Commission)

45 Velikova v Bulgaria, no.41448/98, 4 October 2000, para. 80, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/;

46 As one see from the case Bazorkina v Russia the Court accepts there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, it emphasizes that they cannot exceeded any acceptable limitations on efficiency that could be tolerated in dealing with such a serious crime. See: Bazorkina v Russia, no. 69481/01, 27 July 2006, para. 119.

47 In the case Brecknell v United Kingdom the ECtHR stated that principles of accessibility to the family and public scrutiny do not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or for them to be consulted or informed about every step. See: Brecknell v United Kingdom, no, 32457/04, 27 November 2008, para. 77.

48 Kelly and others v United Kingdom, no. 30054/96, 4 May 2001, paras. 94-98,available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database/; Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 2009, CommDH(2009)4.

49 Citizens have the right to file a complaint to Ministry of Interior with the purpose of protection and accomplishment of their rights, and also when they believe that the actions by a Ministry of Interior employee violate their freedoms and rights. Ministry of Interior is obliged to verify the statement of facts given in the application within a time period not longer than 30 days from the day of reception of the application, and in writing to inform the applicant about the situation found and the measures undertaken. See: Article 38 of the Law on Internal Affairs, Official Gazette of the Republic of Macedonia, no. 92/2009; 35/2010.

[50]and the Ombudsman [51]Also, the Law on Inception of Communications lays down that the implementation of measures by the Ministry of Interior and the Ministry of Defence is under the supervision of the Assembly of the Republic of Macedonia (a Commission composed of one president, four members, one vice-president, and four deputy members).[52]A positive step in establishing an efficient control over the law-enforcement agencies is the Law on Public Prosecution which allows for the Public Prosecutor to care for the lawfulness of measures and actions undertaken in the pre-investigation proceedings and to supervise the respect of human rights by the competent officials in Ministry of Interior and other bodies. In case when the Public Prosecutor hears of competent officials in Ministry of Interior and other state agencies overstepping their powers and of violation of citizens' freedoms and rights, Public Prosecutor has the right to request immediately to be given information whether a procedure has been launched to determine the liability by these persons, as well as about the course and results of such an investigation.[53]In case of death or serious physical injury, by way of duty the Public Prosecutor starts proceedings to determine the justification for the use of firearms by competent official personnel in Ministry of Interior and other state agencies having such authorization under the law.[54]The new Law on Criminal Proceedings organizationally and functionally strengthens the Public Prosecutor Office.

However, in spite of the evident progress (formal and legal reinforcement of Public Prosecutor's role, legal interventions in competences, financial independence and work methodology of the Ombudsman of the Republic of Macedonia) one may conclude that the established control mechanism over the law enforcement agencies in the Republic of Macedonia has not been fully harmonized with international standards, including the ECHR requirements. As European Commission notes "systemic deficiencies remain with regard to combating impunity within the law enforcement agencies."[55]

As the European Committee for the Prevention of Torture and inhuman or Degrading Treatment or Punishment (CPT) observes the SICPS does indeed perform an important role in reporting back to the Minister on the functioning of the police and in working towards improving its professionalism.[56]However, (according to it) Ministry of Interior's SICPS is not an independent and unbiased body according to

50 The Safety and Counter-Intelligence Service submits a Programme to the Commission of the Parliament of the Republic of Macedonia by the end of January of the current year, twice a year informs the Commission about the accomplishment of work tasks in the Programme, and submits a report on the operation during the last year by the end of February next year. According to the Law on Internal Affairs, upon request by the Parliament's Commission, Safety and Counter – Intelligence Service provides for an insight and submits to the Commission the required reports, data and information pertaining to the field of operation by the Commission. The Commission reports on the work performed to the Parliament of the Republic of Macedonia once a year. See: Article 40-42 of the Law on Internal Affairs, Official Gazette of the Republic of Macedonia, no. 92/2009; 35/2010.

51 Ombudsman may start a procedure on his own initiative, in case he founds that citizens' constitutional and civil rights have been violated, or upon application by a citizen. When the Ombudsman finds that constitutional and legal rights of the applicant have been violated or other irregularities may have occurred, he can give recommendations, proposals, opinions and indications of how to eliminate the evident violations, to propose that certain proceedings be instituted anew in compliance with the law, to take initiative to bring disciplinary proceedings against the official or the responsible person, and to lodge an appeal with the competent Public Prosecutor Office to launch a procedure to determine a penal liability. State bodies and agencies are obliged to cooperate with Ombudsman. With the amendment of the Law on Ombudsman of 2009 the competences, work methodology and financial independence of Ombudsman was reinforced. Ombudsman has been appointed to act as the national preventive mechanism against torture.

52 Article 35-36, Law on interception of communications, Official Gazette of the Republic of Macedonia, no. 4/2009.

53 Article 35, Law on Public Prosecution Office, Official Gazette of the RM, no. 150/2007 и 111/2008.

54 Ibid.

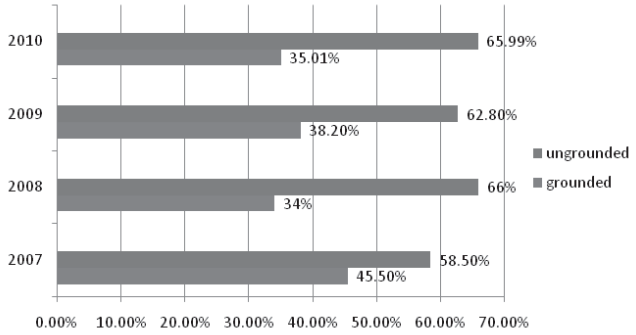
55 European Commission, The Republic of Macedonia 2011 Progress Report, Brussels, SEC (2011) 1203 final, 2011, p. 15.

56 CPT, Report to the Government of the Republic of Macedonia on the visit to the Republic of Macedonia carried out by the CPT from 30 June to 3 July 2008,CPT/Inf (2008) 31, Strasbourg, 2008, p.17.

international standards.[57] At the same time, investigations conducted by Ministry of Interior's SICPS are neither efficient so as to bring about a full establishment of the factual situation and sanctioning of the official persons who have abused their authorization, nor prompt and transparent. Based on the annual reports by Ombudsman of the Republic of Macedonia one can see that the investigations within SICPS are conducted incompletely and to some extent biasedly in favour of police officers;[58]the final position and decision by SICPS is grounded on statements by involved police officers, failing thereby to conduct full investigation by collecting and evaluating relevant material evidence, and taking statements by the witnesses and victims of respective police actions;[59]one can feel the lack of courage inside SICPS when taking the final assessment on the existence of power overstepping;[60] impunity of the fellow police officers and solidarity with them is evident.[61]On the other hand, according to ECtHR the possibility for initiation of disciplinary or internal investigation for alleged maltreatment by the police, could not be considered as efficient legal remedy available for the person who's right has been violated.[62]

If one analysis the SICPS statistics, one can easily notice the relatively high share of applications by physical and legal persons against the Ministry of Interior personnel irregularities that have been rejected as ungrounded. Thus, in 2007 a 58,5 %of total number of applications by physical and legal persons have been rejected as ungrounded by SICPS, in 2008, a 66% of them have been rejected as ungrounded, and in 2009 a 62,8% of total number of applications by physical and legal persons have been rejected as ungrounded by the SICPS.[63]This trend prevails in 2010. Namely, in 2010 65, 99 % of total number of applications by physical and legal persons have been reject as ungrounded by the SICPS[64] (see Graph no.1).

Graph no.1. Application to SICPS against Ministry of Interior personnel irregularities by physical and legal persons, 2007-2010 (grounded and ungrounded).

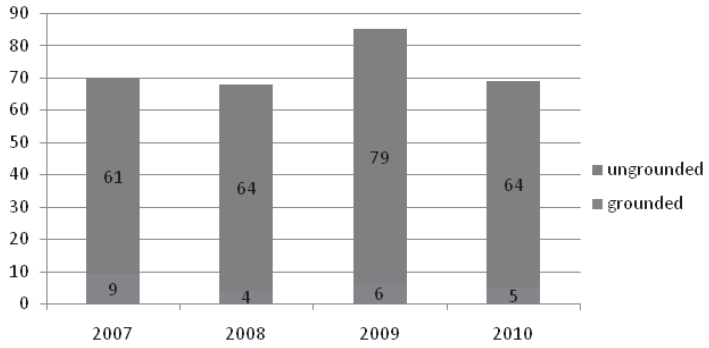


At the same time, the number of cases where SICPS found an unnecessary use of force was distinctly small. In 2007, unreasonable use of force by police officers was

57 In this regard, the CPT concludes that when it comes to investigating allegations of ill-treatment by law enforcement officials, the SICPS cannot be considered as an independent body which is able to carry out prompt, thorough and effective investigations.
58 Republic of Macedonia Ombudsman 2008 Annual Report, p.31.
59 Ibid.
60 Republic of Macedonia Ombudsman 2009 Annual Report, p. 35.
61 Republic of Macedonia Ombudsman 2010 Annual Report 2010, March 2011, p.35.
62 Gordan Kalajdziev et al Proposed Mechanism for Enhancement the System for External Control of the Law Enforcement Bodies, 2007, p.7.
63 Source: MOI, Report on the work of SICPS for 2009, SICPS, no. 12-77,15.01.2010, Skopje; MOI, Report on the work of SICPS for 2008, SICPS, no. 12, 15.01.2009, Skopje; MOI, Report on the work of SICPS for 2010, no.12-254/1, 20.01.2011, Skopje; MOI, Report on the work of SICPS for 2010, no.12-254/1, 20.01.2011, Skopje; MOI, Report on the work of SICPS for 2007, Skopje.
64 MOI, Report on the work of SICPS for 2010, no.12-254/1, 20.01.2011, Skopje.

established in 14.75% of cases (in 9 out of 61 applications), in 2008 unreasonable use of force by police officers was established in 6, 25% of cases (in 4 out of 64 applications), in 2009 in 7, 59 % of cases (in 6 of 79 applications) and in 2010 in 7, 8 % of cases (in 5 of 64 applications) [65]- see Graph 2. This trend prevails at the beginning of 2011. In the first three months of 2011 SICPS acted on 20 applications by citizens about unjustified use of physical force by the police. Ministry of Interior's SICPS found that only in one case (5%) the application was grounded, 16 applications were found ungrounded, and in 3 cases the claims could not be verified (due to lack of evidence) and a special report has been submitted to the Public Prosecutor Office for the information thereof and further proceedings.[66]

Graph no. 2. Applications to SICPS for unreasonable use of force by police officers (grounded and ungrounded) – 2007-201



Specific conclusions concerning the work of SICPS[67] cannot be reached just based on statistics, but it is an indicative fact that in 2009 in all four cases when the Ombudsman requested that proceedings be taken to determine criminal liability against police officers (Public Prosecutor endorsed the requests and submitted requests for conducting an investigation on crime offences against the reported police officers: Torture and other inhumane or humiliating activities and punishment and molesting while performing duty), the Sector failed to find violation of citizens' rights, and the undertaken police actions thereby were assessed to be justified.[68]

Impunity, defensive stance and solidarity with police officers under suspicion of having abused or overstepped their authorizations is also demonstrated by the Public Prosecutor Office [69]and the courts of the Republic of Macedonia.The CPT

65 Source: MOI, Report on the work of SICPS for 2009, SICPS, no. 12-77,15.01.2010, Skopje; MOI, Report on the work of SICPS for 2008, SICPS, no. 12, 15.01.2009, Skopje; MOI, Report on the work of SICPS for 2010, no.12-254/1, 20.01.2011, Skopje; MOI, Report on the work of SICPS for 2010, no.12-254/1, 20.01.2011, Skopje; MOI, Report on the work of SICPS for 2007, Skopje.

66 Ministry of Interior, Quarterly Report on the Operation of the SICPS, 25.04.2011, downloaded from: www.mvr.gov.mk

67 Regarding the work of SICPS the CPT in its last report (2012) to the Government of the Republic of Macedonia acknowledges the investment made by the authorities to improve the effectiveness of the Sector through increasing the professionalism of the staff. However, according to it "despite a more systematic approach towards investigations and the duty to investigate any event within 24 hours, it would seem that the results remain limited". At the same time, the CPT emphasizes that the previous criticism by the CPT relating to the lack of structural independence of the Sector remains pertinent. See: CPT, (2012), Report to the Government of the Republic of Macedonia on the visit to Republic of Macedonia carried out by CPT from 21 September to 1 October 2010, CPT/Inf (2012) 4, p. 14-15.

68 See Republic of Macedonia Ombudsman 2009 Annual Report, p. 35.

69 For example, Ombudsman of the Republic of Macedonia in its 2010 Annual Report observes that "the tendency of absence of punishing and solidarity with police officers was not only found in the course of work of Internal Control and Professional Standards Sector, but unfortunately, in the work of enforcement bodies, courts and public prosecutions, where it was noted that procedures against police officers, as a rule, are endlessly delayed, while priority is given in taking actions upon reports accusing citizens of attacking officers." See: Republic of Macedonia OmbudsmanAnnual Report 2009, p. 35.

is remarkably criticizing the relevant authorities for not undertaking actions on allegations and other information indicative to maltreatment.[70] The CPT concludes that "judges and prosecutors show low interest even when there is undisputable evidence of the maltreatment."[71] Thus, the Ombudsman of the Republic of Macedonia in 2009 Annual Report informs that on two occasions during the year he was forced to intervene with the higher prosecuting instances and to request supervision over the operation of the basic public prosecutor offices against the decisions by the public prosecutors whereby in spite of the presented sizeable evidence the applications for undertaking investigation against police officers have been rejected.[72]In the case *Jasar v Republic of Macedonia* the ECtHR held that there has been a violation of the Article 3 of the ECHR by the Republic of Macedonia on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated by the police.[73]In the judgment the Court particularly criticizes the inefficiency, the inactivity and the delays of the Public Prosecutor. The Court notes that: "*the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant as to the alleged ill-treatment. Indeed, the only investigative measure undertaken by the prosecutor was his request for additional information submitted to the Ministry. This inquiry was made more than a year and a half after the criminal complaint had been lodged. In addition, the inactivity of the public prosecutor prevented the applicant from taking over the investigation as a subsidiary complainant and denied him access to the subsequent proceedings before the court of competent jurisdiction*."[74]In 2007 when the Court passed the verdict, the proceedings in the Republic of Macedonia were still in progress based on the application of 1998 before the competent institutions.

Republic of Macedonia faced the same allegations in front of the European Court of Human Rights in the case *Dzeladinov and others v Republic of Macedonia*. Namely, in this case the applicants claimed that *inter alia* Macedonian prosecuting authorities had failed to take any action to identify the perpetrators or to investigate their allegations of ill-treatment (by the police) and as the public prosecutor had not formally rejected their criminal complaint, they had been prevented to take over the prosecution as subsidiary complainants.[75]The Court took the same position as in the case *Jasar v Republic of Macedonia* and found the violation of the Article 3. It made the similar remarks as in the Jasar case: "*the (public prosecutor) did not take any investigative measures after receiving the criminal complaint, apart from requesting that the Ministry make additional inquiries; He (public prosecutor) took no steps to identify the officers involved in the police raid, nor is there any indication that any witnesses or police officers concerned were questioned about the incident; The public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicants; The addition, the inactivity of the public prosecutor prevented the applicants from taking over the investigation as subsidiary complainants and denied them access to subsequent challenges in the context of the criminal proceedings.*"[76]

Parliamentary oversight of intelligence and counter-intelligence services remains weak.[77]At the same time, the European Commission notes that "the direct in-

70 See: Gordan Kalajdziev et al, op cit., p. 7.
71 Ibid.
72 Republic of Macedonia Ombudsman Annual Report 2009, pp. 35-36.
73 *Jasar v Macedonia*, no. 69908/01, 15 February 2007, available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database
74 Ibid, paras. 58-59.
75 Dzeladinov and others v Republic of Macedonia, no. 13252/02, 10 April 2008, para.58-59.available at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Hudoc/Hudoc+database
76 Ibid, para.72-73.
77 European Commission, The Republic of Macedonia 2011 Progress Report, Brussels, SEC (2011) 1203 final, 2011, p. 6.

volvement of the Minister of Interior in authorizing the use of interceptions remains in place and the Law on Interception of Communications has yet to be amended."[78]

According to Mowbray, "it may, however, be possible for subsequent criminal prosecution against state agents involved in a particular killing to satisfy the necessary elements of public scrutiny/family participation, even when the preliminary investigation did not meet these requirements."[79]However, in the Republic of Macedonia the courts[80]have frequently been criticized for their dependence and inefficiency, especially in proceedings against official persons exercising authority. Once started, proceedings against police officers develop slowly, are constantly delayed, and go on forever, thus contributing to the failure to sanction the police officers for overstepping their powers.[81]Another concerning factor is that the victims give up from the proceedings (further prosecution) against police officers due to fear and pressure.[82]This gives rise to citizens' doubt in the established mechanism for control over the police.

CONCLUSION

The Article 8 of the ECHR enjoins the State not only a negative obligation not to interfere arbitrarily with a person's private and family life, but also a positive obligations inherent in an effective respect for private and family life. Anyway, the state has the legitimate right, in accordance with the law, to interfere in the private life of persons, in order to prevent crime and protect the health and rights of the Others.The State enjoins wide margin of appreciation where the interference with a person's private and family life is in issue. However, in case of conflict, the ECtHR will decide whether there is a reasonable connection between the means used and the legitimate objective that was to be accomplished. A fair balance should be struck between general interest of the community (to prevent crime and protect rights of others) and the requirements of the protection of the individual's fundamental rights (right to respect for private and family life) through the application of the principle of proportionality. As Roagna observes that "in general the Strasbourg case-law emphasizes the urgent need to avoid arbitrary interferences."[83] Therefore, the Contracting Parties to ECHR should provide detailed rules on the application of the measures of secret surveillance which contains safeguards to avoid arbitrary interference or abuse.

The police are granted the authorization to interfere with human rights and people's lives. Therefore, it is necessary to set up an efficient system of internal and external control of the police in order to avoid abuses. The full harmonization of state's provisions regulating the authorization of protectors with the Strasbourg principles is a solid guarantee that they will not arbitrarily interfere with the rights and freedoms of the protected.

Over the last few years the Republic of Macedonia has undertaken a series of steps towards an efficient control over the law enforcement agencies. However, the established control mechanism over the law enforcement agencies in the

78 Ibid, p.67.
79 Alastair Mowbray, The Development of the Positive Obligations under European Convention on Human Rights by the European Court of Human Rights, Hart Publishing, Oxford, Portland, Oregon, 2004, p.39.
80 EC expresses concerns regarding independence of the Macedonian judiciary in its Republic of Macedonia 2010 Progress Report.
81 Republic of Macedonia Ombudsman 2008 Annual Report, p.31.
82 Ibid.
83 Roagna Ivana, Protecting the Right to Respect for Private and Family Life under European Convention on Human Rights, Council of Europe human rights handbook, Council of Europe, Strasbourg, 2012, p. 41.

Republic of Macedonia has not been fully harmonized with international standards. Therefore, the Republic of Macedonia should consider the formation of an independent body for external control of the police with a clear mandate, adequate human and financial resources and precisely defined procedures for cooperation with the police. At the same time, the capacities (technical, financial and human) of Ombudsman and judicial[84] bodies should be strengthened, including by way of training them in the implementation of the Strasbourg standards in their work. Parliament's control over the police should be strengthened. Also, the possibility should be considered to act on the suggestions by the European Commission and thus amend the Law on Interception of Communications in the part referring to the role of the Minister of Interior when authorizing interception of data.

Reinforcement of the established mechanism for control over the police and abandonment of the practices of solidarity and non-sanctioning of police officers shall represent a serious challenge for the Republic of Macedonia in the future. This is in particular so if we know that the ECtHR encourages that the protection of rights and freedoms of citizens under the national law of the state should not only exist in theory, but should above all be efficiently applied in practice.

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UDC 656.1.08(497.7)
656.1.053(497.7)
351.811(497.7)

POLICE-PREVENTIVE ACTIVITIES FOR REDUCING ROAD TRAFFIC DELINQUENCY IN THE REPUBLIC OF MACEDONIA

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Abstract: Traffic delinquency is a mass social and negative phenomenon and tendency, which is manifested through diverse forms of illegal and unethical behaviour of road traffic users, which incurs many and various traffic accidents, whose consequences include the loss of human lives, grave and light body injuries, and massive damage of the property. Therefore, without a doubt, traffic accidents on roads, in modern conditions of life, especially in underdeveloped countries (on the local, national, and global level), pose a serious security and public health problem and special challenge in their modern growth and development.

In this paper, the authors deal with the problems of prevention of traffic delinquency and the role of police in the exercise of preventive-repressive function for the road traffic safety. Police prevention is particularly important and highly influential in the sphere of road traffic, whose role is examined and evaluated by reducing the harmful consequences of road traffic accidents on the lives and health of people and property on the roads. In this regard, it is initially suggested to focus on the basic criminological (aetiological and phenomenological) characteristics of the traffic delinquency, then present some experiences related to the police role under the European action programs for road traffic safety, and finally to present and analyze some experiences of police preventive campaigns which are in the function of road traffic safety in the Republic of Macedonia. The closing part of the paper offers some suggestions and recommendations aimed at promoting preventive police work in the field of road traffic safety.

Key words: road traffic, traffic delinquency, police, prevention, preventive actions (activities), ethics, traffic culture, traffic accident.

INTRODUCTORY REMARKS

Undoubtedly traffic in general and road traffic as a way and style of social and individual life is one of the contemporary challenges of our time. The phenomenon of traffic exceeds the framework of the industry and economy and represents a range of technical inventions of means to meet some existential and broader social, political, economic and cultural needs of man, and manifests as a wide diffusion of technical resources, energy and participation of huge number of heterogeneous actors in it. Among them are developed specific volatile social relations susceptible to rapid changes in the use of too many and varied vehicles and facilities.

Traffic is an existential function of people in today's modern life and extremely important organized social and human activity. It is one of the four existential functions of any living space (work, living, recreation and traffic), whose goal connecting of other functions, through minor negative effects, which in addition to its main goal to connect certain sites, it is important aspect to "trafficking with less negative

effects"[1], too. Today life without traffic is not imagined. However, according to the international statistics it is shown that current development level of traffic negatively affect its security. In the functioning of the road traffic system, numerous and varied range of subjects participating in various properties and activities (as drivers, passengers, pedestrians and others) and they cause certain adverse security situation in road traffic. They usually manifest themselves as different phenomena and situations of threats and hazards (so called antecedents), and because of them as a results are produced accidents (so called consequents).[2] It may be concluded that safety in road traffic is one of the most complex problems in human society and therefore are required continuous efforts by the authorities and stakeholders to reduce the number of accidents and their consequences, and ultimately improve and enhance road traffic safety. Also, police organization, and traffic police as a part of it, must ensure safety of the risk and vulnerable traffic users.[3]

Traffic safety is extremely interdisciplinary area, before which there are numerous and complex tasks of theoretical, phenomenological, etiological, preventive and therapeutic plan. As a scientific discipline - traffic safety through the application of scientific methodology follow, study and explain emergent shapes (phenomenology), the causes, conditions and other factors over which occurring the phenomena of hazards and endangering people and property in traffic, especially traffic accidents (etiology) and the strategy of prevention of traffic accidents and other occurrences that threaten social values in traffic (construction of an effective system of protection), which despite its own results, use also results from other scientific disciplines.[4]

Traffic safety is a state of optimal and normal flow of traffic and the protection of road users as well as material goods by eliminating possible sources of danger or control their preset frames. In terms of accidents, it is characteristic that in the traffic safety literature are dilemmas and debates about the use of terms accidents and crashes.[5] The types of delinquency conditioned using vehicles and non-compliance of traffic regulations, in criminological terms are placed in a special type called traffic delinquency. Modern life requires an ever-increasing mobility, and therefore traffic motorization is becoming an indispensable element of modern life. In a new, steeper lifestyle, it comes with old habits, moral habits, which inevitably lead to social conflicts, and traffic delinquency is one of the examples of such conflicts.[6]

1 Lipovac, K.: Bezbednost saobraćaja, Službeni list SRJ, Beograd, 2008, p. 4

2 Мургоски, Б.: *Етиолошки проблеми при истражувањето на сообраќајните несреќи*, Годишник на Факултетот за безбедност, Скопје, 2010, p. 187

3 Vulnerable road users comprise pedestrians, cyclists and motorised two wheelers. Naturally, each categorisation entails a good degree of arbitrariness. Hence, this basic definition might be seen as too restrictive (insofar as it does not explicitly include other vulnerable road actors such as roller-skaters, wheelchair users, young and elderly car passengers as separate categories) or too wide (insofar as it includes motorised two wheelers, who do not always represent the "vulnerable" party). From Avenoso, A., Beckmann, J., *The Safety of Vulnerable Road Users in the Southern, Eastern and Central European Countries (The "SEC Belt"),* European Transport Safety Council, Brussels, 2005, p. 10, downloaded from http://ec.europa.eu/transport/road-safety_library/publications/sec-safetybelt_safety_vulnerable_road_users.pdf [retrieved on the 25.12.2011]

4 See: *Иниќ*, М, *Безбедност друмског саобраќаја*, друго измењено и допуњено издање, Савремена администрација, Београд, 1987, p. 32-40; Пантазијевиќ, С, *Безбедност друмског саобраќаја*, Виша школа унутрашних послова, Београд, 1994, p. 64-81; Липовац, К., *Безбедност саобраќаја*, Службени лист, СРЈ, Београд, 2008, p. 61-64

5 Murgoski B. distinguishes these two terms and claims that more appropriate is term accident to be defined as "the road crash which involved at least one vehicle in motion and caused minor damage", while the term accident to be defined as "the road accident which involved at least one vehicle in motion and in which one or more persons were killed or injured or has caused great damage". More of this in the scientific paper: Мургоски, Б.: *Некои аспекти за поимите сообраќајна незгода (несреќа) и за криминалистичката обработка,* Научно списание, Битола, бр. 3/2007, p. 59-62;

6 Бошковиќ, М.,: *Криминологија с пенологијом део II, Социјална патологија*, Нови Сад, 2002, p. 163-169

BASIC INDICATORS FOR TRAFFIC DELINQUENCY IN THE REPUBLIC OF MACEDONIA

According to the World Health Organization[7], the state of road traffic safety is particularly difficult and discouraging. The Republic of Macedonia is not excluded from such modern traffic problems, too. The situation with the safety level in road traffic and the accidents number is alarming. Monitoring and analysis of trends in accidents in road trafficking is an important segment of the activities in the field of safety management in road traffic. Thus, in relatively long period of time, it is given opportunity to spot some parameters and characteristics of road traffic safety, with which can assess the effectiveness of current measures, activities and the future state, which means to give a prognosis for the future.

To manage the situation with traffic safety, it is necessary to know the current situation, for defining situation more real and to take measures current situation to come closer to the beloved. The optimal management measures can be reached on the basis of the observations and comprehensive analysis of strategies and programs for traffic safety in developed countries, and the effects of their use in some developing countries and based on own research and experiences.[8] The manner and efficiency of social reaction against traffic delinquency, which are the result of irresponsible human behavior, depend on the degree of social consciousness. In terms of negative phenomena in traffic is still notable lack of social and individual awareness of the greatness of the danger and damage that brings modern traffic with itself.[9] The nature of road traffic is a social activity, which will still occurring accidents and other harmful phenomena, regardless of that will be taken any measures. However, it has to take everything possible to reduce the number of accidents. The measures should include the study of the causes which endanger road traffic.[10]

There are different views[11] in literature for the term traffic delinquency, depending on whether the authors prefer the criterion of variance from criminal or other legal norms. Basically, traffic delinquency covers all types of disrespected the rules of behavior in traffic: offenses as socially dangerous behavior which as a rule cause specific effects (traffic accidents and crashes), offenses as a form of irresponsible, undisciplined and irregular behavior in traffic of the responsible persons; traffic violations as a form of undisciplined behavior that cause abstract danger, like other forms of social behavior of road users that violate the established moral norms of behavior. Traffic accident is an accident on the road in which participated a vehicle in motion and in which one or more persons were killed or injured or has caused material damage[12].

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7 Daily it is estimated that 140.000 people are injured on the roads worldwide, over 3.000 died and 15.000 are disabled for lifetime. Approximately, in one year, about 1.2 million people worldwide die as result of traffic accidents, which represent more than 2.1% of global mortality, which means that 20-50 million people are injured and left handicapped for life. Facts are from World Health Organization: Brochure for World Health Day, 7.04.2004

8 Lipovac, K.: *Bezbednost saobraćaja*, Službeni list SRJ, Beograd, 2008, p. 26-27

9 Šeparović, Z.: *Stradanje u prometu, Sigurnost i odgovornost u saobraćaju,* drugo znatno izmijenjeno i prošireno izdanje knjige, Pravni fakultet – Zagreb, Zagreb-Beograd, 1987, p. 283

10 More on this in: Иниќ, М.: *Безбедност друмског саобраќаја*, Савремена администрација, Београд, 1987, p. 113-123; Јосифовски, Д.: *Сообраќајна психологија*, Авто-мото сојуз на Македонија, Скопје, 2006, p. 167

11 For more see: Milutinovik, M, Kriminologija, Savremena administracija, Beograd, 1969, p. 184-188; Makra, A., Prirucnik, Zagreb, 3/1988, стр. 243-249; Šeparović, Z.: *Stradanje u prometu, Sigurnost i odgovornost u saobraćaju*, drugo znatno izmijenjeno i prošireno izdanje knjige, Pravni fakultet – Zagreb, Zagreb-Beograd, 1987, стр. 283-287; Vodinelik.V, *Sta je predmet prometne kriminalistike*, Priracnik, Kragujevac, 2/1988, стр. 121-123; Арнаудовски, Љ., *Етиологија на сообраќајната делинквенција – за еден пристап коннејзиното проучување*, Скопје, 1998, p. 8

12 Art. 10 item 40, Закон за безбедност на сообраќајот на патиштата, Сл. Весник на РМ бр. 54/07-03.05.2007, 86/08-14.07.2008, 98/08-04.08.2008, 64/09-22.05.2009, 161/09-30.12.2009, 36/11-23.03.2011, 51/11-13.04.2011

Modern road traffic is very dynamic and complex phenomenon in which comes to much conflict situations. To would increase traffic safety, it is necessary to take more measures and activities aimed at eliminating or reducing hazards. The structure of the road traffic system we can observe as the mechanical structure, which consists of the relationship "vehicle - road", and biomechanical structure, which consists of the relationship "man - vehicle - road". Analyzing the possible causes, road traffic can simplify observing the three basic substructures: human, vehicle and road. The danger of occurrence of accidents becomes a function of five factors that make up the composition: human - vehicle - road - traffic on the road-incidental factor. In view of the main factors for traffic accidents in the world today there are different opinions about the percentage of participating individual factors in the occurrence of road traffic accidents. Widespread is the view (most authors) that human misbehavior causes about 85 % of the total number of traffic accidents, while the poor condition of roads, irregularity of vehicles and other factors are represented by about 15 %[13].

Without pretensions of more fully elaborate and processing complex problems and many questions about the factors and causes of accidents (phenomena in general are not subject to our review), here are just trying to give an overview of some of the most important criminological (phenomenological and aetiological) characteristics of the traffic delinquency in the Republic of Macedonia, which are of importance for criminology and criminal policy in traffic. Instead of the causes of the traffic accidents or traffic delinquency, we think that is right to talk about factors for traffic safety. The following notes will present some basic indicators of the perpetrators of the traffic crimes an their representation in the overall structure of crime, then the scope, dynamics, structure and causes of traffic accidents.

Table 1. Comparative review of reported, accused, and convicted adult perpetrators for total crime and for crimes against traffic safety (CATS) in the Republic of Macedonia in the period 2004-2009[14]

		2004	2005	2006	2007	2008	2009	ALL	
reported	Total	22.591	23.814	23.514	23.305	26.409	30.404	150.037	
	CATS	2.299	2.477	2.667	3.174	3.167	3.064	16.848	11 %
accused	Total	9.916	10.639	11.317	11.648	11.310	11.905	66.735	
	CATS	1.498	1.458	1.712	1.908	1.998	2.030	10.604	16 %
convicted	Total	8.097	8.845	9.280	9.639	9.503	9.801	55.165	
	CATS	1.348	1.306	1.572	1.753	1.885	1.903	9.767	18 %

Table 1 gives a comparative overview of reported, accused and convicted adults for total crime and crimes against traffic safety (CATS) in the Republic of Macedonia in the period 2004-2009. From the accompanying statistics we can conclude that reported adult perpetrators for CATS represent 11 % of total reported perpetrators of all crimes, the accused adult perpetrators for CATS represent 16 % of total accused perpetrators of all crimes and convicted adult perpetrators for CATS represent 18 % of total convicted perpetrators of all crimes.

Table 2 provides review of accidents and casualties by them in the Republic of Macedonia in the period 2005-2010. During the six-year period which is analyzed in this paper, there are total 23,153 traffic accidents. It is noted a steady increase in the number of accidents, and after 2007 their number is constantly over 4.000. The number of dead people in them ranges from 140 to 173, and the number of seriously and slightly injured persons especially after 2007 consistently exceeds 6.000.

13 According to: Rotim, F: *Elementi sigurnosti cestovnog prometa - ekspertize saobracajnih nezgoda*, Svezak 1, Zagreb, 1990, p. 2-5

14 Statistic data are listed from: Државен завод за статистика на Република Македонија, Статистички преглед: транспорт, туризам и други услуги, Транспорт и други комуникации, Скопје, 2005-2010

Table 2. Review of road accidents and road accident casualties in the Republic of Macedonia in the period 2005-2010[15]

		2005	2006	2007	2008	2009	2010	ALL
road traffic accidents		2.821	3.313	4.037	4.403	4.353	4.226	23.153
road accident casualties	killed	143	140	173	162	160	162	940
	seriously and slightly injured	4.176	4.936	6.133	6.724	6.731	6.375	35.075
all road accident casualties		4.319	5.076	6.306	6.886	6.891	6.537	36.015

The total number of victims in road accidents was 36.015 people, from which 35.075 persons (or 97.4 %) are seriously and slightly injured and 940 persons (or 2.6 %) died. From the total number of killed persons during the analyzed period each year approximately 5 % were children (persons under 14 years of age). Regarding the structure of killed people in accidents, the most numerous category are car drivers and their passengers, followed by pedestrians and drivers of bicycles, motor bikes and motorcycles, and much less drivers of freight cars, tractors and so on. The distribution is similar for the seriously and slightly injured persons in road accidents. Indeed, this distribution is expected, according to numerical representation of these road traffic users. Otherwise, most casualties are from traffic accidents caused by mutual collisions of vehicles in motion, followed by accidents caused by overthrow or trampling of pedestrians, cars thrown off the road, collision on the road building, collision in a stopped vehicle or when turning the vehicle off the road.

Table 3. Causes of road traffic accidents in the Republic of Macedonia in the period 2005-2010[16]

		2005	2006	2007	2008	2009	2010	TOTAL	
								ALL	%
speeding		990	1.124	1.431	1.461	1.238	1.219	7.463	40.6
violation of rules of priority of passage		419	578	653	757	746	745	3.898	21.2
driving under the influence of alcohol		143	102	140	133	155	132	805	4.4
wrong side and direction of movement		231	295	342	423	467	492	2.250	12.2
improperly movement and turning		297	380	468	539	580	511	2.775	15.1
illegal overtaking		158	175	219	231	206	201	1.190	6.5
TOTAL	ALL	2.238	2.654	3.253	3.544	3.392	3.300	18.381	
	%	12.2	14.3	17.7	19.3	18.5	18		100

Table 3 gives reasons for accidents in the Republic of Macedonia in the period 2005-2010. The main cause of accidents, according to data for six year analyzed period of time is speeding on roads (40.6 %), followed by disobeying the rules of priority in passing (21.2 %), improperly movement and turning (15.1 %) wrong side and direction of movement (12.2 %), illegal overtaking (6.5 %) and driving under the influence of alcohol (4.4 %). The distribution of accidents by liability factor, looks like this: the most responsible for accidents are drivers, followed by pedestrians and negligible accountability have vehicles, roads and other passengers, which confirms the conclusion that the most responsible for accidents is the subjective factor – the man.

15 Statistic data are listed from: Државен завод за статистика на Република Македонија, Статистички преглед: транспорт, туризам и други услуги, Транспорт и други комуникации, Скопје, 2006-2010

16 Information are downloaded from the official web site of the Ministry of interior of the Republic of Macedonia http://www.moi.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=387 [retrieved on the 25.12.2011]

The data clearly indicate the alert and the unfavorable worrying situation and negative trends in un/safety in road traffic. This implies the need for additional enhanced engagement, profound interdisciplinary research on the traffic factors and more effective coordination of all authorities, institutions and entities involved and responsible in implementing the National Strategy for improving traffic safety on roads in the Republic of Macedonia for the period 2009-2014. In this context, the Ministry of Interior and special - traffic police as a professional entity in the police organization for traffic safety, in turn, based on thorough analysis of the phenomenological and etiological characteristics of traffic offenses, we think that should work continuously on problems related to prevention (education, campaigns, etc.), but also effective repression to the causes of the hardest types of traffic violations. In this sense it is necessary to increase the intensity of the control on roads for a place and time in order for effective prevention and repression of traffic offenders. On that way it could be achieved positive and larger effects in the field of special and general prevention among road traffic users, improving traffic discipline, awareness, and responsibility for developing traffic culture in general.

Criminological (phenomenological and etiological) researches of traffic delinquency and the results of law enforcement processing the scene and through forensic investigations, because of the multifactor influence in the actual accident indicate the complex interaction and the need for special competence in clarifying of their causality. Indeed, determining the roots, the immediate determinate factors, causal complex, structure, and causal relationship, the legality of the actions of numerous factors that contribute to the occurrence of accidents as individual and mass phenomena, their nature, and their etiologic relationship is very complex work. Due to the numerous multifactor influences the occurrence of traffic accidents, proper research, clarity and presentation of objective truth (and thus determine the (non) responsibility to the competent judicial authorities) could only be reached only through multidisciplinary approaches from different scientific disciplines (in natural, social and technical sciences) and applying modern technical achievements. To the valid answers can be come only on the basis of results from different scientific disciplines, and above all, sociology, psychology, physiology, law, technology, economics, medicine, physics and others.

POLICE PREVENTION AND ROAD TRAFFIC SAFETY

Crime prevention is a system of measures and activities aimed at removing all direct, objective and subjective conditions and circumstances that enable the creation and execution of crime.[17] The preventive measures are measures of authorities and other bodies, aimed at preventing negative social phenomena or prohibited consequences and the creation of conditions to avoid such occurrences and consequences. There is a whole range of preventive measures.[18] All works performed by the law enforcement agencies have preventive-propaganda purposes.[19] For example, direct traffic control, detection and sanctioning of violations affect preventive and contribute to improving the attitudes and behaviours of road traffic users. The most important preventive propaganda work in road traffic safety in the competence of

17 Алексић, Ж., Шкулић, М., Жарковић, М.: *Лексикон криминалистике,* Београд, 2004, p. 246-247

18 The preventive measures have an important role in the road traffic safety. They are: educational measures and traffic education for children, youth and adults, health selection, training of drivers of motor vehicles and driving test, control and regulation of public transport, media, activities of Auto-Moto Association and the Association of drivers, the technical correctness of the vehicle, the regulations in the field of traffic safety, scientific research, as well as construction and maintenance of the road network etc.

19 Lipovac, K.: *Bezbednost saobraćaja*, Službeni list SRJ, Beograd, 2008, p. 313

Ministry of interior are:

- Recording and monitoring features for traffic safety,
- Informing the citizens about the state of traffic safety,
- Assistance and support to other entities in traffic,
- Participation in preparing a strategy for traffic safety,
- Realization of special programs for risk and vulnerable groups,
- Participation in traffic education,
- Assistance and participation in campaigns for traffic safety and
- Other preventive propaganda work in traffic safety.

The main objective[20] of traffic regulation enforcement is road safety – achieved by deterring road users from committing offences which are related to road crashes and injuries. It is not to maximise the number of infringement notices issued. Many enforcement activities are still too often directed towards detecting and apprehending the offending driver. Police activities should primarily serve as deterrence for drivers inclined to commit traffic offences through increasing road users' perception of the risk of being caught. Consistent deterrence strategies, which typically comprise highly visible police or camera activity can bring about lasting changes in road user behaviour and, as a consequence, changes in road users' attitudes which reinforce these behavioural changes.

Preventive supervision over compliance with the regulations by the police is reflected by the control and regulation of traffic that is striving to create better and safer environment for all road users. The main objective of control is to keep driver's behavior in certain normative and permitted frameworks. With the traffic development, the need for wider engagement and the specific tasks within the state bodies and law enforcement agencies are set up special units of the traffic police. Traffic control is a very complex measure, primarily because of the delicacy of powers, delicate and quite heavy restrictions and prohibition of traffic users, delicate sanctions, as well as complex conditions in which is carried out repression that could affect traffic safety situation and the personal goods of the traffic users. Moreover, traffic control is very expensive measure for engagement because of a large number of people and expensive equipment. Therefore, control holders have the responsibility and complex tasks and need to exercise activity in complex environments.

The road traffic control[21] is specifically organized function within the organs of internal affairs and has held the police. Its main goal is to ensure smooth and safe flow of traffic through regular activities. Regular tasks in the road traffic control by police regarding the following aspects:

- To ensure compliance with traffic regulations by all road traffic users;
- To identify and prevent hazards and dangers for traffic safety;
- To provide a necessary order, smooth and safe flow of traffic;
- To warn regularly road traffic users of the dangers threatening the road, and the prohibitions;
- Within the possibilities and allowed, to indicate comprehensive assistance to road traffic users;
- Regularly monitors the situation on the road, road signs and road facilities, and for the observed defects, to inform the relevant factors with a request for their removal;

20 More of this in: European Transport Safety Council: *Police enforcement strategies to reduce traffic casualties in Europe,* Brussels, 1999, p. 5-6, downloaded from http://www.etsc.eu/oldsite/rep_road3.htm [retrieved 20.12.2011]

21 Мургоски, Б.: *Полицијата и безбедноста во сообраќајот*, Факултет за безбедност, Скопје, 2003, p. 81

- In case of accidents takes necessary measures for providing onsite and for short time traffic normalization, and according to the powers performs onsite inspections, too;
- On the specially dangerous places on the road that occur suddenly (landslides, heavy coats, snow avalanches and tributes, scrolling, damage to buildings on the road, etc.) undertakes special safety measures, traffic regulation and elimination of hazards;
- Sees the specific events, phenomena and problems related to traffic safety, for which informs the relevant factors with proposed measures;
- To detect and prevents violations and traffic offenses, takes adequate measures against perpetrators, finding and catching them if they were unknown at the moment, and then coordinates and cooperates with various organizations and individuals;
- Through the available funds for connection, it has to be constantly connected to the duty station unit, for receiving specific tasks and information, and
- Performs other tasks in the domain of bodies of internal affairs.

It is very important optimal coverage of roads with police patrols, and is essential issue for comprehensive, temporal and spatial targeting of control, its targeting of the essential problems of traffic delinquency because of achieving the better results. Police patrol should take those activities, which in terms of traffic safety are most needed. Patrols of the traffic police to ensure smooth and safe flow of traffic must follow the condition of the road, to assess and take what the actual situation is most needed. Experience has shown that the presence of increased number of traffic police patrols, especially at critical times and critical areas, significantly affect the reduction in the number of traffic accidents. The presence of traffic police patrols on the road, the driver leaves the impression that they aren't left to themselves at the mercy of the possible troubles that may be experienced on the road. The results of the traffic patrol work should not be considered through a number of imposed fines and misdemeanor charges or requests for initiation of criminal proceedings. Priority should be given to prevention because with the indication of certain defects or advices have achieved very good results in terms of imposition of fines as repressive measures.[22]

National strategy is the first strategy for improving traffic safety on roads in the Republic of Macedonia and it should contribute to safer road traffic in the period 2009 - 2014. The main objective of the Strategy is the number of deaths in road traffic in the Republic of Macedonia until 2014 to reduce by 50 % and 0 (zero) children - victims involved in road traffic (forecast made following the plans and acts of the European Union).[23] The National Strategy provides proposed solutions to achieve the main goal. Measures related to preventive police action aimed at increasing road safety related to the number of controls for exceeding the speed and respecting the red light at intersections, reduce accidents and their consequences from participation in traffic under the influence of alcohol, drugs and other psychotropic substances through the action of traffic police, control of using safety belts, fully respect the legislation by all road traffic users by improving efficiency in the work of traffic police and administrative authorities in it etc.

Road traffic control and regulation, and control of vehicles and drivers on the roads in the Republic of Macedonia, are made by members of the Ministry of In-

22 more of this in: Кораћ, Х., Ивановић Р. А., Беговић, А.: *Превенција криминалитета*, Универзитет у Новом Пазару, Београд, 2010, p. 86-87

23 Национална стратегија на Република Македонија за унапредување на безбедноста на сообраќајот на патиштата 2009–2014, Скопје, 2008, p. 21

terior of the Republic of Macedonia.[24] Road traffic regulation and control are one of the actions of police officers which under the Police law are designated as police activities.[25] The police officers in performing their work have been given authorization for diversion, directing or restricting the movement of vehicles on a particular space for necessarily time.[26]

Traffic regulation enforcement[27] has mostly concentrated to date on the important problems of speeding, alcohol impairment, and failure to use seat belts. At the same time, there are other important offences in road safety terms which have yet to be included as priority areas in police work. For example, errors in overtaking or overtaking offences result in very serious crashes. Failure to observe red lights or pedestrian lights is a major safety issue in urban areas. Maintaining short distances (tailgating) substantially increases the risk of rear-end collision. All these types of behaviour appear disproportionately risky but are rarely the target of systematic enforcement. Aggressive driving is a major source of irritation amongst road users. Only when the scope of enforcement is widened to include these offences will the road user be made aware that it not acceptable to violate regulations whatever they concern.

In today's modern living, in which computer equipment and modern technological innovations are applied in all areas, their development must be monitored and they should be introduced, to facilitate and improve the life processes and safety of human existence. New technology for automatic detection[28], if is introduced as a component of the changed security policy can dramatically reduce the damage in traffic. It offers a way to avoid the shortcomings of traditional coercion and can produce large reductions in damages, but only if is introduced in a way that the public approves and supports. New technologies include photo-radar and cameras to record the passage of red light, include photographs of vehicles that violate the speed limit or red light. Registered vehicle owners, who are photographed during the offense, automatic demerit ticket bill in their mailbox.

POLICE CAMPAIGN AS A PREVENTIVE MEASURE AND THEIR BENEFITS

In the following section of the paper is an overview of police preventive activities undertaken in the previous 5 years in the Republic of Macedonia[29], in the form of campaigns[30], projects, briefings, publications, reports, analysis, tips, and other specific measures.

- "Wear a seat belt" - Campaign for traffic safety - through video;
- Campaign " Switch on the Light" - through posters, billboards and TV presentations;

24 art. 5.1, Закон за безбедност на сообраќајот на патиштата, Сл. Весник на РМ бр. 54/07-03.05.2007, 86/08-14.07.2008, 98/08-04.08.2008, 64/09-22.05.2009, 161/09-30.12.2009, 36/11-23.03.2011, 51/11-13.04.2011

25 art. 5.1.5, Закон за полиција, Сл. Весник на РМ бр. 114/06-03.11.2006, 6/09-15.01.2009

26 art. 28.1.7, Закон за полиција, Сл. Весник на РМ бр. 114/06-03.11.2006, 6/09-15.01.2009

27 European Transport Safety Council: Police enforcement strategies to reduce traffic casualties in Europe, Brussels, 1999, p. 9, downloaded from http://www.etsc.eu/oldsite/rep_road3.htm [retrieved 20.12.2011]

28 It is developed a number of automated enforcement technologies that are used in many countries in Europe and other continents (North America, New Zealand, and Australia). More of this technologies in: Бомбол, К.: *Превенција на сообраќајните незгоди*, Предавања, Технички Факултет, Битола, 2009, p. 157, 158, 162

29 Police preventive activities are listed according to the official web site of the Ministry of interior of the Republic of Macedonia www.moi.gov.mk

30 The campaign is defined as a coordinated system of measures and activities with predetermined duration, which affects a particular group of people to meet the predefined task. Campaign in road traffic safety is a system of activities whose general objective is to promote safer use of roads. Specific objectives of the campaign in traffic safety are related to changing knowledge, attitudes, skills and attitudes in traffic, and everything in order to promote traffic safety. According to Lipovac, K.: Bezbednost saobraćaja, Službeni list SRJ, Beograd, 2008, p. 318

- Campaign "Three basic rules for safe driving" (campaign mainly aimed at foreign nationals).
- Use safety belts;
- Turn on the lights (even in daylight);
- Do not use mobile phones (hands-free devices are not allowed).

Campaign "Against the use of mobile phones while driving a motor vehicle". Its main motto is: You have 2500 reasons... not to phone while driving;

Campaign for the "Use of safety belts" with a motto "Use belts - just a single click protects your life – Just click";

Project "Action for safer pedestrians in traffic" realized in the period September-October 2009 by the Skopje police stations in the city supported by the OSCE mission in the Republic of Macedonia. The project was implemented in two phases. In the first phase, which took place in the course of one month, there was distribution of propaganda material on reckless pedestrians and drivers who do not yield advantage on the marked pedestrian crossing. In the second phase there was zero tolerance, and the punishment of all drivers and pedestrians who do not respect the law;

Campaign "Summer guide for radars" - realized in the month of June 2010. Through the cooperation of the Ministry of Interior of the Republic of Macedonia with the newspapers, a map of the Republic of Macedonia was printed, especially marking the places on the roads subject to the radar control. Within this campaign, along with maps for radars, advice was given with respect to the sign "80" on highways, the fine amount for refusing alcotest, advice that on the highway you may only be stopped by police cars with blue squares that are part of highway traffic unit of Ministry of Interior of the Republic of Macedonia and other useful information.

The Ministry of Interior of the Republic of Macedonia, as of recent, pays special attention to informing the public through modern means of communication, primarily the Internet and computer technology. As an illustration, we can offer the following list of published information, reports, analysis, tips, and other articles on the official website of the Ministry of Interior of the Republic of Macedonia:

- Information about the locations where is used instrument for measuring the speed – radar;
- Integral version of the Rules for mandatory equipment;
- Practical advice and warnings for drivers;
- Comparative analysis of traffic rules and permitted amount of alcohol in the EU from 1990 until present;
- Comparative analysis of traffic rules, maximum speed, use of lights and cell phone on the road throughout Europe;
- Amendments to the Law on safety in road traffic;
- Review of tunnels on the main and regional roads.

POLICE ROLE UNDER THE EUROPEAN ACTION PROGRAMS FOR ROAD TRAFFIC SAFETY

European action program for road traffic safety[31] describes the current situation, too, facing challenges and directions of action of the European Union. It contains a detailed list of approximately 60 specific measures for improving traffic safety. With EU enlargement appeared additional challenges for traffic safety (bigger population, increasing number of vehicles, hence, the risk factors of exposure are higher). Therefore, it is necessary in future of carefully monitoring the situation and perhaps to take drastic measures to avoid the number of potential victims. The main objective of European transport policy which was to halve the number of killed people by 2010 was introduced in the National Strategy for improving traffic safety on roads in the Republic of Macedonia for the period 2009-2014. EC and Macedonian authorities are very aware that this goal means giving very high priority to the application of efficient measures at national and local level.

The growing role of the police and improved implementation of regulation and preventive measures provides greater benefits. While traffic regulation enforcement is a matter for Member States, the EU can play an important role in its road safety programme in encouraging information exchange on effective strategies, disseminating research-based information in EU programmes, and carrying out new research. The following recommendations[32] for effective traffic law enforcement in EU countries are made, in particular, for action by those responsible for defining, promoting and implementing enforcement strategy at local, national and EU levels.

- On the basis of detailed crash data analysis, set specific targets nationally for compliance with key traffic offences which influence road safety levels – the arrangements for doing so will vary from country to another. These targets specify the offences to be enforced and the acceptable compliance level for each offence after enforcement in quantitative terms (for example, 95 per cent seat belt use). These offences include, as a minimum, the general target behaviours (speed, drinking-driving, and seat belt use) but also other safety-relevant offences relevant for the country.
- For each offence, integrate police enforcement activities into the national traffic safety policy relevant to that offence, at least including publicity activities.
- In each country formulate for each offence, effective and feasible police enforcement strategies. These strategies should take into account the results achieved in experimental or demonstration projects carried out elsewhere, specify the means and methods of police enforcement and specify the allocation of resources. Increase effectiveness of detection by allowing random breath testing and camera evidence for offences such as speeding, red light violations and tailgating.

Develop information and training resources in order to increase awareness and competence of police enforcement staff.

Obtain explicit agreements between the various actors (legislators, police, and prosecuting bodies) about the consequences that follow detection of offenders.

As part of the EU road safety information system, communicate the results of specific demonstration projects amongst policymakers and police.

31 More of this in: European Commission: White paper, European transport policy for 2010: Time to decide, Brussels, 2001

32 European Transport Safety Council: Police enforcement strategies to reduce traffic casualties in Europe, Brussels, 1999, p. 9-10, downloaded from http://www.etsc.eu/oldsite/rep_road3.htm [retrieved 20.12.2011]

Encourage and support the establishment of an effective network of traffic police in Europe, as part of the Fifth Framework Programme, set up an EU-wide monitoring project to allow objective comparison of the incidence of specific offences and the incidence of crashes related to these offences.

When there is more police on the roads, more preventive activities and initiatives by the police, and also better enforcement – there will be more benefits of it. Here are some examples[33] from the developed countries:

In 2001 France had one of the worst road safety records in Europe, but following the adoption of a 'zero tolerance' policy over speeding offences and substantial investment in safety cameras and road traffic policing, deaths dropped by 43 % between 2001 and 2007. One survey from 2004 found that 45 % of French drivers said that they had altered their driving behaviour due to 'fear of punishment' ('la peur de la sanction'), while 37 % said they had done so due to 'better awareness of risk' ('la prise de conscience').

In Victoria, Australia the Arrive Alive! strategy led to significant decreases in average speeds and a 16 % reduction in fatalities. A lower degree of tolerance for speeding offences and an emphasis on enforcement were major tactics.

Research for the former Scottish Office found that "consideration of the costs and benefits of complying with the law" affected how frequently motorists engaged in anti-social behaviour such as excessive speeding.

The Government's report New Directions in Speed Management notes that the introduction of 30 kph speed limits in Graz, Austria was met with strong public approval, yet speeds crept back to former levels when police enforcement was relaxed.

The Transport Select Committee's 2003 report on its inquiry into traffic law and enforcement noted that "Reductions in traffic law enforcement by the police appear to be linked to the number of road casualties". The Committee cited a comparative study of road safety in Sweden, the UK and the Netherlands10, which found that the effectiveness of drink driving deterrents "depend more on the level of enforcement than on the actual value of the limit". The Committee also cited evidence (from the Government's 2003 review of its Road Safety Strategy) of a strong correlation between a decrease in the numbers of breath tests and an increase in casualties involving drink-driving between 1998 and 2002. The percentage of positive breath-tests rose from 13 %, to 16 % over the same period. Thus one of the Committee's recommendations was: "Roads policing must be one of the strategic priorities of police work, otherwise it will not be properly valued and resourced".

CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

For the future police organization and realization of preventive interventions, despite the stated assumptions and contradictions that must be faced with, it remains one another serious problem. Towards the prevention and eradication of social pathology and criminality, according to the views of contemporary criminal policy must be approached very organized, conscientious and with sufficient knowledge of the situation and its possible changes. Main strong holder in that is a science, which is supplemented with practical knowledge and experience. Depend-

33 Examples are from: The UK's national cyclists' organization: CTC, Campaigns Briefing: Traffic Policing /Other Enforcement Agencies, *Traffic Police and other enforcement agencies,* p. 3, downloaded from http://www.ctc.org.uk/resources/Campaigns/10_Traffic-Policing_brf.pdf [retrieved 25.12.2011]

ing on the identified causes and conditions, the behavior of individual phenomena and their properties, it is needed systematic search for the most appropriate solutions which include broad based measures and means of intervention.

For further improve of traffic safety we think that is essential continually strengthen and promote the partnership between public, private, governmental and NGO sector. Traffic safety should be a political priority. It has to appoint a lead agency for road traffic safety, to provide funds and required accountability of it. Goals which are set in the National Strategy of the Republic of Macedonia through the coordinated and synchronized measures and actions by all relevant stakeholders should be consistently implemented. It should established mechanisms that promote a multidisciplinary approach to road traffic safety and scientific expert recommendations adequately and continuously to be incorporated into strategic measures and activities to promote traffic safety.

We think that prevention of social negative phenomena is the best policy trends in society: as in medicine - and here may be applied principle that is more rational to prevent than to cure. In general, measures and actions should be focused and intensified in the following contents:

1. Prevention of traffic delinquency as a negative phenomenon of social indiscipline in traffic, with specific means of prevention and repression and
2. Traffic accidents prevention, as a general policy of maintaining the traffic safety – security on various ways.

Every measure and action to prevent accidents and traffic offenses must be based on founded knowledge, accurately diagnosed conditions and clearly differentiated conditions in which these phenomena occur, as an important prerequisite for effective social response.

In the development and implementation of criminal-politics conception in terms of traffic delinquency, special attention takes the role of public opinion. The methods and effectiveness of social reaction against traffic crime depends on the level of social consciousness. In terms of negative phenomena in traffic, it is still significantly underdeveloped social and individual awareness and responsibility for the size of the dangers and damages adopted by modern traffic. Because of it, it is needed a more complete engagement in society for awareness and referral to the public as a whole and individuals as complicit in traffic that technique applied in traffic is not just a set of machines, but beyond the technical facilities stand people.

Problems regarding the safety of persons and property in road traffic largely need to be actualize in the scientific and wider public, because of the social-economic damages which arising from them. More obvious is the need for taking concrete measures through the adoption of programs and strategies for managing road traffic safety. However, if the road traffic users are not aware and responsible for security, such activities can not be useful. So, in parallel with the development of road traffic, which lately has been especially rapid, due to the technological advances, it is need increased grow of a sense of responsibility to the community and the relevant state institutions and organs. Namely, many traffic offenses and accidents would not occurred if the participants in traffic would be more responsible.

Traffic Police, in turn, as a professional entity of the police and organization in the function of the traffic safety in the future will need to intensify its preventive-repressive measures and activities aimed at preventing severe types of traffic violations and improve traffic discipline among road traffic users. Along with other authorities and stakeholders it has to constantly worries and provides conditions for more organized operation of road traffic and achieve greater effects on the pro-

tection of citizens and material values in traffic. In the following period, through regular and continuous exchange of ideas, comparative experience and expertise by the traffic police achieving its security mission would have to give its contribution to the qualitative improvement of road traffic safety and achieving better safety effects in the traffic delinquency prevention.

The tasks of the road traffic police units would be:

- To collect data using a questionnaire on traffic accidents and additional questionnaires for different groups of participants in accidents or special traffic situations (additional questionnaires and programs for collecting data, preparing a working group of the National Council for Road Traffic Safety, educating police officers and dissemination of information to the representatives of scientific institutions), bound on the National Council for Road Traffic Safety – and its regular working group, to submit weekly reports which settled on the daily reports of their observations and opinions, to analyse and performs all other works by monitoring road traffic and accidents, as a basis for elaboration of the program and collating and analysing the feedback received from other carriers on prevention, and make special reports;
- Regular weekly to submit requests to the service for road maintenance for removal of deficiencies (in cases of larger defects and enhanced intensity of endangering traffic, therefore, the request shall be submitted without delay);
- Twice a month and more often as necessary, arrange meetings with representatives of labour organizations to maintain the roads, driving schools, the Internal Control and health institutions, aimed at exchanging experiences and mutual harmonization of activities. Also it is needed to be in permanent connection with inspection services, which also organizes meetings and agreements in connection with work; properly cooperate with the department for maintain the roads to the review and renewal plans of road signs in order to give the place that belongs to it to become a reliable supporter to the proper behaviour of the road traffic users;
- Bound to provide control over traffic density that complies with the requirements of traffic flows daily, achieving the highest degree of mobility control, to regulate control of the traffic users and greater attention given to frequent infringements and violations of special social danger, greater extent control by unmarked vehicles, which opens a comprehensive insight into the situation of traffic safety;
- In cases of accidents due to provide fast protection of onsite and during collecting data if do investigation, must respect the requirements of prevention, which are closely interconnected with the requirements of repression;
- Punitive interventions direct them towards the goal, most offenders of all groups of participants to be discovered and to apply to them appropriate measures. The punitive and protective measures of prohibition driving vehicle and license issuing remain as strictly and utterly means of intervention, mainly in socially dangerous behaviours. More attention here is paid to other measures that should be applied more often. Among them are: reminders, sharing appropriate leaflets and brochures, mandatory attendance of lectures and film performances in some time periods that will assess the need, mandatory participation in educational activities during the weekly rest, to use the system of penal points etc;
- Administrative Office of Traffic Safety is also the only centre for collecting and processing the return and all other information and general monitoring of phenomena.

Observed from the standpoint of combating and prevention of harmful occurrences in traffic, the shortest review looks like this: no balanced systematic, educational processes which covering all participants, lacking examples of desirable behavior as an incentive for the formation of ethical attitudes, widespread enjoyment of alcohol does not prevent, but suppress with retribution, that is certainly very wrong view of things, and they should come to full expression, but here they are almost unknown value (safety measures are in fact penalties, very useful system of penal points is not yet fully resurgent, nor special measures to recidivists) and the like. So inseparable part of the changes related to the revival of a well organized and consistently implemented preventive programs would have to be a changing of attitudes and relations towards scientific research and its results. Immediate policy holders of preventive programs should be all councils and committees for traffic safety, office for traffic safety under the Ministry of Interior (traffic police), all preschool and school institutions which in their education programs have a traffic education, driving schools, medical facilities authorized for regular health control examinations and toxicological analyzes, specialized organizations (Auto-Moto Association, Associations of drivers), the media and all organizations that work on maintain the road network, organizations that provide services to drivers on the road network, organizations that provide services to drivers of motor vehicles - perform technical reviews, organizations which are specialize in trade in vehicles and spare parts; market and other inspections, courts and public prosecutors and local communities with their internal organization. That means it is needed a wider social action in which there is involvement and mutual cooperation, coordination and responsibility of more social entities, authorities, agencies and institutions.

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UDC 351.741

POLICE ORGANISATION IN THE WORK OF ARCHIBALD REISS[1]

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Abstract: A century ago, in his study on police, Reiss dealt with a number of primarily organisational issues concerning the policing profession. After analysing the Principles of Modern Police, the same authors show, by way of analysis and synthesis, the scientific foundation of Reiss's views presented in his Contribution to the Reorganisation of the Police. They also point to the relationship between police and politics, i.e. the misuse of police in politics. The paper specially analyses the organisation of criminal police (criminal investigation police) and order police (uniformed police) and their relationship, and, proceeding from organisational law provisions, the state and local police and their relationship. Due to changes in the concept of criminal investigation, the issue of education of judicial and the like police has again become relevant in our country, which would, in the opinion of these authors, affect the unity of police action and its functional unity and by no means be suitable for our conditions. Combining traditional and modern solutions and recognising the particularities of the police is necessary and effective in the process of organising the policing activity in any country, including the Republic of Serbia.

Key words: police organisation; internal organisation of the police; criminal police; uniformed police; interactions between police forces.

INTRODUCTION

The organisation of the police within the state, as well as its internal organisation (structure), is the most immediate prerequisite for the effectiveness of police organisations. Both the efficiency and effectiveness of providing security and the legal (lawful and proper) discharge of police functions in a modern state depend on the applied model for police organisation. In addition, as a general rule, there is neither best 'organisational model', nor equal police organisational models across countries, although there are great similarities. Hence, the policing organisation has constantly been re-examined and adapted to new challenges (organisation – a process) in accordance with modern theoretical and empirical developments. In organising the police, the most significant solutions from the general theory of organisation and the management science, both of which are abound with a multitude of principles, have been applied; but police organisation, by the nature of its activity, also has a number of unique characteristics in relation to other administrative organisations. On the other hand, police organisation is inevitably regulated by law – usually a special legal regime in relation to the "rest of the administration". Since

1 This paper is the result of the realisation of the Scientific Research Project entitled 'Development of Institutional Capacities, Standards and Procedures for Fighting Organised Crime and Terrorism in Climate of International Integrations'. The Project is financed by the Ministry of Education and Science of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011-2014).

the police are a constitute part of the executive power of the state, in the organisation of the latter based on the principle of power separation, their organisation at the state level is regulated by the legislative branch (law), in accordance with the Constitution, and more closely specified by the executive branch (government), as a rule - through a regulation. Finally, being an 'internal matter', its internal structure is regulated in most detail by an internal act of internal organisation (a Rulebook). However, the creation of a necessary legal framework for police organisation is preceded by expert and technical organisation of police functions and duties. Some of the issues of police organisation, proceeding principally from the variety of types of police (criminal police, order police (uniformed), municipal police, political police), were dealt with by R.A. Reiss, among other authors, in his work 'Principles of Modern Police' (1915), and a paper entitled 'A Contribution to the Reorganisation of the Police', translation of which from French into Serbian was published in Serbia in 1920. After analysing the 'Principles of Modern Police'[2], the same authors have undertaken to analyse the 'Contribution to the Reorganisation of the Police', with a view to summarising Reiss's most important standpoints on the issues of police organisation. Most of Reiss's views on major issues of police organisation deserve attention even today, a century after they emerged for the first time. His most significant stances concerning police organisation within a state, internal structure of the police and cooperation relationship of police forces have confirmed this.

ANALYSIS OF THE CONTRIBUTION TO THE REORGANISATION OF THE POLICE

A Contribution to the Reorganisation of the Police is a study on police which was completed in 1914, and published in Serbian language in 1920. The text on 120 pages provides an overview of general organisation of the police and the police chiefs and police officers as the most essential components of any organisation, criminal police and order police (uniformed police), municipal and political police, as most important types of police. The inspiration for this Reiss's research came from the other side of the Atlantic, by the New York City police representatives, who were on their visit to Europe to study European policing organisations.

From an array of organisational issues Reiss dealt with, a few seem most significant to highlight, due to their relevance even today. Here firstly comes into account the current issue of whether the criminal police should be organised within or outside the Ministry of Interior of the Republic of Serbia, and their transformation into the co-called judicial, criminal investigation, prosecutorial and the like police, as a response to the recent endorsement of the so-called prosecutorial (mixed) investigation in our criminal procedure legislation, following the example of the most of the European countries.

Starting from the most important types of police – the uniformed police (order police) and the criminal police (criminal investigation, judicial) – Reiss dealt particularly with their relationship and their organisation and management within the state. In addition, his support for the organisational unity of the criminal and uniformed police, i.e. bringing them under a single management applying the principle of monocracy, is obvious.[3] Because, as Reiss says, 'wherever these two au-

2 S. Jugović, D. Simović, D. Avramović, 'Actuality of Riess's Principles of Modern Police', *Archibald Reiss Days*, Volume I, Academy of Criminalistic and Police Studies, Belgrade, 2011, p. 69-76.

3 On the other side, there is the administrative police, consisting, at that time, of the health or hygiene police, market police, construction police, fire sevice, etc., which should be distinguished as a separate organisation headed by another chief. This is for purely practical and functional reasons, as, in spite of the advantages of such a unified organisation, due to the wide scope of work, a single police chief could not, according to Reiss, supervise actively the work of all of those police forces. R.A. Reiss, *Prilog za reorganizaciju policije (A Contribution to the Reorganisation of the Police)*, Belgrade, 1920, p. 5.

thorities depend on two different management structures (administrative and judicial – the authors), they oppose and cause problems for each other. These incidents do not occur when they are placed under the same command'.[4] The reason of failure when operating separately lies both in the rivalry between these two police forces and in the objective lack of their interactions, Reiss has observed. On this point we can fully agree with Reiss, because without cooperation between these two key types of public security police, the exchange of information (data) and their joint action, in fact, without the unity of police action and its functional unity, police work is already pre-destined to fail. The fact is, indeed, that functional unity may be established even if the police organisations are separated in the organic sense, depending on the nature of activity of those organisations. But, when it comes to the public security police, it is very difficult and always incomplete, because the police activity is direct and concrete. Although the entire decision-making in the administration is based on information, or their processing, with a specific police activity, the information and data, and their exchange, are crucial for its efficient operation. Compared with the work of police clerks who quietly deal with administrative issues, the operational police work is inherently different in its nature. The goals and objectives of both of the police forces (uniformed and criminal) converge at the same point – providing safety and public order which is most directly related to preventing and combating crime. As an example of such unified action, Reiss describes a uniformed police officer who protects public order. When performing the duties of a constable or a patrol officer, this uniformed officer catches a person in the act of (grand) larceny, he does not call the criminal police for help, but immediately arrests the thief and, subsequently, takes part in judicial criminal proceedings, just as the criminal police officer would do. Uniformed police officer may also exercise other police powers (e.g. identity verification, detention of persons, securing and investigating scene of event, etc.), and, therefore, does not need to consult the officer of the criminal (judicial, crime investigation) police to exercise some of those. As can be seen, the uniformed police also deal with the prevention, detection and fight against crime, which is a matter of internal organisation of this police work. Therefore, even in France, which is most often taken as an example of a state with the division of the police into administrative and judicial, this division causes most concern in theory and practice. If we add a third type of police – gendarmerie, which is, very rarely though, managed by a third authority – ministry of defence (e.g. carabineers in Italy), and the municipal or other local police, where applicable, then the effects of the disunity of command are even more obvious. In this regard, modern police law theorists, proceeding from the unique goal of the police, argue for the unification of the concept of policing, regardless of the different responsibilities of the police forces under positive law.[5]

Therefore, Reiss has proposed that the criminal police and the order police should be entrusted to one major chief, a general director of the police, who would have two chiefs under his command: one assigned to the criminal police and the other to the order police. In that way, thanks to the unity of management, a direct and strong relationship is established between these police forces. As for the conditions that Reiss suggests for the selection of the police director, they unmistakably resemble those of the present-day; in fact, they match those of the existing Law on Police. One of the

4 *Ibid*.

5 See e.g: A. Decocq, J. Montreuil, J. Buisson, *Le droit de la police*, Paris, 1991, p. 17-39; S. Miletić, *Policijsko pravo (Police Law)*, Belgrade, 2003. p. 59; A. Delbland, *Police administrative*, Paris, 1995; V. Hreblay, *La police judiciaire*, Paris, 1994.

basic conditions, which suits depoliticisation of the police, is that 'the director has never been nor will he ever be a politician'.[6] The appointment of the police director, which is also very important, should be the responsibility of the Council of Ministers or its president, which means the government, or the Head of State itself. Also he has suggested that the position of the police director should be consistent rather than changeable with the changes of the ruling parties. An essential requirement is an adequate practical experience gained through performing senior official's duties, i.e. the career; but the police director must avoid becoming a bureaucrat, and the advancement as a feature of the civil service employment relationship brings this danger. The salary of the police director should be as high as is the responsibility, like for example in England, and not modest, as was the case then in France, or Germany, Italy, Spain, etc. The police director should, understandably, also have some organisational skills, which must not tend to turn the police into bureaucracy.

Generally, observation skill is one of the most important qualities for a police officer, not only in criminal investigations but also when enforcing police measures. Standard education does not encourage the observation skill, but rather is directed toward creation of philosophical (abstract) thought which has little interest in the observation and interpretation of everyday human life. Reiss criticised the appointment of former senior military officers as chiefs of police in many countries, particularly in the criminal police. This was on the ground of both the lack of relevant expert knowledge of those persons and their habit to command and be obeyed. Therefore, Reiss has considered that it is more appropriate that the police chiefs and law-enforcement officers in general be recruited from the civil society.

CRIMINAL (CRIME INVESTIGATION) POLICE AND ORDER POLICE (UNIFORMED POLICE)

The organisational structure of the **criminal (crime investigation) police,** understandably, depends on the applied tangible criteria, i.e. on functions and duties such a police should perform. So, according to Reiss, this police should be managed by one chief, having relevant education and an adequate practical experience in operational criminal activities, and merged with the uniformed police (order police) into a single police directorate. Reiss has suggested four departments as constituting parts of the criminal police, which include: 1) Functional criminal department – with organisational units under the chief' command (so-called chief's brigade), then brigades responsible for the surveillance of public places, public morality, casinos, hotels, clubs, foreign visitors, anarchists, financial crime; 2) Archive and accounting; 3) Technical departments – forensic identification, laboratory; 4) Administrative office.[7] Thereby, the chief's brigade (which corresponds to police headquarters) is an elite unit of the criminal police which deals solely with more difficult and sensitive cases, such as crimes, serious robberies, etc., - something like present-day organised crime - and requires most diverse specialists. The organisational structure is, of course, hierarchical. Heads of lower level units are accountable to those of the higher level units. The public morality brigade (vice squad) is responsible for maintaining public morale, monitoring streets, brothels, dealing with trafficking in white slavery, and pederasty.

6 R.A. Reiss, *Prilog za reorganizaciju policije (A Contribution to the Reorganisation of the Police)*, p. 8 – 10.
7 R.A. Reiss, *Prilog za reorganizaciju policije (A Contribution to the Reorganisation of the Police)*, Belgrade, 1920, p. 17, 18. Reiss refers to organisational units as 'brigades', which is a technical police term meaning a squad of police agents (Special Unit officers) performing special assignments.

Here, we can easily conclude that public morality is a somewhat forgotten category nowadays and, just like public order and peace, has varied through time. The elements of this concept are also different. For example, in Reiss's time, and until recently, publicly expressing one's homosexual orientation was considered a violation of public morale, and in the present day, the denial of such right is considered a violation of sexual minority rights, even though the constitution does not explicitly guarantees the freedom of expressing sexual orientation.

Further on, Reiss addresses the conditions that officers of the criminal police brigade responsible for hotel surveillance must meet in order to be able to perform these duties. The hotel surveillance inspectors, infiltrating the hotel staff, must not be recognised as police officers by the hotel guests, and should act elegantly, with cosmopolitan manners, which is rare. Such agents, observes Reiss, can be found only in England and France, and yet only exceptionally. They should be recruited from waiters, servants in respectable homes - hence those professions that have had contact with 'refined and well-bred'[8] people. Surveillance of hotels is particularly important in preventing and combating crimes committed by foreign citizens, who most frequently stay therein. It is important that a foreign user of hotel accommodation signs the registration form personally, as a signed document may often be crucial for the operational police work. Of particular importance is the administrative measure requiring that hotels keep records of foreign nationals' accommodation and notify the police thereof within the shortest possible (statutory) period of time.

In a visionary way, Reiss advocated for the establishment of the international police, which was important for the efficient fight against crime. It is a notorious fact that criminals cross national borders, i.e. national borders are not obstacles to their criminal activity, collaboration and cover up, while at the same the police competences are restricted to the area within the national borders. Therefore, international police cooperation is necessary and it is regulated by international treaties or agreements (bilateral or multilateral). It represents the common interest of all, and the agreement governs the rights, obligations, i.e. conditions for exercising (using) certain powers on the territory of a neighbouring or other country under the conditions of mutuality (reciprocity). This old idea, although improving, has not yet been realised. An obstacle to the establishment of an international police with clearly defined duties (e.g. allowing a German police officer to arrest a French national in Italy, etc.) at the level of the European Union is, to a great extent, the legal nature of the EU itself, which is most often defined as *sui generis*, a supranational organisation, which stands somewhere between the state federation and the federal state[9]. Therefore, the EU itself is not a state so it does not have its own state police.

As for the police prevention activities, Reiss has pointed out that keeping police records, especially concerning individuals convicted or suspected of a crime, is of crucial importance. It is one of the best means of preventive actions. Understandably, record-keeping is an administrative function and the administration and use of data contained in these home affairs records is regulated by law (before the enactment of the last-generation laws, records were the subject of secondary legislation). Also, the records on civil status, personal name, permanent or temporary residence, identity card, unique master citizen number, etc. are important. In addition to these data, significance is given to the photographs data, photo albums and data of suspicious individuals preventively photographed on the street (today referred to as authority for audio/video recording and photographing in public places).

8 R.A. Reiss, *op. cit*, p. 20.

9 See D. Simović, S. Jugović, D. Avramović, 'Komunitarizovanje trećeg stuba Evropske unije'*(The Communitarisation of the Third Pillar of the European Union)*, *Suzbijanje kriminala i evropske integracije (The Fight against Crime and European Integration)*, Academy of Criminalistic and Police Studies, Hanns Seidel Foundation, Belgrade, 2010, p. 329-336.

Being a natural science professional, Reiss paid special attention to the necessity and importance of (criminal investigation) scientific and technical services within the police, i.e. laboratories which constitute a necessarily part of criminal police (criminal investigation police). Employees of these criminal investigation centres should have knowledge of all modern technical methods of police and forensic investigation. The head of this department should have a diploma of completed studies at a recognised criminology institute, such as that of the University in Lausanne or in Paris. His assistants (two) are responsible for the police laboratory and the forensic identifications, which relate to dactyloscopy (today also to DNA analyses). What is important is the exchange of experiences – employees in these laboratories must spend certain amount of time with crime investigation officers in the field, and the latter spend up to three months in the laboratory. Identification errors can have disastrous consequences. On one hand, the offender remains unidentified (unpunished), and on the other, an innocent individual gets convicted. This is certainly unacceptable and harmful in many ways, as there are modern and reliable methods of identification.

The most essential part of any organisation – people, hence police officers, have got Reiss's special attention. His recommendations concerning the recruitment of police staff and the police conduct are highly valuable. 'The art of policing is always to find the suitable manner, appropriate for the setting which must be managed.'[10] This adaptability trait is not found among all officers, and is particularly rare among former military officers. A criminal police inspector should enter the profession as a very young man, according to Reiss.

The **order police (uniformed police)** are another part of the directorate, managed by one chief who has two subordinated assistants. The chief of order police has to be a career officer who has passed through all ranks in the service. Before taking up the assignment, he must have practiced in the criminal police for one year. Securing the scene of event, on which the uniformed police officers are usually the first to arrive, also has crime contents, which is why even uniformed police officers need to possess such know-how of which the subsequent solving of crimes largely depends. This is precisely why Reiss has advocated that first steps upon learning of a criminal offence should be taken by criminal (plain clothes) police inspectors - both because of traces (evidence) and because the mere appearance of uniformed police officers at the scene makes the search more difficult. Here we cannot fully agree with Reiss, because both police forces possess equal amount of knowledge and powers for initial action. Immediately after the uniformed police, the crime scene investigation team arrives at the scene, and, depending on the seriousness of the offence, operational police officers of criminal or uniformed police (operational sector officers) will issue the criminal offence report. As for more serious criminal offences, it would be most appropriate that officers of both the uniformed and criminal police arrive at the crime scene.

The order police are divided into city police stations, and a reserve brigade, by Reiss, should be located within the central police station. An analysis of various police systems has confirmed this approach. Mobility of police units for the purpose of completing relevant tasks is of great importance. For chiefs of police stations, Reiss suggests chief inspectors of criminal police. This is another point of contention with Reiss because what he suggests is preferable, but not necessary, as uniformed police officers are prevalent in every police station, and therefore the recruitment of chiefs of police stations from those officers is also quite logical and fair. In any case, the appointment should be made from among these two police forces, based on the

10 R.A. Reiss, *Prilog za reorganizaciju policije (A Contribution to the Reorganisation of the Police),* p. 62.

principle of professionalisation. As for the uniform, it has to meet the following two requirements: it should be such that it meets the requirements of the service and at the same time allow the body to move freely; and secondly, it often has a direct influence on the relationship between the police and the citizens. Naturally, it makes people keep distance, frightens them and makes a police officer look hostile. Therefore, the police uniform and equipment must be practical and at the same time inspire respect, rather than frighten the public.

Another issue that Reiss has pointed out is whether the police should be under the **municipalities (local police)** or the **state (state police)**. His unambiguous answer is: the police should be under the state government, *inter alia*, for the sake of both the unity of management and administration and the depoliticisation of local police. Local police, in addition to its advantages, has a number of disadvantages, the main one being the lack of mutual work. On this point, we can fully agree with Reiss, because municipalities with their own police represent 'para-state organisations', local police depend on local politics, which leads toward its misuse for political purposes. Not to mention disproportional finances, uniforms and other deficiencies. On the other hand, state police implements the official, unique state policy in the area of security (internal affairs), from the top to the last police officer in the entire region, and the inevitable political influence (through the minister who is the head of administrative department, but also a politically responsible member of government) is indirect.

Reiss has also advocated for the dissolution of **political police,** which undertakes surveillance over government opponents, 'creates records of people who have committed no violations against the law, but who just do not align themselves with the same flag as those who rule the country'.[11] Reiss has suggested that such services should remove from their titles the word 'police', because it is not what they are by their nature. They are, in fact, a secret police formed by governments for the purpose of protecting morale and political suitability of their citizens and, since they deal with intelligence and counterintelligence (so-called state or national security), today are often called intelligence agencies. This point has provided further proof for Reiss's arguments, though only in the formal sense, as today's secret or political police does not exist under that name. This, of course, does not mean that their activities were terminated. According to Reiss, their lack of popularity with people is closely connected to the police being used for political purposes.

POLICE ORGANIZATION ACCORDING TO REISS'S PRINCIPLES OF MODERN POLICE

Reiss dedicated most of his *Principles* (p. 24-60) to analyzing different types of police which are prevailing in West-European countries. According to this author, there are four types of police: Uniformed (Order) Police, Criminal or Judicial Police (none uniformed); Gendarmerie (border police) and Central Police Administration.[12] Moreover, whole study is based on their conceptual definition, on their mutual relations and their relations with citizens and other state and non state actors. Focus is on the most significant types of police: Uniformed Police and Criminal (Judicial) Police – nowadays Criminalistic Police.

11 *Op. cit*., 114.

12 More about types of police: S. Jugovic, „Elementi uporednopravne analize vrsta policije", *Pravni život,* br. 10/2005, Beograd, 2005, p. 251-266.

Just like today, basic duty of Uniformed Police was to maintain public order in towns and villages all over the country. Even today, term *public order* is certainly relevant both in all international conventions and domestic legal system. Reiss explains that this type of police would also participate in judicial and criminal investigations, take part in repression of crime just like Criminal Police, and also conduct order in areas of public traffic and public hygiene etc. He insisted on forming Uniformed Police in all parts of country, managed by civil administration, instead of Gendarmerie, which was military body. In his words: "This cannot work, because duality of command never gave good results".[13] Therefore, he was familiar with advantages of monocratic principle that are typical for administration and police, and insisted on unity and indivisibility of police activity.

Uniformed Police maintained order in streets, public buildings, conducted general surveillance of citizens and foreigners, carried out arrests, secured crime scene (physical evidence), cooperated with Judicial Police, and substituted Judicial Police in small towns.[14] Uniformed Police was in charge in all areas, which were divided in main sectors and sectors. Reiss suggested competences of Uniformed Police, and worked to detail relations between Uniformed Police and Judicial Police, especially matters of administration and jurisdiction. Proposed organizational solutions are specific and based on contemporary attainment in the field of organizational theory, respecting specificities of police profession. It is clearly visible in his combining of unilinear, multilinear and matrix organization, and the other contemporary principles of police founding and of internal police organization (realistic, territorial, hierarchical, monocratic, personal, etc.).

Criminal or Judicial Police, as assisting service of judiciary, deals exclusively with criminal law cases, not civil law once. Since it was founded on bases of Secret Police, secrecy is main characteristic of its work. At the same time, Judicial Police is also a technical police, because of its elements forensic science. According to Reiss, Judicial Police would conduct court investigations, surveillance of foreigners, public morale, investigation of spies, surveillance of anarchists and fire investigations. He also analyzed qualifications that candidates and officials of Judicial Police should meet (fluency in foreign languages, intelligence, skills, special knowledge and, most significant, general skills of the trade, not just specialized for particular offences).

Reiss advocated for legal regulation of prostitution, which, according to him, was not crime, neither minor offence, but trade. He suggested mature, married police agents for dealing with prostitution. On the other hand, anarchists are just plain offenders who want to attract a part of electoral body, and they should be under constant surveillance. It is important to distinguish them from the people with liberal ideas.

At the time, Gendarmerie was military formation and it protected state border. Reiss proposed for its superiors to be high officials of Judicial Police because of trans-border crime. If necessary, Gendarmerie would, at the same time, assist Uniformed Police in border counties. Their training should be conducted according to special program, different from Uniformed and Judicial Police training, focused on shooting practice and self defence.

Central Police Administration, settled in Belgrade, according to the organizational scheme, would be under the Ministry of Interior Affairs or Ministry of Justice and responsible to the minister. It would be managed by Director of Police,[15] who

13 R. A. Reiss, *Principi moderne policije (Principles of Modern Police)*, Beograd, 1915, p. 24.
14 *Ibid*. p. 54.
15 Serbia institutionalized position of Director of Police with the Police Law of 2005. This person is "operative chief" of police and minister is head officer that manages police in whole, as Reiss suggested.

would have two assistants: commandant of Public Police and head commissioner for Judicial Police affairs. He would be also assisted by secretary. Central Police Administration would have following departments: human resources, accounting, statistical department, judicial department, central identification department, central lab for technical researches (expert opinion), Police High School and Police College. This organizational scheme of Central Police Administration is, in a great deal, taken from West European countries, mainly Switzerland and France. In short, Central Police Administration in Belgrade would manage the entire police forces in Serbian Kingdom. Reiss, successfully predicting future, suggests centralization of police, i.e. to establish state control over police by elimination of municipal, town and village police department and replacing them by state police and creating "mobile police".

Finally, due to the fact that he was "scholar", his text relevant to police education is particularly significant (higher and lower police school). It is interesting that the requirement for enrolment in the Higher Police School was for the candidate to have successfully completed exams at the Faculty of Law, or a specialized exam in Criminal Law or Criminal Procedure. Knowledge of a foreign language was also required, as well as the approval of the chief or director of police. Training at the school included theoretical and practical aspects. The duration of the training was one year with a graduation exam, which the candidate could take no more than two times.[16] Training programs for main types of police differ among themselves. For Uniformed Police, Reiss proposed usual, boarding school type of education, in uniforms. At the head of this school should be the principle. Candidates for Judicial Police would study: *criminal law, laws, decrees, police orders and their practice (police regulations), civil knowledge, exercises in criminal law and procedure, chemistry and physics applied to police sciences, anatomy based on examining bodies, forensic medicine, scientific and technical police, relations between police and citizens and public.*[17] In the same time, candidate would be engaged in practical work in police. Beside these subjects, candidates for Uniformed Police would attend lectures in military disciplines, especially using and maintaining weapons. Also, students would be trained in riding, boxing, Japanese skills etc.[18]

For admission to Police High School, Reiss suggested following conditions: successfully completed elementary school, served time in the army, single handed written CV, proven moral. It should be a system of boarding school and students should wear uniforms. This school should also be divided into Judicial (Criminal) Police School and Uniformed Police School. Knowledge gained in both sections would be almost the same, but with minimal modalities, considering the nature of Uniformed Police and Judicial (Criminal) Police. It would be essential that students successfully go through programs and to adopt scientific knowledge necessary for police profession they have chosen. Education of students of this high school would be financed by state but their wages would be smaller. Students of Police College would finance their own clothes and would not receive salaries.

Finally, the (re)organisation of the police entails adequate material resources. Money is a necessary element of any organisation. However, due to its large size and broad range of internal affairs, police needs a lot more funding than other public administration bodies, which is often overlooked by politicians. The apparent government savings on expenditure for the police is in fact costly, as without money there is neither a good police nor thus safety for the citizens and the state. In addition to funding for organising the activity, Reiss advocated for proper compensation pay-

16 R.A. Reiss, *Principi moderne policije*, p. 37.
17 *Ibid.* p. 38.
18 *Ibid*. pp. 39-40.

ments for the responsibility in discarding duties and the danger the police officers are exposed to, all of which would lead to the profesionalisation of the police. Fiscal deconcentration of the police seems to be appropriate, but at this point we cannot deal with it more thoroughly.

INSTEAD OF CONCLUSION

The history of the state is also the history of police organisation. Reiss's Contribution to the Reorganisation of the Police is today, a century later, still a useful, clear, and practical reading material, which is already a value itself. Along with the Principles of Modern Police, this study provides a solid platform for a more profound doctrine of police organisation. The content of Reiss's works is still actual today, and the police science is inevitably a historical science. Therefore, a reminder of the content of this study may be of use for a continuous comprehensive reform of the police. It is just that at this point, due to changes in the state being in South-Eastern Europe, the police reform has been the largest and most extensive due to this transition. Social ownership was abolished by the Constitution from 2006, and the private security sector is a notorious fact which cannot and must not be ignored. The existing concept of police organisation in the Republic of Serbia has resisted time and challenges, but a re-examination of organisation, structure and types of police, as well as their scope of competences and interactions, seem more relevant today than ever. Due to changes in the concept of criminal investigation, the issue of education of judicial and the like police has re-actualised in our country, which would, in the opinion of these authors, affect the unity of police action and its functional unity and by no means be suitable for our conditions. Combining traditional and modern solutions and recognising the particularities of the police in the process of organising the policing activity in any country, including the Republic of Serbia, is necessary and effective.

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UDC 343.272

CONFISCATION THE PROCEEDS OF CRIME AND HUMAN RIGHTS STANDARDS[1]

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Abstract: The transition from traditional to contemporary way of confiscation of property derived from crime in the legal systems in Europe was accompanied by numerous debates about its validity. One of the issues that emerged in the forefront is the issue of human rights of the person from whom property is taken by applying the above mentioned institutes. At the time of the domestic judiciary made the first decision on permanent seizure of property acquired through crime, it is interesting to consider how domestic legal solutions in this area are in line with the basic principles of human rights. This paper analyzes the law of the European Court of Human Rights concerning the right to enjoyment of property, rights to a fair trial, in light of legal requirements and shifting the burden of proof, and the prohibition of retroactive application of criminal law, and the normative definition of the issues mentioned in the national legal framework.

Key words: Confiscation of property acquired through crime, human rights, the Law on Confiscation of the Proceeds of Crime.

INTRODUCTION

Nowadays, Institute of confiscation the proceeds of crime has achieved full recognition in the legislation of most developed European countries during the last decade of the 20th century, with mainly promoted as an effective tool in the fight against organized crime. Our application of this institute is more recent and established the appropriate legal framework, the implementation of which began three years ago.[2] Local officials speak positively about the established system of temporary and permanent seizure of assets, and have announced an even clearer application of ZOIPKD,[3] disclosing that in two years and nine months of application temporarily or permanently deprived of their property was worth some 350 million €.[4] By comparison, this value is, as earlier rough estimates claim, close to the amount equal to the amount of damage caused by the commission of criminal acts of economic crime in Serbia during the calendar year.[5] On the other hand, the legal representatives of convicted persons who were under attack of ZOIPKD,

1 This paper is the result of the realisation of the Scientific Research Project entitled „Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations". The Project is financed by the Ministry of Education and Science (No 179045), and carried out by the Academy of Criminalistics and Police Studies in Belgrade (2011–2014). The leader of the Project is Associate Professor Saša Mijalković, PhD.

2 It is the Law on Confiscation of the Proceeds of Crime (hereinafter ZOIPKD), Fig. Gazette of RS, no. 97/08, of 27 October 2008. with the delayed implementation on the first of March 2009.

3 Tanjug (31/03/2010). By now confiscated property worth 300,000 Euros. Daily newspaper ''Blic"

4 Radišić, N. (01/04/2011). The range of confiscation. B92.

5 According to experts of the Council of Europe, the damage caused to Serbia due to this type of crime in 2003. was estimated at 300 to 500 million €, with a particular problem being financial crimes, including money laundering and corruption, Council of Europe, *Organised crime situation report 2005 – Focus on the threat of economic crime*. Strasbourg: Council of Europe, pp. 12, 64.

are sharply challenging certain provisions of ZOIPKD, announcing that it will protect the rights of their clients seeking them, if necessary, in Strasbourg as well.

In connection with the previously stated, it is evident that the process of adopting and implementing the so-called "modern" way of confiscation the proceeds of crime[6] are usually followed by challenges of many as to its fairness. It is not our specificity, and the decisions to introduce such a possibility are challenged in almost every legal system. Foreign and domestic authors cite that, in most cases the arguments' opponents refer to the legal acts of the European Union and the European Convention on Human Rights and Fundamental Freedoms,[7] or the right to a quiet enjoyment of property and a fair trial,[8] and the right to ban the retroactive application of criminal law.[9] In this regard, the role of the European Court of Human Rights is extremely important *(European Court for Human Rights,* hereinafter ECtHR), as is the verdict of the court instances, in fact, created legal boundaries in which they must lead the fight against organized crime.[10]

Relations between the practices of ECtHR and national legal systems are extremely complex. Standards established by the European Court judges undertake domestic courts, while, on the other hand, the practice of domestic courts is in constant competition with the definition of European standards.[11] According to Nikolić, it is a process that lasts and that is still far from having exhausted the potential effects of their own innovation and harmonization. But regardless of that fact, it seems that the position of the EU and other countries where there are applicable laws on confiscation of crime in this regard is very clear - the citizens' interest in this case is well above the interests of the individual, especially when it comes to fighting against organized crime.[12] It seems that the issue of funding is not controversial, but it is very important to determine the limits within which it will be applied, and to thereby maintain its legitimacy.

THE RIGHT TO QUIET ENJOYMENT OF PROPERTY

1st Article of First Protocol of the European Convention on Human Rights and Fundamental Freedoms provides the right to quiet enjoyment of property, which means that no one shall be deprived of private property, except in the public inter-

6 Compared to the previously known (traditional) ways of seizure of property, such as seizure and confiscation of the proceeds of a given criminal act for which the offender is being tried. More about their mutual relations and the genesis of confiscation of proceeds of crime (Laudatti, 2007: 4, 11).

7 The European Convention on Human Rights and Fundamental Freedoms (hereinafter ECHR), entered into force on 03rd September 1953. and ratified on 26th December 2003. The Law on Ratification of the European Convention on Human Rights and Fundamental Freedoms, amended in accordance with protocol no. 11, the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol no. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms which provides certain rights and freedoms that are not included in the Convention and the first Protocol, the Protocol no. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, Official Gazette of Serbia and Montenegro - International Treaties, no. 9/03 and 5/05.

8 Vettori, B., *Tough on Criminal Wealth - Exploring the Practice of Proceeds of Crime Confiscation in the EU.* Dordrecht: Springer, p. 10.

9 Ilić, G. P., Confiscation of crime. Journal of Safety - *Journal of corruption and organized crime,* II (5), 11.

10 Paoli, L. Fijnaut, C., Organised Crime and Its Control Policies. *European Journal of Crime, Criminal Law and Criminal Justice*, 14 (3), p. 19.

11 Nikolić, B., Confiscation of crime - international standards, solutions and comparative law of the European Court of Human Rights. In: G. P. Ilić, B. Nikolić, M. Majić, Đ. Melilo, *Commentary on the Confiscation of the Proceeds of Crime with an overview of relevant international documents, decisions and practices ECtHR*, 5-30. New York: The Organization for Security and Cooperation in Europe Mission to Serbia, p. 41

12 Vettori, B., op. cit., p. 10.

est, and by terms provided by law and general principles of international law. Ilić said that, in light of the right to quiet enjoyment of property, in fact, may ask for a justification of the existence and scope of deprivation of property acquired through crime in the Member States of the Council of Europe.[13] It is worth mentioning that the domestic Constitution provides similar guarantees under which quiet enjoyment of property and other property rights acquired under the law are guaranteed. (Art. 58th URS). As, however, the ECHR has supranational character, further analysis will refer to the judicial institution that cares about its implementation, and relevant solutions of ZOIPKD.

The realization of the right to quiet enjoyment of property, translated into practical use, means that it should determine whether the state's right to establish possession, and later ownership of the disputed property is in accordance with the public interest, whether it prevails over the right of everyone guaranteed in the 1st Protocol of the ECHR, and whether such a right of the state is indeed necessary. The requirements in terms of necessity and proportionality are respected in order to establish a fair balance between the interests of the community and protect the interests of the individual.[14] Of course, to establish proportionality the makings of owners of property who gave grounds for an action by authorized government and judicial bodies and the possible consequences must be taken into account and, so the ECtHR held that it is necessary to determine the *relationship between behavior and violations of the owner,* and *ensuring the owner also has a competent court representation in their case*.[15] The presence of these elements in the domestic front will be discussed after a more detailed analysis of relevant decisions of the ECtHR.

For the rights to quiet enjoyment of property beyond doubt is the importance of the decision in case *Raimondo vs. Italy.* In fact, Italy, trying to deal with mafia-type criminal organizations, has become the European leader in the adoption of regulations that allows the confiscation of proceeds of crime, and it is not surprising that the first decisions of the ECHR in relation to these issues are related to this country. In this case the ECtHR, therefore, immediately declared the legitimacy of temporary and permanent seizure of assets, in the context of the right to quiet enjoyment of property. Decision preceded by a protest Mr. Raimondo, who complained that he was denied this right by him, as a building contractor, seized more real estate (land and ten six-story building), and six vehicles, on suspicion of belonging to a mafia criminal association (ECtHR, 1994, § 8-11, § 13). On this occasion, the Court held that the seizure is a temporary measure that suits the needs of safekeeping possible confiscation of property derived from illegal activities committed to the community. This measure has been established in the common interest and with respect for the exceptional hazards arising from the economic power of organizations such as the ''mafia". Therefore, the ECtHR concluded, t cannot be said that it is disproportionate to its pursued aim, and accordingly, that in no case were any violations of the First Protocol of the ECHR (ECtHR, 1994, § 27).

With regard to confiscation, the ECtHR in the same case expressed the view that it is a measure of general interest, i.e. in the interest of preventing the use of goods that would provide benefit an individual or a criminal association that are suspected to belong to him, to the detriment of the community (ECtHR, 1994, § 30), which it said yes to the question of the necessity of its application. Confiscation in this case could not be seen as disproportionate, given the enormous economic power of organizations like the Mafia. As further stated in § 30 of this decision, the measure of

13 Ilić, G. P., op. cit., p. 12.
14 Reid, K.., *The European Convention on Human Rights - a guide for practitioners, the book second* Belgrade: Belgrade Centre for Human Rights, p. 531.
15 Nikolić, B., op. cit, p. 25.

confiscation of property in the Italian normative framework is designed to prevent suspected movement of capital. Its use is indicated by the Court as an effective and necessary weapon in the fight against the scourge of drug trafficking. Because of all stated above, the ECtHR held that the application of confiscation are measures proportionate to the aim pursued and that, in this case, did not result in violation of the right to quiet enjoyment of property proclaimed in the First Protocol of the ECHR. The opinions of the ECtHR are good guidelines in creating solutions to national legislation.

When considering of the domestic legal framework seizure the proceeds of crime, the important circumstances are that (1) ZOIPKD provides adhesive nature of the procedure for confiscation of proceeds of crime, which means that, at the time of the procedure to permanent seizure of assets, there is already an established link between property owners and crime. However, this relationship is not direct, which is understandable, since it would otherwise be working on the implementation of the institute confiscation proceeds of the (concrete) offense for which the offender is being tried. The modern concept of confiscation implies the absence of causal link between the crimes that are the object of criminal proceedings and the confiscation of proceeds of crime. Due to the foundation in the same principles it should be viewed as a product of an evolution of the institute of confiscation of the proceeds of criminal offences, applied in organized crime.[16] Domestic legislator, according to the model of most foreign solutions, determined that it is sufficient to establish that a criminal act of organized crime or other (heavy) crime is committed, as explicitly defined in 2nd Art. ZOIPKD, which, with presentation of evidence gathered on the property, lawful income and the cost of living, that is evidently disproportionate income, expenses and assets, creates a rebuttable presumption of its criminal origins.

On the other hand, in accordance with the principle *audiatur et altera pars,* creating a presumption of its kind still imposes the need for a hearing of the other party. The owner's got the right to present claims that contest claims in the prosecutor's request for confiscation. (2) Owner has the ability to present counter arguments at the hearing for temporary and at the hearing for permanent seizure of assets, thus fulfilling the second condition mentioned in earlier judgments and the ECtHR. Finally, we can say that (3) local legislator is valued proportionality and necessity of the confiscation proceeds of crime *in abstracto* by defining the offenses for which can be possible the application of ZOIPKD. In this way, situations in which the procedure can lead to confiscation proceeds of crime are predefined and the legislator protects the legal safety of citizens, while limiting the possibility of the proceedings only to those criminal acts that are more dangerous socially.

RIGHT TO A FAIR TRIAL IN THE LIGHT OF APPLICATION OF LEGAL PRESUMPTION AND SHIFTING THE BURDEN OF PROOF

One of the segments from the complex of the right to a fair trial as guaranteed in Art. 6th ECHR, which appears as a relevant one in the discussion on the framework on confiscation of crime is certainly the presumption of innocence (Article 6, paragraph 2. ECHR). This specifies the legal principle which, in practice, means the obligation of the prosecutor to provide sufficient evidence on which a conviction will

16 Lajić, O., About the legal nature of the institute called confiscation of proceeds of crime. *Proceedings of the Faculty of Law in Novi Sad,* XLIV (2), p. 359.

be based. In this regard, one can ask a question of legal justification for the introduction of assumptions that shift the burden of proof on the person against whom proceedings are being conducted (Ilić, 2008: 13), and that the burden of proof shifts to the party, i.e. is divided between the prosecutor and that person. The practice of the ECtHR expressed its views on several occasions that are relevant to this issue and will be mentioned in the text, which could, in principle, be summarized in one paragraph ECHR. Specifically, the rules imposed by assuming the rights and facts, which provide that the accused is to deny them, are not *per se* contrary to Art 6th, paragraph 2 of ECHR, with the need to restrict within reasonable limits, which take into account the importance of the role (i.e. parties*, ed. aut.),* and the right to defense. Also, it should not reduce the right of courts to evaluate facts or guilt.[17]

The question that poses itself to the reader is: why in the confiscation of proceeds of crime is there a need for shift or sharing of the burden of proof between the prosecutor and the person against whom the request are instituted, or what is in this case so specific to require amended rules in relation to orderly course of procedure? The answer, it seems, lies in the nature of the facts to be proved. In fact, the lowering of standards of evidence solves the difficulties in proving the facts that are known only to criminals,[18] and is based on the assumption that the defendant has all the information on the origin of funds, while for the prosecution it is too difficult to prove that it acquired by illegal activities.[19] Therefore, the purpose of the use of legal presumptions is reflected in the attitude which is much easier to person to prove the legal origin of property, or property is not acquired directly or indirectly from the crime, but to prove the opposite by the government.[20]

Smellie, referring to the conclusions of the *Privy Council,* [6] elaborates on the previous claim setting forth several hypotheses that support the validity of transferring or sharing the burden of proof.[21] According to the author, 1) the secret nature of crimes such as trafficking in drugs or arms trafficking often leads to no direct evidence on the sources of revenue derived from these illegal acts or property acquired in this way. At the same time, 2) the ease with which money can be laundered in the global electronic economy points to easily hide the connection between crime and it proceeds, with 3) details of the source or method of acquisition of property generally known only to the defendant. In accordance with the stated, 4) anyone who has legally acquired property should be able to relatively easily prove this fact, especially because in this situation usually requires a lower standard of proof in relation to criminal proceedings. [7] It is the standard *common law* legal systems, known as ''Balance of probability" (*the balance of probabilities),* which is used instead of complete certainty of proof (*beyond reasonable doubt*) inherent to the criminal proceedings.

Perceived difficulties related to the standard procedure for proving the origin of proceeds of crime have found their reflection in several international documents, such as the Vienna Convention[22] (Art. 5 paragraph 4.), and the Palermo Conven-

17 Reid, K., *The European Convention on Human Rights - a guide for practitioners, the book first*, Belgrade: Belgrade Centre for Human Rights, p. 180.
18 Evans, J. L., *The Proceeds of Crime: Problems of Investigation and Prosecution*. Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia, p. 16.
19 Bell, R. E., Proving the Criminal Origin of Property in Money-Laundering Prosecutions, *Journal of Money Laundering Control*, 4 (1), p. 17.
20 Kennedy, A., Designing a civil forfeiture system: an issues paper for Policymakers and legislators. *Journal of Financial Crime* 13 (2), p. 140.
21 Smellie, A., Prosecutorial challenges in freezing and forfeiting proceeds of transnational crime and the use of international asset sharing to promote international cooperation. *Journal of Money Laundering Control*, 8 (2), pp. 11-12.
22 United Nations Convention on the illegal traffic of narcotic and psychotropic substances, adopted in Vienna, 1988, "Fig. SFRY - International Treaties", no. 14/90, hereinafter referred to as the Vienna Convention.

tion[23] (Article 12, paragraph 7.) in which it was proposed to consider the possibility of entering the state provisions in national legislation that would require the defendant to prove the origin of the revenue for which is said to have gotten a crime or other property that may be subject to revocation, if such a request in accordance with the principles of domestic rights and the kind of judicial and other proceedings. Warsaw Convention[24] also introduced similar obligation of Member States (Article 3, paragraph 4.), but it left the possibility of a reabstention in respect of this provision (Art. 53 § 4.). A document of the European Union on the prevention and control of organized crime in the new millennium indicates at relieving the burden of proof (*The Prevention And Control Of Organised Crime: A Strategy For The Beginning Of The New Millennium*), which in recommendation no. 19 proposes to examine the possibilities of the use of instruments that would, taking into account the best practices which are in effect in the Member States and by respecting the fundamental legal principles, introduce the possibility of relieving the burden of proving the origin of property owned by a person convicted of a criminal act of organized crime, whether it comes from criminal, civil and tax proceedings.[25]

Let us discuss the relevant practice of the ECtHR. This Court has, as previously noted, in several judgments took a stand about shifting the burden of proof, or changes regarding the rules in this regard, in the context of the confiscation of criminal profits. In this connection judgments *Salabiaku vs. France* (ECtHR, 1998) and *Phillips vs. United Kingdom* (ECtHR, 2001) may be mentioned. The verdict in the first-mentioned case is significant because the Court took the view that in a general way to determine the issue of use of legal presumptions, as well as the means for shifting or dividing the burden of proof between the prosecutor, on whose side the *onus probandi* usually is, and the defendant, to whom this situation occurs as atypical. Namely, in this case, the ECtHR concluded that the use of factual or legal assumptions is allowed, but that such use must move within reasonable limits and should be proportionate to the subject matter (the principle of proportionality), while maintaining the right to defense (the principle of "equality weapons") (ECtHR, 1998: § 28). Suggested way of interpreting and applying the law, trough the legal presumptions, is object of additional restrictions, arising from previous decisions of the ECtHR. Specifically, it must not be undeniable, and the court shall have the right of appreciation and therefore the completely shifting the burden of proof or generally confiscation is not allowed (ECtHR, 1992: 21-22). In addition, in the case of *Murray vs. UK,* ECtHR has come to general conclusions related to the burden of proof, according to which "the evidences against the accused are 'to seek from him' a satisfactory explanation", and "the inability of the accused to make a logical indication of the fact means that there is no logical explanation and that he was guilty of a committed crime" (ECtHR, 1996: § 51).

In another important exposure for this case, *Phillips* has, in dispute against the United Kingdom, complained that the use of legal presumptions, regarding the determination of the amount of earned benefits, violated his right to presumption of innocence of Art. 6th paragraph 2 of ECHR. In fact, Phillips was convicted by a court to imprisonment for a term of nine years for smuggling cannabis in the United Kingdom, while the financial investigation of the property and assets. During the investigation it was found that Phillips failed to report the source of its income

23 United Nations Convention against Organized Transnational Crime with additional protocols, adopted in Palermo in the 2000, "Fig. FRY - International Treaties", no. 6/2001, hereinafter referred to as the Palermo Convention.

24 Convention on Laundering, Search, Seizure and Confiscation of proceeds of crime and terrorist financing, Fig. Gazette of RS, no. 19/2009, hereinafter referred to as the Warsaw Convention.

25 European Union (2000). *The Prevention And Control Of Organised Crime: A Strategy For The Beginning Of The New Millennium.* Official Journal of the European Communities, C 124/1, p. 22.

should be taxed, and that he owned a house, five cars and other property. Phillips had already been prosecuted, but never for offenses related to drugs. After finding him guilty, the court, based on the legal presumption of criminal origin of property in the possession of persons after conviction or a period of six years before the criminal proceedings, brought confiscation order, under threat prison sentence of two years, pay the amount of £ 91,400.00.

Considering the circumstances of this case, the ECtHR concluded that the use of controversial assumptions did not seek condemnation of the accused of a crime, but it should allow the competent national court to determine the amount to be the object of confiscation. In particular, the relevant factors are, considered from the perspective of human rights, that the previous evaluations given in court proceedings, in a public trial, at which the parties had the opportunity to present their arguments. The Court stated that the defendant failed to take obvious, common and simple steps, in order to dispute the legal presumption, and denies the prosecutor, which would he obviously take that his facts were true (ECtHR, 2001: § 42, 43). So, at no time was he precluded to present evidence to suggest that the property has acquired by other means, rather than drug trafficking, which suggests applied legal presumption. Moreover, the standard of probability that should have reached was lower than the standards required in criminal proceedings (the balance of probability), and the judge has disposed of discretionary power to abstain from the use of these legal conditions if the gained confidence that its application contains a serious risk of injustice. On the basis of all stated above, the ECtHR concluded that in this case there was no violation of Art. 6th ECHR.

At the end of discussion on the shifting of the burden of proof trough legal presumptions, it is noteworthy that's domestic legal system adopted the principle of the divided burden of proof. Specifically, the prosecutor's allegations of criminal origin of property are not arbitrary, nothing substantiated and based on the simple premise, and as such subject to challenge by the defendant in the proceedings below. On the contrary, the prosecutor, in most jurisdictions, including in our own, still must take care to fulfill a number of assumptions, if he pleads of the future success of the procedure of confiscation of property. This process entity bases its claim on the *court sentence* which declares committing a criminal act,[26] and *evidence* collected in financial investigation (the lawful income, cost of living and acquired property), indicating the apparent discrepancy between the legal possibilities of acquiring the property and determined property status. In doing so, the prosecutor does not inhibit the defendant to present new evidence, or at least to indicate the potential source of relevant evidence, that can prove that the prosecutor was in error and that the defendant, or any member of his family, had revenues that fully corresponds to the volume of acquired assets. In accordance with set out, there is no question about the (total) shifting the burden of proof on the defendant, but only on the splitting up of burden between the prosecutor and defendant. Also, all the basic principles laid down by the ECtHR, interpreting provisions of the ECHR in their judgments, are represented in national law. Again, this is a) proportionality (Article 2 ZOIPKD), b) the right to defense (denial of the request at the hearing and presenting evidence in his favor, for access to an attorney, complaints, etc.), c) non-absolute nature of assumptions (see Art. 34, paragraph 1. ZOIPKD), d) the decision by the court, e) a free judicial conviction (Article 28 paragraph 3. ZOIPKD), and f) the public hearing.

26 On the European continent exception are the legal systems of Switzerland, Italy and Ireland, which recognize confiscation based on legal presumption, even if not mentioned judgments rendered (see Ilić, Banović, International standards confiscation of property derived from crime and domestic legislation, The word of law, IV (12), p. 306).

PROHIBITING THE RETROSPECTIVE CRIMINALISATION OF ACTS AND OMISSIONS

The issue of retroactive application of criminal law is closely related to question of the legal nature of the institute of confiscation of proceeds of crime. In fact, if confiscation was not considered as a criminal sanction, or if the measure was considered as *sui generis,* the question of retroactivity should not be raised.[27] The legal nature of the confiscation proceeds of crime into domestic law will be discussed later. Before that, it should be noted that most often mentioned case in the ECtHR judgments, in the light of confiscation and retroactive application of criminal law, is case *Welch vs. United Kingdom* (ECtHR, 1995).

Welch complained of a violation of Art. 7th paragraph 1st ECHR, which prohibits the retroactive application of criminal law, arguing that the confiscation proceeds of crime ordered by national court marked the sentence (ECHR, 1995. § 18). During the proceedings in this case, the ECtHR found a violation of the principle of prohibition of retroactivity. The ECtHR held that in determining the nature of confiscation measures should be considered over its declarative purposes and review its real effects and that in that case severity and scope of applications identified it as a *punishment.* At the same time, the Court has not disputed its dual character, i.e., not challenged the fact that, in addition to the repressive, this measure has some preventive effects (ECtHR, 1995. § 23). According to the ECtHR, penalty nature stems from the legal presumption of criminal origin of property acquired by the defendant for six years before the charge,[28] unless proven otherwise, and from the fact that the confiscation order is not limited to the acquired property, but refers and the funds are used for drug trafficking. Further, the judge had discretion in deciding to take into account the degree of guilt, and above all, there was a possibility of determining the sentence if the accused fails to pay the amount determined by the confiscating order (ECtHR, 1995: § 33).[29]

In domestic legal theory it is still not common to consider matters of legal nature of the institute of confiscation of property derived from crime.[30] However, earlier it was stated that the nature of this institution seems as crucial in the context of application of the principles on the prohibition of retroactivity, and that determination of that institute as a *sui generis* measures cause inapplicability of the prohibition. In domestic authors, Ilić and Majić deserve attention. In the Commentary of the Confiscation of Proceeds of Crime Law they suggest that identification of a permanent confiscation with a sentence of its contents means a reduction to the deprivation or restriction of freedoms or rights of the person against whom it applies, or its reduction to the repression and retribution,[31] which obviously does not represent the essence of this institution. These authors do not dispute that the sentence has a certain preventive effect, and that there may be some similarity with the confiscation of proceeds of crime. However, they emphasize the fact that the specific application of the institute does not find

27 Ilić, G. P., Majić, M., Commentary on the seizure of assets derived from crime. In: G. P. Ilić, B. Nikolić, M. Majić, Đ. Melilo, *Commentary on the Confiscation of the Proceeds of Crime with an overview of relevant international documents, decisions and practices ECHR,* p. 57.

28 The period of time covered by the legal presumption of acquisition of property through crime is different, depending on the legal system. In comparative law the period is generally five (e.g. in Finland, Portugal, Belgium, Denmark) to six years (United Kingdom, Ireland, etc.).

29 Keep in mind that the ECtHR on this occasion wanted to emphasize that the previous conclusion applies only to retroactive application of relevant regulations, and that they do not question the authority to confiscate that the courts have as a weapon in the fight against the scourge of drug trafficking (ECtHR, 1995. § 36).

30 See: Ilić, G. P., Majić, M., op. cit., Lajić, O., op. cit.

31 Ilić, G. P., Majić, M., op. cit., p. 57.

purpose in the repression, but in establishing the idea of fairness and the principle that no one can keeps what is obtained by crime, which may challenge position on repressive character, put forward in the European Court of Human Rights, in the case of *Welch* vs. *United Kingdom*.[32] At the same place they point to the restorative nature of this type of confiscation, which aforementioned institute makes similar to institute of confiscation of the proceeds acquired by processed crimes, and defines its nature closer to *sui generis* measure.

It appears that the relationship between the above-mentioned institutes has points of contact with differentiation legal systems in terms of specific legal nature of the last mentioned. Legal systems, in this regard, could be divided into two groups. In the first belong those which are obtained for the determination of the illegal proceeds *in the abstract* use the so-called "net" principle, as it is ours, and in other systems which use the so-called Principle of "gross". In the first group will be confiscated "clean" profit gained through crime, while the other takes the entire income without any deduction of any expenses. This, ultimately, may result in forfeiture of the offender and more than he earned his commission, which also opens up the possibility of punishment by applying these measures. From these circumstances Lajić concluded that in the first group of legal systems can be said about establishing a criminal seizure and forfeiture of property gain acquired by the crime on restorative principle, without any penal features, so the nature of the institute confiscation of property derived from crime can be determined outside the system of criminal sanctions or legal consequences of a criminal offense as *sui generis* measures, for which in the domestic law favor Ilić and Majić.[33] The foregoing circumstances could, in the context of domestic law, unlikely assumption that the ECtHR considering the same question, taking into account the specificity of "net" principle and before mentioned their own criteria (understanding the real nature and effects, and case severity and scope of applications), define confiscation of proceeds of crime in a qualitatively different way, compared to the earlier decision in the case of *Welch vs. United Kingdom.*

CONCLUSION

Confiscation of proceeds of crime today is a standard tool in the fight against organized crime, and it is present in the legal systems of all developed countries. From the beginning, the legal framework established by the institute was under the scrutiny of general and professional public, both in comparative law, and in our country. The fact is that the acquisition by crime is an insult to most people who have honest job, with the most exposed parts of society where crime inflicts the most damage.[34] These circumstances, however, do not give the green light to populist measures whose implementation would resemble the actions of Robin Hood. Institutionalization of the fight against organized crime and other serious crimes where the motive is acquisition of property, and the creation of an adequate legal milieu to implement appropriate means in this struggle, including the confiscation of proceeds of crime, are today a reflection of the real will of the political elite to oppose the said harmful social phenomena.

As stated at the beginning of exposure, the use of this institute, as a legitimate resource in the war against organized crime, is not being questioned. The

32 Ilić, G. P., Majić, M., op. cit., p. 58.
33 Lajić, O., op. cit., pp. 359-360.
34 Northern Ireland Assembly, *Proceeds of Crime*. Northern Ireland Assembly - Research and Library Services. http://www.niassembly.gov.uk/io/research/0301.pdf , 29th June 2010.

subject of potential controversy, in this regard, is the scope of application i.e. method of administration that would maintain its legitimacy. In this context, the confiscation of proceeds of crime should be viewed through the prism of protection of fundamental human rights, especially the right to quiet enjoyment of property, and the right to a fair trial (the use of legal presumptions and shifting the burden of proof), and the prohibition of retroactive application of criminal law. It is therefore particularly important activity of the European Court of Human Rights, an autonomous institution that interprets and applies the provisions of the ECHR, which sets the standards that are imposed by national legal systems. Related to the right to quiet enjoyment of property these standards are proportionality and necessity of the confiscation, or connection between the conduct of owners and violations of laws, and owner right to present counter-arguments on the competent court. When talking about the right to a fair trial, i.e. the creation of legal presumptions and shifting the burden of proof, it is important to mention the principles of proportionality, the right to defense, possibility to deny assumptions, solving by the court, free assessment of evidence and the public hearing. Finally, it is necessary to mention the prohibition of retroactive application of criminal law, which entails the question of the legal nature of the institute of confiscation proceeds of crime in national legislation.

Commenting on the creation of a national framework for the confiscation of proceeds of crime can be said that the legislator has incorporated the key standards in the legal solutions. It is somewhat controversial nature of the confiscation of proceeds of crime, whose essence, sometimes different from the declarative mark, according to the ECHR, determines the applicability of reverse. In a decision of the ECtHR determined the confiscation as a punishment and in accordance with the principle promoted in the ECHR held that retroactive application is prohibited. However, it can be argued that, in our law system, confiscation of proceeds of crime may be considered as a *sui generis* measure. This position is primarily argumentative by its similarity with the confiscation of the proceeds of crime during the judicial process, i.e. the common principles underlying the application, and by the principle of "net" in its determination. So, one could defend the view that in the domestic law we would not be able to talk about confiscation of such property as a punishment, and accordingly, of prohibiting the retroactive application of this institute.

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UDC 351.076(4-672EU)
351.076(497.11)

INTERNATIONAL AND EUROPEAN PUBLIC ADMINISTRATION STANDARDS[1]

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Abstract: The objective of the paper is to analyse key public administration standards and principles, developed by the international organizations *(the Council of Europe, the United Nations,* and *the International Labour Organization)* and standards developed by the European Union. The aim of the paper is to give an overview of modern administrative standards which represent guidelines for modernization and professionalization of national administrative systems and to point out to the implementation challenges in member states. The paper also restricts to the basic elements of the standards of a public official's status and work. Having in mind that the European Union accession is a strategic goal of Serbia, the paper shall also analyse the alignment of domestic legislation with European principles and explore in more depth the following reform elements.

Key words: international standards, administrative principles of the European Union, legal and institutional framework, administrative convergence, professionalization, de-politicisation, accountability, transparency, Serbian public administration.

INTRODUCTORY REMARKS

The administrative principles and standards defined by the international organizations, such as: the United Nations, the Council of Europe, the International Labour Organization as well as the administrative principles of the European Union have strong influence on the development of professional, accountable and efficient national administrative systems in member states. Concerning the relation between the international and European Union regulations and standards, there should be emphasized that regulations and acts of the international law constitute an integral part of the European Union legislation. All EU member states have adopted the *Convention for the Protection of Human Rights and Fundamental Freedoms* of the Council of Europe and in most of the states the Convention has been incorporated in the national legal systems.[2] The European Union institutions are obliged to adhere to the human rights defined by the Convention. The Court of Justice of The European Union has defined the relation between the Convention provisions and *"Acqui Communautairre"* in the case *Nold v. Commission*.[3] As The Court stated, basic rights of the Convention constitute the integral part of the general European principles and the Court of Justice has the competence to observe its implementation.

1 This paper is the result of the realisation of the Scientific Research Project entitled *"Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations"*. The Project is financed by the Ministry of Education and Science of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011-2014). The Project leader is Associate Professor Saša Mijalković, PhD.

2 *Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe, Rome, 1950.

3 Case: 4/73, *Nold v. Commission* 1974, ECR 491.

INTERNATIONAL PUBLIC ADMINISTRATION STANDARDS

The United Nations as an international organization is promoting and developing rules and standards aiming to support establishing of a clear and consistent legal framework and to foster the implementation of the rule of law at national level. According to *The Universal Declaration of Human rights* and other acts - *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social and Cultural Rights Development,* member states should establish strong, organized, professional, accountable and efficient administrative and judicial structures, building strong civil society based on rule of law and public accountability.[4] Principles defined by the document *Human Resources for Effective Administration in a Globalized World* point out to the central role of efficient human resource management in public administration.[5] It emphasizes new role of the administration which is to respond to the needs of citizens and changes in society. The document promotes the rule of law, professionalism, equal treatment, transparency, efficiency, accountability, effectiveness. In order to promote adequate capacities among public officials, the key issues have been established: recruitment of highly qualified personnel, growing sensitivity towards the respect for citizens needs, promoting professionalism in public service, creating a culture of a learning organization, fair remuneration system, low tolerance for corruption and crime, increasing recognition of the value of cross-cultural and international links as means towards the improvement of the professional image and performance of the public service. It is also promoting effective leadership and good governance, efficiency and accountability of senior officials and de-politicisation of public service.

The United Nations act *Unlocking the Human Potential for Public Sector Performance* is promoting development and implementation of efficient human resource management systems in public administrations.[6] It defines the principles of professional, impartial, neutral, efficient and accountable work of administration. The de-politicisation is especially emphasized as well as the role of senior public officials in human resource management. Thus, an important challenge for public managers would be to incorporate traditional civil service values, while at the same time promoting management innovations and efficiency improvements and encouraging more open and responsive forms of administration. It also represents a framework advocating for a balance between traditional public administration, public management, including new public management and an emerging model of responsive governance that emphasizes networks, greater openness and partnership with civil society and the private sector. Furthermore, it points out the importance of *merit principle*, as one the most powerful, yet simplest way in which administration can improve its effectiveness. A merit-oriented and career-based civil service helps foster organizational standards, professional and quality work, integrity among public servants. It will prevent many negative effects in public administration, such as: corruption, nepotism, discrimination, politicization, etc. The standards and principles defined by the United Nations acts have to be adopted and implemented in member states.

4 *Universal Declaration of Human rights* (1948), Paris: The UN General Assembly; *The International Covenant on Economic, Social and Cultural Rights* (1996), The United Nations; *The International Covenant on Civil and Political Rights The United Nations., July 7, 1994/Last edited on January 27, 1997.*

5 *Human Resources for Effective Administration in a Globalized World* (2005), United Nations: Department of Economic and Social Affairs, Division for Public Administration and Development Management.

6 *Unlocking the Human Potential for Public Sector performance* (2005), Department of Economic and Social Affairs, World Public Sector Report.

The Council of Europe as an international organization considers public administration plays an essential role in democratic societies, as stated in the *Recommendation No. R (2000) 6 of the Committee of Ministers to member states on the status of public officials in Europe.*[7] According to the Recommendation, public officials are the key element of a public administration, carrying out specific duties with necessary qualifications. There should be established appropriate legal and material environment in order to carry out their tasks effectively. Furthermore, public officials should carry out their duties in accordance with law and with ethical standards which relate to their functions. The public officials should serve loyally, impartially and efficiently with skill, fairness, having regard only for the public interest and the relevant circumstances of the case. They are not allowed to act arbitrarily and should have due regard for the rights, duties and proper interests of all others. They should act lawfully, exercising their discretionary power impartially. They should not allow their private interest to conflict with public position.[8] Furthermore, public officials should not engage in any activity, position or function, which is incompatible with the proper performance of duties. They should also take care that that none of their political activities or involvement on political or public debates impairs the confidence of the public and their employees in their ability to perform their duties impartially and loyally. In terms that all member states of the European Union have adopted *The Convention for the Protection of Human Rights and Fundamental Freedoms, m*ember states and their citizens are obliged to adhere to *The Convention* and have the right to use legal remedies before the European Court for Human Rights.[9] The most significant rights proclaimed by *The Convention* are right to a fair trial,[10] freedom of expression, freedom of assembly and association, right to an effective remedy, prohibition of discrimination, etc.

The Council of Europe also advocates for adoption of the national codes of conduct for public officials. The main principles defined by the *Codes of Conduct for Public Officials* are based on the fundamental aim of The Council of Europe which is to maintain stronger coherence between the member states and to foster public administration systems.[11] National administrations are obliged to adopt and implement the principles, in accordance with specific national social, legal and economic environment.

The purpose of *The Code* is to specify the standards of integrity and conduct to be observed by public officials, to help them meet the standards and to inform the public of the conduct. Public officials are obliged to carry out their duties in accordance with law, in a politically neutral manner. They are expected to be honest and efficient and to perform their duties with skill, fairness and understanding, having regard only for the public interest. They should not allow their private interest to conflict with their public position.[12] They are not allowed to be engaged in any activity that is incompatible with the proper performance of duties, neither to be

7 *Recommendation No. R (2000) 6 of the Committee of Ministers to member states on the status of public officials in Europe,* Committee of Ministers of the Council of Europe.

8 Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence the impartial and objective performance of their duties.

9 *Convention for the Protection of Human Rights and Fundamental Freedoms,* Council of Europe, Rome, 1950.

10 According to Article 6 of *The Convention:* "Everyone is entitled to a fair and public hearing within a reasonable time."

11 *Codes of Conduct for Public Officials,* Recommendation Rec (2000) 10, adopted by the Committee of Ministers of the Council of Europe on May 11, 2000 and explanatory memorandum (2000), Council of Europe Publishing, F-67075 Strasbourg Cedex.

12 The public official's private interest includes any advantage to them or close persons. There is an obligation to alert to any actual or potential conflict of interest, to take steps to avoid such conflict, to disclose to supervisor any such conflict.

involved in political activities impairing the confidence in their abilities to perform activities impartially and loyally. Regarding the principle of access to official information, there is a duty to treat appropriately, with all necessary confidentiality of all information and documents. Furthermore, they have to manage public and official resources effectively, efficiently and economically.

Concerning the importance and influence of the international documents, there should also be emphasized that there are legal consequences of *The Conventions* of The International Labour Organization in the field of public administration, such as: *Labour Relations (Public Service) Convention*[13], *Discrimination (Employment and Occupation) Convention*[14] *Human Resources Development Convention*.[15] They define the minimum standards of the labour relations in public administration - right to work, prohibition of discrimination regarding employment and occupation, right to associate and organize, collective bargaining, principle of equal treatment regarding employment, equal pay for equal work, human resource development, professional training, career development, etc.

THE EUROPEAN UNION ADMINISTRATIVE STANDARDS

Although the European Union legal system leaves autonomy to the member states regarding their institutional and administrative organization, preparation for membership gradually worked as a factor and incentive to shape and develop structures and institutions capable of meeting the obligations and needs of the European Union membership.[16] Thus, development of administrative capacity, which includes the requirement to establish professional and depoliticised civil service, becomes an important criterion for the EU accession. Candidate countries have become obliged to comply with general European principles of public administration, which existed within the "European Administrative Space".[17] The idea of "European Administrative Space" was that, in spite of the differences of institutional configurations, a degree of convergence existed among member states at least at the level of general principles.[18] The creation of general European principles of public administration was further facilitated by the jurisprudence of the EU Court of Justice,[19] and by constant interaction among civil servants from the member states.

The general rule is that the Community legal system leaves the autonomy to institutional and administrative organization of member states. There is no direct influence of the European Union to national administrations.[20] National adminis-

13 http://www.ilo.org/ilolex/english/convdisp1.htm, *Labour Relations (Public Service) Convention.* C151. (1978), International Labor Organization. Internet, on November 12, 2010.
14 http://www.ilo.org/ilolex/english/convdisp1.htm, *Discrimination (Employment and Occupation) Convention*. C 111. (1958), International Labor Organization. Internet, on November 12, 2010.
15 http://www.ilo.org/ilolex/english/convdisp1.htm, *Human Resources Development Convention*. C142. (1975). International Labor Organization. Internet, on November 12, 2010.
16 B. Lippert, G. Umbbach (2005), *The Pressure of Europeanisation – from post-communist state administrations to normal players in the EU system*, Institute for European policy, Berlin.
17 These principles were developed by joint initiative of the OECD and the EU „SIGMA" programme in the 1990s. See: Sigma paper No 27 "European principles for Public Administration", Paris, OECD, 1998
18 SIGMA paper 44, prepared by J. M. Sahling, (2009), *Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after Accession*, OECD, Paris. Priniples of Legality, Responsibility and Accountability are modern principles which constitute „European Administrative Space" – informal "Acqui Communautaire" and have to be adopted by and implemented in national legislations.
19 J. Schwarze (1992), *European Administrative Law*, (Sweet and Maxwell), pp. 4-5.
20 C. Nizzo, National Public Administrations and European Integration, SIGMA, http://www.oecd.org/puma/sigmaweb.

trations should have the sufficient capacity to implement the EC law, with an acceptable standard of effectiveness, as defined by the jurisprudence of the Court of Justice.[21] "The greatest number of legal principles governing administrative capacity recognized today in the Community law originate in the creative law-making and decision-making process of the European Court of Justice".[22]

Institutions of the European Union have made a lot of efforts in order to define standards and principles for public administration development. SIGMA[23] has developed a set of baselines for six key areas of public administration which are the working tool to provide a basis for conducting assessments of central management and control systems. Public administration development baselines are related to the following aspects: Civil Service, External Audit, Financial Control, Public Expenditure Management Systems, Policy Making and Co-ordination Machinery and Public Procurement Management Systems.[24] In each of these areas, the baselines reflect standards of good practices in the EU member states. The most important public administration development baselines refer to the following aspects: Legality; Legal Certainty and Predictability; Responsibility and Accountability; Impartiality and Integrity of Public Servants; Efficiency in Management of Public Servants; Professionalism and Stability; Transparency; Development of Civil Service capacities in the area of European integration. The adoption and efficient implementation of Sigma's standards shall influence the development of national public administration systems and encourage harmonization of national legislation with the EU legislation. These standards will enable creation of a modern, responsible and professional public administration.[25] [26]

According to *The Charter of Fundamental Rights of the European Union*, every person has the right to have their affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.[27] This right includes the following: the right of every person to be heard, before any individual measure which would affect him is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the obligation of the administration to give reasons for its decision. Any citizen has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions and bodies.

21 Sigma paper No 27 "European principles for Public Administration", Paris, OECD, 1998.
22 J. Schwarze, European Administrative Law, Sweet and Maxwell, 1992, London, pp. 4-5.
23 Sigma is a joint initiative of the OECD and the EU principally financed by the EU's PHARE programme.
24 **Control and Management System baselines for the European Union membership, OECD, 1999, www.** oecd.org/puma/sigmaweb.
25 Entering the civil service has to be followed by appropriate recruitment procedures based on *merit* and *equality principles*. Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, prohibits discrimination regarding the access to employment, including selection criteria and recruitment conditions, promotion at all levels of the professional hierarchy, access to all levels of vocational training, working conditions, dismissal and pay. The purpose of the Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the member states the *principle of equal treatment*. *Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation,* Official Journal L 303.
26 In order to develop the advantages of long-term employment, and make civil service more flexible, different management tools are used, such as mobility, training, promotion and evaluation. Regarding the mobility principle, and employment in the Public Administration, the provisions of the free movement for workers do not apply to employment in the public sector. However, it must be borne in mind that as a derogation from the fundamental principle that workers of the Community should enjoy freedom of movement and not suffer discrimination. The Court comes to conclusion that "Employment in the public sector must be understood as meaning those posts which involve direct or indirect participation in the exercise of powers conferred by public law in the discharge of functions whose purpose is to safeguard the general interest of the State or of other public authorities." Blanpain, R., Engels, C., *European Labour Law*, Fifth and revised edition, Kluwer Law International, The Hague, London, Boston, 1998, pp.281-282.
27 Article 41 of *The Charter of Fundamental Rights of the European Union*, Official Journal of the European Communities (2000/c 364/01), 2000.

According to Article 47, the right to an effective remedy and to a fair trial is established. "Everyone whose rights and freedoms guaranteed by the law are violated has the right to an effective remedy before a tribunal. Besides, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law."

PUBLIC ADMINISTRATION REFORM IN SERBIA – IMPLEMENTATION AND CHALLENGES

Similar to other countries in the region, Serbia embarked on a process of comprehensive public administration reform over the past couple of years. One of the key drivers for civil service reform in Serbia was the objective to meet the EU accession requirements. The motivation for the reform has been the need to strengthen the civil service capacity, lessen political interference and improve the efficiency and effectiveness of public administration functioning. The comprehensive civil service reform was undertaken, followed by relatively quick preparation and adoption of the package of public administration reform laws.[28] Serbian administrative legislative framework comprises all key European public administration principles which should encourage creation of a professional, efficient and accountable administration - principle of legality (rule of law), impartiality and political neutrality, principle of equality, protection of citizen's rights and of protection of public interest, accountability for results, transparency of operation, equal access to all posts under equal conditions, public officials' promotion and professional development and legal protection of their civil service rights.

As expected, practice has shown that de-politicisation of senior civil service personnel has been one of the key challenges of the Serbian Government. The first step in attempting to reduce politicisation of high ladders of Serbian bureaucracy was to draw a line between political and administrative personnel. However, the Government was not able to fill all of the senior positions by the prescribed deadline (2010), as required by the Civil Service Law amendments.[29] This demonstrates that de-politicisation is a highly sensitive issue which is difficult to sort out. The regulation of the senior civil service seems to be relatively correct, but in practice this regulation leaves a lot to be desired in terms of the de-politicisation of the senior management. Practice has indeed shown how difficult it is to introduce a senior management corps in an administrative environment where politicisation is prevalent, the grounds for professionalism are not sound and managerial capabilities are weak. Although progress has been made in recent years, *the merit system* is still hampered by long-lasting cultural habits and traditions. *The merit system* is weak and politicisation is continuing. Despite the positive aspects of the regulations on recruitment and classification of the civil service, *the merit system* is not yet fully guaranteed and remains fragile, as recruitment decisions are still based excessively on discretion.

Regarding the changes in the civil service integrity system, the amendments to the *Law on the Anti-Corruption Agency s*trengthened the legal basis for the protection of *whistle-blowers* in the public administration. Central government bodies

28 Law on Government, "Official Gazette of the RS", No. 61/05; Law on State Administration, "Official Gazette of the Republic of Serbia" No. 79/05; Civil Service Law, "Official Gazette of the RS", No. 79/05, 81/05, 83/05, 64/07, 67/07; Law on Salaries of Civil Servants and Employees "Official Gazette of the RS", No. 62/06, 63/06, 115/06, 101/07.

29 The competition procedure was completed and the staff appointed to approximately 170 senior civil service positions, whereas the overall number of vacant senior civil service posts was between 30 and 400.

started to develop their integrity plans, in line with the guidelines provided by the Anti-Corruption Agency. It is expected that these plans will identify special corruption risks for each institution, which should result in the reduction of corrupt practices in the administration.

The principle of equality before the Law is one of the key principles guaranteed by the Serbian Constitution. This principle is further elaborated in the *Law on the Prohibition of Discrimination,* which regulates the general prohibition of discrimination, the forms and cases of discrimination. The Law establishes the institution of the Commissioner for the Protection of Equality as an independent state body.[30] Regarding the principles of transparency and confidentiality in public administration there should emphasize an important role of the Commissioner for Free Access to Information and Personal Data Protection, whose decisions are to be binding, final and enforceable by coercive means. Furthermore, a major novelty concerning transparency is *The Code of Good Administrative Behaviour* adopted by the Ombudsman, containing principles of good administration that are recognized by the EU institutions and in the EU member states. However, the political and administrative culture in Serbia is overly reliant on the enactment of new legislation.[31] Greater investment in managerial capacities and capabilities, however, could reduce the dependence on legal instruments.

Regarding the principle of accountability, managerial accountability is virtually non-exist, as decision making is limited to political decisions taken by ministers and politicians. There is no delegation of decision-making powers. Besides, the *Law on Administrative Procedures* is obsolete and does not meet democratic standards for administrative decision-making. The administrative decision-making system needs to be reformed in order to become more reliable, more efficient and more capable of ensuring legal certainty for business and the general public. The Ombudsman needs to be consolidated and strengthened, as still poorly understood by the public. Transparency and accountability have not yet been achieved, the lingering tendency towards secrecy in the public administration and citizen's distrust all hamper the full implementation of the legislation.

According to the Sigma's assessment, organisation of the administration in Serbia is excessively complex, in terms that legislation does not provide sufficient clarity concerning the distribution of administrative competencies among public authorities, and the competencies between various bodies often overlap or contradict each other. A new and sounder organisational policy would be useful in clarifying responsibilities of the various administrative bodies and organisations, increasing transparency and strengthening accountability and efficiency.

Over the past couple of years, an important progress has been made in reforming the human resource management system. Regarding institutional framework, the Human Resource Management Service of the Government of Serbia was formed, as a central, professional body responsible for management and development of the Serbian Government human resources. The centralized human resource structures, at least for a certain amount of time, do have a potential to enhance professionalism in the civil service. However, it is also important that the Human Resource Management Service demonstrates certain level of flexibility in its work, especially related to human resource management procedures, which include efficient recruitment and selection of personnel. More accurate training needs analyses should be established to provide HRM Service with necessary resources to play a role as a facility for hu-

30 According to the data of April 2011, the Commissioner received approximately 140 complaints. One of the areas greatly affected by discrimination is the area of employment.
31 Sigma Assessment, Serbia, 2011.

man resources training and development. The transformation of the HRMS into a training school or an Institute for Public Administration under the Ministry of Public Administration and Local Self-Government is strongly recommended.[32] Training for managers should be considered a part of their working obligations, in order to improve their managerial capabilities and to understand better the essentials of running a democratic administration. The Serbian European Integration Office plays a central role in the EU integration process of the country, but the training and developments should be better coordinated, with the HRMS and Ministry for Public Administration and Local Self-Government, serving as main repositories of policy-oriented knowledge on public administration and public management.

CONCLUDING REMARKS

The adoption and efficient implementation of modern International and European public administration standards shall have strong influence on the development of national administrative systems and shall encourage harmonization of national legislation and creation of a common administrative practice. These standards will strongly influence the development of a modern, accountable, professional and efficient public administration, responsive to citizens and society. International and European standards promote good administration principles, such as legality, professionalism, transparency, accountability, responsibility, impartial performance, protection of servant's integrity, recruitment, promotion and pay based on merit, prohibition of the conflict of interest, no discrimination principle, etc. All of these elements make public administration dynamic and more responsive to the needs of clients and society. There should be emphasized that regulations and acts of the international law constitute an integral part of the European Union legislation. Regarding the case law and consistency of the European Court for Human rights and the Court of Justice of the EU, it should be pointed out that the Court of Justice is treating the Convention as an integral part of the legal system of the European Union. Under strong influence of the European coherency and convergence, the member states of the international organizations and the European Union have made important progress in putting in place the administrative legislation which is in line with the defined standards. However, the effective implementation of defined standards in member states and potential member states remains to be seen.

Although Serbian administrative legislative framework comprises all key European public administration principles which should encourage creation of a responsive public administration, these principles are not yet fully guaranteed in practice. Although progress has been made in recent years, it might be observed that the grounds for professionalism are not sound and managerial capabilities are weak and the merit system is still hampered by long-lasting cultural habits and traditions. Furthermore, transparency and accountability have not yet been achieved, decision making is limited to political decisions taken by ministers and politicians, the efforts of independent control authorities are not consolidated and strengthened, organisation of the administration is excessively complex and central training institution have not been established yet. Thus, significant efforts need to be invested in order to implement and sustain ambitious reform public administration programme.

32 Sigma Assessment, Serbia, 2011, pp. 13.

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UDC 351.74(100)
341.456

INTERNATIONAL POLICE COOPERATION, EUROPEAN ARREST WARRANT AND EXTRADITION PROCEDURES

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Abstract: The dangers and negative consequences that may entail transnational crime especially after the development and security of countries are a challenge for each country individually and for the international community in general, to find instruments, forms and methods for successful dealing with the same issue. The rapid development of technological and communication means, the abolition of internal borders between certain states allow the crossing of state borders and move the crime and its perpetrators from one country to another. This way, most domestic crime problems come to have international character. Successful tackling crime requires continuous, direct, rapid and efficient mutual cooperation of police authorities.

The oldest, most common and unique way of surrendering a person that is subject of international arrest warrant was and will be extradition. European arrest warrant within the European Union provides several changes in the execution of the extradition or transfer of persons, primarily in shortening the duration of the procedure.

The research in this paper will try to initiate a model that will achieve shorter duration of extradition procedure worldwide. Current knowledge suggests the conclusion that the European warrant application significantly shortens the duration of the surrender of the person. Taking into account other elements that make the order effective, this paper presents a challenge initiating a model that extradition will be applicable in all countries, regardless whether they are union members or not.

Key words: International Cooperation, an international arrest warrant, European arrest warrant, extradition, fugitives.

INTRODUCTORY REMARKS

The Negative impacts and consequences that may be caused by transnational crime, on the development of democratic, political, economic and social relations, the rule of law, deterring foreign investors, lack of scientific researches, without universally accepted definition and valid statistical data, due to the problems of adapting to new conditions that countries have, lack of sufficient resources to solve the problem, inadequate and insufficient cooperation, are always a challenge for research.

The term crime originates from the term "crimen" that means crime, wrongdoing, which involves individual behavior contrary to generally accepted standards[2]. For the term crime there are multiple interpretations and meanings.

The Crime represents an inevitable accompanying negative phenomenon in society and follows its development. Historically, it appears in the genesis of civilization itself, because there were always individuals who violated the fundamental values of society with their behavior, which are grounded in the community as a whole.

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2 Krivokapic Vladimir, 1990,"Kriminalisticka taktika", Belgrade, p.17

The social development, as well as the political and economic changes in world, scientific, technical and technological advances, evolved and changed the crime it self. On the other hand, holders of power in the countries have always sought an appropriate way, primarily through regulations, then with appropriate measures, to prevent criminal behavior. The success of the implemented measures was consistently weak.

Modern crime with all its specificities (dynamic growth, structure, new more severe forms and manner of execution) is undoubtedly an increased threat to the vital interests of the individuals, the community and its safety.

In the past two decades, crime, mainly from a domestic social problem has become more global in its nature. Crime is no longer confined to geographical borders within certain countries. Crime became universal - "there is no country without crime ".

The opening of previously closed borders, globalization of the economy development of information and communication technology, transportation, transcontinental mobility, changes in social, political and economic systems in the world, all contributed for the crime to cross state borders.

Switching, from one system of values and the incomplete development of the other, represents a gap and an additional factor stimulating the dynamics and structure of modern crime.

In the middle of the XX century in the United States the crime reached its culmination as "organized crime" or "syndicated crime"[3], spreading then to other, economically more developed countries,[4]

The new developed forms of organization are manifested as criminal gangs[5] and rackets[6], with introduction of prohibition[7], and then the crime activities have expanded to prostitution and drug trafficking as activities that enable the realization of huge profits.

The possibility of earning millions of dollars presents a strong motive for the creation of criminal gangs, so that humanity is "enriched" with a new phenomenon called organized crime[8].

Slowly, but surely and persistently, comes to unite between corrupt politicians, police and other law enforcement authorities on one side, and performers/executors of criminal activity on the other side.

The basic features of the new breed of crime are: the most dangerous crime (heavy consequences, after the used funds, by the difficulties that it is creating to the national authorities in its discovery); least known (un scientifically studied, apprehended and explained; shrouded by secrecy and mystery with a strict application of the "law of silence"), threatens the rule of law and its functioning; paralyzes the safety functions of the countries by corruption, involving them in their criminal activities, brings into question the democratic foundations of the states, neglecting

3 Günther Kaiser, 1993, "Kriminologie", CF. Müller Verlag GmbH, Heidelberg, , и „Crimiminologie" 1995 – translation , Gjorgi Marjanovic, p.195

4 The most known forms of organized crime groups are Italian "Mafia" with its manifestations, "'Ndrangheta" and "Camorra" and its branch in the U.S., "Cosa Nostra", and similar criminal groups Russian, Ukrainian , Albanian, Serbian and other mafias, Chinese "Triads", Japanese " Yakuza", Colombian drug cartels of Cali and Medellin, "Drug lords" of the golden triangle Burma, Laos and Thailand etc.

5 Tomislav Markovic 1977, "Modern research techniques of crime – Criminology ", Zagreb,p. 7

6 Organized violence combined with blackmail, offering «protection» for a percentage of revenues, in cases not paid, the violence continues in the harder forms. The Racket successfully utilized various half legal and illegal activities, such as gambling, stations, major sporting events, mediation in prostitution, enabling the enjoyment of drugs, etc.

7 introduction of prohibition for production, trade and sale of Alcohol in USA

8 Tomislav Markovic 1977, " Modern research techniques of crime – Criminology ", Zagreb

the legitimacy and legality of the state authorities; organize their own protection from persecution and punishment; cause direct and indirect victims; organization; with the orientation and activities to continually search for higher profits[9]; creates and possesses huge resources that allows strength and power.

Today's world is a world of threats and conflicts with an international character, world in which countries and people are still different and divided, with one word in conditions that facilitate the development of transnational crime in particular.

INTERNATIONAL POLICE – JUDICIAL COOPERATION

The fact that the perpetrators of criminal acts consciously or unconsciously, with knowledge or ignorance, do not occur before the judicial authorities to complete the initiated criminal proceedings or to serve a criminal sanction, causes the need to undertake measures and activities for their search.

Their unreachable is actually the main reason for starting the search.

The search is an organized system for collecting various types of notifications of the person by activating the operational tactical and technical measures available to police in order to find them and to bring before judicial authorities.

Locating fugitives is one of the most important activities of the criminal justice authorities globally, taking into account threats on public safety that could be jeopardized by their criminal behavior. We should not neglect the fact that their fast and efficient retrieval is act on prevention. Successful search of fugitives means completing the investigative, criminal and enforcement proceedings.

Transnational crime represents a phenomenon that affects every country. The emergence of transnational crime leads to the emergence of a growing number of fugitives that can now easily and quickly change the place of stay after the committed crime. Modern crime requires the use of modern instruments for successfully dealing with it. This implies, above all, successful, rapid, continuous and immediate international police cooperation.

As the crime becomes more complex, the demands for police cooperation are increasing too. The need for cooperation and creating strategic alliances between police institutions, in due time, became unique and most important tool in the fight against crime and its perpetrators.

In an era of transnational crime, international cooperation of police services is of particular importance.

International cooperation between criminal justice systems is not a new phenomenon. It appears with the foundation of states in the XIX century and the emergence of transnational crime.

The basis for the development and growth of international police cooperation includes the previously acquired experiences of cooperation, primarily for political reasons and requirements to establish international control of persons and organizations, political opponents of the existing systems[10].

Law enforcement and cooperation among countries in the past saw two important trends: the first one, at the beginning when the police had political objectives and the second when the cooperation was based on the temporary and limited forms, primarily on a bilateral level, till the development of more permanent forms with broad multilateral participation.

9 Stankov B., 1992, "Organized crime – problems, prevention and control", Sofia, p.57
10 Socialists, democrats, liberals and anarchists

International law enforcement appears along with the significant social events (political and economic transformations of capitalism and the spread of democratization), that have an impact on the organization and practices of police institutions. Police practices and organizational structures between countries are different. Each culture has its own system of determining justice, having in mind that the primary obligation of each State is to maintain order and peace.

Police cooperation may have many forms and involves different types of police cooperation between police institutions from different countries (temporary or permanent, bilateral or multilateral).

Multilateral efforts for establishment police cooperation in Europe have basically political origin and are based on political issues.

Every state organizes its own specialized police authorities to deal with crime while there are regional police organizations, formed by several countries in one region. Today at the international level, Interpol is the most famous international police organization with a permanent multilateral structure[11].

In Africa, police cooperation takes place through East African sub-regional office, based in Nairobi, Kenya.

Establishing the South African regional organization for cooperation of the police (SARPCO), in 1995, is considered a major step in establishing cooperation between these countries. The organization adopted a number of principles which in the past disrupted police cooperation.

Europe has developed numerous models of cooperation over the years including Interpol, TREVI Group, Schengen regime and Europol. The existence of many different systems of judicial and police cooperation, may complicate the procedure for international cooperation.

Certain mutual cooperation forms dating back before the XIX century[12]. The first organized attempts to create an international police organization come from the middle of the XVIII century with the establishment of the Police Union of the German countries in 1851, in order to control the political intelligence and information exchange of suspicious political groups[13].

The efforts to establish international police cooperation in Europe have basically political origin and are based on political issues. The end of XIX century is characterized by increased activities of the anarchists and as reaction comes to the emergence of police actions aimed at their prevention.

Seeking solutions for the common problem with anarchism, forces the countries to make further attempts to form institutions which would cooperate mutually and at the same time would increase police activities in this area[14].

In 1898 Austria proposed Switzerland the founding of the "International Police League." The Attempt remained not implemented. Then followed the First International Conference on police co-ordination of police measures in Rome from 24 November to 21 December 1898 and the Second International

11 A lot of federal agencies in the States are involved in international police activities: The Federal bureau of investigation–FBI; The Drug Enforcement Agency–DEA; The Bureau of Alcohol, Tobacco, Firearms and Explosives-ATF; Secret Service; Internal Revenue service-IRS; The Bureau of Diplomatic security; etc.

12 Police in Paris possess photo albums-files for identification based on photographs. At the end of 1800 police in Argentina, Belgium, Austria, Germany, France and United States started to identify the characteristic of trans national crime and it`s perpetrators and to create databases of their photos, fingerprints and information..

13 Deflem Mathieu, (2002) Policing world society: "Historical Foundations of International Police Cooperation", Oxford University Press, November.

14 Jensen, R.B (2001),The International police and fight against Anarchist terrorism (1900-1914) Terrorism and political violence, 13 (1) p, 15-46.

Conference against anarchism held in March 1904 in St. Petersburg, where representatives from 10 countries agreed to the "Secret protocol of international fight against anarchism"

Participating countries agreed to introduce a new method of identification invented by Alphonse Bertillon called "portrait parle" (an image that speaks). The method of identification was based on measurements of parts of their heads and bodies. Bertillon measures were expressed in numbers that could be transmitted through telephone and telegraph.

Conferences against anarchism held in Rome and St. Petersburg have occurred at a time when international police cooperation for political purposes, slowly but steadily been declining and failed to create long-term forms of international cooperation of the police, because of their political goals and ideological divisions of the participating countries .

The participants of conferences in Rome and St. Petersburg, could not agree on the creation of central intelligence bureau against anarchy, through which they could coordinate the exchange of information between national bureaus, because national sentiment in Europe at that time were stress pronounced to accept creation of a bureau that would be the only office which will connect the all other national bureaus.

Police institutions exchanging information since the XIX century have created a network of international police experts[15], and acquired police practices are promoted in the protocols from Rome and St. Petersburg.

The second half of the nineteenth century, for the police institutions is a period in which they pay particular attention to fight the crime, in which period the political goals of national governments are no longer a priority. This is a period of abandonment of political motives and commitment to the crime especially international. This is actually the moment that marks the most noticeable and rapid development of international police cooperation.

Although the attempts to establish international police cooperation, in a form that will overcome the problems related to national sovereignty were not successful, they have an important role in the history of international police cooperation. The impact will be felt especially in the first half of XX century.

Fighting crime internationally was also the main topic at the Tenth Congress of the International Criminal Association held in 1905.

The police organization and international cooperation were discussed on the first Congress of the International Criminal Police, held in Monaco in 1914. The congress was attended by politicians and legal officials from Europe, Central America, North Africa and the Middle East, and special attention is devoted to international crime. Although Congress sought to establish international cooperation in criminal matters, the attempt failed.

After the First World War in 1919 the Dutch police have taken the initiative to establish international police headquarters in the League of Nations.

Efforts of the international community to establish an international police organization gave results in 1923, when Vienna was host of the Second International Police Congress. At the Congress the International Criminal Police Commission known as Interpol[16] was established.

15 Deflem Mathieu, (2002) Policing world society: "Historical Foundations of International Police Cooperation", Oxford University Press, November, p.70-77.

16 Interpol in Republic of Macedonia was established in 1993 with in the Ministry of Interior;

The establishment of the commission has been considered as the first step to successful and continuous international police cooperation against transnational crime. International Criminal Police Commission has become the most developed international organization of law enforcement with multilateral membership[17], although the organization was initially predominant as a European organization. The motto of the organization "for a safer world" speaks itself for the purposes of the organization. With its formation, finally, it was considered that conditions for successful and permanent international police cooperation were created. The Organization participates actively in dealing with all types of security threats in the world, which gives a great contribution to world security.

The successful fight against international crime, criminal activities and its perpetrators, requires possession of secure and valid information. The Interpol database[18] and system "I- 24 / 7", as a communication system between the member countries is part of the solution to the problems above.

Tracing and arresting persons, who are subjects of search, is one of the most important activities of the police services. The hiding of the fugitives usually provides further criminal activities, thus leading to the criminal proceedings in more than one country. When fugitives are not available, the cases are incomplete; the accused perpetrators can not take responsibility for the committed acts and for the victims of these crimes justice is not served. The activity of Interpol in searching for international fugitives is a priority since the foundation of the organization.

According to Interpol, fugitives present a threat to public safety and the judicial system. The highest importance that Interpol gives to this issue can be seen in the creation of a separate unit for searching fugitives FIS (Fugitive investigation service), which also enables active and systematic support to all Member countries. Member countries participate actively in search of offenders with the goal to locate and arrest them on one side and in the process of extradition on the other side.

Through Interpol, at the request of Member States, circulating 7 types of notices-warrants[19] - electronic diffusions-notices, which include identity and court data on individuals subject to search, which can be distinguished by the purpose, which also can be determined through the color indicated in top right corner.

The basic instrument used in the search of fugitives is an Interpol red notice. The Red notice is accepted by the Member countries as a legal basis for the provisional detention with a view of extradition. Depending on which stage of the proceedings is the subject there are two types of Interpol red notice: red notice for searches of fugitive, subject of criminal prosecution and red notice for searches of fugitive sentenced to imprisonment or measure of safety.

17 with 190 member countries, it is the second organization according to the number of member countries (the UN 193 member countries)

18 database of wanted persons; photo and fingerprints database; DNA data base; lost and stolen documents; stolen motor vehicles; lost- stolen weapons; lost-stolen object and artistic values;

19 Red Notice - To seek the arrest or provisional arrest of wanted persons with a view to extradition; Blue Notice - To locate, identify or obtain information on a person of interest in a criminal investigation; Green Notice- To warn about a person's criminal activities if that person is considered to be a possible threat to public safety; Yellow notice - To help locate missing persons, often minors, or to help identify persons who are unable to identify themselves; Black Notice- To seek information on unidentified bodies; Orange Notice - To warn of an event, a person, an object or a process representing an imminent threat and danger to persons or property; Purple Notice - To provide information on modus operandi, objects, devices and concealment methods used by criminals; INTERPOL–United Nations Security Council Special Notice - Issued for individuals and entities that are subject to UN sanctions.

EXTRADITION

Extradition is a process in which an accused or sentenced fugitive is brought with police escorts in the country who issued an arrest warrant for the subject's trial or execution of sentence. Having in mind the fact that crime is getting more international, extradition takes its place as an important instrument of international cooperation.

The practical implementation of the extradition process indicates the existence of numerous barriers for a fulfilled and effective practice of extradition. According to written documents the extradition dates back to 1280-BC, when the first extradition has been done on the basis of the extradition treaty between Ramses II of Egypt and the Prince of Hittite Hattushilish III[20].

For a long time, there were no provisions or international agreements about the conditions for extradition or procedure to be followed that was the reason why the extradition was applied in rare cases. During the XVII and XVIII century, many countries requested the extradition of perpetrators for the acts of a political character, which however, France and Belgium did not approve.

Extradition was applied in rare cases, meaning when the case had international dimensions or countries that requested and countries from whom the extradition was requested, had to be ready for cooperation. In practice, extradition was rarely requested and rarely approved and sanctioned. The Extradition as a tool for handing over fugitives was governed by hundreds of bilateral agreements, which were practiced since 1800.

The first multilateral convention on this subject was the Convention for Extradition (Inter-American) from 1933 in Organization of the American States[21]. After 20 years followed the Arab extradition treaty[22] from 1952, then the European Convention on extradition[23] from 1957, the Convention of the European Union for simplified extradition in the European Union from 1995, Convention of the European Union on essential requirements for extradition within the European Union from 1996, a Common welt scheme for the transfer of fugitives from 1966, Convention for the implementation of Schengen on 19 June 1990.

Extradition as a proceeding is basically governed with conventions[24] and treaties ratified and implemented in domestic jurisdictions.

The Convention lays down the procedure for extradition and the general assumptions that must be met for its successful implementation (duration of the criminal sanction, dual criminality and citizenship).

The general assumption that must be met for successful implementation of extradition is the duration of the criminal sanction, dual criminality and citizenship.

Regarding the duration of the imposed sentence, is necessary, the imposed sentence for the committed crime or security measure not to be less than four months or the imposed punishment for the offense not to be less than 12 months.

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20 Yamold, Barbara M., "International fugitives : A new role for the International Court of Justice", First published in 1991Prseger Publishers, One Madison Avenue, New York.
21 Convention on Extradition Inter-American (Montevideo); December 26, 1933;
22 Extradition Agreement of the League of Arab States (1952);
23 Council of Europe, European Convention on Extradition (1957);
24 Convention on Extradition Inter-American (Montevideo); December 26, 1933; Extradition Agreement of the League of Arab States (1952); Council of Europe, European Convention on Extradition (1957); Model Treaty on Extradition, U.N. Doc. A/45/49 (1990); Council decision 2002/584/JHA, Article 17 - Time limits and procedures for the decision to execute the European arrest warrant

Double criminality implies existence of criminal offenses foreseen and punishable in the country that requires and the country from which extradition is requested. The question of citizenship makes the extradition process particularly difficult. Possession of dual citizenship contributes to this situation, because the protection of its citizens is constitutionally guaranteed in all countries.

The conventions provide grounds for refusing the requests for extradition, which in particular are related to the political and fiscal crimes. The existence of suspicion that the person will be the tortured, that it will be tortured or to be sentenced to a death penalty, approved asylum, adopted amnesty or limitation incurred of the execution of the sentence or the existence of national interest, are grounds for refusal of the extradition request.

The convention provides a deadline for submission of the documentation for extradition (40 days of detention imposed).

The deadline for the execution of extradition is not specified, because the national legislations and different legal systems provide different lengths of extradition procedure. For example, in our country and in Montenegro the duration of extradition procedure is up to six (6) months from the date of his/her arrest, in Serbia this period is one (1) year.

This means that the procedure for a person, arrested based on international arrest warrant with a view to extradition, can last from six months to one year. In cases, when it comes to international arrest warrant for the executing imprisonment sentence of four months or longer, then the duration of the extradition custody may be justified.

In cases, where a person is searched for prosecution the time of a year spent in pre-extradition custody can have negative consequences, especially in cases when an acquitted verdict will be brought or a verdict less or equal to the time spent in pre-extradition custody. The question remains open "what will happen if the sentence pronounced is going to be less than four months?"

EUROPEAN ARREST WARRANT

The increased number of submitted requests for extradition within the EU and the disadvantages that stand out, among the particularly complex and long extradition procedures, problems have been noted, that could not be resolved within the EU under the existing legal systems.

The Framework Decision[25],[26]of the Council of Europe, on 13 June 2002, introduced the European arrest warrant and the procedure of surrender of persons, between Member States, which is changing the way of the extradition of persons with surrender procedures between the competent judicial authorities. The decision provides innovations in procedure of extradition and solves some problems that arise during the extradition proceedings.

The European arrest warrant is an instrument which improves judicial cooperation through the abolition of formal extradition procedures and to ensure that criminals cannot escape justice in the EU.

25 COUNCIL FRAMEWORK DECISION (2002/584/JHA), of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States;

26 The idea of replacing extradition with surrender of persons within the EU originates from the meeting of the EU Council in Tampere, 1999.

If the Warrant is the first measure in the area of criminal law that is used and is the basis for judicial cooperation between Member States, then the application of the principle of mutual recognition of court decisions adopted is the basis for making this decision. The application of this principle means automatic recognition and enforcement of a judicial decision, by a court in one country to be enforceable in another Member State.

The handover of persons is made between competent judicial authorities, who exclude the role of higher judicial instances, which previously had an impact on the final decision for extradition. The process of handing over is built on direct contacts between competent judicial authorities of the Member States.

The Warrant contains instruments for the arrest and request for extradition, which in the past represented two separate instruments, a request for provisional arrest and request for extradition (conducting two separate procedures). The Warrant gave special attention to fulfill the requirements, which should be the base for the arrest of the wanted person as well as for bringing the decision for pre-extradition custody. Antidiscrimination represents and is ground for refusing the extradition. Here, among all, is regarding of issuing a warrant for prosecution or execution of the sentence on the basis of religion, sex, race, ethnicity, nationality, political opinion, gender orientation, afflict, torture, imposing the death sentence etc. Appropriate measures have been undertaken for protection of personal data, which have been given special attention.

The European arrest warrant provides a balance between efficiency and strict guarantees that the fundamental rights of arrested persons are respected. Member States and national courts should respect the European Convention on Human Rights especially in terms of providing a lawyer and interpreter; if the judgment was brought in absentia of the person, providing the retrial in the country seeking his return etc. The death penalty is not mentioned as a punishment because it is abolished in the European Union.

The basic assumptions on which the warrant can be issued are: - criminal acts punishable with a prison sentence or security measure of at least 12 months or, if the verdict is already rendered of at least 4 months imprisonment.

The question "what will happen when a criminal act exists, as so, in a member state, and the same in the other country does not have the same status of a criminal act?" This leads to a situation in which the wanted person may stay on the territory of that country without sanctions. To overcome this situation with the EAW are provided 32 crimes[27] for which sentences or security measure can be pronounced, for over three years and the execution of the warrant is required. In such cases the principle of dual criminality is not valid, and the execution of the warrant is required. The list of crimes is not final and may be supplemented by other criminal acts in a proper procedure. The assumptions for the execution of the warrant may

27 Participation in a criminal organization, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests, laundering of the proceeds of crime, counterfeiting currency, including of the euro, computer-related crime, environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties, • facilitation of unauthorized entry and residence, murder, grievous bodily injury, illicit trade in human organs and issue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, organized or armed robbery, illicit trafficking in cultural goods, including antiques and works of art, swindling, racketeering and extortion, counterfeiting and piracy of products, forgery of administrative documents and trafficking therein, forgery of means of payment, illicit trafficking in hormonal substances and other growth promoters, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, arson, crimes within the jurisdiction of the International Criminal Court, unlawful seizure of aircraft/ships, sabotage.

be absolute and relative. Absolute assumptions must be implemented in the national law and for the relative the countries decide for themselves. In special cases the execution of the warrant may be conditional by receiving guarantees from the country that has issued the warrant[28].

A direct contact between the judicial authorities of the country, that issues and the country, which executes it, is an essential feature of the Warrant. The rapidness of the procedure[29] is the main feature of the warrant and is consisted in achieving clear deadlines of the decisions that should be adopted.

Often the decision of surrender of fugitives is brought under an urgent procedure. If the person is consist to the handover, the decision will be made within 10 days of given consent, while, in other cases the decision of surrender should be made within 60 days of the arrest. The deadline of hand over in case of justified reasons may be extended for additional 30 days. The Framework Decision replaces the sections pertaining to extradition, contained in previously adopted European conventions[30].

The provisions of the Decision do not prohibit the application of the existing and the signing of new bilateral and multilateral agreements, expanding the list of punishable offenses, reducing the reasons for refusal of surrender of the person and reduce the time limits for surrender of the person, whose goal would be to simplify and facilitate the procedure of handing over - extradition. It should be noted, that during the harmonization of national legislation with the provisions of the Decision for many member countries[31], a distinct problem is the extradition of its own citizens.

Despite all initial difficulties, which have followed the practical application of the European arrest warrant, all countries have realized the advantages that it offers, particularly, as a tool in combating transnational crime and terrorism. Its application has justified its advantages, primarily, in the time limit of execution. The Surrender process is a procedure between the competent judicial authorities that reduces the role of Ministries of justice. The unique form, the ability for its establishment using different tools, the existence of fixed deadlines for making decisions about execution and surrender, as and decreased number of reasons for its failure, are its advantages.

It should be noted, that, the time limit of execution, did not threaten fundamental rights and freedoms of wanted persons, but is pointed out the right of legal counsel, an interpreter, the time for detention is limited for the purpose of completing the warrant, etc.

Execution of the European arrest warrant means faster and a simpler process of surrender of the fugitives, especially, without political interference and the problem of dual citizenship and dual criminality. This means that Member Countries can no longer refuse to surrender to another Member country, its own citizens, who com-

28 For the Verdicts brought in the absence, not to be brought decision death-sentence, the opportunity to seek review of the penalty or measure after 20 years, parole request etc.

29 According to the European Commission in the entire process takes an average of 48 days in cases of consent to surrender it lasted 14 days.

30 European Convention on Extradition (1957) and it`s additional Protocols; Agreement between the Member States of the EC on the simplification and modernization of methods of transmitting extradition requests, 1989; Convention on simplified extradition procedure between the Member States of the European Union, 1995; Convention relating to extradition between the Member States of the EU 1996; Convention applying the Schengen Agreement of 14 June 1985: Schengen II, 19 June 1990;.

31 Germany, Portugal, Slovakia and Slovenia now have changed their constitutions in order to meet the provisions of the Decision, and 14 countries out of 25 member states in their constitutions banned or limit the release of their nationals. Deen-Racsmany, (2007), Z. Lessons of the European Arrest Warrant for Domestic Implementation of the Obligation to Surrender Nationals to the International Criminal Court, Leiden Journal of International Law, 20,

mitted crimes or are suspected of committing crime in another EU country, based on the fact that they are citizens of a certain country. A common conception of the rule of law, strengthening mutual trust and cooperation, between Member States, contributed to the simplification and improvement of the procedure of extraditing fugitives between them.

The European arrest warrant is valid within the European Union and introduces some novelties compared with extradition conducted by Interpol which is still used among the members of Interpol, that are not members of the European Union.

It should be noted, that, in cases where the extradition of a person to and from an EU member state against a non-member EU state requirements are applicable under conventions or bilateral agreements.

From the above briefly stated, it may be concluded that the novelties offered by the European arrest warrant among others are consistent in:

Rapid procedures: means, the procedure for surrender of persons to take up to 60 days: in specific cases with the opportunity for additional 30 days.

The principle of dual criminality - includes crimes that are not listed in the list or beyond the limit of 3 years; Loss or reduction of political interference, which means that the procedure with the European arrest warrant is strictly judicial and practicing the direct cooperation of judicial authorities.

Surrender (extradition) of own nationals:

The grounds for refusal are strictly limited[32]

Having in mind the duration of extradition procedure, a research is carried out by analysis of twenty-five cases of extradition, realized in 2011 with Slovenia, Croatia, Serbia, Montenegro and Macedonia (five from each country).

In Slovenia, the whole procedure takes from 55 to 102 days or 79 days on average; in Croatia, it takes from 57 to 130 days or 93 days on average. The procedure in Serbia lasts from 53 to 103 days or approximately 76 days and Montenegro from 98 to 156 days or 130 days on average. The situation in Macedonia is similar to those in Montenegro, i.e. the procedure of extradition takes from 78 to 167 days or 126 days on average.

The Research shows that the average time of execution of extradition in the five countries is 100 days.

CONCLUSION

The Extradition as the oldest instrument of international cooperation in practice manifests certain advantages and disadvantages. The advantage of extradition is its application in all member countries of Interpol, which allows the extradition of offenders to / from 190 countries including EU Member States. The duration of the entire procedure from the detention of the person to the time of his extradition represents a long period of time and is considered as its main disadvantage.

Development of a new instrument for the extradition of persons within the EU, whose provisions are, incorporated decisions from previous adopted and previously valid documents, indicates the quality of the offered solutions, especially in the faster and simpler procedure.

32 The principle ***ne bis in idem***; amnesty, legal restrictions, individual's age, life imprisonment, the death penalty;

According to the author finding a solution, primarily, in terms of shortening the time of handing over the person and overcome other practical shortcomings, manifested of extradition, is a challenge to introduce a new instrument. The Overcoming of the problems with dual citizenship and dual criminality show that there are solutions to this issue.

Taking into consideration that the regional cooperation is the most successful tool of fighting transnational crime and therefore, is given the utmost importance and in this struggle, is necessary a coordinated approach, connecting political, judicial and other security authorities in particular increased cooperation between police and judicial authorities, looking around the possibility of introduction of a regional arrest warrant to become a real need in response to new forms of criminality.

The introduction of a regional arrest warrant for the area of Southeast Europe is a possible solution.

I think that, effectively and quickly implemented extradition, will be a preemptive act against criminals, and would also contribute to increasing confidence in the legal system of the state and its institutions. Introducing a new tool for searching of fugitives, ultimately involves effective enforcement and international cooperation, especially between the judicial and police authorities in this section. The fact should not be neglected, that reducing the duration of the extradition or surrender of the fugitives, will have its effects on reducing the cost of the extradition procedure accruing to the states.

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UDC 341.48/.49(676.2)

IMPLEMENTING THE INTERNATIONAL HUMANITARIAN LAW BEFORE THE INTERNATIONAL CRIMINAL COURT: CASE STUDY OF KENYA SITUATION

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Abstract: Recent developments in the cases of Kenya situation before the International Criminal Court have highlighted once again the necessity of studying methods of implementation of both International Humanitarian Law and International Law of Human Rights. The paper focuses on the humanitarian law, as the system of norms whose grave and serious violations present substantive law basis for international crimes. Issues of applicable law, jurisdiction and admissibility are at the very begging of the scheme. With the intent to establish the jurisdiction, a crime must initially constitute an international crime. If an act is treated as an ordinary crime, there is no international court`s jurisdiction. The formula that is to be applied on the certain act must rely on primary norms of the International Humanitarian Law. Thus, an act can constitute an international crime if such an act presents violation of international humanitarian norm.

Constituting jurisdiction in the cases of Kenya situation, for example for crimes against humanity, Prosecutor has defined killings of thousands of civilians as crimes against humanity. On the other hand, challenges of the jurisdiction were based on the statement that mentioned killings cannot constitute crimes against humanity since they are not undertaken as the part of the state policy or by individuals who are acting under the international norms, whether humanitarian or human right norms.

Cases that are before the International Criminal Court present extraordinary field for re-examination of basic concepts in the international humanitarian law-international criminal law relationship and establishment of firm standpoints for the implementation of international humanitarian norms as primary norms constituting substantive law basis for international crimes, as secondary norms.

Key words: International Humanitarian Law, grave breaches, International Criminal Law, International Criminal Court, applicable law, Statute, Elements of Crimes, Kenya Situation

INTRODUCTION

One of the most difficult problems for the Prosecutor and judges at the International Criminal Court (hereafter: ICC) is the proper application of the substantive international law. Yet, determining what is substantive law for the purpose of procedure before the ICC leads us to the merits of the International Public Law and general framework issues such as: sources of law, hierarchy of norms, complexity of responsibility formula, definition of subject of international law, principles of legality, individual criminal responsibility, non application of statutory limits, etc. The focus of this research is much narrower, though. The paper analyzes the present and ongoing cases before the ICC, applying general notions of the International Public Law. Notwithstanding the complexity of mentioned issues, theoretical approach and conclusions must be founded on the relation between the Statute of the ICC and other norms of the International Public Law. Since the narrowest substan-

tive basis for the international crimes relies on the International Humanitarian Law (IHL) and International Human Rights Law (IHRL), the analysis should focus only on these two International Public Laws branches. At the very beginning it should be mentioned that until present day, all cases before either of the international criminal tribunals created up to day, have been based on the direct application of the International Law of Armed Conflicts i.e. International Humanitarian Law, applying with them only these Human Rights Law norms that fall under the title of non-derogability (Koji 2001, Guellali 2007, Zimmermann 2007).

CONJUCTION OF THE INTERNATIONAL HUMANITARIAN LAW AND THE INTERNATIONAL CRIMINAL LAW – PRELIMINARY REMARKS

Implementation of the International Humanitarian Law before the International Criminal Court is multifaceted and dynamic topic. When exploring the present-day jurisprudence of the ICC we find ourselves with no final judgement and with several cases in various stages of the proceedings. Thus deliberation on the modes and methods of implementation of the international humanitarian law before the ICC inevitably rests on the cases under deliberation.

Yet, proper understanding of the relationship between the International Humanitarian Law (IHL) and the International Criminal Law (ICL), as two interrelated fields of International Public Law is of the utmost importance for the proper and helpful understanding of the ICC's work. The mentioned relationship between IHL and ICL has profound theoretical background, with genesis that can be followed from the birth of international law and evolution of the law of war (Condorelli 2003, Green 2003, Gutierrez Posse 2006, Bassiouni 2008). Nowadays there is significant jurisprudence as well, produced in various international tribunals. Appraisal of, for example, work of the International Criminal Tribunal for the former Yugoslavia, often highlights its contribution to interpretation and application of international humanitarian law and especially welcomes the revitalisation of customary law (Brown 2008, Mendez 2009).

The relation between the Statute of ICC and the International Humanitarian Law is not so straightforward at the first sight. Thus, the sole title of this article may be questioned as inappropriate or unnecessary. Is it expedient to refer to international humanitarian law when analysing cases before International Criminal Court? ICC is no doubt an international court, authorised for prosecution of violations of fundamental international law principles and rules, grave breaches of IHL and IHRL, with international criminal law-matter jurisdiction (Scobie and oth. 2002). But, its tight connection to the IHL is not so obvious.

Evolution of the international criminal law institutions, though, teaches us differently. All previous and some present-day international criminal courts, were denoted in terms of the international law of armed conflicts (Cassese 1998). Nuremberg Tribunal`s official name is the International Military Tribunal in Nuremberg. The International Criminal Tribunal for the former Yugoslavia, as commonly referred to, officially is denoted as the – International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991.

International Criminal Tribunal for Rwanda is the first international criminal court with international criminal law official denotation. Yet, The United Nations Security Council, in its Resolution 935 adopted on 1 July 1994, expresses "its grave concern at the continuing reports indicating that systematic, widespread and fla-

grant violations of international humanitarian law, including acts of genocide, have been committed in Rwanda" and recalls that "all persons who commit or authorise the commission of serious violations of international humanitarian law are individually responsible for those violations and should be brought to justice". In the following Resolution 955, from 8th November 1994, the UN Security Council decides "to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto". However, the full title of the Tribunal, as it is decided within the Resolution and as it is cited in the Preamble of the Statute of the Tribunal, is the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

Tight connection between mentioned tribunals i.e. their statutes, as predominantly international criminal law acts, with the corpus of international humanitarian law, is obvious at the very first glance - in their denotation and then in the substantive law basis as its *telos* and *ratio* (Cassese 1998).

The ICC is established on the legacy of the Nuremberg trials and it should be understood as its descendant (Schabas 2001). The same can be said for *ad hoc* tribunals, since they are both rooted in Nuremberg Tribunal (Kirsh 2007). They are sharing the main aims and they are built for the same reason. However, International Criminal Court emerged in basically and structurally different manner than *ad hoc* tribunals and at the specific moment of the International Public Law genesis. While all mentioned tribunals were created during hostilities or afterwards, the ICC was created *pro futuro*. The idea lying in its roots was to create an independent and impartial institution for prosecution of international crimes. Thus, the task for the ICC is even more challenging since it has to act at the very moment when crimes occur, most probably while hostilities are still lasting, at the same respecting procedural principle of complementation.

PENAL ASPECTS OF THE INTERNATIONAL HUMANITARIAN LAW

From the point of the international public law evolution, it should be underlined that the law of international armed conflicts is one of its oldest parts and also one of its most developed parts (Aldrich 2005). It is regulated within the customary and treaty law, thus preserving typical international law expression. However, one of the characteristics of the international law is lack of sanctions and undeveloped judicial system (Zimmerman 2007).

International humanitarian law, as it has been developing since the end of the II World War, has introduced some novelties into the system. Broadening the scope of protection and precise prescription of groups of individuals, as well as their status, rights and obligations, a new approach of the enforcement was introduced. The concept of grave breaches was prescribed in all four Geneva Conventions and obligation for states parties to criminalise certain acts and to prosecute or extradite persons who violated rules of the international humanitarian law (Surlan 2011). All

four Geneva Conventions from 1949 stipulate the obligation (I Geneva Convention in article 49, II Geneva Convention Article 50, III Geneva Convention Article 129, IV Geneva Convention Article 146):

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949."

The firm establishment of the individual criminal responsibility principle, founded in the Nuremberg trials and development of the international humanitarian law created necessary means for development of the international criminal law (Meron 1998, Fleck 2007). Firming the obligation to prosecute and to bring to justice all violators of the Geneva Conventions, states-parties agreed on non-allowing any kind of compensation that could damage the idea of justice. Common Article 51, 52, 131 and 148 provides:

"No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding article (...)."

The Additional Protocol I from 1977 further supplements Geneva Conventions and adds some new penal regulations. It adds as breaches and grave breaches a failure to act, equating it with grave breaches stipulated in the Geneva Conventions (Article 86). In Article 87 it introduces the duty of commanders,[1] in Article 88 mutual assistance in criminal matters[2] and co-operation in Article 89[3].

1 Art 87. Duty of commanders: 1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol. 2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol. 3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

2 Art 88. Mutual assistance in criminal matters: 1. The High Contracting Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of this Protocol. 2. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1 of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred. 3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

3 Article 89: In situations of serious violations of the Conventions or of this Protocol, the High Contract-

Grave breaches under Geneva Conventions (Art. 50, 51, 130 and 147) are wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

The Additional Protocol I further broadens the list of grave breaches. Article 85 prescribes:

"3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health: (a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

(c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

(d) making non-defended localities and demilitarized zones the object of attack;

(e) making a person the object of attack in the knowledge that he is hors de combat;

(f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

(a) the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;

(b) unjustifiable delay in the repatriation of prisoners of war or civilians;

(c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;

(d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives; (e) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial."

The last paragraph of this article expressly highlights:

"5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes."

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ing Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.

The broadest relationship between rules of the IHL and the international crimes, which at present-day presents ultimate foundation for all international crimes, is formulated in the customary law rule defined as follows:

"Rule 156: Grave breaches
of the International Humanitarian Law constitute war crimes."[4]

From the point of view of the IHL, international crimes and international courts are nothing but means for enforcement of humanitarian law (Meron 1998, Cassese 1998, Schabas 2001, Sachar 2001). Thus, international criminal law is the part of the international law system grounded on the widespread substantive law basis. International crimes do not exist separated from the rest of the international public law system (Green 2003). International crimes, their definitions and especially all of the extensive *actus reus* for each of the crimes, emerged as the violation of the fundamental international law rules (Doucet 1989, Gallant 2003, Sandoz 2008).

POSITION OF THE INTERNATIONAL HUMANITARIAN LAW IN THE ROME STATUTE

From the point of view of the International Criminal Law and statutes of international criminal courts, the mentioned relationship shows somewhat different contours. The Statute of the ICC is the most important and major legal documents governing the work of the Court. The Statute is accompanied with two more acts: Elements of Crimes and Rules of Procedure and Evidence, which all together form international criminal law basis for the work of the Court. These three acts are considered as primary sources in the Statute itself (Bitti 2009). It is confirmed in the Courts Judgement of 13 July 2006, where Appeals Chambers held that recourse to sources of law other than those listed in article 21 of the Rome Statute may only be held if the primary sources leave a gap in the law that has to be filled.[5]

While this statement fully applies to the issues of governing the Court, decisions that the Court delivers are not based solely on the text of the Statute. Determination on the jurisdiction, for example, as much as it comes out as the mere procedural issue, cannot be delivered without getting into the merit of the situation (Philips 1999). On the other hand, the Rome Statute (the Statue of the ICC) distinguishes other concepts, related to the concept of jurisdiction, the concept of admissibility (Article 17, 18 and 19) (El Zeidi 2011). It seems quite clear and simple to state that the concept of jurisdiction relies on parameters such as *rationae materiae, rationae temporis, rationae loci* and *rationae personae*. The same can be stated for the concept of admissibility, which arises at a subsequent stage and refers to the fact whether crimes over which the Court properly has jurisdiction can be prosecuted before it. The difference among these two concepts further develops into distinction as the jurisdiction for the situation / admissibility of a case. In such a view jurisdiction is often regarded as more global point of view than the admissibility, which is much more concrete and refers to a case (Philips 1999, Scobbie 2002).

The Court itself examined mentioned relationship and concluded:

"40. The Chamber notes that the second requirement must be considered on the basis of the available information and decide whether "the case is or would be admissible

4 Rule 156 is cited according to the project of comprehensive elaboration of customary international humanitarian law. For detailed elaboration of the rule 156 see: Henckaerts J.M., Doswald-Beck L., Obicajno medunarodno humanitarno pravo, Tom I: Pravila, MKCK, Cambridge, 2005

5 International Criminal Court, Appeals Chamber, Judgement on the Prosecutor`s Application for Extraordinary Review of Pre-Trial Chamber I`s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-o1/04-168, par. 39.

under article 17". Such an examination must be distinguished from that of jurisdiction. The question of admissibility mainly concerns the scenarios or conditions on the basis of which the court shall refrain from exercising its recognized jurisdiction over a given situation or case."[6]

The law that the Court is to apply, when deliberating a case, is defined in the Rome Statute itself. Article 21 reads:

> *"Applicable law*
> *1. The Court shall apply:*
> *(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence*
> *(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict*
> *(c) Failing that, general principles of law derived by the Court from national law of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.*
> *2. The Court may apply principles and rules of law as interpreted in its previous decisions.*
> *3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief. Political or other opinion, national, ethnic or social origin, wealth, birth or other status."*

Article 21 can be considered as novelty for an international criminal courts statute, since there is no enumeration of applicable law in other statutes, but it can be considered as well as the only proper approach when building an international court (Bitti 2005). Thus, it very much resembles the Statute of the International Court of Justice approach (Pellet 2002).

General approach to the International Criminal Law, already elaborated in this paper, as the part of the International Public Law, once again is confirmed in the enumeration of the applicable law. Applicable law is the list of sources of law, in the manner of article 38 of the ICJs Statute, following the spirit of the International Public Law. Thus, the Rome Statute is one part of the international criminal law mosaic, governing the main direction when deliberating, relying on the huge amount of international principles and rules especially those of the international law of armed conflict.

International criminal law jurisprudence, which has been created up today, thus relies on the different approach, when speaking of sources. The explanation for the absence of a list of sources is very simple and it rests on the mere qualification of events that led to creation of *ad hoc* tribunals. Since there were agreement on the level of the international community that conflicts in the former Yugoslavia and Rwanda present violation of international humanitarian law and that criminal tribunals were established with the purpose of enforcement of international humanitarian law, thus tribunals were about to apply that corpus of norms in its penal aspect. From the very foundation of the tribunal they were directed toward corpus of the IHL and thus jurisprudence of *ad hoc* tribunals contains detailed analysis of the IHL.

6 International Criminal Court, Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09.

The creation of the ICC, on the other hand, was *pro futuro*, with unforeseeable situations arising from the violation of both IHL and IHRL and leaving open door for possible future broadening of crime catalogue (introduction of, for example, terrorism, which would implicate different set of substantive law). Thus, the creation of a new institution was carried out in a more stringent manner. The Statute of the ICC itself presents one act, but consisting of three heterogeneous parts. One part defines international organisation, the other part includes rules of criminal procedure and the third part presents substantive law, defining international crimes and general principles of criminal law. In such a constellation court was in deep need for additional sources, which would further support deliberation on international crimes, their nature and understanding of numerous *actus reus.* The Elements of Crimes were recognised as an additional primary source, defining elements of crimes as they are consisted of.

Legal value of the Elements of Crimes is the subject of different opinions, as well as its legal nature (Bitti 2005). From those contemplating it into the continental code, to those finding no worth of it since it does not develop definitions adopted in the Statute (Pellet 2002). Regardless of how this act is estimated, it holds status of primary source. Yet, it is not sufficient and it has no potential to cover all legal aspects of international crimes. As an illustration for this statement we can use the notion of civilians or civilian population, which can be understood and properly applied only as the international humanitarian law notion. Neither the Rome Statute, nor Elements of Crimes have the ambition to create legal notion of civilian, but rather to import it from the IHL. The second illustration is killing as one of the typical *actus reus*, proscribed for all international crimes. The Elements of Crimes define killing as that "perpetrator killed one or more persons". Such a prescription is obviously not sufficient, since it prescribes only the commission of an act. Ordering, soliciting, inducing, aiding, abetting etc. are not covered with such a formulation.

And for the final illustration (for the purpose of this paper), Article 7(1) (d) of the Elements of Crimes - Crimes against humanity of deportation or forcible transfer of population, is appropriate:

"1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts."

Application of Article 7(d) of the Statue and 7(1)(d) the Elements of Crimes clearly assumes that deportation or forcible transfer of population can be permitted and non-permitted. Regulations on possibilities to transfer population are contained, in the case of crimes against humanity, in the IV Geneva Convention. Thus, in order to establish qualification of deportation or forcible transfer it is inevitable to apply norms of the IHL.

Language of the Article 21 clearly states that although the Court is supplied with genuine legal acts, they cannot be understood and applied isolated from the system of the International Public Law. Thus, as substitute players on a bench "in second place, where appropriate..." there are principles and rules of general international law and applicable treaties, especially those of international law of armed conflicts contained in the fine network of legal norms.

Fine network of legal norms, that the Rome Statute has found itself in, is to be directly deliberated by the prosecutor and judges. Though they are governed by typical criminal law principles such as *nullum crimen sine lege*, they operate in the field of the International Public Law, with all of its specificities.[7] While *ad hoc* tribunals expressively relied on the corpus of the International Humanitarian Law, the

7 For more on principle of legality in the International Criminal Law see excellent and profound piece: Gallant K.S., Principle of Legality in International and Comparative Law, Kluwer Law International, 2008.

approach of the ICC is yet to be seen. From the point of the creation of the Rome Statute, the differences between scholars could be noted (Bitti 2005). For one group, the application of norms other than ones exactly stipulated in the Statute would be the violation of the principle *nullum crimen sine lege*. For others, the prescription of Article 21 was irrationally narrow, leaving aside the direct application of one huge, important and inherent international law source - customary law, which is equal with treaty law (Pellet 2002).[8] Customary law, still, is not neglected completely. It is presented, at least, in the form of principles.

Despite the divergence of approaches in the interpretation of Article 21, power is clearly given to the Court to apply sources of law other than primary. The crystallisation of the principles and rules that are to be applied is yet to come and it will be analysed through each new case. This process, on behalf of the ICC, is to start from the very beginning since jurisprudence of the *ad hoc* tribunals is not stipulated as possible source of law in the Article 21. Pre-Trial Chamber II highlighted:

"As to the relevance of the case law of the ad hoc tribunals, the matter must be assessed against the provision governing the law applicable before the Court. Article 21, paragraph 1, of the Statute mandates Court to apply its Statute, Elements of Crimes and Rules of Procedure and Evidence "in the first place" and only "in the second place" and "where appropriate", "applicable treaties and the principles and rules of international law, including the established principle of the international law of armed conflict". Accordingly, the rules and practise of other jurisdictions, whether national or international, are not as such "applicable law", before the Court beyond the scope of Article 21 of the Statute. More specifically, the law and practice of the ad hoc tribunals, which the Prosecutor refers to, cannot per se form a sufficient basis for importing into the court`s procedural framework remedies other than those enshrined in the Statute."[9]

Although, article 21 is clear, as well as the cited stand of the Court, the interest for and connection with previous decisions in the field of international criminal law, inevitably arouse (Bitti 2009). Illustrative paragraph reads as follows:

"43. Turning to the practice of international criminal tribunals and courts, the prosecutor submitted that the practice of witness proofing is here permissible, endorsed and well established. The Trial Chamber notes, as had been established by recent jurisprudence from the International Criminal Tribunals of the former Yugoslavia and Rwanda, that witness proofing, in the sense advocated by the prosecution in the present case, is being commonly utilized at the ad hoc Tribunals.

44. However, this precedent is in no sense binding on the Trial Chamber at this Court. (...)"[10]

In its latter decision the Court again resorted to the jurisprudence of the ICTY, when faced with difficult issues of substantive character. Elaborating on elements of crimes against humanity – policy element, state, organisation, the Court relied on practice of the IC*TY:*

"86. (...) The Chamber also takes note of the jurisprudence of the ad hoc tribunals, and the work of the International Law Commission (the "ILC"). While the Chamber

8 On position of customary law in the International Criminal Law and its relationship with the principle of legalty see: Шурлан Т., Злочин против човечности у међународном кривичном праву, Београд, 2011.

9 ICC, Pre-Trial Chamber II, Prosecutor v.Kony et al, Decision on the Prosecutor`s Position on the Decision of Pre-Trial Chamber II to Redact Factual Description of Crimes in the Warrants of Arrest, Motion for Reconsideration and Motion for Clarification, ICC-02/04-01/05-60, PTC II, 28 October 2005, par.19. This issue was once again addressed in Prosecutor v. Thomas Lubanga Dyilo, Pre-Trial Chamber I, Decision on the Practices of Witness Familiarisation and Witness Proofing, 8 November 2006, II-01/04-01/06-679, par.28-34.

10 ICC, Prosecutor v. Thomas Lubanga Dyilo, Pre-Trial Chamber I, Decision Regarding the Practices Used to Prepare and Familiarise Witnesses for Giving Testimony at Trial, ICC-01/04-01/06-1049, 30 November 2007.

is mindful of the jurisprudential evolution and the eventual abandonment of the policy requirement before the ad hoc tribunals, it nevertheless deems it useful and thus appropriate to consider their definition of the concept in earlier cases.

87. In particular, the Chamber takes note of the judgement in the case against Tihomir Blaskic, in which the ICTY Trial Chamber held that the plan to commit an attack: (...)"[11]

As for the final remarks on applicable law and the position that international humanitarian law holds therein, a necessary distinction should be made between the application and interpretation of the law. Since the international treaty, the Statute of the ICC falls under the rules of interpretation set out in the Vienna Convention on the Law of Treaties from 1969. In words of the Court itself:

"19. In this context, the Chamber wishes to point out that since the Statute is a multilateral treaty, the interpretation of its provision is governed by the customary rules of treaty interpretation embodied in articles 31 and 32 of the Vienna Convention on the Law of Treaties,"[12]

The same is to apply to IHL treaties. In their mutual relationship, the interpretation is the main feature, while the direct application of IHL norms appears only when implied. Thus, the direct application of norms other than the Statute or Elements of Crimes is the clearest in war crimes, Article 8 of the Statute, where the definition of war crimes directly relies on Geneva Conventions.

KENYA SITUATION AND CASES

At its 10th Anniversary the International Criminal Court has on its docket fourteen cases in seven situations. Three situations have been initiated by states where conflicts emerged – Uganda, the Democratic Republic of the Congo and the Central African Republic. The United Nations Security Council has considered two situations – in Darfur, Sudan and Libya, both non-state parties. The Prosecutor himself opened an investigation *proprio motu* in two situations – in Kenya and Cote d`Ivoire.

The events in Kenya, which constituted situation in the focus of the ICC, emerged after elections in December 2007. After the official statement that the incumbent president was re-elected, the opposition made accusations for electoral fraud and rejected results, starting protests, demonstrations and fight. The fight developed into widespread violations, with huge number of killed, injured and displaced persons. Although the main rivals were representatives of two political parties, violence was mainly perpetrated along tribal lines and not political party's membership or support.

Various measures were applied with the aim to bring back peace to the state and to bring to justice those responsible for the conflict and atrocities. International mediation chaired by Kofi Annan as the Chair of the African Union Panel of Eminent African Personalities provided establishment of three commissions: the Commission of Inquiry on Post-Election Violence, the Truth, Justice and Reconciliation Commission and the Independent Review Commission on the General Elections held in Kenya on 27 December 2007.

The Commission on Inquiry on Post-Election Violence produced its Final Report (October 2008), recommending the establishment of a special tribunal for

11 ICC, Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09.
12 Ibid.

prosecution of persons bearing the greatest responsibility for atrocities that emerged in Kenya. In further development Kenyan Parliament failed to adopt acts necessary for the establishment of a special tribunal. During the period of one year further steps were taken from the Kenyan side as well as from the ICC Prosecutor. Finally, they led to the Prosecutor's final move of filing the Request for the authorisation to open the investigation, which was granted by Pre-Trial Chamber II on March 2010 and investigation was initiated thereafter.

Kenya is the state-party of the Rome Statute, the founding treaty of the International Criminal Court.[13] The principle of complementation directs that the ICC has jurisdiction only in cases where the state itself is not willing or able to investigate and prosecute international crimes. From the point of view of the Prosecutor and the Court, the principle of complementation was fully respected since the state proved to be unwilling to investigate and proceed. Kenya, as the state-party to the Rome Statute, is under the obligation to cooperate fully with the Court in the process of both investigation and prosecution. Although all conditions seemed to be fulfilled, Kenya deeply opposed the Court's involvement. Antagonism toward the Court was openly manifested and even institutionalised within the African Union, in attempts to persuade all African Union member states to jointly abandon the International Criminal Court.[14]

Final attempt to annul and block further Court's motions was made in challenges to the Court's jurisdiction filed by defence.[15] The defence has challenged jurisdiction on the grounds that the events that happened in Kenya after the election did not constitute crimes against humanity, since they were not organised, widespread and planed, nor conducted by the state or organisation as a plan or policy. Thus, the violence that followed constitutes ordinary crimes, for which the International Criminal Court has no *rationae materiae* jurisdiction.

Challenges to jurisdiction opened an extraordinary difficult question. At first it appears as the issue of demarcation line between crimes against humanity and ordinary crimes. On the other hand it goes further into the elements of crimes against humanity, which cannot be solved only by accurate application of the Rome Statute and the Elements of Crimes. Thus, a proper standpoint in such a difficult situation is to go back to substantive law and to the international criminal law policy that international community has the consensus of.

When deliberating on opening the investigation, the Court took into account the Prosecutors finding "that there is a reasonable basis to believe that the crimes against humanity of murder, rape and other forms of sexual violence, deportation of forcible transfer of population and other inhumane acts were committed and that therefore the Court`s material jurisdiction is established".[16]

Thus, the starting point was the enumeration of *actus reus*. *Chapeau* or as it was addressed in Court's Decision "contextual elements" came as of second importance. At the very beginning the Court did not define events that occurred in Kenya either as peace or armed conflict, either international or non-international. Crimes against humanity can occur in both peaceful and war periods, thus such a stand

13 Kenya ratified the Rome Statue on 15 March 2005.

14 More facts on this crisis in: Surlan T., Influence of the Security Council on the Jurisdiction of the International Criminal Court and Possible Revision of the Article 16, p. 469-480, in: Archibald Reiss Days, Thematic Conference Proceedings of the International Significance, Volume II, Academy of Criminalistic and Police Studies, Belgrade, 2011.

15 ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya in the case of The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, Defence Challenge to Jurisdiction from 30 August 2011, ICC-01/09-01/11.

16 ICC, Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09, par. 70.

does not itself influence the definition of the crime. Yet, it does influence the corpus of law that is to be applied (Sivakumaran 2009). It is very interesting how the Court went on with the elaboration of the notion civilian population:

"81. Moreover, the chapeau of article 7(1) of the Statute defines crimes against humanity as any of the acts specified therein, when committed as part of an attack "directed against any civilian population". The Chamber considers that the potential civilian victims of a crime under article 7 of the Statute are groups distinguished by nationality, ethnicity or other distinguished features. The Prosecutor will need to demonstrate, to the standard of proof applicable, that the attack was directed against the civilian population as a whole and not merely against randomly selected individuals.

82. The Chamber need not be satisfied that the entire civilian population of the geographical area in question was being targeted. However, the civilian population must be the primary object of the attack in question and cannot merely be an incidental victim. The term "civilian population" refers to persons who are civilians, as opposed to members of armed forces and other legal combatants."[17]

Such an approach seems quite unusual. One cannot determine corpus of law that the term of civilian population was imported from. Neither the Statute nor the Elements of Crimes define civilian population. Civilian population is not human rights law term; it is only common to the international humanitarian law (Шурлан 2011). In the final sentence of par. 82 there is a direction towards humanitarian law meaning, but it sets the Court into another unpleasant task - to define the situation in terms of humanitarian law.[18] The explanation of the element "civilian population" thus is very clumsy and useless for the present case.

Even more conjectural is the element of plan or policy of a state or organisation. The Court directly relied on the practice of the *ad hoc* Tribunal for the former Yugoslavia (as cited previously in this paper). Particularly important part of this element, for the Kenya cases, is term "organisation". Majority of the Court's Chamber holds opinion as follows:

"90. With regard to the term "organisational", the Chamber notes that the Statute is unclear as to the criteria pursuant to which a group may qualify as "organisation" for the purpose of article 7(2)(a) of the Statute. Whereas some have argued that only state-like organisations may qualify, the Chamber opines that the formal nature of a group and the level of its organisation should not be the defining criterion. Instead, as others have convincingly put forward, a distinction should be drawn on whether a group has the capability to perform acts which infringe on basic human values (...).

92. The Chamber finds that had the drafters of the Statute intended to exclude non-State actors from the term "organisation", they would not have included this term in article 7(2)(a) of the Statute. The Chamber thus determines that organisations not linked to a State may, for the purpose of the Statute, elaborate and carry out a policy to commit an attack against a civilian population.

93. In the view of the Chamber, the determination of whether a given group qualifies as an organisation under the Statute must be made on case-by-case basis. In making this determination, the Chamber may take into account a number of considerations, inter alia: (i) whether the group is under a responsible command, or has an established hierarchy, (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population, (iii) whether the group exercises control over part of the territory of a State, (iv) whether the group has criminal activities against the civilian population as a primary purpose, (v) whether a group

17 Ibid, par. 81 and 82.

18 On difficulties and obstacles for the Court to define a conflict see: Sivakumaran S., Identifying an armed conflict not of an international character, p.363-380, in: Stahn C., Sluiter G. (ed.), The Emerging Practice of the International Criminal Court, Martinus Nijhoff Publishers, 2009.

articulates, explicitly or implicitly, an intention to attack a civilian population, (vi) whether the group is part of a larger group, which fulfils some or all of the abovementioned criteria. It is important to clarify that, while these considerations may assist the Chamber in its determination, they do not constitute a rigid legal definition and do not need to be exhaustively fulfilled."[19]

The Statute and the Elements of Crimes do not define terms such as plan, policy, state, organisation. Yet, they are not isolated and they should be interpreted in the conjunction with other elements of crimes against humanity and with the substantive law. Thus, it seems even more incomprehensible why the Court decided to search for meaning of "organisation" contemplating on what potentially it could be, when there are clear directions of the notion in principles and rules of international law and applicable treaties, as stipulated in the Article 21. The search for direction and support in the cases of *ad hoc* tribunals directly leads assertion towards the international humanitarian law. Applying a broad approach and choosing as the main criterion "capability to perform acts which infringe on basic human values" leads to no coordination at all. Such a capability may be possessed by terrorist groups, mafia, even ordinary criminal groups, groups which are not subjected to international public law at all. Considerations that Court enumerated on the other hand do fall under the international law prescription. However, their inductive enumeration should be replaced with deductive enumeration, emerging from a substantive law basis. The deliberation on possible groups or organisations capable to undertake widespread or systematic attacks should be governed by the potential to hold position of the international law subject.

Exactly these notions were the ground for challenges of jurisdiction applied by defence. There stands were based on theory and practice of *ad hoc* tribunals, and their narrower approach of the elements of "organisation" and "policy". An important element for the formulation and scope of the challenges was also found in the Dissenting Opinion (to the decision to authorise the investigation) of judge Kaul.[20] Judge Kaul's approach to the committed crimes was simply formulated in a stand that they do not reach threshold of the crimes against humanity as defined in Article 7 of the Rome Statute[21]. One of the main elements for such conclusion was the understanding of the term "organisation".[22] In a profound analysis on the meaning of the term "organisation", as used in the Article 7 of the Rome Statute, which is generally narrower than the meaning of the majority of the chamber, a final and the most important conclusion is summarised in words:

"53. In this respect, the general argument that any kind of non-state actors may be qualified as an 'organization' within the meaning of article 7(2)(a) of the Statute on the grounds that it "has the capability to perform acts which infringe on basic human values"^^ without any further specification seems unconvincing to me. In fact this approach may expand the concept of crimes against humanity to any infringement of human rights. I am convinced that a distinction must be upheld between human rights violations on the one side and international crimes on the other side, the latter forming the nucleus of the most heinous violations of human rights representing the most serious crimes of concern to the international community as a whole."

The formula "concern of the international community as a whole" means in fact international law since international law is the channel through which international community manifests and formulates its concerns and aims (Tallgren 2002),.

19 ICC, Pre-Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09.

20 ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, Dissenting Opinion by Judge Hans-Peter Kaul to Pre-Trial Chamber II's "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Kenya", 31 March 2010, ICC-01/09

21 Ibid, par.5

22 Ibid, par. 44-53

A broad approach, as applied by the majority of the Pre-Trial Chamber II, the approach that has no international law anchor is both erroneous and dangerous. If such a stand and understanding of crimes against humanity prevails, it will radically change the meaning of the crimes and its function in the international law system. Crimes against humanity, as international crime, must be connected to basic institutes of international law and relied on the substantive law.[23] Without that connection it will become meaningless and finally it will lose its *telos* and distinction from other crimes.

Still, it is important not to forget that this decision is only of the pre-trial chamber and with the sole purpose of opening the investigation. There are still lots of deliberations to undertake until the final judgement.

The quality of rendered decision was already questioned by the Court itself, in the mentioned dissenting opinion by minority of the pre-trial chamber - judge Kaul. His view of the Court's attitude towards the Kenya situation is expressed in words:

"*10. As a Judge of the ICC, I feel, however, duty-bound to point at least to the following: such an approach might infringe on State sovereignty and the action of national courts for crimes which should not be within the ambit of the Statute. It would broaden the scope of possible ICC intervention almost indefinitely. This might turn the ICC, which is fully dependent on State cooperation, in a hopelessly overstretched, inefficient international court, with related risks for its standing and credibility.*"

CONCLUSION

This year the International Criminal Court is to celebrate its 10th anniversary. Time, just enough, to look back and once again reassess the achievements (Nerlich 2011, Sthan 2011). The ICC, established to be independent and impartial, functions in complex and delicate normative and institutional environment. It is of the utmost importance for the Court to hold true and firm international law position, thus gaining trust and support as much from member states as from states that are not members. Years that are to come will be mirrored through the Court's work – primarily its judgements, and its achievement and capacity to enforce both International Humanitarian Law and International Human Rights Law. That is the path the Court should follow and that would lead it to the fulfilment of goals and tasks that were set in its capacity.

As the main conclusion for the purpose of the research presented in this paper is (1) the fact that the Court is not exercising its right and power to apply principles and rules of general international law, international humanitarian law and other sources, (2) and as the result coming out of it is that the Court denied itself substantive law basis and proper legal direction for truthful and meaningful deliberation. Such an approach is to be criticised, negative effects are to be stressed with the hope that the future will bring improvement.

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23 As the illustration for this stand see judge Kaul's analyses on element of "policy", subjects of international law and issues on responsibility: Ibid, par.42-44

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UDC 343.226(460)

EXTREME NECESSITY IN CRIMINAL LAW IN SPAIN[1]

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Abstract: The subject of this paper is the extreme necessity in the Spanish criminal law. The importance of this institution in modern legislation, theory and case law, indicates the purpose of implementation and effect in relation to the perpetrator. Vagueness or improper application of provisions which regulate extreme necessity can cause double damage: first, the impunity of perpetrators of criminal acts, the other the punishment of persons whose act corresponds legal description of a particular crime, but due to special circumstances of the event is not the behavior contrary to law, it is justified from the point of society interests. This paper will discuss the legal nature of extreme necessity, because the Spanish legislation, unlike ours, has accepted the concept according to which it is a basis that excludes criminal responsibility of the perpetrator. Of course, special attention will be paid to the conditions for the application of extreme necessity in this country and the problems faced by the court practice. Also, we will discuss the similarities and differences between the extreme necessity and self-defense, because there is no doubt that the state of necessity, is a characteristic of both institutes.

Key words: extreme necessity, justifying, excusing, unlawfulness, guilt.

LEGAL NATURE OF EXTREME NECESSITY

Unlike self-defense which is one of the oldest institutes of criminal law, the state of extreme necessity was regulated primarily in the legal codes in XIX century. Criminal law of ancient Rome and feudal Europe was familiar with extreme necessity, but it did not have significance of the general institute. These are the cases called existential extreme necessity, where the danger threatens the life or physical integrity of man. The realization of the offense in a state of emergency, or influenced by danger can be removed only if it harms or endangers the well being of another person and thereby achieves specific elements of crime, had a basis that excludes the guilt. Namely, the offender is morally not responsible in necessity, and the cause is a danger which he is exposed to.[2] The idea that the extreme necessity is the reason which causes perpetrator to be morally not responsible was criticized in theory. Although the offender in a state of extreme necessity influenced by the circumstances of the particular situation might be found mentally incapacitated, it is not the rule. In most cases, the person exposed to risk acts rationally, with full awareness of what he or she does, wanting to harm or endanger one legal well-being to save another. In our legislation and the theory of criminal law, this institute provides the basis for exclusion of unlawfulness, i.e. the existence of offense, and where there is no offence, the question of guilt is not raised. On the other hand, the Penal Code of Italy, Article 54 determines that the offender will not be punished if the act was committed in state of necessity (*stato di*

1 This paper is the result of scientific research project entitled *Development of institutional capacity, standards and procedures to resist organized crime and terrorism in terms of international integration*. Project funded by the Ministry of Education and Science of the Republic of Serbia (no. 179 045), managed by the Academy of Criminalistic and Police Studies in Belgrade (2011-2014). Project leader is professor, PhD Saša Mijalković.

2 М. Бабић, Неке напомене о основама искључења противправности, *Годишњак Правног факултета у Бањалуци*, Бањалука 1993 -1995, 16.

necessita),[3] while in Spain the legislator opts for extreme necessity (*estado de necesidad)* as a basis that excludes criminal responsibility (Article 20, Paragraph 5 Criminal Code of Spain):

"The perpetrator is not criminally responsible if in necessity, in order to eliminate the evil from himself or somebody else, he hurts someone else's well-being or do not perform any duty, if the following conditions are met:

- First, that the committed evil is not greater than the threatening one.
- Second, the state of necessity is not deliberately caused by the perpetrator. Third, that the offender is not obliged to make sacrifices, because of professional or official duties."[4]

The above mentioned provision of the Penal Code of Spain can be objected that it is vague,[5] but justification is an undeniable fact that the state of extreme necessity is possible in different situations, making it very difficult to achieve comprehensiveness of the provisions that regulate this institute. The legislature is limited to prescribing the conditions for excluding criminal responsibility of the offender, if the act is accomplished in extreme necessity. However, under Article 20, Paragraph 5, Penal Code of Spain it can be concluded that extreme necessity involves *"a context of conflict between legal well-being, which can be solved only by injury or threat of one of them."*[6] Basically, eliminating the danger of one legal well-being is only possible by injuring or endangering another one. For example, the Spanish criminal literature points out the justification of an act of a person who steals food to eliminate the risk of death from starvation, breaks into someone's apartment in order to save the children who are threatened by fire.[7] One can therefore speak of a right to right conflict: *"the nature of the conflict will force harming the interests of other persons protected by law, which is the only option for saving the interests that are protected as well."*[8] Generally accepted point of view in theory, according to which extreme necessity is a matter of right to right conflict, creates great difficulties in terms of appropriate regulation of this institute. Besides, the law should be especially cautious when prescribing the conditions under which a person who injures or endangers the legal well-being can refer to extreme necessity.

In the theory of criminal law there is no unique opinion on legal nature of extreme necessity. In this regard, it should be noted that it is undisputed that the perpetrator in extreme necessity does not deserve punishment. Although the person who eliminates danger achieves characteristics of specific elements of crime, his punishment is excluded regarding the circumstances of the committed act. As noted above, Spanish law accepts the concept on which the application of this institute means the exclusion of criminal responsibility; while in our country a person's act achieving the characteristics of specific elements of crime cannot be qualified as offense, because the action taken is not unlawful. It is in accordance with the law to harm or endanger legal well-being in order to eliminate the danger that threatens another legal well-being of the same or greater significance. In both cases, the perpetrator will not be punished but the position of accomplice is less favorable in the legislation which treats extreme necessity as ground for exclusion of criminal responsibility. Provided that one accepts the accessory nature of accomplice is limited, it is possible to prosecute instigators and helpers for the act done in extreme

3 S. Beltrani, *Corso di diritto penale - parte generale e speciale*, Padova 2006, 136.
4 C. C. Duran, F. P. Alcoy, *Codigo penal con todas sus reformas comparados por articulos*, Valencia 2004, 41-42.
5 C. S. M. Rodriguez, A. J. Prieto, J. R. P. Rodriguez, *Manual de Derecho penal*, Madrid 2004, 210.
6 G. Q. Olivares, F. M. Prats, *Parte General del Derecho Penal,* Barcelona 2006, 503
7 E. O. Berenguer *et al*,, *Derecho penal - parte general*, Valencia 2007, 87.
8 C. S. M. Rodriguez, A. J. Prieto, J. R. P. Rodriguez, 210.

necessity (which will not be the case if one accepts that the act is accomplished by removing danger in accordance with law). Also, if the use of the mentioned institute implicates exclusion of unlawfulness i.e. crime, we can conclude that the offender cannot be punished by any criminal sanctions. In contrast, certain sanctions can be imposed if the offender has no criminal responsibility; although in this case we cannot speak of an offense in the real meaning (there is an offense in an objective sense, because it lacks the guilt).[9]

In any case, it is clear that the legislator accepts all concepts of protecting the interests of the person who removes the danger of his or the well-being of other persons. The society cannot remain indifferent if the individual is in the state of extreme necessity, because it is in the public interest to save more valuable well-being. If there is a conflict of well-beings of equal value, owing to a special mental state in which there is a person who removes the danger, it is allowed to refer to extreme necessity. This view on the issue of conflict of legal well-being of equal value is not fully accepted in the Spanish criminal law as well, which will be discussed in details in the text below:

Namely, in contrast to our legislation, which opted for a unique regulation of extreme necessity, theory and judicial practice in Spain accept the so-called differentiating theory that there are two types of this institute: justifying (*causa de justificacion*) and excusing (*causa de excuse*) extreme necessity. However, the concept of justifying and excusing extreme necessity does not rely on a unique approach in practice. According to one viewpoint (the Supreme Court sentence of 8th October 1996), justifying extreme necessity involves the removal of danger caused by the evil that is not greater than the threatening evil (the evil done is less or equal).[10]If the evil caused by the perpetrator slightly exceed the threatening evil, this is an excusing extreme necessity. Of course, if the court finds great disproportion, i.e. if the evil inflicted far greater than the threatened evil, in general one cannot speak on the application of this institute of criminal law. According to another opinion (Supreme Court sentence of 3rd February 2003), in case of a conflict between the legal well-being which value is disproportionate because the perpetrator sacrifices less valuable well-being in order to rescue a well-being of greater value, it is a justifying extreme necessity. In contrast, the conflict of well-beings of equal values should be qualified as an excusing extreme necessity (Supreme Court sentence of 24th November 1997, and 2nd October 2002).[11] For example, the offender is to avoid a fire that destroyed his forest, cut down part of the forest owned by another person. The question may be raised how to qualify the situation in which caused evil is of greater value? Part of the theory considers that in this case we can speak of an excusing extreme necessity as well.[12]

Finally, in the Spanish criminal law literature, there is no unique opinion on the effects of extreme necessity. In Article 20, Paragraph 5 of the Criminal Code, which regulates this institution, it is clear that extreme necessity is generally speaking a basis that excludes criminal responsibility. After all, Article 20 is part of Chapter II of the Criminal Code regulating the grounds excluding criminal responsibility (*De las causas eximen que de la responsabilidad criminal*). Therefore, the conclusion is to be made that justifying extreme necessity excludes criminal responsibility, and excusing is a basis that reduces criminal responsibility (Article 21, Paragraph 1, Criminal Code of Spain).[13] **B**asically, it means that the prisoner may be reduced the sentence, stipulated in Article 68 of the Criminal Code of Spain.

9 З. Стојановић, *Кривично право - општи део*, Београд 2001, 173.
10 J. S. Melgar, *Codigo penal-Comentarios y Jurisprudencia*, Madrid 2006, 163.
11 E. O. Berenguer *et al*, 87.
12 A. C. Cerezo, J. A. C. Montalvo, *Codigo Penal Comentado*, Bilbao 2005, 44.
13 C. C. Duran, F. P. Alcoy, 41-42.

In considering the legal nature of extreme necessity Spain's doctrine is based on the assumption that citizens are not expected to be heroes, to sacrifice their own legal well-beings when exposed to danger. Accordingly, the legal system gives them the right (authority) to eliminate the danger threatening them or other persons even if it means that they are to commit specific elements of crime. In other words, the act realized in a state of a justifying extreme necessity is not formally unlawful, i.e. there is no offense.[14] However, the action of the perpetrator is still unlawful in the material sense because it neither excludes or diminishes a caused injury nor endangers a legal well-being.[15] For example, taking lives in a state of extreme necessity causes evil, which means that the consideration of the status of the defendant and qualification of his act cannot be based on the fact that death does not occur. In the case of an excusing extreme necessity, the action of the perpetrator is formally unlawful, although according to some authors, in this case as well there is authorization to take action, which is less comparing to authorization in justifying extreme necessity.[16] Perhaps because of this the author of this opinion by excusing extreme necessity considers the conflict of legal well-beings of equal value. However, part of the theory believes that if in a state of necessity greater evil than the threatening one is caused, we can talk about an excusing extreme necessity, which excludes guilt of the perpetrator.[17]

JUSTIFYING AND EXCUSING EXTREME NECESSITY

Terms of danger

The state of extreme necessity assumes danger and its elimination, although the provisions that regulate this institute in the Penal Code of Spain legislature use the word "evil" (*mal*). Nevertheless, the theory of criminal law is not disputed that the very existence of the danger (*peligro*) allows an offender to refer to a justifying extreme necessity.[18] However, the doctrine in this country has not dealt with the definition of danger, but has focused attention on the quality of danger i.e. terms that danger in a particular an offense must be accomplished in order to enable referring to extreme necessity. In our criminal theory the situation considered to be a danger is the *"situation in which a well-being is endangered and under the circumstances of specific case there is an immediate possibility to be injured."*[19] According to another opinion, the danger is *"a condition which, according to the existing circumstances and the general principles of experience, makes an injury probable."* [20] Common to both concepts is that the danger is seen as a condition characterized by the possibility or likelihood of injury of protected legal well-being.

The danger in extreme necessity may stem from natural forces (e.g., snow avalanche, activated volcanoes, and earthquakes), animals, [21] technology (e.g., failure of the lift that transports skiers), disease, hunger and so on.[22] Consequently, the dan-

14 A. C. Cerezo, J. A. C. Montalvo (2005), 42-43.
15 E. O. Berenguer *et al*, 83.
16 Ibid.
17 A. C. Cerezo, J. A. C. Montalvo (2005), 42-43.
18 C. S. M. Rodriguez, A. J. Prieto, J. R. P. Rodriguez, 210.
19 **З. Стојановић**, *Кривично право-општи део*, Београд 2006, 148.
20 М. Бабић, *Крајња нужда у кривичном праву*, Београд 1983, 82.
21 A. C. Cerezo, J. A. C. Montalvo, Derecho penal, Barcelona 2001, 202.
22 A. C. Cerezo, J. A. C. Montalvo (2005), 44; E. O. Berenguer *et al*, 87.

ger may stem from a man (for example, human act can cause a fire, flood, etc.). It could be said that our earlier criminal literature bowed the wrong stand, according to which animals' attacks may cause a danger only in terms of extreme necessity. [23] There is no doubt that the attack in self defense exists if a man uses a natural force to injure or endanger a legal well-being of another person. For example, a person A causes rock falls with an intent to kill a person B, and other persons who are in a vehicle. So, the fact that the man planning an attack used animal, natural force, vehicle, chemical substances, energy, or other person as an agent, does not affect the qualification of his conduct as an unlawful attack. Of course, only if the attacker's act and injury or endangering of legal well-being of another person are in causal relationship.

The danger in terms of extreme necessity can be directed to any legal well-being,[24] although the legislator in Article 20, Paragraph 5 of Penal Code of Spain uses the phrase *"to eliminate the evil threatening them or other persons*." A widely accepted view in our theory also states that the subject of protection in extreme necessity is everybody's legal well-beings regardless who they belong to. The most endangered values are at the same time the most important values for each individual - life, body, liberty and property. [25] To eliminate any doubt as to the sort of well-being that are protected by extreme necessity, in Article 20, Paragraph 2 of the Criminal Code of Serbia, which came into force on 1 January 2006, it was stressed that the danger eliminates *"from his well-bring or the well-being of another person*." The purpose of both provisions is the same, but the legislator in our country clearly had in mind that the phrase *"from himself or someone else"* could be misleading that the subject of protection in extreme necessity is only life, body, health or freedom, and that the danger to property is no factual ground for the application of the provisions that exclude the existence of crime.

Therefore, it is not disputed that in a state of extreme necessity, the danger to a legal well-being of another person or legal entity could be eliminated. In the theory of criminal law there is no unique opinion on whether the providing of the necessary help in self defense requires the consent of an attacked person, or it is possible to force back unlawful attack against his will. It is reasonable to conclude that consent of the attacked person is not required, which at this point we will not consider in detail. The logic of this principle is clear: in the conflict between lawful and unlawful actions, preference should be given to the lawful ones. The extreme necessity specificity (law with law conflict) further complicates the problem, maybe the solution is the absence of explicit opposition by the person whose legal well-being is exposed to danger. Conversely, if the value of protected well-being is significantly higher than the value of the injured or endangered one by elimination of danger, the approval (expressed or implied) is not required.

According to the unique perspective of legal theory and jurisprudence, the danger must be real (*real*) and serious (*grave*).[26]Whether the danger in individual case is real, the court assesses taking into account all the objective circumstances.[27] However, our doctrine went a step further to determine the danger as a necessary element of extreme necessity requiring the probability of its existence to the *"common experience*".[28] We believe that the correct position is

23 Ј. Таховић, *Кривично право - општи део*, Београд 1961, 124.
24 G. Q. Olivares, F. M. Prats, 503.
25 Љ. Лазаревић, *Кривични закон СРЈ са краћим коментаром,* Београд 1999, 30.
26 L. A. Zapatero *et. al*, *Comentarios del Codigo penal*, Madrid 2007, 122.
27 J. S. Melgar, *Codigo penal-Comentarios y Jurisprudencia*, Madrid 2006, 160-161.
28 М. Бабић (1983), 86.

the one according to which the objective criterion for the existence of danger implies predictability of the average man. This means that in addition to objective circumstances it is necessary to evaluate whether in the experience of the average man there is a possibility of a harming the protected well-being. If the court determines the existence of danger based on the experience of the person who removes the danger, i.e. on his perception, it would be a possible abuse of the institute of extreme necessity i.e. constant perpetrator's reference to the danger who allegedly threatened them. It is clear that different people assess whether there is a real possibility of endangering legal well-being in different ways. Thus, the same factual situation such as fire brings up different reactions of an adult or a juvenile i.e. their assessment of danger is not the same. Therefore, the criteria for determination of the existence of danger should not be the experience of a perpetrator of a particular offense, but the experience of an average person (an adult, a juvenile, etc.). Nevertheless, according to court practice of Spain: "*it is sufficient that the offender assesses if there is a situation of danger and intense risk for a legal well-being.*"[29]

The requirement that the danger in extreme necessity must be serious stems from fundamental features of this institute of criminal law: it is a conflict of laws.[30] Therefore, the danger must be directed to legal well-being that is relevant to the perpetrator, and others from whom the danger is being removed (life, body, health, freedom, food, clothing, housing, etc.).[31] Therefore, the danger as a fundamental condition of extreme necessity must have a certain weight i.e. the danger leaves the perpetrator the possibility of causing significant damage. Although it is clear that the daily inconveniences are not the cause for removal of danger by referring to extreme necessity, Article 20, Paragraph 5 of the Penal Code of Spain did not determine the degree of danger that is required. The theory of criminal law in our country has not paid attention to this problem. In any case, the degree of danger that is necessary for the extreme necessity cannot be expressed in nominal terms, we cannot lay down a general rule on the seriousness of the danger that is needed, but the court should determine whether there is an appropriate seriousness of the danger in each case. An interesting observation was that the average danger, even if the valuable legal well-being is endangered, does not justify the application of extreme necessity.[32] For example, a person who gravely hurts the legal well-being of the other person cannot refer to extreme necessity, because he wants to protect his precious car from demonstrators who did not intend to endanger his property.

If the offender taking into account all the objective circumstances of the particular criminal offense and the predictability of an average man had the wrong idea about the existence and severity of attacks he may refer to Article 14, Paragraph 3 of Penal Code of Spain, which regulates the legal mistake.[33] In addition, only an unavoidable mistake can result in the exclusion of criminal liability of the defendant.[34] *"If the mistake is avoidable minor penalty shall be imposed for one or two degrees."*[35]

In our legislation, if the offender makes a mistake about the existence of danger, the generally accepted view of theory and practice is that extreme necessity is not

29 L. A. Zapatero *et. al*, 122.
30 C. S. M. Rodriguez, A. J. Prieto, J. R. P. Rodriguez, 210.
31 E. O. Berenguer *et al*, 87.
32 **М. Бабић (1983), 101.**
33 Real mistake described in Article 14. Paragraph 1 Penal Code of Spain to refer only to wrong idea perpetrator about specific elements of crime.
34 A. C. Cerezo, J. A. C. Montalvo (2005), 45.
35 C. C. Duran, F. P. Alcoy, 38.

required, because the danger is not real. In this case, we can apply the institute of real mistake that excludes criminal offense, if the mistake is unavoidable (Article 28, Paragraph 1 Penal Code of Serbia). If the person who removes the danger had the wrong idea about the existence of danger due to negligence, it will be an act of negligence if such an act is provided by law (Article 28, Paragraph 3 Penal Code of Serbia).

It is important to respond to the question whether in case of the putative extreme necessity a person who is exposed to "elimination of danger" is entitled to self defense. A widely accepted view is that a person who removes the alleged danger and commits an unlawful act, which gives a victim the right to defend himself. This is because *"the attacker can be a person who is not aware of the unlawfulness of attacks."*[36]

The Spanish criminal theory regards the danger as a condition of extreme necessity which requires the fulfillment of the so called condition of time: only the immediate, impending (*inminente*) [37] or lasting danger (*actual*)[38] enables the exclusion of criminal liability of the defendant. It is interesting that this requirement for the application of extreme necessity is not mentioned in Article 20, Paragraph 5 of the Penal Code of Spain. The danger is referred to as lasting if it *"causes the possibility of direct injury, which will surely happen if the act for immediate removal of danger is not taken."* [39] The Supreme Court of Spain considers that the requirement of an imminent danger is fulfilled in cases of full unemployment, inability to pay obligations and other economic problems of the perpetrator, but the application of a justifying extreme necessity for the above-mentioned circumstances is "*restrictive*".[40] This means that economic problems cannot be a reason for referring to extreme necessity, unless it is determined that the perpetrator either tried to solve them (reported to the employment service, submitted a request for social aid), or is ill, or other personal or family reasons indicating justification for excluding criminal responsibility forced him to use it. It is obvious that the court practice is based on the essential characteristics of extreme necessity, the conflict of laws, and the fact that it is an institute whose application is an exception to the rule that no one can with impunity hurt or endanger the legal well-being of another person.

Today, the criminal codes and literature generally accept the condition for application of extreme necessity only if the danger and its elimination are simultaneous.[41] The common opinion is that danger meets the requirement of simultaneity if it is imminent and from the occurrence until it is stopped.[42] This means that the danger to be expected rather than directly ahead (future risk) and the danger which threatened are not the basis for the offender to recall. However, according to Tomanovic in certain cases the court should note that the condition of time is fulfilled, although it cannot be said that the danger is imminent. For example, if an offender or his property is threatened by flood, it is not reasonably expected for him to wait for the flood to take protective measures (for example, the demolition of the reservoir), because the removal of danger in this case could be a delayed response. [43] It is thought that the condition of simultaneity is fulfilled in case that there is certainty that danger will appear after a certain time (for example, the danger of the bridge collapse, landslides, fire spread, etc.).[44]

36 **З. Стојановић,** *Коментар Кривичног законика*, Београд 2006, 88.
37 G. Q. Olivares, F. M. Prats, 503.
38 C. S. M. Rodriguez, A. J. Prieto, J. R. P. Rodriguez, 210.
39 A. C. Cerezo, J. A. C. Montalvo (2005), 44.
40 G. Q. Olivares, F. M. Prats, 503.
41 М. Ђорђевић, Ђ. Ђорђевић, *Кривично право - приручник за полагање правосудног испита*, Београд 2004, 32; S. Beltrani, 136.
42 **Н. Срзентић, А. Стајић, Љ. Лазаревић,** *Кривично право Југославије*, Београд 1994, 143.
43 М. Томановић, *Нужна одбрана и крајња нужда*, Београд 1995, 150.
44 Ф. Бачић *et. al*., *Коментар Кривичног закона Савезне Републике Југославије*, Београд 1995, 65.

Although it is justified in this case to refer to extreme necessity, it is difficult to understand why some authors interpret the requirement of simultaneity broadly. If it is already beyond doubt that the issue of the time of extreme necessity cannot be answered by placing general rules or precise time intervals (e.g. minutes, hours or days), one must wonder why above mentioned reasoning allow courts complete freedom in determining simultaneity. The solution to this problem can be the taking of anticipated extreme necessity which is analogue to anticipated self-defense. Thus, it is clear that a person exposed to a future attack has the right to establish defense mechanisms (crossbow, trained dogs, etc...)[45] activating at the time of the attack, which do not challenge the time requirement of self-defense.

The reason for the above mentioned various theoretical understanding of time condition should be sought in the nature of extreme necessity. The perpetrator is faced with danger which considering its sources, can be very diverse. Therefore, the essential feature of the dangers of extreme necessity is that often it is not certain when the latent, persistent danger will transform into imminent danger.

If the danger is caused deliberately (intentionally) by the person who removes the danger, to the exclusion of criminal responsibility, the defendant cannot refer to extreme necessity.[46] In this way, prevention of the offender's right is misused.[47] It is not clear why the danger caused by negligence does not prevent the defendant to refer to extreme necessity, especially if one takes into account the most important feature of this institution: conflict of laws.

The legislator in Article 20, Paragraph 2 of the Criminal Code of Serbia stipulates that danger in terms of extreme necessity must not present guilt. As noted above, an extreme example of guilt danger is a deliberate causing of danger, so that an offender may commit a crime by allegedly removing the danger. However, some authors believe that this particular case of intentionally causing the danger is not the only one that excludes the application of extreme necessity. Advocates of this opinion believe that it is possible to imagine a situation in which the perpetrator intentionally causes the danger, but does not foresee the realization of criminal acts to the detriment of third parties.[48] For example, someone wants to take someone else's life by pushing him / her into the water to drown him or her, and as he repents, he subtracts the third party's motor boat to rescue drowning. The application of extreme necessity in this case enables saving legal well-being of greater value, on account of legal well-being of significantly less value. We believe that acceptance of this solution would create disproportionately more damage than benefits and enable misuse of the institute of extreme necessity by the offenders. In addition, in this example, an offense which is committed by subtracting the boat could be excluded institute of minor significance crime, provided that the boat is returned to its owner. If in the above situation, a person who voluntarily gives up of committing a crime of murder indeed wants to prevent taking life, will not give up despite the possible sanction for taking away a boat. Finally, it is difficult to defend the above mentioned view, according to which a person wants to take a life of another and he or she does not predict the danger that may occur as a result of that. In this regard, we accept the notion that the danger is guilty if the perpetrator was aware or could and owed to be aware that the danger could be removed only by injuring of another person well. It follows that the person who causes the danger with intent or negligence to his or well of another, cannot refer to extreme necessity if by removing danger accomplishes specific elements of crime.[49]

45 H. H. Jescheck, T. Weigend, *Lehrbuch des Strafrechts - Allgemeiner Teil*, Berlin 2003, 342.
46 E. O. Berenguer *et al*, 87.
47 A. C. Cerezo, J. A. C. Montalvo (2005), 44.
48 **М. Бабић (1983), 107.**
49 **З. Стојановић,** *Коментар Кривичног законика СРЈ*, Београд 2003, 32.

ELIMINATION OF DANGER

According to the theory and practice in Spain, the realization of the offense is the only way to remove the danger,[50] i.e. there is no other legally allowed way for removal of danger from yourself or another person (e.g. escape, call for help). Necessity as a basic feature of the extreme necessity state is always estimated from the *ex ante* perspective of an average man.[51] Therefore, considering that in case of extreme necessity it is conflict of laws, the offender who was given the choice should always choose the less dangerous means and method of removing the danger. This request for the application of extreme necessity is not specifically regulated, as in Article 20, Paragraph 2 of the Criminal Code of Serbia. Court practice in this country was faced with an attempt of a drug dealer to avoid punishment, because he allegedly was forced to sell narcotics in order to provide for himself and his family members. Of course, the court did not accept the defense of the accused as a reasonable, because it is clear that there are other less harmful ways to ensure the source of livelihood and solve the problem of addiction, e.g. treatment in specialized institutions, education, employment, etc., (taken from the Supreme Court Spain sentence, 16 September, 1982).[52] **T**here is also no doubt that in these cases the requirement that the inflicted evil does not exceed the threatening evil is not fulfilled, due to consequences caused by the use of drugs.[53] Because of the great disproportion between the threatening and inflicted evil, the defendant who committed the offense of the distribution of narcotic drugs is not allowed to refer to either a justifying or an excusing extreme necessity.

The inflicted evil cannot be greater than the threatening evil, which has already been discussed in the section of this paper concerning the legal nature of extreme necessity. Related to this condition of eliminating the danger in our theory there is opinion that life is the most important legal well-being for every man, the condition for the realization of all other rights.[54] As legislators in Serbia and Spain use the term "evil" which in theory is interpreted as harming of a legal well-being,[55] and as there is no reliable rule whose implementation would in any particular case enable us to determinate which well-being is more important for society, it could be said with certainty that for the determination of this particular condition of extreme necessity that the court makes on a case by case basis is reached by taking into account all the objective circumstances of the particular criminal matter. Therefore, we believe that evaluation of the value of legal well-being, which is in conflict in case of extreme necessity, should be objective, without subjective importance of these well-beings for individuals. This means that if some legal well-beings for certain persons are more valuable than for the average person; the court will not take into account this circumstance when comparing competing well-beings in extreme necessity.

In the Spanish criminal doctrine a prevailing objective understanding of extreme necessity states that the application of this basis for exclusion of criminal responsibility does not require the offender's will to remove the danger. Although the legislator in Article 20 Paragraph 5 states that *"in order to eliminate the evil from himself or other"*, it suggests that the crime must be committed in order to rescue the endangered legal well-being. Advocates of the objective-subjective concept of ex-

50 L. A. Zapatero *et. al*, 122.
51 G. Q. Olivares, F. M. Prats, 505.
52 **Ibid.**
53 **J. S. Melgar, 164.**
54 З. Стојановић, Природно право на живот и кривично право, *JPKK* 1/1998, 9.
55 **Љ. Лазаревић (1999), 31.**

treme necessity point out that the offender is to be aware of the situation of extreme necessity in every particular situation, but it also emphasizes the need for the court to determine *"the will to eliminate a danger"*.[56]

Article 20 Paragraph 5 of the Criminal Code of Spain expressly provides that persons who by their profession or occupation have a duty to make sacrifices or to perform their duties cannot refer to extreme necessity. This applies to firefighters, miners, policemen, doctors, etc. [57] However, the obligation to perform duties shall cease if the risk to life or health in particular situations is greater than the risk they are obliged to accept in accordance with their professional obligations.[58]

Finally, the conditions for danger and its elimination discussed in this paper refer to both a justifying and an excusing extreme necessity. The exception is the requirement that the inflicted evil is not greater than the threatening one, which is the criterion for demarcation of two forms of the institute, and the requirement to be met only in respect of a justifying extreme necessity.

CONCLUSION

If the consideration of extreme necessity in the criminal law of Spain relies only on the provisions of the Criminal Code that are directly related to this institute (Article 20, Paragraph 5, Article 21, Paragraph 1 and Article 68), we can conclude that it is a ground for excluding criminal liability which is characterized by necessity and proportionality. The necessity, but only exceptionally, if there is no choice for the offender to achieve specific elements of the offense, while they cannot be punished. Proportionality in danger elimination, because it is conflict of laws, which means that there cannot be committed greater evil than the threatening one. Interestingly, however, if the offender commits a greater evil, his act in the Spanish legislation does not qualify as exceeding the bounds of extreme necessity. In this case, it is considered that his criminal responsibility is reduced (Article 21, Paragraph 1), which means that the defendant's penalty may be reduced in accordance with Article 68.

However, in the interpretation of provisions of a Criminal Code in theory and court practice adopting so-called differentiating concept according to which a justifying extreme necessity excludes unlawfulness (a committed evil is less than a threatening one), while excusing excludes guilt (an evil committed is the same as the threatening one).We are of the opinion that it is an unacceptable view of some authors, that guilt of the perpetrator is excluded and if the court in this case finds that a more valuable legal well-being is sacrificed in order to rescue a less valuable well-being. It is our opinion that we should consider the particular mental state of a person who removes the danger from himself or of another person, but at the same time we must not forget that the perpetrator is usually aware of the state of necessity, and therefore makes a rational decision to eliminate the danger by injuring or endangering a legal well-being of another person. In addition, it should be noted that the key feature of extreme necessity is conflict of laws. In other words, we should take into account the interests of a third party, which did not contribute to the situation of exposing his legal well-being to danger or injury.

There is a dilemma whether to accept a single or partial regulation of extreme necessity. The author of this paper is in favor of the decision adopted by the legisla-

56 A. C. Cerezo, J. A. C. Montalvo (2005), 44.
57 E. O. Berenguer *et al*, 87.
58 L. A. Zapatero *et. al*, 123.

ture in our country.[59] However, after consideration of this institute in the criminal law in Spain, we believe that we should consider accepting the theory of differentiating in the Criminal Code of Serbia. Consequently, we point out that it is not appropriate to regulate law with a single provision: 1. realization of a criminal act in order to rescue a more valuable legal well-being; 2. accomplishment of the crime to rescue the well-being that has the same significance as the well-being which is injured or endangered. In the first case there is no doubt that the legal system is consistent with the action of removing the danger (justifying extreme necessity which excludes unlawfulness), while in another case there is a doubt whether it can be said whether the committing the act is in accordance with the law. The legal system is indifferent to the outcome of this conflict, because it includes well-beings of equal value. Therefore, in addition to the fulfillment of certain conditions, we can speak of an excusing extreme necessity, which excludes guilt.

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UDC 351.74/.75(497.11)"1913/1914"
327.56(497.11)"1913/1914"

1913 AND 1914 DECREES ON PUBLIC SECURITY IN LIBERATED TERRITORIES

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Abstract: The legal position of territories liberated and annexed to the Kingdom of Serbia following the Balkan Wars of 1912-1913 was regulated by the separate decrees of the King and the government. The government's intention was to maintain a special regime in these areas for a certain period of time, and this was why the validity of the Constitution or other laws of the Kingdom of Serbia was not immediately expanded to them. Neither the partial validity expansion of the Constitution of 1903 on the new territories carried out under the pressure of the opposition by the King's edict at the end of 1913, nor the Proclamation of Regent Alexander to revoke the special regime in Macedonia and Kosovo issued at the end of 1914, had any important influence on the change of the regime of administration in these territories. All to the end of the war and even some time after the war, the government stuck to the solution that these territories were administered by special bylaws and expansion of validity of certain Serbian laws. The Decree on Public Security of October 04, 1913, was passed after the great incursion of Albanian units from Albania to the southwest territories of the Kingdom of Serbia. It contained penal provisions taken primarily from the Law on Pursuit and Destruction of Brigands of 1895 and the Criminal Code of 1860. This was an extorted repressive measure of the state directed at overcoming concrete security threats at the time, and in its essence it boiled down to giving wide powers to the police who in the lack of regular bodies for safeguarding people and property could demand from the competent military command to use the army to keep the public security. Since the circumstances in new territories improved in the meantime, on January 05, 1914, the new Decree on Public Security in the Liberated Territories was passed according to which the penalties for the majorities of crimes were reduced.

Key words: Balkan wars, new territories, the government, decree, public security.

EASTERN QUESTION AND THE BALKAN WARS

Eastern question, defined in short as the question of survival of the Turkish state in Europe and in the Balkans, was indicated by the social and political crisis in the Turkish Empire by the end of 17th century and lasted until the World War I. The social crisis was the most intense at the bordering territories of the Empire, in the Balkan and European territories on one side and in the Arabian territories on the other side, and its political expression was the fight for liberation from Turkish authority, national affirmation of non-Turkish nations and the creation of their own nation states. This all weakened the Ottoman Empire and stimulated the aspirations of the Great Powers to take possession of considerably important geopolitical positions in Europe and in the Mediterranean by appropriating the Turkish "legacy". Through the Eastern question, therefore, there were two simultaneous components in action - national-revolutionary ideologies of non-Turkish nations within the very Ottoman Empire and the strivings of some European powers – as external and inter-

nal factors of their contents. The liberation movements of the Balkan nations were characterized by national and social revolutions, since they represented at the same time the fight to overthrow the Empire and create independent nation states and the fight to bring an end to a feudal absolutist system based on theocratic principles of Islam and create a bourgeois social-political system. As for the politics of the Great Powers concerning the Eastern question, until the second half of 19th century, they had primarily fought for political influence, and since then they started open imperialistic battle with the goal to directly rule the Ottoman Empire territories. Finally, from the end of 18th to the beginning of the 20th century the basic content of the Eastern Issue included also the strivings of progressive Turkish elements to recuperate their state by reforms and by strengthening the Turkish national core to attract and gradually assimilate non-Turkish nations, all with the goal to turn the Ottoman Empire into a homogenous Turkish nation state. The complexity of the content of the Eastern issue makes it one of the most complex and most enduring problems of the European and world history in the 18th, 19th and at the beginning of 20th century, turning it into an overall conflict, into "the battle of everyone against everyone."[1]

In the Balkan territory at the beginning of the 19th century liberations revolutions of the nations in the peripheral areas of the Turkish Empire (Serbian and Greek) began, from the 1830s the national liberation movements expanded also to continental areas of the Balkans and finally they opened the crisis of European scope from 1875 to 1878. A short-term lull which at the beginning of 1870s ruled the Western Europe after the storms had passed was only apparent because beneath its surface both external and internal conditions gathered for the outbreak of the Eastern crisis. Externally the Austrian-Russian conflict in the Balkans intensified within which new ideas and movements flew through the Balkans in the 70s (West European liberalism and Russian reformation) which would further direct the stacked national liberation aspirations of the Balkan nations. "Concurrence of both external and internal conditions will cause uprisings in Bosnia and Herzegovina (1875), Bulgaria (1876), Thessaly (1876), Russian military intervention (1877) and political and diplomatic involvement of Europe (1878)".[2] These intertwining events opened a great Eastern crisis within which the Balkan nations would try to complete their national liberation, in other words to resolve the Balkan issue according to the principle of nationality. However, the crisis could not be resolved without active interfering of the Great Powers which were entering the period of full imperialism. Eastern crisis reached its epilogue at the Congress of Berlin in 1878, where Russia was pushed out of the Balkans and Austria-Hungary was pushed into the Balkans as a messenger of the future German *Drang nach Osten*.[3] The Balkan nations and states were excluded from the decision-making process regarding their destiny. Rejected by Bosnia and Herzegovina, given for occupation to Habsburg monarchy for the period of thirty years, internationally acknowledged as independent and enlarged in the Morava area, Serbia was directed southwards, towards Old Serbia and Macedonia, the arena of increasingly severe inter-Balkan conflicts. Montenegro was internationally acknowledged as independent with enlarged territory, while Macedonia remained under the Turkish authority. The Eastern crisis turned into a missed opportunity by the intervention of the Great Powers: unresolved in 1878, the Balkan issue would continue to be resolved under more and more unfavourable conditions which would be created by the increased game of the

1 Popov, Č.: *Istočno pitanje i srpska revolucija 1804-1918*, Beograd, 2008, p. 17.
2 Đorđević, D.: *Nacionalne revolucije balkanskih naroda 1804-1914,* Beograd, 1995, p. 75.
3 «Umesto ruske opasnosti u Carigradu stvorena je austro-nemačka opasnost u Solunu». Đorđević, D., cited, p. 91.

Great Powers and the increase of internal forces of the Balkan states at the end of 19th and the beginning of the 20th century.

The Balkan wars of 1912 and 1913 represent a considerably important stage in the Eastern question. The First Balkan War settled the Eastern question according to the principle of "the Balkans to the Balkan nations", which was threatened by the Second Balkan War in which the inter-Balkan cooperation broke down. The interest of the national development and liberation movements in the Balkans required externally defensive and internally offensive defence from external intervention and the attack on the remaining territory under the Turkish authority. The successful war against Turkey in order to complete the liberation process started in 19th century was possible only with the joint efforts of the Balkan nations, whereas such a war should have been localised in order to prevent the intervention of the Great Powers which would make the war results favourable for them. The expression of these political needs, voiced in 1860s already through the attempts of inter-Balkan connection, was the Balkan League established in 1912 with the support of Russia. The League connected the Balkan shock forces for the offensive on Turkey while the protection of Russia was the counter balance to Austrian attempts to decrease or annul the results of the Balkan warfare. The initiative to make a League was given by Serbia, which at the beginning of the 19th century found itself in open conflict with Austria-Hungary, and which could oppose to it only in cooperation with other Balkan forces. The most important need was the agreement with Bulgaria, and this was why Serbian diplomacy immediately after annexing crisis ended launched negotiations on the alliance in Sofia, seeking at the same time the support in Russia and contacts with Greece and Romania. The crucial moment in the preparation of the Balkan League was Italian-Turkish war of 1911, which opened the Eastern question, isolated Turkey politically delivering powerful blows to it. Realistic possibility of war spreading to the Balkan territories and the prospects for the general Balkan uprising required an urgent defensive agreement among the Balkan states, so by the beginning of October Serbian-Bulgarian alliance negotiations were launched. They were conducted in secret in Belgrade, Paris and Sofia, based on the division of Macedonian territory, since the opposing attitudes of Serbia and Bulgaria in this field could have been overcome by compromise only. It was reached by directing Serbian actions towards the Adriatic Sea, in other words by redirecting the direction of Serbian expansion from the south to the southwest – instead of the Vardar valley, over Old Serbia and Kosovo and Metohija to the northern Albania. The territorial gain in Macedonia was no longer a goal but a means to provide the path to the Adriatic. This compromise resulted in ceding a larger part of Macedonia to Bulgaria, but the Austrian-Hungarian aspirations in Kosovo and Metohija and northern Albania were suppressed, getting Serbia closer to the Yugoslav territories on the Adriatic coast through the middle line in comparison with Turkey and Austria-Hungary at the same time. This is the foundation on which the Serbian-Bulgarian agreement was concluded on March 13, 1912, which included the agreement on the alliance and also its secret annex. The federal agreement was defensive in character defending the Balkan area from aggressive intentions of non-Balkan powers. The secret annex to the agreement gave in a nut-shell the offensive aspirations, which provided for the joint war against Turkey and the division of the liberated territories. They were to be divided into two undisputable and one disputable zone. The area in the north from Šara Mountain was Serbian undisputable zone, and the areas east from Rhodope Mountains and Struma were the Bulgarian undisputable zones. As for the disputable territory of Macedonia between Šara and the Rhodopes, the alternatives were either autonomy or division, whereas in case of the division the Serbian government would renounce the territories south and east from the line which diago-

nally spread from Kriva Palanka to Ohrid. Both sides agreed that the final arbitrator in case of dispute would be the Russian Tzar. The second part of the Balkan agreement consisted of the agreements (both oral and written) among Greece, Bulgaria and Montenegro. By closing the Balkan League in 1912, the Balkan issue entered its final stage.

Despite the opposition of the European cabinets, the Balkan allies entered into war against Turkey in October 1912, launching an offensive of Bulgaria in Thrace, Serbia and Montenegro in Sandžak, Old Serbia and northern Macedonia, and Greece in Epirus and south Macedonia. These wild-fire successes of the allies forced Turkey to seek peace, which was closed on December 3, on *uti possidetis* basis. The results of military operations basically changed the political map of the Balkans and disturbed the balance between the Great Powers' blocks. Austria-Hungary was affected the most, and it would accept the war outcomes on condition that the Serbian army retreated from the Adriatic and from northern Albania. The refusal of the Serbian government to fulfil this condition led to Austrian-Serbian conflict, and the military pressure of Austrian-Hungarian government on Serbia caused military preparations of Russia. The outbreak of European war was prevented by the mediation of the Great Powers, which on the Conference of the Ambassadors in London in December 1912 reached decision to acknowledge independence of Albania and the retreat of Serbia from its coast. Encouraged by this Turkey terminated peace negotiations which had started earlier in London and in February 1913, it continued war in which it was completely defeated by the allies. By the Treaty of London concluded on May 30, 1913, the Balkan victors were given the entire territory of Turkish European lands up to the Enos-Midia frontier.[4] Serbia got the largest part of Kosovo and Metohija, Vardar Macedonia and northern Sandžak; Montenegro got Plav, Gusinje, southern part of Sandžak and Metohija surrounding the town of Peć; Bulgaria got Thrace with Jedrene and a part of Macedonia (east of the Rhodopes and Strumica), and Greece got Epirus, Aegean Macedonia with Thessaloniki and Crete. The destiny of three Greek Aegean islands (Chios, Samos and Mytilene) and the issue of Albania borders was given to the Great Powers to judge.

The alliance of the Balkan states, based on the common interests in a joint offensive against Turkey started to fall apart both because of the expanded requests of the allies in the division of the loot following the warring success and the persistent work of Austria-Hungary on its dismemberment. Rejected from the Adriatic coast with Albania under Austrian-Hungarian tutorship on its side and cut from Thessaloniki, with Bulgaria which according to the alliance agreement had to spread all over to Ohrid, Serbia once again fell under the influence of Double monarchy and changing politics of the Bulgarian King Ferdinand. This is why Serbia refused to cede to Bulgaria the agreed territories of Macedonia, requesting the revision of the alliance agreement under the newly created circumstances. Bulgaria, prompted by Austrian-Hungarian diplomacy, requested the entire Macedonia, Thrace, and even reached for Albania. These over excessive Bulgarian requests, combined with persistent refusal of the Serbian and Greek governments to leave the territories conquered in war, led to tragic break down of inter-Balkan alliance despite Russian mediation aimed at its preservation. By sudden attack on Serbian and Greek positions on June 29/30, 1913, Bulgarian military command launched a new war in which it was completely defeated.[5] Montenegro and Romania were on the side of Serbia

4 For more details see: Živanov, Sava: *Rusija i raskol Evrope. Odnosi između evropskih sila pred Prvi svetski rat, od Berlinskog kongresa do početka rata (1878-1914)*, Beograd, 2005.

5 For more details, see for example. Belić, A.: *Srbi i Bugari u Balkanskom savezu i međusobnom ratu*,

and Greece in this war and even Turkey reclaimed Jedrene from Bulgaria. By the Treaty of Bucharest of August 10, 1913, Serbia kept territories which it got in 1912, Greece moved its borders in Thrace to the east and Romania gained territories in Silistra. The annex of territories liberated in the Balkan wars to the Kingdom of Serbia was officially proclaimed on August 25, 1913, but the Serbian government started to make their legal system even before that considering them Serbian historic territories.[6]

LEGAL ORGANIZATION IN LIBERATED SERBIAN TERRITORIES 1912-1914[7]

The process of establishing Serbian civilian authorities within the liberated territories was carried out parallel with advances of the Serbian army, but due to political reasons neither the administrative division nor the edicts on civil servants' appointments were published in the official *Serbian newspapers* during the war. Organization of civil administration was in charge of the Police Department headed by the Police Inspector within the Headquarters of the Supreme Command which was located in Skopje since its liberation on October 26, 1912. Milorad Vujičić, the Superintendent in the Ministry of the Internal Affairs,[8] was appointed the Police Inspector. The first temporary administrative division of the liberated territories consisted of organization of municipalities, districts and counties as in Serbia, and after the end of the battle of Bitola, it included ten counties (the counties of Novi Pazar, Priština, Kumanovo, Skopje, Tetovo, Prizren, Debar, Pomorje, Pljevlja and Bitola).[9] Civil servants were appointed by the edict of the military Chief-of-Staff, at the recommendation of Police Department of the Supreme Command Headquarters, pursuant to Article 6 of the Law on Army Organization of 1901, therefore the county and district administrators did not have to have qualifications provided for by the Law on administration of counties and districts of 1905. On December 8, 1912, the government made the decision that military officers cannot be appointed district and county administrators, and the appointment of civil servants required the consent of the Minister of the Internal Affairs.[10] The basic duty of district and county administrators, according to the instructions of Inspector Vujičić, was that together with local commanders safeguard life and property of the population, ensure equality of citizens regardless of their religion or nationality and secure the property of the Turkish state and other legal persons. On November 8, 1912, Vujičić proposed that the Decree on administration of the new territories should be passed, but the implementation of this proposal into action was pre-empted by the Commander of the Third Army, General Božidar Janković, who in Prizren on November 16, 1912, issued the *Temporary police decree and the decree on municipal courts*

Beograd, 1913; Protić, S.: *Srbi i Bugari u Balkanskom ratu*, Beograd, 1913; Lazarević, M.: *Drugi balkanski rat*, Beograd, 1955; Skoko, S.: *Drugi balkanski rat*, Beograd, 1968; Milošević, K.: *Od savezništva do neprijateljstva. Srbija u Balkanskim ratovima 1912-1913*, Beograd, 2007.

6 For more details see: Milićević, M.: *Srpska uprava u severnoj Albaniji i na Primorju tokom Prvog balkanskog rata*, Baština 23 (2007), 255-277; Janković, D.: *L' annexion de la Macédonie àla Serbie*, Зборник радова La Macédonie et les Macédoniens dans le passé, Скопље, 1970, 283-310.

7 The most detailed review of legal regulations introduced in the new territories see: Jagodić, M.: *Uređenje oslobođenih oblasti Srbije 1912-1914: pravni okvir*, Beograd, 2010.

8 Vujičić, M.: *Rečnik mesta u oslobođenoj oblasti Stare Srbije. Po službenim podacima*, Beograd, 1914.

9 Archive of Serbia (further in the text: AS), Ministry of the Internal Affairs – Police Department (further in the text: MUD-P), 1912, F 44 R 95, *Temporary administrative division of the Old Serbia*, undated and unsigned act.

10 AS, MUD – classified, box 1911-1912, Minister of the Internal Affairs S. Protic to Police Inspector M. Vujicic, classified no. 369, November 25/December 08, 1912

at the Third Army battleground. [11] This decree was passed without the civilian authorities, its validity was territorially limited, which could cause confusion among the civil authorities of the liberated territories; it provided for the responsibility of the civilians before military authorities as well, which was not a part of the Criminal Code of Serbia; finally, according to Article 7, the municipal court presidents and perish clerks had to be Serbians, while the representation of the members of various nationalities and religions depended on the estimation of the competent police authority.[12] Because of all this, the civil authorities, and particularly inspector Vujičić and the Minister of the Internal Affairs Stojan Protić were not satisfied with this Decree.[13] Vujičić recommended to the administrator of Pristina county Dimitrije Kalajdžić to draft a general decree on the administration of liberated territories, but since he was not satisfied with it either, he made his own concept of the Decree on the administration of liberated territories and sent it for examination and approval to the Minister of Internal Affairs on November 25, 1912.[14] By the Edict of King Petar dated December 1912, based on Articles 5 and 6 of the Law on Army, the Decree on the administration of liberated territories was proclaimed.[15] The Decree had a preamble, which pointed out the historical right of Serbia to the liberated territories and its issuing was motivated by the desire for the population of these territories to "enjoy the immediate benefits of legal order, freedom and justice", and four chapters. The first three chapters referred to the administration of municipalities, districts and district courts, and the fourth chapter titled "General orders" proclaimed equality of all citizens before the law, guaranteed the freedom of religion (Eastern Orthodox religion was proclaimed a state religion and proselytizing was prohibited/banned), state education was proclaimed obligatory and the Law on pursuit and destruction of brigands of 1895 was introduced to implementation.[16] This Decree was the first general legal act which started the integration of the liberated territories into the legal system of the Kingdom of Serbia, and although it was outdated in many provisions, it managed to provide for the functioning of basic organs of civil authorities in these territories during the state of war. Since after the conclusion of the Treaty of Bucharest the Serbian army was demobilized and the Supreme Command ceased to act, this Decree could not stay in force. This is why on August 31, 1913, by the King's Edict and at the recommendation of Ministerial council, based on Article 5 of the Law on organization of central government administration of 1862, the new *Decree on administration of the liberated territories* was passed.[17] The Decree in its

11 *Compendium of laws and decrees, consolidated and systematized edition; I book: the Constitution, organic laws and general administrative laws*, Belgrade, 1913, 268-298.

12 The Decree was supposed to remain in force "until the government of the Kingdom of Serbia do not replace it with the permanent law." It consisted of 62 articles and had two parts. The first part referred to the establishment of municipal courts in accordance with the Serbian Law on Municipalities of 1903, but the municipal officers were appointed on and relieved from duty by the police authorities (they were not elected). Article 7 was contrary to the standpoint of the Serbian government about the full equality of all inhabitants of the new territories regardless of their religion and nationality.

13 This was one in a series of events which intensified the already existing conflict between the military and civil authorities in Serbia, initiated by the pretensions of the military conspirators who participated in the Revolution of May 1903. Bataković, D.: *Sukob vojnih i civilnih vlasti u Srbiji u proleće 1914*, Istorijski časopis, XXIX- XXX/1982-1983.

14 AS, MUD – classified, box 1911-1912, Police Inspector M. Vujicic to the Minister of the Internal Affairs S. Protic, November 12/25, 1912, Vujicic's concept of the decree is enclosed to this act.

15 AS, Ministry of Justice (further in the text: MP), F41 R 31. The decree was not signed by any of the ministers, which was not in compliance with 1903 Constitutions. In its structure and contents, the decree was similar to Temporary Law on Administration of Liberated Territories of 1878 and probably originated based on Kalajdzic's draft and not based on Vujicic's concept.

16 This law was not in force in Serbia from January 31/February 13, 1905, when the Law on Public Security was adopted, which contained milder regulations concerning brigands. Due to the state of war and general circumstances in the new territories, the Decree introduced to implementation the stricter 1895 Law.

17 The Decree was later amended three times. Serbian Newspapers, No. 181 dated August 21/September 03, 1913; no. 200 dated September 13/26, 1913; no. 238 dated October 30/November 12, 1913, and no. 23 dated January 29/February 11, 1914.

structure (four chapters, without preamble) and its contents was almost identical to the previous one, and its validity was limited in time until the passing of the Law on annexing of the liberated territories at the first forthcoming session of the National Assembly.[18]

Annexing of the new territories to Serbia was made by the Proclamation to the Serbian nation of August 25/September 7, 1913, issued by King Petar and signed by all the government members.[19] As for the legal position of these new territories within Serbia, the Proclamation stated that they will be administered according to the King's decrees and according to the government solutions on bringing into life individual existing laws or issuing special bylaws, until the administration of the annexed territories was determined. It was suggested in this way that the government did not have an intention to expand the validity of the Constitution and the laws of the Kingdom of Serbia right away, but that a special regime will be maintained in them for a certain period of time. [20] On the same day the King issued a Proclamation to the population of the liberated and annexed territories, which pointed out the role of the Serbian army in achieving the historical right of Serbia to the new territories, it was repeated that they would be ruled by new decrees until their legal status is determined by the law and the people from the new territories were invited to fall to work vigorously, reject the false beliefs, divisions and conflicts they had by that time, in order to erase every trace of long slavery and create conditions to become equal with their "brothers" within the Old Serbia boundaries.

The Serbian government in its speech delivered from the throne on October 17, 1913, set out its program, in which regarding the new territories it highlighted as its priorities the improvement of traffic, economic and cultural circumstances and announced the submission of legal proposal on regulation and administration of Old Serbia, "which in the first years must be somewhat different from the regulation and administration of the Kingdom of Serbia so far".[21] The Assembly Committee in charge of the addressing outline divided regarding the legal position of the new territories: the committee majority (the Radical Party representatives) agreed with the government standpoint; the representatives of the Independent Radical party itemized the steps that should be taken in Old Serbia, without declaring on the form of administration in it; the representatives of the Progressive Party requested the Great National Assembly gathering in order to make the amendment of the Constitution first, and then to introduce it in its entirety to the new territories; [22] finally, the representatives of the National Party in their outline of the addressing suggested introducing for a certain period of time "worthy, powerful, relentlessly fair and in-

18 **For more details see: Jagodić, M.:** *cited*, p. 25-29.

19 *Serbian Newspapers*, no. 186 dated August 27/September 9, 1913. године. The wording of the Treaty of Bucharest was published in the same issue, which was the legal basis of annexing.

20 **Contrary to this situation, the validity of the Serbian Constitution and other laws was extended by the** government of Jovan Ristic to the districts of Nis, Vranje, Pirot and Toplica when based on the Congress of Berlin they were annexed to Serbia. The attitude of the Serbian government was that the population of these territories should be gradually prepared for the rights and freedoms enjoyed by the inhabitants of prewar Serbia, in other words that they should not be legally made equal right away. Such a stand was to the great extent based on Jovan Cvijić's point of view that the inhabitants of Macedonia were not yet nationally shaped, i.e. that they were a separate ethnic group, "floating mass" which will be nationally shaped depending on the state within whose boundaries it will end up – it would become Serbian in Serbia, Bulgarian in Bulgaria. Cvijić, J.: *Balkansko poluostrvo i južnoslovenske zemlje*, Beograd, 1991.

21 *Stenograph notes of the National Assembly sessions*, 1913-1914, 4.

22 The same attitude was advocated by the representatives of the Serbian Social-Democratic Party. See, for example, the speech by Triša Kaclerović in the Assembly. *Stenograph notes of the National Assembly sessions*, 1913-1914, p. 259. On the standpoints of this party concerning the organization of the new territories see in the monograph by Dubravka Stojanović, *Iskušavanje načela. Srpska socijaldemokratska partija i ratni ciljevi Srbije 1912-1918,* Beograd, 1994, 84-94.

violably pure" military regime.[23] In the assembly debate on the organization of new territories the standpoint of the government was defended by the Minister of the Internal Affairs. The goal of the temporary regime, which would last one decade at the longest, as Protić explained, was to cultivate the newly gained territories for "constitutional and political regime of the mother country", and as for the participation of the population of the new territories in the National Assembly and the decision-making process on the administration in these territories, Protić was undoubted: "We did not ask them when we were liberating them … and it would even be unwise to ask them how they should be managed in the first years of their national liberty".[24] On November 06, 1913, the Assembly adopted the draft offered by the committee majority. In October and November 1913, the government asked the county administrators and judges in the new territories which laws might be implemented immediately and which should be introduced gradually and when, as well as what was the shortest period of validity of exceptional legislation in the new territories. All the county administrators and judges agreed that political and administrative laws should not be introduced immediately, stating that the people were not mature for the political freedom but should be gradually prepared for it, and in the meantime it was necessary to ensure personal and property safety and legal equality of citizens regardless of their religion or nation. As for the duration of the exceptional regime, the opinions varied from three years minimum to fifteen years maximum.[25]

On December 25, 1913, the Ministry of the Internal Affairs submitted to the Assembly the *Draft law on annexing of Old Serbia and the administration in it* complete with the opinion of the State council of the proposal.[26] The proposal confirmed the annexing of the new territories, provided for their administrative division into twelve counties and forty five districts, proclaimed the population in the new territories Serbian citizens and defined the new territories as a separate administrative entity.[27] It provided for the constitutional regulations, laws and bylaws, as a whole or in part be introduced into the new territories gradually, by the King's enactment in the form of edict, and the government was given authority to prescribe special enactments with the power of law for the new territories, if they found it necessary.[28] The National Assembly did not manage to declare on this Proposal until the outbreak the World War I, and during the war it was never put on the agenda, so consequently it was never enacted. After the Battle at Kolubara Regent Alexandar Karadjordjevic, in token of gratitude to the residents of the new territories for their participation in war, on December 28, 1914 issued an order to the army in which he promised that the first regular National Assembly after the war would expand entirely the constitutional order of the Kingdom to the new territories. Almost six years after annexing, the new territories were legally made equal with the pre-war Kingdom of Serbia, which did not exist anymore at the time – by the edict of Regent Aleksandar dated June 30, 1919, it was ordered that the Constitution and all the

23 *Stenograph notes of the National Assembly sessions*, 1913-1914, 107-113.
24 *Stenograph notes of the National Assembly sessions*, 1913-1914, 249-251.
25 The exception was the judge of the County Court in Tetovo, Jovan M. Obradović, who was of the opinion that the new territories should immediately and completely made equal with the old territories, because the special regime would cause slower assimilation of the population and contribute to foreign agitations. AS, MP, 1913, F 30 R 83.
26 *Stenograph notes of the National Assembly sessions*, 1913-1914, 505-517.
27 The counties were those of Bitola, Bregalnica, Zvečane, Kosovo, Kumanovo, Ohrid, Prizren, Prijepolje, Raška, Skopje, Tetovo and Tikveš.
28 Special government decrees were to be brought in the form of the King's edict, published in the *Serbian Newspapers* and afterwards reported in the National Assembly in the beginning of the next convening. Their duration was limited to ten years, with the possibility to be terminated or amended earlier. This deadline was shortened to six years by the intervention of the legislative Assembly commission. *Stenograph notes of the National Assembly sessions*, 1913-1914, 1137-1143.

laws of the "former Kingdom of Serbia" come into force in the territories annexed to Serbia and Montenegro after the Balkan wars on August 01, of the same year.[29]

Since their annexing in 1913, the new territories were administered by the Ministerial Council in the manner provided for by the King's Edict on Annexing. Some laws of the Kingdom of Serbia were introduced (the majority immediately upon annexing), certain parts of the Constitution (December 03, 1913) and several special decrees for the liberated and annexed territories were passed.[30]

1913 AND 1914 DECREES ON PUBLIC SECURITY IN LIBERATED TERRITORIES

Public security in the newly liberated territories was insured by two institutions, the army and the police. The army carried out this duty through military garrisons and commands of logistics services, and the police through establishment of county, district and municipal institutions. These institutions comprised field gendarmerie as a kind of preventive security service, in which the old Chetniks and activists of an organization called National Defence served, especially in order to suppress infiltration over the border by Bulgarian guerilla units, demolition groups and terrorists – the individuals of the VMRO (Internal Macedonian Revolutionary Organization).[31] The security situation was additionally made complex by the Albanian movement, which before the outbreak of the First Balkan War caused riots, particularly in the territories that were under the strongest Austrian influence – the Sanjaks of Prizren, Peć, Priština and Novi Pazar.[32] The territory of Kosovo Vilayet, formed in the course of Turkish administrative reorganization of 1877, comprised the Sanjaks of Novi Pazar, Prizren, Priština, Skopje, Debar and Niš. By the decisions of the Congress of Berlin in 1878, the scope and location of the Kosovo Vilayet were changed, which was reduced for almost the entire Sanjak of Niš and from the middle European province it became *de facto* the end north-western European province of the Turkish Empire.[33] By 1888, on several occasions within administrative-territorial chang-

29 *The Official Gazette of the Kingdom of SCS*, No. 68 dated July 15, 1919. This Decree was replaced on February 27, 1921, by the *Law on Extending Validity of the Laws of the Kingdom of Serbia to the Territories Liberated and Annexed in the Course of the Balkan Wars*, which expanded validity of all the laws of the former Kingdom of Serbia to the Counties of Kumanovo, Skopje, Bitola, Ohrid, Tikveš, Bregalnica, Tetovo, Prizren, Zvečane, Kosovo, Raška, Prijepolje, Pljevlja, Belo Polje, Berane and Metohija, where all special decrees and regulations issued for the territories liberated and annexed after the Balkan wars came out of force. *The Official Gazette of the Kingdom of SHS*, No. 142 dated June 30, 1922.

30 For detailed survey of legal regulations in the new territories see: Jagodic, M.: *Uredjenje oslobodjenih oblasti Srbije 1912-1914: pravni okvir*, Beograd, 2010.

31 More details in: Stojančević, V.: *Slom turske vlasti na Balkanskom poluostrvu, oslobodjenje balkanskih naroda i uvodjenje evropskih i civilizacijskih ustanova*, Zbornik radova „Prvi balkanski rat 1912. Godine i kraj Osmanskog carstva na Balkanu", Beograd, 2007, 1-7.

32 Habsburg influence on the Albanian society intensified from the crash of 1849 revolution, when the preparations for the Serbian national rebellion were revealed in the Turkish provinces. Since then the consulates, vice-consulates and consulate agencies had to monitor closely all political changes in the society and especially to respond to the attempt of creation of the Serbian national consiracies; permanent annual fund was established for this secret work. Austrian consule in Skopje publiclyagitated among the Albanians together with the Catholic Bishop. See more details in: Tomić, J.: *Austro-Ugarska i Arnautsko pitanje*, Beograd, 1913, 14-27. Austrian Consule in Skadar also participated in the Catholic clergy propaganda for the autonomy among the Albanians (with the goal to convert Moslems into Catholics), who in 1877 made a map of the Greater Albania, which spread all the way to Bulgarian Morava. In 1897, Austria-Hungary and Italy made an agreement on joint participation in the Albanian territory with the goal to win autonomy and independence for Albania in case of major changes in the Balkans. In the overall effort to shape the scientific image of the Albanian nation, Habsburg government of 1896 thought that they populated the Vilayets of Skadar, Kosovo, Janjina and Bitola; in the Serbian and Macedonian territories the bordering line went along the direction Priština-Novi Pazar and Bitola-Vranje; the estimates were that there lived about 2.5 million people, 1.1 Albanians and 1.322.000 Moslems. Ekmečić, M.: *Albanski faktor u izbijanju Prvog balkanskog rata*, Zbornik radova "Prvi balkanski rat 1912. Godine i kraj Osmanskog carstva na Balkanu", Beograd, 2007, 10-18

33 It bordered with Bosnia and Herzegovina under Austrian-Hungarian administration, independent Serbia and Montenegro and autonomous Bulgaria. The Sanjaks were divided into kazas, kazas were divided into nahiyes which consisted of villages.

es of the European territories owned by the Turks the Kosovo Vilayet was redefined, so that in September 1888 its administrative division will be established into the Sanjaks of Skopje, Priština, Prizren, Peć, Novi Pazar (Sjenica) and Pljevlja, and such a division remained with certain changes until its liberation in 1912.[34]

Austrian-Hungarian politics brought additional confusion into Albanian society, whose leaders could not agree on the issue of shari'ah (Islamic) law, the degree of independence from the Sultan, as well as on either to pursue Islamic or European concept of national identity. During this period of anarchy, caused by disagreements within the Albanian movement, several great leaders appeared in the territory of Kosovo – Isa Boletini, Bairam Curi and Hasan Prishtina.[35] The pressure by the Great Powers after 1903 to introduce reforms into Macedonia imposed the need for separate Albanian action with simultaneous toning down of radical Albanian solutions. After 1910, the final rebel requests mentioned more and more the autonomy of the Albanian territory. The uprising planned sometime around the crisis of dissolving the Young Turks Parliament and scheduling of new elections in March and April 1912, ended by conquering all Kosovo towns and the threat that the same will happen with the entire territory all the way to Thessaloniki. The uprising caught entire Albania by the end of April, and the government were forced to send a committee in order to reach agreement with the rebels. The agreement was signed on August 12, 1912, and it had previously been prepared by the arrangement of the Albanian elders in Junik near Djakovica on May 20. It provided for the uniting of the Albanian territory into one Vilayet, the acceptance of Albanian language and Latin alphabet, the action of the Albanian courts and that Vilayet civil servants should be domestic people, and the military service to be served in peace time in the Albanian territory.[36] The Albanian rebels were convinced that, at least formally, they achieved autonomy of the Great Albania within the Turkish Empire. Realistically, the greatest success was the territorial defining of Albania, since until that times it was only a mere geographical term with no precise boundaries. And while the Albanians waited for the Turkish government to fulfil the agreement, the events

34 **In November 1889, it was decided to establish the Kaza of Drenitza within the Sanjak of Pristina out** of the parts of Vucitrn and Mitrovica Kazas, but because of the resistance of the Albanian population to the existence of the government authority in their environment, this decision was not implemented. The Sanjak of Novi Pazar ceased to exist in December 1901, when the Kaza of Novi Pazar was annexed to the Sanjak of Pristina as desired by the inhabitants, and the rest of the Sanjak of Novi Pazar was renamed as the Sanjak of Sjenica. Two new kazas were formed in the Sanjak of Skopje between August 1891 and July 1892, Osman Kaza with the center in Pehcevo (the territory of Males was separated from the Kaza of Kocane) and Orhani Kaza with the center in Kacanik (in the northern part of Skopje Kaza), in February 1900. Veles Kaza of the Thessaloniki Vilayet was annexed to the Kaza of Skopje, and in 1903, the nahiye of Gostivar of Tetovo Kaza (the Sanjak of Prizren) was raised to the level of Kaza. The last changes were made in 1910, after the Albanian rebellion was suppressed, in order to increase the number of authority bodies in the northern part of the Vilayet and easier control of the rebellion-caught territory: a new Kaza was established in the Sanjak of Pristina in Ferizovici (Urosevac), the Drenitza nahiye was established in Vucitrn Kaza, nahyine Lab in the Pristina Kaza and in Gnjilane Kaza the nahyies of Gornja and Donja Morava; Kaza Gora was established in the Sanjak of Prizren, in Kaza Djakovica nahiyes Malesija, Has and Reka were established, and nahyies Podgor and Reka in the Kaza of Pec. Stojancevic, V.: *Srbi i Arbanasi* 1804-1912, Novi Sad, 1994.

35 **At one of the rare moments when the agreement among the Albanian tribal leaders was reached, in** October 1896, the uniting of the Vilayets of Kosovo, Bitola, Thessaloniki, Janina and Skadar was requested, the knowledge of the Albanian language as a qualification of the civil servants in this territory, the appointment of one wali (governor) and together with him one representative body consisting of 30 people. Jagodić, M.: *Srpsko-albanski odnosi u Kosovskom vilajetu (1878-1912)*, Beograd, 2009.

36 **It was also provided for to enact the common law, the right to carry weapons, the establishing of sec**ondary schools in every Vilayet and establishing of Moslem religious secondary schools with the education in Albanian, strict application of Mohammedan law, general amnesty and compensation of material damages to the Albanian rebels. This agreement is known in historiography as "14 demands of Hasan Prishtina." The demands were handed over to the commission on August 09; the Turkish government gave their consent on August 12, and finally acknowledged them on September 04, 1912. More details in the works by Bogumil Hrabak *Arbanaški ustanci 1912*, Vranje, 1975; *Unutrašnjepolitički sukobi u Albaniji 1912-1914 sa verskim obličjem*, Vranje, 1990. and *Arbanaški upadi i pobune na Kosovu i u Makedoniji od kraja 1912. do kraja 1915. godine: nacionalno nerazvijeni i nejedinstveni Arbanasi kao oruđe u rukama zainteresovanih država,* Vranje, 1988.

outside Albania, the formation of the Balkan League and the outbreak of the First Balkan War in October 1912, forced them to proclaim their independence.

As for Serbia, Old Serbia in its foreign policy plans was not a priority all the way through to the Serbian-Turkish war of 1876. Although the national propaganda was led since 1846, the political opinion prevailed that it would undoubtedly belong to Serbia once Turkey gets ruined. Only the opposition in the form of the ultimatum by Austria-Hungary to the war actions of Serbia in Bosnia and Herzegovina in 1876 resulted in redirection of Serbian actions from these territories to the territory of Old Serbia. Serbian politics until that time led propaganda action with firm decisiveness to acknowledge all national characteristics to all non-Serbian nationalities after the destruction of Turkey and the cooperation with the Albanian tribes, primarily Catholic Mirdita tribe. Such a policy and the nonexistence of dangers for Old Serbia from foreign conquering as well as irreconcilable contrasts between Serbian interests and other national movements in this territory had to be essentially changed after 1878, when the problem of internationalization of Old Serbia appears. This territory became a part of rivalry fight of the Great Powers in the Balkans, with whose support and help the new national movements in the Balkans were shaped (Albanian and Macedonian), and the Serbian politics under the knot of newly originated unfavourable circumstances had to change both methods and tactics. Besides diplomatic and church-educational action, Serbia strived to strengthen its position in order to defend its national interests by the agreement with other Balkan states with simultaneous start of Chetnik action.[37] The efforts of the Balkan states to resist the intervention of the Great Powers concerning the Balkan issue pushed them out of necessity to mutual cooperation, which regarding Old Serbia implied the agreement of Serbia, Bulgaria and Greece about interest-based division of territories. However, the Balkan League was not powerful enough to resist the concept of the autonomous and independent Greater Albania, which was posed by Austria-Hungary and Italy and in late December 1912, by the decision of the Conference of Ambassadors in London the autonomous Albania was created under the sovereignty of the Sultan and the guarantee of the Great Powers. Immediately after this decision Austria-Hungary requested the Serbian troops to leave Albania, which the Serbian government headed by Nikola Pašić had to agree with despite the protests by the army and the people. As for the boundaries of the newly established Albania, great diplomatic battle was led, in which Serbian requests were supported by Russia and Albanian by Austria-Hungary. After leaving Albania and closing the Treaty of London, the Serbian government refrained from evacuating some border villages and gorges in that country, waiting for the final fixing of boundaries (demarcation) which was supposed to be completed by a European commission. At the same time Albanian companies were formed in Albania which under the command of Bulgarian officers attacked Serbian sentries and civil servants and stormed over the border. When these attacks became more frequent, Serbia undertook harder military measures, which

37 The action of the Serbian Chetniks started much later than Bulgarian or Greek. As of 1902, it enjoyed private and as of 1904 even the official support of Serbia. The primary goal of the action was the protection of the Serbian population which was exposed to the violence of the Turkish authorities, Albanian and other rebels, and particularly severe denationalizing terror of Bulgarian guerrilla and VMRO. According to explicit orders the action was limited to the defence of the Serbian population – the attacks on non-Serbian settlements were strictly prohibited. Under the pressure of the Great Power the action was suspended in summer 1907, and renewed in 1909-1911, and during that period it was sporadic and depended on Serbian-Bulgarian relations. Aleksić-Pejković, Lj.: *Stara Srbija u spoljnopolitičkim planovima Srbije do Prvog balkanskog rata*, Zbornik radova «Prvi balkanski rat 1912. godine i kraj Osmanskog carstva na Balkanu», Beograd, 2007, 27-47.

Austria-Hungary used as a cause to interfere. After it had first led a diplomatic action against Serbia, accusing it for provoking attacks, Austria-Hungary requested from Serbia in the form of the ultimatum to leave the "strategic points in Albania" accompanied with the threat of attack, to which Serbia responded by retreating of its troops from Albania.[38]

The Albanian companies storms from Albania into south western territories of the Kingdom of Serbia was at the same time a cause to pass the *Decree on Public Security in the liberated territories* on October 04, 1913.[39] The Ministerial Council at its session held on September 11, reached the decision on drawing up this *Decree*, since due to more and more frequent reports on agitations among the Moslem population in Prizren (but also in Štip) county, the government thought that in the lack of sufficiently strong gendarmerie in the new territories it should provide for the use of the army to prosecute brigands, companies and those who carried weapons contrary to law. The draft *Decree* was made in the Ministry of the Internal Affairs on September 14, but the storms of the companies from Albania into Serbia postponed its passing for a short period of time.[40] Consequently, the *Decree* represented a repressive extorted measure directed at overcoming direct security threats which the state was facing at the moment. The *Decree* consisted of 31 articles and of stricter, amended and simplified criminal provisions, taken from the Law on pursuit and destruction of brigands of 1895 and from the Criminal Code of 1860. Article 1 authorized police authorities, in case of a deficiency in the regular organization for securing the liberty and security of persons and property, to ask the military commander for the troops necessary for the maintenance of order and peace. The military commander was bound to comply immediately with these demands, and the police were bound to inform the Minister of the Internal Affairs about it.[41] The amendment of the *Decree* dated October 28, 1913, précised that the use of the army may be sought only in "difficult and urgent" situations when the police authorities did not have time to wait for the approval of the Ministerial Council on the engagement of the army.[42] Competent military commander

38 **The ultimatum with eight-day deadline was handed over to Serbia on October 18 and on October 25,** 1913, the Serbian troops retreated from their positions in Albania. Pržić, I.: *Spoljašnja politika Srbije (1804-1914)*, Beograd, 1939, 159.

39 *Serbian Newpapers no*. 208 of September 23/October 6, 1913. The Decree was amended to some extent on October 28. *Serbian Newpapers*, No. 227 of October 16/29, 1913. Before that by the Decision of the Ministerial Council dated September 13, 1913, the *Rules on conduct on undisputed acts* dated December 25, 1872, and January 04, 1873, were introduced to implementation in the annexed territories with all amendments dated October 13, 1911, as well as the Criminal (Penal) Code of April 04, 1860, with all amendments, and by the Decision of the Ministerial Council dated November 27, 1913, some parts of the Law on criminal procedure dated April 22, 1865, with all amendments were also introduced to implementation in the annexed territories. For more details see: Živanović, T.: *Krivični (kazneni) zakonik i Zakonik o sudskom postupku u krivičnim delima Kraljevine Srbije s kratkim objašnjenjima (s obzirom na odluke Kasacionog suda)*, Beograd, 1925.

40 **AS, Ministry of Foreign Affairs (further in the text: MID) – Political Department, 1913, roll 409, R/6-8,** the Decision of the representative of the Minister of Foreign Affairs M. Spalajkovic, Confidential No. 5833, August 28/September 10, 1913, and the note of M. Spalajkovic at the end of the Decision on the overleaf of the document of the Minister of the Internal Affairs, S. Protic to the Minister of the Foreign Affairs, confide. August 27/September 09, 1913; the Minister of the Internal Affairs S. Protic to the Minister of the Foreign Affairs, the *draft Decree on Public Security*, September 01/14, 1913.

41 Law on pursuit and destruction of brigands of 1895 (Articles 6 and 7) allowed the use of the army for apprehension and destruction of brigands, and the decision related to this was made by the Ministerial Council at the recommendation of the Minister of the Internal Affairs. Serbian Newpapers, No. 156 dated July 13/25, 1895. The Law on Public Security of 1905 (which was not introduced to the new territories) allowed for the use of the army if great riots happened in a county, district or municipality, which could not have been suppressed by the permanent security bodies (state and county gendarmerie, state custodians and municipal guards), and the decision was also made by the Ministerial Council at the recommendation of the Minister of the Internal Affairs. Compendium of laws and decrees in the Principality and Kingdom of Serbia, 60, 29-30.

42 **"Difficult and emergency" cases included big riots, sudden perfidious attacks on the border and in the**

had to act upon the request, but the Ministerial Council had to be informed about it immediately in order to give their consent. In other cases, the army could be used only pursuant to the decision of the Minister Council at the recommendation of the Minister of the Internal Affairs. The army could use weapons only as an extreme measure after all other lenient means (warning, scattering, arresting and similar) were exhausted. When the army would cease to be used was decided by the Ministerial Council at the recommendation of the Minister of the Internal Affairs. The *Decree* also regulated the punishment of rebels (Articles 2 through 5), whereas the term "rebels" was defined wider than the term "outlaw". The very act of rebellion against the state authority implied the punishment of five-year imprisonment, and as a sufficient evidence for the existence of the crime of rebellion was the decision of the police authority issued in the municipality where the rebel is from. Ten days from the date of issuing a decision that a person is an outlaw everyone had the right to kill him, and every crime committed by the person proclaimed to be a rebel was also punishable by death (in case of surrender the death penalty was commuted to 10-20 years of imprisonment). County administrators were empowered to deport the rebel's family, as well as inhabitants of those homes where weapons, armed persons or perpetrators were found hiding.[43] The Minister of the Internal Affairs, if he found it appropriate, could by his decision allow the return of the displaced persons. The costs of maintaining the army brought in order to keep public security were borne by the particular municipality or district, which was decided by the county administrator; the Minister of the Internal Affairs could by his decision free the town-inhabitants from this burden.[44] Carrying or possession of weapons without the licence of the police authorities was punishable by penal servitude up to five years or three-month imprisonment (Article 7).[45] Various cases of preparing and using explosives were punished by penal servitude ranging from 5 to 20 years (Article 8 through 11). The endangering of the safety of the public road, rail, steamboat, telegraphic and telephone traffic was punished by penal servitude ranging from 5 years up to death penalty (Articles 12 through 14).[46] Refusal to denounce the perpetrators of these crimes was punishable by up to 5 years of penal servitude (Article 16). Instigating to disobedience against the established powers to valid regulations and preventing the civil servants from exercising their duties was punished by up to 10-year penal servitude or at least 6-month imprisonment

country, floods, fires, pursuit and vanquishing of brigands and similar.

43 **The amendments of October 28, this was alleviated in that the decision of the county administrator on** displacement could have been carried out only after the consent of the Minister of the Internal Affairs. According to the Law on pursuit and destruction of brigands of 1895 (Article 4) the displacement of families of the brigands made known was carried out only based on the decision of the Minister of the Internal Affairs.

44 **The amendment dated October 28, prescribed that the decision on maintaining army by the inhabit-** ants of a municipality or district is made by the Minister of the Internal Affairs and the decision on freeing from these costs by the Ministerial Council.

45 **The administrator of Prizren County recommended at the beginning of September 1913 to put in the** Criminal Code or in the Decree on the organization of the new territories the provision according to which individuals hiding weapons and brigands was punished strictly, since this was the only way to prevent the Albanians from becoming what they were in Turkey. Until the Decree on Public Security was passed, these offences were punished pursuant to Article 326 of the Criminal code by the fine amounting from 10 to 150 dinars or 1 to 20-day imprisonment, which was completely disproportional for the circumstances in the new territories in the fall 1913. AS, MUD-P, 1913, F 15 R 107, Administrator of Prizren county Dj. Matic to the Police Department of the Supreme Command, No. 7608, August 20/September 02, 1913

46 **Article 8 through 14 of the** *Decree* was not a part of the Draft of September 14. The penalties for the offences included in these articles were far more severe that those prescribed for the same offences by the 1860 Criminal Code (for instance, according to Article 13, paragraph 1 of the Decree, the penalty for causing danger to the safety of rail or steamboat traffic was up to 20 years of penal servitude, while according to Article 302b of the Criminal Code the penalty for the same offence was up to 10-year penal servitude).

(Articles 17 through 19).[47] If these crimes were committed by an associated group of persons, all accomplices were punished by up to 15-year penal servitude.[48] Recruiting bands against the State or with a view to offering resistance to public authorities was liable to a penalty of twenty year's penal servitude (Article 20). All accomplices of rebels or of bands offering armed resistance to the army or the public or communal officers were punished by death or by at least ten years' penal servitude (Article 21). Persons taking part in seditious meetings who refused to disperse when ordered to do so by the administrative or communal authorities were liable to terms of imprisonment up to two years (Article 22).[49] Refusal to take part in state or municipal public works was punished by imprisonment from three months up to two years (Article 23).[50] Any agitation not to follow the call for military service was condemned to a penalty varying from at least three months, and in time of mobilization or war up to 20 years' penal servitude. Assisting anyone to desert from the army or attracting subjects to serve with foreign troops was punished by ten years' penal servitude, and in time of mobilization or war the penalty was death (Article 24).[51] Anybody releasing an individual under surveillance or under or public employees for surveillance, guard or escort, or setting such person at liberty, was condemned to penal servitude for a maximum period of five years; in case such delinquency was the work of several individuals, each accomplice was liable to a penalty of between three to ten years' penal servitude (Article 25).[52] The prefects had the right to prescribe for their county the necessary police measures to safeguard the life and property, and their violation was punished by fines amounting to 3000 dinars or up to three months' imprisonment (Article 26).[53] Trying the crimes provided for by the Decree had an absolute priority over other cases. For individuals charged based on the Decree detention was mandatory. County courts were obliged to send their findings to the High Court in Skopje within three days from the indictment, which had to proceed immediately to the examination of that decision (Article 27). Finally, the Decree made all the Articles of the 1895 Law on pursuit and destruction of brigands and the 1860 Criminal Code which did not agree with the present regulation null and void (Article 28 and 29).

In this form *the Decree* was in force for only three months, until January 05, 1914, when it was replaced by the new *Decree on public security in the liberated territories.*[54] The new *Decree* consisted of 33 Articles and mainly contained the same provisions as the old one. The exception was new Article 18, which prescribed the penalty from two to ten years of penal servitude (or in less strict cases imprisonment) for those who found out that an individual was preparing to commit crime and fails to report it to the authorities or to the person against whom

47 Instigation to disobedience by the valid Criminal Code provided for the fine up to 3000 dinars or 1 to 5-year imprisonment (Article 92), while preventing the civil servants from exercising their duties provided for the penalty of two-month to two-year imprisonment (Article 93).

48 The penalty for the same offence in the Criminal Code was up to 5-year penal servitude (Article 95).

49 The Criminal Code provided for the penalty for the same offence ranging from 1-15-day imprisonment (Article 360, paragraph 3).

50 The Criminal Code provided for the penalty for the same offence ranging from 1 to 3-month imprisonment (Article 96).

51 Instigation not to answer the call for military service was punished by up to one-year imprisonment in the Criminal Code, while instigation or support to desertion or serving other country's army was punished by three-month to three-year imprisonment (Article 97).

52 The Criminal Code provided for the penalty for the same offence up to five-year penal servitude (Article 98).

53 The amendment of October 28, précised that these orders can refer only to those cases which are not provided for by the Decree or other laws, and maximum penalties for their violation were reduced to maximum 300 dinars or one-month imprisonment.

54 *Compendium of laws for newly liberated and annexed territories*, Niš, 1915, 87-103.

the crime was being prepared, and the crime was committed or attempted. The main difference between the two decrees was that the penalties for the majority of crimes were alleviated. Since in the meantime the circumstances in the new territories improved, this actually was the true reason to pass the new *Decree*. According to the new *Decree*, the punishment for any crime committed by a brigand could not exceed the maximum penalty prescribed for that crime by the Criminal Code. The penalties for crimes such as preparation and use of explosives (Articles 9 through 11), concealing armed persons and criminals (Article 16), public instigation to disobedience to valid regulations (Article 19), refusal of either state or municipal public works (Article 25), instigation not to answer the call for military service and instigation or helping of deserting (Article 26) as well as setting persons at liberty from custody (Article 27) remained unchanged, since these are obviously the most dangerous acts against the public security.

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UDC 343.533:004(497.11)

CRIMINAL ACTS OF HIGH-TECH CRIME IN SERBIAN LEGISLATION

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Abstract: This essay illustrates the existing incrimination catalogue in the Criminal Law of the Republic of Serbia with special emphasis on a group of criminal acts against the computer data security, which represent a backbone for criminal response to different types of computer misuse and misuse of computer systems. Other criminal acts are regarded as an integral part of the corpus of incriminations, which represents a legal framework available to state authorities competent for fight against the high tech crime. Harmonization of national legislation with the Council of Europe's Convention on High Tech Crime, which the Republic of Serbia ratified in 2009, resulted in expanding of the number of criminal acts in competence of the state authorities for fight against this type of crime. The understanding of *de lege lata* solution is a precondition for successful suppression of this type of crime, for good international cooperation of our state, but also for high-quality and timely response to future challenges, as well as for issuing adequate legal solutions *de lege ferenda*.

Key words: Computer crime, high tech crime, criminal acts against computer data security, other criminal acts of high tech crime, the Criminal Code, the Law on Competence of State Authorities for Fight Against High Tech Crime.

INTRODUCTION

In regard to suppression and fight against the high tech crime it is significant to point out that the efficient fight against this type of crime necessitates, apart from the protection on the national level, intensive and highly harmonized international cooperation, since transnational crime, more than any other type of crime, knows no borders and functions simultaneously on several continents, as well as in the territories of different countries. Several international acts, on different levels and within different regional and universal organizations, have been enacted to that end. The most significant document for this work, among the mentioned ones, is the Council of Europe's Convention on Cybercrime and additional Protocol on incrimination of acts of racial and xenophobic nature perpetrated via computer systems. The Republic of Serbia signed the said two documents in Helsinki in 2005, while the National Assembly of the Republic of Serbia ratified those in April 2009.

The awareness of the increasing number of criminal acts, as well as awareness of their danger, influenced law maker in the Republic of Serbia to incorporate, after longstanding inaction[2], a group of criminal acts made via computers in Serbian criminal legislation. The Law on amendments to the Serbian Criminal Code, from April 11, 2003, defines seven criminal acts from a group of criminal acts

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2 Namely, in 1991, professor Djordje Ignjatovic emphasized the need to introduce new incriminations in the national criminal legislation, as a result of the fact that the increase of this type of delicts and the danger they impose on society has been registered. Up to that moment this type of delicts represented one of the general elements in the concept of criminal act.

against computer data security.[3] With slight alterations, those criminal acts have been incorporated in the current Serbian Criminal Code. Furthermore, an additional criminal act has been incorporated in the latest amendment to the Criminal Code from September 2009.

A group of criminal acts against computer data security is stipulated in Chapter 27 of the Serbian Criminal Code (CC). It comprises of the following eight criminal acts:

1. Damaging computer data and programs (Article 298 CC);
2. Computer sabotage (Article 299 CC);
3. Creating and introducing of computer viruses (Article 300 CC);
4. Computer fraud (Article 301 CC);
5. Unauthorized access to protected computer, computer network or electronic data processing (Article 302 CC);
6. Preventing and restricting access to public computer network (Article 303 CC);
7. Unauthorised use of computer or computer network (Article 304 CC);
8. Creating, acquiring and providing others with means for perpetration of criminal acts against security of computer data (Article 304a CC).

GENERAL CHARACTERISTICS OF CRIMINAL ACTS AGAINST COMPUTER DATA SECURITY

Differences among criminal acts of the same group against computer data security are primarily based on whether computers or computer network are used as an instrument for perpetration or facilitation of criminal act perpetration, or those are criminal acts that cause harm, destruction or damage of data and programs.[4]

Social danger of illicit behaviour stipulated in Chapter 27 of the CC is legal motive for incriminating those types of behaviour within the norm of the criminal law. Misuse of computer, whether as tool for the attack or object of criminal act, became everyday activity of criminal groups and individuals worldwide, while activities in industrial and financial business transactions, as well as in other spheres of social life became endangered and open to attacks that carry an extremely high risk of social danger. Those are specific criminal acts, rather different from standard ones, especially in terms of specific knowledge used for their perpetration, and specific activities, which simultaneously with the development of information-communication technology, gain on daily bases new forms and characteristics. Another specific feature is category of individuals that appear as perpetrators and their characteristics, although those are usually individuals with high level of computer and other technical literacy or knowledge.

Hence, the perpetrator of most of the criminal acts from this group can be any individual with knowledge in computer technology, while only in indictable offence preventing and restricting access to a public computer network perpetrator can be official that has to perpetrate criminal act while performing his official duties.

Criminal acts from this group are regarded as commission delicts, except in case of computer sabotage which stipulates inactiveness as one of alternative actions, by considering omission of correct data inclusion as potential action.

3 This has been made by adopting solutions from the Draft Criminal Code of SRY from February 2000.
4 On the said internal systematization of the group see Djordjevic, Dj. (2009), ***Criminal law – special part***, the Academy of Criminalistic and Police studies, Belgrade, pg. 189 and 190.

The criminal intent isthe form of guilt characteristic for these criminal acts, and qualifying circumstances stipulated for high crimes are volume of caused damage, hindering of electronic processing, data transfer or network, or appearance of other serious consequences.

Misdemeanour is stipulated for criminal act computer fraud, which will exist if the act is perpetrated solely with intention to harm another individual, without the intention to gain unlawful material gain.

Predetermined penalty for these criminal acts is mainly imprisonment or alternatively fine penalty or imprisonment.

Prosecution of these types of criminal acts is instigated ex-officio, except in case of unauthorized use of computer or computer network when the prosecution is private.

CERTAIN CRIMINAL ACTS AGAINST COMPUTER DATA SECURITY DAMAGING COMPUTER DATA AND PROGRAMS ARTICLE 298.

The act of perpetration is stipulated alternatively and may be comprised of deleting, altering, damaging, concealing or making otherwise inapplicable computer data[5] or programs[6]. Each of the mentioned acts has to be taken without the authorization of the owner of computer data or program.

The main characteristic of the act of perpetration in this criminal act is obstruction of usage of computer data and program, which are unable to function normally, regardless of the fact whether consequences took place by computer usage, as in case of deleting and data altering, or by damaging computer itself or physical carrier of data and program, or by physical or chemical action against the mentioned parts of the hardware.

If the act of perpetration is manifested as physical attack against the part of hardware, which as a result makes it unusable, it could be difficult to separate this criminal act from that of computer sabotage from article 299, where the separating element should be found in special intent to disable or hinder electronic data processing significant for state authorities, public services, institutions, enterprises and other subjects.

The perpetrator of the criminal act could be an individual with education in computer science, thus with knowledge in computer technique and programs.

Criminal intent is stipulated as a form of guilt.

Apart from the basic, there are two indictable offences of this criminal act in which the qualifying circumstance is the volume of the damagecaused. Both of these refer to a criminal act qualified by a serious consequence which requires the existence of negligence in accordance to the regulation 27 CC.

Criminal prosecution shall be instigated ex officio.

The security measure confiscation of items[7] is prescribed as mandatory, if in possession of the perpetrator, and as facultative measure the items used for perpetration of this criminal act shall be confiscated even if not in the possession of the perpetrator.

5 According to the regulation contained in article 112, paragraph 17 CC, a computer data represents fact, information and concept in form appropriate for their processing in a computer system, including program based on which a computer system operates.

6 Computer data is a regulated assembly of orders serving to control computer operation, as well as to solve a specific task by means of a computer, in article 112, paragraph 19 CC.

7 In spite of the fact that this is a security measure of facultative character, in some criminal acts, such as act in article 298, it is stipulated as mandatory, thus *instrumenta sceleris* shall be confiscated each time when in perpetrator's possession, and facultative even if those are not in one's possession, when general security interests require it or there is concern that those shall be used for the perpetration of a criminal act.

In terms of the manner of perpetration, this criminal act is similar to the criminal act of computer sabotage, so a problem may occur in practice to qualify a certain illicit behaviour, where a distinction criterion is a form of guilt, as well as the consequence, i.e. its significance for operating and functioning of the harmed party.

COMPUTER SABOTAGE ARTICLE 299.

Law defines two actions, i.e. two basic forms of this criminal act. The first basic form refers to entering, destroying, deleting, altering, concealing or otherwise making unusable computer data or program, while the second basic form refers to destroying or damaging computer or other device for electronic processing and data transfer by the perpetrator.

Object of the first said action is computer data or program, while the second action is directed against computer or other device for electronic processing or data transfer.

The perpetrator of this criminal act can be any individual with computer skills and computer technique knowledge.

Both forms foresee criminal intent as the only form of guilt, but apart from the criminal intent, these forms also require the existence of intention to destroy or damage computer or other device for electronic processing and disable data transfer or significantly hinder electronic processing or data transfer procedure significant for state authorities, public services, institutions, enterprises or other subjects.

The mentioned intent should include awareness on whether data in question are relevant for state authorities, public services, institutions, enterprises or other subjects.

As the said formulation is insufficiently precise, it may be difficult to separate this criminal act and that of article 298, which could be avoided by precisely stating that the action refers to the occupation of the mentioned subjects, as in case of criminal act sabotage that includes the intention to disable or hinder certain operations in any field of work.

Criminal prosecution shall exclusively be instigated ex officio.

CREATING AND INTRODUCING OF COMPUTER VIRUSES ARTICLE 300.

Concept of computer virus is defined in article 112, paragraph 20 of the CC, and it refers to a computer program or some other group of orders entered into a computer or computer network designed to multiply itself and act on other programs or data in a computer or a computer network by adding that program or group of orders to one or more computer programs or data.

Concept of computer network is also defined in article 112, paragraph 18 of the CC and refers to an assembly of mutually interconnected computers, i.e. computer systems that communicate with each other by exchanging data.

Action perpetrated in this criminal act refers to a production of computer virus, with assumption that it is the adverse virus, i.e. program appropriate for causing irregular work of a computer.

Criminal act is considered to be executed when a computer virus is produced meaning that production itself is unpunishable attempt.

Perpetrator of this criminal act is the individual capable of producing a computer virus.

Criminal intent is the only form of guilt in this criminal act, but the establishment of criminal intent requires the existence of intention to introduce the virus in someone else's computer.

The perpetrator introducing the virus in someone else's computer or computer network and thus causing damage, carries out high offence of production and introduction of computer viruses.

A question could be raised which criminal act shall exist in case the same individual creates and subsequently introduces a computer virus in someone else's computer or computer network. In our opinion, the second form of this criminal act will subsume the first form and, as a result, criminal acts should not be conjoined, but only the second form of it shall exist, since the acts from the paragraph 1 are considered to be preparatory acts for the act from the paragraph 2. Therefore, the perpetration of the act from the paragraph 2 deprives the first act from its punishable character.[8]

The damage caused refers to harming of other programs in the computer or computer network, i.e. standard usage of programs installed on a computer or processing of computer data is impossible.

Damage caused is not necessarily of material nature, but of any nature possible.

This form as well can only be executed with criminal intent.

Both in basic and indictable offence fine penalty or imprisonment are alternatively stipulated, but the sentence is mandatorily followed by a security measure of confiscation of devices and means by use of which the offence is carried out.

Prosecution for this criminal act shall be instituted ex officio.

COMPUTER FRAUD
ARTICLE 301.

This criminal act refers to a specific type of fraud. It differs from the general type of fraud since it lacks deluding or maintaining in delusion a certain individual. This type of fraud is based on introduction of inaccurate data, omission to introduce the accurate data or concealing otherwise an accurate data, which results in different data processing from the one that would take place in case the criminal act has not been perpetrated. It is a special type of fraud that is not directed against the individual but against the computer deception.[9] The criminal act computer fraud focuses on data and the manner of processing and transferring data, while the intention of the lawmaker is to protect credibility and integrity of the data through incrimination.[10]

Performing some of the mentioned actions that would not result in adverse impact on electronic data processing would be unpunishable attempt.

8 See more: Lazarevic, Lj. (2011): Criminal Code Commentary, the Faculty of Law on the Union University, Belgrade, pg.883.

9 Mrvic-Petrovic, N. (2011): Criminal Law-special part, the Faculty of Law on the Union University, Belgrade, pgs. 247-248.

10 See more on correlation of this criminal act and criminal act fraud from article 208 CC: Prlja, D., Ivanovic, Z, Reljanovic, M. (2011): Criminal acts of High Tech Crime, Institute of Comparative Law, Belgrade, pgs. 171-174.

The active subject of this criminal act can be any individual with computer skills and knowledge in computer technique.

Criminal intent is the only stipulated form of guilt, but on a subjective level, it requires the existence of a specific intention to gain personal or someone else's gain and as a result cause material harm to other individual. The act is considered executed even if the mentioned intention is not implemented.

The law stipulates two indictable offenses that include as qualifying circumstance volume of the material damage caused.

The act has its own misdemeanour which exists when the perpetrator has intent to cause harm to another individual, but has no intention to gain unlawful material gain.

The computer fraud is the highest criminal act in a group of offences against computer data security, judging by the pending sentence which is prescribed for indictable offense up to ten years of imprisonment, while for other indictable offences from this group the sentence up to five years of imprisonment is stipulated.

Criminal prosecution for all the forms of computer frauds is instituted ex officio.

UNAUTHORIZED ACCESS TO A PROTECTED COMPUTER, COMPUTER NETWORK OR ELECTRONIC DATA PROCESSING ARTICLE 302.

The act of perpetration is unauthorized access to a computer or computer network, i.e. unauthorized access to electronic data processing by breaching protective measure of the computer or computer network. In terms of protective measures, those are primarily software protective measures[11], such as codes introduced in computer in order to prevent unauthorized individuals from using the computer or opening a certain program or electronic data processing.

Perpetrator of this criminal act can be any individual with computer skills or computer technique knowledge.

The second paragraph has been extended in the amendments to CC from September 2009 with another alternative act of perpetration represented by recording of data acquired by perpetration described in paragraph 1 of this article.

The act has two indictable offenses, the first of which exists if the perpetrator from paragraph 1 records or uses data obtained by unlawful action, while other exists if the perpetration of the basic form of act causes cessation or serious disorder of functioning of electronic processing and data transfer, or in case other serious consequences take place.

Cessation refers not to short lasting interruptions without severe consequences.

The first and second form shall not be conjoined, as in case of execution of the mentioned acts the first is considered to be preparatory one in regard to the second, which means that it would essentially be illusory ideal conjunction based on the consumption, i.e. the prior unpunishable act.[12]

Serious consequence in sense of this article of the law is considered to be every consequence resulting from unauthorized access to a computer, and not only direct consequences on the computer, computer network or other device for electronic data processing.

11 More on software protective measures, as previous aspect of protection in relation to the criminal-legal one, see in Putnik, N. (2009) Cyberspace and Security Challenges, the Faculty of Security, Belgrade, pgs.165-166.

12 Delic, N. (2006): Criminal acts against computer data security (art. 298-304. Serbian CC), Collection of works of the Faculty of Law on the East Sarajevo University, East Sarajevo, pg.347.

PREVENTING AND RESTRICTING ACCESS TO PUBLIC COMPUTER NETWORK ARTICLE 303.

The term public computer network refers to free usage of computer network by all interested individuals, and includes right of undisturbed and free communication and obtaining of informing by means of computer. Apart from the computer data security, the indirect objects of protection in this group of criminal acts are certain freedoms and rights of citizens.

The act of perpetration is defined as preventing or hindering access to a public computer network, which refers to inability or difficulty to access the network.

A concept of computer network is defined in article 112, paragraph 18, while public computer network refers to a computer network which is available to everyone with certain conditions fulfilled. The aforementioned refers to both internal networks – intranet, with local character, and global network Internet.

This is the only criminal act from the group of acts against computer data security that includes the official person as active subject, in case of which it represents an indictable offense, which is treated as aggravating circumstance in some other criminal acts against freedoms and rights of man and citizen.

As the sole form of guilt criminal intent is stipulated, while prosecution in this criminal act is instituted solely ex officio.

UNAUTHORIZED USE OF COMPUTER OR COMPUTER NETWORK ARTICLE 304.

This is the most common petty offense against computer data security, which includes unauthorized usage of computer service or computer network. It primarily refers to unauthorized use of internet account, i.e. stealing of internet hours or time in previously used dial-up access to Internet by stealing and unauthorized use of someone else's user name and password for internet access, while at present it refers to unauthorized use of someone else's signal in adsl and wireless. Namely, passive subjects in this case are both individual the time and speed of which is used, and internet provider whose service of providing the signal is not adequately remunerated.

Since this appears to be minor social danger, and the intention of the perpetrator is not necessarily directed to obtaining of considerable material gain, the institute of act of minor significance could be applied here for both subjective and objective circumstances of the perpetrator, which exclude unlawfulness, not in formal but primarily in material sense.

However, we believe that longstanding repetition of this criminal act can significantly increase its social danger, for when we sum up the value obtained by execution of this criminal act, we could state the existence of adverse consequences the volume of which is not minor, and the level of the perpetrator's guilt is not slight as well, so the application of the institute of the act of minor significance would be excluded, regardless of its applicability, since it stipulates penalty up to three months of prison.

On subjective level a criminal intent is necessary, as well as the special intention to obtain to oneself or another individual unlawful material gain. However, the criminal act is committed even if the mentioned intention is not realized.

Prosecution for this criminal act is instigated by private action[13].

13 This criminal act is a special form of criminal act theft from article 203 of CC, while special analogy can be made with electric power theft which is,according to the article 203, considered to be a movable matter, the same as speed and quantity of data transferred.

CREATING, ACQUIRING AND PROVIDING OTHERS WITH MEANS FOR PERPETRATION OF CRIMINAL ACTS AGAINST COMPUTER DATA SECURITY ARTICLE 304A.

The mentioned amendments to CC in late 2009 incorporate this criminal act in a group of criminal acts against computer data security, primarily as a consequence of the ratification of the Council of Europe's Convention on High Tech Crime.

The action is stipulated alternatively as possessing, producing, selling or providing other individual with a computer, computer system and computer programs for perpetration of one of six aforementioned stipulated criminal acts from articles 298 to 303 CC.

The criminal intent is the only stipulated form of guilt.

This criminal act is the only one in this group of criminal acts, which requires security measure confiscation of items.

Criminal prosecution is instigated ex officio.

OTHER CRIMINAL ACTS OF HIGH TECH CRIME

Criminal acts against computer data security represent the first reaction of the Serbian criminal law to growing social danger of unlawful use of computers, and for the first time incriminations of this type appeared in our criminal law in 2003. With minor amendments, the 2005 Criminal Code incorporated the existing criminal acts which made Serbia, although significantly late, join the countries, which, by means of legislation, arranged punishing of different means of computer misuse and misuse of computer technique.

However, even in that period of time a considerable number of experts in the field of information-telecommunication technologies, suggested amendment to the criminal legislation with new incriminations from this field, which could not be enlisted in the existing criminal acts catalogue. In their opinion that left plenty of room for individuals practicing that kind of illicit behaviour to avoid the deserved sanctions and social-ethnic criticism.

Apart from these suggestions on the national level, the international scene faces the rapid and intensive cooperation in development of preventive and repressive mechanisms for protection against the misuse of computers and other means of information-telecommunication technologies, which was primarily inspired by the fact that this type of technology became predominant and practically unavoidable in all vital segments of social life.

On numerous documents used for regulating the field of cyber space and high tech crime the most important international document of that type is the Convention of the Council of Europe on High Tech Crime signed by the Republic of Serbia in Helsinki on April 16, 2005, together with the additional Protocol regarding the incrimination of acts of racist and xenophobic nature executed via computer systems. Although Serbia ratified both documents in April 2009, the law-maker of the Republic of Serbia adopted a number of by-laws by which regulations of this document have been incorporated in our legal system.

In that sense, after the ratification of the Convention and the additional Protocol in 2009, Serbia made changes in legal regulations enacted from 2005 to 2009 and it expanded those with several new criminal acts that were not included in the existing catalogue of incriminations, which shows that, apart from the fact that Serbia

fulfilled its international obligation with it, that law-maker was open to criticism of professional public and of authorities competent for the fight against the high tech crime,[14] that were established in 2005, before Serbia ratified the mentioned Convention and Protocol.

The present legal framework with new solutions includes the Criminal Code, the Code on Criminal Procedure and the Law on Copyrights and other similar rights, the Law on organization and competences of state authorities for fight against the high tech crime, and apart from those, the Law on Public Prosecutor's office, the Law on organization of courts and on headquarters and areas of courts and public prosecutor's offices.

This law represents the legal framework for the work of institutions competent for the fight against the high tech crime, which are competent for the prevention of criminal acts against computer data security and also criminal acts against the intellectual possession, property and legal traffic, in which the object or tool for criminal acts perpetration are computers, computer networks, computer data, and their outputs, both in material or electronic form.

In sense of the Law on organization and competence of the state authorities for fight against the high tech crime, outputsin electronic form refer to a computer data and copyright works that can be used in electronic form.

Article 112 in paragraphs 17 to 20, 33 and 34 of the Criminal Code defines computer data, computer networks, computer program, computer virus, computer and computer system.

A computer is every electronic device which, based on the program, automatically processes and exchanges data. A computer program is a regulated assembly of orders serving to control computer operation, as well as to solve a specific task by means of computer.

A computer data represents fact, information and concept in form appropriate for their processing in a computer system, including program based on which a computer system operates.

A computer network is defined as an assembly of mutually interconnected computers, i.e. systems that communicate with each other by exchanging data.

A computer virus is a computer program or some other group of orders entered into a computer or computer network designed to multiply itself and influence other programs or data in a computer or a computer network, by adding that program or group of orders to one or more computer programs or data.

A computer system is every device or group of interconnected and inter-dependable devices, among which one or more of those perform data processing based on the program.[15]

Defining and specifying the said data in updated article 112 of CC was made in 2009 when criminal acts, which as a group protect the security of computer data, and other acts from this field were enlisted in the category of high tech crime.

The term other acts from the field of the high tech crime include:

1. Criminal acts against the intellectual possession, property, industry and legal traffic, in which object or instrument of perpetration are computers, computer networks, computer data, and their outputsin material or electronic form if the number of copyrighted copies exceeds 2,000 or if the material damage exceeds the value of 1,000,000 dinars;

14 Namely, the Special Prosecutor's office for fight against the high tech crime opened initiative in 2009 for introduction of new criminal acts in the Serbian criminal legislation in regard to the misuse of payable cards and Internet pornography. See more in Komlen-Nikolic, L.(2008) Domestic legislation problems in fight against the high tech crime, Magazine for Security no. 9, pgs.20-25.

15 See article 112 of RS CC.

2. Criminal acts against the freedoms and rights of man and of the citizen, gender freedoms, public law and order and constitutional order of the Republic of Serbia, which are with certainty designated as high tech crimes on the grounds of the manner of perpetration and instruments used.

The amendments were made upon the urgent initiative of the Special Prosecutor's office for the fight against the high tech crime, in terms of the alteration of the law, for as it was stated in "positive-legal regulations from the real competence of the Special Prosecutor's office, the criminal acts related to the misuse of payment cards and Internet pornography have been unjustifiable omitted ".[16]

According to the aforementioned, other criminal acts of the high tech crime include:

1. Showing, acquiring and possessing pornographic material and exploiting a minor individual for pornography, article 185,
2. Using computer network or communication by other technical means for perpetrating criminal acts against gender freedom against the minor individual, article 185b
3. Unauthorized use of copyrighted work or work protected by similar right, article 199,
4. Unauthorized removal and altering of electronic information on copyright and similar rights, article 200,
5. Forgery and misuse of credit cards, article 225,
6. Racial and other discrimination, article 367 CC.

SHOWING, ACQUIRING AND POSSESSING PORNOGRAPHIC MATERIAL AND EXPLOITING A MINOR INDIVIDUAL FOR PORNOGRAPHY ARTICLE 185

This criminal act has been significantly amended in the CC from 2009, primarily in terms of the name itself. Prior to the amendments it was entitled as showing of pornographic material and exploitation of children for pornographic purposes, while the present name is expanded by terms acquiring and possession of the mentioned material. Furthermore, passive subject status in terms of the age is significantly altered, for instead of previous child, presently stated passive subject is a minor individual, hence the criminal legal protection in this field is stricter.

Former legal solution was based on the principle that only children should be given criminal legal protection in this field, since generally accepted opinion is that this type of criminal legal response should not be applied for adults.

However, the problem is the increased misuse of children and minors for the production of items and material of pornographic content. In that sense, standard acts have been issued on the international level, which secure and provide protection of children's rights, and those of minors. One of the said acts significant to emphasize is the Facultative protocol on tradein children, child prostitution and child pornography with Convention on children's rights, ratified by our country.

The said act has three basic forms with a minor as the passive subject, while only in indictable offense the passive subject is a child.

16 The criminal act forging and misuse of payment cards from article 225 CC and criminal act displaying pornographic material and exploitation of children for pornographic purposes, or distribution of the child pornography via Internet were not included in incrimination catalogue prior to the legislation amendments made in 2009, and their social danger was extremely high.

The first form refers to making pornography available[17] , while the other form is exploiting of a minor for the production of items or material with pornographic content. A special form exists when an individual acquires, for private or for someone else's purposes, possesses, sells, shows, publicly displays or makes available either electronically or in some other way, pictures, audio-visual or other items of pornographic content resulted from the exploitation of a minor.

Mandatory security measure stipulated for the said criminal act is confiscation of items, while criminal prosecution is instigated ex officio.

USING COMPUTER NETWORK OR COMMUNICATION BY OTHER TECHNICAL MEANS FOR PERPETRATING CRIMINAL ACTS AGAINST GENDER FREEDOM TOWARDSA MINOR INDIVIDUAL ARTICLE 185B

The stipulated act of perpetration refers to arrangement of a meeting with a minor by use of computer network or communication via other technical means, and appearance on the arranged meeting place for the meeting with a minor with intention to commit one of the following criminal acts:

- The crime of rape, the passive object of which is a child from article 178, paragraph 4,
- The high crime sexual intercourse with an incapacitated individual, the passive subject of which is also a child from article 179, paragraph 3,
- Basic and first indictable offense sexual intercourse with a child from article 180, paragraphs 1 and 2,
- Indictable offense sexual intercourse by abuse of authority by a teacher, child minder and others, and when the act is perpetrated against the child from article 181, paragraphs 2 and 3,
- The basic form of criminal act unlawful sexual conduct from article 182, paragraph 1,
- Other form of the criminal act soliciting and enabling of sexual intercourse execution which enables act from article 183, paragraph 2,
- Indictable offense mediation in prostitution from article 184, paragraph 2,
- Other form of the criminal act showing, acquiring and possession of pornographic material and exploitation of a minor for pornographic purposes from article 185, paragraph 2 and
- Criminal act inducement of a minor to witness sexual conduct from article 185a.

Therefore, new article 185b stipulates sanctioning in case of misuse of computer network or communication via other technical means with aim to commit criminal offense toward a minor or a child, in which the group object of protection is gender freedom.

Penalty for the basic form is cumulative with sentence of imprisonment and a fine penalty, while the penalty for the indictable offence, the passive subject of which is a child, is fined with imprisonment. Similar paradox case is stipulated by article 185a, which in case of indictable offense stipulates also only a sentence of

17 Pornography includes displaying sexual act or sexual body part the aim of which is to incite and stimulate sexual drive and it is not related to educational, scientific, artistic or similar purposes, according to Stojanovic, Z (2009), ***Criminal Law Commentary***, the Official gazette, Belgrade, pg. 465.

imprisonment, although the basic form has cumulative sentence of imprisonment and fine penalty. It would be usual and expected for indictable offense to have both cumulative imprisonment sentence and fine penalty.

As the only form of guilt criminal intent is stipulated while criminal prosecution is instigated ex officio.

UNAUTHORIZED USE OF COPYRIGHTED WORK OR WORK PROTECTED BY SIMILAR RIGHT ARTICLE 199

Criminal act from this article incriminates unauthorized usage of someone else's copyrighted work or work protected by similar right.

Namely, the authors and interpreters have, apart from moral, ownership rights as well, while holders of similar rights that include manufacturers of phonogram, videogram, show or data base, have only ownership rights for they are engaged not only in creation of the item, but in a kind of industrial business as well.

Two basic forms, one indictable and one special form of this criminal act, are stipulated.

The first and basic form protects the copyright, interpretation, phonogram, videogram, show, computer program and data base, from unauthorized exploitation, which can be realized by taking some alternatively stipulated acts of perpetration such as unauthorized publication, recording[18], multiplying[19] or public announcement[20] in other way.

The act of perpetration has to be unauthorized, meaning the lack of author's or producer's consent has to exist, and it can simultaneously harm a number of subjects.

The second basic form of criminal act is defined as putting into circulation or intention to put into circulation, illicit possession of multiplied or illegally circulated copies of copyrighted work, interpretations, phonograms, videograms, shows, computer programs or data bases.

The indictable offense is related to the presence of aggravating circumstances made by obtaining material gain by the perpetrator for oneself or another.

Special form of this criminal act is incrimination of certain preparatory actions for perpetration of acts specified in the previous paragraphs that consist of production, import, export, lending and other actions, of devices or instruments the basic purpose of which is determined with the same regulations.

Criminal intent is the only form of guilt in all the forms of this criminal act.

Item confiscation followed by item destruction is prescribed as mandatory security measure.

Criminal prosecution is instigated ex officio.

18 Recording is the first loading of copyrighted work on the sound or image carrier, according to Stojanovic, Z. (2009), Criminal Law Commentary, pg. 493.

19 Multiplying is defined as production of copies of the work such as printing or photocopying, according to Stojanovic, Z. Criminal Law Commentary.

20 Public display in other way can refer to publishing via line or wireless, according to Stojanovic, Z.,Criminal Law Commentary.

UNAUTHORIZED REMOVAL OR ALTERING OF ELECTRONIC INFORMATION ON COPYRIGHT AND SIMILAR RIGHTS ARTICLE 200

As the first act of perpetration unauthorized removal or altering of electronic information has been stipulated on copyright or similar right. With aim to protect copyright or similar rights, information or certain number, sign, are introduced in the copyrighted work itself or in the item of similar right, by which identification of the work, holder of rights and terms of use is carried out. In that regard the object of perpetration is the information, sign or copyrighted work itself, or the item from which the information is to be removed. The information has to be in electronic form.

The second act of perpetration comprises of placing the item in the market, import, export, broadcasting or public display in other way of the copyrighted work or item of the similar right from which the electronic information on copyrights has been removed or altered without authorization.

Item confiscation and item destruction is prescribed as mandatory security measure.

As the only form of guilt criminal intent is stipulated.

Criminal prosecution is carried out ex officio.

FORGERY AND MISUSE OF PAYMENT CARDS ARTICLE 225

After a longstanding inactiveness, this criminal act has been included in incrimination catalogue, since the need dictated by practice has been perceived to sanction this type of misuse, having in mind that this type of non-cash payment became generally excepted and dominant, but at the same time subject of forging and misuse.

Amendments in CC from 2009 contributed to the increase of imprisonment sentences, while all the forms of this criminal act carry cumulative sentence of imprisonment and fine penalty[21].

The criminal act has five forms. Execution of the basic form of the said criminal act refers to production of the false payment card, alteration of the real payment card or use of false paymentcard.[22]

21 Paragraph 1 has previously stipulated imprisonment from three months up to three years, while the present sentence is imprisonment from six months to five years cumulatively with the fine penalty.
Paragraph 2 has previously stipulated imprisonment sentence from six months to five years, while the present sentence is imprisonment form one to eight years cumulatively with the fine penalty.
In the paragraph 3 the previously defined sentence imprisonment from two to ten years has been altered to sentence of twelve years imprisonment and the fine penalty.
In the paragraph 5 the change is related to imprisonment sentence that was previously up to one year, while at present it is a sentence up to three years of imprisonment.
The mention stricter sentences certainly show intention of law maker to increase criminal legal protection and expectation to obtain in this way better general and special prevention.
As in many other cases of misuse, which use information-telecommunication technologies as subject and instrument for perpetration, primary and maybe most efficient are measures for tech-prevention and other remaining aspects of protection, while criminal protection is the last tool for response, which is used primarily to divert, but also sanction.

22 In sense of this criminal act payment card is considered to be both debit and credit payment card. Difference between those is in the subject authorized to issue them, and in the manner in which paying is made, i.e. in time required for provision of financial means necessary for payment with this means.

The first indictable offense exists if, by use of card, the perpetrator gains unlawful material gain, while other indictable offense refers to gaining the unlawful material gain the value of which exceeds 1,500,000 dinars.

The misdemeanour of this criminal act exists in cases the obtained paymentcard is meant to be used as the genuine one, or when data are collected with aim to be used for manufacturing of false paymentcards.

False paymentcards, as well as instruments used for the production of the false paymentcards, shall be seized.[23]

Criminal intent is the sole form of guilt and criminal prosecution is instigated ex officio.

RACIAL AND OTHER DISCRIMINATION ARTICLE 367

This criminal act is directly related to frequent misuses of information-telecommunication technologies, since those are the most favourable method for promoting, dissemination and inciting of discriminatory ideas, which are in sense of this article considered as forbidden behaviour[24]. Upon the amendments to the criminal legislation, two additional articles have been included in this criminal act. The discrimination element has also been extended in terms of religious affiliation.

The law stipulates five forms of this criminal act, the first two of which carry high penalties, while forms presented in paragraphs 3-5 carry lower imprisonment sentences.

The criminal intent is stipulated as a form of guilt, while prosecution is instigated ex officio.

This criminal act is often made by internet and it is significant for preventing hatred speech on global network. Another criminal act from paragraph 317 is related to the aforementioned, and that is provoking national, racial and religious hatred and intolerance, by which the criminal legislation responded to spreading of the hatred speech.

CONCLUSION

We believe that the mentioned criminal acts form a satisfying legal framework in terms of criminal law for adequate response to numerous phenomena of high tech crime. At present *de lege lata* solutions are more complete and harmonized in quite an extent with the situation in practice, while in terms of *de lege ferenda* the latest business endeavours with use of computers should be taken into account, in terms of separate and comprehensive storing and archiving of business data and personal data on remote, so-called server farms, which are dislocated in rather remote countries from the countries of the data origin, which is called cloud computing.

Apart from its economic and practical benefits, this useful contemporary method for storing of data of state authorities, enterprises, other industrial subjects education and health institutions, carries a risk of misuse of the most important data related to the work and the existence of subjects that opted for cloud computing. Personal data are particularly endangered in terms of misuse, since personal data

23 See art. 227, paragraph 2 RS CC.
24 Especially paragraph 3 of this article, the three forms of which refer to the racist propaganda.

with great potential of misuse are stored, or potentially misused, on great distance, without direct control, in so-called clouds. The (future) social security of such a misuse can reach a high level and hence it can present legal motive for new incriminations which would include numerous, causally determined acts of perpetration of criminal acts related to the misuse of cloud computing as a chosen way for storing and preserving of data.

Suggestions are given, having in mind the growing significance of this type of business, which unfortunately as many other innovations and inventions, contains a risk of misuse. It is probable that future development of high technology shall imminently bring about misuse of those for unlawful purposes, while lawmaker has to be guided by objective to be preventive, not only reactive in sanctioning new phenomena of this type of criminality.

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UDC 343.37(497.11)
343.53(497.11)

CHARACTERISTICS OF ECONOMIC CRIME IN SERBIA

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Abstract: The transition, as a form of social, i.e. economic and political system changes, is the most favourable period for all forms of criminal acts. Unregulated or poorly regulated relations in transition countries' economies particularly contribute to economic crime development. As a result of new trends in social, political and economic relations, and primarily due to the necessity of including the national economy into international economic and financial system, new forms of economic crime, that are believed to be much more profitable and less risky at the same time and for which there are no adequate defence mechanisms, appear. On the other hand, one of the important characteristics of economic crime is its extraordinary concealment ability, which is why its "dark figure" is very high. In this paper, we tried to determine the most significant characteristics of the economic crime in our country, based on the data referring to the scope, dynamics and structure of economic crime as well as on characteristics of criminal policy. We limited our work only to crimes against the economy, since some felonies committed in relation to the economy are classified under some other provisions of the Criminal Code, as per prevailing type of object protected under it. Based on the analysis of the mentioned data, we can conclude that there are decreasing trends as to number of reported economic crimes as well as convictions in relation to this type of crime, and that misdemeanours are prevailing in the structure of this type of crime (and consequently, "small fish" appear as offenders). The court penalty policy is relatively mild and, on the one hand, it corresponds to severity level of offences due before court, since the most serious crimes in economic crime area are the ones that are more difficult to detect and prove, which is why verdicts for these acts are missing, and, on the other hand, there is an issue of extremely wide penalty policy framework, which is why courts are often forced to use the sentence mitigation institute. In conclusion of our work, we tried to identify possible discrepancies between legislation and practice and, accordingly, some proposals to amend the criminal legislation are given, all with a goal to make the fight against this form of crime as efficient as possible.

Key words: economic crime, dynamics, structure, criminal policy, criminal law, Serbia.

INTRODUCTION

The main fact noticed while taking any approach to the economic crime issue is that it is one of the most complex phenomena in criminology and, at the same time, one of the most dominating forms of criminality. Socially dangerous phenomena in economy are not only present in organization and financing of economic activities, but literally occur in all areas of production, domestic and foreign market and direct consumption of finished products. Consequences of such criminal behaviours are not only economic and material damages to country and companies, but other subjects protected by law, such as human lives and health and general environment,

are endangered as well. This is why it is not surprising to argue that the economic criminality is as dangerous as its consequences, i.e. that the consequences of the economic criminality are the base element of its dangerous nature. The economic criminality is characterized by its extraordinary adaptability to the existing social conditions; therefore, the manifestation forms of this type of criminality are very numerous and various. The classic forms of the economic criminality have stopped being dominant in practice, and during the process of establishing new economic system, societies in transition are faced with increasing number of new forms of socially dangerous behaviours in economy, for which there are no adequate defence mechanisms. Globalization gives new opportunities for criminal activities with transnational characteristics such as frauds, financial crimes, money laundering, computer-related economic crimes and other forms of economic criminality for which it is believed to be more profitable and, at the same time, characterized by a lot lower risk of detection.

The important characteristic of the economic criminality also refers to specialization and professionalization of its perpetrators, which enables skilful and professional perpetration of criminal offences, thus making their detection quite difficult. This occurs because perpetrators of this type of criminal offences are intelligent and competent individuals with vast experience which helps them commit criminal offences in such skilful manner that it is almost impossible to trace them. Perpetrators of criminal offences from the economic crime scope have a very good knowledge of regulations governing business activity area, and therefore tend to keep their criminal activities within borderlines of allowed behaviour, using certain loopholes, inconsistencies and frequent amendments of legal regulations[1], but also using corruption, since the interest of economic crime perpetrators in gaining a share of political power is beyond any doubt, as it means control over all particular state bodies and represents power channel for influencing each and every one of them. This is why it is often said that perpetrators of economic crimes are persons representing "social elite", i.e. persons that enjoy social status which keeps their activities from being detected and characterized as illegal, that is, even if that happens, they are rarely held responsible for those offences.[2]In relation to the above said is one of the most important characteristics of the economic criminality reflected in its extraordinary concealment ability, which is why its "dark figure" is very high. While in case of so called classic criminal offences (murders, physical injuries, etc.), the large number of perpetrated acts is visible and perceivable as a real event (murdered or injured person, etc.), in case of economic crimes, a criminal offence is generally neither visible nor perceivable.[3] Additionally, even consequences are not visible immediately, since perpetrators usually act within their work place responsibilities and are focused on presenting criminal offence as a common everyday business activity. All the above mentioned makes detection of these offences and proving process quite difficult, which is why "the dark figure" of this form of criminality represents a subject intensively discussed in criminology literature. Having all this in mind, one can only guess the volume of undetected economic criminality, and even a large number of detected economic crimes is never recorded because it is either impossible to discover the perpetrators or it is impossible to put them on trial.

1 M. Boskovic, "Criminalistics – teaching methods", Police Academy, Belgrade, 2005, p. 285.
2 N. Tanjevic, "Applicability of white-collar criminality in modern conditions", Social Thought, Vol. 17, No. 4/2010, p. 15.
3 A. Petrovic, "Basics of economic criminality criminology", Police College, Belgrade, 1988, p. 25.

DYNAMICS OF ECONOMIC CRIMINALITY IN SERBIA

In an attempt to determine the characteristics of the modern economic criminality in our country, we have analyzed the criminal offence statistics in the Republic of Serbia for the period from 2002 to 2010, published in periodical publications of the Serbian **National Bureau of Statistics. W**e have limited our analysis to criminal offences against economy, since some economy-related criminal offences are classified under other provisions of the Criminal Code, as per prevailing type of object protected under it.

Trends in overall reported economic criminality

Trend in reporting legal adults for commiting criminal offences monitored in the period from 2002 to 2010 shows that the total number of reported (known) perpertrators of criminal offences in Serbia is as follows:

Table No. 1 Legal Adult Offenders, 2002-2010

2002	2003	2004	2005	2006	2007	2008	2009	2010
74686	58073	60641	62370	63970	61922	67405	64456	50870

The highest number of reported individuals was in 2002, while in 2003 that number significantly decreased, then it started increasing until 2009 when it decreased again, to be at its lowest level in 2010 in comparison with all the monitored years. Even though there is a noticed increase, that number is lower than it was in the first year of analysis, which shows that overall trend in criminal offences movement in the analyzed period is decreasing trend. As for the criminal offences against economy, the highest number of reported individuals in the analyzed period was in 2002, when it was 6.047, and then, that number was significantly decreasing from year to year, especially from 2005 till the end of 2007, and in 2010, when the lowest number of reported individuals was recorded.

Table No. 2 Reported Legal Adults for Criminal Offences against Economy

2002	2003	2004	2005	2006	2007	2008	2009	2010
6.047	5.405	5.255	4.721	2.868	2.663	3.099	3.131	2.479

Ratio of reported, prosecuted and convicted economic criminality

As for the number of legal adults indicted for and convicted of criminal offences against economy, the highest number of indicted persons was in 2002, and then it was gradually decreasing from year to year, to come to only 901 in the last analyzed year. The same case is with the number of convicted persons in the analyzed period, which is ilustrated by data Table No. 4.

Table No. 3 Indicted Legal Adults for Criminal Offences against Economy

2002	2003	2004	2005	2006	2007	2008	2009	2010
4.264	3.775	3.724	3.465	2.290	1.649	1.838	1.702	901

Table No. 4 Convicted Legal Adults for Criminal Offences against Economy

2002	2003	2004	2005	2006	2007	2008	2009	2010
2.930	2.695	2.710	2.532	1.464	1.161	1.287	1.228	589

Comparing numbers of legal adults reported, indicted for and convicted of criminal offences against economy by year shows clear decreasing trends, especially noted in 2006 and 2007, and particularly in 2010 in comparison with 2009 and especially with the first analyzed year. For example, in the last analyzed year, out of total number of reported persons for criminal offences against economy (2.479), only 901 is indicted for and only 589 convicted of some criminal offence against economy. It may be assumed that the court reform, started in our country in 2009, influenced a slower convicting trend, i.e. insufficient number of convictions in 2010. On the other hand, the big difference between the number of persons reported for and convicted of criminal offences against economy in 2010 in comparison with other analyzed years, may indicate that the police and the public prosecutor's office were obviously focused on some other areas, i.e. that political priorities did not include, to a sufficient extent, prosecution of criminal offences against economy.

STRUCTURE OF ECONOMIC CRIMINALITY IN SERBIA

In the overall structure of reported criminal offences perpetrated by legal adults, criminal offences against economy are less and less represented.

Table No. 5 Reported and Convicted Legal Adults for Criminal Offences against Economy as per Type of Criminal Offence, 2010

Criminal offence	Reported	Convicted
Tax evasion	658	119
Issuing of uncovered checks and use of uncovered payment cards	310	81
Illegal trade	191	42
Abuse of authority in economy	285	72
Misfeasance in business	51	4
Smuggling	414	74
Illegal production	35	6
Unauthorized use of another company	54	18
Damaging creditors	55	5
Forgery and misuse of payment cards	117	53
Deceiving buyers	4	5
Forging symbols for marking of goods, measures and weights	6	5
Money laundering	34	6
Counterfeiting money	168	67
Preventing control	2	
Damaging business reputation and credit rating	1	-
Disclosing a business secret	5	2
Causing bankruptcy	9	-
Causing false bankruptcy	7	-
Abuse of monopolistic position	1	-
Making, acquiring and giving to another person means for counterfeiting	1	9
Forging value tokens	15	22
Forging securities	8	2
Failure to pay taxes upon deduction	48	3

The data show that in 2010 in the structure of the reported crimes against economy, there are several dominating criminal offences: criminal offences of tax evasion, smuggling, illegal trade, abuse of authority in economy, counterfeiting money and issuing of uncovered checks and use of uncovered payment cards. The reason for a large number of criminal offences of illegal trade and issuing of uncovered checks and use of uncovered payment cards should be looked for in the fact that all of these are everyday criminal offences of citizens which enable them, although illegally, to survive in transition societies. On the other hand, prosecutions take place in case of criminal offence of tax evasion, since it is in the state's interest to collect taxes and therefore the administration is efficient in detecting these offences.

Apart from that, police work on uncovering these offences is not properly continued by the judicial organs. Thus, it can be noticed that for the most common criminal offence from this group, the criminal offence of tax evasion, out of 658 filed charges, only 119 persons are convicted. The situation is similar with other criminal offences, that is illustrated by the data in Table No. 5. For example, for the criminal offence of smuggling, out of 414 reported persons, 74 are convicted, for criminal offence of damaging creditors, out of 55 reported persons, only 5 are convicted, for criminal offence of money laundering, out of 34 reported persons, only 6 are convicted, while in case of criminal offences of abuse of authority in economy, issuing of uncovered checks and use of uncovered payment cards and illegal trade, the number of convictions is more than two times lower than the number of filed charges. In case of criminal offence of illegal trade, one more particularity can be noticed. If we compare the frequency of committing criminal offence of illegal trade with the data from the previous years (and especially with 2009 when 470 charges were filed), it can be concluded that the participation of this criminal offence in the overall structure of criminal offences against economy deacreses. One of the main reasons for that is the fact that situation with supply of goods and economic situation in the country are settling down, i.e. that people tend to stop being engaged in smuggling activities. As for the criminal offence of money laundering, it can be noted that the number of filed charges is in high increase comparing to the previous years, which could have been expected since a small number of this criminal offence in the previous period was a consequence of the fact that the new Criminal Code, defining this criminal offence, started to apply only as of January 2006.

The above stated indicators of the dynamics and structure of the criminal offences against economy show that the economic criminality is in decrease. Offences against public finances are still prevailing in the structure of this criminality. On the other hand, it is noted that the most severe forms of criminality in the field of ownership transformation, payment operations, banking, etc. are not represented to a sufficient extent, but are probably included in criminal offences against official duty (criminal offence of abuse of office or authority, etc.)[4]. However, the impression remains that even official statistics show that the main focus of formal judicial reaction is on "petty" economic criminality, and that only in the following years, providing there will be adequate political will, some significant shifts in this area may be expected.

CHARACTERISTICS OF PENAL POLICY

Apart from the data on reported, indicted and convicted persons for criminal offences against economy, it is very important to notice what criminal sanctions are more frequently pronounced to perpetrators of criminal offences against economy.[5]

4 N. Tanjevic, Economic criminality in Serbia: propositions for improvement of criminal legislation, "Security Magazine", No. 4/2010.

5 http://webrzs.stat.gov.rs/WebSite/repository/documents/00/00/55/23/SB_546_Punoletni_ucinioici_KD.pdf

Table No. 6 Convicted Legal Adults as per Criminal Offence and Pronounced Sanctions, 2010

Criminal offence	Total	Imprisonment	Fine	Release on parole	Pronounced guilty and acquitted
	589	130	56	400	3
Tax evasion	119	17	8	94	1
Issuing of uncovered checks and use of uncovered payment cards	81	12	7	61	-
Illegal trade	42	5	15	22	-
Abuse of authority in economy	72	15	1	56	-
Misfeasance in business	4	1	1	2	-
Smuggling	74	4	1	69	-
Illegal production	6	3	1	2	-
Unauthorized use of another company	18	4	-	13	1
Damaging creditors	5	1	-	4	-
Forgery and misuse of payment cards	53	14	-	39	-
Deceiving buyers	5	-	-	5	-
Forging symbols for marking of goods, measures and weights	5	1	1	2	-
Money laundering	-	-	-	-	-
Counterfeiting money	67	37	9	21	-
Disclosing a business secret	2	2	-	-	-
Forging value tokens	22	12	1	9	-
Forging securities	2	1	-	1	-
Failure to pay taxes upon deduction	3	1	2	-	-

It is noticed that release on parole is dominating in the overall structure of pronounced sanctions for criminal offences against economy, while imprisonment and fine are more rarely used. Release on parole prevails primarily as sanction for criminal offences of tax evasion, smuggling, issuing of uncovered checks and use of uncovered payment cards, abuse of authority in economy and forgery and misuse od payment cards. On the other hand, fine as only sanction was mostly used for criminal offence of illegal trade. As for imprisionment, this sanction was mostly used for criminal offence of counterfeiting money, probably due to the fact that this criminal offence is usually committed with accomplices (almost always in organized manner).

By analyzing the data on the structure of sanctions pronounced for criminal offences against economy, it can be noticed that the penal policy of courts is relatively mild. It may be that such penal policy is correction of sanctions prescribed by law, which for most criminal offences against economy (and especially forgery) prescribes only an imprisonment and not alternatively a fine. On the other hand, it is noticed that a fine as a secondary sanction for some criminal offences is insufficiently used. A fine could have been pronounced as a secondary sanction for criminal offences of tax evasion, deceiving buyers and smuggling. If a fine is not usually used as a sanction, and therefore it is not pronounced as a secondary one, even when the law allows for that possibility, that means that potential 'pool' of criminal sanctions which a judge could use is shrinking, thus they usually opt for sanction of

release on parole. Such penal policy probably corresponds to severity level of criminal offences brought before court, since the most severe criminal offences from the scope of economic criminality are difficult to detect and proove, which is why these offences are lacking convictions. Additionally, the problem of a broad penalty framework arises. This is why, given the unrealistically high prescribed sanctions (and for some criminal offences and certain forms of offences only imprisonment), courts are often forced to use the penalty mitigation institute.

This leads us to a conclusion that it is necessary to review penalty framework for certain criminal offences against economy, but also to stimulate the use of fine, which is prescribed for some criminal offences as principal or secondary sanction, but still not sufficiently used in court practice. It should especially be insisted on wider use of fine as a secondary sanction, especially for criminal offence of tax evasion.

CONCLUSION - PROPOSITIONS FOR AMENDMENT OF FUTURE CRIMINAL LEGISLATION

The statistical data on economic criminality analyzed in this paper have limited value, but still represent irreplaceable source of data on structure and dynamics of economic criminality in Serbia. By analyzing the aforementioned data, we have come to a conclusion that they are more reflective of activities of organs of state in charge of detection of economic crimes (primarily the Ministry of Internal Affairs) than of the realistic situation in the economic criminality area. The statistical data are pointing out to the fact that detection and prosecution of economy-related criminal offences are insufficient and confirm that the formal legal reaction is focused primarily on 'petty' economic criminality. On the other hand, it should be born in mind that economic criminality has evolved; that it appears in new forms of computer and corporate criminality even at this moment, and that in future our society can be faced with great problem of organized economy-related criminal activities.

Criminal offences against economy foreseen in chapter XXII of the Criminal Code are numerous. The legislator, instead of reviewing the need for their existence in the new socioeconomic conditions, especially having in mind that some of these concepts no longer exist in practice, opted for another approach - to add some new criminal offences to the ones already existing, among which are also included the criminal offences from the former general criminal law. However, it has not been done consistently and consequently and the provisions prescribing criminal offences against some areas of economy still exist in other laws. Thus, the Criminal Code did not meet the need of creating a coherent system of criminal justice standards that, applied efficiently, could prevent economic criminality. This is why, as part of this conclusion, we have tried to give propositions for amendments of and additions to the future criminal legislation.

Criminal offences against economy are set forth in the chapter XXII of the Criminal Code under the title "Criminal offences against economy". We consider that the title of this group of criminal offences is not adequate and that the more appropriate one would be "Criminal offences against public finances and economy", due to the fact that the offences against public finances are clearly separated from other different offences from this chapter and almost half of the total number of criminal offences against economy are the ones against state (public) finances. Other possible way would be to divide the existing chapter into two new ones with separate titles "criminal offences in relation to trade and production" and "criminal offences against state finances".

On the other hand, if we take into consideration the fact that methods used for committing economy-related criminal offences are very rapidly changing their forms and are very adaptable to all changes in economic and political sphere, it is clear that the state has to react efficiently by creating legal and institutionalized framework for fight against this form of criminality. In our country, that reaction was very slow and insufficient up to now. By including several prior minor amendments of criminal laws and by maintaining the existing internal systematic of criminal offences, it has been attempted to adjust provisions of that law to the needs of the realistic state of criminality. In the economic criminality area, it has been attempted to adapt the existing criminal offences to the new conditions, by the means of such amendments, which was hard to do since these offences corresponded to the needs of criminal justice system protecting social ownership and socialist self-management. However, even the provisions of the new Criminal Code were not significantly derogated from the previous legal solutions defining economy-related criminal offences. This is why we consider that this problem should be approached in such manner that some of the existing criminal offences are amended and some new criminal offences are defined, which would simultaneously lead to avoidance of certain doubts in practice.

In conditions of open economy, unrestricted business operations with foreign countries, free establishing of economic relations and free price system and in conditions of realistically set local and foreign currencies exchange rates, the question of keeping certain criminal offences in our legislation arises, especially the ones representing relicts from socialist state economy. In relation to the aforementioned, it should be considered how justified it is to prescribe criminal offence of misfeasance in business, defined under article 234 of the Criminal Code, since it is not necessary in the economy in which free market mechanisms work and since the legislations of other countries usually do not recognize it. Additionally, we do not find justifiable application of criminal sanctions in case of poor or unconscientiously conduct of business activities, when sufficient reaction to such behavior can be demonstrated by use of other measures, such as damage compensation under civil law.

Additionally, it is unclear why article 228 of the Criminal Code of the Republic of Serbia prescribes the criminal offence of issuing of uncovered checks and use of uncovered payment cards, since this is a clear case of civil legal, contractual relation between a bank and a client. The bank has at its disposal numerous collateral instruments, from bill of exchange guarantee, pledge, guarantors, administrative order on the client's salary, to preventive measures such as limit determination, account freeze, repudiation of contract, initiation of civil and debt enforcement proceedings. This means that other methods, rather than threat of criminal sanctions, can be used more efficiently for restoring financial discipline. Therefore, we consider that it is unnecessary for this act to be prescribed by the Criminal Code.

Besides that, there are some concepts that should be improved. One of them is related to the criminal offence of forgery and misuse of payment cards (article 225). It is our opinion that the legislator has unjustifiably reduced the concept of misuse solely to misuse of payment cards in their physical form, completely overlooking the fact that payment cards data can be misused in e-banking as well without an actual fabrication of a card.[6]This is why amendments of the Criminal Code of the Republic of Serbia should include this form of criminal offence defined under article 225. This position is defended by the fact that the same harmful consequence occurs, at the same place, both the damaged party and the offender are the same,

6 Takenfrom: B. Banovic, Z. Djokic, "Economic and financial crime in transition Serbia", in Almanac: Criminality in transition: phenomenology, prevention and state reaction, "Institute of Criminological and Sociological Research", Belgrade, 2007, p. 99.

regardless of whether a payment card is misused in its physical form or only its data in the electronic form. Additionally, the mildest form of this criminal offence is acquisition of forged payment card or acquisition of data with intention to use them for fabrication of forged payment card, which would be used as a genuine, and all of which can be done in different ways, by buying, borrowing or committing a criminal offence. In relation to the above said, we consider that there is no reason for treating the acquisition of forged payment card with intension to use it as a genuine any milder than acquisition of any other forged identification document, but that it should be defined as one of the steps in committing the base form of the offence.[7]

At the end, certain behaviors in business activity that by their nature represent business frauds are not included in the group of criminal offences against economy, and they should be. An argument for introducing offence of business-related fraud in criminal legislation is the fact that criminal offences of business-related fraud are widely spread, and additionally the very manner of committing these criminal offences significantly differs from classic property frauds. Perpetrators of criminal offence of business-related fraud are most frequently responsible officers and officials in economic entities and damaged parties are usually legal entities. False-forged payment methods (forged bills of exchange, recently, and earlier false acceptance orders - uncovered, etc.) are frequently used for committing these offences. Damage caused to property and material gain achieved, as the most common consequences of these criminal offences, are in large number of cases extremely high.

To conclude: from a legal and technical point of view it is possible to separate "business fraud" as a special form of fraud committed by responsible officer in legal entity in relation to business activity conducted. In that case, insurance frauds, for example, may be defined as particular form of business-related frauds. Additionally, it is possible to define some more severe forms for the case of the so called business fraud within the existing criminal offence of fraud. In any case, even if business fraud or particular (more severe) form of business-related fraud was defined, the prescribed sanction would have to be higher.

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UDC 613.83-057.874(497.11)

SOME CHARACTERISTICS OF DRUG ABUSE BY HIGH SCHOOL STUDENTS[1]

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Abstract: In a variety of risky behavior that high-school youth is exposed to, drug abuse without any doubt holds the most important place judged by seriousness of the consequences, danger for physical and psychological health of individuals, and by the implications for the families of these individuals. The practical significance of the research on this disorder does not need to be stressed, because every research on disorder with so many adverse and intensive effects is extremely important as aid in the prevention and adequate reaction of the state on the disorder.

Research was conducted on a sample of 488 students in four secondary schools in Belgrade. The sample of students was tested by specially designed questionnaire on students' behavior with questions measuring 25 variables in the area of the family, school and peer environments of students. Drug abuse as a dependent variable, was operationalized with six indicators: the use, sale, giving away drugs, borrowing drugs, age of first-time trying, and knowledge about the price of drugs on the streets. A data analysis showed that 23% of secondary school students tried some type of drugs at least once, that about 14% of male students and 3.2% of female ones rarely or from time to time still use drugs, that first time consumption begins at the age of 11, while most of them try it at the age of 15, 16, and 17, and that of psycho-social characteristics direct impact on drug abuse have the presence of socio-pathological behavior in a group of peers, running away from home, and change of schools because of behavioral infractions.

Key words: behavioral disorders, drug abuse, socio-psychological characteristics.

PROBLEM

One of the most important phenomena in the population of high school students that requires systematic monitoring and study is the drug abuse. Judging by the number of researches performed in the Republic of Serbia during last ten years this type of disorder is on a constant increase. Although official data on the prevalence of behavioral disorders in the high-school environment practically do not exist, the existing studies bring us to the conclusion that the use of different types of drugs and violent behavior among students are particularly increasing. This increase is supported not only by the research data, but also by internal reports of educational institutions, reports of many NGOs, results of numerous NGOs' projects with the behavioral problems in the school as the theme, and debates in public,

1 The paper is a result of research within the project No. 47017 Security and protection of organization and functioning of the educational system in the Republic of Serbia (basic precepts, principles, protocols, procedures and means) realized on the Faculty of Security Studies in Belgrade and financed by the Ministry of Education and Science of the Republic of Serbia.

media, educational institutions, etc. However, even if there was not a high frequency and the increase of drug abuse and violent behavior disorders, these disorders deserve all the attention of professionals, school authorities, teachers, parents and other social factors. The reason for their importance is their nature that they can cause, and usually lead to serious consequences, not only on individual level, but also on a much broader social level. These disorders are, in fact, a possible start of a long criminal career, but also factor in the development of persistent antisocial behavior in individuals. To prevent this, the research and analysis of these disorders, as well as prevention programs based on them are required. Of course, research and analysis of drug use and violent behaviors should have priority because of the effects that they have.

Although there was mention of it many years ago, drug abuse started being perceived around the world as a serious health and social problem in the 20th century. For the development of drug abuse in our country, the sixties of the 20th century can be seen as the key years, when drug abuse started to spread rapidly, so that it reached alarming proportions for that period in the mid-eighties (Petrović, 2003).

The data obtained by many studies show that drug abuse, today, in our country and abroad is on the rise. The seriousness of the problem is indicated by the facts that the number of new users continues to increase, and that the age at which a first contact with drugs happens is consistently lowering, so that today the drug is not new to children in high school, and not even at the elementary school level. Other characteristics of drug abuse in our area are: equalizing of drug abuse between city vs. village and city center vs. periphery of the city, the increase in abuse of synthetic drugs (so-called. "Hard" drug use), polytoxicomania, equalizing the level of abuse by gender and in different social strata, and also an increase in the number of persons getting in contact with the drug for first time in their late thirties or forties (Milosavljević, Jugović, 2008; Majkić, 2009).

Drugs are a major worldwide health problem that adversely affects the social, cultural, political and economic life of the entire society. The severity of the consequences that their misuse causes is the reason enough for the engagement of all the resources of society with the goal to establish a comprehensive system of solutions. This system of solutions requires coordination and effort of all social factors from the individual and local level, through state and regional agencies and associations, all the way to international agencies and organizations, if system's goal is to be effective.

Given the epidemic nature of development of this socio-pathological phenomenon, for the definition of effective prevention programs is necessary accurate insight into its dimensions. This insight into its dimensions can only be achieved through systematic research and monitoring.

According to the survey, the rise of drug abuse in the world had a rapid upward flow, which can be divided into three stages. The first stage is the period till 1970 when there were 6 million registered drug addicts. In the second stage, from 1970 to 1982 this number has increased by more than three times, totaling approximately 20 million addicts. Until 1991 this number increased to nearly 37 million. The biggest jump was recorded in the third stage, in the period from 1991 till 2005, when the number of addicts was estimated at about 110 million (Jović, Savić, Kuljača, 2007).

Since 1975, as part of The Monitoring the Future (MTF) study are conducted annual surveys of drug use among students in America. The study was initiated National Institute on Drug Abuse (NIDA) and implemented by the University of Michigan's Institute for Social Research. The study aims to collect data on daily, monthly, annual (related to the year preceding the survey) and lifetime (at least

once in their lifetime) use of drugs among students. According to these findings, marijuana is the most commonly used drugs in the U.S., which tried at least once in their lifetime close to 98 million of Americans over age of 12. These findings also show that over 14 million Americans have used marijuana in the month preceding the survey.

In 2008, 5.3 million Americans older than age of 12 have used cocaine in any form. At the same time nearly 2% of pupils at the age of 13 years, 3% at the age of 15 years, and over 4% at the age of 17 years have used cocaine, also.

In same year, 2008, more than 400 thousand Americans older than 12 years have used heroin during the year preceding the research, about 800 thousand of students used LSD, and about 2 million of students used ecstasy.

Some studies of drug use in Jamaica showed that 60% of high school age students once or twice tried some kind of drugs, including marijuana, and that 1.3% of them used cocaine (Chung, 1986, according to Soyibo & Lee, 1999).

In our country there is no systematic or any other type of monitoring of drug abuse. The only data that can be found are from police records, medical institutions and from some occasional research within academic institutions. According to one of these studies, in year 1975 in Serbia were 1484 officially registered drug addicts[2]. At the same time was estimated that on one registered drug addict comes two not registered addicts, which led to conclusion that the number of drug addicts is much higher than studies showed.

Some more modern researches in Serbia, in the last ten years have shown very disappointing results.

The data obtained by the research of the Institute for Student Health, University of Belgrade, executed in year 2000, with the standardized questionnaire of the World Health Organization that was used in over twenty European countries, showed that the most commonly used drugs is marijuana that is used in about 5% of the cases, followed by cocaine and hashish with around 1%, and that adolescents between the ages of 13 and 15 years in about 1% of the cases have the experience of polytoxicomaniacs. Overall, based on this study, the experience with drugs had about 10% of adolescents aged between 13 and 15 years.

In year 2002 the pilot study was conducted in six cities of Serbia, and it surveyed the use of opiates, benzodiazepines, cannabinoids and amphetamines in a sample of 1459 students of 7th and 8th graders. The results of the research were compared with similar researches done in European countries, what led to conclusion that in our country much lower number of respondents had experience with drugs, but that the use of alcohol and drinking are much more prevalent among young people in our country than in other European countries. The results of this study showed that 76.7% of respondents had tried alcohol, 46% at least once been drunk, and 15% of respondents had tried a combination of alcohol and tranquilizer pills (Dimitrijević et al., 2002, according to Dragišić-Labas and Milić, 2007).

Research conducted in year 2004 show marijuana is the most used among psychoactive substances, which tried about 32% of young people from a sample of 3111 respondents aged between 17 and 37 (Jugovic, 2004). Ecstasy, hashish, cocaine and LSD are next on the list which tried 2% of respondents. First experiences with the effects of marijuana were usually gained between the ages of 15 and 17 years.

Some recent estimates of the incidences of drug abuse in Serbia operate with information that the country has a total of over 80,000 drug users, and nearly half of

2 Details of the federal Bureau of Health Care.

these addicts live in Belgrade. Also, information is that about 60% of young people, mostly high school students, are in contact with drugs. To define meaningful policy of prevention and public/social reactions on drug abuse, and addiction of them, we need systematical and scientifically based studies of factors that contribute to the abuse and addiction of them. In other words it is necessary to detect, in reliable way, which social and individual factors influence the increase of likelihood for drug abuse and drug addiction. The problem area of this paper is to reveal those factors that in the social field create conditions or indirectly affect the reporting of drug abuse as a socio-pathological phenomenon. These factors, as noted, will be found primarily in the social field. Theories that explain the social deviation, and a review of previous research, suggest that for these factors should be looked for in the micro-social relations, in other words, in the relationship between family, school environment and in peer groups. With all this in mind, the topic of this work is defined as establishing connections between some of the most important variables in the field of family, school and peer group, on the one hand, and the use of drugs, on the other. The use of drugs was selected as the best representative of those variables by which he abuse in the population of high school students can be described.

Theoretical concepts to explain drug abuse

From observing fast expansion and severity of consequences of drug abuse, the entire society, professional and nonprofessional public is concerned with, and makes significant efforts to determine what are the factors that are crucial in the development of drug addiction, what is beneficial for the development and what prevents it, or at least mitigates the consequences. Most researchers dealing with these issues, agreed that there is not only one theory that would give a final explanation, but more of them, individually or in combination. Most often mentioned theories are those that belong to a group of so-called sociological theories, that place an emphasis on factors of social environment as the main factors of drug abuse and those belonging to the psychological theories that explain drug abuse with the factors of personality and learning To these two groups of theories can be added situational theories that explain drug abuse in factors of availability of drugs, of which the most prominent is the weakness of the legal norms.

Sociological theories of drug abuse are mostly rooted in the theory of anomie, subculture theory and the theory of self-control and social ties.

As stated by the first of the theories, *the theory of anomie*, a condition of anomie leads to lack of the system of values, norms and rules of behavior in the community, creates unfavorable conditions for socialization of the individual, and leads to the dissolution of mechanisms of control of behavior. Condition of anomie leads to this regardless of whether it is caused by the economic circumstances, cultural contradictions, by inconsistencies of cultural goals, or by the social structure of given resources to achieve them (Merton, 1969). Anomie is not in itself sufficient and immediate factor, but it leads in indirect manner to feelings of helplessness, loneliness, and alienation. Anomie causes a lack of social integration and leads to different mechanisms of adaptation of an individual (conformity, innovation, ritualism, retreat, and riots), which may lead to the emergence and growth of socio-pathological phenomena. Some of these methods of adjustment, particularly the withdrawal mechanism, are inherent to the drug addicts.

The second theory is subcultural theory by which is subculture defined as a set of "opposing" values that show a group that is separated from the society (Cohen, 1969), or a number to perceived values in a particular social group, which are in conflict with the values of conventional society (Taft & England, 1964). Thus, subcultural social groups belong to a global culture of society, but with a special system of values, behaviors and lifestyles that are created within and specific for the group. Among a number of these social subculture groups and types of subculture for us is particularly interesting subculture of withdrawal. By the opinion of Lovrić (2009), subculture of withdrawal is characteristic of drug addicts. Subculture of withdrawal is formed due to the inability of these individuals to respond on request made by culture of society, and due to constant experience of failure in the use of legal and illegal means to achieve socially desirable goals[3]. These individuals withdrawn themselves from society, they reject the social goals and values and restrict themselves to the group of addicts with whom they share a specific style of life, social values and norms of behavior. Membership in these groups satisfy needs of drug addict for group belonging, understanding, solidarity and emotional support.

The third theory is a theory of self-control and social ties. The author of the theory is Travis Hirschi (1972) and he identifies four categories of social relationships that are important for behavior. These are: 1) *Attachment*. It is about attachment of child and adolescent to parents, school, peer group and specifically about a form of positive attachment 2) *Commitment* or participation of an individual and positive social activities and especially in activities that represent the relationship of an individual with moral and ethical code of society, 3) *Involvement* of the individual in conventional activities. According to the author of the theory, this involvement leaves no space for individual to deal with crime, or to care about it, 4) *Belief* in the legal norms, the people and institutions that respect the law. If these beliefs are weakened or have not been established, the individual will show criminal behavior. Weakness in any of these areas can lead to criminal behavior (Žunić-Pavlović and Pavlović, 2008). The phenomenon that leads to this weakness is low self-control. Low self-control may be associated with all four categories and is defined in this theory as a lack of perception of consequence of their own behavior.

The theory of self-control and social ties can be used as very realistic and logical concept to explain drug abuse. Previous researches have confirmed this by finding, on a sample of drug addicts, that low self-control was associated with all four categories of social bonding (Longshore et al., 2004). At the same time, the research by Milosavljevic (2002) show that young people that use drugs have a significantly poorer social relationships with family, and especially poorer communication on the child-parent relationship. Many other authors have obtained same or similar results.

The group of theories commonly referred to as *psychological theories*, has in its focus the personality and process of learning as a basic etiological factors of drug addiction. There are many of theories in this group and therefore we will mention here only those that could not be avoided when it comes to discussion about drug abuse. These theories are: *attachment theory, social learning theory,* and *the theory of differential association*.

Attachment Theory is well-known theory whose original author is of American psychologist John Bowlby (1969, 1973 and 1980). Bowlby based the connection between ' attachment" and the delinquency of minors on the child's inability to establish a warm and lasting emotional relationships with his mother in early

3 The subcultural theory is a derivative of anomie theory.

childhood due to rejection by the mother or her separation. In a famous experiment with a group of delinquents and control group of non-delinquents, he proved that maternal deprivation in early childhood is an important factor in criminal behavior. Existing studies of attachment go in many directions and are used in very different areas. In criminology and social pathology those studies typically operate with variables that are related to the shattered families, the absence of the mother, the mother's emotional attitude, abuse by the mother and other areas. In some of these studies (e.g. Lovrić (2009)), these variables are associated with addiction to drugs. The results show a statistically significant association between addiction and death of mother, mother's absence, and also all variables that show bad emotional relationships between child and mother.

Social learning theory looks at the human behavior as a triple, dynamic and reciprocal interaction between factors of personality, environment and the behavior itself. According to social learning theory, behavior is learned through observation using mechanisms of imitation, identification and learning of roles, while in interaction with the environment. Observation of behavior patterns leads to imitation, identification with a model, adoption of system of values and acceptance of the lifestyle of the model. If the observed pattern of behavior is socially unacceptable and as the result there is no penalty it is created favorable conditions for development of socio-pathological behavior. Approval of such conduct by a group of peers and the absence of negative reactions, sanctions and punishment by parents, teachers or other institutions in society, have a practical effect of reinforcement (Bandura, 1989).

The theory of differential association. According to this theory, the basis of criminal behavior is a process of social learning that is achieved through interaction with others. Although this theory is primarily concerned with learning of criminal behavior, the basic postulates of this theory can be applied to all types of behavior, including the use of drugs. Socio-pathological behavior, therefore, is learned as all other kinds of behavior through contact and communication with individuals that behave in this manner. If the person is in the process of differential association, or in an environment where there is a prevailing number and intensity of contacts that are affirmative for the socially unacceptable behavior, the person learns this type of behaviors. Social environment in which there are several attitudes that approve drug use, or in which exists frequent and intense popularizing of drug use, is also a risk factor in the development of drug addiction. A key mechanism used to explain the use of drugs is a learning process within the group. This learning process includes learning of methods, means and techniques of drug use, learning the slang specific to addictive subculture, and adoption of the system of values, attitudes, motives and of specific defense mechanisms (primarily of rationalization).

Overview of previous researches on the possible factors of drug abuse

Review of theoretical concepts that was done above cannot completely give an answer to the question why some young people begin to use drugs under certain circumstances, while another part of the population does not do that under the same circumstances. The answer to that question could not be given even if we reviewed many more theories, or described those theories in more detail, because there is no single theory, or group of theories, that could give the answer to this and similar questions. Therefore, in order to explain the emergence and course or give prognosis of drug abuse, many researchers rather turn to the identification of potential risks and protective factors for this behavior, without worrying to which theoretical concept do factors belong to.

For these reasons, in this section of the paper we will give a brief overview of potential risk and protective factors without specifying from which theoretical concept they come from. At the same time, we will stress out that these factors may vary depending on age, sex and other characteristics of the young population. For example, the risk factors in the family have a stronger impact on younger children, while the risk factors that occur in the peer group may have greater strength on adolescents. Gender of an individual can also determine how the individual reacts to the risk factors. For example, research of family relationship shows that female adolescents respond positively to parental support and discipline, while male adolescents may sometimes respond negatively to it. Studies of the early risk behaviors in the school show that aggressive behavior of boys and learning disabilities in case of girls may be important factors that affect the poor relationships with peers. These factors also can lead to social rejection, negative experiences in a school, behavioral problems, and to drug abuse.

The presence of risk factors does not necessarily mean that drug abuse will appear. Their presence and activity indicates an increased level of risk for the development and establishment of such behaviors. On the other hand, each risk factor has a different impact depending on the level of personal development of an individual, and does it act alone or has its effect in the interaction with other risk and protective factors.

The most common risk factors are:

- Factors that originate from the social environment and interpersonal relationships and that are primarily related to the availability of drugs, the presence of attitudes of tolerance and approval of the use of drugs, lack of positive contacts with the social environment and family, rebellion, rejection by peers, alienation and isolation;
- Factors that originate from the family environment such as presence of behavioral problems in a family member, drug use by parents, mental illness in the family, multi-member family, family conflicts and inadequate ways of their solving, child abuse, stressful life events, disturbances in communication among family members, poor emotional attachment of children and parents;
- Factors that come from the school environment, including aggressive behavior in school, school failure, lack of involvement in the school curriculum and extracurricular activities, and lack of motivation for doing their homework assignments;
- Factors related to psycho-physical characteristics of the individual, such as attention disorders, undeveloped work habits and skills, emotional numbness and immaturity, low self-esteem, feelings of depression.

Most frequently mentioned protective factors belong to the following areas:

- Strong emotional connections with the family as a whole or individual members of the family, the supervision by the parents over the activities and behavior outside the family environment, familiarity with the social environment, the establishment and observance of rules of conduct;
- Individual characteristics of the person, especially characteristics of temperament, lack of emotional disorders, self-discipline, flexibility and commitment, developed cognitive abilities.
- Positive social cohesion, integration into peer groups, quality of relationships with people from the environment, contact with adults that show prosocial behavior, association with social institutions and involvement in extracurricular and other forms of activities, and more.

Listed risk and protective factors are only some of those that prove

Of course, there are more risk and protective factors than what is listed here, but already those that are listed give sufficient evidence that drug abuse is a complex behavioral disorder.

METHODOLOGICAL SOLUTIONS

Dependent Variable

The dependent variable is the misuse of drugs. This phrase is common name, in professional and scientific circles, for a number of behaviors sanctioned by the Criminal Code of Serbia (Chapter 23, Article 246, 246a and 247). Some of them are unauthorized production of drugs, processing, sales, purchasing, offering to sell or purchase, giving to others, and keeping in smaller quantities the drug, including also some other behaviors less important for this work. A similar or the same solutions have many other countries in their criminal codes. Given the fact that subjects are high school students, the statutory definition of this concept is not entirely adequate. Because of that this work defines drug abuse something different: a minimum of two times introducing drugs into the body in any way (smoking, swallowing, sniffing, inhalation or intravenous) and/or at least once sold, given or loaned any amount of any narcotic means.

Indicators for the research of drug abuse defined in this way were: 1) Tasting drugs, 2) Frequency of drug use, 3) Age at the time of first trying of drugs, 4) Giving or lending of drugs to others, 5) Selling drugs and 6) Knowledge of the cost of drugs on the streets of Belgrade. The intensity of the disorder was investigated through frequency of the behavior, i.e. the number of repeated drug abuse. Due to limited space, this paper will present distribution of all of these variables, but we will analyze the relationships to the variables of family, school and peer environments with the help of one of the variables that represent in best way this set of dependent variables: the frequency of drug use.

Independent variables

The sample of independent variables consisted of 25 variables, selected from three areas[4]: 1) From the area of family relationships, 2) The area of the school environment, 3) In the field of peer groups and peer influences. In addition to psychosocial characteristics in these areas, two more variables of sociodemographic character were used: age and sex. The specific independent variables are the following:

1. Success in school
2. Punishment of reprimand
3. Changing schools
4. The sudden drop of results in learning
5. Inattention in class
6. Irregular learning
7. Irregular homework
8. Extracurricular activities
9. Playing sports
10. Family relationships
11. Family relationships to student
12. Drug addiction and alcoholism in the family
13. Crime in the family
14. Corporal punishment of students in the family
15. Running away from home
16. Group membership
17. Drug addiction and alcoholism in the peer group
18. Crime in the group
19. The victim of threats at school
20. The victim of threats outside of school
21. The victim of physical attack at school
22. The victim of physical attach outside of school
23. A victim of social boycott
24. Victim of ridicule
25. The age at time of test

4 Due to limited space there will not be given definition of each variable. It seems that this is not necessary because variables are either well known or their name clearly indicates dimensions.

The Sample

The analysis of social factors that influence drug abuse was performed on a sample of 488 high school students in Belgrade. Schools that participated in the analysis were selected based on the assumption of a higher incidence of drug abuse in them. Selection of students within schools was random, because classes were selected by random procedure. The survey was conducted in three technical schools and one gymnasium.

The structure of the sample of students by gender and age is as follows:

Table 1 - Structure of the sample by gender

Gender of students	Number	%
Male	331	67.8
Female	157	32.2
Total	488	100.0

Table 2 - Structure of the sample by age[5]

Age of students	Number	%
15 years	1	0.2
16 years	51	10.5
17 years	146	30.1
18 years	184	37.9
19 years	94	19.4
20 years	8	1.6
21 years	1	0.2
Total	485	100.0

Instruments and data collection

Data for the dependent and independent variables were collected using a Questionnaire on student behavior, particularly constructed for the purpose of this paper. The questionnaire was anonymous. Data were collected by classical group surveying, where the group was identical with the class, i.e. class in a particular school. The survey, on average, took about 30 minutes.

Data processing and analysis

Data processing and analysis was performed by classical methods of descriptive statistics. When analyzing the relationship between drug use and micro-social variables, we used Chi square test and the S ratio. These parameters were considered significant if the probability of error in the repeated study was 5% or less.

RESULTS AND DISCUSSION

Distributions of variables used to investigate the misuse of drugs

Distributions of variables that were used to describe drug abuse tell us about the validity of these variables, but even more they can be of much use to examine the extent of the problem under investigation and the scope of behavioral disorder called drug abuse. So at the beginning of this chapter we give the results of the frequency of selling, giving or lending of drugs, as well as the results that were obtained about the ages when students tried drugs for the first time, and knowledge of students about the price of drugs on the streets of Belgrade.

5 For three students there are no data about age

a) Tasting drugs, age of first trying it and the current use of drugs

Information about the taste of drugs, the age at which students first tried drugs and data on drug use at the time when test was taken, are given in Tables 3, 4 and 5

Table 3 – Tasting drugs

Answers	Number	%
Not even once	367	77.1
Once	35	7.4
Twice	18	3.8
Three times	10	2.1
Many times	46	9.7
Total	476	100

Table 4 – Drugs use (Do you still sometimes use drugs?)

Answers	Number	%
Never tried	61	74.0
Do not use drugs	62	13.2
Rarally use	26	5.6
Sometimes use	5	5.3
Total	474	100

Table 5 – Age when drugs were tasted for the first time

Age	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**∑**
Number of students	3	2	5	5	20	24	21	12	92
%	3.3	2.2	5.4	5.4	21.7	26.1	22.8	13.1	100

The data listed in these tables clearly show that drug abuse is a serious social problem and that it is necessary to address prevention and combat of these abuses with the utmost seriousness, of course, by taking into consideration the consequences that it causes and the fact that it is a period of adolescence. The fact that 23% of students in age 16 to 20 years had tried some kind of drug is very disturbing and undeniable signal that it is urgent to start with programs of prevention, but not only in those age groups, but starting from age of 11 years. The age of 11 is when trying of drugs starts and although the percentage (3.3%) is not high it is a sufficient indicator and sufficient warning that drug abuse can become a behavior at some later age. According to data about the age when the drugs are tasted for the first time, the highest percentage is between students that are 15, 16 and 17 years old. From these data it can be concluded that if we want to reduce the number of students who are potential drug addicts it is necessary that preventive actions peak exactly at that age (age of 15, 16, and 17).

The fact that 23% of students try drugs and that the highest percentage of students are in the middle of the educational process is devastating not only for the school system, but also for society as a whole. This percentage also says that one can expect a significant number of students who will eventually become addicted to drugs. Because the use of drugs cannot be identified with the addiction, the data that about 10% of the students use drugs from time to time, i.e. rarely or when they feel the need to use it are in favor of the idea that drug addicts are recruited from those individuals who first try drugs, and then occasionally use them, until they become physically and mentally put in a state that cannot be without them. Given the size of the student population, the number of 10% of students that use drugs in this way can actually be considered as extremely big and serious warning to the urgent need to take all kinds of social action to prevent this use to develop into addiction.

b) Selling, lending or borrowing of drugs to others

Trying and use of drugs is one type of behavior, completely different nature from the sale, giving or lending of drugs to others, even though both forms are an integral part of the phenomenon called drug abuse. Because of these differences, but also because the sale, giving or landing means a higher degree of involvement in this abuse there is a particular interest in explicit listing of the data. They are given in Tables 6 and 7.

Table 6 - Have you ever sold any drugs

Answers	Number	%
Not even once	428	91.6
Once	12	2.6
Twice	4	0.9
Three times	3	0.6
Many times	20	4.3
Total	467	100

Table 7 - Giving and lending drugs to others

Answers	Number	%
Not even once	423	90.4
Once	14	3.0
Twice	5	1.1
Three times	3	0.6
Many times	23	4.9
Total	467	100

A certain number of students participate in the so-called drug distribution and sales (8.4%) or in giving drugs to the others (9.6%). Selling and giving drugs to others, as well as lending or gifts, is the active attitude of the individual in drug abuse. These behaviors are specifically sanctioned by criminal law. The existence of such a large percentage of students who circulate drugs is a reliable indicator that the drug dealership penetrated into high school students' population and represents alarming information of uttermost importance. The alarming nature of this information comes from the fact that if among the students of one school are those who sell and give drugs to others, no matter whether it is in the form of gift or lending, it can be expected increase of number of students that try, use, and became addicts of drugs. This increase can be expected to happen over time in ratio that is hard to estimate, but this ratio will be higher, for certain, than the one that would exist if in student population were not individuals that sell and give drugs to other.

c) Knowledge about the price of drugs on the streets

Data about knowledge of drug cost on streets of city was used as an indirect indicator of involvement of students in the process of drug abuse, whether the use or distribution of drugs. These data are in the table below.

Table 8 – Knowledge about the price of drugs on streets of city

Answers	Number	%
Do not know	309	65.5
I know for only some types	107	22.7
I know of almost all types	56	11.9
Total	472	100

Base on the results, 22.7% of respondents knew of some kind of drug prices in the market, i.e. on city streets, while the prices of almost all kinds of types know 11.9% of students. Although in this case is not spoken directly about the taste, use or distribution of drugs, it is obvious that knowledge of drug prices in some way is connected with these forms of drug abuse, and because of this we list it as a convenient indicator of this phenomenon.

d) The structure of the first principal component of variables used to investigate the abuse of drugs

The structure of the first principal component obtained by factor analysis of variables used to assess drug abuse is cited as evidence that all six dependent variables are in that area of abuse. Also, we cite it as evidence that the drug usage, as variable based on which will be analyzed the relationship between abuse and psycho-social characteristics of students, represents the phenomenon of drug abuse in a valid and reliable manner.

Table 9 - Structure of the first principal component of variables of drug abuse

Variables	Correlation with first principal component	Communality of variables
Drug tasting	.752	.565
Drug use	.810	.656
Age and time of first trying of drugs	-.558	.311
Giving or landing of drugs to others	.831	.691
Drug sales	.785	.616
Knowledge of drugs price on streets of Belgrade	.710.	.504
Statistical parameters: λ=3,343; % variance 55,7		

Correlations of variables used to describe the abuses of drugs with the first principal component show that each one of them is the part of the same phenomenon, that they define that phenomenon in a proper manner, and that they are a reliable measure of the phenomenon. This structure of component allows usage of individual variables as a measure of drug abuse.

Therefore, in further analysis of the relationship with the social characteristics of students, we will analyze the correlations that variable "use of drugs" has with these characteristics. The variable, "use of drugs" is without doubt an excellent representative of all the indicators of abuse, because its correlation with the first principal component is .810, and its lower confidence limit is .656.

The use of drugs and association with socio-psychological characteristics of students

a) Drug use and socio-psychological characteristics from the field of family

Analysis of correlation between drugs use and socio-psychological characteristics of students starts with variables from a family environment. Data on the relationship between drug use and social, family and other characteristics of students are presented in the form of C coefficient and contingency tables. Because of the limitation with space, the contingency tables have only the most important of those characteristics (largest C coefficient), and those characteristics for which exists particular interest.

Table 10 – Coefficients of correlation between drug use and socio-psychological characteristics in the field of family

Relationship between family characteristics and drug use	C coefficient	Importance Level
The relationship between adult family members during childhood of respondent	.154	.774
Relationship between family members and respondent during childhood of respondent	.296	.000
Physical punishment of respondents by family members	.120	.545
Socio-pathological behavior of family members	.135	.066
Crime in respondents' family	.215	.003
Running away from home respondents	.406	.000

If we look carefully at the coefficients of relationships, the first thing we noticed is that students who have poor relationships between adult family members, who are physically punished, and whose family has a socio-pathological behaviors do not differ based on usage or not-usage, i.e. drug abuse. In other words, the misuse of drugs will or will not be independent of whether the families of pupils have good or bad relationships among adult members of their families, whether respondents were physically punished or not and whether their family has or has no socio-pathological behavior. Therefore, these three characteristics make no difference between students in terms of drug abuse. These differences are made and quite powerfully based on family relationships (bad ones) to the student and, less strongly, the presence of adults in the family that the criminal act. It is interesting to note that these (poor) family relationships to the student have a significant association with drug abuse and make the difference between the respondents, while the variable "Physical punishment of respondents by family members" has no significant association with drug abuse and do not make this distinction. This result can be explained by assumption that poor family relationships to the respondent do not contain or minimally contain a component of physical punishment. It is, of course, theoretically quite possible, because poor relations can be devastating enough for the child's behavior even when there is no physical punishment.

Everything previously said is true and when it comes to features "Crime in the family of respondent", only less pronounced, i.e. less pronounced as the regularity because the coefficient of correlation between this characteristic and use of drugs is rather lower[6]. The obtained results support the thesis that drug use is more common in cases where the student has family members involved or that were involved in crime. This type of establishing connection is so logical that it is not required to prove it.

The relationship between variables "running away from home" and the drug use is logical and expected height, and the level of C coefficient of .406 certainly means that there is an obvious difference in the use of drugs in parallel with the frequency of running away from home. The percentages of students who run away from home and that use drugs constantly grow, and are they are different depending on the number of escape, but the tendency of its growth is constant. Due to the low frequency of running away from home it is difficult to detect trends accurately, so we have reduced this variable of flight from home to only two categories.

6 When it comes to specific variable whose relationship with the family characteristics we analyze, we use the term "drug use" because that is the content of questions in the Questionnaire. In the case of the dependent variable, i.e. disturbance of behavior that we analyze, we use the term "drug abuse". Between them there is a substantial difference: in the latter term is additionally included the purchase and sale of the drug.

Table 11 - Relationship between drug use and running away from home

Running away from home	Коришћење дроге							
	Do not use drugs		Rarely use drugs		Periodically use drugs		∑	
	N	%	N	%	N	%	N	%
No running away	380	90,0	20	76,9	12	48,0	412	86,9
Exists running away	42	10,0	6	23,1	14	52,0	62	13,1
Total	422	100.0	26	100,0	26	100,0	474	100, 0

From these data is evident that from those who do not use drugs only 10% escapes from the house, that those that rarely use drugs run away more often (23.1% of respondents), while those students that use drugs from time to time run away from home even in 52% of cases. The answer to the question which of these variables is earlier in origin, i.e. if more students use drugs because they run away from home or they run away from home more because they use drugs (or used to), is not the subject of this work, but it would be interesting in a future research to seek an answer to this question.

b) Drug abuse and socio-psychological characteristics of the school environment

The school environment was represented by 10 variables. Correlation between these variables and drug use, in the form of C correlation coefficients, are given in the table below.

Table 12 - Use of drugs and socio-psychological characteristics of respondents from the school environment

Relationship between socio-psychological characteristics of the schools and the use of drugs	C coefficient	Importance level
The success of the last class	.279	.001
Attentive in class	.270	.002
Class attendance	.251	.010
Regularity of finished homework	.247	.000
Propensity to cheat in school work	.172	.566
Participation in extracurricular activities	.198	.001
The sudden drop in school grades	.228	.001
Changing the schools because of bad behavior	.355	.000
Punishment of reprimand at school	.402	.000
Training sports during the school	.151	.199

According to what can be inferred from these correlations, the differences between students in terms of frequency and intensity of drug use may be explained by the success achieved by the student during their education, regularity of learning and carrying out homework assignments, attitude towards teaching and teacher in the classroom, teaching duties, changing schools, as well as by disciplinary offenses and punishments associated with them. Using drugs is not in any relationship with participation in extracurricular activities, involvement in sports during their education and a tendency to cheat in school work (copying homework). Direction of the relationship shows that characteristics that increase the likelihood of drug use are the bad grades, decreases in average of grades, periodical learning, irregularity in the execution of school duties, often changing schools and more frequent punishment reprimand for behavior.

Due to limited space at our disposal, directions of relations between variables of drug use and variables in the school environment we will present on the example of variable that represents the punishment of reprimand at the school. This variable is chosen because it has the highest correlation with drug use.

Table 13 - Punishment of reprimand at school and using drugs

	Drugs use									
Punishment of	Do not use		Just tried		Rarely		Periodically		Total	
reprimand	N	%	N	%	N	%	N	%	N	%
Never	187	52,1	14	23,0	1	3,8	3	12,0	205	43,5
Once	80	23,3	11	19,0	3	11,5	1	4,0	95	20,1
Twice	22	6,1	12	19,7	6	21,3	7	28,0	47	10,0
Three times	12	3,3	5	8,2	3	11,5	2	8,0	22	4,7
Many times	58	16,2	19	31,1	13	50,0	12	48,0	102	21,8
Total	359	100,0	61	100,0	26	100,0	25	100,0	471	100,0
Statistical parameters: Chi square=90,853; d f=16; p=.000; C=.402										

The table clearly presents trend of more frequent use of drugs by increasing the number of reprimands with which the student was punished. The regularity of the use of drugs along with punishing reprimand is particularly visible in the row that contains the category of "many times" punished. In this line, there are only 16.2% of students who never used drugs, 31.1% of students that only tried drugs, and event 48 and 50 percent of students rarely or occasionally used drugs. Of course, these results can be interpreted in different ways, however, we believe that the true direction of the argument is that with drug use begins all, that this use leads to other behavioral problems including truancy from school, poor achievements, a violation of school standards and the imposition of reprimand is being provoked by these consequences.

The set of features that come from the school milieu, there are three characteristics by which is not possible to distinguish between students who use and who do not use drugs. These characteristics are: (1) participation in extracurricular activities, (2) the tendency to cheat in school work, and (3) sports in the school. For us, the third characteristic is quite a surprise, because it is a generally accepted theory that sport is a strong defense against crime and drug addiction.

Table 14 - Use of drugs and sports

	Drug use					
Playing sports	Do not use, did not try		Tried and uses drugs		∑	
	N	%	N	%	N	%
Plays sports	170	80.5	41	19.5	211	100.0
Does not play sport	84	78.5	23	21.5	107	100.0

According to available data, the use of drugs is equally represented in the group of students that is involved and that is not involved in sports (19.5% vs. 21.5%). And also, in equal numbers both groups, those who are involved and who are not involved in sports (80.5% vs. 78.5%) abstain from drugs. In other words, there are no significant differences in drug use between those involved and those who are not involved in sports. Answers on questions about what is causing this lack of difference are yet to be discovered. Still, it seems that it is time to abandon the stereotype that sport is an important protective factor against crime and drugs and to consider whether the sport may have too many subcultures of crime or may be that certain types of sports are popular among people who have behavior disorders (delinquents, and others), and which they can even use to raise the their own status in the underworld.

c) Drug abuse and socio-psychological characteristics of the peer group

When it comes to socio-psychological characteristics in the area of peer groups, in the research were used three variables: (1) friendly group affiliation, (2) the existence of socio-pathological behavior in their peer group and (3) the existence of crime in the peer group. Coefficients between these variables and drug use are given in the table below.

Table 15 - Correlations between drug use and socio-psychosocial characteristics of peer groups

Peer groups/drug use	C coefficient	Importance level
Friendly group affiliation	.145	.255
Existence of socio-pathological behavior in the peer group	.366	.000
Existence of crime in the peer group	.279	.000

There is no doubt that the result of the research of the role of variables in the field of peer groups is in relation to the use of drugs is very interesting and we would say, important. According to these results, the peer-group affiliation has no impact on the malicious use of drugs, because based on it is not possible to distinguish between students who use and do not use drugs. The conclusion that stems from it is that belonging to a friendly group, itself, is not a risk factor for behavioral disorders. Risk factors are characteristics of these groups or ways of how those groups behave. In our case, we show that the presence of socio-pathological behavior of some members of the group is a strong risk factor (C = .366). Given that the socio-pathological behavior by its definition included the use of drugs, we can say with great certainty that the use of drugs of some group members leads to drug use and by other group members. Also, we must stress that for this behavior disorder is much more important the use of drugs in their peer group than in the family. This conclusion can be drawn from the fact that this same variable, when it comes to a family, had no significant association with drug use by students. Judging by high value of the C coefficient, the presence of socio-pathological behavior among other members of the peer group quite effectively distinguishes students who use and do not use drugs.

Table 16 - Drug use and socio-pathological behavior in the peer group

Socio-pathological behavior in the peer group	Drugs use									
	Does not use/Did not try		Only tried		Rarely uses		Periodically uses		Total	
	N	%	N	%	N	%	N	%	N	%
Has no group of friends	118	32.8	9	14.6	2	7.7	2	8.0	131	27.7
There was that type of behavior	208	57.8	42	67.7	15	57.7	8	32.0	273	57.7
Many of them behaved that way	34	9.4	11	17.7	9	34.6	15	60.0	69	14.6
Total	360	100.0	62	100.0	26	100.0	25	100.0	473	100.0
Statistical parameters: Chii square=71,110; df=8; p=.000; C=.366										

As indicated by data in this table, socio-pathological behavior in their peer group are the distinguishing factor for those respondents who use drugs and those who do not. That is evident from the tendency of decrease in the percentage of respondents who use drugs and are not members of friendly groups, and on the other hand, from a growing number of students who use drugs in parallel with an

increase of number of members of their peer groups that are doing it. This is particularly evident in the third row of the table, which shows that several members of the group have a socio-pathological behavior. Specifically, the number of students who are members of those groups where there is more social pathology and who do not use drugs is 9.4%, while number is growing quite rapidly to 60% of students who use drugs (and are the members of the same group).

At the end of the analysis of relations between characteristics in the field of peer groups and drug use it has left us to show that the discriminative power on using / not using drugs has a variable "Crime in the peer group" but that her role is weaker than the previous features. This is probably due to the fact that the behavior disorder (drug use) that we analyze "matches" much better with socio-pathological, than with the criminal behavior of the group of peers. This is simply because the content of the variable "socio-pathological behavior in the group" also includes drug use.

CONCLUSION

The conduct disorder that is being analyzed, "drug abuse", was defined as introducing in the body any narcotics at least twice and / or at least once selling or giving any quantity and type of drugs. The disorder was studied with six variables. Results expressed as the student responses to individual questions or as a combination of responses on the common dimension show following:

1. 23% of secondary school students have tried some kind of drug at least once;
2. About 14% of male students and 3.2% of female rarely or from time to time even now use drugs;
3. Trying of drugs is equally distributed across age between 16 and 20 years, and that the use rapidly decline after age of 18 years;
4. Trying of drugs begins at an incredible age of 11 years (3.3% of students), till the age of 15 years it is in range between 2.2 and 5.4%, but the highest 20% is in the age of 15, 16, and 17 years.
5. Drug abuse contributes significantly to poor academic performance, socio-pathological behavior in the peer group (and not in the family), running away from home, frequent changes of schools, and often punishing or reprimand at school. From these characteristics, a direct impact on drug abuse is related to the presence of socio-pathological behavior in a group of peers, running away from home, change of schools because of behavior and punishment of reprimand.

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UDC 341.322.5

TERM WAR CRIME

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Abstract: War crime is, firstly, a complex legal term. Its understanding and defining demand the research of both international public law and international law of war, as well as of criminal and international criminal law. This part of paper deals with contemporary solutions in regulating war crimes in the Rome Statue. However, the term must also encompass all actions by which a war crime can be committed. The Rome Statute divides the actions by which the crime is committed into two groups, depending on whether they are provisioned for the case of international or non-international armed conflict. It is also possible to group the actions by which a war crime is committed using other criteria. In the second part of the paper, they will be sistematised into three groups, according to the passive subject, means of performance and manner of performance.

Key words: war crime, armed conflict, international humanitarian law, international criminal law.

INTRODUCTION

The concept of war crime in the contemporary sense was developed only after the World War II. The Statute of the International Military Tribunal at Nuremberg for the first time precisely stipulates that a war crime is a violation of the laws or customs of war. These violations involve "*murder, ill-treatment or deportation to forced labour or for any other purpose, of civilian population of or in occupied territory; murder or ill-treatment of prisoners of war or persons on the seas; killing of hostages; plunder of public or private property; wanton destruction of cities, towns or villages; and devastation not justified by military necessity*".[1]

Adoption of the Geneva Conventions from 1949 was the most significant contribution to defining war crimes. In these Conventions, the concept of war crime was widened to encompass the following deeds: "*wilful killing, torture or inhuman treatment, biological experiments, wilfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly and others.*" [2]

During the diplomatic conference held in Geneva from 1974 to 1977, the existing Geneva Conventions were added two Protocols. Protocol I pertains to international armed conflicts[3], whereas the other one – Protocol II[4] pertains to non-international armed conflicts and is a detailed elaboration of the common Article 3 of the Geneva Convention. Among other innovations, Protocol

1 *Charter of the Nürnberg International Military Tribunal, (Izvori međunarodnog humanitarnog prava,* MKCK, CKS i FPN, Beograd 2007, p. 598), Art. 6. par. 2. s. b.

2 I Geneva Conventions, (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 18), Art. 50; II Geneva Conventions, (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 42), Art. 51; III Geneva Conventions, (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 95), Art. 130; IV Geneva Conventions, (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 165), Art. 147.

3 V. *Additional protocol to the Geneva Conventions of 12 August 1949 on Protection of Victims of International Armed Conflict (**Protocol I**),* in: *Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 182.

4*Additional protocol to the Geneva Conventions of 12 August 1949 on Protection of Victims of International Armed Conflict (**Protocol II**),* in: *Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 249.

I contains the extended list of "grave breaches" of the Geneva Conventions. The list of violations of military law, which will be considered in war crimes, contains: *making the civilian population or individual civilians the object of attack; launching an indiscriminate attack affecting the civilian population or civilian objects; launching an indiscriminate attack affecting works or installations containing dangerous forces; making non-defended localities and demilitarised zones the object of attack; making a person the object of attack in the knowledge that he is* hors de combat*; "the perfidious use of the distinctive emblem of the red cross, red crescent and other protective signs recognized by the Conventions or this Protocol; the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; unjustifiable delay in the repatriation of prisoners of war; making the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage the object of attack, etc".* [5]

Regardless of the successful development, international humanitarian law (IHL hereinafter) is not the law that could be an immediate basis for establishing individual criminal responsibility and the application of penalties, or criminal sanctions in particular cases.[6] It is a starting point, especially in regard to the determination of the important elements of an individual criminal act in the course of creating a substantive law that an international criminal court would apply. Prior to the adoption of the Statute of the International Criminal Court (the so called Rome Statute) and the establishment of the International Criminal Court, there was no apparent, serious intention to create an International Criminal Law (hereinafter referred to as ICL) that would effectively regulate or achieve something.

WAR CRIME IN ROME STATUTE

In 1948 the UN General Assembly requested that the International Law Commission examined the possibility of establishing a permanent international criminal court. Although the memories of war horrors of World War II were fresh, there was no willingness to establish such a court, then, when the concrete measures to bring about its establishment were first taken. The first drafts were submitted in 1951 and 1953, but they were dropped into the background due to the block division and the Cold War. The initiative was renewed in 1990 and 1992, and the Commission submitted the Draft statute to the General Assembly in 1993, which was revised in 1994. After that, the UN General Assembly founded the *ad hoc* committee, which concluded in 1995 that the work on the Statute is to be continued, the diplomatic conference organised and the final version of the Statute adopted. At the plenipotentiary diplomatic conference held in July 1998 in Rome under the auspices of the United Nations the Statute of that court was adopted. Nearly half a century had to pass, so that the fact of the necessity of existance of one body which would try the most serious crimes with the consequences which affect the entire international community would mature enough to be implemented.

The Statute[7] of the International Criminal Court (or the Roman Statute) is an international treaty by which the International Criminal Court (hereinafter ICC) was founded. The Statute defines the jurisdiction, structure and functions of the

5 *Protocol I,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 230), Art. 85.
6 In addition, in the theoretical circles, the terms "international law of war," "law of armed conflict" and others are interchangeably used.
7 Since the agreement was established by an international tribunal, it is called the Statute (which has a different meaning from that which the statute has in Anglo Saxon common law).

Court, and it determined that it would come into force 60 days after 60 countries ratified it. Since 66 member states (out of 139 States Parties) deposited instruments of ratification on 11 April 2002, the ICC Statute came into force on 1 July 2002. By the end of 2010, 111 States Parties ratified this agreement, and to present day 117[8] states did the same; the remaining 22 States Parties have not ratified it yet. Our country ratified the ICC Statute in 2001.

The People's Republic of China, Iraq, Israel, Libya, Qatar, the USA and Yemen voted against the Rome Statute in 1998. Israel, the USA and Yemen signed the Statute at the end of 2000.[9] However, the USA notified the United Nations that they would not consider themselves a member of the Court and that they did not hold they had legal obligations from signing, which is usually interpreted as a withdrawal of the USA signature, although it was not explicitly stated. The official reason the USA gave for this action is "fear of politicised procedures their soldiers could be exposed to." The United Nations did not remove the USA from the list of signatories.

The reasons for the adoption of the ICC Statute, and therefore for the establishment of the Court, may be best presented in the preamble of the act. Clearly, everyone became aware that during the previous century millions of children, women and men were victims of unimaginable atrocities which deeply shocked the conscience regarding humanity, recognizing that such grave crimes threatened the peace, safety and welfare of the world. This is the very reason why the most serious offenses the international community as a whole is concerned about, must not go unpunished, and the effective prosecution of perpetrators must be secured by taking appropriate measures at the national level and by strengthening international cooperation.

Establishing a permanent ICC was a process which, in order to be successful, prerequired the existence of agreement on the final formulation of its provisions. However, such consent was not achieved on all provisions. Some articles were eliminated from the Draft at the Rome meeting due to imposibility to find suitable solutions that would satisfy all countries. This was the case in the area of sanctions, with penalties for juveniles, penalties for legal entities and the provisions pertaining to the use of the national law for sentencing. Regarding the last, it was pointed out that the laws of nation-states vary and that this would lead to inconsistencies, which was indeed soon established by the *ad hoc* courts which accepted only superficial consideration of national standards. [10]

The ICC Statute is a complex legal document which consists of norms which establish a permanent ICC, its competence (actual, local, and temporal), the structure and functions of the Court, as well as the provisions of general and special part of the ICL. The ICC was founded as a permanent judicial body and is responsible for conducting criminal proceedings against persons reasonably suspected of having committed the most serious crimes of international concern, in the manner prescribed by the Statute, and it is complementary to the national criminal laws of the countries. This means that the national criminal justice system has the primacy in relation to the ICC, and only in cases in which the national judiciary has not taken any actions in the prosecution of perpetrators of crimes within the jurisdiction of the ICC, or has prosecuted them, but there are justified reasons, the ICC will assume jurisdiction over these acts. What the reasons and conditions are, it is stipulated in the ICC Statute, in particular in the Article 17.

8 Source on the number of signings and ratifications: http://www.iccnow.org/?mod=romesignatures, accessed in December 2011, citation of the original data: "**Currently the Rome Statute of the ICC has 139 Signatories and 117 Ratifications";**

9 http://www.icc-cpi.int, accessed in December 2011

10 Kolarić, D., *Krivične sankcije u međunarodnom krivičnom pravu*, Udruženje za međunarodno krivično pravo, Međunarodni naučni skup, Tara 2005, p. 317 – 334.

We can conclude that there is an international legal obligation to initiate and conduct criminal proceedings first in the internal law of States signatories of relevant international agreements which view such behavior as criminal offenses. If they fail to do so or conduct the so-called "rigged trials", then the case should be taken by the ICC. [11]

The Court has the status of internationally recognized legal entity. The jurisdiction of the Court extends to the territory of all Member States, and by a special agreement concluded with a State which is not a member or a signatory of its Statute, the jurisdiction of the Court also extends to the territory of that State. As for the temporal jurisdiction, the Court only has jurisdiction over the crimes committed after the ICC Statute came into force.

The crimes within the jurisdiction of the Court are foreseen in the Article 5 of the ICC and relate to the following offenses:

a) the crime of genocide;

b) criminal offenses regulated as "crimes against humanity";

c) **the offenses regulated as "war crimes";**

d) aggression. [12]

When regulating war crimes, the Rome Statute (Article 8) does not divide war crimes into categories nor into different passive entities, i.e. persons we strive to protect in armed conflict. General characteristic of all forms of war crimes is that they are all directed against persons who are either neutral, or are otherwise affiliated with the parties opposite to the perpetrators in the armed conflict. [13]

The Rome Statute, when regulating multiple war crimes, relies more on another criterion, the one of whether it is an international or an internal armed conflict. Some forms of war crimes can only exist in the case of international armed conflict, some only if it is an internal armed conflict, while in some cases that is irrelevant. With regard to the forms of war crimes that exist in the internal (non-international) armed conflicts, the Statute provided that this limitation does not apply to internal disturbances and tensions such as riots, individual and sporadic acts of violence or other acts of personal nature.

Generally related to the jurisdiction of the Court in respect of war crimes, the Statute emphasizes that these war crimes are crimes committed as part of a plan or policy or crimes which occurred in large number of cases. Extensive and detailed provisions of Article 8 of the Statute provide a great number of forms of war crimes. What is primarily considered a war crime is a grave breach of the Geneva Conventions of 12 August 1949, i.e. any of the following, committed against persons or property protected by these Conventions: *wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering, or serious injury to body or health, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly, wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial, unlawful deportation or transfer or unlawful confinement, as well as taking of hostages.*

In addition to these forms arising directly from the Geneva Conventions, war crimes are also considered other serious violations of customs of international law applicable to **international armed conflicts**. Within this category, the Statute provides the following are war crimes: *intentionally directing attacks against the ci-*

11 Kolarić, D., *Amnestija u medjunarodnom krivicnom pravu*, Udruženje za međunarodno krivčno pravo, Međunarodni naučni skup, Tara 2011, p. 16.
12 *Statute of the International Criminal Court,* in: *Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 628-698.
13 Stojanović, Z., *Međunarodno krivično pravo,* Pravna knjiga, Beograd 2006, p. 152.

vilian population as such or against individual civilians not taking direct part in hostilities, directing attacks against civilian objects, that is, objects which are not military objectives, directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict, launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated, attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion. Also, it is provided that it is a form of war crime to make improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury.

The following are also considered to be a war crime: *the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; killing or wounding treacherously individuals belonging to the hostile nation or army; declaring that no quarters will be given; destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war; pillaging a town or place, even when taken by assault.*

In addition to the aforementioned, the following are also considered to be a war crime: *employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; committing outrages upon personal dignity, in particular humiliating and degrading treatment; committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations; intentionally directing attacks against buildings, material, medical units*

and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

In the case of **an armed conflict not of an international character**, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause are as follows: *violence to life and person, in particular murder of all kinds (aggravating and mitigating circumstances), mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; taking of hostages; the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.*

Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts are: *intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; pillaging a town or place, even when taken by assault; committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f)* [14]*, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; killing or wounding treacherously a combatant adversary; declaring that no quarters will be given; subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.*

In addition to restrictions that regulate the difference between the internal (non-international) armed conflict on the one hand, and internal disturbances and tensions, on the other hand, as previously discussed, the Statute provides that the forms

14 "**Forced pregnancy** is a caused pregnancy by the unlawful confinement of a woman, in order to influence the change in the ethnic composition of the population, or a pregnancy as a result of other grave violations of international law. This definition shall not be construed in a manner that is in conflict with the provisions of national law which regulate the issue of pregnancy."

of war crimes during internal armed conflict, are not related to the right of governments to maintain or restore law and order in the state or to defend its unity and territorial integrity by all legitimate means at its disposal.

In some of the said forms of actions the Statute also introduced the elements of intent, especially volition element, which is evident in analysis of Article 8 of the Statute up to this point, and it was concluded on the basis of the original as well as the translated text of the Statute. [15] However, Stojanović, Z., has a critical attitude to the introduction of volition element in these forms of war crimes, and he leaves out this aspect in his discussions. Specifically, he deems it possible that it was done to emphasize the difference from taking involuntary actions which was not covered by the concept of war crimes (such as "willful killing", "intentionally directing attacks ..." etc.). Similarly, given that war crimes can only be performed with the intent it is necessary that in every case there is an awareness of all relevant elements of the crime, and that there is the volition element. In his opinion, the claim that this is justified because it is necessary to modify the general provisions of intent in Article 30 of the Statute, so as to emphasize that there must also be intent in relation to the effect of these forms of war crimes, does not seem convincing because this is understood from the general provisions.[16]

SYSTAMATISATION OF WAR CRIMES

War crimes can be systematised in different ways. In addition, in the law and theory numerous divisions of war crimes are evident. So, for example, the Criminal Code of the Republic of Serbia ("Official. Gazette RS", no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009), provides for three types of war crimes. The most important difference between these three offenses is related to the passive entity, i.e. the person against whom war crimes are committed. In this sense, there is a differentiation between War Crimes against Civilians (Article 372 of CC), War Crimes against the Wounded and Sick (Article 373 of CC) and War Crimes against Prisoners of War (Article 374 of CC). However, in this paper we have opted for a more comprehensive and broader systematisation of war crimes, which will be discussed at this point.

War Crimes against the Wounded and Sick

International Humanitarian Law (IHL) restricts the violence in armed conflicts to the extent necessary to achieve the only legitimate goal in a conflict, weakening of enemy's military potentials. In this manner, these rules are a compromise between the demand of humanity and military needs. "Military needs encompass everything that can serve to achieve a military goal."[17] Accordingly, the humanitarian rules provide protection to persons not participating, or no longer participating in hostilities, or who are no longer a part of the enemy's military potential, and therefore must be protected from any form of hostilities. In the International Law of War these persons are called protected persons, and unlike the persons involved in an armed conflict "hostile actions must not be directed towards them".[18]

15 Mlađović, I., *Ratni zločin u međunarodnom krivičnom pravu*, master rad, Kriminalističko-policijska Akademija, Beograd 2011, p. 38.
16 Stojanović, Z., *Međunarodno krivično pravo*, Pravna knjiga, Beograd 2006, p. 159.
17 Adrassy, J., *Međunarodno pravo,* Školska knjiga, Zagreb 1984, p. 656, in: Vučinić, Z., *Međunarodno ratno i humanitarno pravo,* Vojnoizdavački zavod, Beograd 2001, p. 251.
18 Majić, M., *Ratni zločini u međunarodnom krivičnom pravu*, Tehnička knjiga, Beograd 2005, p. 75-76.

In order to achieve a victory in an armed conflict, it is not necessary to kill all enemy soldiers, it is sufficient to capture them or make them surrender, thus excluding them from further operations. Also, it is not necessary to attack civilians who do not participate in combat, it is sufficient to direct the armed actions towards the members of the armed forces, who are the only ones capable to counter the opponent's intentions with their acts. Finally, it is not necessary to completely devestate the enemy teritory, but it is sufficient to merely limit the attacks to the objects contributing to military resistance.[19]

The Genenva Conventions of 1949 and the Protocols of 1977 provide that in case of an armed conflict or an occupation, there are following categories of protected persons:

- civilians,
- wounded, sick, shipwrecked and
- prisoners of war.

The IHL is based upon the principle of imunity of the civil population. The principle of immunity means that people who are not involved in hostilities must not be attacked under any circumstances. Thy must be spared and protected. However, in contemporary conflicts civilians are often the direct target of attacks. Hostage taking, sexual violence, psychological and physical abuse, persecution, forced evictions, looting and deliberate denial of access to water, food and medical care, often are the treatment that spreads fear and suffering among civilians.

By accepting the principle that during the armed conflict the only permissible objective of the warring parties is weakening of the military potentials of the enemy, we conclude that the basic assumption of respect of the principle is precisely distinguishing civilians from combatants. The IHL defines the concept of a civilian through a negation and it is defined as any person who is not a combatant.[20] In order to understand this concept, it is necessary to determine which entities have the status of combatants.

The basic rules through which the contemporary IHL defines the status of combatants are in the provisions of the Geneva Conventions of 1949 and the additional Protocol I of 1977. Thus, Protocol I defines this term as follows:

"The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities."[21]

The First Geneva Convention significantly extended the protection of the wounded and sick in armed conflict on land, while the Second Geneva Convention improved protection of the wounded, sick and shipwrecked at sea. However, the said Conventions limited protection to veterans, as provided for in Article 12 and 13 of the First and Second Geneva Convention. According to these provisions, if wounded, ill or have suffered shipwreck, in addition to veterans, this status can be used by persons who accompany the armed forces.

19 Sassoli, M., Bouvier, A. A., *How Does Law Protect in War?,* International Committee of Red Cross, Geneva 1999, pp. 67.
20 *Protocol I,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 208), Art. 50.
21 *Protocol I,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 204), Art. 43.

Protocol I provides an additional group of persons to which the protection applies and which defines in detail the concepts of "wounded", "sick" and "shipwrecked":

"*a)* ***Wounded and sick*** *mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;*

b) ***Shipwrecked*** *means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol."*[22]

The main characteristic of the combatant status is that, if he gets "under the rule" of enemies, he gets the status of a prisoner of war. In addition to combatants, the Geneva Convention of 1949 on treatment of prisoners of war (Third Geneva Convention), also recognised this status, if captured, to civilians who accompany the armed forces. Besides them, there are persons who formally are a part of the armed forces of one of the warring parties, but they will not be recognized as prisoners of war in case of capture. These are mercenaries and spies. [23]

Actions through which war crimes against protected persons are executed are as follows:

- ***murder*** (a "classic" war crime that is provided in all the documents of the international criminal law where these crimes are prescribed);
- ***abuse*** (a group of crimes with a common feature that victims are inflicted severe physical or mental pain or suffering, such as torture, intentional causing of great suffering or serious injury to body or health, inhuman treatment, biological experiments, removal of tissue or organs for transplantation, physical mutilation, insulting the personal dignity, as through rape, sexual violence, sexual slavery, forced prostitution, forced pregnancy, forced sterilization);
- ***destruction or appropriation of property not justified by military necessity;***
- ***forced service in the armed forces of the enemy;***
- ***deprivation of the right to fair trial;***
- ***unlawful deportation or transfer of people;***
- ***taking of hostages;***
- ***using protected persons as shields;***
- ***relocation of parts of its own population to occupied territory;***
- ***military engagement or recruitment of children;***
- ***undue delay of repatriation of prisoners of war or civilians, and so on.***

Use of prohibited means and methods of conducting warfare

The right to choose means and methods of warfare is not unlimited. Rules on the method of warfare provide what tactics are prohibited, as well as who and what is not allowed to be attacked, regardless of whether it is attacked using permitted or

22 *Protocol I,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 186), Art. 8. par. 1. s. a) and b).
23 *Protocol I,* Art. 46 and 47.

prohibited means of combat. When carrying out attacks the conflicted parties are obliged to observe the following precautions:

"*Those who plan or decide upon an attack shall:*

- *do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;*[24]
- *take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss or civilian life, injury to civilians and damage to civilian objects;*
- *refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.*

When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects."[25]

In the strategies of warfare, the so-called "ruses of war", or "stratagem" have always occupied a special place; those are enemy disinformation, sudden raids, false operations and the like. Such actions are still undertaken in order to achieve the best possible result of combat.

However, unlike the previously mentioned strategies which are allowed in war, there are modes of warfare which are strictly prohibited by the rules of international law applicable in armed conflict. Thus, if the ruses of war are conducted through abuse of confidence of the opponent, that shall be considered as so-called perfidious acts which are explicitly prohibited in war. [26] For example, if members of the armed forces, which carry the flag of truce or surrender come to a hostile building, and after being received, undertake a surprise attack, it will be considered to be perfidy.

In addition to ***perfidy***, other prohibited methods of warfare considered to be those which lead to the endangerment of protected persons, such as the ***starvation of the civilian population***. War crimes of using illegal methods of combat are attacks on protected persons and protected objects, such as:

- making the civilian population the object of attack;
- making the civilian objects the target of attack;
- launching an indiscriminate attack affecting the civilian population or civilian objects;
- making non-defended localities and demilitarized zones the object of attack;
- launching an attack against works or installations containing dangerous forces;

24 *"Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."* (*Protocol I,* Art. 52 par. 2).
25 *Protocol I,* Art. 57 par. 2, 3, 4 and 5.
26 *Protocol I,* Art. 37.

- making a person the object of attack in the knowledge that he is hors de combat;
- making the clearly-recognized historic monuments, works of art, places of worship, hospitals or places where the wounded and sick gather the object of attack;
- launching an attack against the personnel or objects involved in a humanitarian assistance or peacekeeping missions in accordance with the UN Charter;
- denying quarters.

Use of unlawful means of combat

During the overall development of mankind there has been major progress in the development of weapons and weapons of mass destruction of people and property. This progress has reflected on the development of firearms in general, the use of artillery, warships, and later the use of poisonous gases, aircrafts, missiles, nuclear weapons, and so on. Shelling and bombing settlements and other civilian facilities became a mass phenomenon. Aviation became one of the main branches of the army, ruthlessly used for bombing civilian targets, settlements, towns and villages. The number of victims among soldiers, prisoners of war and civilians in the new century wars has increased compared to the previous epochs. [27]

Starting from the principle of IHL that the right of parties in an armed conflict to choose methods and means of warfare is limited, and the use of weapons that causes superfluous or unnecessary suffering is prohibited, *the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*[28] was signed in 1980. This Convention only regulates the conditions of coming into force and the possibility of revision and cancellation, and the relevant provisions are prescribed in the three additional protocols. [29]

The first one is *Protocol on Non-Detectable Fragments*, which prohibits the use of weapons whose purpose is injuring with missile fragments, which cannot be detected in the human body with X-rays. It is a large number of small parts of the projectile composed of plastic or other materials that do not contain metal.

The second one is *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices*. This protocol defines "*the term mine as any instrument placed below the soil surface or on the ground or near the ground or other surface, which is intended to explode or burst due to the presence, proximity or contact with a person or vehicle*".[30] It limits the use of landmines by prohibiting their use in the city, small town, village or any area where there is a similar concentration of civilians. In all cases, the use of so-called *booby traps* that are in any way connected with the seemingly innocuous things, such as "children's toys or other handheld objects or products intended for food, health, hygiene, clothing, etc." is prohibited.[31]

Special types of mines are the so-called *antipersonnel mines*. Their use is completely prohibited by the *Convention on the Prohibition of the Use, Stockpiling and Transfer of Anti-Personnel Mines and on Their Destruction* of 1997.

27 Lopičić-Jančić, J., *Krivičnopravna zaštita ratnih zarobljenika u Jugoslovenskom krivičnom pravu*, „Vaša knjiga", Beograd 2005, p. 54 – 73.
28 V. in: *Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 385.
29 Two additional protocols have been adopted afterwards.
30 *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 393), Art. 2. par. 1. s. 1.
31 *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 395), Art. 6. par. 2.

Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons is the third protocol accompanying the *the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects* of 1980.

This protocol defines the incendiary weapon as "*a means of firearm or ammunition whiose main purpose is to set fire to objects or persons to cause burns by effect of flames, heat or a combination of flame and heat released by chemical reaction of substances thrown on the target*".[32]

Protocol on blinding laser weapons, which completely prohibits this type of weapons, was adopted later, in 1995. Blinding laser weapons include the weapons that are intended to cause permanent damage to or destruction of sight.

Later, in 2003, the *Protocol on Explosive Remnants of War* was adopted, with the aim to minimize the risk and reduce the consequences caused by explosive remnants of armed conflict. The provisions of general preventive measures are contained in the technical annex to this Protocol.

International conventions and other international legal acts, regulating the area of armed conflict, as well as general attitudes of the relevant international organisations, such as the United Nations, expressed through resolutions and other legal documents, provide the prohibition of the use of weapons of mass destruction. Weapons of mass destruction are defined as weapons designed to destroy a large part or the entire population in the territory. [33]

Types of the weapons of mass destruction are:

- nuclear and termonuclear weapos;
- chemical weapons;
- biological weapons;
- weapons for changing the environment.

We distinguish the following types of actions by which war crimes are committed using illegal means of combat:

- the use of poison or poisonous weapons;
- the use of suffocating, poisonous or other gases, and other similar liquids, materials or devices;
- the use of prohibited weapons;
- the use of prohibited missiles;
- the use of weapons, projectiles and material and methods of warfare in particular laid down in Annex to the Statute of the International Criminal Court, etc. [34]

32 *Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons,* (*Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 410), Art. 1. par. 1. s. 1.
33 Majić, M., *Ratni zločini u međunarodnom krivičnom pravu*, Tehnička knjiga, Beograd 2005, p. 154-161.
34 *Statute of the International Criminal Court ,* in: *Izvori međunarodnog humanitarnog prava, MKCK, CKS i FPN, Beograd 2007*, p. 628.

CONCLUSION

We conclude that humane behavior in war started with the use of standards that the states considered binding. These basic standards have been strengthened and replaced in the last two centuries by obligations contained in agreements accepted by the states. Thus was created the international law of war as we know it today, rule by rule, and serious violations of the rules that were in force then would be called war crimes only many centuries later. In the modern sense, a war crime is prescribed by the Statute of the International Military Tribunal, through the prescription of grave breaches of the Geneva Conventions and the ICC Statute. The Rome Statute is a modern international legal document regulating the war crime in international legal terms, as presented in the paper. Through the research of the actions by which war crimes are committed, it was observed that they are only listed in the Roman Statute. The author decided to classifiy those actions. Up to now, they were grouped by: the passive subject, manner of execution and the means of execution. According to these criteria, the actions by which war crimes are commited are systematised into three groups, and as a result of: **war crimes against protected persons**, **war crimes of the use of prohibited means and methods of conducting warfare** and **war crimes of the use of unlawful means of combat**. The classification is of great importance because it facilitates to a large extent the study and application of the Rome Statute in the section prescribing war crimes. It is interesting that our criminal law does not recognise this division of actions, but it is primarily made in relation to the passive subject. In addition to prescription and classification of war crimes, finally, we conclude **that a war crime is defined as a grave breach of rules or customs of war which have been regulated by an appropriate act of international or national criminal legislation as a war crime and for which the accountability in court is provided.**

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15. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices;
16. Protocol on Blinding Laser Weapons;
17. Protocol on Non-Detectable Fragments;
18. Statute of the International Military Tribunal;
19. Statute of the International Criminal Court.

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UDC 341.232:351.74/.75(4-672EU)

POLICE COOPERATION IN THE EUROPEAN UNION AFTER THE ENTRY INTO FORCE OF THE TREATY OF LISBON

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Abstract: The Treaty of Lisbon entered into force on December 1, 2009. It introduced limited but significant changes in the Area of Freedom, Security and Justice. The most important breakthrough was the abolishment of the pillar structure, and as a result the European Union represents a single entity now. The provisions on Freedom Security and Justice were enshrined in the Title V of the Treaty on the Functioning of the European Union. The modifications by the Lisbon Treaty are aimed at more streamlined and efficient decision – making process, as well as improvement of the rate of implementation of the measures in this field by the Member States. The Treaty provides for greater parliamentary (European and national) and more significantly judicial control of the acts in this field. For most provisions in the Area of Freedom Security and Justice now the Qualified Majority Voting and ordinary legislative procedure apply, ordinary types of legislative instruments are adopted and the general principles of EU Law also apply. Also, greater role is given to national parliaments in the assessment whether the principle of subsidiarity is observed in the field of judicial cooperation in criminal matters and police cooperation, evaluation of the Union's policies and monitoring the activities of Eurojust and Europol. This particular article aims to identify the major changes in the field of police cooperation and security now mainly governed 84 and 87-89 of the Treaty on the Functioning of the European Union and to give early assessment of their functioning in this short period after the entry into force of the Treaty of Lisbon.

Key words: freedom, security, justice, police cooperation, rule of law.

INTRODUCTION

The police cooperation between the EU Member States dates back to the 1970s. However, for the first time this cooperation was given formal legal status by the Maastricht Treaty of 1993 which introduced the so called "Pillar structure" of the European Union. The police cooperation was located in the Third Pillar – Justice and Home Affairs. *Inter alia*, and it included the cooperation among customs, judicial and police authorities and establishment of the European Police Office (Europol) for exchanging information. It included unlawful drug trafficking and other serious forms of international crime, "including aspects of customs cooperation, in connection with a Union wide system of exchanging information in the framework of Europol. But, there was also a guarantee that the provisions of Title VI will not affect the exercise of the responsibilities incumbent upon Member States with regard to maintenance of law and order and the safeguarding of internal security".[1]

The decision-making was fully intergovernmental, and the main decision-making organ was the Council of Ministers. The Commission and the Member States were given shared right of initiative, and the Commission was to be fully associated

1 Art.K.2(2) TEU.

with the JHA. The European Parliament was to be informed and its views ought to be duly taken into account.

The main innovation made by the Treaty of Amsterdam (1999) was the establishment of the Area of Freedom, Security and Justice. The issues regarding asylum, immigration and protection of nationals of non-member states, judicial cooperation in criminal matters, checks at external borders and free movement of persons were transferred from the Third to the First Pillar (Title IV of the EC Treaty). For a transitional period of five years, the Council continued to take unanimous decisions on initiative from Member State or the Commission and after consulting the EP. After the expiry of this period (after 1 May 2004), the Council had to act only on proposal by the European Commission. After consulting the European Parliament, the Council will have to decide by unanimous vote to apply the co-decision procedure and qualified majority voting when adopting measures under Title IV and to modify the clauses relating to the Court of Justice of the European Communities. The Amsterdam Treaty also assigned the Court of Justice more significant role in the AFSJ. Namely, in the new Title IV, which essentially concerns free movement of persons, asylum, immigration and judicial cooperation in civil matters, the Court of Justice now had jurisdiction for instance if a national court of final appeal requires a decision by the Court of Justice in order to be able to give its judgment, it may ask the Court to give preliminary ruling on a question concerning the interpretation of the title or on the validity and interpretation of acts by the Community institutions that are based on it. The police cooperation remained in the Title VI of TEU and its targets were combating racism and xenophobia; terrorism; trafficking in persons and offences against children; drug trafficking; arms trafficking; corruption and fraud. These objectives ought to be achieved *inter alia* through closer cooperation between police forces, customs authorities and other competent authorities in the Member States, directly and via Europol. The key decision-making organ remained the Council of Ministers, the power of initiative of the Commission was extended to all fields and the Court of Justice obtained the right to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions and on the validity and interpretation of the measures implementing them. In addition, with the establishment of the AFSJ EU was more oriented around certain principles –liberty, democracy, respect for human rights and the rule of law.[2] These principles were materialized through entitlement of the EC to combat discrimination on the grounds of sex, ethnic origin, religion, disability, age or sexual orientation. Furthermore, a special procedure was introduced under which in a given situation of persistent breach of the fundamental human rights, the rights of that Member State could be suspended.

After the entry into force of the Amsterdam Treaty, the objectives of the JHA were set out in more detail in the Tampere European Council conclusions such as creation of crime prevention network, establishment of joint investigative teams, creation of the European Police Chiefs operational Task Force, strengthening the Europol, creation of a European Police College, the adoption of the 2000-04 Drugs Strategy, extending the cooperation of the financial intelligence units with regard to money laundering, etc. These goals were materialized later mostly by secondary legislation of the Council.

Policing and security issues came to the forefront of the EU activities after the terrorist attacks in New York in 2001, Madrid in 2004 and London in 2005, mainly through the emergency summits of the European Council.

2 Art.6 TEU.

The Constitutional Treaty defined that the AFSJ falls under the shared competence between the EU and its Member States, meaning here the space without internal border controls for persons and frame of a common policy on asylum, immigration and external border control based on solidarity between Member States, which is fair towards third-country nationals. The most striking innovation was the abolition of the three pillar structure, which resulted in the abolition of the actual differentiation between the Community method and the intergovernmental method of decision-making. As a consequence, the procedures, principles and sources of law became the same for the justice and home affairs as well as the other fields of action of the European Union. According to the Constitutional Treaty, the European Union offers its citizens an Area of Freedom, Security and Justice without internal frontiers, and an internal market where the competition is free and undistorted.[3] This furthers another fundamental objective of the Union - the free movement of persons within the AFSJ, regardless of the fact whether they are pursuing any economic goals.

The main objective of the Constitutional Treaty was the elimination of the adverse effects of the AFSJ and means to safeguard its efficiency through the coherence, transparency and judicial oversight. The aim was also to overcome the ambiguity over the selection of the legal basis for the legislative action and elimination of the possibility of adoption of parallel legislative acts in different pillars for the same or similar subject – matter.

Additionally, a separate objective was the facilitation of the negotiation and conclusion of agreements with third countries on cross-pillars matters, future introduction of integrated management system for external borders, a common asylum policy and the uniform status of asylum.[4] The CT also foresaw a possibility of adoption of framework laws on minimum rules regarding the mutual admissibility of evidence, the rights of individuals in criminal procedure, the rights of victims of crime and other specific aspects of criminal procedure, authorization for EU action in field of crime prevention and the possibility of the establishment of a European Public Prosecutor's Office. The Charter of Fundamental Rights formally incorporated into the Treaty in order to strengthen the formal protection of the rights of individuals.

Other innovations by the Constitutional Treaty (and retained by the Lisbon Treaty) were: 1) the possibility that proposals for laws or framework laws can be submitted by a group of Member States or the European Parliament; 2) in the field of co-operation in criminal matters and for the administrative cooperation in related areas the possibility one quarter of Member States to make proposals. The European Council was tasked with strategic guidelines for legislative and operational planning within the AFSJ.

The Treaty contained the so-called "solidarity clause", underlying the need for common actions in the specific questions, like common instruments to protect democratic institutions and civilian population from any terrorist attack and in the event of a natural or manmade disaster.[5] Regular assessments of the threats facing the Union are to be undertaken by the European Council. The ordinary procedure for adoption of legislative acts under the CT is the co-decision procedure.[6] The streamlined decision-making procedures under the Constitutional Treaty were intended to improve standards of democracy and transparency. The

3 Art. I-3 of the Constitutional Treaty.
4 Art. III-266-268 Constitutional Treaty.
5 Art.I-43 CT.
6 See Art.I-34 CT and Art.396 CT.

role of the European Parliament as a legislator was strengthened and together with the national parliaments should monitor and evaluate Europol and Eurojust activities. The national parliaments should also ensure that AFSJ are in line with the principles of subsidiarity and proportionality.

QMV was to be applied to a majority of areas, including the areas of asylum, immigration and judicial cooperation in criminal matters. Still, a number of exceptions were retained when QMV in the Council is replaced by a unanimity requirement and co-decision by mere consent of the European Parliament. Exceptions include measures of family law with cross-border dimension, the extension of Union competences in substantive criminal law and criminal procedure, or for operational cooperation between national law enforcement authorities.

Significant step forward represents the extension of the jurisdiction of the ECJ actions to AFSJ, so the restrictions previously contained in Art.35 TEU and 68 (2) TEC in the fields of visas, asylum and immigration no longer apply.

Regarding the preliminary reference procedure, the Constitutional Treaty abolished the specific division of preliminary reference procedures from one hand prescribed by Art. 68 TEC for matters concerning visa, asylum, immigration and other policies related to the free movement of persons, and by the preliminary reference procedure prescribed by Art. 35 TEU.

In the area of police and judicial co-operation in criminal matters, the ECJ would have the jurisdiction to give preliminary rulings on the interpretation of the CT or the validity and interpretation of acts of the institutions of the Union, at the request of Member State's courts, on the interpretation of the Union law or the validity of acts adopted by the institutions and would also rule on the other cases provided for in the CT. However, there is a limitation that the ECJ would have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement agencies.[7]

In 2004, the Hague Programme was adopted enlisting new set of objectives in the JHA with particular emphasis on the implementation of the antiterrorist plan, measures on data retention, passenger name records and mutual access to national police databases. Significant number of measures was drawn from the already existing Prum Convention concluded only between some Member States.[8] Many changes were also made to the Schengen rules on policing: the extension of the rules on cross-border surveillance, amendment on the rules on the exchange of information among police services of the Member States, changes of the Schengen Information System, the adoption of the legislation to establish a second generation of the SIS amendments of the EU and Schengen rules regarding the liaison officers.

Some rules were also adopted on telecom data retention, exchange of information on passengers, access of law enforcement agencies etc.

The Lisbon Treaty made significant impact on the AFSJ. This Treaty continued the process that began with the Treaty of Amsterdam. It retains most of the solutions contained in the Constitutional Treaty. The Pillar structure was dismantled, and the provisions concerning the AFSJ are no longer divided into separate pillars as was the situation under the Amsterdam Treaty. They are grouped in the Title V of Part Three of the TFEU, listed after the titles regarding internal market, agriculture and fisheries and free movement of goods, persons, capital and services. The Lisbon Treaty mainly follows the line advocated by the failed Constitutional Treaty. *In ultima linea*, it was the opinion of the Working Group X on Freedom Security

7 Art.III-377 CT.
8 Council Doc. 10900/05, 7 July 2005.

and Justice from the Convention on the Future of Europe that recommended the de-pillarisation, the abolition of the distinction between the legal acts between the separate Titles of the Treaty and the incorporation of the AFSJ in the main body of the Treaty.[9]

INNOVATIONS TO THE POLICE COOPERATION UNDER THE TREATY OF LISBON

After the entry into force of the Lisbon Treaty on 1 December 2009, the police cooperation is primarily governed by the provisions of Article 84 as well as 87 -89 of the Treaty on the Functioning of the European Union (TFEU). The Lisbon Treaty kept the substance of the Constitutional Treaty regarding the Area of Freedom, Security and Justice, but included some changes, too. Generally, the decision-making procedures under the new Treaty are streamlined, more transparent, and prone to democratic control and accountability. All provisions concerning police cooperation are subject to the general provisions of the Title V TFEU, including: evaluation of the national implementing measures, establishment of the standing committee on security, national competence for law and order measures, cooperation in the field of security of the Member States, the administrative cooperation between Member States and the adoption of anti-terrorist sanction measures.

Procedural innovations

The system of legal instruments now is synchronized and the so far existing instruments of the former Third Pillar have disappeared (the framework decisions, common positions, conventions), and consequently the negative effects of their *sui generis* nature and legal effects. The abolition of the pillar structure also means the application of the general and horizontal principles of EU Law and full control powers of the EU institutions, notably the European Commission and the Court of Justice over the proper implementation of the adopted legislative acts.

In this way, the new Reform Treaty abandoned the state-like legislative instruments and procedures enshrined in the Constitutional Treaty, which raised concerns among several Member States and was one of the major obstacles in the ratification process. These changes were triggered by the intention of the Member States to revive the European Constitutional process again, without any indicators in the text of the new Treaty of a state-like quality in the European Union.[10]

The maximum extension of the QMV and the application of the ordinary legislative procedure were made acceptable to the more sensitive Member States by introduction of the following Lisbon Treaty innovations:

1. better delimitation between the legal bases in the Title V TFEU *vis-à-vis* former Title VI TEU
2. a new procedural "brake – accelerator " device has been provided for
3. more democratic control is ensured through new powers granted to the European Parliament and to the national parliaments

9 CONV 426/02, Final Report of Working Group X, "Freedom, Security and Justice", Brussels, 2 December, 2002.

10 Kau, M., "Justice and Home Affairs in the European Constitutional Process – Keeping the Faith and Substance of the Constitution, in: Griller, S. and Ziller, J.(eds), *The Lisbon Treaty : EU Constitutionalism without a Constitutional Treaty*, Wien, Spriner, 2008, p.228.

4. extension of the mutual evaluation system and

5. the power of legislative initiative for the Member States was kept in some areas.[11]

The rule for unanimity in the field of police cooperation and cross-border cooperation can be overridden by the procedure for simplified treaty amendment in order to introduce QMV in the Council of Ministers and co-decision by the European Parliament. The possibility for a group of Member States to establish an enhanced cooperation in this area still is open and as well as a possibility to change the relevant decision-making procedures between them. The police cooperation matters are subject to the revised opt-out clauses contained in the Lisbon Treaty.

Other changes introduced by the Lisbon Treaty are concerning the insertion of the new Art.75 which authorizes EU to combat terrorism via taking measures at suppressing its financing. The Constitutional Treaty Art.III -160 contained similar provision, but it was located in the section regulating the freedom of movement of capital and payments. This new Article is complementary with Art.83 (1) (1) TFEU referring to criminal offences with cross- border dimension, including terrorism. The measures to be undertaken under new art.75 include freezing of funds, financial assets or economic gains aimed at financing terrorist activities. Besides its practical implication in effectively combating terrorism, this provision has important political implications in proclaiming the EU's commitment to combat international terrorism.[12]

Under the TFEU, most of the measures concerning police cooperation (as art. 87 (3) and 89 are adopted under the special legislative procedure. On the other hand, the measures concerning criminal law are subject to the ordinary legislative procedure. But there are exceptions: Art.86 TFEU is subject to the special legislative procedure and Art. 82 (2) and (3) concerning criminal law are subject to the so called "emergency brake procedure." But a combination of the criminal law provisions and provisions on police cooperation of the FSJ Title of TFEU is needed when adopting criminal law measures or criminal procedures when these entail investigations by the police authorities in the Member States. Furthermore, any measures concerning jurisdiction over the police investigations (as separate from the prosecutions conducted by the public prosecutors in the Member States) should always be based on the provisions concerning police cooperation. Additionally, when in the process of conducting police investigations the Eurojust or the European Public Prosecutor participate, then as a basis for such involvement the provisions of Arts.85 and 86 TFEU are needed.

Besides the distinction with the criminal law provisions of the Title V, the distinction should be made also between the provisions concerning police cooperation as a legal basis between them. Namely, the ordinary legislative procedure under the Treaty applies only to non-operational police cooperation,[13] while the special legislative procedure is required for measures concerning operational police cooperation.[14] Within the Article 87 (3) TFEU there is a possibility for the so-called fast track enhanced cooperation where the adoption of a concrete measure is prevented by veto, subject that this measure is not part of the Schengen *acquis*. On the contrary, this procedure is not applicable in cases where such measure will form part of the Schengen *acquis*. This innovation was introduced by the Lisbon Treaty (the Constitutional Treaty did not contain such a

11 Piris, J., Merkel, A., *The Lisbon Treaty: Legal and Political Analysis*, Cambridge, Cambridge University Press, 2010, p.181.
12 Kau, op.cit., p.230.
13 Art.87 (2) TFEU.
14 Art.87 (3) TFEU.

provision) on the insistence of the non-opting out states, in order to more easily accept the extension of the opting-out for the UK and Ireland.

This fast route to enhanced cooperation does not apply to conditions and limitations under which the police authorities of one Member State may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.[15]

Although as a general rule ordinary legislative procedure applies to all AFSJ measures, the Lisbon Treaty provides for even more "emergency brakes" and enhanced cooperation" than the failed Constitutional Treaty and further opens the door for new derogations from the general rules. This "exceptionalism" could have difficult implications for creating a common Area of freedom, security and justice.[16]

Namely, under the TFEU if one Member State considers that a certain draft legislative act affects fundamental aspects of its criminal justice system, then it can apply the "emergency brake": it can ask the draft-act to be transmitted to the European Council so the ordinary legislative procedure can be suspended. However, in comparison with the failed Constitutional Treaty, there is not a possibility for the European Council to ask the European Commission or the group of states initiators of the opposed proposal to submit a new draft proposal.

After the discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

But, if the European Council cannot reach an agreement, a simple notification to the European Parliament, the Council and the European Commission will allow, as a group of nine member states, to establish enhanced cooperation on the basis of the initial draft proposal. In such a case, the authorization to proceed with enhanced cooperation referred to in Articles 20 of the Treaty of European Union and 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Furthermore, when the Council, acting in accordance with a special legislative procedure, establishes measures concerning operational cooperation between the authorities referred to in this Article, and in case of the absence of unanimity in the Council, a group of at least nine Member States may request that the draft measures be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorization to proceed with enhanced cooperation referred to in 20(2) TEU and 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.[17]

However, this procedure shall not apply to acts which constitute a development of the Schengen *acquis*.

These new provisions exclude the possibility of finding compromised solutions, stimulate the enhanced cooperation and limit the influence of the Commission in

15 Art.89 TFEU.
16 Carrera, S. and Geyer, F., "The Reform Treaty and the Justice and Home Affairs:Implications for the Common Area of Freedom, Security and Justice", in: Guild, E.&Geyer, F.(ed.), *Security v Justice?: Police and Judicial Cooperation in the European Union,* Aldershot: Ashgate, 2008, pp.289-290.
17 Art.87 (3) TFEU.

the whole legislative process. In this way, the bargaining power and obstructive behavior of certain Member States has been reduced, if they want to exercise the "fundamental aspects of the criminal justice system" too often. In this way, and based on the behavior of certain Member States during the accession of new states in the Union, as well as drafting of the Constitutional Treaty and Lisbon Treaty, an instrument was created to eliminate the possibility that the Union with the present number of Member States become a hostage of obstructive tactics of one or several Member States.[18]

Institutional innovations

The main institutional innovations (mainly concerning the expansion of competence) are directed at the European Parliament, the Court of Justice, the Council and European Council as well.

The novel Art.68 TFEU codifies the existing role of the European Council in defining the strategic guidelines for legislative and operational planning within the Area of Freedom, Security and Justice. This function the European Council has been exercising since the Tampere Programme,[19] then The Hague Programme[20] and now the Stockholm Programme.[21] The role of the Council of EU will remain central in the AFSJ Area especially in the launching legislative initiatives in this area and attaining the general objectives of the AFSJ as well providing the European Council with strategic initiatives and documents. However, since the application of the ordinary legislative procedure for the adoption of the most of the AFSJ measures and the veto power of the European Parliament, the position of the Council is eroded now when compared with the monopoly in the adoption of the JHA legislative acts it had enjoyed under the TEU.

In the Area of Freedom Security and Justice, the Court of Justice exercises full jurisdiction, including the measures concerning police cooperation. This means that these measures can be challenged via actions for annulment by the individuals from the Member States, as well as the European Parliament. This was marked improvement ***vis-à-vis*** the situation *ex ante*. Namely, previously, Art. 35(6) TEU provided that the ECJ shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission within two months of the publication of the measure on grounds same as those for the Community acts under Art.230 TEC. The grounds for reviewing would also encompass the human rights protected as general principles and, by virtue of pre-Lisbon Article 46(d) TEU, as protected by pre-Lisbon Article 6(2) TEU. The restrictions on *locus standi* in pre-Lisbon Article 35(6) TEU are particularly difficult since under pre-Lisbon Article 34(2) TEU framework decisions and decisions must be adopted unanimously by the Council acting on the initiative of any Member State or the Commission. So, the potential applicants for this action for annulment were either one or more Member States or the Commission. The individual applicants were not allowed to bring this action in the former Third Pillar, since Art.35 (6|) represents the primary Union law that cannot be reviewed by the ECJ, on the grounds of (for instance) access to justice. The only recourse to judicial review available to individuals was to seek a reference from the competent national court or tribunal under Art.35 (1) TEU on the validity or of the framework decision or decision.

18 Kau, op.cit., p.231.
19 Tampere European Council, 15-16 October, 1999.
20 Brussels European Council, 4-5 November 2004.
21 Council 16484/1/09, Brussels, 25 November 2009.

Additionally, now after Lisbon actions for failure to act, damages and pleas of illegality can also be submitted to the Court of Justice. The European Commission and the Member States can take infringement actions under art.258 and 259 TFEU, while the Member States could be financially punished in accordance with Art. 260 (2) and (3) TFEU. The Court of Justice also has jurisdiction to give preliminary rulings on questions posed by any Member State court or tribunal regarding the validity on the newly adopted acts (after 1 December 2009) in the AFSJ, but not for the acts adopted under the former Title VI TEU.[22] These acts should be replaced in the transitional period of 5 years. After 1 December 2014 the Court of Justice will have full jurisdiction to give preliminary rulings on these acts as well. Art.267 TFEU fully applies to the AFSJ measures, and the only exception is that urgent preliminary rulings procedure is available here. Although there are no procedural limitations, the Lisbon Treaty still poses *ratione materia* limitations to this procedure, which arise from the restrictions related to the maintenance of law and order and the safeguarding of the internal security.[23]

This marks a significant step forward regarding the situation ex ante: namely, under pre-Lisbon Article 35(1) TEU, the ECJ: 'shall have jurisdiction, subject to the conditions laid down in this Article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions on the interpretation of conventions established under this Title [Title VI] and on the validity and interpretation of the measures implementing them.'

The scope of pre-Lisbon Article 35(1) TEU was significantly more restrictive than the equivalent pre-Lisbon Article 234 EC Treaty procedure. Common positions adopted under pre-Lisbon Article 34(2) (b) TEU were not subject to the preliminary ruling procedure and the ECJ may only rule on the interpretation and not the validity of conventions adopted under the pre-Lisbon Article 34(2) (d) TEU. The pre-Lisbon Article 35(2) TEU limited the ECJ's preliminary ruling jurisdiction only to Member States which by declaration accept it. Pre-Lisbon Article 35(3) TEU requires a Member State accepting the ECJ's jurisdiction under Article 35(1) to specify either that references may be made by a court of tribunal 'against whose decisions there is no judicial remedy under the national law' (Article 35(3)(a)) or by any court or tribunal of the Member State (Article 35(3)(b)). This structure of the provided different level of judicial protection since the preliminary reference procedure is the only means for an individual to challenge the validity of a pre-Lisbon JHA measure. This is the result of the fact that direct review proceedings under the pre-Lisbon Article 35(6) TEU were limited only to Member State or the Commission.

Additionally, the pre-Lisbon Article 34(2)(b) TEU provided that framework decisions shall not entail a direct effect; this meant that an individual applicant practically could not challenge a framework decision in the context of national proceedings. Still, the ECJ has broadened the scope of this procedure. In *Maria Pupino*[24] the ECJ said that preliminary reference under the pre-Lisbon Article 35(1) TEU is subject to the same procedural framework valid for references under Art. 234 EC Treaty: 'It follows that the system under Article 234 EC is capable of being applied to the Court's jurisdiction to give preliminary rulings by virtue of Articles 35 EU, subject to the conditions laid down by that provision." In the same case, the ECJ extensively interpreted the pre-Lisbon Article 34(2) (b) TEU by applying the doctrine of indirect effect (previously adopted in the

22 Broberg, M. and Fenger, N., *Preliminary References to the European Court of Justice*, Oxford, Oxford University Press, 2010, p. 116.
23 Hinarejos, A., *Judicial Control in the European Union: Reforming Jurisdiction in the Intergovernmental Pillars*, Oxford, Oxford University Press, 2010, 106.
24 Case C-105/03.

context of implementation of EC directives) to framework decisions adopted under Title VI on the basis that the wording of the pre-Lisbon Article 34(2)(b) TEU mirrored that of the Article 249 EC Treaty.

However, under the Treaty of Lisbon the Court of Justice will not have jurisdiction to review the validity or proportionality of the operations carried out by the police and other law enforcement services of a Member State or the exercise of responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.[25] This has the potential in some extent to undermine the positive reforms advocated by the Treaty of Lisbon.[26]

According to some authors, the preservation of this restriction in the Art.276 TFEU from the former Art.35 (5) TEU creates anomaly in the new Treaty's structure. For this purpose, concerning the national grievances about possible Court of Justice incursion in their sovereign rights, Art.72 should be enough to deteriorate the Court from reviewing any national measure or action that truly falls out of the domain of the Union Law (including measures concerning law and order and police actions).[27]

Art.72 TFEU would be enough to entice the Court to review only those measures and actions by the police and other law enforcement agencies which are in function of the realization of the Union measures in the AFSJ, i.e. when acting as agents of the Union. In addition, a light proportionality tests could be exercised by the Court when national measures aimed at the maintaining of law and order or internal security are infracting the rules of the Union law. In such a way, the Court would be in position to regain trust among the Member States by allowing a wide margin of discretion in this field.

But the explicit wording of the Art.276 precludes the judicial control by the Court of Justice even when such national measures or actions are disproportionate from the point of view of the Union law. In this way, the Member States can breach the EU law in this area without fearing that they would be subjected to any control by the Court. This restriction is so wide that even precludes the Court to give preliminary rulings on the requirements of a particular provision of the Union law.[28]

Another restriction on the jurisdiction of the Court of Justice comes from the Protocol 36 on the transitional provisions. This Protocol was the result of tough negotiations during the Lisbon IGC, regarding the extension of the opt-out Protocol for the United Kingdom and Ireland. According to this Protocol, with regard to the measures adopted under the former Title VI of TEC, the Court of Justice will not have jurisdiction for a transitional period of 5 years from the entry into force of the Lisbon Treaty (i.e. until 1 December 2014). But this restriction will not apply in an event that same act adopted under the former Title VI is subsequently amended or replaced by another act before the expiration of the 5 year transitional period.

The Lisbon Treaty also prescribes the creation of a new standing committee in the Council hierarchy, apart from the Art.36 Committee (so called CATS). This new Committee (codenamed COSI) is tasked to promote and strengthen the operational cooperation on internal security in the Union.[29] It consists of high ranking officials from the ministries of interior of the Member States and representatives

25 Art.276 TFEU.
26 Carruthers, S., "The Treaty of Lisbon and the Reformed Jurisdictional Powers of the European Court of Justice in the Field of Justice and Home Affairs," http://arrow.dit.ie/cgi/viewcontent.cgi?article=1006&context, p.35.
27 Hinarejos, A., p.270.
28 Hinarejos, op.cit., p. 270.
29 Art.71 TFEU.

of the European Commission. It is a Member States' discretion whether they will send different representatives for each subject-matter or one representative for all subject-matters.[30] The representatives of Europol, Eurojust, the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) and other relevant bodies and agencies may be invited to attend the meetings of COSI as observers. In this regard COSI is tasked to help consistency between the activities of these bodies. The actual tasks of this committee include evaluation of the general direction and efficiency of operational cooperation and to assist the Council in reacting to terrorist attacks or natural or man-made disasters. Without prejudice to the mandates of the bodies referred to in the Article 5, the Standing Committee shall facilitate and ensure effective operational cooperation and coordination under Title V of Part Three of the Treaty, including in areas covered by the police and customs cooperation and by the authorities responsible for the control and protection of external borders. It shall also cover, where appropriate, judicial cooperation in criminal matters relevant to operational cooperation in the field of internal security.

The term "internal security" is neither defined in the FSJ Title nor in the Treaty itself. Therefore, the meaning of the term should be derived from the general context of the FSJ Title, and can be defined as it covers all forms of cooperation between the responsible authorities of the Member States and the European Union regulated by national police or criminal laws, including customs cooperation. In this form of cooperation, the national intelligence services are excluded, except in the cases where they are tasked with combating serious organized crime. But, the general rule must be that the cooperation under the framework of COSI includes all law enforcement authorities except national intelligence agencies.[31]

COSI is not tasked with conducting operations (which shall remain reserved competence for the Member States) or preparation of legislative acts. Under the Stockholm Programme COSI is under an obligation to develop, monitor and implement the Internal Security Strategy. For its activities COSI must submit regular reports to the Council. The latter must keep the European Parliament and national parliaments informed of the work of the Standing Committee.[32] However, this does not guarantee effective parliamentary control over this potentially seminal committee.

With the creation of the COSI, the COREPER was tasked before 1 January 2012 to re – evaluate the work of other two important committees - CATS and SCIFA. However, during this period they should focus their discussions on strategic issues where COSI could not be able to contribute and meet regularly.[33] Besides COSI, new structures emerged in the Council hierarchy – 1) the Working Party on Terrorism - a single, overarching working group to deal with all cross cutting aspects of terrorism and to consolidate the different terrorism related action plans, and 2) the JAI-RELEX Working Party which is the permanent version of the previous JAIRELEX Ad Hoc Support Group.[34]

Regarding Europol, the decision-making procedures shifted fully to the ordinary legislative procedure, which means only QMV voting in the Council. In these procedures the only legislative acts that can be adopted are the Regulations. The new provisions in the TFEU explicitly state that Europol cannot exercise any coercive actions, and must act in liaison and agreement with national police authorities

30 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf.
31 Monar, J., *The Institutional Dimension of the European Union's Area of Freedom, Security and Justice*, Brussels, Peter Lang, p.191.
32 Council Decision on setting up the Standing Committee on operational cooperation on internal security, 2010/131/EU, OJ L52, 3.3.2010.
33 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf.
34 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf.

when taking an operative action. This operative action concretely has to be taken jointly with the Member State authorities or in the form of joint investigative teams. The scrutiny regarding the work of Europol by the European Parliament and the national parliaments is also a novelty introduced by the Treaty of Lisbon.

This means that under TFEU no independent role for Europol is foreseen, but one can say that it becomes a partner to national police authorities. However, it is theoretically possible to implement measures to be adopted insofar they do not transgress the limits set by the Art. 88 (3) TFEU, i.e. they do not entail any operational activities or coercive measures.

There is also a distinction between the provisions regarding the operation of Europol as an EU agency *vis-à-vis* provisions regarding the police cooperation between the competent agencies at national level.

Art. 87 (2) (b) now provides that the following measures can be adopted for the purposes of the police cooperation: support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection. That is why the Art. 30 (1) (c) has been only slightly altered as far as the training, staff exchange, research, and eliminating the liaison officers are concerned. The new Art.87 (2) (c) provides a solid ground for greater harmonization of the common investigative techniques in relation to the detection of serious forms of organized crime.

Now, the national authorities are provided the assistance by the Europol, but without the fulfillment of the condition that there must be an organized crime link in the concrete situation. In addition, the participation in the joint investigative teams is facilitated and the post of data protection officer was created.[35]

The regime concerning the cross – border operations is postulated on the previous art 32 TEU without any substantive amendments. Here the special legislative procedures apply.

The Position of the Member States

In comparison with the failed Constitutional Treaty, the Lisbon Treaty contains a new provision allowing Member States to organize such forms of cooperation and coordination as they seem appropriate between the competent departments of their administrations responsible for safeguarding national security.[36] This provision was not envisaged in the Constitutional Treaty and the insertion of this provision was obviously superfluous, since the purpose was to clarify something that was already clear: in cases where national interests are at stake, the Member State(s) would take every necessary and effective steps, regardless of the recommendations made by the other Member State or the EU institutions. On the contrary, by inserting this provision it was made clear that the Member State(s) are not absolutely sovereign, but their actions depend on the explicit authorization in the founding Treaties of EU.[37]

The Lisbon Treaty also stressed (on the insistence of the Government of the United Kingdom) that the national security remains sole responsibility of each Member State.[38] The AFSJ title of TFEU will not in any way affect the exercise of the

35 Vos,J., "Police cooperation on an EU-wide level 1998–2010: Developments and challenges," in: GUILD, E., CARRERA, S. AND EGGENSCHWILER, A., THE AREA OF FREEDOM, SECURITY AND JUSTICE TEN YEARS ON SUCCESSES AND FUTURE CHALLENGES UNDER THE STOCKHOLM PROGRAMME, Brussels, CEPS, 2010, p 86.
36 Art.73 TFEU.
37 Kau, op.cit., p.229.
38 Art. 4 (2) TEU.

responsibilities incumbent upon the Member States with regard to the maintenance of law and order and safeguarding of internal security.[39] The insertion and reaffirmation of this clause by the Lisbon Treaty has more political significance than legal implications, since the FSJ is an area of shared competence between the EU and its Member States. Consequently, the Member States actions and measures will be circumscribed more or less by the relevant EU measure.[40]

The Member States are also entitled to conclude international agreements in the area of police cooperation with third countries or international organizations, provided that such agreements are in line with the Union Law.[41]

The provision stated in the Art. 87 (2) TFEU is nearly identical to prior art.30 (1) (b) – (d) TEU, but the references to Europol and data protection rules are abolished. The change concerning Europol simply takes account of art.88 (2) (a) TFEU. The final change in this article is due to the general provision of Art.16 TFEU regarding data protection. But this information under a special Declaration on the Final Act indicates that specific provisions will be adopted in order to overcome national security concerns of some member states.

Art.16 TFEU concerning data protection applies not only to the former first pillar, but also to the former third pillar. Consequently, in this area the ordinary legislative procedure applies when adopting legislation, and when concluding treaties, the European Parliament will have the right to give consent to such treaties. The crossing of paths when exchanging information in the field of data protection with exchange of information between the law enforcement agencies is not a problem since the decision – making procedures are the same and the potential problems regarding territorial scope is overcome by the special provisions contained in the opt-out protocols for the United Kingdom, Ireland and Denmark.

Art.72 TFEU confirms that the implementation of EU police measures is left to the national police authorities, particularly the implementation of coercive measures. Art.73 TFEU explicitly limits the competence as regards intelligence cooperation. The administrative cooperation is governed by Art.74 and is of limited scope *vis a vis* provisions regarding policing powers located at arts.84- and 87-89.

The administrative cooperation in the area of FSJ between the relevant departments of the Member States will fall within EU framework. Here the European Parliament will be only consulted and the right of initiative is shared between the European Commission and the Member States. In the judicial and police cooperation in criminal matters there will be a shared right of initiative between the European Commission and a quarter of Member States. However, compared with the TEU, the conditions for submitting legislative proposal are stricter since under TEU every Member State had the right of initiative.[42] Under TFEU a quarter of the Member States acting jointly is needed.[43]

Under the new Title II TEU (Lisbon version) titled "Provisions on Democratic Principles" a strengthened role for national parliaments is envisaged. Namely, national parliaments will take part in the evaluation mechanisms for the implementation of the AFSJ policies, including the police cooperation. Compared with the failed 2004 Constitutional Treaty, the new Treaty contains more decisive wording defining this role for the national parliaments. Now Art.8 TEU clearly states that "National parliaments shall contribute actively to the good functioning of the Union (…), by

39 Art.72 TFEU.
40 Craig, P., *The Lisbon Treaty: Law, Politics and Treaty Reform*, Oxford, Oxford University Press, 2010, p.344.
41 Declaration No.36.
42 Art.34 (2) TEU.
43 Art. 76 b TFEU.

taking part, within the framework of the area of freedom, security and justice in the evaluation mechanisms (…), and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities". Previously, the Constitutional Treaty provided that "National parliaments may within the framework of freedom, security and justice participate in the evaluation mechanisms" and "shall be involved in the political monitoring of Europol and the evaluation of Eurojust activities".

The Council is entitled to lay down arrangements whereby the Member States in collaboration with the European Commission conduct objective and impartial evaluations of the implementation of the Union's policies under the Title V of the TFEU (the AFSJ Title).[44]

The Lisbon Treaty also foresees strengthened the role for the national parliaments in preserving the principles of subsidiarity and proportionality. In more details, Art.69 TFEU prescribes that:

National Parliaments shall ensure that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

Under articles 6 and 7 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality, the initiator of a draft legislative act in the field of judicial and police cooperation in criminal matters is under a legal obligation to review the proposed text or certain parts of it if the latter is opposed or faces criticism from quarter of votes allocated to the national parliaments (two votes are allocated to each national parliament). The threshold for other legislative fields is lower requiring opposition by a third of the allocated votes to the national parliaments. This means that even after the abolition of the pillar stricter, the AFSJ still is under special regime *vis-à-vis* other areas.

Additionally, in accordance with the Art.7 (3), "under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes cast allocated to the national parliaments (…) the proposal must be reviewed. But the European Commission can still decide to maintain the proposal. In this case special procedure is launched that can result eventually in dropping out the Commission's proposal.

If the Commission chooses to maintain the proposal, it must prepare a reasoned opinion to justify on what grounds the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

(a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, paying special attention to the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;

(b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.[45]

Evidently, under the Treaty of Lisbon the influence of the national parliaments in the AFSJ has markedly improved in comparison with the situation *ex ante*.

44 Art.70 TFEU.
45 Art.7 (4) Protocol on the Application of the Principles of Subsidiarity and Proportionality.

CONCLUSION

This paper points out that the new Reform Treaty has responded successfully to all deficiencies of the previous legal order established by the Amsterdam Treaty, especially regarding the decision-making procedures, and institutional balance in participating in the AFSJ procedures. The Lisbon Treaty has kept the substance of the provisions on the police cooperation from the failed Constitutional Treaty and provides more or less an adequate framework for this cooperation at the current level of development of the cooperation in the Area of the Freedom Security and Justice. The Lisbon Treaty contains significant improvements and changes compared with the previous legal situation. With the extension of the jurisdiction of the Court of Justice over whole Area of Freedom, Security and Justice, the principle of rule of law extends to this important and in many respects sensitive area of national sovereignty. With the abolition of the Pillar structure the European Union has been given more resources and leeway to promote police cooperation which should help the functioning of the Area of Freedom, Security and Justice and respect for fundamental human rights. Furthermore, the mentioned along with the uniform set of legal instruments as well as the participation of the European Parliament in the legislative process, will contribute to increased legal certainty for the subjects of the AFSJ as well as increased legitimacy, transparency and efficiency of the common Area of Freedom Security and Justice.

The Lisbon Treaty streamlined the decision-making procedures and made them more transparent and democratic as well as efficient. Among the most significant improvements made by the Treaty is the extension of the jurisdiction of the Court of Justice to the whole AFSJ, including the ability to give preliminary rulings. This means significantly improved framework for the protection of the human rights in the European Union and the respect for the principle of the rule of law. But still, this reform has limited effect with regard to the judicial control of the legal acts adopted under former Title VI TEU in accordance with the Protocol on transitional provisions (no.36) as well the general limitation to review internal security matters in accordance with Art.276. This reform is particularly important because in this area the security concerns were always given precedence over the access to justice and judicial review of the adopted legal acts. In addition, a significant achievement is strengthening the scrutiny function of the European Parliament and national parliaments, notably in preserving the principles of subsidiarity and proportionality.

However, the negative side of the new rules of the Reform Treaty might be that there are many possibilities for opt-outs, flexibility, exceptionality that could undermine the coherence of the common Area of Freedom, Security and Justice. On micro level it is the EU citizens that may be deprived of effective legal safeguards in a case of exercising the vast array of "emergency brakes", exceptions etc. Here lie the potential "devices" that (if largely used by some Member States) can jeopardize the cohesiveness of AFSJ and limit the positive effects of the changes introduced by the Reform Treaty.

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UDC 343.91-053.6(497.16)

THE ROLE OF SOCIAL ACTORS IN WORKING WITH ROMA, EGYPTIAN AND ASHKALI CHILDREN IN CONFLICT WITH THE LAW IN MONTENEGRO

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Abstract: The most suitable social protection of Roma, Ashkali and Egyptian (RAE) children in conflict with the law and their families, can be achieved if the community places all the necessary resources at their disposal, including the ones that function as a part of an organized system of organizations, institutions, programs, etc., providing at the same time the necessary assistance and comprehensive support. No well-regulated legislation or European standards will work, if the state doesn't provide their permanent implementation, networking of system institutions and good cooperation with other organizations involved in the combating of juvenile delinquency and prevention work with children in conflict with the law in these communities.

This paper aims to objectively show the importance of the role of social organizations and institutions in Montenegro in the process of reforming the juvenile justice system with special emphasis on roles of certain public entities and the necessity of their participation and mutual dependency in the process of helping the RAE children in conflict with the law.

The paper puts special emphasis on the proposal of standardized specific elements in subsystems (subjects) for the work with children in conflict with the law, towards RAE children, so that the entire juvenile justice system in its composition contains part of these solutions, as well as the emphasis on the social exclusion of the Roma, Ashkali and Egyptian children, as a possible factor of development of delinquency.

Key words: RAE, social subjects, children in conflict with the law, delinquency.

OPENING REMARKS

Social Protection of Roma, Ashkali and Egyptian children in conflict with the law and their families in Montenegro during the last decade passed through significant reforms that primarily included improving policies, legislation, new concepts, approaches, and principles for working with children in conflict with the law.

Under the auspices of international organizations, there began a reorganization of the system of services and facilities for work with children in conflict with the law; such a system in the perspective of the development of system facilities, services for children in conflict with the law, should still provide quality intervention for early detection of children with risk, support and assistance to children and families, the application of a series of diversion, alternative, inclusive interventions in the community, but also the subsequent programs to help those who come out of the system of social welfare, juvenile justice system with a "European" respecting of the norms of communitarian law relating to children in conflict with the law.

The reform of the juvenile justice system should also provide more social care for children and youth in conflict with the law, who come from marginalized social groups, which can be considered socially discriminated, undereducated, disadvan-

taged and socially excluded, based on a number of strategic national and international documents. Starting from the fact that young people are an important resource for the future of every society and that in this period of life, they shall acquire key personal and professional knowledge and skills that will decisively influence their lives and the condition and development of community, therefore, the support of the society is very important so that they can become happy, successful, productive and independent adults.

Given that measures of social protection, not only here, are focused on prevention, which may consist of: universal measures (for all children), specialized measures (for children at risk, unprotected groups, and their families, etc.) and indicated measures (for children who have shown symptoms of behavioral disorders), the system of institutions should represent a jagged coast long and integrated set of institutions and programs, that offer to children and families just those services that best suit their needs and resources. As a specialist prevention measures in the social protection may apply to the Roma, Ashkali, and Egyptian ethnic population, the current stereotypes about the fact that certain delinquency characteristics of certain ethnic groups represent their way of life must be broken. Social protection of the RAE-population children is the most efficient protection of the society from juvenile delinquency. The discrimination of this ethnic group is being considered from several aspects, but the results that are accomplished in their better social treatment seem to be very poor. As the scientific source of their social, cultural, criminal and the overall position is very poor, it is very difficult to define a methodological approach for the problem of RAE children in conflict with the law and accomplish to avoid underrating of this topic. The reason for this is certainly the lack of interest in these and similar topics of research and the fear of commenting on critical texts, as well as personnel deficit and surplus of taboos in the society.

The social exclusion of Roma, Ashkali and Egyptian (RAE) population in Montenegro is not only the notion that can be seen in the framework of poverty, social marginalization, and social isolation. This is a broader term that consists of a series of factors that dislocate a particular social group or a few individuals from the wider community, taking away from them all those benefits that are available in a particular political moment, for most of the other population, which has the effect to their social inferiority.

The Roma, Ashkali, and Egyptian community is an ethnic social group with a high degree of material poverty, in which individuals are faced with economic exclusion in terms of production and consumption, and absence of meeting subsistence needs. Modern democratic societies are based on the principle of encouraging citizens at all levels of political decision-making process and in the community, but this runs into a logical conclusion that the politically active members of the community, cannot be those who lack sufficient economic resources, who are excluded from the economic sphere, and do not participate in cultural, physical, social activities, are without adequate access to information, and the like, which would enable them to actively participate in important political events. The total exclusion leads to the social isolation, which manifests itself as the unavailability of public institutions, state institutions, sports and cultural elements of society, which brings this vulnerable ethnic group to the level of social isolation. Continued social isolation of any social group encourages self-exclusion, affirms and encourages voluntary self-marginalization and supports socially negative and harmful social phenomena, but it also has a stimulating effect on crime inside or outside the social group. This problem has grown to such an extent, that it is now very difficult to find any of the important documents of the European Union in the social domain, in which social exclusion is not highlighted as a major problem.

It is virtually no longer necessary to prove, using scientific methods, that this population is more than overtly discriminated and excluded from participation in all segments. Today we have so many obvious facts and examples in everyday life and social relationships, group and individual behavior that this scientific assumption need no longer be proven or disallowed. For this reason, in this paper we will specifically not address this hypothesis. What should be pointed out at the beginning of any scientific research project, are their specific needs in different dimensions of social life, of which some elements are already partially described. Besides education, (un) employment, culture, housing, health care, etc., it is necessary to mention the negative social distance which the population of this ethnic group meets in political and social sense, violence, discrimination in public life, media, and the position of the family, women and children, the elderly, persons with disabilities, and others. Social institutions, by their nature, are interdependent, and dysfunction of an institution may affect the functioning of some other institutions. When individuals or groups are exposed to dysfunction of some social institutions, the impact of this spreads on to the other spheres of life, causing multiple negative spiral effects.

THE ROLE OF SOCIAL ORGANIZATIONS AND INSTITUTIONS IN THE PREVENTION OF SOCIAL EXCLUSION IN THE EDUCATIONAL SPHERE

This paper recognizes education, among many other factors, as a necessary element for further prevention of social exclusion of RAE children and it is given special attention.

The Constitution of Montenegro stipulates that ratified and published international treaties and generally accepted rules of international law are an integral part of the internal legal order and have primacy over national legislation and immediately apply when regulations are different from internal legislation. Since the country proclaimed its independence in May 2006, Montenegro has signed a series of international conventions and other binding documents committing itself to respect all of them. Among others, the state has signed the Convention on the Rights of the Child and the Convention on the Elimination of Racial Discrimination. However, numerous examples show that the role of the government must be more efficient and effective. A large number of Roma children are not enrolled in schools, there is a high level of cancellations and non-completion of higher levels of education, (Committee on the Elimination of Racial Discrimination: 2009), which is why, on 74th session there was concern expressed with respect to education. The socio-economic status and conditions of the Roma continue to be uncertain and discriminatory in the spheres of education, employment, health, and social protection.[1] Although the government pledged to take measures in the field of education and research for the preservation of culture, history, language, and religion of their national minorities[2], very modest scientific results have been reported. It is precisely because we believe that education has a significant impact on the further social development, that public schools as social institutions should be given a special importance when it comes to the work with the RAE children. Educational institutions must offer education and support for children in conflict with the law. Sometimes it is unavoidable, especially when children in conflict with the law are placed in homes and institutions, to provide specially formulated individual education plan so that, in close cooperation

1 National report on research conducted for Montenegro, CRI, 2011 p. 15
2 Framework Convention for the Protection of National Minorities, art. 12, Strasbourg 01.05.1995.

with the educational staff of these institutions, the most appropriate, individualized, compensation plan is provided for each child of the RAE population. Bearing this in mind, the task of schools is to provide multiple child support, help them to make up for previous omissions and gaps and achieve a higher level of education that will help him to engage in the process of work and participation.

Since there are no significant studies that show the actual extent, social danger, crime rate and their relation to the education of Roma, Ashkali, and Egyptian ethnic groups in Montenegro or the neighboring countries, and given that these studies are very rarely implemented in the region, it is not possible to determine the other factors previously listed for a number of reasons. All significant problems encountered during the studies of this population, showed that in our opinion there cannot be a complete and serious study, methodological research or scholarly work that refers to this area of social life. There are many reasons why there cannot be a scientific and systematic method that would deny this assumption, however, we should mention some of them (still undetermined number of RAE population according to the latest population census in Montenegro, a large number of refugees from Kosovo and the lack of identity documents, confinement of this ethnic group, educational status, poverty, discrimination, frequent displacements, etc.). The education of the RAE children can reduce social exclusion, which does not mean that other factors of social development do not have equally important role in preventing the further isolation of these ethnic groups.

NETWORKING OF THE SOCIAL ORGANIZATIONS AND INSTITUTIONS IN MONTENEGRO

Masai warriors, widely known for their courage, still greet each-other in the traditional way by asking: "How are your children" and by answering: "All children are fine." instead of saying: "Good day to you." or "How are you?", putting in this way the child and the welfare of the child in the center of their value system. Can we imagine the institutions working with children in conflict with the law in which the normal working day or usual greeting would begin with this clause? The system of these institutions must strive for this ideal.

Social institutions, and numerous services in Montenegro, many NGOs and support programs for Roma, Egyptian, and Ashkali children in conflict with the law, but also religious, recreational, cultural, and other organizations still do not have a built-in system of mutually disinterested cooperation that is developed to the extent to provide all necessary assistance to children in conflict with the law. Immeasurable roles that certain social actors have towards children with socially unacceptable behavior are essentially interdependent. All social actors, more or less, play a significant role in the development of alternative and diversion programs, particularly future programs, which are now in a poor way required for the RAE children in conflict with the law.

Primarily for the sake of completeness, it is necessary to additionally mention educational institutions that are supposed to offer support to all children, but also to the children that are placed in institutions, nursing homes and prisons. Also, in this part of the paper, we will mention some other functional factors of child development, which are in our opinion indispensable in working with the children in conflict with the law. So, in the alternative report on the implementation of "CEDAW" Convention and RAE women's human rights in Bosnia and Herzegovina, situational analysis, education, and social inclusion of Roma girls in Serbia

but also national policies in relation to the Roma in the Western Balkans, whose report included analysis in relation to education in Montenegro and Croatia, it can be concluded that the situation in the field of education, is rather difficult. Attached to the research that was conducted by "CARE Northwest Balkans," presented at the conference "Where are the Roma women today," held in Sarajevo in the second half of 2011, it was found that, at the regional level (Serbia, Croatia, Bosnia, Montenegro), the established figures showed that one third of fathers (30.6%) of the RAE children who drop out of school were without any education, while 61.1% had several grades of elementary school or finished primary school (elementary school). Mothers showed even lower educational structure: 52.3% of them were without any education, and 45.7% had completed a few grades of primary school. Such alarming results suggest that the role of school must be in close cooperation in provision of "dual support" to RAE children. Schools must help them to identify gaps and vulnerabilities, and achieve the maximum level of education that will enable smooth RAE-children's engagement in a broader social process. It is also essential that institutions for prison treatment, such as the center "Ljubović" as the only one of its kind in the country, provide control over the children of this population, constituting a special individual education plans for these children's education, so that - in close cooperation with the educational institution staff - the most appropriate, individualized, compensation plans for all Roma, Ashkali and Egyptian children are provided. Schools must be acting upon the applicable laws of the country, monitor attending of classes by this population, and taking adequate measures to notify other institutions that children are absent from school; they must fully coordinate with other social actors (police, prosecution authorities, and guardianship) in breaking the negative trend - the termination and cancellation of school by the RAE children, breaking the stereotype that it is part of their culture and customs.

It seems no longer necessary to prove that the social organizations in the "modern" system of government must cooperate with each other and represent a unified system of state organization, composed of parts (state authorities). State agencies must be linked by certain types of activities, making separate entities in the state organization. These public bodies must establish a relationship that is previously regulated by legal norms. In the juvenile justice system almost every relationship is important for its full implementation in the best interest of the child. The most important social relationships must have mutual correlation of full coordination, cooperation, and support, mostly between the social, cultural, and recreational organizations, schools, health institutions and services, judiciary, police, employment services, media, business organizations, and companies, but also prominent individuals, elected representatives of local communities and the like.

Educational institutions, which we have in part already discussed, in addition to offering education and support to the children in conflict with the law, must also cater education for the RAE children, on the basis of individual education plan prepared specifically for the population of this ethnic group, so that in close cooperation with the family, social subjects could manage to provide the most appropriate, individualized, compensation plan, providing double support to children in their interests and future development of proper education. Also, the other strategic directions such as, for example, health care have an immeasurable contribution to the prevention of social exclusion and reduction of crime.

The role of health authorities must be adequate protection of health of the RAE children without prejudice of their ethnic origin, professional protection of physical and mental health in children's homes, juvenile prisons, police detention, and the like. Also, the networking between these institutions and their specific needs and

challenges is crucial, and, should more severe forms of threat to public health arise, other specialized health institutions are to be involved.

The role of the media with respect to these children must be reflected in timely, concise, and impartial information about the status and problems in the field of social protection of children and their families; in obtaining more accurate information on public opinion, ensuring better understanding of the situation and needs of the REA children in conflict with the law and their families. The institutions that work with children in conflict with the law must have a permanent contact and clearly defined protocols of cooperation with the police. It is particularly important that this relationship is based on the sensitivity within the police departments in charge of combating juvenile delinquency. This cooperation is very important for the children who have been taken to reception centers programs by police officers, children who are victims of abuse, neglected children, and victims of domestic violence, children who are on the run from homes or schools, or for the children who are likely to commit crimes, as well as for the ones that are at risk from the negative social environment.

A police officer dealing with the REA children in conflict with the law should respect the right to self-determination and inner-being, with partial restrictions, because the children's rights have been partially limited by the rights of their parents, but should provide the active participation of the child with respect for the rights to privacy and confidentiality. Every profession accepts and promotes the acceptance of certain professional values which are then incorporated into their own code of ethics. The police, just like any other organization, are interested in reducing the influence of subjective, personal factors; in other words, the practice of police officers is based on a professional, not on a personal system of values. The police must strive to offer every professional intervention, the official conversation or official activities conducted in a manner that will not cause harm to one side and bring the result to the other side. A police officer is expected to do something more than avoid worsening of conditions and improving the situation; he is to help children mitigate their problems and to create conditions for further development and welfare of the child as well as its rapid integration into the family or community. (Slavko Milic, 2010: 408). Employment agencies also need to have a significant place in the system in order to help children with socially unacceptable behavior. This importance is even greater, since after release from the Center or juvenile prison, there is an important need for professional orientation, guidance, training, and employment. Organizations and employment services can provide critical support to the children on their way to independence and engagement in the work process. The justice system and its importance are immeasurable and unavoidable, whether the REA children are placed in prison or a treatment facility for the execution of criminal sanctions. Although the court and prosecution have no state administrative supremacy in relation to the social institution for the execution of criminal sanctions "Ljubović Center", this cooperation must exist in a part of organizing and providing assistance to the children and their families. Justice, although not entitled to administrative supervision over the work of the Centre Ljubović, or Bureau of education, has full responsibility and all the authority to supervise the execution of measures, or quality of treatment of children sent to the Bureau to carry out corrective measures for the RAE children who are located at the facility. Judicial authorities have other important responsibilities in working with children in conflict with the law, however, given the real object and the scope of this topic, the jurisdiction of the judicial authority will not be further subject of this work.

PROPOSAL OF SPECIFIC SYSTEM ELEMENTS TO INSTITUTIONS WHICH WORK WITH CHILDREN IN CONFLICT WITH THE LAW IN MONTENEGRO

Juvenile justice in Montenegro is in the process of reform, which also includes the new legislation as well as the improvement of standards of work in this area, in order to achieve the principle of unity of action of all actors in society to participate in all phases of treatment of children and minors. Raising standards up to the level of professional competence is very difficult and calls for elaborate work that Montenegro is about to face, along with the neighboring countries, such as Serbia, Bosnia and Herzegovina, Macedonia, etc. The European integration is present in every pore of the society, are according to its very demanding principles, national laws must adapt to the European standards. The aim of these reforms, among other things, is the creation of conditions for continuing training in the function of enhancing the existing and acquiring new professional knowledge, attitudes, and skills. (Slavko Milic, 2010:310).

The system of the institutions which work with the RAE children in conflict with the law must be a system whose elements are mutually connected in the best interest of the child and whose purpose is to facilitate the achievement of basic educational restorative goals. This is a specific system that must meet some of the following objectives:

1. A special focus on the Roma, Ashkali, and Egyptian children, their well-being, personality and rights equalling those granted to the children of the majority of the population under already existing legal national and international standards;
2. Focus on their families;
3. Integration in the community with ongoing assistance and support;
4. Providing of the support programs and specific measures of protection;
5. Providing of natural, informal sources of support and assistance;
6. Diversification, decentralization, development, and transparency;
7. Cultural characteristics, sensitivity, and practical competence, and
8. Focus on results, aiming for comprehensiveness, mutual coordination, and many other elements.

1. It is generally known that the legal status of juvenile perpetrators of criminal offenses in modern criminal legislation is completely different from the status of adult perpetrators of criminal acts and violations. Minors are a special category of perpetrators, whose personality is characterized by special mental and physical characteristics that require quite different form of social response to illicit behavior (Ljubinko Mitrovic 2010: 266).

The Roma, Ashkali, and Egyptian children must be the focus of interventions - the rights and needs of the child are listed in the Convention on the Rights of the Child and in the main legal instruments of the Council of Europe (such as the Convention on the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the revised European Social Charter). The rights defined in the Convention on the Rights of the Child include the right to protection and the right to participate in the proceedings. The emphasis here should be placed on child development, on helping a child's evolutionary capabilities. Good parenting, in accordance with basic principles of the UN Convention on the Rights of the Child, and knowledge gained through the research that includes:

Providing a safe environment in meeting the child's basic needs, including needs for shelter, food, water, health, and social care, the children's needs for emotional care, safety, sense of belonging, and a secure connection.

The boundaries and guidelines for the further conduct are required for every child, for his physical and psychological security and development of their own values and sense of personal and social responsibility.

Accordingly, it is believed that changes in behavior, like the change of attitudes towards self, others and society could only be realized on the basis of full respect of the rights of the child, by compensation of what is missed, encouraging the development and correcting asocial forms of behavior, attitudes and beliefs. (Djuradj Stakic, 2011:22). In order for the young people to readily meet the demands of the future - school, family and community, they must be involved in the project of a healthy / positive youth development (McWhirter and others, 1993), social development of young people, but also in the prevention of behavioral disorder and other risk behaviors.

There are no precise data about the buildings that house the RAE population and their children, whether these are conditional or inadequate facilities. General observation was that the housing conditions of most of RAE population members in Montenegro are below the minimum of national and international standards of living. Some of the Roma, Ashkali, and Egyptians have almost no permanent accommodation, and many reside in the area that is not even close to adequate housing. Especially bad and extremely worrying are sanitary conditions of living of a large number of these populations. In the case of a large number of members of the Roma community it is primarily a problem of survival - de facto the right of life - due to the unavailability or lack of clean drinking water, the fact that their homes are temporary, often made of poor, under-solid materials, small-sized, having no sanitary and drainage facilities, frequently located near the landfill waste. Understanding of the biological, cognitive, social, and moral development, identity development, and the general functioning of the RAE adolescents helps to understand what happens to them, how and why they behave unacceptably. This gives us the ability to predict their behavior, and with the selection of appropriate measures of help and assistance to support their pro-social development and behavior in a way that reduces the causes which we talked about in this paper.

2. Focus on the RAE families: primarily, a long a series of objective and subjective factors of help and support, we have already mentioned, must be based partly on an effort to develop a preservation of the integrity and improvement of educational competence of the family, which is accepted as a natural and important factor to help care, education and further development of the child. The family is certainly a unique and distinctive social group, which owns a number of differentiated characteristics in relation to other social groups (Beutler, Burr and Bahr, 1989). Since family ties are expected to last even when the majority of social links are broken, they are practically inseparable. Hence the attempt to back up families, especially of these ethnic groups, so that the separation of the child from a family doesn't happen, with full preservation of the connection between parents and children, whenever possible.

3. Integration in the local community with the continued assistance and support must be reflected in the effort to identify, activate, coordinate, and harmonize the available resources in order to identify and solve problems where they occur. Local communities should not be rigid and centralized in terms of (not)providing assistance and seek solutions to developmental problems of young people of the Roma, Ashkali and Egyptian population. Also, it is expected to exchange coordination of

profession and science in addressing family dysfunction of this ethnic group, but also the combination of theory and practice which should be given a special priority. As it has been known, ever since Aristotle, there is a division and differentiation of theory from practice. While theory indicates science and activities focusing on the knowledge itself, the practice is the way that people talk about an action or doing something (according to Bernstein, 1971, Glanz, Lewis, Rimer, 1997a, 19).

According to Dewey (Glanz, 1997b) there is a need to look on the theory and practice more through their similarities and differences rather than as a dichotomy. Thus, he considered that the theory, research, and practice are continuous wad where skilled professionals are moving easier. Researchers and practitioners may differ in their priorities, but the relationship between researchers and practitioners and their applications can and should move in both directions (D'Onofrio, 1992; Freudenberg and others, 1995, according to Glanz, Lewis, Rimer, 1997a, 20). A set of resources for help and support to Roma, Ashkali and Egyptian families and the children in conflict with the law in a community, can be combined in several ways, such as their mutual relations, can be placed on a different basis, making it easier, faster and more complete to meet the urgent needs of children and families of this population.

4. The provision of support programs and specific protection measures, should include the obligation to develop appropriate prevention measures, measures of appropriate treatment, and support measures of help to Roma, Egyptian and Ashkali children. Adequate support can be achieved by unconditional cooperation of all governmental authorities with the aim of prediction of early, primary and universal prevention. Support programs may not be, in the way it is now mostly anticipated, intended only for children and families who are under a high degree of risk to be resent to residential care, juvenile imprisonment or re-exposed to dysfunctional social environment on incorrect forming their personalities or returned to their poor, disenfranchised, marginalized families immediately after the "treatment", without any capacity on the part of the families to steer them towards their re-colonization. Science and the results of scientific research, as well as their role in the implementation of positive development and prevention of behavioral disorders of children and young people, constantly focus on the search for new knowledge and skills on which lays the foundation for an effective strategy for prevention of behavior disorders and various risky behaviors of children and youth (delinquency, violence, school leaving, teenage pregnancies, and drug addiction) that, as the "outcomes" often have negative consequences for these children and young people, as well as their environment (Basic, Feric Kranzelic, 2001). This is why this paper places a special emphasis on prevention programs, programs, methodological innovations, especially the methodology of case management and ongoing monitoring and care in the quest for stable and long-term solutions for the re-unification of the families, social reintegration, and many other elements in the best interest of the child. The growing knowledge about the prevention of behavioral disorders, particularly delinquency, violence, teen pregnancy, and drug abuse, and mental health promotion, along with prevention of mental and behavioral disorders and their applications, especially in 21st century, have reinforced the need for this knowledge and skills in the areas of prevention science and its application in our country should be aimed at achieving the coordination of all subjects. Since this is not the case, this paper can be used, among other things, as such a proposal.

5. Ensuring application of natural, informal sources of support and assistance: Social marginalization has conditioned containment of the Roma community towards the environment, which results in the maintenance of patriarchal tradition

and rigid traditional norms in it. For example, the Roma women in the family are in a subordinate and often oppressed position. They are denied their rights to their own will and opinion, and their whole life is governed by male family members. Certain quantitative studies only confirm this statement. Based on these, it is found that in 75% of the cases of the important decisions in the home are brought by male family members, and only one in six of the married couples jointly make decisions about managing the household and raising children. The largest number of members of RAE population lives in conditions of extreme poverty, poor hygienic conditions in rural areas, which are exposed to spatial segregation, but also the total social marginalization, compared to the majority of the population.

6. Diversification, decentralization, development and transparency are just some of the large number of assumptions, that must be met by systems for working with the RAE children in conflict with the law.

Systems of institutions, many services and providers, must strive to develop a wide range of measures, diverse and high quality system of services, designed to meet the needs of children in conflict with the law. Such a system of measures, services, support services and rights, must be equally present in all institutions that have contact with children in conflict with the law (police, social services, day centers, juvenile prisons, etc.). Diversification represents a special challenge for Montenegro, and all its institutions, especially in the scope of the integration of different content in working with children from marginalized groups. As already known, RAE children, mostly due to insufficient attending of regular school system, are not usually able to accompany the already existing programs of institutions, that have contact with children in conflict with the law. Diversification in this context, could include further development of the continuity of services and programs adapted to age, sex, language and other cultural and traditional content for these children. Given that in Montenegro, there is only a center for children and youth - Ljubović, as the only institution of this kind, it must accept the obligation to further develop programs suited to children of Roma, Ashkali and Egyptian population. Decentralization is often seen as the expression of closeness, indeed it can also mean that, it must represent direct expression of solving problems of children of Roma, Ashkali and Egyptian population, there, where these problems occur. Basically it would represent the development of a wider range of measures, programs and services, that will be available to children and families in local communities, exactly where they live, where they are educated, work, and the like.

In this way, even when resorting to temporary separation of the child from the family, there is not necessity for full, but planned separation, and at the same time, the relationships are kept untouched at all other levels of local communities. Such a relationship of inter-systematic close cooperation for these children and their families, must be based on a constant search for solutions, finding new opportunities and ways to achieve the best interests of the child. The system of services and facilities for work with children in conflict with the law, must represent complex and dynamic developmental system components, whose number, position, roles and mutual relations change over time, adjusting to the changing needs of children, families and the general social conditions (Djuradj Stakic 2011.27). Development and transparency, also need to have a crucial, vital place, primarily through the most important prerequisites, that must be created by the statal systems. Consideration and resolution of the complex position of RAE population in Montenegrin society, is only possible through a synchronized operation of all relevant social actors, from the state and its institutions, the medias and the NGOs. In Montenegro and in the region, there is a large number of Roma and non-Roma NGOs operating, who have made significant

progress in the field of improving the situation of Roma, in some segments of society (education, health), in terms of connectivity and establishing trust between Roma and majority of the population, but the whole story can not be completed if part of the job responsibilities in this area is not taken by the State. The State must provide the necessary capacity, such as physical conditions, but development in this sense includes development of a juvenile justice system primarily, the development of flexible mounted systems in program content, that will ensure the extension of real needs of RAE population. Also, if institutions and programs in the juvenile justice system are not represented by the general public and potential users in relation to their programs, the type of care, admission criteria, staff, experts and expected outcomes, and thus already un-informed and insufficiently technically uneducated RAE population, it will represent a "step-back" to re-socialization of minors.

7. Culturological characteristics, the practical sensitivity and competence, includes first and foremost, given the importance of multicultural environment, what can be considered as Montenegro, providing and nurturing of equal rights for all, and protection against discrimination on any grounds, that the staff working with children in conflict with the law, in all state bodies have the relevant knowledge, skills and attitudes and awareness of RAE culture, values and prejudices, knowledge of the culture, values, lifestyle and needs. Also, it is necessary to prevent members of the majority of the population to impose their values to the RAE ethnic group, encouraging assimilation. The main goal of all professionals, working with children in conflict with the law, must be to avoid the imposition of values, standards and finished solutions that are not characteristic of this cultural group, but to help children and families to recognize themselves, articulate and affirm their own cultural identity and values, and bring them in accordance with the values of society in general. Primarily, the aim of all social actors must be based on the focus on the future of the child, rather than on the state of the past that was before (what, how and why it was), with a pretense focus on the future outcome of these children.

8. Focus on results with the aim of comprehensiveness and mutual coordination, can be considered to be another of the many of the elements which must "rule" in the system of institutions for work with RAE children in conflict with the law, because it means rounding up all the above-mentioned elements, as well as numerous other elements, which can be considered necessary for the work with this population. Primarily it is important to strive to provide the conditions for a holistic approach, to provide complete care for the child, and to manage that RAE child and its development needs, are comprehensively reviewed in the context of their families and local community. Continuum, diversification and versatility, are inspired by the idea that the factors and institutions are tied together, in accordance with the needs of the child, rather than to let RAE families to indulge themselves, looking for solutions, which sometimes are not known either to the institutions of the system.

CONCLUSION

Despite the fact that Montenegro respects ethnicity and highlights interculturality, numerous analyses show that in the Montenegrin society we have a social group that is clearly in a subordinate position, a social group whose members almost never make decisions about their future, and, on the other hand, live in a social environment where there is a pronounced social distance from the rest of the population. Roma who have lived in different areas of Montenegro for five centuries, nowadays live in much more complex conditions than other people living in Montenegro. They lag behind in most aspects of emancipation. Centuries-old isolation caused

them to be tightly integrated into the inside, preserving the cultural identity and lifestyle. One of the main social goals should be to help the Roma to get out of the marginalized slum communities. The Roma need to understand that social integration is not a negation of the Roma specificity and deletion of their socio-cultural identity. The concept of integration should be seen as acceptance of and involvement in common processes that occur in a social environment.

The children who are in conflict with the law must have a state-run institutional aid of networked institutions of the system, so that all the elements already mentioned could become recognized in the system "structure" of juvenile justice in line with the European standards in Montenegro, reducing the already recognizable social exclusion.

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UDC 343.542.1-053.6:004.738.5

SOME ISSUES ON ON-LINE CHILD PORNOGRAPHY

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Abstract: Internet is a new space for illegal behaviour which is especially dangerous for children and one of the reasons is that communication by the Net is an easier way how to find potential child victims for producing pornographic materials. Child pornography is a problem of international proportion and it is of great importance to emphasize and mark out crimes related to manufacturing and distribution of child pornography on the Internet, among widespread cybercrimes such as infringement of the work of computers and computer networks, data theft, Internet fraud, blackmail and extortion, distortion of computer information. Current statistics shows a popularity of such crimes. According to different sources child pornography is 2-3 billion dollar a year industry. The global community has recognised that children are at risk from those who engage in the production, exhibition, distribution, and consumption of child pornography and that children can suffer serious negative effects as a result of pornographic exploitation, but despite the notable efforts of many nations, child pornography remains a serious issue, partly because of the lack of knowledge of law enforcement on the subject. In order to investigate effectively and make arrests for these offences, sophisticated technology for communication and investigation is required, and law enforcement officers need specialized training in investigation tactics.

Key words: child pornography, investigation, computer emergency response teams.

INTRODUCTORY REMARKS

Child exploitation has been a problem throughout history. While newer technology has been responsible for many positive changes in society, it has also changed the way in which adults can take advantage of children. Commercial sexual exploitation of children is not a recent problem but it has gained more public interest over the last decades. Until the late 80's, with a mixture of indifference, apathy, denial, or even cynicism, child labour and more specifically child prostitution was not an issue of major concern, at either national or international levels. With the tremendous technological advances made in the 20th century, a variety of new tools are available to those who prey on children. However, in 1989, the United Nations adopted the Convention on the Rights of the Child ("UNCRC") explicitly prohibiting child prostitution and illegal sexual practices with children under the age of 18. Since then, an increasing number of governmental and non-governmental organizations have been pressuring both governments and the general public to take steps against the commercial sexual exploitation of children. As we begin the 21st century, this victimisation has taken on important new characteristics.

The term "commercial sexual exploitation of children" means sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons; the child is treated as a sexual object and as a commercial object. The term was defined at the World Congress against commercial sexual exploitation of children held in Stockholm in 1996 in Declaration *Towards a Common Definition of Commercial*

Sexual Exploitation[1]. There is a need for a common definition of commercial sexual exploitation, so we may refer to it as sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery. 'Child sexual exploitation' refers to the sexual abuse of a human being below the age of 18. Among other things, it includes the production of child abuse images and online dissemination as particularly serious forms of crime committed against children.

For the purposes of this article, we have identified three main forms of international commercial sexual exploitation of children: 1. trafficking in children for sexual purposes; 2. child sex tourism; 3. the cross-border distribution of pornographic material involving children.

So, the problem of child pornography is not isolated but one could approach it as a part of international commercial sexual exploitation of children, powered by the new technologies' capacities. Child pornography, which consists of images of child sex abuse, and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the internet. Nevertheless, it is not a recent problem in contemporary society.

CHILD PORNOGRAPHY AND TECHNOLOGIES

In the earliest days, child pornography was somewhat cumbersome to produce, and the use of cameras and film limited its production. The cameras could be quite big, and film had to be developed and the images printed. This required time and fairly expensive equipment on the part of the pornographer, or else the film had to be taken to someone else to process, often commercially. This led to increased expense and the possibility of exposure. First Polaroid cameras and camcorders meant that it was no longer necessary to process film, thus cutting the costs and fear of detection. In 1970s and 1980s, postal authorities and customs officials were trying to limit the quantity of child pornography that was entering, and being disseminated. At that time, the pornography was in hardcopy form: pictures, magazines, 8 millimetre movies, and later, on videotapes.

However, technological improvements in photographic equipment made production much easier. Digital technology made such activities even easier. Now it was possible to produce and store photos and videos at virtually no cost or effort. The advent of the Internet dramatically changed accessibility to child pornography. Suddenly, it was possible to produce these images in the privacy of one's home and distribute it worldwide with minimal risk of detection that could lead to criminal charges. Initially, the Internet was a great boon to child sex abusers, but in time it also became a stunningly successful commercial venture, with an estimated more than 10,000 child pornography domains.

Today, in addition to monitoring the mail service and sources which transport indecent material illegally, law enforcement agencies have begun to monitor Cyber-

1 Stockholm Congress was held in Stockholm from 27–31 August 1996, organised by ECPAT (End Child Prostitution in Asian Tourism, the world-wide movement against commercial sexual exploitation of children), UNICEF, and the NGO Group for the UN Convention on the Rights of the Child, together with the Swedish government. It was attended by government representatives from 122 countries together with non-governmental organisations active in the fight against the commercial sexual exploitation of children. The Stockholm Congress closed with the adoption of a Declaration describing the problem of the increasing commercial sexual exploitation of children and setting out broadly defined areas for action to be taken by countries working in co-operation with national and international organisations.

space to find offenders dealing in child pornography. Through the use of computers, it is very easy not only to manufacture child pornography**,** but simply to take existing child pornography and disseminate it worldwide over the Internet. These days, many child pornographers acquire pictures from 1970s or 1980s hardcopies and use computer scanners to download or upload it onto a system. Once on a system, the pornography is more quickly and more easily transmitted to a worldwide audience. In addition to increasing ease of distribution, computers and the Internet have made it a lot easier to hide and dispose of child pornography. A regular computer disk can hide several digital images. In addition, devices such as ZIP disks or CD-ROM's can store even larger quantities of child pornography, especially if the files are "compressed." With the growth of the Internet from the 1990s through the present and with the decrease in price of Personal Computers (PCs) in recent years, child pornography sold over the Internet has become an increasingly visible problem for society, regardless of geographical and legal jurisdictions—for the Internet has no real borders. There is no question that the Internet has caused the most explosive growth in child pornography than at any other time in history. One of the reasons for this explosion is that technology itself has greatly reduced the barrier to entry of the production and distribution of child porn. Cameras and powerful editing multimedia software are becoming more affordable and easier to use, simplifying the process of creating and distributing child porn. Internet has given child porn new life because of the ease of transmission from one paedophile to many other paedophiles and from one country to many other countries. The first international common commitment to tackle the distribution of child sexual exploitation material on the Internet was expressed at the International Conference on "*Combating Child Pornography on the Internet*", held in Vienna in 1999, where it was stated that "*Child Pornography on the Internet is a growing problem, and as more of the world comes online, it will continue to grow in the future since it does not know or respect borders*".

The Internet's popularity also has increased the potential for children to be directly exploited by adults and for child pornography to be instantly produced and distributed from around the world. All these developments have made it more difficult for law enforcement agencies to track down and prosecute on-line child pornographers. Today child pornography is a problem of international proportion and it is of great importance to emphasize and mark out crimes related to manufacture and distribution of child pornography on the Internet, among widespread cybercrimes such as infringement of the work of computers and computer networks, data theft, Internet fraud, blackmail and extortion, distortion of computer information.

SERIOUSNESS OF ON-LINE CHILD PORNOGRAPHY PROBLEM

The Internet has had a dramatic impact on the evolution of child exploitation, both in providing an avenue for paedophiles to communicate with each other and as a tool for making contact with potential victims. Newer photographic technology has revolutionised child pornography, as a tool of child molesters and also commercially. In addition, long-standing forms of exploitation have become much more sophisticated, such as the prostitution of children, along with its international partner, child sex tourism. As a mass medium Internet is extensively used in connection with sexual material; it is used for the sale and purchase of adult pornographic material and sexual devices, for advertising contacts for explicit sexual purposes, and to distribute child sexual exploitation content, providing a platform for online groom-

ing of innocent children with the abusive material reaching the Internet, constituting a permanent re-victimisation of the depicted child. Current statistics shows a popularity of such crimes. Trafficking in online child pornography has exploded in recent years. The advent of new technology has made its circulation wider and has caused global alarm that resulted in various national and international legislation introducing measures to stop online child pornography. In 2009, a United Nations report by UNICEF estimated that there are more than four million websites featuring minors, including those of children of less than two years of aged, and it was said that more than 200 new images are circulated daily. The report warned that about 750,000 sexual predators are constantly prowling the Internet in a bid to gain contact with children and estimated that between 10,000 and 100,000 minors are victims of the child pornography network. The report assessed that the production and distribution of such images generates between $3 billion and $20 billion a year. These statistics continue to grow as technology becomes more advanced. While the existing laws have been adapted or amended to cater for the rise of crimes on the Internet and computer-generated child pornography, technological advances of the Internet respects either international boundaries or criminal jurisdictions[2].

The global community has recognised that children are at risk from those who engage in the production, exhibition, distribution, and consumption of child pornography and that children can suffer serious negative effects as a result of pornographic exploitation, but despite the notable efforts of many nations, child pornography remains a serious issue, partly because of the lack of knowledge of law enforcement on the subject. According to law enforcement agents, daily paedophiles exploit every aspect of the Internet, sharing children abuse tips and trading millions of "homemade" movies and photos of suffering children. Police estimate that anywhere from 25% to 50% of individuals viewing and trading cyber child porn have also committed acts of child sex abuse. Police further estimate that over 50,000 children worldwide are abused and used as child porn actors. Often, the children are bound, raped, and sodomized. Sadly, of this large number of children likely to be abused, apparently only a small fraction of them have been identified, and an even smaller fraction have been rescued by law enforcement officers. Adults engaged in cyber child porn are pleased to learn that many other like-minded adults exist, and they often utilize this reality to rationalize their own behaviours which tend to escalate in aggressive acts – to hurt core – over time.

Another element of the child pornography problem is virtual child pornography. Photos can be manipulated or manufactured to produce images that look like real children in sexual poses or performing sexual acts. Using often inexpensive software, a person can actually design a photo *de novo* that looks as if it is real. The figures in the photos can be made to partake in a variety of situations, including sexually provocative or explicit poses or activities. Another method involves changing an existing photo of a child through a process call morphing. A photo is changed incrementally to look like someone or something different from the original. For example, hair and eye colour, skin texture and even clothing can be substituted. In this way, the identity of a victim can be hidden. Since these images often are indistinguishable from real photos, it may not be possible to tell whether or not an image is of a real child. Perpetrators and their attorneys claim that if no victim has been identified, the photo must be considered to be manufactured rather than a photo of a real victim. They thus claim that it should not be considered illegal. This notion has been used as a defence tool in cases where an actual victim cannot be identified.

2 AFP (2008) Some 750,000 paedophiles are prowling Internet: UN. Available at http://www.breitbart.com/article.php?id¼CNG.566c6 d9cae728c5a9d3fc6f1e2b0e0c8.3f1.

At present the following trends may be recognised:

- The involvement of worldwide criminal networks in offering pay-per-view websites is apparently decreasing, as a result of major international law enforcement efforts and cooperation over the last two years;
- Criminals seem to be focusing on hidden channels where private access is granted only to those who have been 'selected'. This 'selection' derives from the amount and kind of images that can be shared and it is based on respect and trust;
- Child sex offenders and their networks make more and more use of sophisticated software in order to try to protect their anonymity, to make use of online storage and to use advanced encryption techniques to counteract digital forensic examination by police;
- Child sex offenders travel to specific countries where children are offered by their families or other facilitators in order to be sexually exploited and to produce illegal material that is distributed through the Internet;
- Sometimes, illegal material is self-produced by teenagers or children who underestimate the risks of distributing their images or movie files;
- In some other cases, children are persuaded or coerced into producing the material by child sex predators through online grooming;
- Online grooming and the solicitation of sexual messages through mobile phones and multimedia devices ('sexting') are dangerous realities which need constant attention from a responsible society.
- The global community has recognised that children are at risk from those who engage in the production, exhibition, distribution, and consumption of child pornography and that children can suffer serious negative effects as a result of pornographic exploitation, but despite the notable efforts of many nations, child pornography remains a serious issue, partly because of the lack of knowledge of law enforcement on the subject. In the next chapter we will present some of the international efforts that took place to mark an end to the commercial sexual exploitation of children.

INTERNATIONAL LEGAL DOCUMENTS

Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. Serious forms of child sexual abuse and sexual exploitation should be subject to effective, proportionate and dissuasive sanctions. This includes, in particular, various forms of sexual abuse and sexual exploitation facilitated by the use of information and communication technology.

Already mentioned Declaration adopted at the Stockholm Congress notes that "concerted action is needed", among other things, "at international level to bring an end [to the commercial sexual exploitation of children]" (Art. 2). It describes such exploitation as a "fundamental violation of children's rights" (Art. 5) and (in Art. 12) calls on all States in co-operation with national and international organisations and civil society, among other things, to: criminalise the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalise all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalised; review and revise, where

appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children; enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and co-operation between law enforcement authorities; mobilise political and other partners, national and international communities, including intergovernmental organisations and NGOs, to assist countries in eliminating the commercial sexual exploitation of children.

The most important international conventions addressing the issues of child pornography are the two adopted within the Council of Europe: *Convention CETS No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse(2007)* [3], which arguably constitutes the highest international standard for protecting children against sexual abuse and exploitation to date, and *Convention ETS No.185 on Cyber-crime (2001)* [4]. On a global scale, the main international standard is the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000).*

Convention CETS No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) in terms of combating cyber crime represents a significant legislative step towards the harmonization of national legislation, in respect of the substantive criminal law in all those cases in which computer technology and networks are used for the purpose of distribution, exchange and storage of prohibited content in terms of punishing production, offering or placement available, distribution or transmission; obtaining for him/herself or another person, and possession of child pornography; i.e. conscious obtaining the access through information and communication technologies to child pornography. For the purpose of the Convention, the offering or making available child pornography includes, among other things, setting up illegal content online, to allow access to other people or making pornographic Internet sites. This provision also covers cases where a group of hyperlinks is made available toward the child pornography content, to facilitate access to prohibited content. The distribution includes an active and regular delivery of illegal pornographic content to other people using computer networks. The term obtaining for himself or another person is related to obtaining unauthorized downloading of pornographic material through video clips from the Internet or buying child pornography in the form of films or photos. Possession of child pornography as a form of action involves the actual possession of illegal content in any form (magazines, video tapes, optical media), and also the storage of such data in electronic form on your computer or removable media. The prohibition of the possession of child pornography is an expression of desire for the criminalization of any conduct in the chain of many participants, from the production and manufacturing to distribution and possession of prohibited materials.

Convention on Cyber-crime is significant for the matter, given the potential for abuse of computational systems and networks for the purpose of recruiting children for trafficking and other forms of sexual exploitation. The Convention also provides for specific procedural mechanisms as essential minimum standards to be met in order to provide the prerequisites for successfully combating cyber crime and that as such should be implemented in national legislation. According to the convention the term "child pornography" shall includes pornographic material that visually depicts: a minor engaged in sexually explicit conduct, a person appearing to be

3 http://conventions.coe.int
4 http://conventions.coe.int

a minor engaged in sexually explicit conduct, realistic images representing a minor engaged in sexually explicit conduct. The term "minor" according to the convention shall include all persons under 18. A party may require a lower age-limit, which shall be not less than 16. Each party of the convention shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: producing child pornography for the purpose of its distribution through a computer system; offering or making available child pornography through a computer system; distributing or transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; possessing child pornography in a computer system or on a computer data storage medium. Each party may reserve the right not to apply in whole or in part the conduct: procuring child pornography through a computer system for oneself or for another person or possessing child pornography in a computer system or on a computer data storage medium and also may reserve the right not to apply that child pornography is material with a person appearing to be a minor engaged in sexually explicit conduct or with realistic images representing a minor engaged in sexually explicit conduct.

EU INITIATIVES TO COMBAT ON-LINE CHILD PORNOGRAPHY

At the EU level steps towards creating a regulatory framework for the fight against all forms of trafficking in children and their sexual exploitation have also been taken.[5] The general policy objective of the Union in this field, under Article 67 of the Treaty on the Functioning of the European Union, is to ensure a high level of security through measures to prevent and combat crime, which includes child sexual abuse and child sexual exploitation. In accordance with Article 83 of the Treaty on the Functioning of the European Union, this should be done primarily by establishing minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of children. National legislation does cover some of these problems, but to varying degrees. However, it is not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon. That is the reason why in 2000 the EU Council adopted the Decision on combating child pornography on the Internet and in ***2003 Framework Decision*** 2004/68/JHA ***on combating sexual exploitation of children and child pornography***. The framework decision obliges EU Member States to harmonize their legislation with the decision, i.e. with a minimum of approximation of Member States' legislation in order to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. The states should have adopted offences concerning sexual exploitation of children and child pornography. Offences concerning child pornography mean the following intentional conduct whether undertaken by means of a computer system or not, when

5 Other EU initiatives in force or on the way partially address some problems which also affect child sexual offences. They include Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the internet, Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems, Decision No. 854/2005/EC of the European Parliament and of the Council of 11 May 2005 establishing a multiannual Community Programme on promoting safer use of the internet and new online technologies, and Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

committed without rights: production of child pornography; distribution, dissemination or transmission of child pornography; supplying or making available child pornography; acquisition or possession of child pornography. It was possible to exclude from criminal liability conduct relating to child pornography, e.g. when a real person appearing to be a child was in fact 18 years old or older at the time of the depiction or images of children having reached the age of sexual consent are produced and possessed with their consent and for their own private use. The instigation of, or aiding or abetting in the commission of an offence in the discussed area should be punishable, too. Each member state shall also take necessary measures to ensure that legal persons can be held liable for offences concerning sexual exploitation of children or offences concerning child pornography or their instigation, aiding, abetting and attempt. Liability of legal person shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the mentioned offences include their instigation, aiding, abetting and attempt.

Although the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings. It approximates legislation only on a limited number of offences, does not address new forms of abuse and exploitation using information technology, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims, and does not contain adequate measures to prevent offences.

In this regard it is necessary in the fight against sexual exploitation of children to approximate the criminal laws and regulations of the Member States and to improve cooperation in criminal matters. On ***29 March 2010***, the European Commission adopted a ***proposal for a new Directive on combating sexual abuse, sexual exploitation of children and child pornography***[6], following up on a previous proposal tabled in 2009, with the aim of replacing the current EU legislation (*Framework Decision 2004/68/JHA*) which now seems to be out of date. The new Directive, if approved, will follow the Lanzarote Convention. The Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of children. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims. The definition of child pornography is amended to approximate it to the COE Convention and the Optional Protocol to the Convention on the Rights of the Child.

Serious forms of child sexual abuse and exploitation currently not covered by EU legislation would be criminalised, especially new forms of sexual abuse and exploitation facilitated by the use of IT. This includes on-line pornographic performances, or knowingly obtaining access to child pornography, to cover cases where viewing child pornography from websites without downloading or storing the images does not amount to "possession of" or "procuring" child pornography. Articles 3 and 4 are aiming at punishing the intentional conduct of recruiting or coercing a child into prostitution or into pornographic performances or profiting from or otherwise exploiting a child for such purposes, and establishing provisions that punish all the offences related to child pornography which already fall under the Europol mandate as listed in the Council Decision establishing the Europol Police Office, applicable from 1 January 2010. Directive introduces several types of acts that if conducted intentionally should be punishable in Member States and these are: offences concerning sexual abuse, offences concerning sexual exploitation, offences concerning

6 Text of the proposal available at http://eur-lex.europa.eu/ LexUriServ/LexUriServ.do?uri¼COM:2010:0094:FIN:EN:PDF.

child pornography, solicitation of children for sexual purposes. The Directive also obliges states to proscribe the instigation of, aiding and abetting to commit any of the offences as punishable, as well as attempts to commit any of the offences. As preparatory offences that should be punishable as well the Directive identifies (a) the dissemination of materials advertising the opportunity to commit any of the offences and (b) the organisation of travel arrangements with the purpose of committing any of the offences.

On criminal investigation and initiation of criminal proceedings in order to facilitate investigation of offences and bringing charges in criminal proceedings new powers to authorities are introduced, especially bearing in mind the difficulty for child victims of denouncing abuse and the anonymity of offenders in cyberspace. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences are not dependent on a report or accusation being made by the victim, and that the criminal proceedings may continue even if the victim has withdrawn their statements.

Also, states are to be obliged to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved; to enable investigative units or services to attempt to identify the victims of the offences, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology. To ensure successful investigations and prosecutions of the offences referred to in this Directive, effective investigation tools should be made available to those responsible for the investigation and prosecutions of such offences. These tools may include covert operations, interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations.

Concerning prosecution of offences committed abroad, the Directive's rules on jurisdiction would be amended to ensure that child sexual abusers or exploiters from the EU, both nationals and habitual residents, face prosecution even if they commit their crimes outside the EU, via so-called sex tourism, in following regard: Member States shall take the necessary measures to establish its jurisdiction over the offences where: (a) the offence is committed in whole or in part within its territory; or (b) the offender is one of its nationals or has a habitual residence in its territory; or (c) the offence is committed against one of its nationals or a person who has a habitual residence in its territory; or (d) the offence is committed for the benefit of a legal person established in the territory of that Member State. Also, Member States shall ensure that its jurisdiction includes situations where an offence referred to in Articles 5 and 6, and insofar as is relevant is committed by means of information and communication technology accessed from its territory, whether or not it is based on its territory. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances the jurisdiction rules set out in paragraph 1 (c) and (d) as far as the offence is committed outside its territory. For the prosecution of any of the offences committed outside the territory of the State concerned, as regards paragraph 1 (b) of this Article, Member States shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition: (a) that the acts are a criminal offence at the place where they were performed; or (b) that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

One of the most innovative provisions is the referring to ***blocking internet content***. Child pornography, which constitutes sex abuse images, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child abuse material by making it more difficult for offenders to upload such content onto the publicly accessible Web. Action is therefore necessary to remove the content at source and apprehend those guilty of making distributing or downloading child abuse images. The EU, in particular through increased cooperation with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing child pornography, which are hosted in their territory. However, as despite such efforts the removal of child pornography content at its source proves to be difficult where the original materials are not located within the EU, mechanisms should also be put in place to block access from the Union's territory to internet pages identified as containing or disseminating child pornography. For that purpose, different mechanisms can be used as appropriate, including facilitating the competent judicial or police authorities to order such blocking, or supporting and stimulating Internet Service Providers on a voluntary basis to develop codes of conduct and guidelines for blocking access to such Internet pages. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interest of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

Internet blocking has become increasingly common within Europe as a tool to attempt to prevent the distribution of child pornography. However, until 2006, blocking systems largely developed independently at a national level. Although there have been European measures against child pornography since 1996 these measures have previously focused on other responses such as the approximation of national laws and the development of hotlines to report illegal content. This, however, is now changing and the European Union (EU) policy is moving towards greater use of blocking. For example, the Safer Internet Plus Programme has funded the CIRCAMP (Cospol Internet Related Child Abusive Material Project) police network to promote blocking and the sharing of national block-lists and the European Commission has proposed legislation which would require all member states to introduce blocking systems. There is however one article which is very important to the crimes against children community and has been central to a great deal of work we have done over the last five years. It relates to website blocking and whether it should be made compulsory or not in the European Union countries. The original proposal had it mandatory to have law to block websites: "Member States shall take the necessary measures to obtain the blocking of access by Internet users in their territory to Internet pages containing or disseminating child pornography". That means that the EU, in particular through increased cooperation with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing child pornography, which are hosted in their territory. However as, despite such efforts, the removal of child pornography content at its source proves to be difficult where the original materials are not located within the EU, mechanisms should also be put in place to block access from the Union's territory to internet pages identified as containing or dis-

seminating child pornography. For that purpose, different mechanisms can be used as appropriate, including facilitating the competent judicial or police authorities to order such blocking, or supporting and stimulating Internet Service Providers on a voluntary basis to develop codes of conduct and guidelines for blocking access to such Internet pages. Both with a view of the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interest of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. However, the blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it. Any such developments must take account of the rights of the end users, adhere to the existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online. This article of Proposal is a subject of controversy however, especially with regard to civil rights and freedoms. Other arguments may be, according to INTEPOL which since October 2010 INTERPOL has been compiling, the so called "Worst of" - list of domains distributing child sexual abuse material, the following: access blocking does not reduce the amount of material present on the Internet, access blocking does not identify children of sexual abuse in material, access blocking is not foolproof, and it is possible to circumvent for technically skilled Internet users and persistent material customers, access blocking has costs in the form of manpower and ISP/ASP implementation, access blocking may be intrusive for some, access blocking does not work on other protocols, like p2p, access blocking does not arrest anyone or bring them to court, access blocking may result in "over blocking" – affecting legal services and material, etc[7]. On July 12, 2011, the European Council reached a political consensus with the European Parliament Civil Liberties Committee on a draft directive on combating sexual abuse, sexual exploitation of children and child pornography, in particular online. The rules would also require the EU Member States to ensure the prompt removal of child porn websites hosted in their territory and to endeavour to obtain their removal if hosted outside of their territory. In addition, Member States may block access to such web pages, but must follow transparent procedures and provide safeguards if they make use of this possibility. The draft was unanimously passed after its first reading by the Council of Ministers representatives, with three abstentions. The draft legislation will be put to vote in the European Parliament's plenary session in September and should be formally adopted by the Council of Ministers shortly thereafter. Once adopted, the directive will replace current EU legislation dating from 2004. Member States will have two years to transpose the new rules into their national laws

Speaking of internationalization of the problem of on-line child pornography problem at the EU level, one must not underestimate the international cooperation which is taking place within ***European police***. EUROPOL, in close co-operation with the Members States, aims to:

- Identify perpetrators and establish cross-links within the participating Member States;

7 http://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking/Concerns-about-access-blocking

- Identify cross-border modus operandi and shed light on the methods of communication of criminal networks, with a view to dismantling those networks;
- Identify the victims, with a view to stopping potentially ongoing exploitation and to make it possible to initiate care measures by the competent authorities;
- Co-operate on an operational level via the Europol Liaison Officers (ELO)
- Network, as well as providing strategic and operational analytical support;
- Conduct expert meetings (both operational and strategic) with the aim of exchanging information on ongoing investigations and enhancing mutual cooperation between law enforcement bodies and other competent authorities, by updating the Member States experts about relevant cases, modus operandi, etc.;
- Participate and contribute to several initiatives, e.g. awareness meetings, projects on the implementation of new legislative instruments and training sessions organised by international organisations;
- Support international projects developed by the EU Member States, such as the COSPOL Internet Related Child Abuse Material Project (CIRCAMP) and the European Financial Coalition (EFC), providing expertise and criminal intelligence analysis.

The CIRCAMP[8] project was launched in 2004 by the European Police Chiefs Task Force under the Comprehensive Operational Strategic Planning for the Police (COSPOL) mandate to fight the use of the Internet for the distribution of child abusive material. The project was successful in implementing the Child Sexual Abuse Anti Distribution Filter and disseminating it widely. At the same time, the project members identified new challenges that required a more operational approach and this has led to a new proposal, which is entirely needs-driven. The operational activities will be effective if carried out at a national level and there is a requirement for a European or even an international approach, including the involvement of Europol and Interpol. The intelligence generated by the above investigations is to be contributed to Europol for analysis and dissemination of the relevant intelligence packages to the involved countries. Such activity requires stronger support to be provided by AWF Twins to CIRCAMP in order to coordinate the collective actions undertaken by the participating countries and to identify international cross-links.

The aim of the EFC is to disrupt the commercial gain behind child sexual abuse images. The major financial, Internet and technology corporations have joined forces with international police agencies, the EU Commission and specialist child protection NGOs to track, disrupt and confiscate commercial gains made by those who profit from the distribution of indecent images. On the policing side, Europol is working with the Child Exploitation and Online Protection Centre (CEOP) from the United Kingdom to deliver a European wide policing response, supported by the Italian National Police. VISA Europe, MasterCard, Microsoft, PayPal and the NGO Missing Children Europe, assisted by Allen and Overy, are amongst the founding members of the coalition and are joined by the International Centre for Missing and Exploited Children (ICMEC) and the International Association of Internet Hotlines (INHOPE). Europol has supported the European Financial Coalition since its launch in March 2009, participating in and providing expertise to the Steering Group, the Law Enforcement Cooperation Working Group and the Legal Working Group.

The core activity of Europol is to support the Member States in their actions to prevent and combat serious and organised crime, with the *Analytical Work File (AWF)* being one of the means of providing support to the Member States. AWF

8 http://circamp.eu/

Twins was opened in 2001 to support the participating Member States in preventing and combating the activities of criminal networks involved in the production, sale or distribution of child sexual abuse material, and the associated forms of crime within Europol's mandate. This activity, due to its great success, will continue. To date, AWF Twins has led to the identification of around *1,600 suspects* belonging to different criminal networks involved in offences related to the distribution of child sexual exploitation material on the Internet and support has been given to *23 international operations* at the end of 2009.

AWF supported several investigations, two of which are the most representative:

1. Operation *"Typhoon"* was concluded with house searches conducted in 19 countries, enabling the identification of 286 child sex offenders, of which 118 have been arrested. The investigation was led by the Austrian Criminal Intelligence Service BK which detected an ISP that was misused by child sex offender groups to distribute illegal content. Log files collected by the Austrian investigators were sent to Europol together with the child abuse images. After structuring and analyzing the content, Europol provided intelligence packages and analytical reports to the EU Member States and those countries with a Europol cooperation agreement that were also affected. The offenders had various professional backgrounds, some of whom were teachers or caretakers and were therefore in close contact with children. Furthermore, this case has led to the identification and rescue of five children, aged between four and twelve, who were the victims of sexual crimes in different countries.

2. Operation *"Venice Carnival"* resulted in data packages being sent by Europol to some MS and non EU countries concerning URLs of websites infected by a malware which caused internet surfers to be redirected to child abuse images websites. This investigation conducted by the Venice Italian Postal and Communication Police, revealed malware code stored on servers, the owners of which were not aware that they had been infected. It is believed that the same criminal organization involved in commercial child abuse images websites were also behind the malware-infection process. As a result of this operation, several websites in different MS were "cleaned" by their owners once they had been informed about the presence of the malware.

CONCLUSION

As cyber crimes, especially including those that exploit children, are often undetected and underreported, increasing the certainty of apprehension and punishment could potentially decrease the prevalence of these crimes. Online offenders often feel undetectable as online has anonymity proving it as an attractive feature of the Internet; therefore, they feel they are less likely to be apprehended. In response to the growing challenges of online crime, law enforcement has deployed innovative techniques to combat perpetrators. Foremost among these are proactive investigations that involve law enforcement agents posing as minors, lurking in chat rooms, and waiting to be contacted by offenders seeking underage victims. Despite the advantages of proactive investigations, given the large number of law enforcement agencies, many with limited sworn officers, it remains a significant temporal and monetary burden to train and deploy agents in these investigations. In order for law enforcement to track, arrest and gather evidence of ICAC incidents effectively, they must be well-versed in computers and the Internet, the online social behaviour of young people and suspects, and relevant investigative techniques. There certainly

is no way to predict what new challenges will be facing law enforcement agencies in the future. The problem of online exploitation of children is going to continue to take on greater importance. We should never view this area of the law as being static. They change with technology; they change with the problems society faces. The law will need to keep pace with technological developments. This means law enforcement agencies, much like technology, must keep evolving to meet the needs of an ever-changing society and to better ensure the protection of children.

In investigating on-line child pornography in the most effective way, the following are necessary:

- Enhancing awareness and providing appropriate tools, equipment and human resources to carry out investigations;
- Reducing any duplication of efforts in activities by consulting international police cooperation agencies and spreading knowledge and proposals;
- Developing closer operational co-ordination of ongoing investigations at national, European and worldwide levels;
- Enhancing close co-operation with Internet Service Providers and the Internet private sector;
- Enhancing close co-operation with non-governmental organisations.

The most important steps in fight against on-line child pornography may be in the direction of criminalisation of forms of abuse not included in the current legislative, in particular new forms of offences using IT; elimination of obstacles to investigation and prosecution in cross-border cases; ensuring comprehensive protection of victims, in particular in investigation and criminal proceedings. Also of great significance is to promote safer use of the internet and new online technologies, particularly for children, and to fight against illegal content, contributes to preventing child sexual abuse through an array of measures including the empowerment and protection of minors, awareness raising and education, self-regulation and safety tools.

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UDC 340.137(497.11)
94(497.11)"1914/1918"

LEGAL AND POLITICAL CONTRIBUTION OF ARCHIBALD REISS TO SERBIAN STATE

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Abstract: This paper analyses the work and influence of Archibald Reiss on the development of the institutional system of Serbian state and on the creation of the real picture about Serbia during and after the First World War, which was sent into the World. This Swiss professor of criminology, forensic scientist, doctor of chemistry and a war crime expert, working as a war correspondent for respectable European magazines, contributed to international legitimacy of the newly founded Kingdome of Serbs, Croats and Slovenes. Besides the analysis of his influence on the modernization of police and its education at that time, the work also analyses Reiss's vision of life and characteristics of Serbian people, focusing special attention to politicians and intelligence. The goal of the work is to emphasize historical importance of Reiss in understanding of Serbia and mentality of Serbian people, through his friendly advice about virtues and flaws of Serbs.

Key words: Serbia, The First World War, Archibald Reiss, legal and political contribution.

INTRODUCTION

The paper analyses the influence of Archibald Reiss on the development of the institutional system of Serbian state as well as his commitment to send the real truth about the situation in Serbia during the First World War to the wider public outside Serbia. This famous professor of criminology from Lausanne, forensic scientist, chemistry doctor and a war crime expert, came to Serbia, sent by the international community to investigate war crimes committed over Serbian civilians by enemy soldiers. Thanks to his work, documented reports, courage and righteousness, he let the World find out the real truth.

Although his ideas had not been completely accepted, his establishment of the First Police School 1921 presented a milestone in police education in Serbia. Another novelty that he introduced was „technical police", which was the first police laboratory in Serbia. His friendly advice and ideas to Serbia could be applied even today, which clearly shows that Reiss was ahead of its time and that he was well familiar with Serbian mentality.

His political significance is immeasurable and had been reflected through his contribution to the establishment of the new state, Kingdom of Serbs, Croats and Slovenes, and through his participation in international peace conferences as a member of the delegation of Serbian Government. The end of the War for Reiss never meant the end of his mission in Serbia and the Salonika Front. He wanted to witness and to participate in the build-up of new life in the destroyed Serbia, and that is how he got involved in the Ministry of Foreign Affairs, Ministry of Internal Affairs and the National Bank of Serbia. From his political testament "Listen, Serbs!" (fr. "Ecoutez les Serbes!"), which was left to Serbia as a legacy after his death, very important moral lessons can be learned; astonishingly, even written a century ago, they are applicable on the currently prevailing situation in Serbia today.

REISS`S BIOGRAPHY AND HIS ARRIVAL IN SERBIA

Rudolph Archibald Reiss was born near Hechtsberg in southern German State Baden in 1875, in a landowner family. In 1893 he moved to Lausanne, where he studied chemistry and received a Ph.D. at the age of 22. As an assistant at the University, he was involved in photochemistry and photography, and very soon acquired the title of the first assistant in this discipline and he started writing his first scientific works. His interest for this area continued, and he soon became a private docent for photochemistry and scientific photography. From the interest for scientific photography he developed the interest for criminology, which at the time had not at all been developed as a scientific discipline. In Paris, he started acquiring knowledge in this area and in 1905 he published a manual „Forensic photography". His works, research and thorough studying of criminology have contributed to his appointment as a professor of forensic science at the University of Lausanne.[1]

Not long after that, he used his extensive knowledge in the field of criminology to establish the Institute of Forensic Science at the University of Lausanne and soon after that he became very well known in the entire world. He worked with many scientists, some of which were in Serbia, who wanted to specialize in that field. As a well-known expert he was invited to many countries to give lectures, trainings and help organize criminology schools and police laboratories. His books and smaller works became very relevant in the world and his name got to be even more recognizable. At the beginning of the First World War he voluntarily applied for counter-espionage troops in Switzerland, as his health condition had not allowed him to serve as a regular soldier. Deeply disappointed by obstructions by some of the highly ranked officers who were clearly inclined to Germany, he resigned and offered his services to France[2]. But, at the same time in 1914 he received an invitation from Serbian Government to examine the misdeeds done by Austria-Hungarian troops over soldiers and civilians in Serbia. By the end of September 1914 he already came to Nis. Reiss, as a dutiful researcher and experienced criminologist, was following Serbian soldiers in the fronts, visiting bombed towns, gathering material evidence, conducting surveys and verifying all the evidence in order to come to the real truth.

At the end of 1915 he voluntarily joined Serbian Army and by doing so, he got a chance to perform research about atrocities on the spot and also testified some of the deeds committed by Central Powers, which were contrary to principles of international conventions. After the end of the war he resigned his position as a professor in Lausanne and permanently moved to Belgrade. From that moment on, he did everything to help the newly formed state, Kingdom of Serbs, Croats and Slovenes. He participated together with the Delegation of the Kingdom in Neuilly and Paris. After that he pledged for modernization of police and police education and established the First Police School in 1921. Unfortunately, some of his ideas and friendly advice could not be implemented because of the disagreements that he had with officials of Serbian Government, especially because of the fact that he was strongly opposing to political police.

Soon after the conflicts, Reiss withdrew from the public life and in the end, worked only as the National Bank advisor. Because of his tremendous experience, in 1925 he was named honorary professor by the Canton Vaud (Switzerland). Independently of that he decided to spend his entire life in Serbia. His long experience of living in Serbia Reiss used to write a book "Listen, Serbs!" The book describes

1 Prsic, M., Bojkovic, S. (1997). Suffering of the Serbian people in Serbia 1914-1918 (in Serbian), Chosen Works, Belgrade, p. 238-239.
2 Ibid., p. 240.

Serbian mentality and Serbian people, and Reiss, as a true friend of Serbian people, truthfully points out to flaws and virtues of Serbian people, flaws of politicians, the youth and problems with criminal and corruption that are present these days, too. Reiss was a real friend who accepted Serbs with all their flaws and virtues and who knew Serbs maybe even better than they knew themselves. The fact that his advice could be applied on the situation in Serbia that we are facing today, once more confirmed that Reiss was ahead of his time. On August 8, 1929 Reiss died unexpectedly during a dispute with a former minister. In his will, Reiss expressed a wish that his heart should be buried on Kajmakcalan Hill.

As mentioned above, Archibald Reiss came to Serbia for the first time in August 1914 following the invitation of the Serbian Government as a neutral observer in order to investigate the crimes that Austro-Hungarians, Germans and Bulgarians had committed over Serbian civilians at the beginning of the First World War. At that point, the powerful Austro-Hungarian Empire, with the help of Vatican, Austrian, German and Bulgarian press, spun lies about Serbs, presenting them as savages, robbers and murderers. The fact that he was called "Sherlock Holmes from the Canton Vaud" testifies that he was very well known and widely appreciated.[3]

Reiss wrote down the observation concerning his first arrival to Serbia in the war diary called: "What I Have Seen and Lived in the Great Days". He was riding on a train from Salonika port to Gevgelija, where he reached the Serbian border and switched trains to continue his ride. In that moment he never thought that his fate would be connected with the fate of Serbia. "I thought that I would conduct a survey to tell the world about what had happened on the war stage, but I could have never guessed that these soldiers that I had seen for the first time, would become my co-warriors and that this country would become so dear to me, as my home Switzerland", Archibald Reiss said after a decade spent in our country.[4]

His first impressions were filled with amazement. As he had been used to cleanness and perfect order of train stations in Switzerland in which people more or less look alike, saw a heterogeneous people who were standing all over the train station, including even the railroads. Reiss's description is very picturesque when depicting Serbian militia, peasants and the nature that had enchanted him on that autumn morning. The consequences of war had already been present, so that there were no different departments in the train, but everybody sat where they found vacant place. That is how Reiss ended up in a train compartment with a group of students who had just arrived from France to help defend their unfairly attacked country.

When he reached Nis he met with the Prime Minister Nikola Pasic, which will be described later in the work. From that moment, Reiss made an effort to establish intense war-corresponding activity. He did not limit himself on the official reports about the survey that he was supposed to conduct, which could never achieve such high publicity, but he made sure that his frequent war stories were published in daily press in Lausanne, Paris and Amsterdam. In that way Reiss became very well known and reputable among Serbian allies, but, at the same time was hated and fiercely attacked, often by insidious means, by the opposite side. He always looked for new goals and new means such as travels to Switzerland and other countries to hold lectures about his findings in Serbia.

3 Levental, Z. (1984) The Swiss in Kajmakcalan (in Serbian), Prosveta, Belgrade, p.24.
4 Politika (1929). Number 7638, Year XXVI, (in Serbian), Belgrade, p. 1-2.

REISS`S LEGAL CONTRIBUTION

Archibald Reiss is well known in Serbian history as a man who discovered the real truth about the atrocities in the WWI and somebody who brought justice for Serbian people in the hard period after the War. However, although it has been often neglected, his contribution to police education in Serbia is of immense importance. This chapter will be dealing with this part of Reiss's contribution.

For example, his "Manual for Technical Police", published in 1911, confirmed his world reputation as an expert on forensics and an author of valuable scientific works from the same field. Before and especially after that moment, governments of many countries were often inviting Reiss, or sending him their officials to be trained. He, as an expert on forensics, helped in many practical aspects, such as trainings of the staff and improvement of the work of courts, organization of police laboratories and delivery of trainings in application of forensics.[5]

During the First World War a Gendarmerie NCO School existed in Serbia and the members of the school belonged to the military service. In the after-war years Reiss perceived disorganization, non-professionalism and militarization of the police at the time. Therefore, he wanted to use his knowledge and expertise to found the First Police School and to modernize police. The year 1921 could be considered crucial when it comes to police education in Serbia. Namely, on the 8th of February 1921 by the Regulation of Ministry of Foreign Affairs the first State Police School was founded. It was a starting point of university police education. In his handwritings from 1914, named "Contribution to Police Reorganization", which was published in 1920, Reiss identified the establishment of lower and higher ranked schools for police as a necessity for police modernization. Furthermore, he concluded: "The police can prevent many crimes and violations, but only if it is a professional police which is aware of its real role".[6]

According to the writings of the editorials of the magazine "Police" from 1921, the school was opened by the Ministry of Internal Affairs Milorad Draskovic, who "honoured the science and expertise" and invited the students to improve and enrich their professional knowledge "based on conscientiousness and correctness in the work", pointing to "benevolence which the Ministry will show to the school and to all students that achieve notable results". In the school opening Reiss spoke to students and reiterated the significance and necessity of professional police education: "Very often, justice is in the hands of the police, and even the life of those that are being investigated…Police should be contributor to justice; and is there anything more dignifying then justice!...Prepare for the profession, which is, if honestly served, the best there could be". In this first speech in front of the students, Reiss also said, what most strikingly and most efficiently reflects the essence of the police vocation: "It will not make you rich but you will have the pleasure to work for your own country and belong to the elite part of your nation. Your leading principles should be work and honesty[7]".

There was total of 18 police clerks and 9 detectives enrolled in the school. The curriculum, which is comparable to a faculty degree, contained of 14 subjects, most of which are still up-to-date: criminal law; criminal proceedings; laws, police regulations and instructions with application; general political education; practical

5 Prsic, M., Bojkovic, S. (1997) Suffering of the Serbian people in Serbia 1914-1918 (in Serbian), Chosen Works, Belgrade, p. 12-13
6 90 years of High police education in Serbia (1921-2011), A brief historical review (in Serbian), Academy of Criminalistic and Police Studies, Belgrade, p. 1
7 Ibid., p. 2.

criminal law and criminal proceedings; practical knowledge in physics and chemistry; identification and offender description; anatomy and hygiene; judicial medicine; scientific police; identification and description of offenders; criminology and general political questions; practical application of description and identification; special physical exercises and French language. Reiss specially emphasized the values that police members should posses, and he found it even more important than the content being taught in the school. In his book "Listen, Serbs!" as the most important characteristics and values in the work he stated technical skills, inteligence, deligency, love toward work, moral courage and honesty.[8] Police education in Serbia today seems to fail to embed these necessary values into the future policemen, which shows that we unfortunately have not learned much from the advice and ideas of this great man and a true friend.

For police agents special classes were foreseen: behaviour instructions, submission of reports, and acquiring practical skills in criminal law and proceedings. The school was a unity of practical skills and theory that is lacking in schools of this kind even today. As a school director, Reiss taught criminology and general police issues, and according to A. Todorovic, one of the students, he held his lectures in French language. The lecturers in the school were professors of the University in Belgrade and higher ranked officials from the Ministry of Internal Affairs.

Unfortunately, the school stopped working only two years after being founded, which coincided with the Reiss`s "departure from the civil service". The reason for that lies in the fact that the governmental officials stopped providing support to Reiss. Still, his deeds were not forgotten, so his principles of police restructuring served as an inspiration for some parts of the Law on Internal Management from 1929, and for many legal solutions which were later implemented.[9]

From Reiss`s Police School the Central Police School in Zemun developed, which began with work on February 10, 1931. After the Second World War, until 1972, NCO and Officer School in Zemun continued to exist. Other institutions for police education at the time were College for State Security, Higher Officer School of National Militia in Sremska Kamenica and Higher School for State Security. Even to this day Reiss's ideas present a cornerstone and the model how the police should look like.

Besides the attempt to modernize the police education, Reiss also participated in the modernization of after-war police structures. Within the Ministry of Internal Affairs, he was appointed the Chief of Anthropometry Department. As the scope of work of the department was significantly broadened and started applying new methods, Reiss renamed it to Technical Police.[10] For the purpose of this service, Reiss organized and equipped an appropriate laboratory base. Another suggestion was to divide police to criminal police, state security police and gendarmerie.[11]

Reiss's engagement contributed to the establishment of the system of internal state security, which was an enormous challenge in the war-devastated country. He had been trying to implement different organizational models within the police, and combat the existing problems. Unfortunately, his ideals had not been fully accepted, and it is clear that Serbia today still faces some of the challenges concerning state security, such as corruption and hypocrisy of the ruling class, that were also present a century ago.

8 Rudolph, A.R. (2009). „Listen, Serbs" (in Serbian), Jovan, Belgrade, p. 80
9 90 years of Higher police education in Serbia (1921-2011), p. 3
10 Levental, Z. (1984). The Swiss in Kajmakcalan (in Serbian), Prosveta, Belgrade, p. 157
11 Milovanovic, Z. (1989). Memory on Rodolphe Archibald Reiss (in Serbian), Bezbednost i društvena samozaštita, Belgrade. p. 89-93

Archibald Reiss, as a world known criminologist and a forensic scientist had greatly contributed to braking down of prejudices against the Serbs, which were present in Europe and the rest of the World. He did it through his unbiased writings, which were always corroborated by facts. His first works were written at the time when the Serbs were exposed to massive sufferings during the WWI. His works present examples of scientific and professional interpretation of research results and they highly differentiate from baseless propaganda which was used to form a public opinion and create official policies in some countries.

Proofs of criminal actions of Bulgarian occupational authorities were collected, besides Reiss, by special interallied comission which investigated the violation of the Hague conventions and general international law, in the period between 1915 and 1918. Reiss and the interallied comission reported series of violation of international war laws, such as massacres, torture, mutilation of Serbian captives and the wunded[12]. It was also reported that the civilians and captives were forced to hard psychical labour in the immediate area of combat on the front line. The reports reveal data about slaughter of civilians, done not only by military staff, but also by civil servants of the occupational authorities. All the data from Reiss`s reports were gathered by investigation, survey, gathering material proofs, namely, all the methods used up to this date.

Archibald Reiss approached his duties as a crime scene investigator very responsibly, never retreating from his professional ethics. He wrote down in his memoirs, that he "went and conducted a survey with all the precautionary means". Not only did he conduct hearings of over hunderds of captives, but he also went on the crime scene, often risking his own life in order to gather all posible evidence. An extract from his writings confirms that he was working according to most rigid scientific criteria: "I was opening graves, examining corps and the wounded persons, visiting bombed towns, entering houses and performing all technical examination in most dutiful way. Shortly, I did everything to discover and verify facts that I have published[13]..." Reiss never took witnesses' testifyings as truthful, based on indications. He would always come up with possible versions that he would then thorroughly check, and back up with sheer facts. This kind of procedure is still being used in modern criminalistics rules. That is exactly why his works had awaken the interest of wider public and were taken very seriously.

As an experienced forensics scientist, with a special knowledge of ballistics, Reiss dedicated attention to the usage of ammunition which was forbidden by Hague conventions. During three months of work, he gathered unrefutable evidence that the Austrian soldiers used unallowed ammunition. Reiss describeed the looks and technical characteristics of explosive ammunition, factories used for their production, their devastating effects, and emphasised that their usage had been strictly banned by conventions. Although the "Decalration on the Use of Bullets which Expand or Flatten Easily in the Human Body" was signed by the countries of the Central Powers, they claimed that classical bullets were not convinient for guard duty in the period of peace, so they started producing unallowed ammunition, which were called bullets for excercises.[14] Austrians tried to negate Reiss`s claims, but Reiss, using his innevitable evidence made them conffess their deeds.

Reiss also wrote about bombing of houses which was against the rules of the war law. He determined that the granades were thrown on private houses, state build-

12 Prsic, M., Bojkovic, S. (1997). Suffering of the Serbian people in Serbia 1914-1918 (in Serbian), Chosen Works, Belgrade, p. 16
13 Ibid., p.18
14 Ibid., p. 19.

ings and factories and Belgrade sites. After careful abduction of corps and gathering of other evidence, he proved the usage of expanding bullets, burning houses, robbery of proprerty, rapes and mass murders. His reports contained exact casualty numbers, with full names and surnames, origin, sex and age of the victims.

Three most famous of his voluminous reports in the period between 1914 – 1920 are "Suffering of the Town of Bitola", "Report upon the Atrocities Committed by the Austro-Hungarian Army during the First Invasion of Serbia", (which is an important document stating proofs of the usage of forbidden ammunition, Austrian, Bulgarian and German law violations) and "Answers on Austria-Hungarian Accusations against Serbs".[15]

Besides his survey, the reports written by correspondents, publicists, writers, scientists, official reports of diplomats, doctors, and other staff of international allied missions and Red Cross representatives, had significantly influenced clarification of misdeeds of Austro-Hungarians in Serbia.[16] As these information reached the world public, medical and financial help was arriving to Serbia. Reiss`s reporting raised interesst of Europe for Serbia during the war, mostly because of scientific approach that he was using. That was also the reason that many politicians, diplomats and wider inteligence have paid more attention to the situation in Serbia during the War.

Origninality of Reiss`s work, and his unbias approach in reporting about madness and animal cruelty of Austria-Hungarian and Bulgarian troops in Serbia, provided a breakthrough into the widest audience. His reports were the base for passing the new and revising the old rules of the International Humanitarian Law. That is another reason why his contribution is absolutely immeasurable.

The reports testifying about the misdeeds also had a positive influence outside Serbia, as Reiss was at the same time fighting for the goals of supranational and human significance. The greatness of his role also lies in the fact that he represented consciousness of liberal Europe who owing to this man built the awareness and values that every European should posses.[17]

REISS'S POLITICAL CONTRIBUTION

Archibald Reiss inevitably had to face political reality in completing different tasks, which were given to him, as a forensic scientist. As far as his political engagement related to events in Switzerland and the world, there are no direct data, but there are indications that he wasn't exclusively doing expert and teaching work, but was also showing interest in politics. The outbreak of the world conflict in 1914 woke up Reiss's neutrality in this rather active political arena. So, after the outbreak in Switzerland, he got disappointed in openly pro German politics of official neutral Switzerland and he resigned and offered his services to France.[18]

At the end of August, as he had just decided to resign, he met Nikola Petrovic, Serbian general consul in Geneva, who tried to persuade him to come to Serbia, and do a survey about crimes, which Austro-Hungarian troops committed in Macva. Reiss had accepted his invitation and after his arrival to Nis, he met Stojan Protic, the Minister of Foreign Affairs of Serbian Government. When he met Nikola Pasic, the President of Serbian Government, and a famous politician, Pasic told him:

15 Prsic, M., Bojkovic, S. (1997). Suffering of the Serbian people in Serbia 1914-1918 (in Serbian), Chosen Works, Belgrade, p. 15-26
16 Ibid., p. 356.
17 Levental, Z. (1984). The Swiss in Kajmakcalan (in Serbian), Prosveta, Belgrade, p. 25
18 Prsic, M., Bojkovic, S., p.357.

"Come to the front. Open your eyes and ears, and then tell the world what you saw and heard".[19] Then, Reiss came out from the president's office, as an official and neutral investigator of Serbian Government and Army. He was visiting Serbia, which was enveloped in the wind of war. He was faced with tremendous crimes of Austro-Hungarian troops in Macva, when he was visiting the Sava and Drina fronts. It was clear from the beginning that the Serbian Government made a great choice choosing Reiss for the investigation, as he was the man who not only had all the necessary qualifications and international prestige, but was also a great humanist. However, after the meeting with Pasic, he lost support of a part of Serbian politicians who were against Pasic. "The politician slackers" from parties which were opposed to Pasic, now considered him as their enemy, who had to be beaten with the most insidious weapons. In front of the Allies, they presented him as a spy who worked for the Central Powers. Reiss said: "It was hard for me, very hard, when I saw, that the people for whom I had sacrificed all, are capable of such crime, but, it never occurred to me to blame the whole nations for the crimes".[20] After that, Reiss emphasized, that that had hurt him most, during the whole life. And that pain was caused to him by our politicians.

For his position of a neutral investigator of Serbian Government and Army, he said: "I remained neutral investigator until the end of the War. But when I saw all the atrocities done to Serbian people because of the cruelty of their enemies, when I heard how enemies' bullets whistle around my head, and I could not fight back to them, because of my neutral status, I quickly left that status and became a Swiss volunteer of Serbian Army, friend of glorious Sumadija, Dunav, Morava, Drina, Timok and Vardar warriors. But, this new status hasn't ever forced me leave my objectivity of an expert and a sheer investigator, in front of my country courts and elsewhere. I have sworn to tell truth, and nothing but the truth".[21]

So, Reiss strived to inform the world what was happening in Serbia, not waiting to complete his survey and publish the results within the official reports to Serbian Government. The role of messenger from the scene, he accomplished as he became the special war reporter of three influential European newspapers. From the three, "Gazette de Lausanne" and "D. Telegraph" were being published in neutral countries. Thanks to that, they enjoyed special reputation and credibility. Reiss's articles echoed strongly. Their influence spread over the circle of newspapers` readers and impacted Governments and their attitudes. That could be considered as Reiss's most important and most effective contribution in his striving for Serbian side and side of its Allies. It is no wonder that a special place in Serbia belonged to Reiss. He was given huge trust, because of the mission that he accepted. He also enjoyed inviolable authority by readers of daily press abroad, because he was not only a professional journalist, but also a scientist and university teacher coming from a neutral country.[22] Those readers were important part of public opinion abroad.

In addition to the survey of invaders' inhuman acts, Reiss quickly got interested in political issues, such as international relations among the countries, which were waging the War for Entente, especially related with Serbia and future South Slavs. In the visiting of some parts of the fronts and burnt villages, or bombed cities, he had to consider some military aspects, although he did not know the strategy and tactics, and showed no interest in learning them. In the middle of his attention were humans, their attitudes in misfortune and hours of triumph. He was especially fascinated by the mentality of common soldiers, usually peasants, but also of some

19 Levental, Z., p. 24.
20 Rudolph, A.R. (2009). „Listen, Serbs" (in Serbian), Jovan, Belgrade, p. 70-71.
21 Levental, Z. (1984). The Swiss in Kajmakcalan (in Serbian), Prosveta, Belgrade, p.40.
22 Ibid., p.25.

people belonging to higher classes. His experience in close contact with them, significantly contributed to him becoming a convinced friend of Serbia, with whom he permanently attached his heart and his destiny.[23]

When he returned to Lausanne, in the beginning of 1915, he faced the enemies of Allies in newspapers, because of his articles about Austrian crimes in Serbia. That was during his work on arranging data, which he had collected in Macva. Later he lectured about those events on the Sorbonne. From that period Reiss's famous opinion stemmed: "In front of crime, there is no neutrality". This opinion permanently marked his orientation to serve only and exclusively to the truth.

Because of the engagement on Entente's and Serbian side, Reiss caused himself a real storm of threats, intrigues and attacks, and not just in opposing countries, but also in his home Switzerland. So, he claimed that everything which he had had to face in his homeland, had been more merciless and dangerous, than what he had experienced in battlefields.[24] Because of big chase against him in Swiss daily press, which reached culmination in the autumn of 1915, Reiss wrote an article entitled "For Civilians of Serbia. Appeal to Allied World". The article was published in "Gazette de Lausanne" as an appeal to Allied Governments. Reiss in this section pointed out that enemies were using all war cruelties over Serbian civilians, even against women, children and the old. Reiss asked a question: "May we as the neutral, stay indifferent to those horrors?"[25] He considered that we should have raised our voice with the whole strength and protested against the War, which affected civilians and the innocent. Switzerland was famous as an initiator of merciful and charity actions, in Reiss's opinion. According to that he considered that Serbia, the country which was characterized by heroism that caused general admiration, should have been protected from massacre. "That intervention could be performed by a demarche of the governments of the Allied countries in the countries of Central Powers. It is certain, that the affected countries, would have tried to justify the taken actions. It is also sure that one Swiss protest would make them issue more human orders to their Armies in Serbia…"- said Reiss.[26] He pointed out in his article, that civilians and the Army in Serbia were being exterminated. It affected him and the like-minded, because it was about sublime laws.

Reiss might have expected that his alert call would affect the Swiss Government, whose diplomatic move could make the enemies stop slaughtering Serbian people[27]. He was right when he had believed that his article would have echoed in public opinion of his own country and one part of foreign countries. He was also right when he had concluded that important people of Central Powers could not have ignored him. That disturbed Central Power sympathizers and helpers in Switzerland, so the very next day an anonymous reporter for canton Vaud wrote replica in the biggest Zurich magazine "Neue Züricher Zeitung". The reporter tried to deal with Reiss in the name of pro German forces. The reporter understood Reiss's defending of civilians in Serbia as an insult to Reiss's Baden origin and accused him for being a medals hunter. Reiss did not remain indifferent. His replica followed, where he still defended his inclination to Serbian nation and its Allies. He added, that he would continue to publish the truth, because it was his duty. He was very sorry, that his countrymen doubted his words although he had never given them cause not to trust him.

In his speech, which he prepared for the Congress of Nationalities in Lausanne in 1916, Reiss showed once again great courage and ability to properly think in terms of politics. But this speech that should have been held as an introductory

23 Ibid., p.48.
24 Ibid., p. 41-47.
25 Ibid., p.88.
26 Levental, Z. (1984). The Swiss in Kajmakcalan (in Serbian), Prosveta, Belgrade, p.89.
27 Ibid., p.46.

speech was not held from unknown reasons. Fortunately enough, Reiss's manuscript of that speech is saved, and represents an interesting contribution for understanding his unconformity in his reasoning and reacting.

At the beginning of the manuscript, it was stated that Reiss had been given a chance to open the Congress, because he had the honour of standing up in defence of a rather small but brave nation during the war: heroic and faithful Serbs. The Congress had a goal to discuss the World War influence on nations and to raise interest of the neutral countries for the destiny of the oppressed, but could the Congress give some specific results - Reiss asked himself. He did not want to encourage anyone, but he seemed that the fate of nations was being decided at battlefield. And the best decisions which were brought at gatherings could affect their destiny only to a very small extent. He said the German Chancellor Batman Holweg in his speech in front of Reichstag, claimed that Germans had been a friend and protector of little nations. If there were a nation who would have to be quiet, when it was about protection of little nations, then it would be Germans and their allies in the War. Further, he said how Germans had behaved to other nations, such as to, for example Poles of Poznań area, Schleswig Danes, Alsace, Lorraine and to German Jews. "Haven't they been exposed to a disdain of German nation before the war, who had never let them become officers in Germany", said Reiss. Then he mentioned Austro-Hungarians and asked about what they had done in Bosnia and Herzegovina, Dalmatia, Czech and parts of Hungary which had been settled by Romanians.[28]

It is not known how much Reiss was interested in national issues before the war, but it is certain that during the war and after it, he became interested in problems of small nations and minorities.

In 1916, Reiss left the Serbian Army, because he wanted to improve accommodation capacities for many refugees in Switzerland and to inform the world what had happened. His countrymen helped him a lot. In that way he succeeded to save a huge number of Serbian orphans' lives and later he strived for 300 of them to get a proper education in Geneva.[29]

Reiss did not only follow the course of military operations, but also the echoes of negotiations regarding the future state of South Slavs. This political topic had an impact on his report from Salonika in 1917 and 1918. He wrote about Serbian relations with other European countries. Articles overwhelmingly referring to Yugoslavs and their perspective of forming a single state started to appear in the papers. Some of the headlines of these reports were: "Future State of Serbs, Croatians and Slovenes", "Serbs and Trinity", "Austro-Hungarians and Yugoslavian People", "Vidovdan", etc. In one of his articles he says how "The Corfu Declaration" made the end of manoeuvres in advantage of Austro-Hungarian Yugoslav. Serbian, Croatian and Slovene people determinately said that they did not want Austro-Hungary.[30]

For Reiss, the end of the war did not mean the end of his mission in Serbia. He was a witness and a participant in building a new life in devastated Serbia. So, the one more important and noticed role in Serbian politics, reflected on his work in the Ministry of Foreign Affairs, where he was appointed as Chief of newly established section for documentation of war crimes. This section had an actual ad hook character for preparation for the peace conferences. At the same time, he worked in the Ministry of Internal Affairs where he was trying to establish a modern police school and manage it. That was recognition for his superior professional skills. But the prob-

28 Ibid., p. 90.
29 Prsic, M., Bojkovic, S. (1997). Suffering of the Serbian people in Serbia 1914-1918 (in Serbian), Chosen Works, Belgrade, p.357
30 Levental, Z. (1984). The Swiss in Kajmakcalan (in Serbian), Prosveta, Belgrade, p. 137-138.

lem was that his enthusiasm could not fit in bureaucratic administration, and at the end he became an expert for counterfeit banknotes at the National Bank in Belgrade.

But, very soon he realized that Serbian Government was not in need of professionals. With his knowledge Reiss started presenting a threat to dilatants in power. As his knowledge and truth were not enough in confronting the corrupted politicians, and ignorance and lies he could not use, he got very disappointed and retreated in personal exile. In contrast of the so-called intellectuals who were in authority, Serbian people had never stopped to appreciate Reiss. Perhaps that was the only reason why great Reiss preserved his attention to bequeath his heart to Serbia. He was aware that most of Serbs were those common peasants, whose good sides were priceless, and not the intelligence which was leading Serbia.

When it is comes to the police, Reiss's already mentioned "Contribution to the Police Reorganization", contains a chapter about political police. We find out that Reiss did not consider anarchists and revolutionaries as political fighters. He also proposed that the police should be free of "unpopular burden of unnecessary jobs concerning secret control" of some citizens and that those jobs should be given over to a special agency, which could be called "Service of Political Notifications". He pointed out that it should not spy on those who thought differently from the Government. It should spy only on those whose goals were illegal.[31]

Regarding his role at the Peace Conference in Neuilly (Bulgaria), at the end of 1919 it could be said that it was very successful. Reiss had an expert role within the Allied Commission, which should determine law infringements committed by Bulgarian forces. Actually the Commission was supposed to put together a list of persons that Bulgaria should deport for a trial to Allies. His engagement in preparing files against Austro-Hungarians and Germans, who were supposed to be extradited, did not pass as successfully as this previous task.

In November 1919 Reiss asked explanations from Yugoslavian delegation in Paris concerning the role of International Allie Commission for lists coordination and organization of mixed courts. He did not get any answer, so in December he sent a telegram again with the same content, as it was very important for the continuation of his work. The President of Yugoslavian delegation at peace negotiations, Mr. Pasic sent a telegram from Paris to the Ministry of Foreign Affairs in Belgrade. From that moment on, a conflict between Pasic and Reiss started, as Reiss's secretary in the Ministry of Foreign Affairs claimed. The conflict was about the list of war criminals. It still remains an open question: Was the lack of coordination and misunderstanding between Reiss and the Delegation only the result of sloppiness of the latter, or was it the lack of organization in Ministry? Were those dissonances caused by the disagreement between Pasic and Reiss, or Pasic criticized Reiss before and did not pay enough attention to his pledges? [32]

In the years after the war, Reiss got new obligations of international significance. So, he had a special passport with visas for about ten countries. French Government used Reiss's authority and skilfulness and delegated him to French missions in Russia and Germany.

If one reads Reiss's work today, one could think the current political situation is being depicted. He was referring to Serbian politicians in the Parliament as "slackers". It seems as nothing has changed from the period when he wrote a well-known political testament "Listen, Serbs!" This book, which he left us as a heritage, is up to date in many ways.

31 Ibid., p. 29.
32 Ibid., p.154-156.

During the conflict with many enemies through history, Serbian people became fighters. Even in peaceful times we manifested that characteristic in political conflicts among ourselves. Reiss thought about arguments between political parties. In the War it was not important who a radical, liberal or a member of some other party was. Everybody was Serbs. When he was at Corfu during the War, he saw how Serbian politicians were fighting for power and causing ministerial crisis. Then he was ashamed of defending the Serbs. "Politicians slackers" were trying to move the Parliament from Corfu to Cannes, how they could live much better. The politicians who lived in Geneva, Paris, Nice, London, continued to fight in countries where they emigrated. When the War was over, the politicians rushed to take authority and high functions, instead of allowing those who sacrificed for fatherland in the battlefield to take positions. Unfortunately, for them, politics was the only way to earn more. Not only ministers but also members of the Parliament thought in that way and a very high level of corruption existed among them. Because of that Reiss was sorry for Serbian people, whose destiny was in hands of such politicians.[33]

From the already mentioned conflict between Pasic and Reiss, Reiss formed his opinion about Pasic: "Among your politicians that I have met, there were people who could have been great statesmen if they had been brave patriots without calculations and if they had dedicated their lives to a common good. The best example is Nikola Pasic". Despite that, Reiss thought that Pasic was one of the statesmen who had done most for Serbia. But, Reiss also thought that he had done it only because his personal interest had matched the state interest. Reiss thought that if those interests had been opposite, he would have used his big intelligence composed of deceit and spontaneous intuition, against Serbia. Also, he criticized him because he was a son of poor peasants, and he left the greatest wealth in this country. "The man who commits to a common thing must sacrifice a lot, because the fight for ideals costs. But, during his whole life, Pasic was only a politician who only had one thing in mind - to get rich. Reiss further wrote, how that great man loathed from socializing with bad people, and Pasic`s friends were only those with poor spirit and corrupted. He even did not order his son to stay in his country to defend it from enemies, but he let him enjoy bohemian night life in Paris and Corfu. "The old Pasic served as an example to nowadays politicians who are moulded after him. He created those arrogant politicians and profiteers. The state is being considered as personal gold mine".[34]

Reiss was actually fascinated by moral and heroic qualities of Serbian peasants and soldiers -common people, not the people in power. He discovered them in the First World War. He considered that those wonderful features should have been a basis of new free Serbia and that was a country in which ideal society could be build with the capacities that common people have. The conflict with authorities in Belgrade presented Reiss's meeting with the harsh reality. Wanting to contribute to the development of the Serbian state, he invested all his knowledge.

Reiss concluded that the politics had influenced everything and rule everywhere. If there is a powerful position, the qualities of a candidate are not important, but their political connections. Although, that person could be an ignorant or a dishonest man, he would win the most qualified experts. Our contemporaries could agree with his statements, because nowadays situation does not differ very much.

33 Rudolph, A.R. (2009) „Listen, Serbs" (in Serbian), Jovan, Belgrade, p. 64-75.
34 Ibid., p. 92-95.

CONCLUSION

Reiss, as a great friend of the Serbian people sent a message that they should not allow its soul to perish in the whirlpool of historical burden, which was left by their rulers. Reiss can be fully trusted because his teachings are the reflection of a neutral scientist, who had fought for truth and high goals from outside of the state borders. Besides his sincere and convincing words, his deeds testify of his sacrifice for the Serbian state. That was demonstrated through his work within the Serbian institutions and his pleading for the war-torn country to get back on its feet.

Incredible is the fact that in his book from 1928, Reiss wrote about the things which can be related to the current social and political situation in Serbia. But rather devastating is the fact that the situation has not improved in eight decades and could even be considered as worse .

A friend like him, Serbia has never had and will most likely never have in the future. So, we express sincere thanks to Ph.D. Rudolf Archibald Reiss, a great Serbian friend who had bequeathed his heart to Serbia, which has unfortunately fallen into the dust and oblivion.

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UDC 343.85:343.261-052
343.244

INDIVIDUAL TREATMENT IN THE ENFORCEMENT PROCESS OF CRIMINAL SANCTIONS

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Abstract: The paper presents an analytical approach to treatment as a primary means of re-educational concept of convicted prisoners, with a particular reference to the period when the idea of re-socialization was predominant in penology, and the period when the idea of re-education was abandoned. All of that influenced the determination of the goals of punishment and other criminal sanctions, which reflects on the forms of application of work with prisoners. The disappointment and abandonment of the concept of re-socialization influenced the goals of punishment and the relationship with offenders, and thus, the degree of use and application of all known forms and methods of work with prisoners.

In modern Europe, a correctional practice, in spite of a high level of distrust when it comes to the concept of social reintegration, did not enter the retributive type of oppression, but preserved the healthy core of re-socialization in selecting types of penalties and sanctions, and greatly respected the principle of guilt, by which a more balanced relationship between the general and special prevention was established.

The form of individual treatment, as a form of work, as well as techniques and methods used in individual work with prisoners, are discussed in this paper. The number and variety of treatment techniques is great. Therapeutic techniques can be distinguished by the degree or level of importance of working with prisoners, on which they are carried out. Also described are the basic steps and the essence of individual work, which includes: exploring personality – testing of convicted persons from the socio – psychological, pedagogical, medical and criminological aspects; educational activities to inmates during the execution of criminal sanctions – using a method of counseling, prevention, encouragement and punishment; correction of behavior in changing negative attitudes, working habits, building and maintaining positive habits, working discipline and self – discipline, guidance through the ongoing process of prisoners' education, (either professional or general) and to assist in solving personal and family problems and other interpersonal conflicts.

All these activities are an integral part of individual work with prisoners, which is achieved by different techniques and methods of exercise.

Key words: treatment, penalty and the individualization of punishment, types of work with prisoners, methods, convict.

INTRODUCTION:

The prevention of crime, especially its severe forms is the challenge for modern civilization. By the late seventies in most Western European countries the social approach, which puts the emphasis on the perpetrator, prevailed.

Within this approach, a punishment, time spent on carrying out the sentence depended on the characteristics of the offender, successful execution of

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treatment programs and assessment of the possibility of returning to crime, after release. The radical shift in penal policy and practice was made after Robert Martison (1974) published a study on the effects of prison sentences which included a treatment of different programs compared with standard procedures executing the sentence, which were based only on sentencing, incarceration and punishment. The main conclusion of Martinson's study was that a treatment program of carrying out the punishment was equally unsuccessful in preventing crime as was the return of "normal" prison sentence. The perception of failure of a treatment approach in punishment has led to changes in policy and practice of punishment so that it emphasizes the type of the offense and its social danger and harm, the degree of guilt that is associated with a criminal offense, so that the punishment should fit primarily the degree of guilt - it is the general goal of prevention, while almost entirely neglecting the personality of the perpetrator of the offence. The tendency is to insist on the more stringent punishment of perpetrators of crime. The principle of socialization and individualization of sentence is almost entirely abandoned, which in recent years led to a multiple increase in prison population in the world. Despite these trends, the European Committee on Crime in the "European Prison Rules" keeps re-socialization, taking care of past failures of treatment procedures, stressing that the success of treatment depends on the quality of engagement of the convicts and the degree of cooperation between inmates and the outside world. The policy emphasizes the need to respect individual rights and human dignity of prisoners and to ensure humane conditions in prisons. In such circumstances, prison systems, are facing a great dilemma: whether to continue using all the forms and methods which characterized the concept of social reintegration, as a basic approach to the process of imprisonment and other institutional sanctions, or to reorient to other forms of work with prisoners, which in practice did not show significant results? If we start from the essence of the concept of re-education, which aims to improve the offender, and the ability to reorient, and respects positive social value s, the application of the treatment makes sense and it may represent a mechanism for changing delinquent behavior patterns. Most systems of criminal sanctions in the world apply "modified" forms and resources in dealing with persons deprived of their liberty, which are characteristic for the concept of re-education. Unfortunately, there are no other means and forms of work that could replace the already known and applied methods of penology that have been used in practice for decades. Treatment, as the basis of re-socialization process, is most contested, but still applies in almost all national prison systems. Of course, with the specific characteristics and with a lot of innovations that reached the penological thought in its development. Certainly, we can say that after the first sharp criticism, socialization and treatment were not abandoned, but they required a different treatment models and methods of work with prisoners. They require a greater level of involvement of inmates in the programs that are to be implemented along with professional services. The abandonment of the concept of socialization also affected the sentence and punishment and the situation is substantially changed in comparison to how it was in the fifties, when a treatment ideology was at its peak. The theory emphasizes the considerable part of the increased role of general prevention, its positive, integrative sense. It requires the provision of greater importance in sentencing principle and the principle of the weight of guilt and sentencing offences. This means that the sentence reflects the gravity of the offense, the right measure for the committed crime, not that the penalty for a significant treatment – personality of the perpetrator of criminal acts, and other facts that are of importance for the treatment procedures. So, now it is insisted on the gravity of the offense and the equality of penalties for the same or similar offences. Personal characteristics of the perpetrator of

crimes come to the fore only in the extent in which they affected the execution of the crime. It can be said that in addition to high confidence in the conception of re – socialization, it did not touch the repression and retributive type of repression that is still preserved. More balanced relationship between general and special prevention is established.

TREATMENT AND INDIVIDUAL WORK IN PENITENTIARY INSTITUTIONS

The concept and the goal of treatment

The use of the term "treatment", which is a French origin (traiter) and indicates the actions, behavior, is very widely spread in penological and criminological literature. The term "treatment" has been used intensively since the fifties and the terminology is used in all international institutions, declarations, conventions, which deal with the problem of combating crime and treatment of prisoners. Term treatment covers a very wide content that may have a broader and narrower meaning. For the treatment of prisoners serving sentences commonly are used terms: treatment, re-socialization, reformation, correction, rehabilitation, reintegration, etc. Some of these terms include only measures, the process, while others contain the process and goal.[2]

The term treatment can be seen in the broad and narrow sense. Treatment understood in the broad sense refers to the treatment of perpetrators, as in criminal proceedings, and in the process of execution of criminal sanctions and later, in the post penal period, with what he observed at all stages from the standpoint of socialization, as the most important goals of criminal sanctions.[3] Accordingly, we distinguish the judicial treatment, institutional treatment, treatment during the execution of criminal sanctions and post penal treatment. All these stages must be considered, and they act, in a unique way. If we start from Ansel's thought – that in the process of re-socialization of offenders they lose their traditional boundaries between the phases of the trial, and execution phases of post penal-phase- then leads to the widest understanding of treatments that included treatment of the delinquent mentioned in all three phases.[4] In penology, about the treatment, is most often spoken in the narrow sense- the treatment of the persons sentenced to deprivation of liberty. The treatment, in the narrow sense, refers to taking all actions by prisoners arising from the regime of living and working in a penal institution.[5] All procedures that are undertaken as parts of the treatment must be consistent with the goals of reeducation, because only a single action in all segments of the treatment is possible to correct offender's behavior. The treatment involves the removal of individual causes of crime, in a process that is aimed at keeping convicted through several phases, starting from the conflict with the norms of society, to accept the existing value system in society. High hopes and expectations were put in the treatment in the sixties and the seventies. It was felt that the treatment is a powerful mechanism in terms of special crime prevention. However, it soon became clear that the treatment was an extremely complex activity, and that there were numerous uncertainties and dilemmas that arose during its implementation. At the very begin-

2 Davidovic, D. and others. (1970),Categorization of correctional homes and classification of prisoners in Yugoslavia, p. 171
3 Milutinovic, M. (1973), Criminology, p. 509
4 Atanacković, D. (1988). Penology, p.134.
5 Stefani-Lavasseur, (1968), Precis de Criminologie et penitentiaire science, Paris, p.226

ning, it became clear that treatment should be tailored to the individual personality of convicts, which is very hard for anyone to apply in practice. With a range of adverse circumstances that exist in correctional institutions at the expense of treatment, in particular, reflects the criminal infection and imprisonment and ongoing controversy between the control, protection and punishment, on the one hand, and efforts to re-socialization, on the other side.[6]

Past experiences point to the need to examine the entire spectrum of factors that influence the success of treatment and, in particular, to explore new dimensions in terms of treatment objectives. Experience shows that the treatment and training of prisoners did not give the expected results, because the inward goals were too ambitious. It is known that the main preconditions for the success of treatment depend on the desire and will power of convicts, and the level of relations between penitentiary institutions and the society. The most important thing is that prisoners adopt positive attitudes and acquire their skills, even essential, to be ready to face the problems after discharge and the need to engage actively in social life. The goal of treatment is to reduce the negative effects that prison conditions have on the personality and behavior of prisoners.[7]

FORMS OF TREATMENT

The current practice of re – education, in our country as well as abroad, made several forms of treatment, whose origins come from different areas and scientific disciplines, since the reformation is a multidisciplinary problem. Therefore, in our penitentiary (i.e. correctional) institutions and their educational practice forms of educational work are set through: individual work, group work, education of convicts, productive labor, occupational and work therapy and the participation of the convicts in reformation and leisure activities. That does not mean that this system is closed for the attendance of other possible forms of work, especially for the working methods within each of these forms, but this is the reason why the norms which regulate the operation and function of institutions for the enforcement of criminal sanctions, are not mentioned specifically by these forms.[8]

Individual form of treatment is considered the most important method in the process of re – education, but it has some advantages and disadvantages. Individual treatment is managed by an educator, whose task is to become familiar with prisoner's personality by monitoring behavior in the prison environment, the workplace, compared with the family. In this treatment there are different forms and methods used in the exercise of individual forms of work with prisoners. In practice, the individual shape is the most commonly used. The form of group treatment is applied to those offenders where the causes of crime orientation affect the result of delinquent environment.

Group counseling is used in Centers for professional orientation, so that the counseling takes place in groups of 10-15 people. Duration of group counseling is not exactly defined so that they can last from 45 minutes to 2 hours during the day, and intervals of meetings should be more than 2-3 days. The form of group work is most often used with specific populations characterized by particular psychological problems such as depressed individuals, neurotic, emotionally unstable, and individuals with other mental disorders. Group treatment approach aims to separate

6 Stevanovic, Z. (2008) Open prisons, p. 179-180.
7 Stevanovic, Z. (1993) The treatment of prisoners, Current problems of crime reduction, p.174-177.
8 Nikolic, Z., (2005), Correctional andragogy, the Institute for Criminological and Sociological Research, Belgrade, p.189.

the offender from criminal groups and that in the conditions of treatment and the quest for socialization, perform differential association in the opposite direction, by the offender to make a pro-social group.

Education as a form of treatment aims to enable prisoners to understand the conditions of life and relationships in the society, in order to understand that the problems he faces in his environment are not only the result of the disturbance of the relations the in society, but represent a part of his personality, attitudes, motives and realistic goals. Effects of educational work are very important, because the convicts in the prison environment feel lost, discarded and worthless. Treatment education aims to eliminate this feeling, to regain the trust of prisoners in their own personality and society. Therefore, the education of convicts is set as a necessity and education as the needs and obligations arising from the UN Minimum Rules, or as a human right to life. Adult education is used for the purpose of training for particular professions, as a socialization factor, due to the fact that a number of convicts do not have the necessary education or elementary professional occupations. When it comes to minors, the focus is on the treatment of general education with a minimum content of the profession. The aim of education is that the sentenced, returns to the new environment after serving his sentence as a person who has a condition that is engaged in a regular occupation and not to be "forced" to return to criminal behavior. Working engagement, as a form of treatment, is a human need as any other physiological needs, just as it is aimed at offenders negatively. A very small number of people unmotivated for work, it is the case only with the idler, and rogue. As a penal measure, labor has always been the initial function of criminal sanctions. The work has long been a criminal sentence within imprisonment, and not a form of treatment. In this sense, the work, as required, and occupational therapy, in the penal system passed several stages, depending on the goals of punishment. Initially, when the target of the sentence was retribution, work was a part of their content, as well as cruel means and methods of exploitation of man as a function of force and repression, humiliation in heavy physical effort. Such peculiarities of its functions are retained until the end 18th century. By the early 20th century, penalty retains the same function, but without additional compensation becomes a means of punishment, and the early 20th century work ceases to represent both - a punishment and a means of correction, and becomes a method of re-educational treatment of prisoners.

Document of the UN on the minimum rights of prisoners, suggests some basic principles of work as therapy: the first principle refers to the contribution of inmates' work to the economic activity in the state, Document of the UN on the minimum rights of prisoners, suggests some basic principles of work as therapy: the first principle refers to the integration of the inmates' work on the economic activity of the state, which in the moral and social meaning of inmates' labor equates with the work of human freedom, as his natural and social needs; second principle, the principle of introducing compulsory occupational therapy, as well as the right of the convicts, assumes that work, as human need, cannot be seized or imprisoned, the third principle, applicable to occupational therapy, vocational guidance of prisoners, which represents a significant factor for the development of vocational training and work habits in the function of social readjustment. The fourth principle involves the creation of equal conditions of prisoners with the same conditions, economic conditions and the profession at large, safety, etc. The fifth principle relates to the principle of reward and attitude that belongs to the convicted, which gives meaning to the work of free man and a proper compensation. Work in prisons is adapted to re-socialization, and many countries recognize the right of convicts to work. There are three approaches to treatment such as: work as an obligation,

work as a right and obligation and the right to work. Regarding ways of engaging prisoners there are two kinds of systems: the system of prevailing private interests and the system of prevailing public interests. The first group includes the following models: tenure system where the prisoners are given away to private employers who pay the rent for their work, the contract system -where prisoners are made available to private employers who pay the investment account and penal institutions and the private system of work where the employer pays for inmate labor penal institution per unit. The second group of models includes: working on the behalf of the state, work for government and public works - in which the convicts are engaged outside the correctional institution under the supervision of staff. In order to realize a working treatment it's necessary to make the selection of the work duties to adapt to physical, psychological and medical capabilities of convicts. Certainly, in the area of working the principle of individualization is applied in all phases ranging from training to work engagement, deployment of a fixed place of work, evaluating work, awarding - the degree of proficiency that, upon release from imprisonment, may enable convicts to perform certain activities. Leisure and self-initiative, as a form of treatment, is a complex process and depends on the complex emotional and volitional elements that reduces feelings of alienation and deprivation of prisoners. It takes place through the initiative and participation of prisoners in work and community (social) life in the prison, as well as through their participation in the administration. This treatment encourages the initiative of self – discipline, sense of responsibility, understanding and tolerance. Treatment of people sentenced to the free time has a different sense of free time of other people. Free time is not at all facilities for all types of prisoners in the same way regulated, it depends on the structure and character of convicted in correctional institution. In some theoretical approaches- leisure is treated in three ways:

1. The compensation- to establish a balance of personality that is lost away
2. Compensation - for what is lost in the professional work
3. Substitution -new functions in prison are changed

Post penal treatment requires certain procedures to continue the process of resocialization of convicts even after their release from prison. Reformation does not extend to the institutional-prison treatment, but there is a need to continue with the social integration of prisoners into the environment after release from prison. After serving his prison sentence it's necessary to take measures to reintegrate prisoners into the society. It is, perhaps, the most important phase in the overall process of re-socialization of convicts. In our conditions, and not only ours, post penal treatment is usually given little attention, which reversed the results of institutional treatment, In our conditions, and not only ours, post penal treatment is usually given little attention, which reversed the results of institutional treatment, which is manifested by a high percentage of returning and continuing with the criminal activities of convicts who had a chance to return a positive pattern of behavior. Post penal treatment occurs in two forms: the form of internal and external assistance. Internal support appears as the provision of advice, encouragement and guidance, while external assistance consists of providing financial assistance, providing temporary housing, securing employment, solving family problems, etc. Unfortunately, social institutions are neither financially nor staff – trained and focused enough to continue the post-corrective treatment and social services in the prison system are not developed to deal with this aspect of treatment, so in our circumstances post penal help is undeveloped.

Rewarding and punishment- stimulation as a treatment has a particularly important role in the process of correcting the behavior of offenders and represents

a special method in the individual treatment of prisoners. Stimulating measures have a significant impact on acceptance and adoption of system of values and habits of the prisoners. By stimulate measures, a formal prison system provides a response to the positive changes that the convict manifested in behavior and its relation to other inmates, prison administration, criminal act that is done, etc. Benefits and disciplinary measures are the only form of evaluation of the accomplished or unaccomplished in the process of realization. Benefits, as a tool in the work-corrective educational facility are a part of the process of socialization, and they reflect the degree of the achieved socialization on the individual level but also at the level of groups and institutions in general. There is a wide range of benefits, in general, and the level of individual institutions, depending on the type and character of the institution and the personal characteristics of prisoners, and they represent an important mechanism of individualization of treatment. What is very important in using this mechanism is that one should always try to get stimulants devised by those persons who deserve it, because it is a very stimulating act.[9]In addition to benefits that are provided by the Law on Execution of Criminal Sanctions, in individual work are used all other means of educational practices that have motivational properties. Combining the benefits and various other forms of competition among the convicts contributes to more efficient training process.

Benefits should be given respecting the principle of gradualism, steadiness and continuity. In the process of decision making should be seen the flow of re – socialization and involvement of all actors who work in the process of implementation of treatment and this is the most concrete and individual work with the convicts.

Treatment of juveniles is specific, since it is a special structure, which requires a special approach in the treatment of reeducation and re-socialization. Their treatment is takes place on the same principles as the treatment of adults, but with customized approaches in the content of the applied methods, depending on age and institution in which he is serving a criminal sentence. The aim of the special treatment of minors is to understand the need to respect the order and discipline, and to develop a sense of responsibility for themselves, their behavior and the environment in which they live. The treatment should allow the creation of habits of juveniles to use their free time creatively, in order for it to become a habit and routine practice in life at large. The exercise treatment in juvenile population can be facilitated, because there is a real possibility of changing attitudes and even personality traits in young people, but it can be difficult unless adequate methods are applied and if it does not establish the required degree of trust between the minors and the therapist-educators. Under such conditions it can cause the resistance of the young, prominent irrational stubbornness and persistence, which often leads to protests and disrespect norms of behavior.

Individual work with prisoners as a form of socialization

This form of work is considered the most important in the re-socialization of convicts. The significance of this method is reflected in the fact that it is continually implemented throughout convict's stay in prison, and after being released from prison - at the time of parole, post-corrective period, etc.

The number and variety of treatment techniques that are used in individual work with prisoners is high. Therapeutic techniques can be distinguished by a certain degree or level of importance of working with the convicts. This may be the

9 Jonić, Z. (1984), Individual work with prisoners and juveniles, Gazette, Belgrade, p.15.

level at which the therapist -educator actively participates in the therapeutic interaction and the degree to which the educator intervenes in activities of the convicts or participates in their environment. In penology, most often, individual work includes:

1. Analyzing and Personality-testing of convicted persons with socio-psychological, educational, medical and criminological aspects
2. Educational effect on the prisoners during the execution of criminal sanctions, by using the method of counseling, prevention, encouragement and punishment
3. Correction of behavior in terms of changing negative attitudes, work habits, building and maintaining positive habits
4. Construction of work discipline and self-discipline
5. Focusing on a continuous process of education of convicts, both on professionally and on general level
6. Assistance in solving personal, family and other interpersonal conflicts.

Understanding the personality of the convict, his features, attitudes, skills, motivation, personality traits, character, temperament and other psychological and somatic characteristics, provides a basis for the successful implementation of treatment and the achievement of positive effects of socialization. Personality testing of prisoners is done by a professional team that is made of a psychologist, social worker, teacher, doctor and criminologist, who, with all their aspects, provide the estimation of facts related to the convicts and a written report which should include the most important sectional figures with clear conclusions and where the problems are, failures in personality development, social integration, education level, criminal behavior, interpersonal relationships, etc. Based on these findings, the expert team and the teacher-therapist can draw up the operational plan for handling individual in the process of implementation of educational programs focusing on those segments in the behavior of convicts that deviates from the normal, stable and healthy behavior. The first individual contact between educators and the convict is realized, upon the internal classification of the convicted person to an educational group, the workplace and in residential building. In practice this information is called - the first interview, when the first individual contact between prisoners is accomplished and the teacher-therapists. The first interview is also significant because it makes trust between the participants. If you establish a positive attitude there is a great probability that the educator can successfully manage to lead a process of resocialization of convicts, and vice versa. Also, in the first conversation educator is required to explain all aspects of treatment, convicts obligations, expectations of teachers, and their attitude to the teacher opens the perspective that the convicted person may, with his assistance, carry out the treatment, and obtain all kinds of benefits and shorter stay in prison, which is the most important goal for the convicted. *The educational activities of the professional teams* pay special attention to those parts of prisoners' behavior that deviate from the prescribed norms of behavior, both in society and the rules and regulations of the institution. The educator is required to monitor the work of the convicted person in his work place and to be in contact with a professional instructor, to ensure the education of the convict and to give him advice and guidance, to ensure the conduct of the convicted person and his discipline and to take appropriate measures, to monitor his relationship with the family of the convicted person, to observe and collect data on the convicted person, and that may influence the provision of facilities, probation or parole, it can prepare the prisoner and undertake other measures that are necessary for his return to the society after serving say, to take all other measures that will help

him to solve internal and external conflicts. Correction of behavior is an important element of individual work. Methods and techniques of individual work are varied and their use depends on each individual case and needs to what level is necessary to correct the behavior of convicts. The most common techniques of individual work are directive and non-directive. In directive techniques, educator is hired by the deliberate use of persuasion, suggestion, or some other form of personal effects, which will be paid to prisoner's attitude or behavior, or to the course and direction of his actions while in prison institution. Directive technique relates to the scope of proceedings in which the initiative is taken and held by the educator and not by the convicts. Non-directive procedure deliberately avoids interference with the problems of convicts, not offering solutions for them and not taking responsibility for the behavior of the convict. The initiative consists of a therapist in encouraging prisoners. The teacher intends to create an affordable, relaxed atmosphere that will not judge the actions of convicts, nor will it make criticism or advice of any kind. Non-directive methods are based on the initiative of convicts in the therapeutic process.[10]Many of the actions the teacher has to take regardless of the psychophysical characteristics of the convict, so that they cannot be predetermined to some general rules. Sometimes the teacher has to take action intuitively. The creative possibilities of adapting the subtle specifics of the convicted person provide the greatest value of individual work as a method of re-socialization.

Construction of labor discipline and discipline of inmates is one of the goals of re-socialization. If we start from the assumption that most inmates come to prison with no working habits and discipline, and with very low self-discipline, then it is reasonable to expect that it is very difficult to achieve the program of re-socialization of convicts with such predispositions. So, one of the first tasks of all participants in the treatment of convicts is to build working, personal and any other discipline as a prerequisite for success in all other fields of re-socialization. Individual work makes convict to see where the rules of conduct are. Many convicts are difficult to adapt to circumstances where the behavior is strictly prescribed and where great self-control is required, because otherwise it often leads to conflict. Problems of discipline are conflicts between the aspirations, inclinations of the individual standards and seeking of external forces. It is generally assumed that the discipline is an instrument of socialization. Building a conscious discipline of the convicts is a guarantee of successful resettlement in the process of execution of criminal sanctions. Application of methods of prevention and punishment is used only in cases where encouragement, motivation, encouragement and rewards for behavior are not effective in building of positive behaviors. Directing a continuous process of education of convicts is a permanent task for all teachers and other participants in the treatment of prisoners, for educating convicts in: vocational training, educational training, and in general. Information on training is a personal guarantee of successful reintegration and training for the acceptance of positive models of behavior, and thus to leave the form of criminal behavior. In prisons there are several types of activities that have an impact on general education and training of prisoners, but unfortunately, lately, for various reasons, the number of activities that may affect the improvement of general education of convicts decreased. In our conditions, the data shows that a very small number of convicts in the prison system in Serbia are included in the educational process.[11]Education of convicts appears as an important component of socialization that contains the educational function. Education is a

10 Konstantinović-Vilić, S, Kostic, M. (2006), Penology, Niš, p. 175

11 According to the report of the execution of criminal sanctions in 2009 education included 319 convicts and minors and to the literacy, primary school completion and the third level of high school, which is 27% in 1183 compared to persons who are illiterate or havenot completed elementary school that were located in prisons in Serbia.

function of re – socialization of prisoners. The society's commitment to education is more declarative, as indicated by the data coverage of convict by the educational process. The situation is much better when it comes to minors. Providing assistance in solving personal, family and other interpersonal conflict is a significant segment of the individual treatment of prisoners. Educator - therapist uses a variety of methods and means of assistance to a convicted person when he finds himself in a conflict situation. Besides, in the directive style and directive counseling, the therapist uses various forms of therapy, which are intended to enable prisoners to have a rational goal in resolving conflict situations, that they can control by themselves and to approach the problem realistically, to identify the cause of the problem, to think about a possible conflict before the emergence of conflicts and to have courage to ask for help when unable to solve the problem. Of course, such level of proficiency means that the convict has to possess a lot of knowledge and skills so they can be able to cope with potential conflicts and frustrations.

The preferred methods for resolving the conflict are the psychotherapeutic techniques, which require special educational teachers, therapists, psychologists, psychiatrists or other profiles of experts, who have specific knowledge in the application of particular therapeutic techniques.

Psychological techniques and methods work best on the correction and the change of personality. In the modern world of alienation, insecurity and many conflicts, including "criminal illnesses", healing cannot be imagined without the application of the treatment of some forms of psychotherapy. There are two methods of group psychotherapy:

1. Superficial psychotherapy – has the effect of neurotic behavior and you can apply multiple profiles of experts and it is suitable for working with convicts
2. In depth – psychotherapy that seeks to find the causes of neurotic and conflict situations and for its application requires a special training, experience and knowledge.

Deep psychotherapy takes longer and is not suitable for use in the prison conditions of the classical type. The use of psychotherapy in prisons is best suited for certain categories of prisoners such as neurotic, aggressive offenders, a certain type of killer, minors and others who fall into the category of conflicting parties. These techniques are not suitable for convicts who are mentally challenged, emotionally immature, infantile and for similar categories of prisoners.

CONCLUSION

Individualization in the execution of criminal sanctions and individual work with prisoners in the process of realization of the institutional treatment is the topic that has been discussed for decades on both theoretical and practical levels. The principle of individualization of punishment and execution of criminal sanctions has a human dimension as it is derived from the principle of respect for differences of personality, the psychological, pedagogical, biological, social and other characteristics. The individualization of punishment and execution of criminal sanctions relates to the population of people who commit criminal acts. The individualization of punishment involves several phases, starting with the individualization of the investigation through the trial stage of individualization, over individualization during the execution of punishment, to individualization in post penal stage. Individualization is a particularly important stage in the process of execution of

criminal sanctions, because it offers the best opportunities to achieve correctional programs which facilitate the re – socialization of prisoners. In the process of individual treatment of prisoners, there are several methods and techniques that can be achieved by the principle of individualization in the prison systems in the world and in our system. Due to the neglect of the concept of socialization, there is a delay in the implementation of treatments and facilities that are used in the realization of treatment programs, but this situation has led to the appearance of new techniques and methods in working with individuals who violate social norms and rules of behavior. The current crisis in the prison system in the world has limited the choice in the application of new methods and forms of work with prisoners. Extreme economic crisis, a large number of prisoners addicted to drugs and a high percentage of sick prisoners, reduced the possibility of addressing the substantive issues in the correction of convicts' behavior in a comprehensive manner. There is neither financial support, nor time or appropriate conditions for such efforts. In such circumstances, it is unrealistic to expect significant improvement of correctional practice, and it will take many years to estimate the overall effectiveness of crime prevention.

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UDC 343.98.06

CRIMINAL OPERATION SOURCE

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Abstract: According to the views in the world criminal theory, the operation source is an important constituent part of the operation activity. As such, it is incorporated in the operation system/ process of every criminal agency in the world. The operation source activity results in the form of concrete and active operation, and information making an input for the operation process in the control of criminal occurrences, criminal milieu and criminal activities. At present, criminal theory in the process of staff education for operation activities, on one hand, and normative regulations pertaining to operation sources, on the other, as well as the development and guidance of operation sources in the criminal theory and in the practice of criminal agencies, are not on the track that would enable their development and establish the prevention of criminal activities. Insufficiency, not only in criminal operational educational knowledge, but also in that kind of knowledge known in criminal theory as 'operational IQ', is more than evident in the criminal scientific field and practice. This is precisely the topic on which the analysis and investigation in this paper will focus.
Key words: operation source, recruiting, movement, dimensioning, operational knowledge.

OPENING DISCUSSION

The challenge that crime carries in itself requires a skilful and strong answer, and each answer is conditioned by timely information.[1] A piece of information coming from the criminal milieu is the key, not only for considering the current problem, but also for predicting a criminal offence. Therefore the information coming from the criminal milieu is necessary for determining time and conditions for an optimal reaction to crime.[2] This study will follow through meeting and conditioning of these two facts, for it summarises the development of criminal activity on one hand, and on the other, the need for detecting and proving the same activity at court.

Processing the issues of operation sources, taking into consideration their operational aspect and the possibility of their application when detecting criminal activities, will not process the issues of undercover investigators, agent provocateurs, confidants or an official of the prosecutor's office. What is important to understand here is that both an agent provocateur and an undercover investigator, as well as the official of the prosecutor's office, can be operation sources; yet, in these cases using sources in investigating actions[3] is possible, whereas operation source used for collecting operation knowledge does not have the possibility of being a part of the

1 Manojlović, D.:"Good operation source, good case. Bad operation source, bad case. No operation source, no case." (Police saying)

2 Hall, R., Higgins, O., Adams, R.: The Treath from serious and Organized Crime to UK Secutity and Interests - a strategic assasment, London, 1998, National Criminal Intelligence Service.

3 Each possible appearance of the source for collecting the information at court, which is not in any of the following categories - with the participation of an undercover investigator, an agent provocateur, an official from the prosecutor's office - is a piece of irrefutable evidence that the employer acted contrary to the criminal operation combinatorics rules and regulations in force, for the source was being directed to the procedure, not to the ambient recognition of criminal occurrences and their delivery. Bringing to court an operation source that collects information without taking part in the operation is impermissible, it is a defeat, breaking of the fair-play rules, a loss of trust with the sources that are "eyes and ears" of the detection authorities.

investigation techniques, for it does not qualify as a source of that status.[4] However, here we have to be careful, for in certain countries a transition from the operation source status for collecting operation knowledge from criminal milieu without taking part in criminal activities, into a source phase/status that takes part in committing criminal offence under certain circumstances is allowed: according to a precisely defined procedure and in a way provided by legal rules and regulations of that country.[5] What is crucial here is the manner in which a criminal-law expert manages the operation source and channels its designs (authority demands). The operation activity over the source, in this case, cannot be an intervention into the individual civil rights[6]. The source discloses the information it has obtained from the surroundings, due to identifying occurrences (it is not an intervention into the rights of a citizen offering his criminal loot for sale or taking out his gold to sell it "on the street".)

Ever since the international conference, held in the city of Ohrid, in November 1993, the significance of the terms of an informant, informer and an undercover police scout, from the field of criminal operation activity has not been understood properly[7]. Apart from a significant delay of a few decades, significant structural changes in the dynamics of the development and movement of criminal activities cannot be perceived.[8] Secondly, eyes are being shut in front of the increasing grey zone into which the detection authorities cannot infiltrate.

The lack of understanding that the "core" of the struggle against criminal activities lies not only and solely in directing to the organized criminal activity, but also, and a lot more, directing onto general criminal activity, significantly reduces operation work competence, making it "unproductive" when it comes to its function[9] In order to act in the pre-field of criminal activities in respect of preventive consequence restrain[10]- for a potential harmed party, far-reaching information is essential (certain authors take a standpoint that even some of the weak information could be accepted), the information is permanently gathered, indicating the trend in criminal activity and crime itself. This can be guaranteed only by a new strategic orientation - reliable processing of the reliable operation material, managed in a way which meets the criteria of "modern" currents and criminal activities. The separate strategy equals taking a step back. On the contrary, modern aspirations,

4 Howe, S.: *Slabosti obaveštajnog rada, Policing Today, Izbor, 2/97.*

5 In the opinion of professor Vodinelić, in the Prosecution Act and also in the Police Act, a precise general police clause on defense against danger should be enacted, and no unnecessary secrets should be made, retrieving dignity to police and visible protection to citizens...

6 A decision of the greatest importance was made by the Federal Constitution Court of Germany-…"as far as the area of crime repression is concerned the interest of keeping the execution of this task in secret may be more important than the interest of the criminal offence condition. An intervention into the legal position of a citizen should be considered appropriate, if it serves more to the direct protection of public welfare, rather than to the aims and objectives: of the state punishment demand …". Fijnaut, C. and Marx, G.: Undercover: Police Surveillance in Comparative Perspective. The Hague: Kluwer Law International, 2001.

7 Discerning between a private and intimate sphere is crucial for the functioning of a crime investigation operation source and officials managing secret crime investigation operations. Whether we will regulate this area by means of legal acts in the same way that is done in some European countries, where an intervention into the intimate sphere is impermissible, and permissible for the private sphere only when there are legal grounds for it, depends on the level and the power of the act which will legally regulate this area. If this area goes on being regulated by instructions, the damage will be bilateral (an intervention into the intimate personality sphere and inability to prevent the danger).

8 Adler, P.: Wheeling and dealing. NY: Columbia Univ. Press, 1985.

9 Today, in Europe, there is a general understanding that an operation activity is a successful way towards confronting criminal activities, by means of creating an operation network, which is at the same time followed by explicitly legally regulated area, starting from recruiting, leading and managing, securing to registering and recruiting an operation source. All criminal agencies build their services on reliable information, as well as the strategy of the future direction for the development of structures and police service, taken from Howe, S.: Slabosti obaveštajnog rada, Policing Today, New York, 1997.

10 Manojlović, D.: Teorijski i praktični aspekti kriminalističko-obaveštajnih izvora, Bezbednost, broj 2/06., MUP RS, Beograd, 2006.

originating from a comprehensive research, indispensably require developing operation sources on a global level with a unique organizational form (starting from recruiting to security, for that is what the development of criminal milieu dictates), or the simple lack of it.

Defining a source as a "well-intended citizen who provides information and data of interest to the Service voluntarily" or "a person who consciously, in an organized and secret way gives out information, data and other facts to the Criminal Activities Service, that is to say, to its agents," is an outdated specification that has been in use for more than six decades. This clearly stresses the necessity for precise legal regulation of operation activities, so as to reduce the "grey zone" of these activities as much as possible. The course of action should be directed in a way which would make it possible for a catalogue of procedures[11] and principles to determine explicitly, precisely and comprehensively the legal basis of operation activity with sources and their involvement. Modern democratic choices should try to recast the regulations on operation authorizations from the Police Law into the Criminal Procedure Act, by which dignity of the highest possible legal quality would be given to them, for precisely the Criminal Action Legal Act represents the concretization of constitutional and legal regulations in the crime field.[12]

MODERN CRIMINAL APECTS OF OPERATION SOURCES

It is not necessary to examine minutely and essentially "the labyrinth of operation activities" in order to notice the fundamental significance that the source has in the functioning of detecting authority. The operation source is in the initial phase of gathering information. In criminology, there is a common standpoint which can be summarized in the following statement: the quality of operation action is in a direct proportion to the quality of the operation source,[13] in correlation to the same[14]. That

11 The Importance of Following the Confidential Informant Narcotic Arrest Procedures. An informant is an integral part of a narcotics arrest. However, if proper narcotic arrest procedures are not followed, than the case can be thrown out no matter how much evidence is obtained. The Identity of the Confidential Informant -Law enforcement should not reveal the identity of the informant to anyone to protect the informant from harm. A prosecutor might not know the informant's identity. However, under certain circumstances, the informant's identity can be revealed if a judge or magistrate orders it. Procedures: According to the informant manual for the city of Los Angeles, California, a confidential informant who has come into contact with narcotics through a purchase, assisting officers in a narcotics operation or any other reason, shall immediately be searched for narcotics once the operation has been completed, and the results of the search shall be documented in writing; An informant must provide law enforcement reliable information that can be corroborated by another witness. The informant should provide law enforcement with eyewitness accounts of any drug-related criminal acts, vital background information on the suspects and their narcotic criminal activity and contacts, critical intelligence to help support the investigation in obtaining a search warrant, the identity of valuable witnesses or leads that will cooperate and important testimony during trial, which will help the prosecution convict those arrested. The informant should provide accurate and complete information, keep all intelligence gathered confidential, never discuss any part of the investigation with anyone, never pursue suspects through entrapment, must be a law-abiding citizen (if the informant is a criminal once retained, they must immediately cease and desist any criminal activity), never violate the rights of any subject of the investigation and never place themselves or anyone else in harm's way. The prosecutor should always have an additional person present whenever meeting with a confidential informant. The prosecutor should review any findings provided by the informant with law enforcement to determine whether the information provided can be relied on, whether the informant has the means to provide critical information relevant to the narcotics investigation, whether promises were made to the informant by law enforcement or the prosecutor and whether their background includes criminal activity. ehow.com…

12 Водинелић, В.: Проблематика криминалистичко-тактичких института - информант, информатор и прикривени полицијски извиђач у демократској држави II део, "Безбедност", број 2/94, Београд, 1994.

13 Greer, S.: 'Towards a sociological model of the police informant.' The American Journal of Sociology, 46(3), 2001.

14 Some of the authors go even further and take standpoints that imply that without the operation source that they call "golden source," it is impossible to count more precisely and with greater certainty on crime control: Bowman, M. E.: Intelligence and International Law, 2005., Swenson, R. G.: Intelligence Education

is the reason why a large number of European countries have started passing legal rules[15] in the field of operation sources, no matter whether we talk about a human or technical source, which should lead us to the adequate principles and procedures when choosing, recruiting, preparing, hiring, leading, and securing the source. Passing written acts in this field should enable state authorities: to improve ethical principles in relation to this most sensitive operational action/criminal investigation operation; to gather operation information more successfully; to use and exploit the gathered information; to manage the source itself better, based on his/her sphere of activities; to infiltrate more efficiently into the criminal surroundings; to gather operation data with or without participation of the source directly; to create up preventive researches for cutting off criminal actions of networks, individuals, organizations; an early warning; to create studies of criminal action, trends, and crime forms; to "stretch" the time of criminal investigation in advance.[16]

ASPECTS AND EXPERIENCES ON THE TERRITORY OF EUROPEAN COUNTRIES

Theoretical and practical criminal experiences in the European countries can be summarized in the following – crime investigating action and ensuring evidence at the beginning of such an action, of an individual or a criminal group, have a crucial significance when it comes to the outcome of criminal operation, especially in cutting off the action[17] so as not to lead to the intended consequence and the latter managing of the prosecution. The criminal analysis of the performed criminal offences in European proportions displays that the criminal activity does not occur spontaneously, but the same is planned in advance[18]. When the function of an operation source is being described and determined, the same can be understood in the following way: firstly, the criminal operation source has a function in taking precautions (preventive measures) in preventing criminal activity from forming and manifesting, secondly, it should reduce criminal activities to the least possible measure and thirdly, the criminal operation should be unobtrusive.

Furthermore, it is implied that in order to make "the narrowing" of criminal activities possible, the first assumption is a timely gathering of operational information; the second assumption is that state authority has an operational capacity to conduct its operation in that direction. From an operational aspect, there are numerous methods by which operational information[19] can be gathered (findings, data, information, etc.) along with the proofs of criminal activities, apart from the phenomenological characteristic of those activities to be undercover in the pre-field of execution (preparation), in the field of execution and after the execution of a criminal offence. In our opinion, it is possible to expect a higher degree of effectiveness when confronting all the forms of criminal activity, if the methods by which it would be possible not to break into the protected area of human rights and freedoms. We take a standpoint that in finding the bridge between the three fields of activity, which aspire to the same aim: a) the civil rights to undisturbed enjoying of hu-

Smith, A.: Intelligence–Led Policing: International Perspectives on Policing in the 21st Century, 2005.

15 Водинелић, В.: Проблематика криминалистичко-тактичких института – информант, информатор и прикривени полицијски извиђач у демократској држави II део, "Безбедност", 2/94, Београд, 1994.

16 Fatić, A.: Kriminal i društvena kontrola u istočnoj Evropi, "Institut za međunarodnu politiku i privredu", Belgrade, 1997.

17 Adderley, R. W. Musgrove, P.: Police crime recording and investigation systeme, Policing, 2001.

18 Schurholz, F. H.: Intensivierte Finanzermittlungen mit dem Ziel der Veomogensabschopfung, Zwischenbericht zem Pilotprojekt dre baden-wurttemberischen Polizei, 9/99., sz. 257-261.

19 Robertson, K. G.: Canadian Intelligence Policy: The Role and Future of CSIS, 2003.

man rights and freedoms; b) to their justified and legally based demand to be safe; c) the preservation of the justified interest of the damaged party offers room for a criminal operation source and operational IQ. One of the equally important issues considered in criminal theory is how to organize the action of operation sources in a vertical or horizontal structure.[20] In other words, most of the operation activities (including that of crime investigating agencies) are organized according to the organizational structure of the service, that is to say, a vertical principle of activity ensures delimitation and coordination of the activities, that is, the order in making decisions and decisions capacity. By a horizontal principle of performing operation activities, procedures and work technology are satisfied (structure activities).

Namely, the modern age is characterized by fast development in all criminal activities; leaps in that field are incomparably faster and bigger than progress in the development of operational structures and activities. All this requires a constant adjustment of structures and jobs. What should always be taken into account is the fact that the structure of operation activities depicts everything those jobs represent – their purpose, aims, methods and means, and that, from the aspect of success in confronting criminal actions has a decisive role with hiring a source. In European countries in theory and professional practice on operation activity, it is implied that the activity is very dynamic and in its phases mutually dependent process, so that all the structures in the jobs chain have to stand in a tight causal connection. Criminal operation work is observed as a process with three key components: a) gathering operation information; b) processing operation information; and c) use or usage of this information. Broader and more appropriate observation that has been accepted in defining operation actions, indicates to us that the three-element process represents too narrow an understanding of operation work, for in this operation work the unavoidable elements are: managing and working with the sources, means, application of the operation technique, development and managing of the operations, etc. A certain number of experts in the field of criminal operation activities and services in Europe, claim that a cycle of criminal operation work starts by recruiting the source, whereas others believe that it starts by gathering information which goes alongside with processing the already gathered data[21]. This observation is more appropriate for modern operation activity, for it builds a constant process, which in its functioning includes guiding as well.

ATTITUDES ON HIRING OPERATION SOURCES

To allow hiring and using operation sources is disputable nowhere in the world, in principle. In fact, it is believed that authorities for detection have authorizations to gather information from every citizen who does that without being forced and is also in a situation to obtain the information. The constant enforcement of the feelings of necessity for respecting human rights and freedoms of citizens requires

20 Another useful typology is presented by Weston & Lushbaugh (2003) who distinguish the usefulness of the informant as well as the quality of their information: basic lead informant -- usually a friend or acquaintance of a criminal with any number of possible motives who is most useful and accurate at revealing the whereabouts or geographical location of persons or property; participant informant -- usually a go-between or arrestee turned informant who helps police instigate a drug sting or reverse transaction or lure a suspect into surveillance; covert informant -- usually someone deep inside a criminal organization with a falling out or difference of opinion and wants to provide spot intelligence over a period of time as long as their identity is protected and a pleasant future guaranteed for them; accomplice-witness informant -- usually a co-defendant in a criminal case who agrees to testify for the prosecution and/or do one last undercover operation (by being wired for sound) in return to the package deal of immunity and the witness protection plan. Weston & Lushbaugh, 2003.

21 The EU Council decided at it 1st meeting in Tempere, 1999.

legal regulation of this area of interest[22]. The regulated area of operation sources would solve this dilemma: whether the operation source controlled by an official, who organizes it, guides it and controls it in gathering information, extends to the individual sphere of the citizen. Or, for working with operation sources of this kind, it is necessary for public servants only to be presented with the task of "repressing the crime" following the Police Law and Prosecution Legal Act, which should once again require explicit legal regulation, avoiding the up-to-date determinants to "take the necessary measures"- not stating clearly which ones. This kind of definition is imprecise and it leaves open the possibility for arbitrary interpretation by public servants, together with the risk to be responsible for the decision made in the best faith, for the Public Attorney believes that the action could have been carried out "in a different way," which also is not being clearly defined. Thus, avoiding ambiguity is essential. Most specifically, this area should be legally regulated in such a way so that the official who conducts the operation activity by hiring an operation source, who complies with the assigned principles and procedures of the employer, enjoys absolute protection.[23]

DIMENSIONING ASPECTS OF OPERATION SOURCES

In criminal activity, the operation source makes a significant constituent part of the operation activity. As such, it is a part of every operation system / process of every criminal agency in the world. Activity results of the operation source in the form of concrete, action operation information[24] make an operation process input in controlling criminal occurrences, criminal milieu and criminal activities.[25] Therefore there is a general opinion that the operation scaling could and should be defined in two dimensions: a) in space and b) in time. Authors wonder what implies to these two dimensions and they give an answer. Firstly, it is implied that the operation source should be distributed on the whole territory, both national and international, and that it should completely "cover" all the relevant states and movements in the criminal milieu. Secondly, as the authors notice, it requires also its presence in all the three criminal milieu dimensions: a) the past; b) the present and c) the future.[26]

How do these two dimensions reflect themselves on the activity and the tasks

22 Frank, C.: Strategic intelligence secret world - an antology, London, 2000.

23 Operation Department officials- of the Federal Bureau of Investigation, in applying secret operations measures with sources, following the assigned principles and procedures of the employer (FBI), are protected from the secret service influence, and the official prosecution is out of the question, when the board determines that the official has behaved according to the assigned instructions. This legally regulated course of action builds up the capacity and dignity of the service and a public servant himself, creating trust and assurance that if he follows the assigned rules, he will have all the necessary protection. This kind of regulation is a vital necessity for the course of action of any official in Serbia. The current state of this field in Serbia can be summarized in a saying "wash the cloth, but be careful not to get it wet."

24 Castells, M.: End of Millennium. The Information Age: Economy, Society and Culture, Vol. 3, Oxford: Blackwell, 2004.

25 Finally, there is the oldest typology of motives which has been around for some 40 years simply because they never change (Harney & Cross 1960): fear -- people who feel threatened by the law or by other criminals (most police believe this is the best motivation); revenge -- people, like ex-wives, ex-girlfriends, ex-employers, ex-associates, or ex-customers who want to get even; ego -- people who need to feel they are smart "big shots" and/or outwitting those they see as inferiors; money -- people who, like mercenaries, will do whatever it takes if the money is right; repentance -- people who want to leave the world of crime behind them and/or citizens fed up with crime.

26 The snitches, the basis of DEA in Mexico. In the fight against drug trafficking and organized crime, said Michael Braun, who until October 2008 directed the U.S. anti-narcotics operations. Braun, who left the DEA after 33 years of service and now a consultant in the field of combating terrorism and organized crime, says U.S. agents do not protect any Mexican cartel. In an interview with Proceso, the expert points out: "The key to success in the fight against drug trafficking has always been the intelligence obtained through people, ie through confidential informants. This is and always will be. "Informants play many important roles: they take part in covert operations, steal information, help to place microphones and get phone numbers to track criminals."

of the operation source? Space dimensioning is achieved as: a) gathering operation information from the internal surroundings (criminal milieu) inside the level of responsibility and approach to criminal activities inside the state borders; b) gathering information from external surroundings (criminal milieu) on the international level; and c) gathering information by means of the problem approach independently from either internal or external criminal milieu.

Time dimensioning is achieved, as a) gathering information through identification of occurrences in the criminal milieu which indicate the future criminal activity which still has not been developed; b) gathering information on the current state of criminal activities in the criminal milieu; and c) gathering information on the up-to-date criminal activities and the changes in that matter.

Thus, dimensioning the operation source is seen as "screening" the stimuli which will develop a potential criminal activity, the stimuli originating from the external or the internal surroundings, and enabling the stimuli "decryption." On the other hand, we would say that we see and determine dimensioning of the operating source: as diagnosis of the position of the criminal activity and criminal actions and the criminal milieu itself, but also the competence, knowledge and possibilities of agencies for their control and detection. We are at the standpoint which we may summarize as follows: the criminal operation source should be put in three dimensions: of space, time but also of the problem. We believe that from denominators which may be understood in the world criminal theory, that the source dimensioning on two levels is insufficient for comprehending the scope of its activity. Therefore, we believe that the attitudes on spatial and temporal dimensioning are acceptable, but not sufficient as well. Problem dimensioning is necessary, for one criminal activity can only be traced in a problem dimension, both from the aspect of space and the aspect of time, e.g. overseeing an activity inside a criminal organization or a criminal milieu, but not the criminal milieu and criminal organization.

MOVEMENT MODELS OF THE OPERATION SOURCE

One of the important aspects of the operation source activity is the model of its "movement"[27]. Based on the modern views in criminal theory, the movement of an operation source is observed from a few aspects: a) non-endangering or cooperative movement; b) endangering movement; and c) defensive movement. Non-endangering, or how we else define it in criminal theory, cooperative movement of an operation source is divided into: 1) the movement that enhances the source position; 2) movement that enhances the criminal agency position; and 3) movement that improves the methods of collecting information from a criminal milieu.

From the theoretical aspect, these movements may be: a) offensive; or b) defensive. Defensive movements of the operation source are the so called responsive movements, that is to say, a reaction of an operation source on the actions of the participants in a criminal milieu, which may be further divided into: a) an action prior to an offence being committed; b) a reaction after an offence has been committed; and c) an action while an offence is being committed. We are of the opinion that this division of the movement aspect of the source is insufficient to cover all the movement models in the responsive movement, adding that we must not forget *lag in retaliation* – halt or how it can be also found in theory- a halt in the source reaction,

27 Here, we talk about the thing that is in the criminal theory known as "the regular" system of scanning and recording the criminal milieu. So, we understand that the issue here is not about being legal or illegal, for both models are legal.

by which we imply the time that passes from the moment of action in the criminal milieu in all the aspects of activities till the time of the operation source activity.

When we talk about endangering movements in criminal theory, for a parameter by which we express that movement we consider the following: a) whether the position of the source in that criminal milieu is endangered by the same; b) whether the source complies with the rules that were intended for its activity; c) whether the configuration of the criminal milieu is acceptable for the source profile; and d) whether there is an assigned coordination of the leader and the source. The coordination has the moving instruments: a) from the zero unacceptable option, in fact, there is no activity coordination between the source and the leader; b) over the option of the acceptable scope of coordination action with the leader; and c) to the option of differentiating which implies taking over the activity based on the estimation of possibility for returning the source to the acceptable options activity.

BUILDING SOURCE PROFILE METHODICS

One of the most complex activities in the criminal operational activity is producing a profile of a criminal milieu, object or a subject of investigation and the operation source itself that would offer answers to many asked questions. There is a belief that making a source profile must be carried out in a few independent, and yet linked steps.[28] The first step in making the profile of a criminal source, criminal milieu or a criminal object or subject of the operation investigation, should be the answer to the question: for what, that is, for whom is the profile intended? This question is actually the issue of the profile intention, which relates the act of making the profile[29] to the operation decision that should be made based on the same. The second step is defined in the question: what should a profile contain? The operation profile may have different content, e.g. general or exactly determined which is conditioned by a concrete decision that should be made. It is believed in criminology that the profile should be concrete and specific as much as possible, and the data entered concise and precise, so as to be relevant solely for the subject or object in the scope of the investigation. The next important step is defined in the question: which sources for making a profile should we use? Here we should, from the aspect of criminal theory, use internal operation sources that are stored in the operation base of the agencies. Only after consulting internal sources we should move on to investigating and using information from the external resources. A certain number of authors believe that these two actions should be conducted simultaneously, from an operational aspect. Next, or the third step is using weak information (in theory, we can still find weak information, but that is not the same). In theory, the general opinion is that using weak information does not guarantee that we will make a good profile of an operation source or milieu, for the information sources in question are either not tested or really difficult to test.

The advocates of this criminal term of "hard approach, that is, the approach of making a profile from verified operation sources"[30] believe that if the profile is based, ho matter how partly, on this information, it is flawed, that is, neither valid nor reliable, so it can inflict more harm than bring benefit. Respectively, they believe that it can take the operation action to the wrong operation source. On the other hand, a great number of theoreticians in criminology believe that weak information must

28 Cannavale, F.: Witness cooperation. Lexington: Lexington Books, 1976.
29 Јовић, В.: Криминалистичко-обавештајни рад, појам и криминалистички аспект, Правни факултет, Крагујевац, 2004.
30 Billingsley, T. and Bean, T.: Informers. Portland: Willan, 2001.

not be excluded in advance from the operation material for making a profile. Furthermore, they point out that a criminologist who makes a profile will not always have "firm information" which is supported by the authenticity of the source. In order to make a difference between the confirmed operative information which has gone through the estimation according to the criterion of the source assessment and information from the source, we will offer that of what weak information are made, those being: rumors, opinions, personal attitudes, etc. If we could define making of the operation profile of the source and milieu, based on the given facts, how would we do it? Using the so far knowledge, we will define operation profile as: the sum of very delicate, planned, and professionally carried out operation activities on gathering operational information that could help the operation source performance.

USING THE SOURCE INFORMATION

The information obtained from the source is determined, in the following way, as "*information for action*" and, depending on the information value estimation, it receives the status based on the levels of protection - a) "*must know*"; b) "*needs to know*" c) "*should know*"; d) "*can know*" e) "*cannot know*." Operation information[31] from the source is mostly delivered in the form of a report, without any possibility of finding out how the information is obtained, due to the fact that the information may be presented only in person and transmitted under the system of protection, never openly.[32] Introduction or register part of the operation information[33] is being encoded, so that the key stays in the hands of the source managing official, and all the others who are familiar with the text according to the scale, where the key identification signs are closed. Based on the level of grading, an entrance is allowed- an insight into the information, in a way that the unity of knowledge is not disturbed and it does not leave the subject of knowledge.

Furthermore, it is indicated in criminal theory that the information from the source may be, apart from being secret and public: a) outdated; b) general; c) valid; e) invalid; f) examined; g) unexamined; h) reliable; i) unreliable, etc. When it has been clearly defined in criminal theory from what sources information can be obtained, the sources are as follows: secondary, primary, closed, open, basic, creative, human, technical, etc. Apart from the stated, criminal theory implies that the knowledge is obtained from the operation source from many levels: 1) from the source for ad hoc operation investigation; 2) from the source for the urgent investigation; 3) from the source for fundamental operation investigation; 4) the sources for strategic operation investigation; 5) source for tactful operation investigation. The entire listed criminal operation source can be centralized or decentralized.

CRIMINAL IQ FROM THE OPERATION SOURCES

Another aspect of the operation knowledge from the source is very important for criminal agencies in general that are in charge of, or in the jurisdiction of which is, detecting criminal activities and gathering evidence. This aspect of operation knowledge implies creating abilities in a criminal agency so that it would be as a unified structure capable of forming new operation knowledge, to expand it

31 Brown, M. .: "Criminal informants." Journal of Police Science and Administration, 1985.
32 O'Connor, T.: "Surveillance" and "Wiretapping." Pp. 624-629 & pp. 710-712 in R. Carlisle (ed.) The Encyclopedia of Intelligence and Counterintelligence, Vol 2. NY: Golson Books, 2003.
33 Carroll, J.: Confidential information sources. Los Angeles: Security World, 1975.

through the whole agency towards every employee, and embody the same into the operation activity of higher quality and its products.

In world criminal literature, books and articles, we may recognize a standpoint that the objective of criminal agencies should be, increasing operation knowledge[34] of an agency as a basic support to every operational activity. In addition, in criminal theory it is believed that every criminal agency, when we talk about the operation work, has its own operation IQ. How do we estimate whether and to what extent is one criminal agency intelligent? IQ of a criminal agency is as high as the same is capable to prevent criminal activity, is one of the opinions of criminal theory. And the operation IQ[35] of the agency official is as high to that degree as: each official gathers valid knowledge, data and information, on one hand, and how high a quality operation network of the source is, on the other hand. Any other operational knowledge that is based on technical sources (tapping, tracking, etc.) or the knowledge obtained on the basis of the operation knowledge after the performed criminal offence is not the operational IQ, but rather the instrumental-work knowledge, which is, technically speaking, a part of the first operation IQ, that is, the knowledge of "lower" operation quality. The operation activity, and in that sense criminal agencies themselves, where the priority is given to the first IQ, are the agencies with the perspective development of knowledge and the quality for the protection of citizens and their assets.

In the world and in a great number of countries, the first level operation knowledge has the status of a "golden wire", which is a condition for a timely and quality action of the agencies.[36] In view of the above discussed and displayed, it is believed that in criminal theory there are no obstacles and that each criminal agency asks itself questions in order to determine its current level and the future operation knowledge - IQ, on one hand, and its operation intellectual[37] capital on the other. The basic question that we ask ourselves is: is the criminal agency operationally intelligent? In order to get the answer to this question, it is necessary to ask a few questions. *Firstly*, whether the agency uses and applies methodology and the methods by which we increase the level of the operation IQ? *Secondly*, whether the agency realizes that the present and future operation activity in the criminal milieu is conditioned by high operation IQ? *Thirdly*, whether the agency measures to what extent the officials build up their operational IQ - professional knowledge - the quality of that knowledge? *Fourthly*, how much has the criminal agency IQ of been making the conversion of the criminal milieu secrecy into the operation knowledge, data and information? *Fifthly*, how big is the ratio of the knowledge conversion into data and the operation data into the operational information, and later on into analytical operational information with the IQ agency? *Sixthly*, how big is the ratio between the conversion of the operation knowledge, data and information into material information as IQ of the operation activity of the agency? *Seventhly*, what is the conversion ratio of the material information into evidence as the product of the agency operation action? And finally, *the eighth* question, what is the ratio between submitted charges to the Public Attorney and the charges in favour of the guilty verdicts, which is the product of the IQ agency? The eighth question is the crucial question of the criminal agency IQ operation - does it do the right things and does it do them in the right manner? All the issues are defined by IQ agencies, and not only them, but also the officials, primarily the managing officials.

34 Hans J. E.: Intelligence a new look, New York, 2000.
35 It is clear that here we do not talk about the IQ as the intelligence of an individual, that can be quite high, high, above the average, average, below the average.
36 Miller, G.: "Observations on police undercover work" Criminology 25:27-46, 1987.
37 What is criminal intelligence, National Police Academy, Oslo, 2006.

SECRET CRIMINAL OPERATION ACTIVITY AND THE OPERATION

Understandably and justifiably from the aspect of this research, before we would give any specification of the operation contact we should define secret activities in operation activity. From the aspect of criminalistic operation activities, a secret operation activity is defined as any kind of activity or operation criminal action[38] that includes the need of the operation source, regardless of the fact whether we have a human or technical source, which requires the application of the disguised[39] (legendary identity) by a criminal agency official, who - on behalf of the criminal agency - undertakes the activity regulated by law or any other kind of legal act. This kind of secret criminal operation activity is most commonly carried out as part of the secret operations,[40] and is also carried out individually as an isolated operation task.

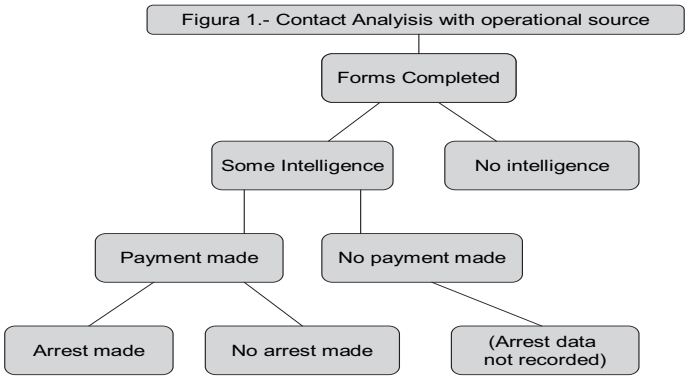
Next institute without which this research would not have a methodological approach is criminal theory specification, of the secret crime operation institute,[41] in the scope of which a secret operation activity of recruiting and engaging is being carried out, alongside with the operation source managing.[42] We will define secret criminal operation as, an operation activity that includes more/a series of linked secret operation activities in a certain period of time, on the part of criminal agency officials.[43] The series of linked secret operation activities consists of three or more separate contacts on the part of criminal agencies officials/recruiters, a leader or a coordinator, when the recruiting of an operation source is being carried out.

CRIMINAL OPERATION CONTACT WITH THE SOURCE

The use of secret methods and techniques is not the only characteristic of operation activity. In secret criminal operations that are carried out in operation activity we include the operation contact, as well. In operation activity an operation contact is defined as a communication between a criminal agency official and a person who is not an agency employee; the communication may be: spoken, written, established by the phone or in an electronic way, which includes gathering knowledge, data or information of interest for the operation activity or process investigation. What is of great significance is the generally accepted standpoint in criminalistics where contacts that are made accidentally, for example, meeting on the street or any other place,

38 Hight, J.: "Working with informants." FBI Law Enforcement Bulletin (Sept.): 15-20, 2000.
39 Dempsey, J.: Introduction to investigations, Belmont: Wadsworth, 2003.
40 Marx, G.: Undercover. Berkeley: Univ. of CA Press, 1988.
41 Late on October 16th 2002 Thom collected a trailer from an industrial unit in Burscough. The trailer had previously been located at a unit owned by fellow conspirators Harold Camello and Alexander Brown, on the Weaver Industrial Estate in Garston and had been fitted with a concealment under a false floor. He then drove to the Channel Tunnel and left the UK, returning on the 19th. During this same time period, Alan Gerrard flew to and from Holland. Thom was apprehended and arrested on the M74 just south of Glasgow. The truck was seized and searched by Customs officials. It was found to contain: 100 kilograms of amphetamine 64 kilograms of ecstasy (the equivalent of 150,000 tablets) 21 kilograms of cocaine 9 kilograms of heroin.The haul was valued at around £6m. Following the seizure Smith, O'Toole, Gerrard, Healey, and Camello were arrested and, along with Thom, charged with Conspiracy to Supply Class A and B drugs. A subsequent search of premises owned by Healey revealed a further 40 kilograms of cannabis as well as equipment designed for used as part of a cocaine 'factory'. **Operation Mac Arthur, socyberty.com**
42 **Operation Babraham**, May 2001 - Nov 2002 /**The Investigation;** Successful local Merseyside man Francis Kennedy prided himself on being a self made sharp businessman who was making millions from his alcopops business. But in truth he was the figurehead/gang boss behind a booming drugs business that operated out of Merseyside and had major connections all over the UK, Europe and South America. The police operation, codenamed Brabraham began in May 2001 and started by picking off Kennedy's couriers one-by-one. **Operation Babraham**, May 2001 - Nov 2002.
43 Ericson, R.: Making Crime: A study of detective work (2nd edition); Toronto: Butterworth, 2000.

are not considered to be the contact from the aspect of operation activity. On the other hand, the conversation that confirms the arranged time and place of the second meeting is considered to be the contact inside the operation activity.



When in operation activity the term "multiple contacts" is used, then a distinctive difference in the activity should be made in comparison with an operation activity.[44] That is necessary due to the fact that a line of communications with multiple contacts upon which a line of sentences is exchanged may constitute a part of a single conversation.[45] In order to understand whether one or more contacts are in question, we should take the following factors into consideration; a) time that has passed between the contacts; b) the number of interruptions between the messages in electronic mail; c) changes of the theme for conversation contacts.

Newer criminological views in theory until the end of the twentieth century hold a standpoint that, apart from the listed divisions, upon a contact of an agency official for control and detection of crime with a person from the surroundings (criminal milieu), we must take into consideration: 1) whether the contact has undergone a protocol in a way that legal or sublegal acts or instructions require; 2) whether the contact is the consequence of an approval; 3) whether after the contact has been made, the official has submitted a formal written act on the reasons and the contact approval; 4) whether the official has revealed the contact, only after the demand to expound the contact with the person from the criminal milieu. All this is necessary from the aspect of criminal operation activity because a special treatment of the contacts that have the status of "the contacts of delicate circumstances" is required. Namely, a delicate contact requires a special authorization and an approach to the source for more than one reason, which can be classified as categories, such as: the duty of keeping a professional secret, a person who is tried for by any state organ, an official of any level of power or any other person who would fall into the category of delicate contacts anyway (e.g., a person from a foreign state).

44 Maguire, M., Timothy J.; Intelligence, Surveillance and Informants: Integrated Approaches, Editor: Barry Webb, Home Office Police Research Group, London, 1995.

45 The number of intelligence informants has been substantially larger in previous years because of the "Ghetto Informant Program," which at its height comprised over 7, 000 informants. The FBI began the Ghetto Informant Program in 1967 in the context of the urban riots and violence of the mid-1960's, and in response to instructions from the White House and the Attorney General. Although "ghetto" informants were initially used as "listening posts" to provide information on the planning or organizing of riots and civil disturbances, many were eventually given specific assignments to attend public meetings of "extremists" and to identify bookstores and others distributing "extremist literature". The FBI terminated the program in 1973 after sharp debate within the Bureau over the program's effectiveness and the propriety of the listening post concept. Final Report, of the ha Select Committee to study governmental operations with respect, intelligence activities, United States Senate, april 23 (under authority of the order of April 14), 1976 23., The use of informants in FBI domestic intelligence investigations. See U.S. Department of Justice, The Attorney General's Guidelines regarding the Use of Confidential Informants, May 30, 2002.

SUMMARY CONSIDERATION

In theory and in professional practice alike, it goes without saying that the criminal operation source is the heart, bloodstream and navigation device for detecting, understanding and interpreting occurrences in the criminal milieu. Moreover, the criminal operation is not only an early warning for the occurrences and their potential danger, but also the condition for detecting and collecting material evidence. The conversion of the criminal milieu's hidden secrets by means of operation sources into the data or information (into the operational knowledge) is the highest operation IQ. The criminal operational knowledge is the basis for detecting and comprehending the occurrences in the criminal milieu. In the theory, it is especially stressed that the form of the operation activity with the source cannot be juxtaposed to the essence of the criminal agency's objectives, the objectives of the operation it undertakes, civil rights, ethical and legal regulations.

Many criminologists believe that good executive organs, informers or investigators owe their success to something that we call "a gift." You have surely heard that word a lot of times. When solving the most complicated cases criminologists use the term "talented", "gifted," etc. We would not dare to write this kind of paper if we do not share the modern views of criminology that each criminologist working on the jobs of the criminal milieu operation investigation and criminal activities owes his success to the operation sources. Their operation ability for good quality operation detection and understanding occurrences in the criminal milieu, announcing the operation interview, detection of criminal activities and gathering evidence, stands in a direct proportion to the quality of the operation source.

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UDC 343.21:351.75(497.11)

OBSTRUCTING AN AUTHORIZED OFFICER IN PERFORMING SECURITY TASKS OR MAINTAINING PUBLIC ORDER AND PEACE

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Abstract: Criminal law protection of police officers has been ensured by incrimination of basic or aggravated forms of certain criminal offences in the Criminal Code and by enactment of one criminal offence in the Law on Public Order and Peace. In this way, criminal offences committed against police officers are not systematized in one law or in one chapter of a law, but within criminal offences that provide for protection of life and body, public order and peace and proper functioning of state bodies and performing of their tasks.

In this paper, the author will present the elements of criminal offence: obstructing authorized officer in performing security tasks or maintaining public order and peace, and point to court practice in our country. Also, the author will point to some possibilities of different incrimination of this criminal offence, aimed at comprehensive and efficient protection of police officers while performing security tasks or maintaining public order and peace.

Key words: public order and peace, obstructing authorized officer.

INTRODUCTORY REMARKS

Police officers in our country are almost on a daily basis exposed to various forms of threats and injuries while performing their regular duties related to the security protection of persons and property, prevention and suppression of crime, maintenance of public order, securing of public meetings, etc. Although the modern tendencies in the prevention and repression of crime are oriented towards the criminal offences of corruption, organized crime, terrorism and other "most serious" crimes, it is necessary to point out the numerous phenomena of endangerment of safety of police officers. Increasingly frequent attacks on police officers while exercising everyday and law-based tasks raised the issue of modalities to improve personal safety of police officers, but also of the adequacy of criminal protection provided by the existing incriminations.

The substantive law of the Republic of Serbia envisages a number of criminal offences that protect police officers while performing security tasks and maintaining public order and peace, through the provisions of the Criminal Code and the Law on Public Order and Peace. The Criminal Code[2] provides for the following criminal offences: murder of an official or serviceman during discharge of their duty (Article 114 Paragraph 1 Item 5), preventing an official in discharge of duty (Article 322), attack on an official in discharge of duty (Article 323) and participating in a group preventing an official in discharge of duty (Article 324).

Until the enactment of the Criminal Code in 2005, the Law on Public Order and Peace[3] provided for two criminal offences: obstructing an official in performing

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2 Krivični zakonik Republike Srbije („Sl. Glasnik RS", No. 85/2005, 88/2005-ispr., 107/2005-ispr., 72/2009 and 111/2009).
3 Zakon o javnom redu i miru („Sl. glasnik RS", No. 51/92, 53/93, 67/93, 48/94, 101/2005 – dr. zakon and 85/2005 – dr. zakon).

security tasks or maintaining public order and peace (Article 23) and preventing an official in performing security tasks or maintaining public order and peace (Article 24). Upon entry into force of the Criminal Code on 1 January 2006, the criminal provisions contained in Article 24 have ceased to exist, i.e. main contents of this criminal offence were incorporated into the Article 322 of the Criminal Code.

The basic and the mildest form of endangerment of security of police officers are obstructing an official in performing security tasks or maintaining public order and peace. The Law on Public Order and Peace does not define "security tasks"; therefore, in the accordance with the Law on Police, one can speak of police affairs[4], among which the main groups stand out: protection of national security, protection of citizens' security, prevention and suppression of crime, maintaining public order and peace, and administrative internal affairs.[5] In this respect, under "security tasks" one may consider police tasks aimed at security protection of life, rights, freedom and personal integrity of a person, as well as support to the rule of law, security protection of persons and property and prevention and suppression of crime.

Activities related to maintaining public order stand out as special police activities (Article 10 Paragraph 1 Item 5 of the Law on Police). The terms "public order"and "public order and peace"are used as synonyms in our law. In the Constitution of the Republic of Serbia both terms were used, while in the Law on Public Order and Peace and the Criminal Code only the term "public order and peace"was used. Even though there is still no progress in the harmonization of terminology differences, some authors believe that future laws will only adopt the term "public order".[6] Public order is defined as the coordinated state of mutual relations of citizens created by their behaviour in public places and activities of agencies and organizations in public life, aimed at ensuring equal conditions for exercising the rights of citizens to personal and property security, peace and tranquillity, privacy, freedom of movement, preservation of public morality and human dignity and rights of minors to protection (Article 2 Paragraph 1 of the Law on Public Order and Peace). Tasks of maintaining public order and peace imply prevention of its disturbing, and restoring disturbed public order.

Maintaining public order and peace, and thus the safety of citizens, depends upon the successful, timely and proper conduct of police officers who perform these tasks. In order to protect life and health, physical integrity, honour and reputation of police officers who perform security tasks or tasks of maintaining public order and peace, obstructing authorized officer in performing security or maintaining public order and peace has been incriminated, and its elements will be presented in the following section of this paper.

ELEMENTS OF THE CRIMINAL OFFENCE OF THE ARTICLE 23 OF THE LAW ON PUBLIC ORDER AND PEACE

The Law on Public Peace and Order stipulates in the Article 23 criminal offence of obstructing an authorized official in performing security tasks or maintaining public order and peace. This offence consists of obstructing an authorized official in performing security tasks or maintaining public order and peace, by insult, abuse, threat of assault, attempted assault, assault or otherwise.

4 Police affair are defined in the Article 10 of the Law on Police ("Sl. glasnik RS", No. 101/2005, 63/2009 – Decision of the Constitutional Court and 92/2011).
5 S. Miletić, S. Jugović, Pravo unutrašnjih poslova, Belgrade, 2009, p. 135.
6 Ibid, p. 220.

The object of protection has been determined in two ways. These are, on the one hand, the life, physical integrity, dignity, honour and reputation of an authorized official, and on the other hand, timely, lawful and effective performance of security tasks or maintaining public order and peace.

Actus reus of this criminal offence consists of various activities directed at slowing, obstructing or complicating the official task of authorized official, so that it can not be performed in a timely and efficient manner. The actur reus is mainly positive activity, that is, active action of commission of perpetrator, although in exceptional cases it can also be undertaken by omission.[7]

Obstruction can be committed with several alternatively envisaged activities: 1. insult; 2. abuse; 3. threat of assault; 4. attempted assault; 5. assault and 6. some other way.

Insult is any action that disdains, underestimates or demeans the honour and reputation of an authorized official.[8] Insult as a form of obstruction can be directed verbally, that is by saying bad words, expressions or swears, or by concluding actions, i.e. by taking certain positions of hands or body parts.

"The defendant was insulting the official when he approached the police officer that was talking to the owner of the business premises in connection to disturbance of public order and peace, and told him: F. you, you took my license away, you will remember me"[9]

Abuse is any action that causes physical or mental pain, suffering, discomfort, but does not result in physical injury, i.e. it is rough behaviour of the perpetrator, which leads to obstructing an authorized official.[10]

The threat of assault is presenting an authorized official with the possibility that the attack will occur. The threat must be serious and possible, so that the passive subject feels threatened.

Assault is any behaviour that threatens the physical integrity of a passive subject - authorized official, while no bodily injury was inflicted. This means that there is only a threat of violence, that injury may occur, but it didn't.[11] Assault can be committed in various ways, such as: pushing, pulling, kicking, throwing an object at authorized official, etc.

Besides the mentioned actions, legislator has foreseen that obstruction can be committed in other way. Which way it is, is the factual question resolved by court in each concrete case; however, this action may include "those ways and actions which lead to complication of tasks performed by an authorized official, such as placing barriers for movement of vehicles or authorized officials"[12]

In the case of criminal offence of obstructing an authorized official in performing security tasks or maintaining public order and peace to exist, it has to be established whether the injured party in a particular situation was on a duty as authorized official; whether he was performing security tasks or maintaining public order and peace, as well as whether the defendant was obstructing him with his active actions. If the perpetrator has committed some of the mentioned actions after the execution of official task by authorized official, there is no criminal offence of the article 23 of the Law on Public Order and Peace, but there may be some other criminal offence.

7 See more in: D. Jovašević, *Javni red i mir i oružje i municija: zbirka zakona sa komentarom i praksom*, Belgrade, 2005
8 Ibid, p. 38.
9 The verdict of the District Court in Cacak, 9/02 of 07/02/2002..
10 D. Jovašević, *Javni red i mir i oružje i municija: zbirka zakona sa komentarom i praksom*, op. cit., p. 39.
11 D. Jovašević, Obeležja krivičnog dela sprečavanja ovlašćenog službenog lica u obavljanju poslova bezbednosti i održavanja javnog reda i mira, *Bezbednost*, 5/2001, p. 594.
12 D. Jovašević, *Javni red i mir i oružje i municija: zbirka zakona sa komentarom i praksom*, op. cit., p. 42.

”As the actus reus of the criminal offence of the Article 23 Paragraph 1 of the Law on Public Order and Peace consists of obstructing an authorized official in performing security tasks or maintaining public order and peace, that is – during their official action, the question is how the accused obstructed police members after the intervention. In the re-trial proceedings, the court will assess whether the defendant's actions contain the elements of some other criminal offence, if there are no elements of criminal offence from the Law on Public Order and Peace.“[13]

In order for this criminal offence to exist, the essential is „undertaking unlawful action against authorized officials, regardless of the place where they performed security tasks or maintained public order and peace, and regardless of the place – location where the actions of the perpetrator were undertaken.“[14]

Some of envisaged actur reus of this criminal offence, such as assault and attempted assault, can also be actus reus of the criminal offence preventing an authorized official in performing security tasks or maintaining public order and peace. However, in order for this criminal offence to exist, it is necessary that the official action did take place.

“In the defendant's appeal, the defence states that this is the criminal offence of obstructing an authorized official in performing security tasks of the Article 23 Paragraph 1 of the LPOP, and not the criminal offence of preventing an authorized official in performing security tasks of the Article 24 Paragraph 1 of the LPOP. In this particular case, a traffic police officer has acted in the capacity of an authorized official that performs security tasks in terms of the Article 19 Paragraph 1 and Article 27 of the Law on Internal Affairs of the Republic of Serbia. By pulling the gun, the defendant prevented the authorized official to perform official action, i.e. prevented him to identify him. By leaving the scene, the defendant prevented the authorized official to perform official action in performing security tasks. In this way, the criminal offence was completed. The fact that in the end the defendant was stopped does not in any sense mean that preventing an authorized official did not occur. Obstructing an authorized official implies that this person, despite the fact that he was obstructed by the defendant, did manage to finish the official action, which in this case did not happen, because the defendant left the scene, and police officer could not prevent it, because the defendant pulled a gun against him.“[15]

The consequence of this criminal offence is endangerment of safety of an authorized official while performing security tasks or maintaining public order and peace, that is preventing the lawful, efficient and timely performance of official action or duty.

Perpetrator of this criminal offence can be any person.

This criminal offence can be committed only against an authorized official who performs security tasks or maintains public order and peace. The notion of authorized official is determined by the Article 4 of the Law on Police, which states that authorized officials are uniformed and uninformed employees that exercise police powers.

In order for this criminal offence to exist, perpetrator's intent is required.

“The criminal offence of the Article 23 of the Law on Public Order and Peace will exist only when the perpetrator acts with intent, which has to comprise the awareness that it is an authorized official who performs security tasks or maintains public

13 The verdict No. 160/03 of 04/02/2003, retrieved from http://www.sirius.rs/praksa/22422 accessed on 05/12/2011.
14 The verdict of the district Court in Kanjiza, K-243/06 of 31/01/2007.
15 The verdict of the District Court in Belgrade, No. 1820/02 of 06/03/2003.

order. Given the fact that in this particular case the injured party was not in uniform, but in civil suit, and that before undertaking official action he did not identify himself by showing official ID card, and given that he himself claimed that from the moment he radioed police the accused did not resist, the presented evidence have not entirely denied the defendant's defence which stated that until that moment he did not know that injured party had the capacity of authorized official. "[16]

For the basic form of this criminal offence, the law has stipulated the punishment of imprisonment from six months to 3 years.

AGGRAVATED FORMS OF CRIMINAL OFFENCE

Besides the basic form of this criminal offence, the Law on Public Order and Peace stipulates two aggravated, qualified forms of this criminal offence.

The first aggravated form of this criminal offence exists if the perpetrator, while committing the basic form of offence, threatens the authorized official that he will use a weapon, or reaches for a weapon or inflicts light bodily injury. The notion of weapon is interpreted in the accordance with the Law on Weapons and Ammunition.[17]

Threat of using a weapon exists when perpetrator presents an authorized official with the possibility of using a weapon, in a way that gives impression of seriousness and creates passive subject's fear, due to which he decides to act or don't act (or endure) against his will. Also, the threat may be made indirectly, when an official is presented with the possibility of use of weapons against another person, close to him.[18]

Aggravated form also exists if the perpetrator reaches for a weapon.[19] This action implies the movement towards a weapon and it is most often manifested in taking a weapon in hands or just in touching it.

The notion of light bodily injury, as consequence of obstructing an authorized official, is interpreted in terms of the Article 122 of the Criminal Code and implies light and short-term damage to bodily integrity or health, but its intensity is such that it does not represent threat to life and doesn't lead to inability to work in longer period, nor it leaves visible changes of lasting character.[20]

For the first aggravated form of this offence, the law stipulates sentence of imprisonment from one to five years.

The second aggravated form of offence exists if perpetrator, while committing the basic form of the offence, pulls a weapon, uses it or inflicts serious bodily injury to an authorized official.

Pulling a weapon implies movement with a weapon for the purpose of its placement in the position for its use. Undertaking of this action creates the immediate situation that is conditions that imply that the very next moment a weapon could be used.[21]

16 The verdict of the District Court in Kragujevac K-830/03 of 22/03/2005 and the verdict of the District Court in Kragujevac No. 693/05 of 25/11/2005.

17 Under weapons, according to this law, we consider any device that is manufactured, adapted or intended for the discharge of projectiles, gas, liquids or other substances through the thrust of propellant gas, air pressure, gas pressure or other means of pressure, and other items whose basic purpose is to attack (Article 2 Paragraph 1).

18 D. Jovašević, Krivično delo ometanja ovlašćenog službenog lica u obavljanju poslova bezbednosti – teorijski i praktični aspekti, *Bezbednost,* 99/01, p. 51.

19 D. Jovašević, *Javni red i mir i oružje i municija: zbirka zakona sa komentarom i praksom*, op. cit., p. 43

20 V. Đurđić, D. Jovašević, Krivično pravo:posebni deo, Beograd, 2006, pp. 37-38.

21 D. Jovašević, Krivično delo ometanja ovlašćenog službenog lica u obavljanju poslova bezbednosti – teorijski i praktični aspekti, op. cit., p. 52.

Use of a weapon implies that attack against an authorized official with weapon has been undertaken – that a weapon has been use, but no serious bodily injury was inflicted.

Serious bodily injury shall be interpreted in terms of the Article 121 of the Criminal Code and consists of the violation of bodily integrity or physical or mental health, which is expressed in the destruction or impairment of a body part or organ, or in causing permanent or temporary incapacity to work, or in permanent or serious damage to health or in causing such changes on the visible parts of the body that disrupt or distort the aesthetic appearance of a man.

"The Court of Appeal, based on the established facts, has legally qualified actus reus as committing criminal offence of obstructing an authorized official in performing security tasks or maintaining public order and peace of the Article 23, Paragraph 3 of the Law on Public Order and Peace of the Republic of Serbia, instead of criminal offence of attempted aggravated murder. The defendant has, in the state of mental competency, with premeditation, attacked official, the injured party BB, while performing duties of maintaining public order and peace at the stadium. The injured party was, in the capacity of inspector, member of the Gendarmerie of the Ministry of Interior, on security and protection tasks, observing the fans on the north stand... and in the moment when he was leaned, the defendant has, with the burning side of flaming torch, while saying to him 'you want torch, here it is', burnt his body, thus inflicting second degree burns to him… this injuries represent serious bodily injury and have caused, along with light bodily injuries… severe pain and fear of high intensity, the emergence of serious bodily injury on psychological level, which is a serious impairment of health in the form of anxious-depressive syndrome."[22]

For the second aggravated form of this offence, the law predicts punishment of imprisonment of minimum three years, without special maximum. Since the Criminal Code, as a general maximum sentence stipulates sentence of 20 years imprisonment, that means that legally, out of negligence, "obstructing an authorized official has became more serious criminal offence than preventing an authorized official, and more serious than a murder."[23]

If this criminal offence results in death of an authorized official, then we would have criminal offence of aggravated murder - death of an official or serviceman during discharge of their duty (Article 114, Paragraph 6 of the Criminal Code of the Republic of Serbia).

SCOPE AND DYNAMICS OF CRIMINAL OFFENCE OF THE ARTICLE 23 OF THE LAW ON PUBLIC ORDER AND PEACE

The criminal offence of obstructing an authorized official in performing security tasks or maintaining public order and peace is most often committed against police officers. Police officers are threatened mostly while maintaining public order and peace and controlling and regulating traffic. In the period 2006- 2010, total of 8.426 criminal offences against police officers were committed, out of which 4.890 offences or 60% are related to obstructing an authorized officer in performing security tasks or maintaining public order and peace of the Article 23 of the Law on Public Order and Peace.[24]

22 The verdict of the Appeal Court in Belgrade, No 5239/10 of 06/04/2011.
23 D. Jocić, Sporedno krivično zakonodavstvo, *Bilten sudske prakse Vrhovnog suda Srbije,* 3/2009, p. 114.
24 http://www.sindikatsrpskepolicije.org/index.php/aktivnosti/centrala/105-krivicna-dela-nad-policajcima accessed on 03/10/2011.

At the territory of the Republic of Serbia, in the period 2005-2009, the criminal offence of obstructing an authorized officer accounted for about 1% of the total number of reported crimes.

Tabel № 1. Number of criminal offences of the Article 23 of the Law on Public Order and Peace, in the period 2005-2009, at the territory of the Republic of Serbia[25]

Year	**2005**	**2006**	**2007**	**2008**	**2009**
Number of criminal offences	1222	849	1014	986	1108

By observing statistical data on the number of reported criminal offences of the Article 23 of the Law on Public Order and Peace in the mentioned period, one cannot see any regularities, that is trends of decline or increase in the number of committed offences. After decrease in number of committed offences for 30%, the increase follows, so that decrease in number of reported criminal offences between initial and final observed year is 10%.

This criminal offence is usually committed alone, while in 10% of cases there is accomplice.

Police officers perform tasks related to maintaining public order and peace or security daily, usually in the street, in residential, hospitality, sports and other facilities. These places are the most common places of commission of criminal offences against police officers.

Table № 2. Place of commission of criminal offences of the Article 23 of the Law on Public Order and Peace in the period 2005-2009, at the territory of the Republic of Serbia[26]

Place of commission	**2005**	**2006**	**2007**	**2008**	**2009**
Residential facility	121	63	70	96	97
Shop	8	4	6	6	6
School facility	2	1	1	4	4
Hospitality facility	98	66	82	71	99
Sports facility	6	9	9	7	19
Bank	/	/	/	1	/
Street	783	585	699	655	731
Other places	204	121	146	147	152

Out of total number of committed criminal offences of the Article 23 of the LPOP, in the period 2005-2009, about 66% were committed on the street, while 8% were committed in residential or hospitality facilities. Other places of commission include shops, sports facilities, school facilities etc.

Therefore, police officers who perform their daily duties in the street, in direct contact with citizens, are usually threatened by criminal offence of obstructing an authorized official in performing security tasks or maintaining public order and peace. Uniformed police officers, working as police constables or patrolmen, or controlling and regulating the traffic, are the most vulnerable category.

25 Source: Data of the Directorate for Analytics of the Ministry of Interior of the Republic of Serbia.
26 Ibid.

OBSTRUCTION OF AUTHORIZED OFFICER IN COMPARATIVE LAW

Legal protection of police officers from the basic forms of security threats, is stipulated by modern legislation. In some legal systems, criminal law contains these offenses, while some states, like ours, the legal protection of life and body of authorized officials is incorporated in the subordinate legislation. Also, in some countries, the legislation that directly regulates the organization and authority of the police, envisages similar provisions.

Obstruction of authorized officer during the performance of security activities or maintaining public order, does not occur in every legislation as a separate offense. Actions that, given the terms of Art. 23 of the Law on Public Order, may be considered as criminal offence of obstruction, appear as separate offenses, special forms of individual acts or as a part of alternatively envisaged acts of commission of other criminal offenses against police officers.

Aiming at comprehensive and effective protection of police officers and further development of existing criminal law provisions, we are going to indicate the relevant provisions of certain laws in Europe, Europian Union countries and USA.

Russian Criminal Code[27] provides acts simillar to the obstruction of an authorized officer in Chapter 32 – Crime against administration procedure. Aticle 318. Defines Use of violence against a representative of the authority as follows:

1. Use of violence that does not endanger human life or health, or threats to use violence against a representative of the authority, or his relatives, in connection with the discharge by his official duties, shall be punishable by a fine in the amount of 200 to 500 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of two to five months, or by arrest for a term of three to six months, or by deprivation of liberty for a term of up to five years.
2. The use of violence endangering the lives or health of the persons referred to in the first part of this Article shall be punishable by deprivation of liberty for a term of five to ten years. In this article is specified that a public officer of a law-enforcement or controlling body, and also other public officials vested in the statutory order with regulatory powers in respect of persons who are not dependent on them by virtue of employment, shall be deemed to be a representative of the authority in this and other Articles of the present code.

Article 319. defines a crime that is very similar to criminal offence of obstructing an authorized official in performing security tasks or maintaining public order and peace art obstruction, stipulated in the Article 23. in Serbian Law on Public Peace and Order. Insult of representative of the authority defines that public insult of a representative of the authority during the discharge by him of his official duties, or in connection with their discharge, shall be punishable by a fine in the amount of 50 to 100 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of up to one month, or by compulsory works for a term of 120 to 180 hours, or by corrective labor for a term of six to twelve months.

Criminal code of the Republic of Hungary[28] in Crimes against public peace defines Disorderly conduct, a crime that has many similarities with crime from Serbian

27 http://www.russian-criminal-code.com/PartII/SectionX/Chapter32.html; accessed on 28/02/2012.
28 http://www.legislationline.org/download/action/download/id/1679/file/84d98ff3242b74e606dcb1da83aa.pdf; accessed on 22/01/2010.

Law on Public Peace and Order. Art. 271/A disorderly conduct provides as follows:

1. Any conduct of violent or intimidating resistance against the actions of security officers to maintain order in a public event, if it does not result in a more serious criminal act, shall be construed as a misdemeanor offense and shall be punishable with imprisonment of up to two years, work in community service, or a fine.
2. The punishment shall be imprisonment of up to three years for disorderly conduct committed in groups or with any weapon.
3. As auxiliary punishment, a permanent injunction may also be ordered.
4. For the purposes of this Section 'public event' shall mean an event as defined in the Act On the Right of Assembly as well as cultural and sports events that are open to the public without discrimination.

German criminal code[29] in chapter six, named "Resistance to state authority" stipulates section 113 – Resistance to law enforcement officials as follows:

1. Whoever, by force or threat of force, offers resistance to or violently assaults a public official or soldier of the Federal Armed Forces, who is charged with the enforcement of laws, ordinances, judgments, judicial rulings or orders, while in the performance of such an official act, shall be punished with imprisonment for not more than two years or a fine.
2. In especially serious cases the punishment shall be imprisonment from six months to five years. An especially serious case exists, as a rule, if:
3. the perpetrator or another participant carries a weapon in order to use it during the act; or
4. the perpetrator, through an act of violence, places the person assaulted in danger of death or serious health damage.
5. The act shall not be punishable under this provision if the official act is unlawful. This shall also apply if the perpetrator mistakenly assumes that the official act is lawful.
6. If the perpetrator during the commission of the act mistakenly assumes that the official act is unlawful and if he could have avoided the mistake, then the court may mitigate the punishment in its discretion (Section 49 subsection (2)) or dispense with punishment under this provision where guilt is slight. If the perpetrator could not have avoided the mistake and under the circumstances known to him he could not have been expected to use legal remedies to defend himself against the presumed unlawful official act, then the act shall not be punishable under this provision; if he could have thus been expected, then the court may mitigate the punishment in its discretion (Section 49 subsection (2)) or dispense with punishment under this provision.

Criminal code of the Republic of Romania[30] defines as aggravated form of criminal offence named Outrage, in chapter Crimes and delicts against public interests committed by any persons, when threat, hitting or any other acts of violence, as well as corporal injury are committed against a police officer or gendarme or other member of the military. This crime is stipulated in art.323 as follows**:**

1. A threat committed directly or by any means of direct communication against a public servant in an office that involves the exercise of State authority who is

29 http://www.legislationline.org/download/action/download/id/3238/file/Germany_CPC_1950_amended_2008_en.pdf; accessed on 28/02/2012.

30 http://www.legislationline.org/download/action/download/id/1695/file/c1cc95d-23be999896581124f9dd8.htm/preview: accessed on 22/01/2010.

in the exercise of office or acts committed during the exercise of office shall be punished by strict imprisonment from one to 2 years or by days/fine.

2. Hitting or any other acts of violence, as well as corporal injury committed against persons in para. (1), who is in the exercise of office or acts committed in the exercise of office, shall be punished by strict imprisonment from one to 6 years, and if serious corporal injury was caused, the penalty shall be strict imprisonment from 3 to 12 years.
3. If the acts in para. (1) and (2) are committed against a magistrate, police officer or gendarme or other member of the military, the special maximum of the penalty shall be increased by 2 years.
4. If against the spouse, children or parents, of persons in para.(3) the offences in Art.185-187, 201 and 210, were committed for purposes of intimidation or revenge for acts performed by the public servant in the exercise of service, the penalties provided in the law for these offences can be increased up to their general maximum.

United Kingdom Police act[31] in Part V, named Offences, and defines offences concerning the Police. Obstructing a Police Officer is incorporated in section 89(2) as follows:

"Any person who resists or willfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale, or to both."

The offence of obstructing a police officer is committed when a person:

- willfully obstructs
- a constable in the execution of his duty, or
- a person assisting a constable in the execution of the constable's duty.

It is a summary only offence carrying a maximum penalty of one month's imprisonment and/or a level 3 fine.

A person obstructs a constable if he prevents him from carrying out his duties or makes it more difficult for him to do so.

The obstruction must be 'willful', meaning the accused must act (or refuse to act) deliberately, knowing and intending his act will obstruct the constable. The motive for the act is irrelevant.

Many instances of obstruction relate to a physical and violent obstruction of an officer in, for example, a public order or arrest situation. This standard only deals with conduct which can amount to an obstruction in the context of an interference with public justice.

Examples of the type of conduct which may constitute the offence of obstructing a police officer include:

- warning a landlord that the police are to investigate after hours drinking;
- warning that a police search of premises is to occur;
- giving a warning to other motorists of a police speed trap ahead;
- a motorist or 'shoplifter' who persists in giving a false name and address;
- a witness giving a false name and address;
- a partner who falsely claims that he/she was driving at the time of the accident but relents before the breathalyzer procedure is undertaken;

31 http://www.legislation.gov.uk/ukpga/1996/16/part/V/crossheading/offences; accessed on 28/02/2012.

- an occupier inhibiting the proper execution of a search warrant (if the warrant has been issued under the Misuse of Drugs Act, see also s 23 of that Act);
- refusing to admit constables into a house when there is a right of entry under s.4 (7) of the road Traffic Act 1988 (arrest for driving etc while unfit through drink or drugs).

Revised Code of Washington DC[32] defines Obstructing a law enforcement officer in Title 9A, Chapter 76, and Section 020 as follows:

1. A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.
2. "Law enforcement officer" means any general authority, limited authority, or specially commissioned Washington peace officer or federal peace officer as those terms are defined in RCW 10.93.020, and other public officers who are responsible for enforcement of fire, building, zoning, and life and safety codes.
3. Obstructing a law enforcement officer is a gross misdemeanor.

Californian Penal code[33] in section 148 stipulates Resisting, Delaying or obstructing officer as follows:

a)

1. Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.
2. Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

b)

1. Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

c)

1. Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment pursuant to subdivision (h) of Section 1170.

d)

1. Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to perma-

32 http://apps.leg.wa.gov/RCW/default.aspx?cite=9A.76.020; accessed on 28/02/2012.
33 http://dmv.ca.gov/pubs/vctop/appndxa/penalco/penco148.htm; accessed on 28/02/2012.

nently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

1. The officer's holster strap was unfastened by the defendant.
2. The firearm was partially removed from the officer's holster by the defendant.
3. The firearm safety was released by the defendant. .
4. An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.
5. An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.
6. The defendant's fingerprint was found on the firearm or holster.
7. Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.
8. In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

e)

1. A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician is victims.

f)

1. This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.

CONCLUDING REMARKS: CHANGES TO THE ARTICLE 23 OF THE LAW ON PUBLIC ORDER AND PEACE

Commission of criminal offences against police officers threatens their life and bodily integrity, and above all, all goods and interests they protect. In order to establish a more efficient criminal protection of authorized officials, we will point to some of the possible changes to provisions that incriminate obstructing an authorized official in performing security tasks or maintaining public order and peace.

By entry into force of the Criminal Code on 1st January 2006, the Article 24 of the Law on Public Order ceased to exist, that is, provisions that stipulated the criminal offence of preventing an authorized official in performing security tasks or maintaining public order and peace, while the Article 23 remained in force. In that way, preventing was incorporated into the Criminal Code, and obstructing was not.

The Criminal Code provides for similar offences in the group of offences against state bodies, which include preventing the attacking an official, while a special chapter of the Code includes criminal offences against public order and peace. Since the object of protection in the criminal offence of obstructing an authorized official was determined in two ways (protection of life and integrity of an authorized official and protection of public order and peace), it is not clear why the obstruction, after the provisions of the Article 24 ceased to exist, remained the only criminal offence in the LPOP. By including it in the Criminal Code, and by removing now invalid provisions of the Article 24, the Law on Public Order and Peace would include only misdemeanours, while the criminal offences against public order and peace would be included in some of the chapters of the Criminal Code.

Almost everyday examples of threats and injuries to police officers while performing official duties indicate the necessity of different approach and procedure against perpetrators of these criminal actions. As one of the ways, the possibility of decriminalization of this offence is imposed, i.e. stipulating obstructing an authorized official as misdemeanour. This approach would certainly ensure a shorter duration of the proceedings, greater efficiency of imposed sanctions and greater criminal law protection of police officers, regardless of whether the proceedings would be summary or regular.

On the other hand, the question of citizens' protection that is their basic human rights, from the possible abuse and arbitrariness of police officers arises. It is necessary, above all, to clearly define the object of protection, and examine the degree of social danger the offence represents, because it would be unreasonable to, for the purpose of more efficient punishment, see obstruction as less socially dangerous offence than other offences that endanger authorized officials, such as preventing and attacking official. Also, it must be kept in mind that certain criminal offences of obstructing an authorized official were committed due to improper or illegal conduct of authorized officials. Therefore, in the Article 23 of the LPOP, the possibility of exemption from punishment should be provided for perpetrator who was provoked by unlawful or rough conduct of authorized official.

One of specific issues is relationship between criminal offences of obstructing an authorized official in performing security tasks and maintaining public order and peace and assault on official performing his duty. Namely, criminal offence of attack on official in performing his duty consists of attack or threat to attack an official in performing his duty (Article 323, Paragraph 1 of the Criminal Code). In addition to the basic form, this offence also has three aggravated forms. The first aggravated form exists if the official suffered a light bodily injury or was threatened with weapon. The second aggravated form exists if some of mentioned forms of offence were committed against an authorized official in performing public or state security duties. The third aggravated form exists if while committing the first or the second aggravated form of this offence, authorized official suffered serious bodily injury.

Special criminal law protection of authorized officials has been provided by incrimination of attack or threat to attack an authorized official in performing public or state security duties, as well as infliction of light or serious bodily injuries while committing basic form of this offence. Given that criminal offence of obstructing an authorized official stipulates almost identical provisions, which also include attack against authorized official, threat to use weapon and infliction of light or serious bodily injuries, the question of demarcation of these offences imposes itself. When establishing boundaries between criminal offences of obstructing and preventing authorized officials, completion of started action is taken as deciding factor, that is – if an authorized official

did complete official duty, despite the actions undertaken by perpetrator, the criminal offence of obstructing will exist. Therefore, if for the existence of criminal offence of obstructing an authorized official, completion of undertaken official action is necessary, and bearing in mind already mentioned verdict of the Appeal Court, when the perpetrator has "intentionally, i.e. consciously and willingly attacked authorized official in maintaining public order and peace and that he has consciously and willingly inflicted serious bodily injuries to the injured party"[34], after which the injured party has not proceeded with the undertaken official action, it is evident that the border between these offences will be determined by the court in each individual case.

The Criminal Code also explicitly provides for punishment of the attempted attack on officer while performing official duty. If the perpetrator attempts to attack an authorized official in performing public or state security duties, after which authorized official completes his action, the question whether there will exist criminal offence of the Article 23 of the LPOP or attempted offence of the Article 323 of the Criminal Code, imposes it self justifiably.

A clear distinction between these offences is necessary also due to existence of special grounds for exemption from punishment for criminal offence of attack on an authorized official in discharge of official duty. Namely, the Criminal Codes provides for in the Article 323, Paragraph 6 the possibility of remission of punishment, if the perpetrator was provoked by unlawful or rough conduct of an official. Therefore, it is necessary that the very action of an official was undertaken lawfully, but that his conduct was unlawful or rough, so that it provoked the perpetrator to commit criminal offence of attacking official in performing his duty.

As the criminal offence of attack on an official essentially contains provisions already contained in particular paragraphs of the Article 23 of the LPOP, abrogation or deletion of certain provisions of this article should be considered. In this respect, the criminal offence of obstructing an authorized official would incriminate insult, abuse or attempted assault, as well as aggravated forms of offence not containing attack or attempted attack, when the taken official action is completed, that is, when there are no elements of preventing an official. In this sense, any attack or attempted attack would be contained in already existing provisions of the Article 323 of the Criminal Code. This would contribute to establishing clear differences between criminal offence of obstructing an authorized official and aggravated forms of preventing or attacking an official, when the act of commission was undertaken by threat of attack, attempted attack or attack.

The existing legal provisions, which define obstructing an authorized official in performing security tasks or maintaining public order and peace undoubtedly, leave certain dilemmas, which can be resolved by the future changes to the criminal legislation. Besides changes to the mentioned incriminations, it is necessary to ensure their efficient application, which would complete the system of comprehensive criminal law protection of police officers.

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CIP – Каталогизација у публикацији
Народна библиотека Србије, Београд

343.9(082)
343.85(082)

МЕЂУНАРОДНИ научни скуп „Дани Арчибалда Рајса“ (2012 ; Београд)

Tematski zbornik radova međunarodnog značaja. T. 1 / Međunarodni naučni skup „Dani Arčibalda Rajsa“, Beograd, 1–2. mart 2012 ; [[organizator] Kriminalističko-policijska akademija ; glavni i odgovorni urednik Goran Milošević] = Thematic conference proceedings of international significance. Vol. 1 / International scientific conference "Archibald Reiss Days“, Belgrade, 1–2 March 2012 ; [[organized by] Academy of Criminalistic and Police Studies ; editor in chief Goran Milošević]. – Beograd : Kriminalističko-policijska akademija = Belgrade : Academy of Criminalistic and Police Studies, 2012 (Belgrade = Beograd : Scanner studio). – XIII, 477 str. : tabele ; 24 cm

Tiraž 200. – Preface = Predgovor: str. [VIII–IX]. – Napomene i bibliografske reference uz svaki rad.

ISBN 978-86-7020-217-7
ISBN 978-86-7020-190-3 (za izdavačku celinu)
1. Криминалистичко-полицијска академија (Београд)
a) Криминалистика – Зборници b) Криминалитет – Сузбијање – Зборници
COBISS.SR-ID 192446220