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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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 Republike Srbije i Ministarstva prosvete i nauke, održan na Kriminalističko-policijskoj akademiji.

U godini kada Ministarstvo unutrašnjih poslova i Kriminalističko-policijska akademija obeležavaju dva veka ovog ministarstva i 90 godina visokog policijskog obrazovanja u Srbiji, u znak zahvalnosti i sećanja na istaknutog kriminalistu, jednog od reformatora policije Srbije i osnivača i direktora prve moderne visoke policijske škole u Srbiji, prof. dr Rudolfa Arčibalda Rajsa, ovaj skup nosi njegovo ime.

Tematski zbornik se sastoji iz dva toma i sadrži 86 radova nastavnika i saradnika Kriminalističko-policijske akademije iz Zemuna, Fakulteta bezbednosti iz Skoplja i Beograda, Policijske akademije iz Bratislave, Visoke škole unutrašnjih poslova u Banjaluci, Pravnog fakulteta Univerziteta u Kragujevcu, Novom Sadu, Prištini, Nišu i Beogradu, Fakulteta za specijalnu edukaciju i rehabilitaciju, Beogradskog centra za bezbednosnu politiku, Policijske akademije „Alexandru Ioan Cuza“ iz Bukurešta, Državnog univerziteta unutrašnjih poslova u Lvivu - Ukrajina, Fakulteta za sport i fizičko vaspitanje Univerziteta u Beogradu, Medicinskog fakulteta u Kosovskoj Mitrovici, Prirodno-matematičkog fakulteta Univerziteta u Novom Sadu, Instituta za međunarodnu politiku i privredu, Veleučilišta u Velikoj Gorici – Hrvatska, Elektrotehničkog fakulteta Univerziteta u Beogradu, Fakulteta bezbednosnih nauka Univerziteta u Mariboru, kao i naučnika i stručnjaka predstavnika Ministarstva unutrašnjih poslova Republike Srbije, Republike Crne Gore, Republike Srpske i Makedonije. Autori radova su eminentni stručnjaci iz oblasti prava, bezbednosti, kriminalistike, forenzike, medicine, pripadnici nacionalnog sistema bezbednosti ili učestvuju u edukaciji pripadnika policije i vojske, kao i drugih službi bezbednosti. Svaki rad je recenziran od strane dva kompetentna međunarodna recenzenta, a celokupan Tematski zbornik recenziran je od strane četvorice kompetentnih međunarodnih recenzenata.

Radovi objavljeni u Tematskom zborniku sadrže prikaz savremenih tendencija u razvoju sistema policijskog obrazovanja, razvoja policije i savremenih koncepata bezbednosti, kriminalistike i forenzike. Dalje sledi analiza aktivnosti pravne države u suzbijanju kriminala, zatim stanja i kretanja u ovim oblastima, kao i predlozi za njihovo sistemsko prevazilaženje. Tematski zbornik radova predstavlja značajan doprinos postojećem fondu naučnog i stručnog znanja iz oblasti kriminalističke, bezbednosne i kaznenopravne teorije i prakse. Publikovanje ovog Tematskog zbornika vodi uspostavljanju i unapređivanju međusobne saradnje obrazovnih, naučnih i stručnih institucija na nacionalnom, regionalnom i međunarodnom nivou.

Naposletku, želimo da se zahvalimo svim autorima i učesnicima skupa, kao i recenzentima prof. dr Vidu Jakulinu, prof. dr Oleksandru Marinu, prof. dr Miodragu Simoviću i prof. dr Vaclavu Krajniku. Takođe, zahvaljujemo se 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, jun 2011. godine

Programski i Organizacioni odbor

PREFACE

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

In the year when the Ministry of Interior of the Republic of Serbia and the Academy of Criminalistic and Police Studies celebrate the 200th anniversary of this Ministry and the 90th anniversary of higher police education in Serbia, as a sign of appreciation and in memory of the prominent criminalist, one of the reformist of Serbian police and founder and director of the first modern higher police school in Serbia, Dr. Archibald Rodolphe Reiss, this Conference has been named after him.

The Thematic Conference Proceedings consists of two volumes and contains 86 papers by teachers and associates of the Academy of Criminalistic and Police Academy in Belgrade, Faculty of Security in Skopje, Faculty of Security in Belgrade, Academy of Police Force in Bratislava, Higher School of Internal Affairs in Banja Luka, Faculty of Law of the University of Kragujevac, Faculty of Law of the University of Novi Sad, Faculty of Law of the University of Pristina, Faculty of Law of the University of Nis, Faculty of Law of the University of Belgrade, Faculty of Special Education and Rehabilitation, Belgrade Centre for Security Policy, Police Academy "Alexandru Ioan Cuza" in Bucharest, Lviv State University of Internal Affairs - Ukraine, Faculty of Sport and Physical Education of the University of Belgrade, Faculty of Medicine in Kosovska Mitrovica, Faculty of Sciences of the University of Novi Sad, Institute of International Politics and Economics, University of Velika Gorica – Croatia, School of Electrical Engineering of the University of Belgrade, Faculty of Criminal Justice and Security of the University of Maribor, as well as scientists and experts – representatives of the Ministry of Interior of the Republic of Serbia, Republic of Montenegro, Republic Srpska and Macedonia. The authors of the papers are eminent experts in the field of law, security, criminalistics, forensics and medicine, members of national security system or participants in education of members 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 Vid Jakulin, PhD, Mr Oleksandr Marin, PhD, Mr Miodrag Simović, PhD, and Mr Vaclav Krajnik, 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, June 2011

Programme and Organizing Committee

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III THE RULE OF LAW, POLICE AND CRIME SUPPRESSION

CRIMINAL PROTECTION OF PUBLIC REVENUES ACCORDING TO THE LAW ON TAX PROCEDURE AND TAX ADMINISTRATION[1]

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Abstract: Criminal offences in the area of public revenues represent a great social threat. Therefore, every country seeks to protect its economic function by providing criminal law protection of public revenues. Commission of these criminal offences may cause disorder in economic system and economic chaos, which is a good ground for commission of other criminal offences.

Key words: public revenues, tax, excise, tax return, tax credit, the Republic of Serbia.

1. Introductory Remarks

Each country in its positive legislation incriminates activities related to avoidance of public revenues payment. In the Republic of Serbia, tax-related criminal offences have been incriminated in the Criminal Code2 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), while 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 the rest of this paper, we shall point to tax-related criminal offences in the Law on Tax Procedure and Tax Administration.

2. Unfounded Presentation of the Amount for Tax Return and Tax Credit

The criminal offence of unfounded presentation of the amount for tax return and tax credit has been provided for in the Article 173a of the Law on Tax Procedure and Tax Administration. This offence is committed by a person who in order to acquire the right to unfounded tax return or tax credit, files a tax return with false content, expressing the amount for refund that exceeds 150.000 dinars.

The Paragraph 2 provides for more serious form of criminal offence of unfounded presentation of the amount for tax return and tax credit. It differs from the basic form in the fact that it is necessary that presented amount for tax return and tax credit exceeds 7.500.000 dinars. It poses a greater social danger, which manifest itself through the intention of the perpetrator to acquire the right to greater unfounded tax return

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 leader of the Project is Associate Professor Saša Mijalković, PhD.
2 Službeni glasnik RS", broj, 85/05, 88/05 i 107/05.

and tax credit.

The Paragraph 3 prescribes precautionary measures towards the entrepreneur or responsible person in legal entity of ban of performing vocation, business activity or duty for the duration of one to five years.

This tax-related criminal offence is similar to the criminal offence of forging a document from the Article 355 of the Criminal Code of the Republic of Serbia. Criminal offence of forging a document from the Article 355 of the Serbia Criminal Code exists when someone makes a forged document or alters a real document, with intent to use such document as real, or when someone uses a false or altered document as real or obtains such document to use.3 In terms of the Article 355 of the Criminal Code of Serbia, document may also be any object that is suitable or designated to serve as evidence for facts relevant to legal relations. In terms of this tax-related criminal offence, document of significance for establishing unfounded right to tax return or tax credit is a tax return.

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.[4] For the criminal offence of unfounded presentation of the amount for tax return and tax credit, 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.[5] As well as for criminal law stands the principle 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.

The criminal offence of unfounded presentation of the amount for tax return and tax credit protects the fiscal interest of the country. In order for this criminal offence to exist, a taxpayer has to undertake action with intent to acquire the right to unfounded tax return or tax credit. The substance of the criminal offence of unfounded presentation of the amount for tax return and tax contains **act of commission** - filing a tax return with false content.

The criminal offence of unfounded presentation of the amount for tax return and tax credit is committed when a perpetrator files a tax return based on which his tax return or tax credit should be determined, but enters false data in that tax return. The data are false when they do not match the objective real situation in

3 Article 233 of the Criminal Code of the Republic of Serbia.
4 N. Srzentić, A. Stojić, Lj. Lazarević, Krivično pravo Jugoslavije, Opšti deo, Beograd 1996, pp. 164-165.
5 Lj. Lazarević, Krivično delo poreske utaje, Priručnik – oporezivanje i poresko pravo, Beograd 1998, p. 423.

terms of legally obtained incomes, or in terms of other facts, that are of significance for establishing the right to tax return or tax credit.

By false presentation of facts, a perpetrator misleads the responsible authorities in terms of tax return or tax credit, 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 information; it is necessary that information is relevant for determining the right to tax return or tax credit. For example, if employer gives a false information on the name of his employee, this criminal offence will not exist, but if he gives false information in terms of the right to tax return, this criminal offence will 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.

In order for this criminal offence to exist, it is necessary that the perpetrator has intent to obtain illegal material gain.[6] If such intent does not exist, then this criminal offence cannot exist, but eventually economic violation or misdemeanour.

For criminal responsibility of the perpetrator of the criminal offence of unfounded presentation of the amount for tax return and tax credit, **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.[7] This act is directed towards precisely defined goal, and the motive and goal cannot exist one without the other. Motive appears as a cause, and goal 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.[8]

Guilt in this criminal offence includes the awareness of the perpetrator of circumstances, under which the commission of act is concretized, then the awareness of consequence and awareness of causal relation between act and consequence. Awareness of circumstances under which the act of commission is concretized includes the awareness of act of commission, i.e. giving false information/data on the facts of influence on tax return or tax credit.

Each criminal offence has to have a **consequence**, because without the consequence, there is no socially dangerous criminal offence. 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 act of commission in order to obtain the right to tax return or tax credit in an amount that exceeds 150.000 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 succeeds in his intention to by misleading the tax authority obtain the right to tax return or tax credit, but it is sufficient enough that the perpetrator, in order to obtain the right to unfounded tax return or tax credit, has given false information on the facts of influence for establishing those rights.

The perpetrator of criminal offence of unfounded presentation of the amount for tax return and tax credit is every person who files a tax return with false con-

6 M. Kulić, *op. cit*, p. 171.
7 M. Kulić, *op. cit*, p. 151.
8 N. Srzentić i drugi, *op. cit*, p. 554.

tents with intent to obtain the right to unfounded tax return or tax credit. The perpetrator of this criminal offence can be legal representative, trustee, custodian, co-owner, or any other person who on behalf of other person files a tax return with false data, with a consequence of obtaining the right to unfounded tax return or tax credit.

3. Endangering Tax Collection and Tax Control

Criminal offence of endangering tax collection and tax control is provided for by the Article 175 of the Law on Tax Procedure and Tax Administration. This offence is committed by a person who, with the intent to endanger the collection of tax which has not yet become due or has not yet been assessed, but for which the procedure of assessment or control has been initiated, or tax assessed for himself or another person, after imposing temporary measures for securing tax collection in the accordance with the law, or in the enforced collection procedure or tax control, perform any of the following activities:

1. hides an item that is established as temporary measure for securing tax collection, and that is a subject of enforced tax collection or tax control;
2. estranges an item that is established as temporary measure for securing tax collection, and that is a subject of enforced tax collection or tax control;
3. damages an item that is established as temporary measure for securing tax collection, and that is a subject of enforced tax collection or tax control;
4. destroys an item that is established as temporary measure for securing tax collection, and that is a subject of enforced tax collection or tax control;
5. renders unusable an item that is established as temporary measure for securing tax collection, and that is a subject of enforced tax collection or tax control and
6. gives false information on facts of significance to the execution of enforced tax collection or tax control.

In order for this criminal offence to exist, it is necessary that the perpetrator has intent to, by committing this criminal offence, endanger tax collection or tax control. If there is no such intent, there is no criminal offence. The consequence of act is abstract threat to tax collection, and it is accomplished by undertaking the very act of commission of criminal offence, so that the attempt is not possible.[9]

The perpetrator of the criminal offence of endangering tax collection and tax control shall be sentenced to up to one year imprisonment and a fine.

4. Illegal Trade in Excise Goods

The criminal offence of illegal trade in excise goods is provided for by the Article 176 of the Law on Tax Procedure and Tax Administration. This criminal offence has two forms. According to the basic form, this offence is committed by a person who places into circulation or sells goods that are not specially marked by proper control excise stamps.

The Paragraph 2 provides for the other form of the criminal offence of illegal trade in excise goods. It differs from the basic form in the fact that it is committed by the entrepreneur, or responsible person of a legal entity who produces or imports prod-

9 D. Popović, *op. cit*, p. 255.

ucts that must specially be marked with control excise stamps, and does not undertake measures in order to mark these goods with control excise stamps before placing them into circulation.

This criminal offence protects the fiscal interest of the country and obligation to mark goods with control excise stamps. The criminal offence is committed by not acting in accordance with the regulation that prescribes marking of goods with control excise stamps. Excise taxpayer is obliged to, when producing, or before importing cigarettes and alcoholic beverages, except beer and cigarettes used for production quality testing, mark with control excise stamp each of those products.[10]

Natural person - perpetrator of criminal offence can be sentenced to six months to five years imprisonment. Entrepreneur and responsible person of a legal entity can be sentenced to six months to three years imprisonment. Entrepreneur and responsible person of a legal entity may be sentenced also to the precautionary measure of ban of performing his vocation or duty for one to five years. All assets gained by commission of this criminal offence and goods that were not properly marked with control excise stamp shall be seized.

5. Illegal Storage of Goods

The criminal offence of illegal storage of goods is provided for by the Article 176a of the Law on Tax Procedure and Tax Administration. This criminal offence is committed by a person who stores taxable goods in premises not registered for that purpose, or who allows storage of goods in his premises, that are not registered for that purpose.

The Paragraph 2 provides for other form of this criminal offence, which differs from the basic form in the fact that it is committed by a person who stores taxable goods in registered storage premises, but the goods have no proper documentation on their origin and paid taxes.

The Paragraph 3 prescribes precautionary measures towards the responsible person in legal entity, including ban of performing vocation, business activity or duty for the duration of one to five years. The object of criminal offence shall be seized.

This criminal offence protects fiscal interest of the country and the obligation to store goods in premises registered for that purpose. Perpetrator of this criminal offence may be sentenced to three months to three years imprisonment and a fine.

6. The Causes of Public Revenue-Related Criminal Offences

In order to protect its fiscal interest, the country has established, in the accordance with the positive legal regulations, appropriate sanctions against persons who perform their activities contrary to the tax norms. However, the taxpayers, through their illegal activities, consciously break those tax regulations, thus endangering the fiscal sovereignty of the country. Numerous and different factors influence individuals and groups to perform their activities contrary to the tax norms. Basically, these causes can be divided into two groups, depending on whether they are external in relation to a taxpayer, or are integral part of his personality.[11]

1. The first group consists of objective causes that are independent from a taxpayer.

10 Article 18, Paragraph 1 of the Excise Tax Law of the Republic of Serbia.
11 M. Kulić, *op.cit*, p. 234.

Objective causes that influence commission of public revenue-related criminal offences can be grouped as follows: the overall economic situation; level of tax burden; form of public revenue; equality in the treatment of a taxpayer according to the form of ownership; allocation of collected public revenues; presence of grey economy etc.

a) The overall economic situation of a country influences public revenue-related criminal offences. The stable economic flows create conditions under which taxpayers less avoid paying of taxes. The economic crisis and instability of business environment are factors that cause increased presence of these criminal offences. The more unstable economic environment is, the greater are the chances for commission of public revenue-related criminal offences.

b) The Level of tax burden influences the attitude of a taxpayer towards tax liability. Taxpayers consider that the economic benefit gained by not paying taxes would be greater than potential consequences they would suffer as perpetrators of criminal offence. If the penal policy is too mild towards perpetrators, it will contribute to the above-mentioned attitude of taxpayers.

c) The vaguely defined attitude of the country towards the forms of ownership has caused the private sector to be treated as phenomenon bad by itself. Because of this attitude, one number of entrepreneurs has shown a low level of tax morality. In current business conditions, tax evasion is equally present in both state and private legal entities.

d) The allocation of public revenues is an issue of interest to every taxpayer. If taxpayers do not approve spending of public revenues, it causes their tax evasion. If public revenues are used for financing something for which taxpayer is interested, especially if taxpayer sees personal interest in it, then there will be less resistance against taxpaying.

e) The grey economy especially affects those subjects that earn their income in legally registered businesses. Grey economy brings taxpayers who legally do their business into disadvantaged position, so they start concealing a part of their business activities, in order to increase their income in this unlawful manner.

2. The group of subjective factors that influence the commission of public revenues-related criminal offences includes: egoism and desire for profit, tax morality, lack of awareness on the necessity of public revenues and understanding of equity of the fiscal system.[12]

The desire for profit and getting rich is always a driving motive of an individual. This desire has no limits. It forces individuals to perform different socially dangerous activities and businesses. Tax morality also influences tax evasion. In countries (including ours too) in which a common view is that tax evasion is moral, it is certain that these criminal offences will occur more often.

This feeling that taxpayers have that paying of taxes does not produce any return favour, causes to some extent the tax evasion. To pay, and not get anything in return, creates resistance against taxes. Public revenues have to be fair. Resistance against taxes depends upon whether taxpayers consider that the allocation of tax burden was carried out fairly or not. It is impossible to tax someone without him being unsatisfied. However, the feeling that taxation is unfair, that it is not evenly distributed to all taxpayers, contributes to increase of resistance against paying of taxes.

12 M. Kulić, *op. cit*., p. 240.

INSTEAD OF CONCLUSION

In an attempt to protect its fiscal interests, our legislator in subordinate criminal legislation has prescribed criminal offences that protect public revenues. However, the transition, as well as protection the perpetrators of these criminal offences receive from bearers of economic and political power, decreases the effects of suppression of this phenomenon.

The policy of fighting this phenomenon, besides penal, has to include preventive dimension. According to our opinion, the following preventive measures that could suppress tax evasion should be undertaken:

- perform upgrade of fiscal system in terms of taxation of taxpayer according to his tax capacity, as well as in terms of mitigation of resistance against the obligation of paying taxes;
- continuously improve expertise and technical equipment, ensure better and more stimulating rewards for employees dealing with detection and suppression of tax evasion, especially those employees working in the police, Tax Administration and judicial organs;
- work on improvement of tax culture and tax morality codex, thus raising the trust and mutual respect between taxpayers and tax authorities;
- continuously raise the level of mutual cooperation between all state bodies dealing with detection, collection and control of public revenues.

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PROCESS AND OUT OF PROCESS WITNESS PROTECTION MEASURES IN CRIMINAL PROCEEDINGS[1]

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Abstract: The paper describes the institution of witness protection in criminal proceedings. It presents process and out of process measures of witness protection in Serbian positive law, and points out the most important international documents in this area, as well as the practice of European Court of Human Rights. Particular attention is dedicated to evidential importance of statements of witnesses to whom certain measures of the process protection has been implemented and to the relationship between this protection and the defendant's right to fair trial. In the presentation of outprocess witness protection measures the current solutions and perplexities met by competent authorities in practice are explained, as well as the work of the first **Victim**/witness support **service** which was established at the Special Department for War Crimes of the Higher Court in Belgrade. New solutions proposed by the Draft Code of Criminal Procedure of the Republic of Serbia are reviewed in brief.

Key words: witness protection; process and out of process measures.

INTRODUCTORY REMARKS

The examination of a witness is one of the most important sources of evidence in criminal proceedings. The Criminal Procedure Code of the Republic of Serbia2 prescribes that persons who are likely to be able to provide information on a criminal offence, its perpetrator and other relevant circumstances shall be summoned as witnesses (Article 96 Paragraph 1). This means that anyone, except the defendant, is allowed to be a witness provided that person is not excluded from testimony by the law. The witness statement is often the key evidence at court disposal. Therefore, the court and other state agencies are required to enable undisturbed and safe testimony of witnesses. Namely, there is obligation to offer necessary protection to a witness whenever his/her psychical or physical integrity is endangered. Laws regulate witness protection differently, but all of them prescribe two aspects of protection, that is, they provide process and outprocess protection measures.[3] Witness protec-

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2 Criminal Procedure Code of Republic of Serbia, Official Gazette of the FRY, Nos. 70/2001 and 68/2002, and the Official Gazette of the RS, Nos. 58/2004, 85/2005, 115/2005, 49/2007, 20/2009, 72/2009 and 76/2010.

3 For more information: Banović, B., *Zaštita svedoka u krivičnom postupku,* Pravni život, No. 9, 2003, pp. 645-662; Ilić, P.G., Majić, M. *Procesna i vanprocesna zaštita učesnika u kriivčnom postupku, Primena novog krivičnog zakonodavstva Srbije,* Proceedings from the scientific meeting, Kopaonik, 2006, pp. 303-324.

tion has a special significance in certain proceedings, such as the proceedings for organized crime and other particularly serious crimes and war crimes.

This paper deals with the issue of witness protection in domestic positive law with a presentation of major international documents in this field, and points out the practical problems in implementing the statutory provisions governing the above mentioned issue.

International legal framework of witness protection

There are numerous international documents that establish the appropriate legal standards of the protection of witnesses, and the protection of other participants in criminal proceedings. Among the important European documents of non-binding character[4] it is necessary to mention several recommendations of the Committee of Ministers of the Council of Europe: Recommendation (97) 13 concerning intimidation witnesses and the rights of defense, Recommendation (85) 4 on Violence in the Family, Recommendation (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, Recommendation (87) 21 on Assistance to Victims and the Prevention of Victimization, Recommendation (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in children and young adults and Recommendation (2005) 9 on the protection of witnesses and collaborators of justice.

Among the international contract documents we should mention the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950 and the practice of European Court of Human Rights, the Rome Statute of International Criminal Court from 1998, the UN Convention against Transnational Organized Crime from 2000 and Criminal Law Convention on Corruption from 1999 which all have corresponding significance for the issue of witness protection, as well as other participants in criminal proceedings.

Council of Europe's Recommendation R (97) 13 broadly defines vulnerability of witnesses as "any direct, indirect or potential threat which may affect the obligation of witnesses to present proof without any influence". This also includes endangering as a result of the existence of criminal organization that has the distinct reputation of violence and revenge, or as a result of fact that a witness belongs to a closed social group and therefore has an inferior position. The mentioned EC Recommendation particularly emphasizes a growing security risk for witnesses in certain crime fields, as organized crime and other serious crimes, as well as crimes within the family, and accordingly recommends protection measures for potentially endangered witnesses in this crime fields. These measures should provide the necessary balance between the prevention of disorder or crime and the protection of defendant's right to a fair trial.[5]

The Rome Statute of the International Criminal Court (ICC)[6] anticipates court obligation to take appropriate measures to protect the physical and psychical integ-

4 Brkić, S., *Zaštita svedoka prema procesnom zakonodavstvu Srbije i Crne Gore i opšteprihvaćeni pravni standardi,* Article collection *Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda i krivično zakonodavstvo Srbije i Crne Gore,* Belgrade, 2004, pp. 433-458.

5 In recommending protection measures for endangered and vulnerable witnesses to member states Recommendation R (97)13 cites another relevant documents of the Council of Europe treating similar problems: the Recommendation R (85)4 concerning family violence, the Recommendation R (85)11 concerning witness position in the scope of the criminal law and the criminal proceedings, the Recommendation R (87)21 concerning victim support and victimisation prevention, the Recommendation R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficing in children and young adults and the Recommendation R (96) 8 concerning criminal politics in Europe during the changes.

6 In our state this document has been in force since passing the Law concerning ratifing Rome Statute of the International Criminal Court, Official Gazette of the FRY , International contracts, No. 5/2001.

rity, dignity and privacy of injured party and witnesses estimating their age, gender, health status and the character of the committed crime. This is made particularly, but not solely, in cases of sexual molesting and child molesting as a concrete action of crime. The same regulation provides that judging court is allowed to take some process actions that include presence of mentioned participants in proceedings in a separate court room (in camera), or may allow the evidence presentation by electronic or other similar means, aiming at the protection of the injured party, witness or defendant. These measures must be applied if the injured party or a witness is a child, an old person or victims (Article 68). The Rule 88 anticipates special protection measures in relation to the traumatized witnesses or sexual violence victims. The possibility of allowing the presence of advisors, legal representatives, psychologists and family members of a witness or a victim during the examination is especially emphasized.

The practice of the European Court of Human Rights assumes that endangering threat must be clear and real before the protection reach a level that includes a revocation of defendant's rights. According to the interpretation of the mentioned court, the character and the extent of witness protection depend on individual circumstances, but the court accepts the following protection measures in certain situations: a trial without an audience and/or the presence of the media; reading the witness testimony in his/her absentia; testimony of a disguised witness at a trial; non-identification of the witness or announcing only selected identity details at a trail; witness voice modification at a trail; testimony from another room via video links and discovering the identity of the witness only in the final process stages.

Important protection form is related to the position of victims who appear as witnesses in criminal proceedings. This is also included in Article 24 of the UN Convention which envisages the taking of appropriate measures aiming at witness protection against possible revenge and intimidation in all cases, including the cases of human trafficking victims. The Article 6 paragraph 1 of the Palermo Protocol emphasizes the importance of privacy and identity protection of human trafficking victims which, among other things, includes confidential conducting of the legal proceedings concerning illegal trafficking.

National legal framework of witness protection

The development of the national criminal procedure legislature regarding witness protection in criminal proceedings demonstrates efforts toward following all contemporary tendencies concerning offering protection by legislative solutions and legal regulations. The Criminal Procedure Code and the Law on the Protection Programs of the participant in criminal proceedings provide for witness protection.[7]

Until recently the procedural protection of a witness and injured party was limited to only one regulation of the Criminal Procedure Code which proscribed an

7 **Law on the Protection Program for Participants in Criminal Proceedings,** the Official Gazette of the RS, No. 85/05. The laws regulating the proceedings for organized crimes and war crimes also provide a possibility to examine a witness and injured party by a video-conference link or by means of international support in criminal proceedings, as well as a possibility of a court to decide regarding privacy protection of witness or injured party on the justified proposal by the interested party. Certain protection measures in criminal proceedings are also envisaged for juveniles, such as the special rules of evidence and adapting some process solutions aiming at juvenile protection against secondary and tertiary victimization (The **Law on Juvenile Offenders and Criminal Legal Protection of Minors**, the Official Gazette of the RS, No. 85/05). For more information: Perić, O., *Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica,* the "Official Register", Belgrade, 2005.

obligation of the authority in charge of the proceedings to protect the witness and the injured party from insults, threats or any other attacks. Also, the President of the Court or the Public Prosecutor, on a demand of the Investigative Judge or the President of the Trial Chamber may request from the police to take special measures for the protection of the witness and injured party (Article 109).

Regulations concerning the need and possibilities of obliging to keep a secret, or to exclude the public during the execution of some actions in proceedings are in function of protection of personal and family life of an injured party. Among other things, it is provided that the official person who is undertaking an evidentiary action shall order to the persons being interrogated or present during a carrying out of evidentiary actions, or being reviewing the files of the investigation, to keep certain facts or information they have learned in these proceedings confidential; he/she shall instruct these persons that a disclosure of the secret is a criminal offence. This provision is applied if it is in the interest of morality considerations, in the interest of the public order, in the interest of the national security, in the interest of the protection of juveniles or in the interest of the protection of private lives of the participants in proceedings, or when it is necessary to prevent publicity to injure the interest of justice. Mentioned order shall be entered into the record on the evidentiary action or shall be noted in the files reviewed, along with the signature of the person instructed on the duty of confidentiality (Article 261 CPC).

The protection of a witness is also realized by the provision that anticipates ability to remove the defendant temporarily from the courtroom if the witness refuses to give a statement in the presence of the defendant, or if the circumstances indicate that he/she would not tell the truth in the presence of the defendant (Article 324 CPC). Upon the return of the defendant to the courtroom, the statement of the witness shall be read to him, and the defendant has a right to examine the witness and, if necessary, a confrontation may be ordered. Finally, legal provisions on excluding the public from the whole or from a part of the trial, if it is in the interest of morality considerations, in the interest of public order, in the interest of national security, in the interest of the protection of juveniles or in the interest of the protection of private life of the participant in proceedings or when it is, according to the opinion of the court, necessary to prevent the publicity injure the interests of justice, complement the existing witness protection system (Article 292 CPC).

Provisions on the 'protected witness' are of great significance for the regulation of the issue of witness protection. Namely, the Criminal Procedure Code regulates that, if there are circumstances clearly indicating that the life, health, physical integrity, freedom or any considerable assets of a witness or persons close to him were seriously threatened due to his testimony especially in the offences related to organized crime, corruption and other serious criminal offences, the court may decide to order special measures of protection (Article 109a).

Special witness protection measures include special methods of examination of witnesses in order to prevent disclosure of their identity as well as the measures of physical protection of witnesses during the proceedings. The court may order the special measures of witness protection *ex officio* or upon the request of the parties or the witness himself. The request shall be filed in a sealed envelope bearing the marking: "witness protection – official secret", that is handed over to the Investigative Judge in the course of investigation or to the President of the Chamber after the indictment entry into force (Article 109b Paragraph 1 and 3 CPC). In addition to the mentioned, if a witness during examination by the Investigative Judge denies personal information, refuses to answer some questions or give testimony as a whole with the explanation that there are circumstances under Article 109a (1) CPC, it shall

be deemed that he/she has submitted a request for the special protection measures, and the Investigative Judge shall, if he assumes the risk is grounded, invite him/her within three days to submit a formal request. If the Investigative Judge decides that the denial of information, answers to some questions or a testimony as a whole are obviously groundless, or the witness fails to proceed in the prescribed timeline, the witness shall be fined up to 100.000 RSD, and if he/she refuses to testify again the witness shall be similarly fined again (Article 109b Paragraph 4 CPC).

The decision on specific witness protection measures may be issued by the Investigative Judge during the investigation; upon the indictment entry into force it may be issued by the Trial Chamber if it is in session or by a non-trial Chamber if the Trial Chamber is not in session, or if the Investigative Judge disagrees with the request. The Chamber is bound to make a decision within three days from the receipt of the files. The Trial Chamber shall preclude the public in ruling on the measures of special witness protection. If the Investigative Judge or the Trial Chamber accepts the request, its decision shall include the following: the code that will replace the witness's name; the order for the removal of the name and other data which can disclose witness's identity out from the file; the way of conducting interrogation, and the measures to be undertaken to prevent disclosure of identity, residence and domicile of the witness or persons close to him/her. Against this decision both the parties and the witness may lodge a complaint – during the investigation, it will be decided by the non-trial Chamber, and after the indictment entry into force by the Second Instance Court. The decision upon the appeal is to be made within three days by the Chamber or within eight days upon the receipt of documents by the Court of Second Instance (Article 109v Paragraphs 1 to 3 CPC).

Once the decision on a special witness protection enters into force, the court shall inform in confidential manner the parties and the witness on the day, hour and location of witness interrogation by a special order, which is an official secret. Prior to interrogation the witness shall be informed that he/she is to be interrogated under the special protection measures, about the type of these measures and that his identity will not be disclosed to anyone except to the ruling judges, and one month before the main trial to the parties and defense counsel as well. The interrogation of a protected witness can be executed in one or more of the following manners: the precluding the public from the main trial; the concealment of the witness; testifying of the witness from a separate room through technical voice and image distortion devices for transmission of sound and images.

The Investigative Judge or the Chamber shall seal the information about the identity of a witness and persons close to him and other circumstances which may lead to disclosure of their identity in a separate envelope, and deliver to the Witness Protection Unit. The sealed envelope can be opened only by the second instance chamber which rules on appeal against the verdict. The envelope shall be marked with the date and hour of opening and names of the Chamber members who are familiar with the data contents, after which the envelope shall be re-sealed and returned to the Witness Protection Unit (Article 109v Paragraphs 1 to 4 CPC).

The court is obliged to warn all the persons attending the examination of protected witness that data about him or persons close to him, their residence, domicile, transfer, bringing, protection, location and manner of examination of a protected witness, are kept secret and that their disclosure is considered a criminal offence (Article 109đ CPC). The Criminal Procedure Code contains the specific restriction

in the provision of Article 109d regulating that the verdict cannot be based solely on the statement of a protected witness.[8]

In addition to the general provisions on protection of participants in criminal proceedings the positive national legislature also includes some special regulations concerning protection programs for the parties in criminal proceedings - the Law on the Protection Program for participants in criminal proceedings. This Law shall govern terms and procedures for providing protection and assistance to participants in criminal proceedings and their close persons who are facing a danger to life, health, physical integrity, freedom or property due to testifying or providing information significant for the purpose of proving of a criminal offence and without that testimony or information it would be considerably more difficult or impossible to prove in criminal proceedings. Protection and assistance are guaranteed to participants in criminal proceedings for the following criminal offences: against the constitutional order and security, against humanity and other values protected by international law and organized crime (Articles 1 and 5). A participant in criminal proceedings may be a suspect, defendant, witness-collaborator, witness, an injured party, expert witness and expert person, while a close person is a person for whom the participant in criminal proceedings demands to be included in the Protection Program (Article 3).

The Protection Program may be implemented, before, during and after the effective conclusion of criminal proceedings to the participants in criminal proceedings and close persons and it means a group of measures that are applied with the objective to protect the life, health, physical integrity, freedom or property of the protected person (Articles 2 and 4). Information related to the Protection Program is particularly confidential and constitutes an official secret. In addition to officials, such data may not be disclosed by other persons to whom they are available. An official is obliged to inform another person that such information constitutes an official secret (Article 6). Decisions on inclusion, extension, suspension and termination of the Protection Program shall be passed by the Commission for implementing of the Witness Protection Program, comprising three members. One member of the Commission shall be appointed by the President of the Supreme Court of Serbia from the ranks of judges of the Supreme Court of Serbia, the second member shall be appointed by the Republic Public Prosecutor from the ranks of his/her deputies, and the Head of the Protection Unit of the Ministry of Internal Affairs shall be a member of the Commission by virtue of the post held. Members of the Commission shall each have a deputy (Article 7).

In implementing the Protection Program the Protection Unit shall provide the protected person with the required economic, psychological, social and legal assistance. All government bodies, organizations and services are obliged to render assistance to the Protection Unit, and at the request thereof undertake activities within their purview as required for implementing the Protection Program (Article 12 Paragraph 2). Within the protection Program the following measures shall be applied: physical protection of persons and property,[9] change of place of residence or relocation to another prison institution, concealing of identity and ownership information and change of identity. In the implementation of the Protection Program one or more measures may be applied,

8 The Criminal Procedure Code of the Republic of Serbia from 2006 contained the special rules for the examination of particularly vulnerable injured parties and witnesses that have been in force for some time (Official Gazette of the RS, Nos. 46/06, 49/07 and 122/08).

9 The Protection Unit autonomously implements measures under Article 14, paragraph 1. Implementing of these measures towards a protected person in detention shall be instituted by the Protection Unit in cooperation with the Ministry of Justice. When measures specified in Article 14, paragraph 1 cannot otherwise be applied, the Protection Unit may in undertaking tasks within its purview conceal the identity of its members as well as ownership data of items it is using in applying a particular measure.

where the measure of the change of identity may be applied only when the purpose of the Protection Program cannot be achieved otherwise (Article 14). The decision determining three of the first mentioned measures shall be taken by the Protection Unit, and the decision determining the measure regarding change of identity by the Commission following the recommendation of the Protection Unit (Article 15). If the protected person is summoned to appear before the court as a suspect, defendant, witness-collaborator, witness, an injured party, expert witness and expert person for a criminal offence committed prior to change of identity, the protected person shall participate in the criminal proceedings under his/her original identity. In other proceedings before a court or other government bodies where use of original identity is necessary, the protected person may participate only with the consent of the Protection Unit. If the Protection Unit does not give approval, the protected person exercises his/her rights in the proceedings through proxy. The protected person shall be summoned by the Protection Unit, which ensures his/her appearance (Article 23).

The relevant public prosecutor, investigative judge or president of the court panel may, ex officio or at the motion of a party in the criminal proceedings, submit a request for including into the Protection Program. After effective conclusion of criminal proceedings, the request may be submitted also by the Protection Unit (Article 25). If the relevant public prosecutor, investigative judge or president of the chamber are of the opinion that there is a direct threat to life, health, integrity, freedom or property of the party in criminal proceedings or close person, he/she shall inform the Protection Unit of the need to take urgent measures, while Head of the Protection Unit shall order application of urgent measures, with prior consent of the party in criminal proceedings and/or close person. For a juvenile or legally incompetent person the consent is given by a legal representative (Article 27).

The Agreement on implementing of the Protection Program shall contain, along with information about signatory parties and other information, statement of the protected person on voluntary inclusion in the Protection Program, a list of obligations accepted by the protected person, as well as obligations of the Protection Unit, duration of the Protection Program and terms and conditions for termination of the Agreement (Article 30). International cooperation in implementing the Protection Program provided under this Law shall be realized on the basis of international agreement or reciprocity (Article 39).

One of the important aspects of protection of witnesses and other participants in criminal proceedings is the establishment of services to support victims and witnesses.[10] Such service was established at the Special Department for war crimes in the Higher Court in Belgrade. The victim/witness support service was established in 2006 in order to provide witnesses and victims with various types of assistance: by offering expert advices and support; providing an appropriate security and safety, proposing the measures and taking actions to protect witnesses who have testified or will testify before the International Criminal Tribunal for the Former Yugoslavia (the Tribunal in the Hague); informing the witness in the proceedings and his/her rights; conducting actions regarding traveling, lodging, finance and other logistic and administrative actions for witnesses and accompanying persons; maintaining close relations with investigating teams in relation to all aspects of appearance of witnesses before the Tribunal in the Hague. The Service consists of three units: the unit for protection that coordinates activities regarding security needs, the support unit that provides social and psychological consultation and support and the operational unit responsible for the logistics and administrative actions related to the witness.

10 For more information: Ćopić, S., *Zaštita žrtava i svedoka u Srbiji,* Pravni život, No. 9, 2006, pp.1133-1150.

The Law on Organization and Jurisdiction of Governmental Authorities in the Proceedings for War Crimes,[11] after changes in 2009, prescribed that the Victim/witness support service will be established in the Higher Court in Belgrade, with the tasks to perform administrative and technical actions, activities in relation to assistance and support to injured parties and witnesses, as well as to provide conditions for the application of procedural provisions of the Law (Article 11). The Service, in addition to maintaining relations with the same services existing in surrounding and other countries, and at the International Criminal Tribunal for the Former Yugoslavia, also undertakes other activities when the presence of the witness coming from that country is necessary. These additional activities include:

- establishing contacts with witnesses and victims after they were summoned to a trail or hearing before the investigative judge;
- delivering a written pamphlet (along with summons for witnesses and victims) regarding service activities and possibility to provide them with technical assistance to come and testify;
- establishing contacts with witnesses and victims and, as agreed with the judge, informing these persons about protection possibilities in the proceedings; maintaining conversation with victims in order to estimate the existence of fair or real danger, and when a witness goes on trial, giving him/her full support;
- providing technical assistance for arrival, lodging, travel, coming to the courthouse;
- conversation with the victim and witness in the courthouse before interrogation aiming to relax the victim; showing victims and witnesses the courtroom, explaining the course of the procedure and interrogation, offering refreshment and rest during the intermission.

The work of the Service induces victims and witnesses to give statements of high quality in war crime proceedings. Before interrogation, the court has to find out whether victims are willing to testify or whether they are in bad psychical condition and accordingly adjust the method and tempo of interrogation. In addition, the court has relevant information about the witness's health condition that may be useful during the testimony (for example, a victim may become ill and receive a therapy because of a chronic illness or may suffer from a disease and his/her health may get worse during the testimony, e.g. hypertension, etc.). On the other hand, all doubts of the defense attorney and defendant regarding the witness with hidden identity (for example, by using the pseudonym) or witness that is interrogated using some of the protection measures provided by the law, are instructed by a prosecutor and eliminated by the fact that it is known that the Service is in contact with victims and witnesses.

Review of perplexities in legal regulation of witness protection

Among the legal solutions making confusion in practice, we can distinguish the provision regulating the request for the protection which provides obligation to submit facts and evidence in cases of the public testimony, when the existence of serious threat to life, body, health, freedom or any considerable assets of a witness or persons close to him is present. In the cases of witnesses receiving one or more protection measures, these facts and evidence have not been adequately justified in

11 The Law on Organization and Jurisdiction of Governmental Authorities in the Proceedings for War Crimes, the Official Gazette of the RS, Nos. 67/03, 135/04, 61/05, 101/07, and 72/09.

practice, in particular there has been no information whether such statements are checked and investigated, and if so, how they are checked and by whom. In many cases, the feelings of fear and vulnerability of the witness/the victim regarding testifying have been cited as reasons for requesting protection measures, but without any concrete facts, personal or telephone threat or any other facts or events that may present a threat to a witness or persons close to him. Surely, in the case of certain crimes, such as for example human trafficking, especially when the procedure is largely relied on the statement of a witness as one of the key evidence, in the request for protection measures the statements about feelings of fear and vulnerability must be treated in a significantly different way. In such cases, the court decision to allow the witness protection might be justified, even though there are no concrete evidence and facts that indicate presence of serious danger. In this way, we could actually provide the key evidence why the ordering of protection in such cases without estimating serious and real danger may be considered as justified.

Also, there is a dilemma in the court practice, both domestic and international, regarding revealing the identity of a witness to the parties. The problem is observed in the light of a fair trial and the possibility of the parties to examine witnesses and to challenge their credibility. On the other hand, the solution requiring the victim's identity disclosure at the beginning of the trial is problematic from the aspect of real and effective victims' protection. It seems reasonable that the Criminal Procedure Code provision provides for the possibility of full victim identity protection in case of particularly difficult circumstances which imply justified worry over violating the integrity and life of the victim. Such arrangements already exist in comparative legislation, and the practice of the European Court of Human Rights provides the basis for its use in exceptional cases. In the verdict on the case *Van Mechelen and others v. the Netherlands* regarding the verdict based on the statements of police officers who were interrogated as anonymous witnesses in the proceedings, the Court emphasized, as a general principle, that "if the identity of the witness for the prosecution is protected, the defense is faced with difficulties that criminal proceedings should not include in regular circumstances. This suggests that difficulties in the preparation of the defense should be sufficiently compensated by the procedure carried out by the legal authorities. Balancing the interests of defense and request for hiding the identity of witness leads to particular problems if the witness referred to is a member of the state police forces. The Court observed that their position is to some extent different from the position of an impartial witness or victim. They have a general duty of obedience to the state executive authorities and are usually associated with the prosecutor. For these reasons they should be used as anonymous witnesses only in exceptional circumstances."

FINAL REMARKS

By analyzing the relevant legal provisions in the field of the witness protection we come to the conclusion that Serbia continues the trend of improving the position of witnesses in criminal proceedings. Particular progress in this area was made by the adoption of the Law on the Protection Program for participants in criminal proceedings that provides for the harmonization of national law with international standards in this area. Also, the provisions of the Draft Code of Criminal Procedure of the Republic of Serbia (Draft) lead to a significant qualitative shift in the regulation of specific problems that introduces several forms of protection. In the first place, it is the basic protection of an injured party and witness from insult, threat or any other attack which is depending on the stage of the proceedings, taken by the

public prosecutor or by the court (Article 106).[12]

In addition, the Draft specifically provides for the protection of "a particularly vulnerable witness" that means a person who is especially sensitive taking into consideration age, life experience, lifestyle, gender, health status, character, manner or consequences of a criminal offence or other circumstances of the case. The decision on granting of this status which includes specific rules on the interrogation of such persons (interrogation in an apartment, with the assistance of a psychologist, using the special technical measures, prohibition of bringing face to face etc.) is made by the Court (Articles 107 and 108).

Finally, a special set of rules relating to the protection of witnesses from intimidation is provided, i.e. the rules on interrogation of the so-called protected witness (Articles 109-116). The most significant difference from the current solution is the elimination of the provision according to which the verdict cannot be based solely on the statement of a protected witness. In addition, an exceptional possibility to deprive the defense of information about the identity of a protected witness in the proceedings for the following crimes is envisaged: unlawful production, keeping and circulation of narcotics (Article 246 CC),[13] terrorism (Article 312 CC), trafficking of human beings (Article 388 CC), international terrorism (Article 391 CC), financing of terrorism (Article 393 CC), if they are committed by an organized criminal group, or in the criminal proceedings for crimes for which the special law prescribes the operation of the Prosecutor Office for War Crimes.[14]

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12 The Draft Code of Criminal Procedure of the Republic of Serbia from 2010, available at www.mpravde.gov.rs 20.11.2010.
13 The Criminal Code of the Republic of Serbia, the Official Gazette of the RS, Nos. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009 and 111/2009.
14 Ilić, P.G., *Krivično procesno zakonodavstvo Republike Srbije i standardi Evropske unije,* In *Krivično zakonodavstvo Srbije i standardi Evropske unije*, Proceedings from the XLVII Regular annual conference of Serbian Association of Criminal Law theory and practice, Belgrade, 2010, p. 41.

THE MERIT SYSTEM AS A CONTEMPORARY CIVIL SERVICE SYSTEM[1]

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Abstract: The administration cannot be better than the individuals working for it. The quality of work of the administration will therefore mostly depend on dedication, competence and honesty of public officials, who are expected to perform their duties very competently, professionally, creatively, responsibly and showing initiative, in keeping with the existing standards defined both in domestic and in international documents.

Comparative law states that the contemporary civil service system, referred to as the merit system, is characterized by the goals it strives to achieve and the methods of achieving the set goals. This system is aimed at increasing efficiency and lawfulness of the state administration actions, avoiding recruitment from only one social rank, abandoning the relationships of political loyalty or patronage, enabling access to positions in civil service and public office only to those who possess the required knowledge and experience, that is the most competent and most creative staff, and realizing the principle of availability of civil service posts to all, under equal conditions, with respect to their capabilities.

These goals are achieved by consistent selection of candidates upon their engagement by means of public advertising and checking their abilities and knowledge in various ways; by establishing and applying objective criteria for evaluating employees' performance and, with respect to it, their promotion and deployment on the basis of established nomenclature of titles or job positions; the introduction of a standardized payment system and the institution of a central human resource department, etc.

The merit system implies implementation of the principle of depoliticization, unbiased and anonymous work and actions, as well as other similar principles aimed at ensuring that officials will strictly abide by the law and other legal regulations in performing their duties. Instead of the so-called functionary administration, an expert administration should be developed, whose vital core should consist of professionals interested in the work they do and not political careers.

As for the Serbian legal system, both the Act on State Officials and the Police Act, as well as other system laws pertaining to state administration, have been harmonized with the standards of the European Union, the Council of Europe and contemporary world. This is a good legal foundation for creating a modern administration without which there can be no social progress or development.

Key words: administration, a civil servant, expertise, depoliticization, professionalism.

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INTRODUCTION

The modern concept of administration is based on the principles of a legal state. This does not refer only to the legal state in formal terms, but also the legal state of a liberal-democratic type, that is the legal state in material terms, which, we should say, corresponds to the modern concept of the rule of law. The concept of the legal state implies, among other things, an adequate level of effective legislation which should stem from the collective common sense of the society and reflect justice, equity and legal security.

The principles, as a rule, are of a universal nature. This is why these principles, as the most important notions without which it is impossible to conceive a modern administration and which therefore have to be present in every legal system, including ours, have interdisciplinary features and can be accurately determined only if this law is studied in a wider context, within the framework of phenomena in the existing social reality that are connected with it.

The quality of administrative work depends to a large extent on the commitment, capability and honesty of civil servants, who are required to perform their duties very professionally, creatively, responsibly, showing initiative, and in keeping with the relevant standards stemming from both domestic and international legal documents.

The administration cannot be better than individuals it employs, especially those performing managerial roles and responsibilities, since administration is a hierarchical organization, so that the quality of performance of senior staff has crucial influence on the overall quality of performing tasks and duties.

Some of the solutions in comparative law

In comparative law, the contemporary civil service system – the merit system, which is the only suitable one for a modern legal state, is characterized by goals that it aims to achieve and the methods used to achieve the set goals.

The merit system primarily strives to increase efficiency and lawfulness of the work of state administration, avoiding at the same time granting posts in the administration to members of only one social stratum or one political party, abandoning the relations of political loyalty or protection, opening the access to administration and civil service only to those who possess the required professional competence and experience, that is, to the most competent and most creative personnel, and to realize the principle of accessibility of positions in civil service to all under equal conditions, depending entirely on their merits.

These goals are achieved primarily through strict and consistent screening of candidates upon entering the service by public advertising and checking their competence and knowledge in various ways, and primarily by means of tests, relevant exams or probationary work; by establishing and applying objective criteria for evaluating the employees' performance and, with respect to it, their promotion and deployment on the basis of established nomenclature of titles or job positions; the introduction of a standardized payment system and the institution of a central human resource department, whose task is to ensure uniform implementation of regulations in the sphere of work relations and employment policy, to participate in the creation of such regulations, to see to it that the best candidates are chosen for civil service and to decide on legal remedies related to rights and obligations connected with or arising from employment, thus restraining the arbitrariness of

political functionaries in employing, deploying and firing administrative and other personnel, etc.[2]

One of the typical examples of the merit system is undoubtedly the civil service system established in the United Kingdom, which has long since served as a model and inspiration for normative arrangement of this sphere in many other countries.

A civil servant in Great Britain is an officer of the Crown who receives payment from the fund allowed by Parliament. The role of civil servants in performing their administrative duties is of utmost importance for the British political system, firstly because the heads of these departments are not professionals, but political activists. After such heads set political goals of their departments, it is up to civil servants to assist the department heads in finding out the most convenient ways and means of achieving these goals, which means that their engagement and advice should be aimed at realizing these goals. It is important to point out that a replacement of the department head does not lead to any changes in the personnel of the given department. A minister may leave, but the civil servants remain in place, the continuity of their work being a guarantee of administrative stability.

The recruitment of candidates for civil service is the responsibility of the Civil Service Commission, whose work is not subject to control by either ministers or Parliament. The Commission members are appointed by the Crown at the recommendation of the Cabinet. A person becomes a civil servant on the basis of a public advertisement. The main feature of the Commission's work is that it is free from any control and subject to no influence or pressure (either political or of any other kind).

According to the German law on civil servants, *Bundesbeamtengesetz* of 27th February 1985, the Federal Personnel Commission, which has the same role as the Civil Service Commission in the UK, acts independenlty, on the basis of and within the law, in order to ensure uniform implementation of regulations pertaining to officials. Beside this basic task, the Commission also has an active role in preparing genaral acts providing for the position of civil servants and their professional development, takes stands regarding complaints of civil servants with repect to questions of principal nature, submits suggestions related to removing shortcomings in the implementation of regulations of the officials' status, decides on exceptions from publicly advertizing vacancies for certain posts, makes decisions on exceptions related to deployment of persons attaining a certain age if special requirements of the service should call for it, etc.

The applicants are employed, as a rule, on the basis of an advertisment, and the selection is made with respect to their capabilities, qualifications and professional achievements, regardless of their gender, background, race, religious and political views or attitudes.

A person who is German as per section 116 of the Basic Law can be employed as a civil servant. This person must also guarantee that they would at all times advocate free democratic order, in keeping with the provisions of this law. Beside this, in order to be engaged, these persons must possesss the required level of prior education for the adequate system of promotion in the service, which are arranged by a federal government act and on the basis of the principles outlined in the law.

2 For details see: Ljiljana Dapcevic Markovic, Статус полицијских службеника и европски стандарди (The Status of Police Officers and European Standards), Правни живот бр. 10/2007, p. 691-703; Александра Рабреновић, Оцењивање државних службеника као основ за напредовање, награђивање и отпуштање (Evaluation of Civil Servants' Performance as a Basis for Promotion, Rewarding or Firing), Правни живот бр. 11/2009, p.133-149; Александра Рабреновић, Зорица Вукашиновић-Радојичић, Новине у службеничком систему државне управе Србије (Novelties in the Civil Service of the Serbian State Administration), Правни живот, бр.10/2010, p.421-437.

The promotional system, as one of the key categories of the merit system is particularly developed in French legislation (*Loi n 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires)*, which, among other things, insists on permanent education as a right granted to civil servants, but which can also be defined as a duty by special regulations. French administrative science has taken a stand that systematic education not only provides knowledge, but also leads to homogenous behaviour of prospective administrative functionaries and civil servants by ensuring uniformity of their values, habits, and weltanschaug.

The American version of the merit system essentially includes all institutions characteristic of this system, such as:

1. CSC, which issues instructions and formulated techniques for testing applicants, monitors performance of prescribed conditions, arbitrates in disputes, plans staff demand in government institutions, etc.;
2. Classification of officials and payment system, which present a basis for standardization of nomenclature of administration employees and creating rules for their rewarding;
3. Public advertisement and selection of applicants with the use of assessment tests, assessing personality traits and intelligence, aimed at establishing the applicants' competence.

As we can see from the examples of a number of countries, a conclusion can be drawn that two principles govern the civil servant employment policy in the countries of the European Union: the principle of equality and the principle of competence. This implies the prohibition of discrimination and unbiased screening, as well as selection of highly competent personnel.[3] In the European Union member-states the prevalent system is that of a career state, whose main components include:

1. Promotion – Officials are most frequently promoted on the basis of two criteria: work experience and results. Validation is an important factor in promotion and it is based on results, commitment, and professional development. An indicator of fulfilled conditions for promotion in a career is a merit-based system of rewards;
2. Mobility – Civil servants can move from one administrative body to another after a certain period of time, which develops professionalism in the administration and makes work more flexible;
3. Training of civil servants – The training of civil servants should enhance capabilities, knowledge, skill, quality and overall success of the administration itself. It is expected to bring about improvements in professional competence of civil servants in order to achieve optimal results;
4. Continuity – Civil servants are career officials who perform their job regardless of political changes. Work posts in administration should not depend on political changes;
5. Neutrality – Refers to political neutrality of civil servants.

An important role in the formation of standards pertaining to the status of civil servants is played by the European Court of Justice, to which dissatisfied civil servants in the Union can appeal. The importance of such disputes was emphasized by the establishment of the Court for Officials of the European Union, with the headquarters in Luxemburg, which became operational in 2005.[4] It usually deals

3 Thus the regulations on civil servant recruitment in Germany prohibit discrimination on all known grounds, including the trade union affiliation, while in Belgium, Spain and Luxemburg linguistic pluralism is also granted.

4 Службени лист Европске Уније, I, 333 of 9.11.2004.

with work disputes where proceedings are instituted by employees of certain EU institutions with respect to employment, salaries, promotion, disciplinary proceedings, etc., which would be subject to official disputes within national frameworks.[5]

Some solutions in domestic legislation

The status of civil servants and police officers in particular is provided for by the Civil Service Act, as well as the Police Act. Upon passing the Civil Service Act, the starting point was to observe the standards and principles of the civil service system existing in the European Union. The status of civil servants is based on the assessment of their competence and results or merits (therefore the merit system), so that the Act envisaged the establishing of two bodies important for achieving depoliticization and professionalization of the state administration: High Civil Servant Commission and Human Resource Department.

Sections 5 to 11 of the Act define the principles upon which civil servants are to act in keeping with the European standards and principles. These are the principles of lawfulness, objectivity, and political neutrality, as well as the principle of accountability of civil servants for lawfulness, competence, and efficiency of their work. The Act specifically emphasizes the ban on favouring or denying civil servants their rights or duties, especially based on their gender, racial, religious, national or political affiliation or any other personal quality. Public character of the civil service is ensured by availability of information on the work of civil servants, obtained in a way defined by the law as free access to information of public interest.

Upon recruitment, all job vacancies are available to all applicants under equal conditions. The choice among the applicants based on their professional qualifications, knowledge, and skills. The promotion of civil servants is based on their expertise, work results, and requirements on the part of the state body. The law defined the principle of equal opportunities for all civil servants concerning promotion, rewards, and right to legal protection.

The Police Act (Section 4) provides that police duties are performed by police officers, including uniformed and plain-clothes officers entrusted with police powers (law enforcement officers), as well as personnel in charge of specific and special duties whose activities are directly related to police work. The principles of civil service activities defined in the documents of the European Union and the Council of Europe, as well as the above-mentioned Civil Service Act, also apply to police (Sections 121-126). Evaluation measures the results achieved in the performance of tasks related to a certain position and goals set for the specific post, as well as independence, creativity, accuracy, conscientiousness, and cooperation with other civil servants.

CONCLUSION

Generally speaking, the merit system implies the implementation of the principles of depolitization, unbiasness, and anonymity in the course of performance, as well as other similar principles aimed at ensuring strict compliance with relevant laws and bylaws and binding civil servants to place their intellectual and work potentials and expert knowledge at the disposal of their superiors regardless of their political affiliation.

It should be pointed out that the merit system does not apply to categories of political officials or assistant staff in state organs. With respect to political functionar-

5 For details see: С.Лилић, Управно право Европске уније, Зборник радова Право Европске уније, p. 201.

ies, it is necessary to emphasize the fact that the legitimacy of their position is based on the trust invested in them in democratic elections, their appointment by special procedures, which means that the function they perform within a certain body, as a rule, cannot be their occupation. However, contemporary administrative law and study of public administration take a stand that the number of political functionaries in the state administration should be kept down to a minimum, that is, restricted to ministers and other persons who manage the work of administrative organizations and services. The number of these officials should also be reduced in keeping with the nature of activities within certain administrative bodies or organizations. For instance, our system of state administration recognizes the status of political functionaries to ministers and secretaries of state.

Instead of the so-called functionary administrations, an expert administration would be developed with its core consisting of professionals who are interested in the work they do, rather than political career which implies moving from one office to another, and whose ties to the administration are of transitory nature. In this clash between expertise and politics within the state administration, knowledge should be favoured because in all properly arranged systems, which are hierarchical by their nature, the quality of top professionals is crucial for the quality, efficiency, and lawfulness of work of administrative organs and organizations.

As regards our legal system, it should be emphasized that the Civil Service Act and Police Act, as well as other laws pertaining to the state administration, have been harmonized with the standards of the European Union, Council of Europe and contemporary world in general. This presents a valid legal foundation for creating a modern administration without which there can be no social progress or development. The only thing that remains is to be done is to implement these standards practically, and the time will be the best judge of our success in this attempt.

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E- GOVERNMENT AND POLICE

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Abstract: It is possible to use electronic government as a modern way of work of public institutions in all segments of social life, as well as in the area of police work. Citizens may use it through the web pages, which offer a wide range of information concerning police services, such as issuing travel documents, personal documents, reporting the place of residence etc. Besides, it enables citizens to obtain information on the services provided by the police and it enables delivering online reports of previous services. However, the electronic government today also refers to interactive communication between the citizens and police when reporting crime acts, as well as interaction with experts in this area.

The online police station model is the type that can be accepted by police forces in the European Union countries. The combination of this technical project based on the experience of the online police station and the work process necessary for its work can be used for various network structures and legal systems. The project confirms that in the huge internet area, where there are no limits, the cooperation with the citizens can be of vital importance for discovering other types of crime. Thus, this new applied model presents the conventional computer crime from a new aspect, and it indicates the existence of some social phenomena like bullying, anorexia or suicides.

Kew words*:* e-government, police, Online police station, citizens, public administration

INTRODUCTION

Under present conditions, there is an increasing orientation towards efficient and flexible public administration, which aims to meet the needs of users. In this context, in contemporary society, in which the principle of orientation towards the user is placed in the center of attention, especially in recent years, there is the concept of e-government.

For the normal functioning of e-government, there is a need to meet specific conditions that allow the application of the normal and efficient functioning of electronic government. Therefore, we must point out the importance of conditions and recommendations from the European Union, which all countries that aim to become members of the European Union should fulfill by harmonizing legislation with the acquis communautaire[1].

Creating e-government is an essential part of widespread public administration reform that includes the redefining of the role of modern government. E-government is closely linked to concepts (e.g. New Public Management) that are to ensure a new quality in managing complex social environments, particularly in view of the

1 Acquis communautaire is a French term referring to the cumulative body of European Community laws, comprising the EC's objectives, substantive rules, policies and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU). This includes all the treaties, regulations and directives passed by the European institutions, as well as judgments laid down by the European Court of Justice. The acquis is dynamic, constantly developing as the Community evolves, and fundamental. See more: (http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/acquiscommunautaire.htm)

knowledge-based economy. The main premise of e-government is that information and services must be accessible to all citizens, without personal privilege or discrimination. However, this also means that some information is classified and that these protected zones must be under strict legal control.[2]

Using information and communication technology, the Internet, personal computers, mobile phones and digital television have resulted in the transformation of governance. Access to information and providing online services by "open government" creates new quality of public services. Many states now make available and distribute information through a website, create a digital database and provide online public services.[3]

E-government finds its application in all areas of life today, consequently, in the performance of police actions. It finds application in the presence of web portal that offers various information services, such as issuing travel documents, personal documents, and registration of the place of residence, and so on. In this way, though the option enables citizens to obtain information about services provided by police there is a possibility for online applications delivery. However, in modern terms, e-government in this area does not stop here but goes further in enabling interactive communication between citizens and the police when reporting criminal activity.

E-government - term, principles, objectives and functions

besides the term e-government, nowadays there is a use of the terms internet management, online administration, or digital government. The term e-government refers to the facilitation of information flow, communication and transactions within the state bodies, as well as between public authorities, citizens and businesses.

It can apply in the legislative, judicial and executive authorities in order to improve efficiency, delivery of public services or the process of democratic governance. The biggest benefit from the use of e-governance means effective, appropriate and better access to public services. It may be noted that e-government has two important roles. The first role is to mediate between government and citizens and the government and companies. The second role is to provide mediation and use of common data between different parts of government.

The World Bank defines e-government as the use of information technologies (such as computer networks, internet and mobile computer networks) by governmental entities that have the ability to transform relations between citizens, companies and other parts of government. These technologies are used to achieve better delivery of government services to citizens, improve interactions with business companies and industries, better access of information to citizens and more efficient management of government. Establishing e-government results in less corruption, increased transparency and higher quality of government services, thus, increasing revenue and reducing costs. Traditionally, government services were performed in government offices. By using information and communication technology, services approach their customers and they can be used from home, office, through information kiosks in public institutions or government offices. Analogous to e-commerce, which allows companies to more efficiently carry out transactions with each other (B2B or business to business) or customer (B2C or business to citizens),

2 Stevan.Lilić, Maja.Stojanović, *E-Governemnt and Administrative Reform in Serbia,* Journal of Law and Technology, volume 2, No. 2, Faculty of Law, Masaryk University, fall 2008

3 John Morison, *e-Government: a New Architecture of Government and a New Challenge for Learning and Teaching Public Law*, http://www.unizar.es/derecho/fyd/lefis/documentos/JMfinaldraft.pdf., in: Stevan Lilic, *Upravno pravo, Upravno procesno pravo*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2010, p. 245

e-government aims to provide a simpler, cheaper, more transparent interaction between government and citizens (G2C or government to citizens), government and companies (G2B or government to business), and the government agencies (G2G or government to government). [4]

According to UNDP, e-governance is considered as the use of information and communication technologies to increase efficiency, accessibility and democratic accountability of public administration in the process of collective decision-making. The concept e-government consists of three parts, e-administration, e-democracy and e-business. In all cases the "e" means electronic conducting and/or proceedings. E-administration involves an electronic board in a narrower aspect, because that is in aspect of administrative procedures and their facilitating. This means the provision of public services over the Internet. E-democracy is the use of information and communication technology with the aim of strengthening the democratic process in a society. E-business means conducting business transactions over the Internet between businesses and government bodies. [5]

E-government can be understood as a concept and a reality that consists of the use of information and communication technologies in their activities by the public and political governance (public administration), with which the administration is transformed (redefine) into a service that should meet the needs of citizens (civil service). Information and communication technology are extensively used in the process of providing information in order to offer public services at the administrative and political level. [6]

In order to introduce e-government and successfully apply information and communication technology in the administration, several conditions, both legal (e.g. legal authorization for the use of ICT, etc.) and technical requirements (e.g. cooperation between administrative units) must be fulfilled. Conditions that must be fulfilled to introduce e-government require adequate financial resources, appropriate legislation (data protection, cyberspace, digital signature, etc.) strong political support, technical and technological support (access to information, secure transfer data, security systems, etc.) and so on.[7]

In the environment of the knowledge-based economy, the idea of e-government is taking effect in terms of efficiency and effectiveness. There are three basic elements of e-government: a) ensuring open government and transparency in the activities of government agencies; b) providing on-line services enabling citizens to use the Internet to pay taxes, access registries, make applications or undertake procedures, elect their representatives, express their opinions, as well as participate in administrative decision-making processes, and c) interconnecting government agencies. "With e-government, a new box is being opened and one which might potentially further increase the problems of government use of technology - and it may be that we will see that the underlying tension of government technology is actually a legal tension: that is, that there is something about the legal nature of government which makes technology much more difficult to apply than it is in a commercial environment. This is obviously important; since the message of e-government is that the

4 World Bank, *Definition of E-Government* http://njeb.njorldbank.org/WBSITE/EXTERNAL/TOPICS/EXTINFORMATIONANDCOMMUNICATIONANDTECHNOLOGIE2/EXTEGOVERNMENT/0,,contentMDK:20507153-menuPK:702592-pagePK:148956-PK:216618-theSitePK:702586,00.html, 17. januar 2006.

5 Okot-uma, 2000, 6 i Gilbert-Riley, 2003, 11, in: Lisjak, Nives Miočič, *Koliko je "dobre vladavine" u Hrvatskoj e-vladavini?* Anali Hrvatskog politoločkog društva 2006

6 Prof. Dr Stevan Lilić, Doc. Dr. Milan I. Marković, Doc. Dr Predrag Dimitrijević, *Nauka o upravljanju, sa elementima pravne informatike,* Beograd, 2001

7 Ibid,

state should take the techniques and methodology of commerce and apply them to this new relationship of the ICT-based state and ICT-based citizen."[8]

E-government is practical, transparent and interactive with citizens. It is primarily in a function of the acceleration of economic development as a general or common interest and set up as a partner to the economy. E-government is oriented towards users with an aim to faster and more completely meet the needs of citizens. E-government helps the citizens and companies to participate in administrative proceedings, and quickly and easily obtain a permit. E-government is transparent to its users by giving a complete review of public administration, and its activity is easily controlled and improved. The interactivity of e-government can be seen both in internal terms, between the bodies in the public sector, and in the external terms, i.e. not only in providing a service to citizens rather than seeking feedback and ratings on them. Despite the saving resources[9], more time availability of e-government should be added, as opposed to office hours, which limit the provision of administrative services. However, despite the development of e-government we should not forget that for a long time users of administrative services when offered to choose between the different forms of communication will choose the direct personal contact. E-government should be a possible way to services that user may or may not have to choose. [10]

It is well known that the European Union has devoted enormous attention and resources to the implementation of e-governance taking into account the savings that are achieved with the application. In this respect as one of the major priorities in the plans for the development of the European Union by 2010, the European Commission adopted an Action Plan for Electronic Government in 2010 that identifies five priority areas.[11] A new generation of open, flexible and collaborative e-Government services is needed to empower European citizens and businesses, to improve their mobility within the internal market of the 21st century and to ensure that public services can serve an economy which relies on the networks of the future. The European Commission aims to support with its e-Government Action Plan 2011-2015 the provision of a new generation of e-Government services for businesses and citizens. The Action Plan identifies four political priorities based on the Malmö Declaration, agreed on 18 November 2009 at the 5th Ministerial e-Government Conference in Malmö, Sweden:

- Empower citizens and businesses
- Reinforce mobility in the Single Market
- Enable efficiency and effectiveness
- Create the necessary key enablers and pre-conditions to make things happen[12]

The Action Plan aims at maximizing the complementarities of national and European policy instruments. Its actions support the transition of e-Government into a

8 Philip Leith, *Legal Issues in e-Government*, (http://www.lri.jur.uva.nl/~winkels/eGov2002/Leith.pdf), Stevan.Lilić, Maja.Stojanović, *E-Governemnt and Administrative Reform in Serbia,* Journal of Law and Technology, volume 2, No. 2, Faculty of Law, Masaryk University, fall 2008

9 E-government initiatives in Europe have already led to significant savings of time and money in some Member States. Electronic public procurement in Italy resulted in savings of 3.2 billion euros to 2003 in Portugal report on savings of 30% with the use of electronic public procurement. The overall use of electronic public procurement in the European Union could lead to savings of 80 billion euros per year.Vidi više: http://europa.eu/rapid/pressReleases

10 Virant, 2005, in: Dragoljub Kavran, *Evropski upravni prostor, reforma i obrazovanje državne uprave*, Pravni život, Beograd, 2004, p. 1073

11 See more: Iskra Akimovska Maletic, *E-uprava i reforma javne uprave*, Pravni život, Vol. 57, br. 10, Beograd, 2008

12 http://ec.europa.eu/information_society/activities/egovernment/action_plan_2011_2015/index_en.htm

new generation of open, flexible and collaborative seamless e-Government services at local, regional, national and European level that will empower citizens and businesses. There are strong political and economic reasons for European collaboration in e-Government. Joint action and knowledge sharing at EU level contributes to overcoming the current economic crisis, by using public resources more efficiently.

The Commission's main mission is to optimize the conditions, for the development of cross-border e-Government services provided to citizens and businesses regardless of their country of origin. This includes the development of an environment which promotes interoperability of systems and key enablers such as e-Signatures and e-Identification. Services accessible across the EU strengthen the digital single market and complement existing legislation in domains like e-Identification, e-Procurement, e-Justice, e-Health, mobility and social security, whilst delivering concrete benefits to citizens, businesses and governments in Europe. The Commission will lead by example in further implementing e-Government within its organization.

The combination of all these efforts should lead to an increase of the take-up of e-Government services. By 2015 50% of citizens should use e-Government. The target envisaged for businesses is 80% by 2015. This Action Plan contributes to a knowledge based, sustainable and inclusive economy for the European Union, as set forth in the Europe 2020 Strategy. It supports and complements the Digital Agenda for Europe[13]. According to the Digital Agenda there are several planned actions:

- Digital Single Market
- Interoperability and Standards
- Trust and Security
- Very Fast Internet
- Research and Innovation
- Enhancing e-skills
- ICT for Social Challenges

Trust and security provides following actions:

- Action 28: Reinforced Network and Information Security Policy
- Action 29: Combat cyber attacks against information systems
- Action 30: Establish a European cybercrime platform
- Action 31: Analyze the usefulness of creating a European cybercrime centre
- Action 32: Strengthen the fight against cybercrime at international level
- Action 33: Support EU-wide cyber-security preparedness
- Action 34: Explore the extension of security breach notification provisions
- Action 35: Guidance on implementation of Telecoms rules on privacy
- Action 36: Support reporting of illegal content online and awareness campaigns on online safety for children
- Action 37: Foster self-regulation in the use online services
- Action 38: Member States to establish pan-European Computer Emergency Response Teams
- Action 39: Member States to carry out cyber attack simulations

13 European Commission, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee of the Regions, A Digital Agenda for Europe, Brussels, 26.8.2010, COM(2010) 245 final/2, (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF)

- Action 40: Member States to implement harmful content alert hotlines
- Action 41: Member States to set up national alert platforms

The ideal of modern government, instead of the physical single desk, becomes a virtual one-stop shop or acknowledgment of services by the principle of "'any data, in any place and at any time".

In recent years the development of online services and electronic government in the European Union has been constantly growing and moving towards the level where the entire process can be conducted online. Specifically, in 2007, 58% of services allowed citizens to receive public service fully online, which represents 8% more than in 2006, which means better, more efficient and effective use of public services for citizens and companies. In 2007 Austria once again led in online public services with almost perfect score (i.e. 100% of the overall online availability of public services), followed by Malta, Portugal and Slovenia.[14]

Availability of public online services in the European Union is viewed through a realization of the four phases of availability.

1. Availability of information - information necessary to begin a process
2. Interaction in one direction when forms can be downloaded from web pages
3. Interactions in both directions - on the web site by submitting completed forms with the authentication
4. Complete electronic process - via the web by providing full services including decision making and delivery decisions.[15]

In order to ensure full implementation of electronic government, it is of great importance to ensure the application of electronic signatures and therefore meet all preconditions for achieving a secure electronic communication between users and systems. This technique is based on cryptography that allows the authenticity of electronic information, so that the source of information and its integrity can be verified. The basic characteristics of electronic signatures to electronic information can be signed using a secret cryptographic key. This key can be verified only by the associated public key. It is essential that there is safety in that the public key really belongs to the proclaimed identity. That security provides a third party that issues and confirms the public keys. The third party guarantees the relationship between identity and public key and issues a digital certificate that binds the public key to identity. The third party is known as a certification body and must be accepted by all participants in the process. The process of issuing the certification key must be made with the highest degree of data security. The certification body issues a digital certificate to prove the identities of users and ensures that the public key really belongs to the proclaimed user.[16]

Electronic signatures are used when it is necessary to preserve the trace of the identity and origin of computer data. In the EU countries electronic signature has become fully equal with the hand signature since 1999, when the Directive 1999/93/EC[17] was adopted. According to the aforementioned Directive electronic signature is made up of data in electronic forms that are linked or

14 eGovernment Benchmark Survey 2007, www.ec.europa.eu-information_society/newsroom/cf/itemdetail.cfm

15 Dr Dragan Prlja, *Elektronske uprave u Evropskoj uniji i u Srbiji*, Revija za evropsko pravo:VII (2006) 1,Centar za pravo Evropske unije, p. 60

16 Jos Dumortier, *E-Government and Digital Preservation*, http://www.unizar.es/derecho/fyd/lefis/documentos/Alareccin_JosDumortier.pdf, 14. januar 2006, sp: Dr Dragan Prlja, *Elektronske uprave u Evropskoj uniji i u Srbiji*, Revija za evropsko pravo:VII (2006) 1,Centar za pravo Evropske unije, p. 75

17 Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.01.2000

logically associated with other electronic data and which are used as a method for authentication.

European Union member states have been obliged to harmonize their national legislation with the Directive and to provide equal legal status of electronic signature and classic manual signature on paper. With that the electronic signature has become an integral part of electronic documents and has provided an efficient system of identification required for building e-commerce or e-government. [18] According to the aforementioned Directive electronic signature is used in the public sector between national administrations and the administration of the Community, between the administration and the citizens and economic operators, for example in the areas of public procurement, taxation, social security, health and justice.

E-GOVERNMENT AND POLICE

As in other areas, e-government finds its application in the performance of police actions. We can see that through presence of web portals that offer various information services, such as issuing travel documents, personal documents, registration of the place of residence and, information for the actions taken by the police regarding criminal activities, and so on. Besides the possibility of informing citizens about the services provided by the police, there is also a possibility for online applications delivery and interactive communication between citizens and the police when reporting criminal activity.

Within the increased activity of the European Union in the development of e-government in recent years the European Commission has organized awards for e-governance. Awards for e-government for 2007 were published on 20 September at the Ministerial Conference for e-government in Lisbon.[19] In 2007 evaluation of all applications were submitted to a panel of independent European experts and subsequently registered members of the portal "ePractice.eu" were invited to vote online for the "most inspiring good practice" which was awarded for the fifth time.

The award "The most inspirational Good Practice" in 2007 was won by an online police station launched by the Italian police on 15 February 2006. Specifically www.commissariatodips.it website enabled citizens to gain access to general information, downloading forms and online reporting of cyber crime. In addition it enables citizens to obtain very important advice, to communicate with experts and report illegal conduct and the events on the web. So, the project entitled "Commissariat di PS on-line" or "Online Police Station" was started by the Sector for public safety in the Italian Ministry of Internal Affairs with a mission to promote safe use of Internet and thereby to improve dealing with computer crime.

An Online Police Station is a project based on the provisions and recommendations based on several national directives and decrees, such as: Program Committee Minister for Information Society (2002), Decision of the Chief of Italian police to establish sub directorate working group for the development and implementation of "Integrated Security Project" (2002) and the Directive of the Minister of Innova-

18 Dr Dragan Prlja, *Elektronske uprave u Evropskoj uniji i u Srbiji*, Revija za evropsko pravo:VII (2006) 1,Centar za pravo Evropske unije, p. 75

19 E-Government Awards for 2007 at Ministerial Conference for electronic government in Lisbon are: in the category of better public services for development and jobs - Department of Economic Development City of Amsterdam (HoReCa1), in the category of social impact and cohesion - City Besacon (Besancon. clic), the category of participation and transparency - Norge.no (Mypage), in the category of effective and efficient administration - Senator for Finances in the city of Bremen (German Administration Services Directory) in the category most inspiring good practice - Italian police station (Online Police Station)

tion and Technology for guidance in digitalization of public administration (2003). In order to advertise the online police station several contracts were concluded with the main Italian web portals (Adnkronos, Virgilio, Kataweb, Libero, Tiscali, and Diritti Diritto, MSN, Google and Yahoo), which have created links to their web pages to Online Police station. In addition several agreements have been achieved with the main consumer associations and with the ANCI (National Association of Italian municipalities), which fully supported the project, publicized it and were ready for any cooperation with the Web site. A later Online Police Station, in cooperation with eBay Italy launched a campaign entitled "Good sense in all senses" in order to advise people on how to shop safely online.

An Online Police Station consists of following virtual rooms: ICT security, immigration, permits and suppression, employment, travel documents, minorities and appeal. In each room visitor can find detailed information for each title, as well as forms for permits, authorizations and documents that can be downloaded from the Internet. Inventive service of this project is the ICT security area where citizens can submit their complaints online or report on cyber crime.

Impact and results[20] of this project mean less work for conventional police station. At the same time it presents new concept and that is that citizens are in the center of the institution. In fact, an online police station locates them in offices, homes, etc. As a result of this increased public trust in institutions, citizens they can safely use the Internet. In addition to increased confidence in institutions, other results of the project are a number of reported crimes, a better knowledge about the new crime on the Internet, increased public safety when using the Internet, full exploration of social phenomena and new types of crime.

CONCLUDING REMARKS

Different elements that indicate the level of development of electronic government in one country can be pointed out - first, the adoption of the strategy on e-governance, the adoption of various laws relating to e-commerce, personal data protection and electronic signature. In addition, it is very important to the entire public administration to function in a manner which will ensure the effectiveness, accessibility, accountability and transparency in carrying out its duties. In order to operate e-government on such principles the reform of public administration should be completed, the culture of administrative employees in the public administration should change and general technical culture of all citizens should be improved (knowledge and use of computers, Internet use, etc.).

There is no doubt that e-government as a modern way of public administration functioning in all segments of society, consequently, in the performance of police actions. It finds application in the presence of web portal offering all kinds of information related to services such as issuing travel documents, identity documents and the registration of the place of residence, and so on. Besides, it enables citizens to obtain information on the services provided by the police and enables delivering online reports of previous services. However, e-government in this area in modern terms means enabling interactive communication between citizens and the police when reporting criminal activity, and interaction with experts in this field.

20 In the period from 15 of February 2006 until the end of June 2007, in the Project Online Police Station 760,000 visitors took part, 6,000 online complaints were submitted, and 12,000 reports were sent for content and events of illegal nature on Internet and 17 000 submitted demands for information. See more: http://www.epractice.eu/cases/olps

This kind of an online police station has been suggested as a model that can be accepted by police forces in other European Union countries. Combining this technical project based on the experience of an online police station and the work process necessary for its operation model can be applicable to various network structures and legal systems. The project confirms that the vast area where the Internet knows no boundaries, cooperation with citizens is of fundamental importance in finding other forms of crime. Thus, this new model applied though the proven conventional computer crimes in a new light, revealed the existence of some social phenomena such as youth violence, anorexia or suicide.

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14. http://europa.eu/rapid/pressReleases

INFLUENCE OF THE SECURITY COUNCIL ON THE JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT AND POSSIBLE REVISION OF THE ARTICLE 16

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Abstract: International Criminal Court is established as an independent and permanent institution, beyond the UN system. Yet, it functions in the collective security system, which directs it to cooperation with the UN and especially Security Council. In the first part of the paper analysis follows the Rome Statute, interpreting articles that compose referral and deferral of investigation. In the second part of the paper, focus is moved towards the contemporary issues on the Article 16 application. As the docket of the ICC shows, all cases that are under deliberation are considering cases located at the African continent. Thus it is not surprising that African states, especially those involved in commitment of international crimes, are interested for the work of the ICC and the role of the Security Council. African Union has already proposed amendments on Article 16 in 2009, but at the time it was stopped since the AU itself didn't have unified stand on the issue. At the moment amendment is not under deliberation, but still it is beneficial to analyze their proposal and views that African states hold on the ICC.

Keywords: International Criminal Court, UN Security Council, African Union, jurisdiction, referral, deferral, amendment

INTRODUCTION

There are two articles of the Rome Statute[1] and several statements that can describe the relationship between the UN Security Council and the International Criminal Court. From the pure normative point of view Security Council is empowered to initiate a proceeding and to stop an investigation or prosecution, both within its authority defined in the Chapter VII of the UN Charter. Yet, deeper Interpretation of these two norms is necessary, in regard to proper and comprehensive understanding of this, legally quite complex, relationship[2].

Complexity of the mentioned relationship basically rests on the institutional level and roles of the ICC and the UN in the international community. The International Criminal Court is not formally part of the United Nations. It is not its organ, nor an international organization formally connected to the UN collective security system. In the furtherance of this logic, same as the definition and logic of the court as such, the Court is organized as independent, impartial, effective and fair. Thus, the formal independence from the UN is favorable.

Yet, an international court cannot stand isolated from the rest of the International Public Law system, its principles and normative frames, from subjects of international law and from the international community itself. In other words the ICC must be imbedded into the whole international law system. One of the key features of such position is shown through the relationship that states-parties to the

1 Article 13 and Article 16 are directly dedicated to the rights of the UNSC towards the ICC; on the other hand there are other articles that concern further impact of UNSC's deferral or referral and further acts undertaken by the Prosecutor

2 Hector Olasolo, The triggering procedure of the International Criminal Court, Martinus Nijhoff Publishers, 2003, p.270-283

ICC constructed in the respect of the UN, UNSC and collective security system.

The relationship between the UN and the ICC is expressed basically in the Preamble of the Rome Statute. States- Parties to the Statute stressed that through the Court they are reaffirming purposes and principles of the Charter of the UN, repeating that all states should refrain from the threat or use of force against each other. On the other hand the Court is independent and permanent body in the relationship with UN, with jurisdiction over the most serious crimes of concern of international community as a whole.

Thus, Courts jurisdiction *rationae materiae* considers grave breaches of the International Humanitarian Law and the International Human Rights Law, breaches of fundamental international law principles and it is firmly connected to the situations when the international peace and security can be endangered[3]. That leads us straight to the Security Council.

Summarizing the relationship between the UN and the ICC we can conclude that formally they are independent, but closely interrelated since they both relate, in their different ways, to international peace and security. From the operative point of view, special relation is established between, not the UN as a whole, but the Security Council and the ICC. Security Council, in the scheme of the UN, is the primary organ entrusted with the responsibility and tasks in maintenance of international peace and security. Thus, it is interested in the work of the ICC, as the judicial body authorized to prosecute those who breach the peace and massively violate fundamental values of international community.

Logic seems quite reasonable - on the initial consideration. On the other hand, we have two bodies that are inconsistent in their own legal nature. While Security Council is political body, the ICC is judicial body. In an interstate organization, at least in those states organized according to *Trias Politica* principle, political and judicial bodies cannot work together or in parallel. In the international law system, such a principle does not exist, which gave the floor to States to arrange a treaty firmly connecting judicial and political organs[4].

The role of the UN Security Council consists of two divided rights – the right of referral and the right of deferral. While the first one is only one of the means of the "triggering mechanism",[5] the other one presents exclusive right of the Security Council. Thus, impacts of these two rights on the Court are completely different, from the point of view of exclusiveness to the point of view of threatening the Courts independence and impartiality.

Article 13 reads as follows:

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of

3 Leila N. Sadat, The International Criminal Court and the Transformation of International Law, p.309-324, in: Sadat L.N., Scharf M.P. (ed.), The Theory and Practice of International Criminal Law: Essays in Honor of M. Cherif Bassiouni, Martinus Nijhoff Publishers, 2008.

4 On the interplay of political and judicial organs see more in: Steven C.Roach, Politicizing the International Criminal Court – the convergence of politics, ethics and law, 2006.

5 As Elizabeth Wilmshusrst points "the referral was not a matter of great controversy at the Conference" , in: Elizabeth Wilmsuhurst, The International Criminal Court: the Role of the Security Council, p. 39, in: Politi M., Nessi G. (ed.), The Rome Statute of the International Criminal Court – A challenge to impunity, Dartmouth-Ashgate, 2001.

the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

One of essentially important aspects of this rule considers the subject matter of referral. During the preparation period and negotiations on the Statute, the issue was raised on what exactly is Security Council referring – "matter", "situation" or "case".[6] Obviously there are certain degrees between these three options, where it is clear that referring a "case" is too specific and narrow, and implies criminal jurisdiction which Security Council does not possess. If accepted it could lead to the possibility of annulling the role of the Prosecutor.

Difference between "matter" and "situation" is not so obvious, yet it is generally understood that "matter" is more specific than "situation"[7]. The option that States have agreed on is "situation" as the most neutral approach and plus limited to the application of the Chapter VII. Security Council has the right to refer a situation in which one or more crimes appear to have been committed. Its right does not cover submission of a specific case, nor does it oblige the Prosecutor to act. Prosecutor is obliged, according to the Article 42 and 53, to evaluate information, but it is his/her own decision whether to initiate investigation or claim inadmissibility[8]. Such relation is functionally welcomed. If both, the UNSC and the ICC are recognized as interrelated bodies, it is then of the common interest that Security Council, after its deliberation on a specific situation threatening international peace and security, refers its knowledge to the Prosecutor. Security Council is not transferring criminal jurisdiction on the Court; its role is in passing information of a larger factual or political background on the Prosecutor.

If the relationship between the UN Security Council and the International Criminal Court is viewed from the functional point of view, rivalry should not be expected and unpleasant paring of political and judicial bodies could function[9]. Compared to others empowered to trigger jurisdiction Security Council is not privileged with more power. Its decision will be political, as usual, and there is nothing to be criticized more than usual criticism of the Security Council and its *legibus solutus* position. But, seen from the formal point of view conflicts could be expected, since the race for primacy could be one of the goals of both bodies towards each other[10].

6 For more on preparation, negotiation and stances taken by States individually see: Lionel Yee, The International Criminal Court and the Security Council: Articles 13(b) and 16, p. 143 – 152, in: Lee R.S. (ed.), The International Criminal Court – The Making of the Rome Statute-Issues, Negotiations, Results, Kluwer Law International, 2002.

7 Luiggi Condorelli, Santiago Villalpando, Referral and Deferral by the Security Council, p.627-655, in: Cassese A., Gaeta P., Jones J.R.W., The Rome Statute of the International Criminal Court: A Commentary, Vol. I, Oxford, 2002.

8 Dan Sarooshi, The Peace and Justice Paradox: The International Criminal Court and the UN Security Council, p. 95-120, in: McGoldrick D., Rowe P.J., Donnelly E., (ed.), The Permanent International Criminal Court, Hart Publishing, 2004

9 An interesting view on the Security Council's right to refer reads as follows: "Through this provision, the Statute renders homage to the Security Council's decisive contribution in the *renaissance* of penal international law and situates the ICC on a continuum with the *ad-hoc* international criminal tribunals for the former Yugoslavia and Rwanda which the Security Council established as part of this rebirth." Luigi Condorelli, Santiago Villalpando, Referral and Deferral by the Security Council, p.628, in: Cassese A., Gaeta P., Jones J.R.W., The Rome Statute of the International Criminal Court: A Commentary, Vol. I, Oxford, 2002.

10 Nigel White and Robert Cryer have recognized three types of relationship between the SC and the ICC – a complementary fashion when they act in harmony; a conflictual manner, where they take opposing positions or try to usurp the competence of each other; or in an overlapping way, where they pursue their own agendas without regard to the other even though they may be dealing with the same situation. Nigel White, Robert Cryer, The ICC and the Security Council: An Uncomfortable Relationship, pp.455 -483 , in: Doria J., Gasser H.P, Bassiouni C.M. (ed.), The Legal Regime of the International Criminal Court: Essays in Honour of Proffesor Igor Blishchenko, Martinus Nijhoff Publishers,2009

First "situation" the UN Security Council referred to the ICC concerned the conflict in Darfur. On 31 March 2005 UNSC adopted Resolution 1593, where it determined that situation in Darfur continues to constitute a threat to international peace and security. Within the Resolution the UNSC decided that the Government of Sudan and all other parties to the conflicts in Sudan *"shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to the resolution*". Also, "*invites the Court and the African Union to discus practical arrangements that will facilitate the work of the Prosecutor and the Court...*".

Acting under the UNSC's referral the Court issued arrest warrants for four Sudanese officials, one of them concerning Sudanese President Al-Bashir.

Deferral of investigation or prosecution is articulated within Article 16 of the Rome Statute. It reads as follows: *"No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."*

From the point of the legal nature, this norm although formulated as an inhibitory norm towards the Prosecutor, in fact creates the right to the UN Security Council. Compared with the Article 13 and the right of a state to refer as well as the SC, in the case of deferral the Security Council is the only one empowered to preclude process. Thus, the Security Council once again is obtained with the exclusive right, which deeply differentiates it from other institutions, organs, subjects on the international scene. Another important comparison with the Article 13 considers subject matter of the deferral. While it was very important to clear that referral of the UNSC can address only "situation", Article 16 establishes right to defer an investigation or prosecution of one single person, that means one specific case, on a case-by-case basis. While regulation of Article 13 was considered as the improvement of the Courts independence, Article 16 can be understood as its direct undermining.

Ratio for such a strong dis-balance of rights has to be sought in the relationship of peace and justice. The right should be exercised when Security Council decides that in particular situation it is more important to achieve peace and consequently save lives of people, than continue with criminal investigation or prosecution of a leader or other persons. Peace is recognized as more important value and goal than justice - when they clash. But, the formulation of the Article 16 should be understood not as favoring in absolute terms political decision over matters of war and peace, but as postponing issues on responsibility and impunity after the peace and functioning of a state is reestablished.

Limitations of the right to defer are not symbolic. They rest on the application of Chapter VII, on rendering a resolution and *ratione temporis* resolution is valid for the period of 12 months. Thus, situations than can possibly give raise to the application of the deferral right should be situations that are endangering international peace and security in such a manner that the SC acts according to the Chapter VII. Adopting a resolution that establishes a deferral completely rests on the UN Charter as well as on the Rules of Procedure that UNSC is working under. This observation may come as an important one, since it can be intriguing who can initiate the Security Council to provide a resolution for deferral.

The deferral may concern only investigation or prosecution, which is another restriction for the SC. Since the main purpose of deferral is not to allow the SC to interfere into the ICC business, deferral may achieve its goal only at the very beginning of a case, and not during the proceeding or at the rendering of judgment peri-

od.[11] This solution also supports the ICC's independence, that once the case is before the Court it can be rejected by means of request from the UNSC.

Time limitation period, yet, can be prolonged each year if there is need and willingness among the Security Council members. Technically, purpose of the time limitation period and reestablishment of the same resolution is in certainty that resolution of the SC is in coordination with the stance of its members.

The deferral thus, with all mentioned restrictions, is supposed to be exceptional and interpreted restrictively, and as the last resort when justice has to step back in front of political deals. This provision is more troublesome[12] than the provision on referral and has been widely criticized by lawyers[13]. The fact that politics and political arrangements, no matter that they are time limited, has been given primacy over the justice personified in the ICC, has been understood as disparaging of the criminal justice.

The other element that gives floor for criticism concerns future criminal justice policy of international community and states itself. At the present moment states are showing repulsiveness towards international criminal justice, claiming the principle of complementarity even when there is no ground for it[14]. From that point of view it appears that states are rather in favor of the UNSC Resolution than jurisdiction of the ICC (recent case of Kenya). Such an attitude can further impact work of the UNSC and its impartiality.

The right to interfere in the Courts jurisdiction strongly undermines its independence – that is the most often fear of international lawyers[15]. And yet, as much as from the pure legal point of view there is room for strong criticism, it should not be overseen that such a right has been given to the Security Council by the States-Parties to the ICC Statute. This right has not been arranged between the UN or UNSC and the ICC, but as a rule formulated and adopted by States-Parties.

Indeed, if the regulation is to be applied *bona fidei* criticism could be easily dismissed. But, if the right given to the Security Council is misused, it could strongly influence international relations even more than in period before the ICC[16]. Yet, it is the matter of time and practice, which is to come to show how the system is functioning. Evaluation of the real impact of the Article 16 thus cannot be formulated relying purely on the interpretation of norm.

At the time, though, there are already some cases and experiences that are achieved according to the application of Article 16.

Ten days after the Rome Statute has entered into force, Security Council adopted the resolution grounded on the Article 16. Resolution 1422 from 12 July 2002 presents a severe strike against the nascent Court, at the time before it even started its office.

The bottom line of Security Council's resolution is the request to the ICC not to establish its jurisdiction over officials and personnel that are part of peacekeep-

11 Robert Cryer, Security Council, Darfur and Article 16,Oxford Transitional Justice Research Working Papers Series, 2008

12 Lionel Yee underlines that this issue proved to be one of the most controversial in the negotiations. Lionel Yee, op.cit., p. 149

13 Robert Cryer ,Hakan Friman, Darryl Robinson, Elizabeth Wilmshurst, International Criminal Law and Procedure, Cambridge, 2008, p.138

14 For example Kenya is preparing at the moment to initiate the UNSC to invoke Article 16 concerning its six nationals that has been under investigation before the ICC, www.africa-union.org; www.iccnow.org

15 Robert Cryer, Nigel White, The ICC and the Security Council: An Uncomfortable Relationship, p. 455-483, in: Doria J., Gasser H.P., Bassiouni M.C. (ed.), The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko, Martinus Nijhoff Publishers, 2009.

16 Robert Cryer, Nigel White, The Security Council and the International Criminal Court: Who is feeling threatened?, p.143-169, in: Langholtz H., Kondoch B., Wells A. (ed.), International Peacekeeping: The Yearbook of International Peace Operations, Martinus Nijhoff Publishers, 2004.

ing missions under the UN or related to it and from States non Parties to the ICC. One part of the request concerns legality of the subject matter of the request. Are peacekeepers not bound by international law? Yet, that topic is of different nature than the topic this paper is dealing with, so it should be left out of its scope. Focus of this paper, though, traces application of Article 16. It is obvious, even at a first glance that such an application of Article 16 presents its abuse and thus it is unlawful and it doesn't meet the purpose of the deferral right. Article 16 should be applied on the precise case, on a case-by-case basis, when international peace is endangered. Resolution, on the contrary, concerns an indefinite situation concerning peacekeeping missions - neither towards the case, nor toward the critical situation when peacekeeping mission was found in the middle of the threat to international peace. Thus it could be understood as if UNSC has been granting immunity to those who are involved in UN peacekeeping missions from states non parties to the ICC. And thus, through this Resolution the Security Council confirmed the worst possible scenario of the application of Article 16.[17] Since it is political body, such resolution is clearly product of vulgar political deal between states, members of the SC at the time being.[18]

Work of the ICC has commenced with investigations of the alleged crimes at the African continent[19]. From the period of creation of the ICC African states were very supportive as towards the idea and project of international criminal justice as to their own benefits from such an institution, since number of African States had issues with impunity of their own leaders and states officials. The very beginning of the ICC's work – from self-referrals to investigations, cooperation with African states with the Court was fruitful. Regretfully, it didn't last for a long. At the moment there is even a profound tension between the African Union and the ICC[20].

History of the African Union's reluctance towards the ICC is tightly connected to the case of Omar Hassan Al-Bashir, Sudanese President. As was mentioned earlier in this paper, first Security Council's referral to the Court was on situation in Darfur. With respect to the SC referral the Court issued arrest warrants for four persons and one of them was Sudanese President Al-Bashir. Government of Sudan did not accept Courts jurisdiction and claimed that its sovereignty has been violated by the UN Security Council and by the ICC[21]. Thus tension between Sudan and the ICC was raised, which resulted in no cooperation whatsoever. African Union, for itself, has been involved in Sudanese situation over the years, trying to find political solution to the Darfur conflict. From the point of efforts to establish peace in the war-torn country AU called on UNSC to invoke Article 16 of the ICC Statute and request a deferral of the ICC prosecution of Al-Bashir. During 18 months African Union has repeated the call to the UNSC several times, but reply or any kind of formal statement has not been produced. Understanding of African States

17 After 12 months, as is proscribed by Article 16, the UNSC adopted new resolution (Res.1487) which confirmed previous resolution 1422, repeated its scenario and prolonged the arrangement for another year. A year after another resolution has been passed (Resolution 1497). This resolution basically repeats previous two, with the important difference of connecting it to specific "situation" in Liberia and peacekeeping mission for Liberia, www.un.org

18 For details on political background of the resolution see: Neha Jain, A Separate Law for Peacekeepers: The Clash between the Security Council and the International Criminal Court, European Journal of International Law, Vol.16, No.2, 2005, p.239-254; Dapo Akande, Max du Plessis, Charles C.Jalloh, An African Expert Study on the African Union concerns about Article 16 of the Rome Statute of the ICC, Institute for Security Studies, 2010.; www.opiniojuris.org

19 Jurisdiction has been established according to the self-referrals by Uganda, Central African Republic and Democratic Republic of Congo; the ICC pre-trial chamber approving the *proprio motu* prosecutorial action in respect of Kenya, and UNSC referral considering situation in Darfur, www.icc-cpi.int

20 For current information on the ICC see: www.icc-observers.org

21 Sudan is not a party to the ICC Statute; thus, the only possible way of establishing the Courts jurisdiction was through the UNSC referral.

of no-answer attitude has been that the Security Council is not truly interested in the immense African problems and interests. As a result of miscommunication AU decided to withhold the cooperation with the ICC and to initiate amending of the Article 16.

At the Ministerial meeting of African parties to the ICC [22]held in November 2009 the amendment was adopted:

"No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

A State with jurisdiction over a situation before the Court may request the UN Security Council to defer a matter before the Court as provided for … above.

Where the UN Security Council fails to decide on the request by the state concerned within six (6) months of receipt of the request, the requesting Party may request the UN General Assembly to assume the Security Council's responsibility under par. 1 consistent with Resolution 377(v) of the UN General Assembly."

The proposal, though, was not ready for Kampala Review Conference held at June 2010, so deliberation on it was left for the future Assembly of States Parties, which occurred at December 2010. Apparently, the 9th Assembly of States Parties did not bring anything new considering the proposed amendment, since the representatives of African parties to the ICC Statute have not been particularly vocal. Other States-Parties to the Rome Statute didn't show an interest in proposed amendment or at least willingness to analyze it[23].

Development of the matter has grown to the very heated debate that is nowadays occurring within the African Union[24]. There is not only articulated request to amend Article 16, but very strong anti-ICC initiative, pushing the members out from the ICC. The anti-ICC feelings has been further encouraged by Kenya and its opposition to the ICC investigation on six Kenyan nationals, considering the international crimes that had taken place during 2007 and 2008, after Kenyan elections.[25]

The previous example, coupled with grounded legal concerns on application of the right to defer, do provoke interest in proposed amendment and potential new formula that can preclude future malfunctioning of the international criminal justice system.

The proposal of the African Union thus provoked discussion on the suggestion. One of them, perhaps the most important since has been elaborated by the team of legal experts is the African experts study, initiated by the Institute for Security Studies in Pretoria[26]. Without the prejudice on the final outcome in the tensed relation between the African Union and the International Criminal Court, this case gives us valuable example of how really deferral by the SC functions and should be functioning.

There are several, constituent aspects of this case, that provoke analysis. If the SC issued referral, and the ICC acted according to it, is it lawful to subsequently issue a deferral on the same matter? Is there a right of a state or international organization to initiate SC to invoke deferral? What are possible tools in the situation when the Security Council is silent? If an international organization decides not to cooperate

22 There are 31 African states that are parties to the ICC Statute; they formed very important support at the begging of ratification process.

23 For more information see the internet presentation of the ICC www.icc-cpi.int

24 For more information see the internet web-site of the African Union www.africa-union.org

25 On the current information considering the ICC docket and reaction to it see: www.icc-observers.org

26 More on the group of experts in: Dapo Akande, Max du Plessis,Charles C. Jalloh, An African Expert Study on the African Union concerns about Article 16 of the Rome Statute of the ICC, Institute for Security Studies, 2010.

with the ICC since it has issues with the SC is it lawful or unlawful? Potential new approach on the whole set of new issues, has been replied and formulated in the amendment that was proposed on 9th Assembly of State-Parties.

One aspect of the amendment proposes introduction of the General Assembly into the deferral issue, as a subsidiary organ, if the Security Council fails to render resolution in the period of six months. This proposal encroaches deep into the relation between the UNGA and the UNSC, the issue of such legal and political complexity that reaches beyond the scope of this paper. Yet, some general remarks must be introduced.

Introducing the General Assembly into the matters of international peace and security in respect of deferral of investigation is grounded on the UN General Assembly Resolution 377 "Uniting for Peace" from 3rd November 1950. The same logic that formed the ground for this resolution has been applied at the proposed amendment. Thus, if the Security Council fails to accomplish its duties according to the international peace and security, the General Assembly may step in and finalize the matter. As long as proposition seems logical and fair it must be stressed that relying on the UNGA Resolution Uniting for Peace does not provide firm legal support. Mentioned resolution is legally questionable itself. Yet, it has been rendered by the General Assembly. Although its implications are tectonic, legality of the resolution can be understood as *de facto* revision of the Charter, since it was adopted by the GA, which means by majority of the UN members. On the contrary, if rearrangement of the jurisdiction and relationship between two important UN organs are to be implicated from aside, legality of such an regulation can be severely challenged. The Rome Statute is the autonomous international treaty between states. The Court, as the new institution in the international community, can only be incorporated into the existing international law system. If there would be a treaty regulating relationship between the UN and the ICC, it would be legally possible to influence on the scheme of organs and jurisdictions[27].

Another argument that is *contra* involvement of the UNGA into the deferral power concerns legal nature of the UNGA's resolutions. As is well known UNGA's resolutions do not have binding power, while the UNSC's resolutions, concerning matters of international peace and security are legally binding, as the deferral should be[28]. This point of view is one more against empowering the UNGA into the matters of international criminal justice.

The other part of proposed amendment concerns involvement of states into the deferral. Version that is proposed, gives right to a state that would normally have the jurisdiction over the situation to request the UNSC to defer investigation or prosecution. This part of proposition clearly is based on the specific experience of the AU left with no reply by the UNSC. There are no rules within the Rome Statute that could possibly direct reasoning on whether a state or even an international institution is empowered to request SC to issue a deferral, which implies that the answer should be sought within the UN Charter. According to the Article 35 of the UN Charter, any member of the UN may bring any dispute and (according to the Article 34) any relation that potentially can endanger international peace and security to the attention of UN Security Council or UN General Assembly. These two norms though form part of the Chapter VI and by itself their function in the whole UN system has different aims and purposes than Chapter VII. Also, it must be underlined, that if the AU was about to rely proposed amendment on the Chap-

27 Malgosia Fitzmaurice, Olufemi Elias, Contemporary issues in the law of treaties, Eleven International Publishing, 2005, p. 270-283

28 Malcolm Shaw, International Law, Cambridge, 2006, str. 108

ter VI, than this alinea of proposal should cover potential General Assembly role, according to the wording of the UN Charter's Article 35.

Article 16, as was concluded before, enters disbalance towards the Article 13. According to the previous analysis of potential involvement of a state, that would normally have jurisdiction over the case, there are two more remarks to be added. First, the fact that a situation or a case is already before the Court means that a state, that would normally have jurisdiction, didn't exercised its jurisdictional rights, which opens floor to application of principle of complementarity. On the other hand, as it was already elaborated the purpose of deferral is achievement of a political arrangement that would lead to the reestablishment of peace[29]. The UNSC is body recognized in front of international community as responsible and capable to deal with matters of international peace and security. This explanation again leaves a state that would normally have the jurisdiction over a case, with no ground to act from.

CONCLUSION

The challenge how to device new formula, which is both legally grounded and politically sound, appears to be unattainable. Proposed amendment, although grounded on the specific case showing shortcomings of the ICC-UNSC arrangement, didn't manage to produce better encompassing formula. Introducing the UN General Assembly as the subsidiary organ to the Security Council would be in violation of the UN Charter. Also, it is legally unacceptable and unjustified to interfere in a treaty and change treaty norms by means of another treaty with completely different subject matter and purpose.

As far as innovated deferral role of a state is concerned, possibility of a state-role in the matters of international peace and security, in a manner consistent with the purpose of the Article 16, is very doubtful. Single state cannot reach the necessary impartiality and influence, as from the point of theoretical concept either of collective security system or balance of power system. Thus, the overriding pattern to achieve the international security is formulated in a political body structured of several states that are balancing together. Without prejudice to the rightfulness of the present composition of the UNSC, it is still legal, according to the UN Charter.

Present case of African states reaction to the SC acts, involvement of the African Union, strong anti-ICC feelings grounded on several cases do not promise bright future to the ICC. At the moment what do we have at the international scene is the clash between two international political institutions – the UN through the Security Council on one side, and the African Union on the other side. The most important objection is that through the referral of the UNSC under which the ICC opened case against the Sudanese nationals, work of the AU has been challenged, even destroyed. Thus, proposed amendment is to be understood as the attempt to rearrange relations between international political institutions through the means of the ICC Statute. This is certainly one of the reasons, though very important one, that kept other States-Parties silent on the proposal.

And for the very end of this conclusion it must be underlined that the Article 16 is not ill formulated, but ill-applied up to now. That brings us to another complex issue, both theoretically and practically, of the status of the principle of the rule of law in international public law, which is certainly generator of all illnesses in international law.

29 M.C.W. Pinto, Truth and Consequences or Truth and Reconciliation?, p.693-728, in: Vohrah L.C., Pocar F., Featherstone, Fourmy O, Graham C., Hocking, Robson (ed.), Man's Inhumanity to Man – Essays on International Law in Honour of Antonio Cassese, Kluwer Law International, 2003.

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STATE LAW AND FIGHTING CORRUPTION — INTERNAL AND INTERNATIONAL LEGAL ASPECTS

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Abstract: Legal thought has managed after centuries of search to "give" the greatest invention for the realization of human rights and freedoms and it is a rule of law and Law state. Beginning in Ancient Greece and the Roman Empire until today, the thought of our current legal present and other actors of social sciences has been searching for the best state-legal system. This order was given in the German theoretical and legal thought through the doctrine of the Rechtsstaat and the Rule of law theory of Anglo-Saxon legal climate.

The paper discusses the concept of Law state and rule of law and provides the best constituent elements of constitutional order.

It analyzes the institutional and broader social struggle against extreme dangerous form of crime-corruption which is implemented by the law state on the international level. For example, against some of the most serious forms of corruption, even the most powerful countries in the world that have effective judicial systems cannot successfully fight if there is not an international cooperation.

What is the importance of the fight against that general social evil is the fact of the adoption of international documents, such as the Convention against Corruption adopted at the UN in 2003 and the Criminal Law Convention from 1999 and the Civil Law Convention against Corruption adopted at the Council of Europe in the same year. Also in 1998the Agreement on the Establishment of the Group of States against Corruption – GRECO was signed.

The authors conclude that the interaction between the instruments of international law and stable institutions of the internal legal order in the form of law can lead to achieving satisfactory results in the fight against certain types of crime such as terrorism, organized crime and corruption, which the attention is paid to in this article.

Key words: Law state and the rule of law, constituent elements of the Law state, fight against criminality, national and international aspects, corruption.

INTRODUCTORY CONSIDERATIONS

From the moment when progressive thought was born from the fields of social sciences, it was being searched for the best form of government. The mentioned moment of birth of progressive thought is usually connected with the Ancient Greece and the Roman Empire. Through the centuries the question was asked, what form of government was better, rule of law or the rule of humans, in the nineteenth century the final answer was given. A merit for getting the final answer, legal civilization owes to Euro-continental laws, specifically to the German legal literature in the nineteenth century. It is a Rechtstaat theory. In Anglo-Saxon legal theory, priority was given to the rule of law over the rule of humans. As the German theory of State law or Anglo-Saxon doctrine of Rule of law are undoubtedly achievements of the civilization, even before its theoretical form, but unfortunately, especially after

the world saw flagrant violations of human rights and killing all kinds of freedoms. Let us not forget that the First and Second World Wars, totalitarian and fascist legal orders as well as many other evils for humankind occurred just after the realization of the legal state on the European-continental legal field and the practical application of doctrine of Rule of law in the Anglo-Saxon constitutionalism. Because, in the past and present affirmative was spoken and written about the state law and rule of law, and because the legal orders that have truly sign of state law and the rule of law, took the victory over the totalitarianism and autocracy, and every day, in different quarters of the world, state law wins the battle against the most diverse types of crime, it is an evidence that the future generations of lawyers will talk about the positive legacy of the state law and rule of law.

Unfortunately, we are witnesses of legal orders in which instead of the democracy, we have the government of autocracy where the government of the unity is personified in the person of one man, and it is about powerful state controller, which leads to the conclusion that in such legal systems there is no true state law.

They are the negation of freedom, of true constitutionalism, and such societies "suffer" from many "diseases". In international relations, some countries are synonymous for sponsorship of terrorist activities, other of totalitarian regimes (such as North Korea), and the third are today recognizable by corruption and enrichment of the privileged minority at the expense of the most disenfranchised and impoverished as it is the case with legitimate rebellion of the people affected in Tunisia and Egypt.

Further attention in this paper is aimed at its two key parts - its focal points -State law and its fight against corruption at the national and international level.

The concept and forms of legal state and rule of law

From the initial question which one is better - the rule of law or the rule of the people, we focus our attention on the question whether the rule of law and state law are better which incorporate certain principles and ideals which means that they have specific properties, or any rule of law, and those tyrannical in totalitarian systems. There is a hidden answer in this question. Since we do not speak about autocratic regimes and totalitarian systems, the best form of government is the one based on the idea of rule of jurisdiction and not of law, about value supremacy of the law state. However, historical journey for getting this reply was long and the result of the end of that "walk" today is majority opinion in the scientific circles and in the lay public on what the state of law is and what its constituent elements are. In German legal theory "walk" in defining the state law and its building elements was not in compliance, which is understandable especially when we talk about the rich diversity of German intellectual thought. Professor Gordon Vukadinovic said that the theory of the state law "was developed in terms of explicit and bureaucratic state apparatus of administration and looks for the limitation of state power and the preservation of individual liberty on such assumptions.[1]" Further, it should be highlighted that the economic basis of the state law was represented and it is still represented by private property and free economy (including the free market and equal competition of plural forms of business entities). Stable institutions of the state law protect its economic base by different mechanisms, and the corruption is corroding it. As a result of reaction to a police state, the demand for the rule of law is highlighted. Kare de Malber says that system of state law should not be confounded with something which is contrary to a police state. According to this writer a police state is one "in

1 Vukadinovic G. The State Law, Novi sad, 1995, page 17

which the administering authority may, in a discretionary manner and more or less with complete freedom of decision, apply all measures to all citizens which it finds useful in order to achieve goals that it had set to itself."[2] In Serbian legal theory we can see the attitude that this state is history. "With the establishment of absolutism, the police state is becoming lost and a legal state becomes created. However, later, even today, there are various forms of police states. We have these countries in various extreme right-wing reactionary regimes, fascism, National Socialism, racism and so on. These are modern forms but in their base and by their character, they are the militaristic and police states. "[3] Although Germany is the homeland of the theory of the state law (it was born in the nineteenth century) the greatest evil of mankind was born in it - a totalitarian Nazi Germany. The idea of state law was born in this country; it received its theoretical form, normative framework through the Weimar Constitution, displacement of free ideas, and people under the Third Reich, in order to be resurrected again in the Bonn Constitution from 1949 or Basic Law, which is the official name of the German Constitution. In Article 20 of this constitutional document it was written "The Federal Republic of Germany is a democratic and social state." According to the negative experiences of the past, in the spirit of protection of the state law, the Constitution provides that "all Germans have the right to resist anyone who would try to overthrow this constitutional order."[4] For the simple reason faith in the state is preserved, in the case of Germany, because it is considered to be economically superior and exemplary western, legal and social state, the welfare state for decades, which had more or less been able to neutralize many of the negative effects of free market. All positive values of the state law would not be quoted in full glory if the German state was a state in which there is an alarming percentage of widespread corruption. So, it is the same today, when the constitutional state with its social sign in the first economic power of the United Europe is not threatened from any of the social evil, so we do not have to ask ourselves whether the rule of law has a future. Faith in the rule of law also had the founders of its substantive legal concept Materieller Rechtsstaat, or formal legal concept Formeller Rechtsstaat, which were Robert von Mohl and Franz Julius von Schtaal. An establisher - father and the founder of the theoretical concept of substantive state Robert von Mohl in his work *Die Wissenschaft nach den licked Grunasatzen des Rechtsstaates* defined the state law as a type of state whose primary purpose and principle of the highest is the achievement of individual freedoms. In some individual elements of the state law Mohl in1844 said that specific "defense funds" can be recognized in the state law in the fight against corruption. Therefore, these defensive funds mean the state law (i.e., substantive state in Mohl's interpretation) and they are its principles.

We mention those building elements of the state law which are in the focus of this paper and these are: "equality in front of the law, openness in all public services for all capable and competent citizens, individual liberty with the accompanying freedom to express opinion ..."[5] The German legal writer who defined formally state law is already mentioned von Schtaal. [6] "The focus of Schtaal's understanding of the state law is on the form of execution of state power, which should be specified in the law."[7] The connoisseur of Schtaal's concept of the state law Franz Neuman

2 de Malberg, R.: Contribution a la theorie generale de l' Etat, 2 vol, T, I, Paris, 1920, page 488
3 Dimitrijević M., Simić M., Đorđević S: Introduction into the Law, Kragujevac, 2006, page 154
4 Vasović V.:The modern democracies, Part I, Belgrade, 2006, page 604
5 More about this Šarčević E: "The concept of the state law", an Archive for legal and social sciences, Belgrade, 1989, number 4, page 416
6 Theoretical foundation of formal state law is given in Schtaal's Philosophy of Rights - Die Philosophie des rechts, 3. Aufl. from 1856.
7 G. Vukadinović:The State Law, Novi Sad, 1995, page 18

says: "The state must be a state of law, it is a password and even really a call of the development of new period. It has to determine ways and limits of its activity as well as a free sphere of its citizens on the right way and precisely and unconditionally provide the moral ideas of the state, therefore, directly it must not be imposed from outside the legal sphere, but only to necessary restrictions. This is the concept of state law, but it is certainly not to the concept where the state handles the legal system without administrative intent or even just to protect the rights of individuals, that means it does not talk about the goal or the content of the state, but only about the way of their imposition." [8] So, Schtaal sees the law less as an implement for limiting state government, but rather as an implement of rational organization of the state and the normalization of relations with those who are governed."[9] For the legality which is sure a sign of the state law, in the Anglo-Saxon legal climate the expression - Rule of Law is extensively adopted.[10] In addition to this term, other terms are also used "government under law" in due process. Due process is a term used mostly in the United States (U.S.) and it is a synonym for the procedure for the protection of human rights and freedoms in the legal system (as it says in theory), which are determined by the nation or the state. The term government under law represents the government and its administration limited by the law. The creator of Anglo-Saxon conception of Rule of Law doctrine AV Dicey believed that the legality was "something more" than just the law and work. According to this great legal thinker, legality in the legal system exists when it is not only formally proclaimed, but when principle of criminal law is really manifested in practice: "*nullum crimen sine lege, nulla poena sine lege*." Dicey believed that the well-governed state and legal order is the one in which real equality in front of the law is presented, and that is especially applied to high government officials, when it comes to their liability, they should not have any privileges. Also well-regulated state and legal system is one in which one important postulate exists - the existence of the Constitution. Constitution, according to this author, can be changed only by the wishes of the people and in the part where the privileges are abolished. Constitution, according to Dicey should not become a source of rights protected by the court but their consequence. Otherwise the state law or its content in the constitutional right is expressed by the word constitutionality. The constitutionality in the democratic order is expressed through subordination of state bodies, other bodies with public authorities, legal entities and individuals in the objective law. Concepts of the rule of law even today are not unique. They split into three directions. According to a legalistic way, the rule of law is empty in a valuable sense, impoverished idea. Its main idea is that acts of less legal force should be in the coherence with the acts of higher legal force and that the activities of state government and individuals are complied with the applicable law according to its content. State law is what the rule is reduced on, and the state law on state and legal order in which all legal acts are in the conformity with the principle of formal legality structure. One of the bases of this concept is that the state law, due to its properties, is the antipode of a police state. Administration and the judiciary are ruled by the laws of the state law. In a police state, as opposed to state law, an administration is managed by the state reason. According to liberal-democratic conception of rule of law as a category is not limited in time or space. This theoretical concept considers correctness of the law by price meta-legal prin-

8 Neuman F.:"Democratic and Authoritarian state, Zagreb, 1978, Page 95

9 G. Vukadinović, or. cit. page 19

10 In Article 1 of the 2006 Serbian Constitution it is stated: "The Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms and belonging to European principles and values. " In this way a Serbian writer of the Constitution has accepted the Anglo-Saxon terminology.

ciples that have effects outside the Constitution. Another name for this theoretical concept is a natural and legal structure of the rule of law.

The practical repercussions of this concept is that it provides an answer to the question of what law should be and what the properties are that laws and the Constitution should have.

We are favored to the theoretical concept about the rule of law as a positive legal order of certain properties. These properties mean limited state power within the Constitution and legal norms. Such state-legal system is an antagonism to the authoritarian regimes that were characterized both in theory and in reality what is the best confirmed by the concentration of power in the central, local and arbitrary action of government and unconstitutional invasion of the government into the human and civil freedoms and rights.

Awareness of lawyers was prophetic enough so that special international documents in this century were made at international conferences of lawyers which were committed to the rule of law and its various aspects.

The so-called "Chicago Colloquium" which was held 1957, and was dedicated to achieving the rule of law in the West. There were, among other things, the measures mentioned that should make the rule of law more efficient and better. These measures are defined as follows: the existence and recognition of traditional rights and freedoms, including the instruments for their protection; systematized general norms for obligating administration and judiciary, the existence of an independent and permanent judiciary, an impartial judicial process, the legal basis for administrative decisions and judicial review for the administrative authorities. "

In 1959 the International Commission of Jurists also confirmed this approach in Delhi Declaration. This act states: "The main function of legislation in a free society which is subject to laws is to create and maintain the conditions that will hold pride of man as an individual. That pride not only requires a certain recognition of his civil and political rights, but also the creation of social, economic, educational and cultural conditions necessary for the development of his personality."

"Delhi Declaration also states that the rule of law implies the realization of appropriate conditions for the development of human dignity."[11]

The facts specified in the declaration of New Delhi were repeated and specified in the document from Lagos, brought in 1961 (Act of Lagos).

By the document from Lagos, in order to talk about the real existence of the rule of law in one constitutional order there must be three conditions realized:

1. Existence of an effective government that is able to maintain the law and labor and to provide social and economic conditions in society, 2. Independent society, and 3. The possibility that those who break the law are deprived of the position, reputation and related social goods.

About the constituent elements of the state law

When the situation that prevails in a country is far from obeying the law, then such a country is ruled, we can use a Jennings' words from his book *New Despotism,* by "Twilight" of the legality, its set (development away from the rule of law).

In another case, when "the sun of the legality shone" one state and legal order, then we can say that such an order is on its way to become qualified as an order of the rule of law.

11 According to Mitrović D.:"The Right Fundamentals", Belgrade, 2004, p. 201

The principle of legality and constitutionality and legality is a fundamental postulate of the state law. It means that citizens obey the will of impersonal rules, and not the will of other people, which is held in individual acts. The state and legal system can be discussed as a legal system of state law, if there is compliance of all legal acts that constitute it to its highest legal acts primarily and above all with the constitution and then with the laws.

On a national level there is no effective fight against corruption, if the administration because of its tendency for bureaucratization and tendencies of using autocratic methods, is not limited by the sovereign will of the citizens which is expressed through the laws passed by parliament.

Besides the importance of the principle of legality, which is undoubtedly, the state law will not be built on the healthy ground if it is without its following pillars:

- The government that is legitimate, but when its division exists
- The independence of the judiciary, human and civil rights, which are guaranteed by the Constitution.

It should be noted that in addition to economic freedom and economic activity which is undoubtedly institution of rule of law, the most effective instrument in combating corruption is an institution of an independent judiciary. First of all, the executive and also legislative, with their actions must not interfere with the activity of courts and decisions in individual court cases. The independence of the judiciary means independence of judges, which is provided by a special system of selection and stability of the judges. Therefore, the best method of selecting judges is by the independent judicial collegiums.

The issue of corruption is no longer the exclusive subject of the criminal law and criminology.

It is a dangerous social deviation, especially if it is spread into the area of interest of political sciences. The fight against corruption suffered its normative framework and at the international level it justified and studied this phenomenon in terms of international law. The most important definitions of corruption, by our opinion, are given in the actions of the criminal and criminological literature.

It is believed that one of the best definitions of corruption is given by Carl Friedrich who said that the "deviant behavior" is associated with a specific motive to obtain private gains at the expense of public authority.

As in Serbian literature Djordje Ignjatovic said: "This definition requires some refinement: in particular, modern criminal law has expanded the scope of interference so much in this area that every form of corruption is criminalized and because of that it is in the definition, better to say the criminal behavior." The mentioned criminologist defines corruption as the criminal behavior where assigned authority is misused in order to obtain personal benefit. [12]

Slobodan Vukovic said that there are three types of corruption in Serbia:

- First, as an additional payment to a public servant to obtain the right or to accelerate its implementation.
- Second, bribery due to violation of the law - the acquisition of rights which by positive law do not belong to a corruptor.
- As a third kind of corruption, we have the bribery in the process of making or changing laws to make the solution useful for the corrupter.[13] Successfully combating of corruption is one of the conditions that must be met in order for

12 Ignjatović Đ.: Criminology, Belgrade 2008, page 153
13 Vuković S.: The corruption and the rule of law, Belgrade, 2003.

Serbia to receive candidate status to join the European Union. Corruption in Serbia, it seems, has become a systemic phenomenon, and institutions in the state law must do more to curb it to such a level that would be sufficient for the normal functioning of a modern democratic society. Among the indirect sources of corruption, we may specify the "flaws" of the legal system. Deviations in the legal system can be summarized as follows: lack of compliance of series of laws and their inconsistency from the point of fight against corruption, the slow step in the harmonization with the international documents on combating corruption. Attack to the state law, which in Serbia can still be qualified as a creation in the making, is sometimes in inefficient parliament. The alienation of its critical edge is shown as a mitigated vocabulary in relation to the corrupt phenomena in society. Public administration and public finance system in all countries, including Serbia are fertile ground for the flourishing of corruption. This is especially true for the authoritarian regimes (as the most recent examples we have Tunisia and Egypt) and the state law in the construction with an authoritarian past. The characteristic of economic systems of societies in transition, and also Serbian society, is that they are probably the best sphere of proliferation of corruption. A flagrant example for that is the privatization of public sector.

International legal aspects of the fight against coruption

Despite our conclusion that the international community has not agreed about the definition of corruption that does not mean that there is not corruption at various levels of politics, economy and society in general. Qualification of dangerous social activities as corrupted and their conviction from the standpoint of the ruling ethics is not the same in all legal states, and that has its logical justification. It is in the diversity of jurisdictions. Effective fight against corruption requires dimensioned, prompt and functional international cooperation between all state laws. We say this because their legal systems are based on at least minimum morality (as a great man of American legal theory of the twentieth century Lon Fuller said). It can be expected that the international cooperation in this field becomes successful, and not only in criminal matters but also in civil matters. Therefore, as a positive trend, noticeable number of activities should be noted, including the actions of the United Nations, the World Bank, the International Monetary Fund, the Organization of American States, the European Union and the like.

The fight against corruption at the global level

The United Nations Convention against Corruption is a convention that is known as the Merida Convention14 from 2003. Eduardo Romero stated that this international document created the possibility to "create a global language and strategies against corruption."15 There is a large number of contracts on the international level whose "subject-matter is corruption, or fight against corruption. Application of these contracts is neither unique nor complete. Mechanism for minimizing the men-

14 The UN General Assembly at its 58th session in December 2003 adopted this Convention. The name of the convention was taken from the town in Mexico where on 09 and 10 December 2003 the international conference was held and then the diplomats from 111 countries of the world put their signatures on this first global anti-corruption instrument.

15 Romero E.: „Preventive measures against corruption: the rule of the public and private sector, www.unodc.org/unodc/eucorruption

tioned weaknesses is the Merida Convention. This Convention is unique, specific in relation to other international instruments in the global approach to this problem, as well as detailed and comprehensive provisions. This international document is divided into eight chapters with a total number of 71 articles. It is established for the parties of the Convention that they have an obligation to fight corruption, with various measures. Two years after the adoption, the Convention became valid on December 14, 2005, all in accordance with Art. 68 paragraph 1 of this international document. - Global Programme of the United Nations for the fight against corruption provides for the assistance to the States Parties so that the implementation of the United Nations convention would be successful. It is encouraging that there is an increasing number of countries-parties to this Convention. The task of the global programme is to provide practical assistance and develop technical capacity to support countries in anti-corruption strategies, plans and concrete measures. Merida Convention includes measures that are particularly focused on prevention, criminalization, and detection and sanctioning of criminal acts with the characteristics of corruption and also on the International Cooperation of States Parties concerning the above measures. The Convention stresses that it is necessary to establish special anti-corruption bodies and that financing of political parties and election campaigns has a transparent framework, it insists on the adoption of codes of ethics for all categories of civil servants and public officials and the necessity of a comprehensive definition of public procurement procedures. This Convention in relation to criminal repressive policies of the Party introduces expanded definition of criminal corruption activities. The liability of legal entity is also defined for criminal acts with the characteristics of corruption. The Convention stipulates the obligation of establishing effective protection of witnesses and victims of corruption. Particular emphasis is placed on the confiscation of property earned through the work of corruption which is a fundamental principle of this international document whose implementation requires intensive and direct cooperation and mutual assistance to the Parties. In accordance with the preventive anti-corruption policy, it is stressed that there is a necessity of taking appropriate action in terms of avoiding conflicts of interest, money laundering, free access to information and active involvement of the private sector and civil society in the fight against corruption. The United Nations Convention against Corruption, connected to the prevention of this phenomenon, defines goals and set of measures for both public and private sector. Prevention means establishing a code of behavior for all categories of civil servants and public officials, and legal regulation and clearly defined procedures for conducting public procurement and disposal of public finances. Convention, in relation with the criminalization of corruption, requires from states parties to define corrupt practices in the national laws as criminal offenses, if such actions have not already been considered as criminal offenses in accordance with applicable laws. Clear conclusion is that the Merida Convention goes beyond the scope of previous efforts in this plan. That means that it is expected that in addition to basic forms of corruption, such as accepting and offering bribes and fraud, there would also be sanctioning of trading in influence, concealment of income of crime and their transformation through legal financial flows. Establishing of illegal enrichment as a criminal offense has been shown as useful in many systems. This criminal act is important because of the difficulties that arise in criminal proceedings when it is necessary to prove that a public official demanded or accepted bribe, especially in cases where the enrichment of public officials is in disproportion with his legitimate income when there is a good reason to doubt the existence of corruption. A good mechanism to prevent corruption in public functions is to introduce a criminal offense in many legal systems. The sanctioning of this crime is, according to the Merida Convention, obligation of each Party in accordance with its

Constitution and basic principles of its constitutional order, which suggests that the introduction of this crime in which a public official as a defendant in support of his defense should provide reliable evidence for increasing their income and assets in a lawful manner. Thus, the onus of proof is on the defendant. However, in our positive law, the onus of proof is on the plaintiff, which means that the defendant is not obliged to prove his innocence.[16]

Europe in the fight against corruption

The Council of Europe as a regional international organization of European countries has identified corruption as a serious threat to the state law and to the realization and protection of human rights and freedoms. At the conference in Valetta in 1994, the Justice Ministers of European countries have concluded that the fight against corruption should be approached multidisciplinary. This meant an urgent need of adaptation of national legislations to effective fight against corruption and improving cooperation between countries and international institutions, including the countries that are not members of the Council of Europe.

Based on these conclusions, there followed a series of activities including the establishment of the International Group for the fight against corruption. This group, in an international program of action against corruption[17], defined anti-corruption measures, provided the model laws, or crimes related to corruption, stressed the need to adopt an international convention against corruption and stressed the importance of the international fight against this phenomenon, in order to realize these tasks of the program and achieve a stronger need for an organized and international approach to fighting corruption in 1997. On the conference in Prague, the Ministers of Justice of the European countries have concluded that the fight against organized crime necessarily implies a corresponding reaction against corruption. Senior officials of European countries on this occasion showed what the dangers of corruption were.

This phenomenon threatens the rule of law, democracy, social justice, economic development, justice and moral values in a society. On the same occasion, the importance was stressed of passing the Criminal Law Convention about corruption. The reason for that lies in more efficient coordination in defining criminal offenses related to corruption and for improving prosecution and sentencing for these crimes.

The representatives of states and governments of the Council of Europe adopted an Action Plan to fight corruption, which included activities in fighting organized crime and money laundering. Intensive work on drafting the Convention was accompanied by the adoption of the "Twenty Guiding Principles for the Fight against Corruption"[18] whose main aim is coordinating the processes of criminalization of corruption at national and international level (Principle 2). One of these principles says that the obligation of States is to ensure the independence of the officials in charge of prevention, investigation, prosecution and trial for criminal acts of corruption, and to provide them with protection from unlawful influence to freely collect evidence and protect people who have helped in exposing corruption (Principle 3). It is also said that there is the state's obligation to provide appropriate measures to "freeze" and confiscate the property which came by corruption offenses (Principle 4) and so on.

16 Please note that there is a provision in Art. 34 in the Constitution of the Republic of Serbia which is related to the presumption of innocence and which in paragraph 3 of this Article says: "Everyone is presumed innocent for a crime until his guilt is established by a final court decision."

17 The Committee of Ministers at its session held in November 1996 adopted the Programme of Action against Corruption with the recommendation to be implemented before the end of 2000.Listen

18 The Committee of Ministers at its session held on 6 November 1997, adopted the document "Twenty Guiding Principles for the Fight against Corruption".

The Committee of Ministers on 5 May 1998 founded the "Group of States against Corruption - GRECO". This was done in order to enhance the capacity of its members to fight corruption. At the same time there were invited, both the members and non-members of Council of Europe, to join the Greco, as the body that will monitor the process of joint evolution and meeting of "20 guiding principles in the fight against corruption", as well as implementation of international legal instruments adopted through the process of adopting the Action Plan against corruption. GRECO is designed to be flexible and effective body to monitor taken preventive and repressive measures and results achieved in the fight against corruption.

Criminal Law Convention of the Council of Europe

A significant moment in the fight against corruption was made by the adoption of the Convention of the criminal law on corruption.[19]

This international document was adopted in order to improve international cooperation and development of joint anti-corruption standards in the countries signatories of the Convention, taking into account the material and procedural provisions that are closely associated with criminal acts that have features such as corruption, for example giving and receiving bribes, other undesirable behaviors such as corruption in the private sector or trading in influence. The Convention requires taking legislative and other measures at the state level in order to introduce a number of criminal acts (*numerus slausus*) to the national legislation, by each Party. Criminal liability for aiding and abetting the commission of criminal acts of corruption is introduced. It also provides the criminal liability of legal entities for criminal activity of bribery, influence trafficking and money laundering. To prevent abuse, or that there is not only liability of legal entity for corruption offenses, at the same time, or after processing of the legal entity, there should be criminal proceedings against a natural person as a perpetrator or an accomplice in the crime of corruption cases. Considering the serious nature of crimes of corruption, the Convention provides that Contracting Parties should provide effective, appropriate and dissuasive measures for individuals who commit any of the criminal acts of corruption, including deprivation of liberty that could lead to extradition. For legal entities it is necessary to determine the criminal and non-criminal sanctions including fines, and confiscation, or other confiscation of assets and income arising from the criminal acts of corruption, whose property value corresponds to such incomes. The Convention of the Council of Europe requires form the Parties to establish specialized institutions to enhance the personnel composition of the staff which is involved in the fight against corruption, which means that it is further specialized and independent in its work.

Success in implementing the Convention involves the necessity of protection of witnesses and other people who provide useful information to the court and the authorities, then the availability of special investigative techniques which are necessary for detection of criminal acts of corruption. Bank secrecy may not be an obstacle for implementation of these measures.

This international document defines the basic principles and measures for international and mutual cooperation between the signatory countries. This entails an obligation that with bilateral or multilateral agreements on extradition a solution has to be offered that extradition can be done when it comes to crimes of corruption as well. What may be the downside of this part of the presentation regarding the

19 That happened in November in 1998, when the Committee of Ministers of Council of Europe adopted this Convention.

extradition is that it is a subject of the conditions provided by law in the country of which the extradition is requested from.

The possibility that the extradition request can be denied means that there is a principle of political opportunism. The Additional Protocol to the Convention[20] was adopted in order to clarify some issues that emerged in its application.

These dilemmas are related to clarifying the term "arbitrator", "arbitration agreement" and "juror". Related to this, there is an obligation of the Contracting Parties in accordance with the domestic legal system to prescribe the criminal acts of bribery for these subjects.

It is interesting to say that beside the European countries which have ratified this Convention, there are also the United States (USA) and Mexico.

As for *other international regulations*, we will mention the Civil Law Convention on Corruption of the Council of Europe that has been adopted the same year as the criminal law which regulates the issue of civil compensation to the victims of corruption and related to this it deals with issues of compensation, then the losses incurred as a result of corruption actions, liability for acts committed by public officials (including state accountability), protection of employees who report corruption, accuracy of accounts and audit reports.

We will also show that the Commission of the European Union has in the conclusion of April 28, 1999, established a special office to combat fraud and corruption OLAF.

The European Public Prosecutor - EURO JUST was formed by the conclusion of the European Council in 2002. EURO JUST has a duty to coordinate national state prosecutors, consisting of representatives from all 27 EU countries. They coordinate co-operation and investigate crimes of corruption, since it is a socially dangerous occurrence which is opposite to financial interests and the rule of law in the EU. The OECD (Organization for International Cooperation and Development) in May 1994 adopted recommendations with which it required from the state parties to take decisive steps to prevent bribery of foreign public officials in international business transactions. After making the recommendation, a historic agreement was made, which became valid in 1997. The OECD Convention against bribery of foreign public officials in international business transactions requires from signatory countries to criminalize bribery of foreign public officials and to end the provision of tax benefits on the basis of such bribery, which apparently used to be common practice in most OECD countries. Also, the World Bank with its legal mechanisms and the undisputed economic power at the international level confronts corrupt activities of the individuals and organizations. We can say that an official policy of the World Bank on granting loans to beneficiary countries is based on condition that the legislation is used to prevent overflow of the approved funds into the private hands of local politicians. This international institution may suspend any loan when there is a contract based on the corrupt activity.

The International Chamber of Commerce in Paris has for almost 30 years been engaged in resolving the questions of bribe with a foreign element. The program for fight against corruption was adopted in the Chamber and a number of specific rules and principles were developed that are in the spirit of the goals of the OECD and other international institutions.

20 The Additional Protocol to the Criminal Law Convention on Corruption was adopted in Strasbourg on May 15, 2003 and became valid in 2003.

INSTEAD OF CONCLUSION

Through this exposure the reading public will be able to get convinced in the complexity of the notion of state law from the moment it was created at a theory to the current moment.

There is no state law if its building blocks are formally proclaimed by the highest legal act but in reality it represents a striking counterpart to the constitutionality, legality and lawfulness. In this state-legal system where a small number of people have abused power by fundamental principles of the Constitution which are based on the concept of natural rights and freedoms, so there is no rule of law. Gustav Radbruh would qualify such state and legal projects as an empire legal non-law. In legal systems of this type, corruption is a phenomenon that follows the everyday life. In state laws, which are in the part of forming or as we say in "democracies" which are in transition, corruption is much more widespread phenomenon than in states where the true rule of law is centuries old tradition. The standardization of the legal issues at the international level brought a new quality. It reflects on the variety of international cooperation in combating various forms of criminality. States members of the international community in particular, in the leading democracies are aware of corruption danger for the rule of law at the international level.

Therefore, in the future the instruments of international law will be adequate for defending the state law and its values and the fight against the corruption.

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THE ANALYSIS OF THE LEGAL GROUNDS FOR THE POLICE USE OF FIREARMS

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Abstract: The use of firearms is a police power that can lead to grievous injuries to citizens and their rights. Therefore the conditions under which police officers have the right and duty (police powers) to use firearms should be as clear as possible with no room for ambiguous interpretations. Articles 100 to 109 of the Law on Police define the conditions for the use of firearms and are considered the most complex articles in the entire Law on Police. The law maker tried to be precise by describing specific situations when a firearm can be used for the benefit of police officers. To us it appears the opposite effect was achieved. The aim of our paper is to point out some of the dilemmas in interpretation of individual articles and to come up with recommendations that would ease the interpretation of the law by police officers and bring them more in line with generally accepted legal definitions of self defence and extreme emergency.

General conditions for the use of firearms

In our legal system the conditions when a police officer may use a firearm and open fire are defined by the Law on Police[2] (hereinafter Law). According to the Law, *when acting in the official capacity police officers may use firearms only if other coercive measures fail and when it is absolutely necessary to: 1) protect human lives; 2) prevent the escape of persons caught in the act of crime (in flagrante delicto, i.e. while committing a criminal offence subject to public prosecution carrying a prison sentence of 10 years or more, if there is a direct threat to life; 3) prevent the escape of a person deprived of freedom or a person against whom an arrest warrant has been issued for a criminal offence pursuant to Paragraph 2 of this Article, if there is a direct threat to life; 4) fend off a life-threatening attack against police officers; 5) fend off an attack directed against a facility or person under police protection, if there is a direct threat to life.*[3]

Firearms can be used only as the coercive weapons in police arsenal, when the use of other means and measures of fighting crime cannot achieve desired outcome.[4] If we analyse the text from the language point of view we might get an impression that police officers may use firearms but may also choose not to do so as the law maker offers a possibility ("police officer *may use*") and not the obligation to use firearms. From a teleological point of view such interpretation is unacceptable as police officers have the right but also the obligation to exercise police powers. This opinion

1 *Student of the Academy of Criminalistic and Police Studies*
2 Official gazette of the Republic of Serbia, number 101/05 and 63/09
3 Article 100 of the Law
4 According to the paragraph 2 of the article 84 of the Law police officers shall apply enforcement measures only if otherwise it is impossible to carry out their tasks, with due restraint, and in proportion to the danger threatening the protected goods and the seriousness of the offence being prevented or combated. Analyzing the previous sentence we can conclude that the use of force is an exception, to be used only when an officer cannot achieve his task by other police powers or other actions and measures. By police tasks we refer to the article 10 of the Law. When it comes to the use of force, the use of firearms is also an exception only to be used when other levels of force cannot complete the task at hand. Therefore firearms should be used only when we can expect that other actions and measures, police powers or levels of force cannot achieve the successful end of the official task.

can be supported by the initial articles of the Law, stating that the police are responsible to maintain safety, to protect the rights and freedoms of all but at the same time they can limit individual rights and freedoms only as defined by the Constitution and Law.[5] However, the use of the term "may use" has its justification in a different context. According to the article 107 of the Law,[6] the use of firearms is prohibited when it can endanger the lives of others except in cases where firearms are the only means of performing duties pursuant to Article 100 as well as against minors except as the only defence from a direct attack or danger (paragraph 2.).[7] Also, according to the Rulebook, a police officer can open fire if a person against whom firearms may be used is fleeing towards the state border but only if he can ensure that the bullet doesn't cross the state border.[8] Without detailed discussion of individual interpretations and considerations of the creator of the Law and the Rulebook we can conclude that a police officer has the right but also the duty to use firearms to protect lives, unless he causes greater consequences in comparison to those if he has not used firearms, in accordance with the principle of proportionality as stipulated by the Law. [9]

Firearms are used in *official capacity*. Bearing in mind the duty of every police officer to undertake the necessary measures to protect lives and safety of people and property,[10] the term official capacity with regard to article 100 of the Law should include situations when lives are threatened even outside of working hours. The narrow interpretation of the official capacity cannot be justified as solely the task that was issued as a written order.

Police officers will use firearms *only if other coercive measures fail*. This legal condition should be interpreted as the right of a police officer to use firearms in cases when the use of other *available* enforcement measures (physical strength, baton, chemical agents, police dogs, etc.) cannot accomplish the task. Furthermore, under *available enforcement measures* we should assume those measures that are available to a police officer at the time when he performs his police task, excluding those measures that are so time consuming that they endanger the successful completion of the task.[11]

5 Article 1 of the Law

6 More in paragraph 1 article 19 of the Rulebook on the use of force, Official gazette of the Republic of Serbia number 19/07 and 112/08, (hereinafter Rulebook).

7 This limitation on the use of firearms appears clear at first. In further interpretation it can lead to certain problems. According to the article 100 of the Law firearms can be used only if other enforcement measures fail and when it is absolutely necessary to complete one of the tasks in items 1 to 5. However, article 107 states that a police officer will give up the use of firearms in these cases (if he endangers other lives or minors), except if that is the only means to complete tasks article 100. (defence from a direct assault or danger). Interpreting article 107 in correlation with article 100 we cannot draw a reliable conclusion on the logical connection between these articles unless we take into consideration article 84, paragraph 2 of the Law and the order of primacy defined as „other ways", the use of force except firearms and than ultimately firearms. It is clear that inconsistencies between these articles can lead to other conclusions. Moreover, article 107 of the paragraph 1 deals with means while paragraph 2 considers the ways (methods). Semantically speaking, in this context, other ways include other means - other means are one of other ways (methods). Finally, from a legal standpoint an interesting situation would develop if firearms were used on a minor, in circumstances where such use could endanger the lives of others. Moreover we find it unacceptable that a minor's life is more valuable than the lives of others solely for the fact of its young age (especially keeping in mind that the minor in question is endangering the lives of others).

8 Paragraph 2 article 19 of the Rulebook. Although we understand the reason for this definition we consider it to be problematic. Our opinion is that it is not legitimate to give up the use of firearms to protect lives solely for the reason that a bullet could cross the state border. This stipulation disregards the hierarchy of values we protect at the top of which there is the life of every human being.

9 See article 36 of the Law.

10 See article 13 of the Law.

11 The possibility that other (available) coercive measures cannot accomplish the task should not be interpreted abstractly. While it is possible to use other coercive measures but in a specific situation the use of other coercive measures would endanger the successful outcome of a police task. For example, if a police officer or a citizen was assaulted with a metal crowbar the police officer could use his baton to defend himself or others. But due to time required to prepare and use his baton, if the police officer has already drawn his firearm the use of firearm should be considered justified.

Use of firearms to save lives (Article 100, item 1 and article 101 of the Law)

Firearms will be used if it is absolutely necessary to protect human lives. This condition relates to the situation of self defence. Criminal Law[12] additionally defines that the self defence has to be necessary and the assault has to be immediate and unlawful, which is not in conflict with the Law. Firearms will be used only when it is *absolutely necessary* to protect human lives.[13]

According to the article 101 of the Law, life threatening assault has to be *direct*. Criminal Law in the section on legitimate self-defence explains the term of *immediate* assault. Assault is immediate if it has started and is still ongoing or when it hasn't started but is forthcoming. Direct assault is always immediate. Direct assault actually assumes that it is happening at the same time it is being observed, but also represents something more as it covers the space where assault is taking place as well as the time of assault. We can conclude that assault is to be considered direct only if, apart from being immediate, it comes from the source that is near the object of the assault and the object of the assault is directly exposed to the assault. Immediate and therefore direct assault is in line with the previous condition stipulating the use of firearms only when it is absolutely necessary for protection of lives. Defence from direct assault will require the use of firearms because if the firearms are not used we can reasonably expect lives will be threaded with the assault. It is often not possible to avoid direct assault and most frequently it is only possible to defend from it. Future assault that hasn't started and is not immediately forthcoming is the assault that could be avoided. It is clear that in this case there is not absolute necessity to use firearms.

The use of firearms will certainly be justified if it is used for the defence from an immediate *unlawful* assault threatening human lives, and that is every assault that is not self defence or extreme emergency. The question is raised whether the use of firearms will be justified if a police officer defends himself from immediate assault that is not unlawful. This question, as customary in criminal law, should be solved on the level of mistake of facts (error facti). If a police officer were in a situation of irreversible mistake of facts about circumstances (that the assault is unlawful) what would, if they existed, make the use of firearms allowed, the use of firearms would certainly be justified (allowed). Irreversible mistake of facts in this context is such a mistake of facts where a police officer, based on circumstances of the case and the urgent need to react, neither has the duty nor the possibility to avoid the mistake of facts on important circumstance (that the assault is unlawful). This mistake of facts nullifies criminal responsibility in criminal law; therefore it is logical that in a case like this the use of firearms will be legal. All legal conditions for the use of firearms are assessed by a police officer before he uses firearms and he is held responsible for his assessment.[14]

If we consider article 101 of the Law, under assault as mentioned in item 1 article 100 we assume assault by humans. However, beside humans, the lives can be threatened by animals, natural or mechanical forces, radiation, etc. These forms of assault are usually not treated as assaults in criminal law but as *dangers*. For that reason item 1 should not be limited to situations of self defence but also extreme emergency. If we strictly interpret the meaning of article 101 in relation with item 1 article 100 of the Law, it is not clear how to interpret the use of firearms by a police

12 Official gazette of the Republic of Serbia, number 85/05, 88/05, 107/05 and 72/09

13 Strictly speaking the law maker has made a mistake in this paragraph stating that firearms will be used in order to save lives (plural). In our legal terminology this represents a group of 5 people or more. For this reason we should not interpret the Law from a strict language point and assume the protection of life of one or more persons, in line with the Article 101 of the Law.

14 Paragraph 2 Article 31 of the Law

officer to protect lives from dangers not originating from a human.[15] The life of a person protected by the use of firearms doesn't have to be threatened only by unlawful assault by a person (only assault by a person is unlawful and considered assault in self defence cases), but it could also be threatened by other dangers. The interpretation of these articles should be extensive, limited by the general goal representing a teleological approach to interpretation.

The use of firearms in the prevention of the escapes of persons caught while committing a criminal offence (Article 100 item 2 and article 102 of the Law)

Interpreting article 100 item 2 and article 102 of the Law we can conclude that the *aim of the use* of firearm is to prevent an escape. Therefore a police officer will open fire to prevent the escape of a person caught in the act while committing a serious crime and when lives are threatened. This condition is a narrow (special) condition compared to the item 1 article 100 of the Law. Logical and language interpretation of the items 1 and 2 of the Law leads us to conclude the following: police officers can use firearms to prevent the escape of a person committing a serious criminal offence if there is an immediate threat to lives. If a police officer caught a person in the act while committing a less serious criminal offence (subject to public prosecution carrying a prison sentence up to 10 years), and lives were immediately threatened, a police officer would not have the right to use firearms.[16] Teleological interpretation of this section of the Law, in relation with item 1 or 4 article 100 is as follows: even though it is a less serious criminal offence if there is an immanent threat to lives conditions in item 1 or 4 article 100 would be present (use of firearms to protect lives or to defend from a life threatening assault against the police officer). This is, without a doubt, acceptable solution, but from a legal dogmatic point of view leads to a problem known as *circulus vitiosus* (vicious circle).

The biggest objection to this section of the article is that it specifically lists the need to prevent the escape of offenders caught in the act as the reason to use firearms.[17] To us it appears the law maker doesn't clearly define the aim of the use of firearms. If the aim of the use of firearms is to prevent escape then surely there is no need to add additional condition of an imminent threat to lives.[18] If the aim

15 The use of firearms and opening fire on animals is defined separately in article 109 of the Law, also discussed in greater detail in this paper. However, for example, if a police officer opens fire at a door lock, to protect a person from fire, flood, or similar circumstances, it is unclear if it should be considered the use of firearms as defined by the article 100 of the Law (has no ground based on the present legal concept) or situation of extreme emergency as defined by the Criminal Law. It is our opinion that these cases should be considered as the use of firearms, based on article 18 of the Rulebook that defines when the use of firearms in not considered the use when opening fire in the air to call for help, issue warning or signal, not any other preventive use of firearms without opening fire. What follows is that the use of firearms is considered every other opening fire "pointed" at persons, animals, objects, etc. Again, we stress the need to harmonize the institute of self defence and extreme emergency with conditions for the use of firearms.

16 This conclusion, at first unacceptable, comes from the rule that exceptions should have a narrow interpretation (exceptionis sunt strictissimae interpretationis).

17 It appears the law maker, in situation described in item 2, wanted to apprehend and arrest the person committing a crime at all costs. For that reason he gives the right to use firearms if it is not possible to arrest him with other means of enforcement.

18 If we had to choose one of possible two interpretations of legal articles on the reason for the use of firearms, we would say the aim for the use of firearms in this case is to prevent the escape of a person caught in the act committing a criminal offence. But in this case we find the following problem: how can we observe as equal an individual's right to life with the interest of the state to secure his arrest? As firearms are lethal weapons we should not look for the answer that a police officer should take care to fire non lethal shots, especially looking at legal safety of citizens and police officers. Here, as in many other instances when it comes to law interpretation, there are two distinct opinions (allow the use in order to prevent escape or don't allow). The law maker has chosen a middle-way option. He allows the use of firearms to prevent escape but only if there is an immediate threat to lives. He has chosen the possible but not legally justifiable higher efficiency in prevention of escapes over the highest standards in the protection of human lives

is to protect their own or lives of others then this definition should not exist due to items 1 and 4 of the article.

The use of firearms in the prevention of the escapes of persons deprived of their freedom (Article 100 item 3 and article 103 of the Law)

As in the previous case (item 2), in definitions in articles 100 item 3 and article 103 the Law states the *aim of the use of firearms* is to *prevent escape*.[19] Here the person is, as the Law defines it, legally deprived of freedom (arrested) or, based on a warrant, should be arrested. If the person has already been arrested the Law defines that the arrest has to be *legal* for firearms to be used. An isolated interpretation of this legal formulation, which is the result of the law maker's wish to be precise, could lead us to logically accepted and yet incorrectly conclusion: firearms can be used to prevent escape of a person previously arrested and only if the arrest has been legal, performed by the police officer and deemed legal by the police supervisors or court of law. But this interpretation is based on a too narrow interpretation of legality. Legality is also objective category, it exists or it doesn't. This doesn't diminish the importance of validation of legality but by law validation of legality is not solely in jurisdiction of a police officer and/or court of law. Article 31 paragraph 2 of the Law defines that a police officer, prior to using force, has the duty to evaluate if all legal conditions are fulfilled for the use of force and holds him responsible for this evaluation. Further, at first logical but incorrect, the conclusion that if a person escaping was arrested unlawfully, even if there is a threat to lives, a police officer has no right to use firearms. However, this interpretation of item 3 article 100 is not correct as in this case (unlawful arrest) we can relate to item 1 article 100 of the Law setting the "condition of all conditions" – imminent threat to lives.

If a person is yet to be arrested, according to the Law, the arrest warrant has to be written.[20] Logically concluding, if we isolate the legal text of item 3 article100 and item 1 article 103 we can say firearms cannott be used if a person has to be arrested without the previous written warrant, even if the legal requirement for arrest has been fulfilled. However, this interpretation will be unsupported and incorrect, as it disregards the legal solution in item 1 article 100 of the Law that can be applied when there is no written arrest warrant or any other order for that matter.

The next questionable definition by the law maker is the fact he listed the *order for summons* in article 103 of the Law. This makes it unclear if this section of the article 103 expands the situations when a police officer can use firearms (firearms can be used to prevent escape of the person that has to be summoned), which is clearly unjustified and incorrect. In our opinion this formulation of the article 103 should be interpreted solely in the context of item 3 article 100 of the Law meaning the order of summons refers only to the arrested person (person being summoned by the arrest order).

The same article further states *warrant* for the arrest and summons has to specifically *state the fact that a police officer will use firearms to prevent escape of that person*. This declaration leads us to conclusion that firearms cannot be used if the

(right to life).

19 The same remark is valid as in the previous item 2 of the same article, relating to equality between the right to life of arrested persons or persons that should be arrested and the interest of the state to ensure the presence of such persons in pre criminal or criminal proceedings. Of course other remarks we have mentioned are also valid, referring to narrow interpretation and circulus vitiosus.

20 We conclude that, based on the rules of interpretation of existing legal definitions, it would be a written warrant based on article 103 of the Law („the warrant for arrest, or summons specifically states a police officer will use firearms to prevent the person from escape…").

warrant specifically doesn't mention them as described. It is especially important here to pay attention to the following: if the warrant has to state that firearms may be used to prevent escape it unequivocally means that this Law gives the right to the commanding officer of the police officer using firearms to issue an order that the police officer can use firearms to prevent escape of a person without stating the limitation that firearms may be used only in circumstances of an imminent threat to lives.[21] If an imminent threat is assumed we would once again have *circulus vitiosus*, and the entire item 3 as well as article103 of the Law would be redundant. Yet we consider it is better to support that interpretation (as redundant articles), than to strictly interpret these, by all accounts, inconsistent legal definition.

The use of firearms to fend off a life threatening assault against a police officer (article 100 item 4 and article 104 of the Law)

A police officer has the right to use firearms if it is absolutely necessary to protect himself / herself from a life threatening assault. The assault has to be such (in intensity, with objects, at a place, time of assault, number of subjects and other circumstances) that can endanger a police officer's life. This clearly represents the situation of self defence. A police officer has the right to use firearms even though it is not defined by the item 4 article 100. Linguistic (but also logical and teleological) interpretation of item 1, referring to the use of firearms to protect lives, could easily include the use of firearms to protect his own life.[22] Yet the existence of this separate condition is not a problem.

The Law defines what is considered by assault on a police officer by firearms and clearly defines what is considered to draw the firearms and what an attempted drawing is. It is absolutely justifiable to assume that an assault has started at the moment a person has attempted or drawn firearms and from this moment a police officer has the right to use firearms, in accordance with the terms immediate and direct assault (assault started and is ongoing or *assault that hasn't started but is immediately forthcoming*). We also hold the opinion that similar line of thought should be followed in cases where assault is committed with other dangerous items (objects). The moment that is considered as the start of the assault should be moved to the moment when the item is ready for use (assault) and a police officer can still fend off the assault without great difficulty.

Fend off an attack directed against a facility or person under police protection (article 100. item 5. and article 105.of the Law)

Here the aim of the use of firearms is to defend oneself from a direct assault against a facility or a person under police protection. In principle all remarks on unjustified equality between the right to life of a person (assailant) and defence of facility and *circulus vitiosus* we have presented when discussing items 2 and 3 from the article 100 are valid. Furthermore, it is easy to notice that defence of a person under police protection, without specific definition in the item 5, could be regarded as the protection of human lives as defined in item 1 article 100.

21 This interpretation is supported by paragraph 2 article 103 defining that, before following thought on arrest warrant or summons, a police officer will warn the person in question that he will use firearms if the person attempts escape.

22 Based on present concept, item 4 will be valid if firearms are used to protect a police officer's life and item 1 if firearms are used to protect lives of others (other citizens or other police officers).

The use of firearms in pursuit of naval vessels and on animals (Article 108 and 109 of the Law)

According to the article 108 of the Law if it is necessary to stop a naval vessel on internal waterways the police can use firearms to prevent escape, stop and escort the vessel to the authorised institution only if it is not possible to do so by other measures available.[23] Other measures, according to the Law, could be a verbal warning and warning shots fired across the bow of the vessel if the shots will not endanger others. When shots are fired at a vessel as a final measure the police will do so making sure they protect the lives of persons on the vessel and in the line of fire. Firearms will not be used if they endanger lives and if they are not necessary to preserve or protect lives.[24]

The aim of the use of firearms is therefore to stop a vessel (prevent the escape of persons on/in a vessel) chased on internal waterways. Firearms may be used only if the vessel could not be stopped with other, available, means and under condition the firearms do not endanger the human lives.[25]

The u*se of firearms on animals* is regulated by article 109 of the Law and article 21 of the Rulebook. According to the Law firearms may be used on animals only if they represent a direct threat of assault on life and limb or endanger the life or health of people (contagious diseases and similar). Firearms may also be used on sick and injured animals when a veterinarian or some other person cannot take appropriate measures.[26]

The use of firearms on animals when they present a direct threat to lives is already covered by the item 1 article 100 of the Law if it were modified as suggested. However, here a police officer is granted the right to use firearms not only to protect lives from a direct threat from an animal but also to use firearms if there is a direct danger to a limb, i.e. there is a danger that an animal will endanger the health of people. In our opinion, it is acceptable to lower the conditions for the use of firearms in this case as the use is not targeting humans but animals. It would not be legitimate to insist on equal conditions for the use of firearms on humans and animals, especially bearing in mind the dangers and consequences certain animal species can represent to humans. Firearms will be certainly used on animals as an ultimate means, when other measures can't complete the official task (defence from a direct assault, removal of the danger), which is in line with the principles of proportionality and gradual use of force and the lowering the threshold for the use of firearms has a lower limit.

The Law also allows the use of firearms on sick and injured animals, when a veterinarian or some other person cannot take appropriate measures (for example the

23 In our desire to be precise we would like to indicate a language error in this provision of the article. The law defines that the police will use firearms to prevent escape, stop and escort the vessel to the authorized institution. It would be linguistically more correct to say that firearms will be used to prevent escape, stop and escort the persons on a vessel to the authorized institution.

24 See article 20 of the Rulebook.

25 Here the law maker makes a clear distinction between two things: an interest to stop a vessel (to prevent escape of persons on a vessel), is the reason he grants the right to use firearms (here firearms are used to open fire not on the persons on a vessel but on a vessel with the aim to stop, damage it and prevent escape of the persons on a vessel), and the interest of protection of life (of persons on a vessel and those in the line of fire), which present a priority, clearly visible in the definition that firearms will not be used if the use endangers lives or if it is not necessary to save or protect lives.

26 If firearms are to be used on sick and injured animals, the consent of the owner or a veterinarian is required or only a veterinarian if it is not possible to request the owner's consent or the animal doesn't belong to anyone. Firearms may be used on animals as property if the treatment is painful, with uncertain outcome and takes a long time or if the animal is contagious or in agitated state due to pain and could endanger lives o limbs or the animal is dangerous to the environment due to terminal illness or contagion. (See articles 21 of the Rulebook).

veterinarian cannot put the animal to sleep as he fears the animal might attack him in agitated state induced by pain). Although it is not obviously visible, these articles also deal with the use of firearms on animals in order to remove dangers for life and limbs originating from an animal the firearms are used on. In this case we find it logical that firearms should be used after a request was submitted by a veterinarian or other persons indicating the reasons they are requesting police assistance.

CONCLUSION

Articles 100 to 109 of the Law regulating the police use of firearms were created using and innovating on the earlier (traditional) definitions in the law on internal affairs and other regulations (articles 100 to 107 of the Law) and introducing new definitions that did not exist in earlier law on internal affairs and other regulations (articles 108 and 109 of the Law). Traditional definitions were drawn mostly from police practice and less from the concept of human rights, expressed in more literal and less precise definitions.

When the Law was developed, enacted at the end of 2005, the starting point in creation of the articles we have discussed was, without a doubt, the European Convention for the Protection of Human Rights and Fundamental Freedoms.[27] It is clear the law maker did not want to abandon traditional definitions but tried to increase the guarantees of human rights in each of definitions. In other words, in all typical cases (situations) of the firearm use on humans the existence of direct threat to lives is required. The end result is that wording used in definitions is debatable and we have tried to present our view and critique, albeit in a brief form.

Expecting the partial or complete replacement of firearms with non lethal police weapons, announced long time ago and limited with possibilities of modern technology and determination of the state to give up on "equality of arms" with crime groups and other neutral firearms owners, it is necessary to improve the efficiency of the police work and legal safety of police officers on one hand and keep the level of protection of human rights on the other hand. To accomplish this, the law maker should use complete and precise legal norms regulating the use of firearms.

Supporting the opinion that each individual has equal rights to life, except when in the protection of that right it is absolutely necessary to use firearms to protect the life of a victim from the assailant (so called aimed lethal shot), without pretensions to present the final legal definition in this paper, we note that in future modifications of the articles of the Law regulating the use of firearms the present articles should be summarised into two basic legal norms. The first one should relate to the use of firearms to protect lives and the second one on the use of firearms for all other purposes. Draft of these norms should be:

When performing in official capacity a police officer will use firearms and open fire on a person only if he cannot use other coercive measures to defend himself from a direct assault from a person firearms are used on and the assault is life threatening.

In addition to opening fire on a person, a police officer, when performing in official capacity, will use firearms only if he cannot use other coercive measures to: 1) prevent the escape of a person caught in the act of crime prosecuted by public prosecution or an arrested person or person with an arrest order, under condition the use of firearms

27 See article 2 paragraph 2 European Convention for the Protection of Human Rights and Fundamental Freedoms. Convention is ratified with Law on ratification of European Convention for the Protection of Human Rights and Fundamental Freedoms (Official gazette of Serbia and Montenegro – International contracts, number 9/2003, 5/2005, 7/2005 – and Official gazette of the Republic of Serbia – international contracts, number. 12/2010).

does not endanger lives; 2) remove a direct danger from an animal attack if an animal is endangering life and health, under condition the use of firearms does not endanger lives; 3) protect the property or other legally protected goods in such a way that the use of firearms does not cause consequences greater than if the police officer have not used firearms.

We hope that we have opened some of the questions with this brief paper, and expect that in the near future both public and expert interest in the subject will increase. If so, our paper will fulfil its purpose.

SECURITY DIMENSIONS OF CONTEMPORARY TRENDS OF HUMAN TRAFFICKING

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Abstract: The paper gives a review and presentation of the general picture of the phenomenon of human trafficking, i.e. the security dimension, the general trends and factors that generate this phenomenon, which is a contemporary problem of every country.

Human trafficking is a transnational criminal phenomenon that is controlled by global organized crime-networks for the realization of large profits. Authorities in the countries and international organizations are taking measures and activities to prevent human trafficking, and criminal organizations are a step ahead of them and always adapt their methods of operation of the existing conditions in the country and find new ones. Besides being a dangerous and worrisome phenomenon, which includes a diverse range of victims' exploitation in violation of the universal human rights, it also represents a dangerous challenge for the national and the international security.

Scientific approach in considering the security aspects of contemporary trends, should contribute to detection, prevention and involvement of all competent authorities to combat this evil.

Key words: human trafficking, contemporary trends, factors, security dimension, criminal networks, organized crime, victims

Determining the concept of human trafficking

We live in a time full of challenges, a time of rapid change, uncertainty, here and abroad. Contemporary living brings many problems, criminal activity, such as various types of trade, which leave different consequences, in particular the phenomenon of trafficking with human beings causes serious consequences to life, safety and rights of victims. Human trafficking has become a global phenomenon. The public recognizes that it is an increasingly prominent theme, most often addressed from two aspects: in terms of human rights and in terms of combating organized crime. Human trafficking is undertaken and controlled by organized transnational, criminal networks, and it is because they are making large profits, that human trafficking is a highly-while low-risk form of criminality. Europol says that global human trafficking is a business with values from 8.5 to 12 billion Euros.[1]

Human trafficking is an uncomfortable and worrisome phenomenon which includes forced sexual exploitation, labour exploitation in conditions similar to slavery, trafficking in human organs, exploitation of begging and juvenile delinquency and domestic violence. It will not be exaggerated if we say that this phenomenon represents a version of slavery in 21st century and it is one of the most serious forms of abuse of basic human rights of the victim. International documents related to

1 taken from www.europol.eu.int [retrieved on the 10.01.2011]

this outbreak highlight the need for international cooperation and elevate the level of responsibility of each state.

The term "human trafficking" is present in society throughout its history. In the past, the term "human trafficking" was mentioned as something that existed throughout the history of class society, depending on the nature and development of social and economic relations are changing their phenomenological shapes and forms of emerging. This clue is found in many international documents constantly complemented according to new findings and the dangers posed by this phenomenon.

Human trafficking means trafficking in persons and their misuse by criminals for profit. Nowadays, human trafficking is so common it is the third most profitable criminal activity in the world, just after illegal drugs and arms. We cannot equalize trafficking and smuggling. Smugglers, in exchange for a monetary amount, allow illegal entry into a country, but after the arrival to a particular place the smuggled person is free, unlike the victim of human trafficking, who is converted into a facility and is trapped. Human trafficking is an international crime and therefore governmental and nongovernmental organizations worldwide adopt policies and strategies to combat human trafficking.

Which factors generate this phenomenon?

The process of globalization tightens and aggravates many of the old problems of international security and cause new risks and challenges. Those are terrorism and separatism, national, religious and other forms of extremism, human trafficking, drug trafficking and organized crime, regional conflicts, the threat of proliferation of weapons of mass destruction, financial and economic crises, environmental disasters and epidemics. All these problems existed before, but in an era of globalization when the world becomes more connected and interdependent, they rapidly gained a universal character and become a real threat to regional and international security.[2]

Once the organized trafficking will find a suitable ground within a country or region, it grows rapidly and presents a risk for strategic stability and the future of the country. Once it is established, the network traffic associates itself with other existing criminal organizations that hold other spheres of influence in the criminal market, such as terrorism, drug trafficking in arms.[3]

Although many countries in the world long ago eliminated slavery, human trafficking has become one of the activities of organized criminal groups that have proved highly effective in breaking into countries and regions that are depleted by the wars, armed conflicts and badly managed transitions. Surprising is the fact that traffickers make choices about which countries will serve as a source of people to trade according to three main factors[4]:

1. Poor economic opportunities and chances for employment of people;
2. Well defined and organized crime networks;
3. Culture that emphasizes the subordinate role of people in society, i.e., hopes for a better economic life, well-paying jobs and so on.

When it comes to matters affecting the security and democratization in transitional democracies, they take a central place in organized crime and corruption.

2 more of this: Милошевска, Т., Безбедносни аспекти на трговијата со луѓе во Југоисточна Европа
3 Stability Pact for South Eastern Europe, Development of Anti-Trafficking training module for Judges and Prosecutors, International Center for Migration Police Development, April 2003
4 Лајман, М., Потер, Г., Организиран криминал, 4 издание, Магор, Скопје, 2009, стр. 209-210 / Layman, M., Potter, G/. Organized crime, 4th edition, Magor, Skopje, 2009, p. 209-210

Numerous experts have recognized the growing link between trafficking and organized crime. Even in situations where criminal groups are not directly responsible for trafficking abroad they often provide and protect operations. The inclusion of "Mafia" dramatically increases the danger and challenges for those who are willing to get caught in the grips with trafficking, but increases the price you have to pay the price to be paid by society if allowed to continue this practice.

The second very important issue of the security concerns of the phenomenon is trafficking in post-conflict areas. Political, social and economic dislocation, as previously stated, supplemented by numerous international presences helped in Bosnia and Herzegovina to create conditions where human trafficking flourishes. Kosovo is a similar danger and challenge. Several member states and NGOs in order not to "repeat Bosnia" urged the OSCE, as part of his wider role in the Stability Pact, to confront human trafficking in Kosovo.[5]

The issue of trafficking takes enormous proportions in the area of Southeast Europe (Balkans). Among the reasons that the Balkans is a reference case of human trafficking is a progression from a state of conflict in post-conflict situation and the transition in these countries.[6]

The following factors have been identified as the most common causes of human trafficking in Southeast Europe:

- The transition to a free market economy
- Opening of borders
- Development of the "black market"
- The wars in former Yugoslavia.

Human trafficking is an extremely important phenomenon and it should particularly be taken into account, since it has the potential to undermine and destroy the democratization process, the value system of the state and the concept of human rights, to undermine efforts to reform the institutions to encourage corruption and threats to the peace process and strengthening the rule of law and the smooth functioning of state law.

General trends

Human trafficking, sometimes primarily concentrated in certain regions of the world, and today under the pressure of globalization, is linking many remote regions. In that sense, it is evident that human trafficking has become a concern as in the national and international systems of control.[7]

According to the UN estimates, human trafficking has become the "third largest business in the world, which creates a profit of about approximately $ 9.5 billion annually. It is closely linked to money laundering; drug trafficking, document forgery and smuggling of people.[8]

5 ОБСЕ, Трговија со човечки суштества: импликации за ОБСЕ, Оценувачка конференција, Варшава, Полска, 1999, стр. 33 / OSCE, Human trafficking: OSCE implications, Assessing conference, Warsaw, Poland, 1999, p. 33

6 more at: Неткова, Б., Превенција на трговијата со жени и градење на мирот во Македонија, Фридрих Еберт, Скопје, 2004/ Netkova, B., Prevention in human trafficking with women and building the peace in Macedonia, Fridrich Ebert, Skopje, 2004

7 Albrecht, H., Trafficking in Humans-Theory, Phenomenon and Criminal Law based responses, Max Planck Institute for Foreign and International Criminal Law, Freiburg, available at: http://www.umn.edu/humanrts/svaw/trafficking/law/index.htm [retrieved on the 20.11.2010]

8 U.S. State Department, Trafficking in Persons Report, June 2005, available at: www.state.gov/g/tip/rls/tiprpt/2005 [retrieved on the 15.12.2010]

The true scale of trafficking, however, is not known. Due to the underground and illegal nature of the activity reliable statistical data could not be obtained. Obstacles are the lack of data collection and their research, as well as numerous and varied definitions of the term "human trafficking" who use different sources. In addition, the number of victims of trafficking who are willing and able to tell its experience to the police is very small. Estimations of the NGO, as a result of all this, are significantly higher than those coming from official sources.[9]

Despite the lack of precise and specific data, most sources agree on some basic trends[10]:

- Women and girls who are targets of traffickers often come from different developing countries of Latin America (Colombia, Brazil, and Dominican Republic), Asia (China, Thailand, Vietnam and Philippines) and Africa (Nigeria, Morocco). From the developed countries, trafficking is mostly present in the Netherlands, Belgium, Germany, Austria, Switzerland, Italy, Spain, Greece, Turkey, United Kingdom, Sweden, Denmark, Finland, Norway, Canada, and USA.
- Since the early 1990s, a growing number of victims of trafficking come from Central and Eastern Europe and newly independent countries: the Russian Federation, Ukraine, Poland, the Baltic states, Albania, Czech Republic, Hungary, Slovakia, Romania, Bulgaria, countries of former Yugoslavia, Moldova, Georgia, Armenia and Azerbaijan.
- A new trend in human trafficking is that as the destination of the victims more and more appear the Western states, but also Turkey, Israel, United Arab Emirates, Thailand, Japan and North America.
- Member resources for victims of trafficking are increasingly becoming transit countries, and countries and purposes. Many Western countries are also transit countries. For example, the Schengen Agreement, which provides free movement, allows traffickers once they are found within the European Union, the relative freedom to transport people to other destinations in the EU. Canada is a destination and transit country on the way to the United States.
- Most women and girls from Central and Eastern Europe and newly independent states traded, are under the age of 25 years, and many of them are between the ages of 12 and 18.

As a special trend in human trafficking to be emphasized is child trafficking for sexual exploitation. It is a phenomenon that is increasingly becoming a growing international problem. There has been significant and dramatic increase of U.S. citizens abroad for there to have sex with children. These children are often caught in the networks of human trafficking and one has repaid the expenses incurred for them. Sometimes it happens for one to be kidnapped and sold into prostitution, but the most disturbing fact is that most children who are forced into prostitution, in fact, are sold to traffickers by their parents.

Human trafficking in the world in the future is expected to be a booming industry of organized crime, especially because it is a highly profitable business, little risk of detection and relatively small number of terminations in criminal court proceedings.

9 ОБСЕ, Трговија со човечки суштества: импликации за ОБСЕ, Оценувачка конференција, Варшава, Полска, 1999, стр. 18 / OSCE, Human trafficking: OSCE implications, Assessing conference, Warsaw, Poland, 1999, p. 18

10 ОБСЕ, Трговија со човечки суштества: импликации за ОБСЕ, Оценувачка конференција, Варшава, Полска, 1999, стр. 18-21/ OSCE, Human trafficking: OSCE implications, Assessing conference, Warsaw, Poland, 1999, p. 18-21

Safety aspects of the human trafficking in Macedonia

The beginnings of human trafficking in South Eastern Europe date from the early nineties, a period in which Macedonia is covered in small percentage. The Macedonian state and the problems caused by trafficking escalated in mid-nineties, i.e. from 1998 when the Ministry of Interior Affairs have taken extensive action to detect carriers of this type of crime, organized criminal groups or networks and their internal structure, then the internal and international linkages, the channel for illegal transfer of persons, objects that are used to transfer people and performing prostitution.

Based on the analytical insights about developments in this area of crime derived from conversion and operational considerations, one can conclude that the subject of human trafficking are young girls and women originating from countries belonging to the former socialist bloc countries such as Moldova, Romania, Russia, Ukraine, Bulgaria and others who illegally entered or imported into Macedonia, and part accomplished legal entry into the territory of our country. That means that in Macedonia, trafficking with women for sexual exploitation is prevalent. According to the findings, some women who illegally enter the Republic through organized channels are transferred to Albania or Greece, where , at a price, they are sold to nationals of these countries, and some are further transported to Italy and other Western countries. Otherwise, in recent years, most commonly used channel for illegal transfer of foreign nationals from Romania through Serbia to Macedonia.

Many of the women who entered illegally remain in Macedonia, where by means of various false promises of employment in catering facilities they are fed into the chain of their illegal sale of pimping and prostitution. Apart from the foreigners, there have recently been registered Macedonian citizens, often children, who pander into prostitution and become the subject of illegal trade. According to observations, the incidence of trafficking in women and seducing them into prostitution is the most typical of the west area of the country (Tetovo, Gostivar, Struga and Ohrid), so according to the Ministry for Internal Affairs special emphasis was placed on the controls of catering facilities in these areas, which are differentiated as places in which the forced prostitution flourishes, but this phenomenon to a lesser degree represented in the eastern part of Macedonia.

Based on analytical considerations, in most cases such crimes are committed by owners of restaurants in the area of Tetovo, Gostivar, Struga, Kicevo, Ohrid, then Kumanovo, Skopje and Strumica, for the purpose of acquiring unlawful property gain. They provide shelter or embrace foreigners for exploitation through prostitution, forced labour or servitude in their restaurants, where they work as dancers, while they provide sexual services to other facilities in the area. The owners of catering facilities sometimes try to resell each other the "merchandise", i.e. the victims of human trafficking, and in one case in January 2003, because of the disagreement among them regarding the sale of foreign nationals, they attemped a forcible kidnapping; they were armed and there was a shootout in which three foreigners were killed and one injured. These conditions indicate the severity of the occurrence of particular brutality in the behaviour towards the victims of trafficking.

In order to prevent illegal phenomena with elements of organized crime in Macedonia in the past few years continuous activities in the field of human trafficking were undertaken, and according to the programmed priorities, these activities are particularly intensive in the past ten months when they reached a high level of organization and efficiency in the detection of such acts. Parallel to this, continuously implemented activities aimed at creating a national strategy for prevention of trafficking for the modernization of national legislation in order to create a legal

basis for effective struggle improving the conditions and possibilities for assistance and support to victims of trafficking, their return and reintegration, and education and professionalization of the professional staff, and creating conditions for successful international cooperation and coordination in detecting carriers of this type of criminal activity.

The Ministry of the Interior has initiated constitutional and legislative changes aimed at improving the existing legislation, asking for the introduction of special investigative techniques, and supported the reform of criminal legislation that provides for criminal liability of legal persons for participation in acts of organized crime, including human trafficking, then the confiscation of property and proceeds acquired by executing the crime and international cooperation for execution of the measure of confiscation of property and incrimination of the smuggling of migrants and witness protection and promotion of international legal cooperation in this Plan (international joint investigation teams, hearing witnesses via video link and video conference).

Human trafficking through legal and illegal channels

Criminal organizations that deal with trafficking for crossing borders and transportation of their victims in many countries, for further exploitation often use a combination of legal and illegal channels and strategies. The line between legal and illegal entry is often blurred because traffickers use more roads to transport the victims by using travelling stations, safe houses, special vehicles and so on.

In situations when a victim wants to be transported in a given country and thereby to use the legal channel, retailers need any documents, whether forged or genuine that will enable safe crossing. The ability to obtain documents that appear genuine has always been exploited by all types of criminal organizations. Passports that meet the needs can be made in four ways[11]:

1. Parts of the original passport physically changed (usually by replacing the photograph, by inserting a page with a visa or biographical data) to correspond with the desired passenger requirements.
2. Whole passports or visa pages falsified.
3. Obtained original passports using stolen or illegally obtained identity documents.
4. Original passports, stolen or obtained in the black market are used by criminal organizations that take the identity in the passport.

In making these fake passports, they need quality paper, latest printers and modern, sophisticated computers for graphic design, laminating machinery which results in excellent passports that can rarely be detected at first glance.

Besides the use of legal channels for transportation of victims, criminal organizations very often exploit illegal actions and they achieve their goals. Frequently used strategies are those that are going on by land, water and air. When travelling by road, the advantage is taken of border crossings that are illegal or poorly secured, hardly accessible, but still useful for traders. They also persuade drivers and take advantage of their transportation services. If necessary, transportation is performed by sea takes although it takes more preparation and planning, because it is necessary to ensure that ships will are ready to travel the high seas. The traders often place their victims aboard large cargo ships or in containers carrying certain goods subject to weaker control. Rarely used, but worth mentioning, is transport

11 Шелдон, Џ., Шверц и трговија со луѓе - сите патишта водат кон Америка, Академски печат, Скопје 2009, стр. 58 / Sheldon, J., Human trafficking and smuggling, 4th edition, Magor, Skopje, 2009, p. 210

by air, which is quite expensive and requires a lot of preparation and sophisticated procedures for implementation.

Traffickers often use a combination of these methods depending on their needs and ultimate destination. Relying on well-made networks and corrupt officials in various countries, transport proves to be quite successful.

Spectrum of organized criminal networks

Criminal groups that deal with human trafficking are relatively small organized criminal entities that operate as loosely connected networks. Since the influx of people that trade is permanent, their sales quickly turn into a major source of revenue for a number of organized criminal networks.[12]

Through another organization that carries out human trafficking, criminal organizations are able to maximize the expected gains and to minimize the risk of punishment, and it is a process similar to the behavior of any legal entrepreneurial activity.[13]

The activities of human trafficking are affecting almost all countries of the world, classified as countries of origin, transit or destination, but the level of involvement by criminal organizations varies. Criminal groups involved in human trafficking may be ranked within a range from less to more transnational and organized.

At the lowest level are the traffickers - amateurs, representing individuals trading with one or two people and exploiting them for private purposes. Occasional traffickers receive small amounts of funds and are often involved in the phase of transport. They are usually the owners of taxis, small boats, trucks, etc. The activities undertaken by individual traders do not represent their main source of income, but the work carried out occasionally, if needed, upon request by criminal groups that are ranked higher.

Small criminal groups are the next level in the spectrum and they are composed of a small number of members and have a small number of partners that collaborate. Within these criminal groups, members are specialized to perform the transport, which is limited to a small number of countries. The links between the groups members are not very strong, no division of activities, meaning that while carrying out illegal activities they operate together. This level comprises many gangs around the world which are involved in trafficking.

On the higher positions of the spectrum are listed medium-size and large criminal organizations that actually represent well-organized transnational groups. They are characterized by high levels of expertise, involvement in various criminal activities and operation in a wider geographic area. Hierarchical structure, centralization, conspiracy and illegality are the key elements that determine the characteristics of these criminal groups.

The last category, which also is on the pedestal of this range, are the multinational or international networks. They are able to perform the transport of victims of trafficking across thousands of miles through several countries and continents, with bases and logistic support in most countries. The most representative members of this category are the Chinese triads and Japanese Jacuzza dealing with their countrymen throughout the world.

12 Лајман, М., Потер, Г., Организиран криминал, 4 издание, Магор, Скопје, 2009, стр. 210 / Layman. M., Potter, G., Organized crime, 4th edition, Magor, Skopje, 2009, p. 210

13 Рајкел, Ф., Прирачник за транснационален криминал и правда, Датапонс, Скопје, 2009, стр. 205 / Rikel, F., Manual for transnational criminal and justice, Datapons, Skopje, 2009, p. 205

Regarding the current trends related to the spectrum, the situation can be summarized as follows[14]:

1. Depending on the distance needed to cover and on how many countries they need to cross from the country of origin to the final destination, the more sophisticated and better organized criminal groups are involved;
2. Trafficking for purposes of exploitation of labor require a greater number of actors and a higher level of expertise; as a consequence, criminal organizations involved in trafficking for purposes of exploitation of labor are typically more sophisticated and complex;
3. Not so strong networks are increasingly common in this area of criminal groups; they consist of networks of individuals or criminal groups that show significant dynamism and fluidity. Any attempt to give a static definition is in danger of distortion of reality. Those referred to as individual, small and medium-sized and multinational criminal groups can work together for specific purposes, where each group performs its specific expertise and acts as a node of a large network;
4. Criminal groups that perform trafficking specialize in an opportunistic manner. This means they tend to switch from one illegal activity to another, spreading their operational sectors, on the basis of certain opportunism.

Human trafficking has become a major source of financial gains that motivate criminal groups; the business continues to strengthen, expand and further improve.

Human trafficking and terrorism

Trafficking and exploitation has already become one of the main sources of financing terrorism since the end of the last century. Taking the swing in states with severe and complex conditions, the deficit of jobs, unemployment, low income and low standard of living in certain strata of society, international terrorist and extremist organizations form networks of trafficking and their exploitation. They trade in women and children for prostitution and forced work for profit, and involve adults in their activities as mercenaries.

At this stage of development, globalization, internationalization of trafficking and exploitation for profit, it is an indisputable fact that humanity must confront this phenomenon. Human trafficking is a real threat to national security because in the new century transnational organized criminal groups involved in human trafficking linked to international terrorist organizations further hamper the work of state security services.

Trafficking and terrorism are associated with some parts of the world, especially in those areas where trafficking is particularly prevalent and is an important component of the illegal economy. These regions may include the Balkans, and parts of the former Soviet Union. According to UN estimates, human trafficking is the third largest illegal "business" in the world that creates a profit of several billion per year, and therefore is an important source of financing for terrorist groups, providing 10-15% of their funds.

Terrorist organizations are heavily involved in trafficking, which often links them to criminal groups that work on this scene. This trade comes in two predominant forms. To assist their own operations, terrorists pay to their foreign merchants

14 Рајкел, Ф., Прирачник за транснационален криминал и правда, Датапонс, Скопје, 2009, стр. 207 / Rikel, F., Manual for transnational criminal and justice, Datapons, Skopje, 2009, p. 207

to deliver one or more persons in a particular country. Terrorist organizations collect profits from lucrative transnational criminal activity of trafficking. Evidence for this is the activity of the Liberian Tigers who were involved in trafficking in Sri Lanka. Also Partiua Karkaren Kurdistan (PKK), was associated with trafficking, as well as Islamic fundamentalist terrorist groups which traded in people from North Africa to Italy. Another very dangerous form of trafficking involves the recruitment and trafficking of men, women and children into slavery and exploitation of labour for providing funds later used to finance terrorist activities. For example, the Maoist rebels in Nepal fund their activities with longstanding trade in young girls taken from Nepal to work in brothels in India.

The connections between human trafficking and terrorism are reflected in logistic support. In addition to providing financial resources, human trafficking may, through skills and methods that are used to provide transportation develop a mechanism for the movement of terrorists across borders worldwide.

Concluding observations

From the above stated it may be concluded that human trafficking is a sophisticated crime and that its victims need assistance to restore their freedom. Also, human trafficking is a serious problem that many countries in the world are faced with. It is therefore the multidisciplinary approach which is necessary for solving this problem that would allow easy identification of this problem, and thus enable prompt reactions.

It is necessary to establish an efficient system of cooperation and coordination at the international level, which necessarily entails a need for assistance and support of the international community, both in terms of training of professional staff through education and exchange of experiences at home and abroad, and in the form of financial assistance in terms of creating conditions for building adequate institutional capacities or databases for easier communication and information exchange in the field of human trafficking.

Finally we can say that in order to combat human trafficking both repressive and preventive actions should be taken so as to achieve success in the destruction of this worldwide scourge.

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INSTUTIONALISED TYPE OF ORGANISED CRIME AS A NEW THEORETICAL TYPE

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The instutionalised organised crime as a consequence of the general concept of the systemic corrupted politics

Theoretically, the new type of the instutionalised organised crime, as a consequence of the general concept of the systematically corrupted politics, is a continuation in leading the foreign politics of the great world powers, regardless of which party the government comes from or what the personification is of the institution President of the state. The general concept of the systemic corrupted politics actually means the level of the political system, which produces a national strategy in the foreign politics in both system and systematic ways, whose fulfillment of the national priority interests and strategic goals is being accomplished with both conventionally forbidden and morally-humanistic not allowed means[1]. In the theoretically new type of instutionalised, organised corrupted politics resulting from the general concept of the system corrupted politics, it is not a matter of achieving a direct, personal criminal profit or any other type of protecting the personal interests of the highest bearers of such politics, through which it is being manifested (at least the personal interests are not a priority). This highest and most subtle type of an instutionalised organised crime exceeds all conventional and unconventional corruption transactions, even among the highest statesmen of one country, since it is a matter of the general concept of a system corrupted politics that systematically generates the political and economic system of the capitalist expansionism and the exterritorial imperialistic neocolonialism, so to achieve the long-term geo-strategic interests of the mega capital, which is concentrated in the most powerful countries of the world. The institutionalization level of this type of organised crime, seen from an extra instutionalised, sociological approach, meaning de facto and not de jure, is also hidden crime, i.e. a crime protected outside the law.

This type of instutionalised organised crime has a strong impact on the international economic and political relations. Thus, this most perfidy type of organised crime is indirectly in a wider national interest of the great powers, since most of the citizens in those countries enjoy the benefits of the social, health, tax and other politics, so to "buy" the social peace (possible avoidance of protests, demonstrations, turmoil, strikes, revolutions to the full). All that directly affects 80% of the world population in the poor parts of the world and the transition countries.[2] Therefore,

1 In that sense, please refer to Michael D. Lyman and Gary W. Potter, "Organised crime", Magor, Skopje, 2009, page 432, saying that "The crime is an excellent maker of the capitalist oil. Those that wish to influence the results produced by the machine understand that the money made by the crime is an effective tool that enables them to go wherever they want, in the same way as the money made in an another way. Those that make the money control the machine. The crime is a side effect of the effective political economy. It is a main product of the political economy. The crime is in fact the foundation of the politically and economically built relations in the democratic-capitalistic societies".

2 See: Natalia Nikolovska, "The big illusion", Culture, Skopje, 2000. It is really necessary to point out the brave and objective judgment of the most eminent representatives of these organizations, such as James Woolfenson, former president of the World Bank, who noted that "There must be something not normal in a world where 20% of the population handles 80% of the wealth", or the former vice president of the World Bank for Europe, Jean Francois Rischard, who openly doubted the potentials of the UN, IMF and WB, so to solve the big problems of the globalizations.
In the UNDP report, in 1999, the dark side of the globalization in the transition countries was supported by the numbers: 10 million lost human lives as a result of shortening the life time; an enormous expansion of poverty: in 1989, 4% of the population in the transition countries (14 million people) had an average per

this type of organised crime is in fact a sociological idea of the organised crime, because it is not treated equally or is out of every positive international legal regulation and positive criminal-juridical legislation of any country in the world.

There is a huge difference between this highest type of instutionalised organised crime, as a result of the general concept of system corrupted politics led by the most powerful countries in the globally economic and political constitution and forms that are used for the instutionalised type of organised crime to be present in the transition and undeveloped countries. In those countries, the forms directly harm the state and its citizens. This highest, and most sophisticated type of organised crime is performed through most perfidy and most subtle methods, on the level of continued foreign politics, whose ultimo ratio is the military intervention in countries that are tens of thousands kilometers away from the country aggressor. Hence, such military actions or fabricated terrorist acts, even on their own territory against its citizens, relentlessly cause invaluable and immeasurable damages in lost human lives and material demolitions.[3] Later, the same countries make humanitarian donations for restoration of the ruins through their own companies. All those invaluable and immeasurable damages will be marked as collateral damages, as a side effect that was inevitable so to prevent even something worse. Due to the abovementioned reasons, nobody is held responsible for the killed civilians (children, women, old and weak people). This type of organised crime eliminates the subjective, criminal-legal responsibility and complicity, simply because these activities, planned as criminal acts against the humanity and the international law are not treated as international criminal acts[4], but as a legitimate way of leading politics. When such a politics is not successful with the political and the diplomatic means and resources, then a military action in inevitable. It is not by chance said that the war is the last method or a lengthened arm of the politics. There is even a search for a not yet precedent for an exemption from a criminal responsibility for the commanders, commandants and the members of the armed forces of the USA before the International criminal court. That way, they are placed into a completely unequal condition before all other

capita $2 daily, while in 1995, 32% out of 147 million "transition" people entered the zone of African poverty (under $2 daily). The trend continues and according to the scientific estimations, over half of the transition population will most probably live in an extreme poverty at the end of the century.

3 During an interview for the American newspaper "Wisconsin State Journal", Kevin Barrett, assistant professor at the American University "Wisconsin Madison" stated that the American government planned the terrorist attacks on September 11th in 2001, so to provoke a mission against terrorism with the attack on the sovereign state Afghanistan. There are video clips from these events, posted on the Internet, and according to the scientific aspect with the laws of Physics, Chemistry and Mathematics, there is no way that the "twin" buildings in the World Trading Centre in New York and the Pentagon building could be damaged in such a way with just a passenger plane. However, the material proofs cannot be collected because the US intelligence service that organised this attack themselves will never let scientific and non-government organizations to check the actual scene, to measure and collect evidence so to prove it later.

A similar vanguard had the military attacks on Iraq in 2003, when the false information from CIA were used as a motive to attacked, as if a nuclear weapon is being produced in Iraq, it is a threat to the national interests of the USA and the humanity. After the American-British armed forces occupied the territory of sovereign Iraq, it was concluded that there is no sign of any type of nuclear weapon production on the territory of Iraq. Still, the attacks were justified with a rationalization that the non-democratic and inhuman regime of Saddam Hussein was brought down, from whom the Iraqi people were supposed to be saved.

There is a documentary produced by a certain American house, which was presented on A1 TV and Sky Net, which states that the motives for the First and the Second World War (for which there were more profound reasons), are in fact the following: the supposed sinking of the American submarine, when a few hundred of American soldiers lost their lives – just before the USA entered the First World War. These facts were actually used to win over the public opinion in the USA and influence the massive, voluntary joining the USA Army. A reason for winning over the public opinion, just before the USA entered the Second World War was supposedly the intentionally sent, false information about the conditions of the Japanese Army, when the American Army was dragged into an unequal collision. A large number of American soldiers lost their lives then, in the clash with the Japanese Army in Pearl Harbor.

4 The definition of aggressive war of the General Assembly of the UN is not a legal obligation. The Rome Statute for the International criminal court was signed by 108 countries. The world powers including the USA, Russia and China have not signed it, and the effective date of the legal activity for the international criminal act, aggressive war is still under question.

participants in the military conflicts all over the world. This type of instutionalised organised crime in the shape of aggressive war or a state terror, stays as the "grey zone" of the legal sanction in the international document and most of the national legislatives of the countries over the world. Therefore, it is not recognizable, for the regular citizens and also most of the professional and scientific public.

The instutionalised type of organised crime, resulting from the general concept of a system corrupted politics is not something new. It is just a newly created theoretical concept. It has been part of the international relations history, especially among the great powers. Today, its indications can be found especially in the way of the greatly coordinated functioning of the international financial and safety-political organizations, of the so-called international community towards the governments of the disobedient leaders. In fact, we are witnesses of empiric examples, generally known in the modern international reality, of using the method of a double standard for the same or different occurrences in internal or international conflicts; a brutal interference in the national matters of sovereign countries, which is a direct breakage of one of the basic principles of the international public constitution, even a total suspension of the international public law by using a military force on the sovereign countries without a decree of the UN Security Council. Everything is being done with a justification that a human catastrophe is to be prevented or the national interests of the NATO leading countries are to be protected, which are tens of thousands kilometers far from the targeted country. Also, there is an excuse for "exporting" democracy for a supposed defense of the human rights and freedoms in sovereign countries, which are in fact of a great importance for the interesting spheres of influence of the great forces. There might be also some financing and other types of support of terrorist organizations, as well as putting various subtle pressures to change the constitutional set up of the weak countries; encouraging and supporting fully the logistics in civil wars, inter-ethnic relations, coup d'état in countries with governments don't go towards the goals of the global politics: donator financing of various needs for covering financial frauds and other "loopholes" in the budget deficits in developing countries; subtle diplomatic blackmails for giving credits under acceptable conditions (really necessary for the financially powerless countries). Everything is done so to achieve the long-term, geostrategic and economic interests of the mega capital concentrated in the most developed countries of the world.

The terrorism and the general concept of the systematically corrupted politics

Say the institionalised organised crime was classified as the most perfidious type of organised crime, as final effect of the general concept of systematically corrupted politics, in that case terrorism should also be discussed as counteract to the general concept of the global, systematically corrupted politics, which permanently creates crisis centre and injustice of various types. Due to the fact that the terrorism is becoming more and more an international, global problem that does not know of any borders and acts on a world level; since it threatens the international relations and the terrorists turn to resources and methods that initiate human and material damages that jeopardise the international safety, the international community is making efforts to regulate the numerous questions directly and indirectly connected to terrorism. There have been many conventions, resolutions, recommendations and agreements from the 30ties of the 20th century, up to the present, connected to the terrorism and its accompanying elements. Although the number and the scope of such adopted and accepted international documents directly on indirectly related to terrorism are big (a larger space is necessary to have all of them reviews and analyzed), there is still an opinion that not all documents did fully contribute to the optimal efficiency in fighting the terrorism. This is mostly due to the existence of

an enormous scope of discreet and opportunistic solutions in these documents; the political color of the terrorism (its direct or indirect support by certain countries, as well as the reality of double standards, i.e. unequal validity and respect of the international documents and law from all the countries in the world) resulting with the disagreement in its true definition. Such obstacles on an international level must be overcome if there is a wish for implementing an efficient system to fight terrorism and suppress it. I would point out to the UN and the Council of Europe as the main bearers of the international documents and instruments, and the organizations that had passed most of the acts, which are also the most important ones. The number is really high and I would therefore count just a few: The Resolution for terrorism from 1985 (UN); the Hague Convention to prevent kidnapping airplanes (UN); the International convention against taking hostages (UN); the Convention for preventing and punishing crimes against persons under international protection, including diplomatic agents (UN); the UN Convention for suppressing financial aid to terrorism (UN); the European convention for preventing terrorism; the European convention for extradition; the Convention for money laundering, discovering, capturing and confiscating property values attained with a criminal act, etc.

We can also mention the efforts made by the international community to find measures and instruments that will be most suitable for preventing and suppressing this extremely negative occurrence, including measures that will be acceptable for all countries. If, besides the international documents, the fight against terrorism also includes practical efforts for its suppression through various intelligence and police-operational measures and actions, as well as the creation of anti-terrorist coalition led by the USA, with a determined, announced war, which resulted with practically performed military actions in Afghanistan and Iraq, there is still a defeating fact that the terrorist attacks do not decrease in their violence.

There is the inevitable dilemma – if those international documents, anti-terrorist coalitions and fights against terrorism on a global level really contribute in the battle against terrorism, since the development of terrorism and the number of adopted international documents seems to be in a proportional relation**.** Simply said, we cannot neglect the fact that the terrorism is constantly rising despite many adopted international documents. It is a result of certain obscurities, unsaid things, hesitations, which are still present in relation to establishing the single definition of the complex and multi-dimensional existence of the terrorism, its various appearances and other phenomenon and etiological characteristics.

From the aspect of analyzing the existing international rules for the terrorism, there are many deficiencies, such as identification of the terrorists with the fighters for human rights and the right to self-defining. It cases when there is no definition about the terrorism in any international document, which could be supported by a consensus, problems are being created in practice that reflect in two directions:

1. The lack of consensus for avoiding the matter of extradition and the need for separating the terrorism from the national liberation movements that some of the terrorists identify themselves with. The positive side can be the attempt to exclude terrorist acts, which although with political goals, will not be an obstacle for extradition. Nevertheless, that is a specific approach, since it related to certain acts, if they are performed against certain individuals and institutions. That way, a confusion is created, because the fight against terrorism is losing its sharpness.
2. There is no clear separation of the terrorism from the fight for self-defining. What is positive is the fact that both the colonial and racist regimes are considered as terrorism. If there is no suitable solution, there are still questions

about the applicable rules for an armed conflict in cases of terroristic acts. Therefore, the right to self-defense is being mobilised in situations when there is a conditional aggression without a known subject. However, according to the classical theory of the international law, subjects of the act of aggression can be only the states. As per the Geneva conventions from 1949, as well as both Protocols of these conventions from 1977, the terrorist organization is not one side in an armed conflict and the terrorists cannot identify themselves with fighters, rebels, saboteurs and hostages, neither can they refer to the rules of warfare.

The camouflaged identifying of the terrorists with the fighters for human rights and freedoms, in situations when there are no rules in the international, military and humanitarian law, which could help solve such a case, creates additional problems connected to the intervention and the so-called anticipated self-defense. Accordingly, it is necessary to go about changing certain enactments from the international law, which do not correspond with the new reality and practice implemented by the states in the fight against terrorism.

On a criminological plan, there is an urgent need to start thinking about a casual neutralizing of the globally degenerative side effect, called terrorism due to the circumstances when those kinds of crime becomes a separate form of the political and the general social pathology. The increasing and more intense and brutal escalation of the terrorism must be considered as danger that very seriously threatens to develop as the most optimised violent modus for an efficient achievement of the goals from a global, national all the way to the specific-individual level on the planet. It should not be considered only as accompanying occurrence that goes together with all positive and negative sides of the globalization process. Taking into account the reasons and circumstances that instigate terrorism, it can be considered as a separate ideological reflection, a response to the political and the general, social pathology of the global society and the so-called "shuttle diplomacy" of the international community that is present everywhere. By the way, the global degenerative side effects cannot be neutralised only with the more intense an brutal usage of the military and the violent means, which in fact contributed the most for the terrorism, but with the review of the basic course of global politics, if there is no tendency to have the world face the unseen destruction of planetary dimensions[73]. Such a wrong approach means attacking the consequences instead of the reasons, which in fact were causing those consequences. The solutions for dealing with the terrorism cannot be found, if there is no way to enter the deepest and most complex determining schemes where that phenomenon rises and develops. It is most obviously shown by the politics of force led by the talion maxima "An eye for an eye, a tooth for a tooth", "The force doesn't ask God", or "Where there is force, there is no justice", which leads to a total failure of such politics on The Middle and the Far East. The best example for that is the Israeli-Palestinian conflict, with mutual killing almost every day, mostly of innocent civilians, which lasts for decades. If there is no crucial change, the mutual killings will last endlessly without any success in solving the dispute and establishing a normal life that is free from everyday shocks and fear for saving the poor lives of the civilians.

A matter that deserves all due respect and imposes in the open discourse is the question whether the terrorism is in fact a myth, or a reality? The answer to this question is not and cannot be of a single dimension. Without any pretentions for a general answer, and unnecessary simplifications, it will still be far from the truth if the terrorism is not understood as a reality and is a factual threat and challenge for the modern civilization. However, the events that occurred particularly in the first decade of the

third millennium do not allow for the science to overpass easily and lightly everything that burdened the international relations and the international public podium. To be precise, there are still many unanswered questions under the veil of the (un) covered conspiracy, the events of 9/11 in 2001, and all that happened afterwards[5].

Instead of conclusion, we shall try to find the answer through a counter question: if the present terrorism is over dimensioned, and in certain cases imagined as a motive for starting an aggressive war and occupation of territories of sovereign countries, but not for conquering those territories. Instead, for meeting the long-term geo-strategic, geo-political and economic interest of the exterritorial, imperialistic neocolonialism?!

CONCLUSION

It is of high importance to determine the connection as well as the differences between organised crime and terrorism. Nearly every writer dealing with the issue of terrorism and organised crime or both at the same time, has established a certain connection between the two phenomena, that endanger the safety of the citizens, the country and the international community generally. This probably results from the fact that even reality itself contains certain points of connection between these two extremely dangerous types of crime. The thesis about the connection existing between terrorism and organised crime can be proven by analysis of the activities of certain terrorist organizations or known organised crime groups and associations, that turn to means and assets of an other type of organised crime in order to achieve the determined goals, or, simply establish connections and collaborative actions when interests are mutual.

There is no universal definition explaining these two entities fully. Therefore the multiple opinions and attitudes regarding terrorism as a type of organised crime, whether these two are separate types of crime, and whether organised crime catalyses terrorism, don't come as a surprise. Still it is certain that there are certain types of mutual connections and correlations between terrorism and organised crime, i.e. between terrorists' organizations and criminal organizations. Still, they are definitely two types of entities existing and operating separately.

Terrorism and organised crime, two crime phenomena present in our society, have certain mutual features, misleading some writers to see terrorism as a type of organised crime:

- Hierarchical establishment of the organizational structure, clear task assignments and the devoted execution.
- Operating in areas or places completely out of reach for the government.
- Applying the identical methods for highly conspired communication.
- Cooperation between the terrorists organizations and crime organizations with the purpose of providing financial sources for the terrorism.
- Terrorist organizations take on highly profitable criminal operations, just like the criminal organizations, but strictly for the purpose of financing the terrorists' needs and goals.

The differences between terrorism and organised crime are evident in these two essential elements:

- Terrorism and organised crime apply different methods, means and tech-

5 Please refer to the already presented futnote, where Kevin Barrett, assistant professor of the American University, "Wisconsin Madison", during an interview for the American newspaper "Wisconsin State Journal" gives a scientific explanation that the twin towers were not pulled down by the hijacked airplanes. It was instead an act organised by the American Intelligence.

niques of operating.

- Terrorism applies strictly force and other types of violence in order to cause more fear and insecurity among the people generally just to achieve its terrorist objectives.
- Terrorism operates mainly for politically-ideological, nationally-separatist or religious purpose, whereas the main goals of the organised crime are acquiring or maintaining profit and/or power.

Organisationally, these similarities and differences may represent terrorism and organised crime identically. However, considering the methods and the goals, these two phenomena are different. This leads to a clear distinction between these two criminal entities, which, on the other hand, leads to a sociological – criminal, normative – institutionalised treatment and criminology approach.

Organised crime and terrorism are a serious threat to the safety and stability of every society. Therefore, their potential is not to be underestimated, as it can have destructive consequences. Terrorism and organised crime and their many shapes, are extremely difficult to recognise, prevent and prove, mostly due to their flexibility, transnational nature and ability to adapt. They attack every level of the social life and nearly all countries worldwide are threatened by their numerous shapes of operations. These types of crime are highly serious and inconsiderate, and the classical methods for fighting against it are inefficient and ineffective, and therefore every country needs consistent provisions adopted nationally and internationally in order to prevent and punish them. Establishing the correlation between the institutionalised crime and the terrorism is particularly important. Institutionalised organised crime is the most perfidious type of organised crime, the top of the general concept of the systematically corrupted politics; however, on the other hand, the terrorism is mostly generated by the institutionalised organised crime and represents its antipode or contra reaction. In conclusion by reducing and neutralising the causes for institutionalised organised crime, the causes for terrorism, particularly on an international level, will also be reduced.

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EVALUATION OF CRIME PREVENTION PROGRAMS[1]

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Abstract: The constant growth of crime "price", as a global trend in recent decades has been accompanied by raised interest in crime prevention programs. There is no doubt that these programs will acquire greater significance in future, but the same goes also for their quality evaluation. Through the evaluation, in fact, the useful information on adequacy and properness of prevention programs, their acceptability to key stakeholders, and their effectiveness may be acquired - knowledge that will enable a designing of necessary program improvements or corrections, as well as refininement of the theory, policy and practice of crime prevention. The reality is that currently, it is still generally insufficient prevention programs are being evaluated with the consistent application of appropriate methodology. Superficial measurements and fragile interpretation of effects of prevention programs that can only correspond to specific interests of policy makers and other stakeholders are not only useless, but can be counterproductive and harmful. The aim of this paper is to point out the extraordinary importance of developing such models of evaluation which application may result in knowledge relevant to the science and practice, as well as for the creators of strategic guidelines for designing of crime prevention programs. In this regard, the paper emphasizes particular importance of introducing and maintaining of high scientific standards in the field of crime prevention programs evaluation.

Keywords: evaluation, prevention of crime, prevention programs, standards of evaluation

INTRODUCTORY REMARKS

The question how much does crime actually cost the community is increasingly attracting research attention and is becoming increasingly common topic of the public debates around the world[2]. Along with an increasing concern over dimen-

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 leader of the Project is Associate Professor Saša Mijalković, PhD.

2 Estimates of the „price of crime" paid by the communities have been done so far mostly in English-speaking countries - the U.S., UK, Australia and New Zealand. All these estimates have explicitly pointed to the dramatic dimensions of damages suffered by the victims and communities. According to the first authentic assessment at the national level, cost of crime in the United States in the mid-90 was even reached $450 billion (Miller et al., 1996, according to Farrel, Roman, 2010: 165). The research conducted by the Home Office showed that in the United Kingdom in 2000 the total cost of crime at the national level was estimated around 60 billion pounds (Brand, Price, 2000); subsequent research conducted by Sinclair and Taylor, which covered only the registered crimes in England, Wales and Northern Ireland in 2007 estimated this cost around 15 billion pounds (Sinclair, Taylor, 2008). In Australia, the price of crime is estimated 11 billion dollars a year, with a further 6.4 billion dollars expended for the criminal justice system (Jeffries, Payne, Smith, 2002, according to Armstrong, Francis, 2003: 2). In recent years, however, the research of crime cost has been appearing in the continental Europe. Recent research in Poland, which was conducted using a model developed under the project within the 6th Framework Programme, entitled Mainstreaming Methodology for the Estimation of the Costs of Crime, the cost of crime in the country has been estimated around 5.1% of GDP (Czabański, 2009).

sions of damages that crime causes to victims and communities, in many countries the interest in prevention programs has also considerably increased, particularly in evidence-based programs. Recently, an increasing interest for improving the evaluation of these programs has been noticed, that is in a way that will enable a competent "cost-benefit" analysis.

Evaluation, in the broadest sense, means application of scientific research procedures for systematic investigation of efficacy and side effects of social reforms, programs and innovations[3]. As such, it has been developing rapidly since the 1960s, first in the U.S., followed by other countries around the world. Nowadays, it is considered a "growing industry" (Leeuw, 2005). Although the immediate objective of evaluation studies is to provide answers about specific prevention programs and interventions, its general and ultimate purpose could be defined as gaining the information to allow correction and refining the theory, policy and practice of crime prevention.

It is generally expected that the evaluation can provide answers to the questions: whether the program was needed; whether the program has reached the target population; how sound was the underlying theory of the program; whether the intervention has been well implemented; how effective was the program; and what was the relationship between costs and effects of the program (Leeuw, 2005: 234). Or, put briefly, the evaluation projects are commonly focused on the following questions regarding functioning and effects of the program (Bachman, Schutt, 2011: 346-347):

- Is the program needed? (evaluation of need)
- Can the program be evaluated? (evaluability assessment)
- How does the program work? (process evaluation)
- What are the program's impacts? (impact evaluation)
- How efficient is the program? (efficiency evaluation)

The initiative for introduction of certain social programs may originate from various social actors, including politicians, representatives of local communities and civil society. However, before program is implemented, it is necessary to gather reliable data about the existence, nature and extent of social problems which are to be delayed or mitigated, as well as the target population, in order to prevent any unnecessary waste of time, efforts and financial resources.

Needs assessment is usually made on the basis of the information collected using the questionnaires, interviews, secondary data, etc. (Fajgelj, 2010: 295). The evaluation study will be meaningless if it is not possible to evaluate the program – for example, if implementers of the program activities are concerned only about their own performance (without care if the program achieves intended effects); program personnel are only „help people" or „put in time" without a clear sense of what the program is trying to achieve; if the program is not clearly separated from other services provided by the agency, etc. (Patton, 2002, according to Bachman, Schutt, 2011: 348). In such cases, an assessment on the possibility of evaluation, which typically includes the use of qualitative methods, may take an action research aspect, or sensitize participants on importance of clarifying their goals and objectives.

The evaluation of program process involves collecting data on program implementation, on whether the program reached targeted individuals or groups, on whether the program works as expected, and on the consumption of resources due to its implementation. Qualitative methods are often a key component of program evaluation process since they are applied to identify and explain internal program

3 One of the more complete definition of evaluation research provide Rossi and Freeman, who define it as „systematic application of social research procedures for assessing the conceptualization, design, implementation, and utility of social intervention programs" (Rossi, Freeman, 1989, according to Bachman, Schutt, 2011: 342).

dynamics and events that are not anticipated (Patton, 2002, according to Bachman, Schutt, 2011: 350). If the program process study shows good implementation of the program and that the program reaches target population, the evaluator proceeds to the next task: to assess how the program achieves its goals, ie whether the program (independent variable) leads to desired change in a dependent variable. Since it is the question of causality, preferred method is an experimental design, in which unit are assigned randomly to the experimental and control groups, to ensure that any other factors do not affect on program effect assessment. Effects of the program can be also evaluated by using a quasi-experimental design, as well as a non-experimental design - however, the last one reaches much lower degree of internal validity and produce less reliable conclusions about the causal relationships.

In a broader social view, the evaluation of program effectiveness commonly is implemented in order to assess program benefits and justify its cost. It may take form of „cost-benefit" analysis or cost-effectiveness analysis. „Cost-benefit" analysis is carried out to estimate the economic benefit obtained from the program, while the cost-effectiveness analysis is focused on the program outcomes, rather than on their economic value. As a rule, the goal of policy makers is to offer programs that would justify resources invested. However, it is usually hard to convert program benefits into money figures (Bachman, Schutt, 2011: 353-354).

What is important to stress relating to previously described typology of evaluation research is that evaluation does not begin when application of programs is completed, but program actually starts with the evaluation (Fajgelj, 2010: 295).

Generally, in the evaluation research, all available methods of data collection can be used. This research can be conceived as a survey, or a longitudinal research, a case study, or the secondary data analysis. However, it is often emphasized a need to construct certain standards and criteria in order to improve the level of evaluation, as well as to be able to track changes over time (Fajgelj, 2010: 296).

Current challenges to assess performance and efficiency of crime prevention programs and interventions

It is a common position in contemporary literature that the high-quality evaluations of specific crime prevention interventions are still a scarce, especially outside the Anglo-Saxon countries (van Noije, Wittebrood, 2010). There is no doubt however, that implementation of a solid evaluation in this field is quite a difficult task. Generally, many factors complicate measuring of the success of crime prevention programs. These are, first, possible methodological flaws in the research design, a high cost of implementation, incompleteness of data on crime and dark figure of crime, a lack of adequate cooperation with implementers and program sponsors, a poor program implementation, the use of a number of different preventive measures at the same time by different actors in the same community[4], a separation of evaluation of research from funding programs where evaluator, who is expected assessments from on effectiveness, comes into the scene when program has been already implemented[5], etc.

4 Prevention programs usually incline to eclecticism and often encompass various sorts of interventions including, here and there, even those do not fit into program design (Baerveldt et al., 2008: 346). Even in successful programs, it is sometimes almost impossible to isolate the factor or combination of factors that produced desired result (Sherman et al., 1997).

5 Sherman and associates (Sherman et al., 1997) have emphasized this problem while pointing to the the following dilemma: how program outcomes can be assessed properly if evaluator was not able to gather information on dependent variable before the program was implemented, nor he/she had an opportunity to include a control group and ensure randomization? To overcome this problem, Sherman proposed to

Various practical, financial and political reasons actually limit the scope of many evaluations, and sometimes inhibit implementation of the most appropriate research designs and methods (Burton *et al*., 2006: 296). A common problem is the fact that national and local prevention strategies are often associated with political and ideological interest groups, where changes in political situation cause the changes in policies and prevention programs, while the knowledge on their effects is not accumulated or improved. Above all, the current scientific understanding of factors of crime is not sufficiently used in creation of prevention programs – Elliot states that in the U.S. (while similar experiences can certainly be found in many other countries) billions of dollars have been spent in ineffective prevention programs and policies such as the teacher training programs to conflict resolution, and Project D.A.R.E. in schools, while, on the other side, some of those programs confirmed to be effective have never been implemented on a wider basis (Elliot, 1998).

One of the general characteristics of evaluation research, as pointed out by Fajgelj (2010: 296), is an opposition between the interests of researchers and institutions that carry out program. Further, there are commonly a number of possible misunderstandings about the objects, methods and conclusions of the research – things become a bit clearer, he says, when we take into account the fact that typical users of findings of evaluation research are sponsors, donors, government bodies etc.

The researchers-evaluators are now aware of the fact that it is not enough to conduct rigorous experiments to assess programs' effectiveness – they must, above that, do everything in their power to ensure that practitioners understand and properly use their results when deciding on revocation or modification of existing programs. In addition, evaluators are now more concerned with the issue of fiscal responsibility and need to document the worth of social programs which justifyes their costs (Bachman, Schutt, 2011: 342).

Interventions that can have a preventive effect on criminal activity can be generally divided into three domains: domain of repressive activities of the organs of the formal crime control; domain of social prevention, and the situational crime prevention domain. Traditionally, it is considered that effective detection, prosecution and punishment of offenders achieve a certain preventive effect both in the field of special, and general prevention. On the other hand, programs and measures that fall within domain of social prevention develop the idea that it is possible to optimally prevent manifesting and reinforcing of criminal behavior by affecting certain social and psychological factors (such as economic and family conditions, quality of parenting, peer group pressure etc.), primarily through early intervention and programs for children and youth. Situational prevention measures target primarily at reducing physical conditions that enable or facilitate commission of offences – they are mostly based on the idea that modifying the "structure of opportunity" and making it difficult to commit the crimes can achieve desired preventive effect (van Noije, Wittebrood, 2010: 501). While until 1980s the largest preventive effect has been generally expected from the activities of the organs of a formal crime control, in recent decades crime prevention has been increasingly understood as a task that can be achieved only through a partnership and cooperation of state bodies, civil society, businesses and citizens. Prevention strategies therefore become more and more complex mix of repressive measures, measures of social support and situational prevention. At the same time, the main responsibility focus for crime prevention has been increasingly switched to local level, with clear intention of local authorities to delegate important preventive tasks to welfare institutions, companies

Congress to provide financial support for partnerships between local agencies that implement programs and researchers who evaluate them (Bachman, Schutt, 2011: 369).

and citizens themselves (van Noije, Wittebrood, 2010: 501).

And while on the one hand prevention programs are becoming increasingly complex, the expectations from them, on the other hand, amplify. These programs are expected to as quickly as possible and as effectively as possible reduce crime and fear of crime, to be as simple as possible and to require less involvement of financial and other community resources. Accordingly, the need for evaluation research is growing in the field of crime prevention and it is now, generally speaking, usually related to testing efficacy of programs for prevention of juvenile delinquency, policing, rehabilitation of offenders, and the private security system. While the goals of prevention programs are generally simple, the goals of their evaluations are far more complex and are related to both aspects [more and more difficult] implementation, and outcomes (Johnson *et al*., 2004: 328).

A particular challenge, however, still represents the introduction of evaluation as a regular practice within public sector, where prison administration and correctional homes, attorney offices and other state bodies comply with the obligation to provide a public access to evaluative information about their work (Leeuw, 2005: 254). Despite that the U.S. has a bit of a tradition of evaluation research in the field of crime prevention,[6] the current situation in this country is not optimal in terms of rigorous scientific verification of efficiency of implemented programs. Elliott suggests that most of the implemented initiatives have not been rigorously evaluated (Elliott, 1998: 288-297) and it is still, for instance, not known for sure whether liberal or more restrictive regulation of firearms possession have an impact on the rate of firearm homicides. Similarly, while exploring the effectiveness of police work in crime reduction, Weisburd and Eck have recently concluded that findings on the effectiveness of many basic practice of policing in the United States remain uncertain, while many tactical approaches applied across the country have never been subjected to systematic evaluation (Weisburd, Eck, 2004, according to Leeuw, 2005: 240-241).

The current prevailing practice in evaluation of crime prevention programs is exposed to criticism, especially in terms of methodological issues. The literature indicates that nonexperimental research[7] still persists in this field, and that experimental designs are almost never applied (Duflo, Kramer, 2004, according to Leeuw, 2005)[8]. Particular problem represent pseudo-evaluations, which exaggerate good sides of the program, and gloss over his weaknesses. As a rule, in such cases there is specific political motivation of users or implementers of evaluation research (Armstrong, Francis, 2003: 6).

Finally, it should be noted that a special problem in the implementation of evaluation research is the identification of appropriate performance indicators of specific prevention or intervention programs. In many cases the criteria for success of the program takes a global performance indicators in the front row of crime statistics obtained from the records of the criminal justice system. Global performance indicators dominate in the community crime prevention programs in the UK, Australia, Canada, USA and Germany, and one reason for this is their transmission by the bureaucracy of traditional police work (crime fighting) in the area of crime

6 The tradition of experimental evaluation studies in the field of crime prevention in the United States can be traced to the Cambridge-Somerville study that began in 1930s.

7 The studies applying nonexperimental designs in which a single group is studied only after the program implementation are considered of low scientific value. However, it has been noticed that their use by the researchers trying to determine the efficacy of programs is sharply decreasing (Bachman, Schutt, 2011: 366).

8 Leaning on the observation of Donald Campbell that social reforms are in fact a kind of social experiment and should be treated exactly as such (if some reform is enacted in order to achieve some effect on the dependant variable, then an experimental design may be implemented for the purpose of its evaluation), Fajgelj notices that many methodologists consider necessary to treat reforms as quasiexperiments in order to evaluate them well (Fajgelj, 2010: 294-295). .

prevention (van den Eynde *et al.,* 2003: 238). The central problems of global performance indicators are related to the inability of evaluating a number of different crime prevention programs that started in the community; failure to ensure long-term changes, in particular those related to the implementation of social prevention; deficiencies related to recording raw data from the use of different methods in their gathering and recording of the various entities; inefficiency to determine the effects of displacement of crime (van den Eynde, *et al.,* 2003: 245-246).

Contemporary standards, approaches and the scope of prevention program evaluation studies

A good evaluation research should be characterized by solid internal, as well as external validity – while the internal validity is a necessary basis for determining the causal links between variables in the research, the external validity enables a generalization of the research results, which is particularly important for the application of effective prevention programs. Although in the literature still prevails assessments that methodological quality of the evaluations of prevention programs are generally unsatisfactory, it should be noticed that introduction of the *Maryland Scientific Methods Scale* and the broader use of the Campbell Collaboration's standards[9] for the research evaluation enhanced the quality of recent evaluations in this field.

Maryland Scientific Methods Scale was developed by Sherman and colleagues (Sherman *et al*., 1997, 1998) while preparing the report for the US Congress on the effectiveness of crime prevention programs (1997). By the use of this instrument, each evaluation study is - according to the level of internal validity – ranked on a scale from 1 (the weakest) to 5 (the strongest). The studies of the level 1 include the correlation between an intervention and a measure of crime at a certain point in time, measured after intervention implementation. These designs fail to eliminate any threat to internal validity and fail to establish the causal order. The level 2 studies include measures of crime before and after the intervention, but omit to employ control group. Even though the causal order is established, there still remain many threats for internal validity in these studies, so they cannot be considered as adequate. The studies of the level 3 contain measures of crime before and after intervention implementation in both the experimental and control group (quasi experimental design). These designs are regarded as the minimum interpretable designs because they eliminate many internal validity threats.[10] Yet, a problem regarding selection effects remains. The level 4 studies contain the measures of crime before and after the intervention implementation in several experimental and control groups, while controlling for other factors. Finally, the level 5 studies include the measures of crime before and after intervention implementation, while the units are randomly assigned to experimental and control groups (experimental design). These designs have the highest possible internal validity – thus they are considered to be the "gold standard" in evaluation research (Welsh, Farrington, 2006, according to Van der Knaap *et al*., 2008: 52). Generally, the systematic reviews conducted in line with Campbell-standards, include only the studies of the level 3 and higher, while the meta-analysis is preferred method for determining the

9 *The Campbell Collaboration* is an independent, non-profit international organization founded in 1999, which applies the rigorous systematic procedures to review the effects of interventions in the social, behavioral and educational arenas. It is in fact the international network of social scientists joined together with an idea to produce, maintain and disseminate systematic reviews of research evidence on the effectiveness of social interventions. More information available at the organization's web-site: www.campbellcollaboration.org .

10 Welsh and Farrington notice however that many evaluations actually don't reach this level of competence – most often they compare crime rates before and after the intervention, without comparing the changes in experimental and control groups (Welsh, Farrington, 2000, according to Johnson et al., 2004: 329).

effects of the intervention.[11]

It should be noted that activities aimed at improving process of evaluation of prevention programs have been somewhat intensified in recent years in Europe. Within the European Commission's AGIS programme, the "Beccaria Project: Quality management in the prevention of crime" has been promoted in order to raise sensitivity on quality, and establish the minimum standards for quality and evaluations. Marks, Meyer and Linssen (2005: 9-40) pointed to a range of activities in this direction. Crime Prevention Unit of the Central German police announced in 2003. the lieflet „Practical support for evaluation". In the beginning of 2004. the Council for Crime Prevention of North Rhine Westphalia published a guide for local crime prevention initiatives. Beccaria standards for ensuring quality in crime prevention projects have been developed,[12] and they are applied to the following seven key steps of the project: 1) establishing and describing topics, 2) identify the causes, 3) goals, 4) development of possible solutions, 5) design and implementation of the project, 6) control of influence and 7) documentation and conclusions (Marks et al., 2005: 30). In July 2005, Internet Agency - Beccaria Online Evaluation Agency was founded for connecting users and providers of evaluation services. Service providers should ensure regular review of service quality, transparency in operation, usability, information accuracy, reliability or completeness.

The advantages of experimental designs of evaluation studies are evident and include, briefly, a lower validity risk and fair good opportunities for easy transfer of knowledge to practisionars and policy creators (Leeuw, 2005). On the other side, however, these designs are expensive, time consuming, and sometimes difficult for practical implementation. Besides, Campbell-style approach is being criticized by the "realist" evaluators for over focusing at internal validity while neglecting just as important external validity, as well as for failing to answer *why* particular programs and interventions are successful or unsuccessful, and which are those social and behavioral mechanisms that enable program or intervention to be successful in particular contexts. The lack or inadequate program theory is being designated as the greatest shortcoming of this approach - the program is practically reduced to a set of mechanical steps (Pawson, Tilley, 1997, according to Leeuw, 2005: 251-252).[13] As considered within the realist approach, if an evaluation is to have external validity and be really useful it is necessary to overcome technical rigidness and to be scientific in the full meaning of the word, i.e. guided by the theory explaining how changes happen.

The solutions for overcoming cited shortcomings of experimental designs actually are being found in integration of experimental evaluations and activities focused on testing of program theories (Leeuw, 2005: 254), more exactly, in combining of Campbell standards with realist evaluation approach, ie applying of a realist analysis after finishing the systematic review of evaluation studies which will enable a better insight into micro-architecture of those interventions

11 A systematic review (whether a meta-analysis is its part or not) aims at the quantification of effectiveness of particular programs or interventions and presents the procedure employing the Campbell standards, that is rigorous methods in order to summarize, analyze, and combine available study findings (Petrosino et al., 2001, according to van der Knaap *et al.,* 2008: 49). Its first step is the formulation of research questions; next, the criteria for inclusion/exclusion of the studies is determined, and then the studies are being searched for; finally, the methodological quality of each of them is being set by employing the Maryland Scientific Methods Scale (according to van der Knaap *et al*., 2008: 51-49).

12 According to the Beccaria Standards, those responsible for crime prevention should ensure that: they align the planning, implementation and reviewing of crime prevention projects with the criteria for quality outlined in scientific literature; projects are designed in such a way that they can be evaluated; scientific experts, advisors, contracting bodies and sponsors should have a technical foundation for judging the project's objectives and quality achievements (Meyer, *et al*., 2005: 203).

13 Alternative (realistic) approach that advocate Pawson and Tilly (Pawson, Tilly, 1994) suggests the focusing on the mechanisms, contexts and outcomes ("CMO-model").

approved as effective and mechanisms that contributed to their effectiveness (van der Knaap *et al*., 2008: 53, 55).

CONCLUDING REMARKS

Actually, the evaluation studies are definitely expected to give clear answers and evidence on (in)effectiveness of crime prevention programs, that is to be sufficiently informative and enable correction of present policies. The evaluations shoud directly answer the question if the safety of the community is imporved, if that happened because of the intervention implemented or because of something else, and are there any collateral, or harmful effects of the intervention[14] (van Noije, Wittebrood, 2010: 503). Because this actually means exploring the causality, the insistence upon rigorous methodological standards and preferring the experimental and quasi experimental evaluation studies in line with the Campbell standards, are quite understandable. Apart from well known critics regarding practical difficulties in controlling variables in social settings as well as some ontological, epistemological and ethical concerns (Burton *et al*., 2006: 297), the researchers relying exclusively on experimental designs are being criticized for disregarding of explanatory mechanisms from "black box" – those underlying program interventions. As considered by the authors who are skeptical toward real scope of (quasi)experimental evaluation studies, the qualitative methods are irreplaceable in exploring the program processes, ie what is inside the "black box". They are important in order to find out how the clients experienced the program, how different individuals react to the treatment, as well as how complex social process operate – the more complex social program, the more value that qualitative methods can add to the evaluation (Bachman, Schutt, 2011: 367-368).

The importance of internal validity - which is crucial for determining whether particular measure produces intended change in reality, and which is being maximized by applying the experimental designs – is unquestionable. However, it is often said in the literature that limiting exclusively at the (quasi)experimental designs is not good enough – it is necessary to combine it with the reconstruction of the theory that explains particular intervention (van Noije, Wittebrood, 2010: 503). It is also necessary to make additional efforts to improve external validity of crime prevention program evaluations, which is generally considered to be a weak spot of the evaluation research in this field. The same goes for the insistence on scientific integrity of evaluations and their immunity toward certain interests of clients, donators and program participants which may endanger credibility of the results. Further on, it is absolutely necessary for evaluation research to investigate both positive and possible negative effects of programs and interventions (McCord, 2003). Finally, it should be noticed that particular challenge in the future will be the development of such evaluation frameworks that would be capable to adequately response toward rising dynamism and complexity of programs implemented in various social contexts, involving in this or that way many social actors.

14 As quoted by Joan McCord, after carefull evaluation by using experimental designs it was revealed that some programs, being considered beneficial prior to their evaluation (like programs "Court volunteers", "Group interaction programs", "Scared Straight" and other), had, in fact, produced some harmful effects. That is important additional reason to insist on performing the scientifically credible evaluations of all social programs (McCord, 2003).

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AMNESTY AND INTERNATIONAL CRIMINAL COURT[1]

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Abstract: During the past few decades the international community intensified the efforts to create mechanisms to prosecute and punish the offenders of serious crimes. This paper discusses the complex relationship between the permanent International Criminal Court and amnesties which are usually granted by the countries within their national legislations following the end of internal (civil) conflicts or in order to protect the people who have committed serious crimes. This is rather a delicate issue which has not been clearly determined by the Rome Statute. This is why the author discusses the notion and historical context of amnesty in the first part of the paper. The second and central part of the paper refers to the relationship of national amnesties and the International Criminal Court (ICC) with a special review of diplomatic conference in Rome, preparatory meetings held before the adoption of the final text of the Rome Statute, its Preamble, provisions on complementariness (Article 17) and the principle *ne bis in idem* (Article 20). The author also pays due attention to the provisions which represent the alternative possibilities for the relationship towards national amnesties: to defer an investigation or criminal prosecution (Article 16) and discretion of the attorney to stop prosecution even in cases which are within the jurisdiction of the International Criminal Court (Article 53).

Key words: amnesty, International Criminal Court, Rome Statute, Truth and Reconciliation Commission, international community, serious crimes, signatory countries, jurisdiction

INTRODUCTORY NOTES

There are a certain number of impediments for conducting criminal procedures for international crimes. Many impediments are of practical and political nature, ranging from the lack of political willingness to prosecute those who have committed international crimes to problems related to collecting evidence due to insufficient resources, small number of trained professionals and the need to assign material assets to more urgent needs such as reconstruction and construction following after-war conflicts. However, the attention is also drawn to many obstacles which are of legal nature and which influence the establishment of jurisdiction for trials before the International Criminal Court. In theory, these are amnesty, out-of-datedness, pardon, immunity from criminal prosecution, *ne bis in idem* and the misuse of legal process.[2]

Legal impediments with which the courts are faced within their jurisdiction for international crimes have certain common characteristics. These are all impediments which both national and international courts might face when making deci-

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 leader of the Project is Associate Professor Saša Mijalković, PhD.

2 Yasmin Q. Naqvi, *Impediments to Exercising Jurisdiction over International Crimes*, Hague, Asser press, 2010, p. 13.

sions whether to initiate criminal procedures for international crimes. It seems that the international criminal law does not offer a clear and unambiguous answer to the question of their legality. As a result of this, various opinions have surfaced within scientific circles. On the one hand, there are claims that these impediments prevent jurisdiction of the International Criminal Court and thus contribute to the general atmosphere of non-punishing, which is contrary to the current trends to exercise jurisdiction over international crimes without any exceptions. On the other hand, there is a tendency to find rational solutions in such cases and to make balance between the interests which are protected by impediments in conducting criminal procedure with the interests of the trial. Oxford English Dictionary defines an impediment as "a hindrance or obstruction in doing something".[3]

Within the framework of international criminal law the use of such an expression suggests that initiation of criminal procedure and trial has been blocked due to understated and mutually contradictory rules of international criminal law sources (primarily the Rome Statute). At the very beginning we wish to point out that the impediment should not be observed as an unsolvable problem only which disturbs the functioning of international criminal law but as a legal problem that the court should consider in a right manner when deciding whether to exercise its jurisdiction. Our attention in this study is focused on the question of amnesty.

The concept of amnesty and historical context

From the etymological point of view, the word "amnesty" comes from the Greek word "amnestia" which means "forgetfulness". Within the contemporary context, amnesty refers to the act of sovereign government of a country which exonerates persons from criminal prosecution for previously committed crimes. Amnesty is therefore granted by a state to a group or a circle of people and it most often refers to the crimes against state sovereignty, i.e. to political crimes for which pardoning is considered more appropriate for the sake of the general good than trial and punishment.[4] During the past few years Argentina, Cambodia, Chile, El Salvador, Guatemala, Haiti, Uruguay and South Africa granted amnesties to the members of former regimes who committed the international crimes and all as a part of peace agreements.[5] Many countries have included the provisions on amnesty for certain international crimes into their legislations as a means of re-establishing peace and rule of democracy. The clauses on amnesty are often constituent parts of peace agreements by which crimes are forgotten and forgiven in order to stop an internal conflict in majority of cases. This paper investigates whether national amnesties are a means to avoid punishment or their meaning is to put an end to conflicts which have already had severe consequences. It is obvious that sometimes justice and peace are incompatible goals. In order to stop an international or internal conflict, it is often necessary to carry out negotiations with leaders who have committed war crimes and crimes against humanity. In such cases insisting on criminal prosecution may prolong a conflict, resulting in more deaths, more destruction and more human suffering. The leaders of opposing parties involved in a conflict must cooperate in order to end fights and violations of international criminal law. It is not realistic to expect that these leaders would agree to peace agreements if directly following the agreement they would face life sentences together with their associates.[6] The rea-

3 Ibidem, p.11.
4 *Black's Law Dictionary*, St. Paul, Thomson West, 2004, p. 93.
5 Michael P. Scharf, The Amnesty Exception to the Jurisdiction of the International Criminal Court,*Cornell International Law Journal*, Ithaca, The Cornell Law Association, Cornell Law School, Vol. 32, 1999, p. 507.
6 Ibidem, p.508.

sons for granting amnesty reduce to the fact that following the period of turbulence and deep divisions which come after the armed conflicts, civil wars or revolutions, it is best to heal social wounds by forgetting and crossing out previous serious crimes ("international crimes") committed by any side. It is believed that this is the fastest way to forget hatred, animosities and thus reach national reconciliation.[7] However, there are a large number of papers that have appeared recently which advocate the stand that amnesties for international crimes undermine the basic principles of democratic and stable society which is founded on the rule of law.

From the historical point of view, amnesties for serious crimes, especially those committed during wartime, have had a long and rich history. Aristotle in his famous work "Athenian Constitution" proposes that hardship is taken as a starting point for consensus. The oldest record of a peace agreement, which ended the battle at Kadesh between the Egyptians (led by the Pharaoh Ramses II) and the Hittites in 1296 B. C. can be considered exclusively as a form of amnesty for fugitives who were returned to their homeland.

The law on amnesty was also brought by Thrasybulus after the civil war in Athens in 404 B. C. It included both sides, except the leader of the conquered party (the thirty tyrants) and his worse agents. The Roman commanders have also used amnesties to appease their opponents, such as Julius Caesar did and that practice gradually became the common feature of peace agreements. The European history of the 17th and 18th centuries shows that the amnesties were most probably part of peace agreements when there was not a clear victor or when the conflicting sides had a true wish to establish a stable and long-lasting peace. In the 20th century two most important wars were ended by a determined victory of one side and therefore the efforts to prosecute the conquered side were of primary importance which made amnesty within peace agreements a less acceptable option. However, proclaiming amnesty was followed by 1923 Lausanne Peace. It included the Turks who committed massacre over the Armenians and annulled the previous 1920 Sevres Agreement, which provided for the trial for these crimes.[8] At the end of World War II, the prosecution of war criminals led to Nurnberg and other trials after that, and the peace agreements concluded with the Axis Powers did not include the clauses on amnesty. On the other hand, General Douglas MacArthur, the Commander-in-Chief of the Allied Forces in Japan amnestied some Japanese state and military officers who were condemned to death and also amnestied the Japanese Emperor, which was the move considered to have contributed to the reconciliation between the USA and Japan, but made angry those who considered the Emperor Hirohito the main organizer of aggressive Japanese war and war crimes committed.[9]

In the 20th century amnesties started being used by governments as a means to end civil wars. During the last decades we have witnessed a large spectrum of amnesties which marked the process of transition from dictatorship into democracy (Haiti in 1993, Angola in 1994, South Africa in 1995, Sierra Leon in 1996, Algeria in 1999 and 2006). We shall mention only some cases of amnesties. In the period from 1990 to 1994, there was a military regime in Haiti headed by General Raol Cedras and Brigade General Phillipe Biamby, who murdered more than 3,000 civilian political opponents and also tortured a large number of them. The United Nations mediated the negotiations at Governor's Island. By this agreement the military leaders renounced of the power and made it possible for the return of democratically elected civilian president Jean-Bertrand Aristide in return for full amnesty for the members of the

7 Antonio Cassese, International Criminal Law, Oxford, Oxford University Press, 2003, p. 335.
8 Yasmin Q. Naqvi, *Impediments to Exercising Jurisdiction over International Crimes*, op. cit, p. 77.
9 Ibidem.

regime. Under the pressure of the UN mediators, Aristide agreed to the amnesty clause. The UN Security Council immediately "reported their readiness to give the greatest possible support to the signed agreement" for which it was later pointed out that "it constituted the only valid framework for solving the Haiti crisis." When the military leaders broke the agreement on July 31, 1994, the Security Council undertook the extreme measure and approved the invasion of Haiti by the international forces. On the evening of the invasion General Cedras agreed to withdraw his command when the Law on general amnesty was passed in the Parliament of Haiti. The negotiations on amnesty led to the desired results: Aristide could return to Haiti and re-establish the civilian rule, the military leaders left the country, the majority of soldiers handed over their weapons, but this was also the end of the longest period of misuse of human rights, practically without bloodshed or resistance.[10]

In the period from 1960 to 1994 thousands of dark-coloured South Africans were in much more unfavourable positions under the apartheid system in the country. In order to prevent the bloody civil war to outweigh the negotiations, the leaders established some form of amnesty for those who were responsible. The leaders of the majority black population decided that it was the obligation when guaranteeing amnesty to have a corresponding price for a relatively peaceful transition to full democracy. In accordance with the agreements among bigger parties, South African Parliament established the Truth and Reconciliation Commission[11] on July 19, 1990, which consisted of the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation. Within this process, amnesty was available only to those individuals who have completely revealed all the facts related to their crimes of apartheid. After 140 public hearings and having considered 20,000 written and oral statements, the South African Truth and Reconciliation Commission published the report on 2,739 pages about their discoveries on October 29, 1998.

Sierra Leon faced the crisis related to human rights violations which lasted for almost a decade (1991-1999). The results of this fight were tens of thousands of dead people and even more cases of tortures, mutilations, amputations and rapes. The conflict emanated from the fight for the control over diamond mines. The rebellious groups used children as soldiers and the great numbers of them were victims of forced amputation. The government of Sierra Leon and the rebellious groups known as the Revolutionary United Front finally made attempts to end violence by signing the Lome Peace Agreement in July 1999. This Agreement guaranteed amnesty to the individuals who participated in the conflict. This Commission started to work only in 2002. Despite the peace agreement, the violence in Sierra Leon reoccurred in May 2000. The forces of the Revolutionary United Front captured a group of UN peace troops stationed in Sierra Leon, which incited Britain to intervene on behalf of peace forces. After that, the government of Sierra Leon asked the United Nations to establish a court which would help in criminal prosecution

10 In 2000, Aristide won the great majority of votes at the elections which in addition to international observers the Haitians themselves estimated as illegitimate, so the violence, corruption and protests ruled Haiti. This led to the great political crisis and armed attacks in the course of 2004, after which Aristide resigned and left Haiti under mysterious circumstances. By the USA plane he flew to Central African Republic on February 29, 2004, and he is now in exile in South Africa. Although he continues to claim that he is democratically elected President of the country, the international community has rejected such a claim. Some observers report that the amnesties might have sent the wrong signal to Aristide and his followers and Haiti is still poor and with small chances for the improvement of the situation as long as the rebels dream of armed comeback. At the very end, the example of Haiti suggests that the"exchange of amnesty for peace" might lead to increased violence and future destablization. See: Leila Nadya Sadat, Exile, Amnesty and International Law, Notre Dame Law Review, University of Notre Dame, Vol. 81, 2006, p. 128.

11 Simon M. Meisenberg, Legality of amnesties in international humanitarian law: The Lome Amnesty Decision of the Special Court for Sierra Leone, International Review of the Red Cross, International Committee of the Red Cross and Cambridge University Press, Vol. 86, 2004, p. 838

and trial of the perpetrators of most serious crimes. The trial started in 2002. This newly-founded *ad hoc* criminal tribunal is considered a new category of international criminal courts and it is mainly considered a hybrid tribunal since its Statute includes various national elements. The UN Secretary General mandate to initiate the negotiations with Sierra Leon in order to establish an independent international court which would prosecute the serious forms of international humanitarian law violations was based on the UN Council Resolution 1315. The Agreement on Special Court and the Statute of the Special Court were ratified by the Sierra Leon Assembly in March 2002, based on the Law on ratification which explicitly says the following: "Special court will not be a part of Sierra Leon criminal justice system." Article 10 of the Agreement on establishing the court is important because it states that every amnesty granted for crimes which are within the court jurisdiction will not be an obstacle for prosecution . This actually means that the Court will not acknowledge the amnesties resulting from the Lome Agreement. This decision is of key significance for the development of the international criminal law since it represents the first decision of an International Criminal Court that says that amnesties are not impediments for trials for international crimes.[12]

In the countries of Latin America there were not any Truth Commissions but the amnesties were granted by military regimes of their own initiative. This is why during 1970s the campaign was launched for avoiding punishing foreign dictators for human rights violations, particularly in Latin America. Self-proclaimed amnesties to which military dictators, who were renouncing of power and wanted to protect themselves, referred to met a storm of protests by groups of victims such as Mothers of the Plaza de Mayo and Latin American Federation of Associations of Relatives of Disappeared Detainees. The UN Human rights commission published a report in 1997, whose author was Louis Joinet, which identified three elements essential for the fight against eluding punishment. These are: the right of the victims to know what happened to them and their compatriots, the right to justice (including the right to legal remedy) and the right to compensation.[13] Although they do not explicitly mention criminal prosecution as *sine qua non* of the campaign against eluding punishment, there is no doubt that they, as well as the groups of victims worldwide, identified the criminal law as the corner stone of this fight. Criminal law, naturally, does not represent the only element of this campaign, as highlighted by the Joinet's report. The additional component is knowledge. At the beginning of 1970s many countries established Truth Commissions as transition mechanisms of justice in order to focus on the overall opus of violations of the previous regime and not on the act of individual crimes. Although the amnesty may follow after the Truth Commissions, it may also serve to alleviate responsibility because they precede the adoption of measures which include the compensation to victims and may serve as therapeutic and powerful form of re-establishing justice, since they make it possible for the victims to talk about the terror they experienced without painful circumstances brought by the usual criminal prosecution procedures. The decision of the South African Government to establish the Truth and Reconciliation Commission prompted the interest of the international community. The South African Truth and Reconciliation Commission was unique when compared with the previous ones, because it was formed by the democratically elected legislative body which included the representatives of the victims of apartheid and it was not just a command to be obeyed.[14] In the course

12 Manisuli Ssenyonjo, The International Criminal Court and the Lord's Resistance Army Leaders: Prosecution or Amnesty, International Criminal Law Review, Martinus Nijhof Publishers, 7 (2007), p. 380.
13 Leila Nadya Sadat, Exile, Amnesty and International Law, Notre Dame Law Review, University of Notre Dame, Vol. 81, 2006, p. 123.
14 Ibidem.

of this process there were debates between those who favoured unconditional amnesties and those who opposed amnesty of any kind. The South African Truth and Reconciliation Commission attempted to find a compromise between these two extremes. Out of 7,112 requests for amnesty that the Commission received, 849 were granted and 5,392 declined. The perpetrators who did not admit to committing the crimes could still be prosecuted. The procedure for granting amnesty is more legitimate if it does not include prosecution of perpetrators who have not admitted the most serious crimes. The South African Truth and Reconciliation Commission, due to the great support it enjoyed in both South Africa and beyond it, states that in some cases carefully worded provisions of amnesty combined with the threat of prosecution may be desirable means to improve justice.

We can conclude in this part of the paper that amnesties granted as a part of democratic parliamentary and consultative processes, in which both the victims and community are involved, can be characterised as appropriate more than those situations when national leaders grant amnesties to themselves before they renounce of power. The difference should be made between the so-called "self-amnestying" laws and amnesties which are the result of peace process based on democracy, which exclude criminal prosecution for crimes or acts of the members of opposing fractions, but leave possibility for punishing the most serious crimes.

Amnesty and the roman statute

What standpoint should the International Criminal Court take regarding the national amnesties? Despite the thorough description of international crimes within its jurisdiction, the Statute does not have a provision which refers particularly to the question whether the International Criminal Court shall observe the amnesties for such acts. Depending on the situation the International Criminal Court (ICC) chooses the weapons among those at its disposal according to the Rome Statute (it makes the decision whether to assume jurisdiction for the international crime or it will consider that the states parties to the Statute have resolved the dispute in their respective countries in a satisfactory manner which includes implicitly the acknowledgment of amnesty). Article 16, 17 and 53 are of special importance to that effect. There is a standpoint that failure to include the provision on amnesty into the Rome Statute is intentional, since in the Preamble the International Criminal Court took obligation to oppose to eluding of punishment for serious crimes. [15]

It would therefore be inconsistent to acknowledge national amnesties. It is our opinion that the lack of the provision on amnesty in the Rome Statute is the result of opposing attitudes and impossibility to reach consensus among the countries which participated in the diplomatic conference. Namely, during the stage when the future status of the International Criminal Court was negotiated there were heated debates on amnesties, the status of Truth Commissions and the requirements to provide for unhindered transition from authoritarian to democratic systems. A number of countries, South Africa and the USA among them, were of the opinion that national amnesties should be included by the Rome Statute but in such a manner as to exclude the jurisdiction of the International Criminal Court in corresponding situations. For

15 In brief, the Preamble of the ICC Rome Statute says the following: "Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,... Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,... Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes... Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,...We have agreed as follows...."

instance, South Africa particularly insisted on the introduction of alternative forms of responsibility, worried that the approach taken by their Truth and Reconciliation Commission (which offered amnesty in exchange for honest confession) will be rejected as a proof of lack of willingness of a country to prosecute the case.[16] The USA delegation made an informal proposal for the Court to take into account national amnesties when deciding whether to exercise its jurisdiction or not. According to the USA standpoint, the policy favouring prosecution of perpetrators of international crimes must be balanced with the need to close "the door of conflicts from the past era" and to "encourage the surrender of armed groups" and thus alleviates transition towards democracy.[17] One of the reasons stated in their decision dated May 06, 2002, in which the USA notified the UN Secretary General of their intention not to become a signatory, was that the Rome Statute did not accept amnesties under certain circumstances, that according to their opinion it should allow for democratic choice between prosecution and national reconciliation and that the International Criminal Court is not the institution which should make such a decision.[18]

Other countries responded by expressing fear that national amnesties might be used by dictators and war criminals who were attempting to avoid application of legal norms and that this would degrade the Court.[19] Some authors point out that national amnesties are directed towards protection of perpetrators of war crimes, genocide and crimes against humanity and that it is really a pity that the proponents of the Roman Statute missed a possibility to state clearly and unambiguously in it that such amnesties are inadmissible.[20]

Ambiguity and freedom of interpretation, as we are about to see, still make it possible for amnesties to be taken into account. A certain number of provisions of the Rome Statute of the International Criminal Court are sufficiently widely set so the amnesty can find its place. [21]

In the provision titled "Admissibility" in Article 17, the Statute deals with complex relationship between national judicial systems and the International Criminal Court. Pursuant to provision 10 of the Preamble and Article 1 of the Rome Statute, the powers of the International Criminal Court in exercising its jurisdiction over individuals accused of international crimes are complementary with national criminal courts. The term "complementary", according to one opinion, is the expression denoted the wrong meaning because basically the relationship between the international and national judiciary which is established is far from complementary. The two systems operate more one against the other and to a certain extent show animosity towards each other.[22]

Pursuant to the principle of complementariness, conducting the procedure is within the jurisdiction of the states parties to the Rome Statute and only under specific circumstances this would be the International Criminal Court. In order for the International Criminal Court to initiate and conduct criminal procedure it is

16 William A.Schabas, *An introduction to the International Criminal Court*, Cambridge, Cambridge University press, 2001, p. 68.
17 Michael P. Scharf, The Amnesty Exception to the Jurisdiction of the International Criminal Court, op. cit, p. 508.
18 Anja Seibert-Fohr, The Relevance of the Rome Statute of the International Criminal Court for Amnesties and Truth Commissions, *Max Planck Yearbook of United Nations Law*, Vol. 7, 2003, p.556.
19 Naomi Roht-Arriza, Amnesty and the International Criminal Court, in *International crimes, peace, and human rights: The Role of the International Criminal Court,* New York, Transnational Publishers, 2000, p. 79.
20 Christine Van den Wyngaert & Tom Ongena, Neb is in idem Principle, Including the Issue of Amnesty, in: Cassese A., Gaeta P., Jones J.R.W.D. (ed.), *The Rome Statute of the International Criminal Court: A Commentary*, Vol. II, Oxford, Oxford University Press, 2002, p. 727.
21 This is where there is the greatest difference between national criminal justice provisions and the international criminal law which can be observed through the prism of the Rome Statute and the Statue of ad hoc tribunal. While the national criminal laws respect consistently the principle of legality and its segment lex certa, the same cannot be said for the international criminal law which is the result of its underdevelopment but also of the lack of consciousness that would suggest the great importance of respect for the basic criminal justice principles.
22 William A.Schabas, *An introduction to the International Criminal Court,* op. cit, p.67.

necessary that there are not any obstacles which refer to functioning of the principle of complementariness. Therefore, a certain barrier for the acceptance of national amnesty is the provision specifying the situations which refer to functioning of the principle of complementariness in which the procedure will not be conducted before the International Criminal Court. According to this provision, the International Criminal Court will decide that the case is inadmissible when: a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute; c) person concerned has already been tried for conduct which is the subject of the complaint, and there are not any conditions to depart from the principle *ne bis in idem*, and d) The case is not of sufficient gravity to justify further action by the ICC. It is important to point out here that this Article does not speak about the legality of national amnesties but about the place of jurisdiction of the International Criminal Court. But, in the absence of specific provision on amnesty, the International Criminal Court must determine if the case is admissible according to Article 17. Judging by paragraph 1, sub-paragraph a) the case is inadmissible if there is an ongoing criminal investigation or the criminal prosecution has been initiated, except in case when the country does not want the case or is not capable of conducting a proper investigation or undertaking prosecution. According to Schabas, the country is unwilling and does not want to conduct investigation when the national court acts "superficially and for their own sake" in order to make an impression that the investigation and prosecution are in progress, although the determination for their conduct is missing. While the question of whether the country is capable of conducting a proper investigation is observed through the prism of whether it can capture the accused or provide the necessary evidence and similar [23], whether the "case has been investigated" (sub-paragraph b) must be evaluated from case to case. This actually means that if amnesty prevents investigation, the inadmissibility of the case cannot be discussed. Sub-paragraph c) points out that a person will not be tried by the ICC if he/she was already tried by another court. If a national trial has already been completed, the judgment pronounced by the court represents an obstacle to court procedure which would be conducted by the ICC, except in case of framed or so-called "performance" trials. They are defined as trials conducted so that the accused would be protected from being declared guilty, or those which are not conducted independently and impartially and in the manner which "in the circumstances is inconsistent with an intent to bring the person concerned to justice." When amnesty was not preceded by the trail, it is clear that this provision cannot be applied. However, it is possible, if amnesty is granted prior to trial or in the course of the trial the jurisdiction of ICC is established according to sub-paragraphs a) and b). The problem is, however, what to do with the individuals who were amnestied after they were sentenced in the given country. Is there *res judicata* here since the trial is over? Article 20 specifies only inadmissible manners of conducting criminal procedure, but not what should be done with inadmissible measures brought after the procedure is over. One of the solutions is extensive interpretation of the notion "procedure", which would allow for the amnesties to be treated as "performance" trials.[24] The Statute also provides for as inadmissible the case which is "not of sufficient gravity to justify further action by the Court (sub-paragraph d)." It is questionable whether this sub-paragraph can be applied to all cases of amnesty. Gravity must be determined based on characteristics of a particular crime. Taking into account that

23 Ibidem.
24 Christine Van den Wyngaert & Tom Ongena, Neb is in idem Principle..., op. cit, p. 727.

the ICC is competent for crimes considered the most serious, inadmissibility based on the gravity of the case should be interpreted restrictively providing for the exception in only a limited number of cases.[25]

Equally difficult question is whether the other forms of "reconciliation", such as amnesty granted by the Truth and Reconciliation Commission, have any effect *res judicata* on the International Criminal Court. Taking into account that Article 17 pays special attention to conducting investigation, the question may be asked if the procedure carried out by the Truth and Reconciliation Commission, as a form of out-of-court procedure, fulfils the requirements of complementariness which exclude the trial by the ICC. The Court judges may consider that the project of the Commission of honest confession is taken as a form of investigation which means that they do not interpret this as "true unwillingness or impossibility" of the country to exercise justice. However, it is not possible to predict in advance what standpoint will be taken by the actors of judicial system. Judges and prosecutors may decide that the cases such as South African are just the cases where the line must be drawn and say that the amnesty for such crimes is inadmissible.[26]

When the amnesty procedure is conducted by some Truth and Reconciliation Commission, the solution to the problem may be sought in application of Article 53, which in some cases may lead to acceptance of amnesty. This is so-called prosecutor's discretion. Namely, if the case has been referred to the prosecutor pursuant to Article 13 of the Roman Statute, the prosecutor may decline to investigate if "taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice" (Article 53). After the investigation, the prosecutor may decline to proceed with prosecution when "a prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime." The final decision will be made by Pre-Trial Chamber. It is important to point out here that in some cases where the case was not referred to the prosecutor for political reasons, the prosecutor may initiate investigation at his own request (*proprio motu*), based on notification that the crime from the ICC jurisdiction was committed. The expression "may initiate investigation" should be understood as his right to initiate investigation which is not conditioned by anything and which is based on his discretionary judgment and activated on the basis on his free decision and not through the action of any other party, such as any country or the UN Security Council.[27]

Finally, there is another option which will prevent the ICC from considering the case covered by amnesty even when it is acceptable according to the Rome Statute. This option is called deferral of investigation or prosecution and it is regulated by Article 16. Namely, "no investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect. That request may be renewed by the Council under the same conditions." The Statute imposes the condition that when deferral of investigation or criminal prosecution is requested, the Security Council acts in accordance with the Chapter VII of the UN Charter. This means that the Council must determine the existence of "any threat to the peace, breach of the peace, or act of aggression", in accordance with Article 39 of the Charter. Indeed, it is hard to imagine a situation in which refusal to acknowledge national amnesty represents

25 Anja Seibert-Fohr, The Relevance of the Rome Statute..., op. cit, p. 566.
26 William A.Schabas, *An introduction to the International Criminal Court,* op. cit, p. 69.
27 Милан Шкулић, *Међународни кривични суд-надлежност и поступак*, Београд, Правни факултет, 2005, стр. 431.

a threat to international peace. But, if the ICC continues with the process despite the amnesty which represents a part of the UN peace agreement and as a means to end serious conflicts, transition to peace might be made more difficult due to mass protests in these countries. This represents a sufficient argument for the Security Council to demand deferral of prosecution in order not to compromise the peace agreement which includes the provision of amnesty.[28]

CONCLUDING REMARKS

The Rome Statute does not mention amnesty explicitly. However, it is not completely ignorant of this issue. A certain number of provisions offer the possibility to the ICC to accept or reject such situations. When making a decision whether to apply Article 16, 17, 20 or 53, a great help has come from the practice so far, which includes both the situations when amnesties were justifiable and the situations which suggest they were inadmissible from the point of view of the international criminal law. The Court shall particularly take into account certain principles which have crystallized recently in treating such situations.

First of all, there is an obligation of the countries to prosecute and punish perpetrators for serious crimes within the jurisdiction of the Court. This offers a certain insurance that the countries will not let a serious crime be forgotten by undertaking measures aimed at forgiveness or exoneration from culpability. Second, the standpoint is highlighted that the victims have the right to truth and compensation and therefore it must be made sure if the country or international community have established a mechanism to find the truth about the victims and provided for the corresponding compensation. Also, it is a very important question whether the fighting will end and transition initiated without the agreements which include amnesty. It could be proved with arguments that amnesties which fulfil these conditions are consistent with international sources and should be acknowledged by both national and international courts. According to the opinion of Michael Scharf, it is still necessary to determine whether a country has implemented important steps to provide for the prevention of further violations of international criminal law provisions and whether it has undertaken steps through alternative manners of perpetrators sanctioning (losing a job, losing a government or military retirement compensation, and similar).[29]

Therefore, the difference is made on the one hand between the self-proclaimed, unconditional amnesties, which were particularly prominent in various countries of Latin America when a large number of military juntas amnestied themselves for all crimes committed during their government or they forced civil governments to do so before they handed over power, and on the other hand, amnesties which provide mechanisms for investigation and forgiving in the process of national reconciliation by resulting from a particular decision of the court or Truth and Reconciliation Commission.[30] By this we do not want to claim *a priori* that the conditional forms of amnesty, such as the process of the South African Truth and Reconciliation Commission which was reached after many years of disturbances and the goal of which was for the society to face its past and starts on the path of democracy, is in accordance with the requirements of the international criminal law. This must be determined in each specific case. As we have seen, some provisions of the Rome Statute provide for dealing with the issue of amnesty. They indirectly allow acknowledge-

28 Anja Seibert-Fohr, The Relevance of the Rome Statute..., op. cit, p. 583.
29 Michael P. Scharf, The Amnesty Exception to the Jurisdiction of the International Criminal Court, op. cit, p. 527.
30 More about this in: Antonio Cassese, *International Criminal Law*, op. cit, p. 335; Garth Meintjes, Domestic Amnesties and International Accountability, in *International crimes, peace, and human rights: The Role of the International Criminal Court,* New York, Transnational Publishers, 2000, p. 86.

ment of amnesties guaranteed within the context of Truth Commissions, such as in South Africa, and rejecting of unconditional amnesties, i.e. that the ICC reaches the decision that the case of amnesty without an investigation conducted is admissible, which means that it will initiate the criminal proceedings and that it is inadmissible when it refers to amnesties followed by the investigation and determination of truth by the appropriate Commissions. The solution today may be reached only by careful analysis of every individual situation, while eventually an additional protocol to the Rome Statute is brought which will regulate the question of amnesty. Only time will show if this is too optimistic a view of the development of the international criminal law, taking into account that even those who were involved in writing the Rome Statute could not agree on certain provisions on amnesty.

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ETHICS AS A MEANS OF PREVENTION OF ECOLOGICAL CRIMES

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Abstract: Globalization as the basic characteristic of the modern world is developing extremely pathological features. If the century behind us is considered the century of economics and information technology, a period of time ahead of us is to be called the period of ecology.

Athough the interactive relationship between mankind and nature is actually threatening the nature itself, it is even more dangerous to humankind in general. The tension between these two categories is rising, and we must bear in mind that ever agressive and superior humans are having a fragile ethical thought as their opponent. The aim of this work is to hightlight this tension.

The criticism of the present, especially if it is concrete, and if it underpins causes and consequences, as well as powers which can help us surpass the present condition, already possesses certain ideals neccesary for our future. Accordingly, critical attitude towards different types and contents of destruction of our environment tells us much about our future.

Many theoreticians' ideal was actually intertwinning of ethics and law. The power of ecological ethics and morale depends on variety of factors – do they help develop healthy surroundings, which laws do they promote, and do they apply sanctions? One of the prerequisites for succesful application of ethics on functioning of ecological criminology is systematic planning and programming of preventive measures consistent with ethical principles. The importance of the questions being discussed here is very high.

Key terms: ethics, prevention, ecological crime, security

INTRODUCTION

After so many centuries of the progressive development of modern civilization, we are in a situation to think about the future of the mankind, not with unlimited optimism, but with many doubts and moral dilemmas. Ethics is the product of the mankind, and its laws are connected with the existence of the society, and some of them were relavant just to one historical period. While natural laws have no purpose, because they were not invented by humans, ethical laws are introducing the necessary harmony into relations between humans, as well as preventing the possible harm individuals could do to each other. These differences between some historical and the above-mentioned moral principles show that the ethical laws do not have the same character as the laws of nature that are being studied by exact sciences.[1]

Ecological ethics is a philosophical discipline that deals with spontaneous, as well as learned behaviour towards natural surroundings and the relationships in those surroundings. Philosophers were fast to admit that traditional theories and principles are inadequate for confronting with new ecological challenges and threats, such as ecological crime. As a response to that challenge, they started widening traditional terms and principles, so that they could become more relevant to ecology itself.

1 Mihajlo Marković „Etika i politika", Beograd BIGS 1994, page 9, ISBN 86-7030-007-9.

The development of ecological crisis also develops ecological consciousness, which does not represent the awareness that the problem exists. It has its own sociological core, so that its definition cannot be based on criticism only, however that criticism sounded progressive.

Ecology as a science was born in the 20th century, although its principles can be traced much earlier. It is more of a borderline integral science that came to its existence along with other natural and techical sciences, and even humanities.

When the ecological crime started developing, and the damages started reducing the budget, it was expected from different sciences such as economics, law and many others to suggest possible soultions for the problem. If the importance of ethics is taken into account, the up-to-date theory and practice are focused mainly on researching the possible causes and factors which influence deviations in applications and use of ethical principles, especially in the field of prevention. Accordingly, the attention is focused on discussing the causes of the erosion of moral and ethical values and all the negative aspects of it, especially in the field if ecological crime.

Basic principles of ethical management as a means of prevention can be:

- To define the system of responsibilities
- Strong political will to apply the ethical principles
- To raise consciousness of the public
- To promote and define ethical behaviour in the public
- To prevent underestimation of effects that the free access of the public to information can develop in order to suppress the serious sociological problem: ecological crime[2]
- To set the precise institutional and normative frame for sanctioning the violation of ecological laws
- To promote ethical standards at all levels.

The applied ethics is one of the basic indicators of human values. It is a part of sociological theory that has been developing rapidly over the past several years and which became one of the most developed social sciences. It branched out from the moral philosophy and became interdisciplinary theoretical field which involves law, economics, religion, and other theoretical disciplines.

Are we confronted with ecological challenges in the 21st century? Are we confronting them, or actually creating them? Here is the presupposition for all the answers posed by philosophers: to solve the problems, to define some basic terms and to make certain distinctions.

It's high time that professionals took ethics into their own hands.[3]

Genesis of ecological crime and development of ethics

The crisis is being reflected into moral responsibility in general, as well as in the field of ecological moral, or in other words, destruction in the field of ecology. From the interactive relationship between our surroundings and human activities, we may come to conclusion that degradation of nature's powers can have terrible consequences on economic growth, health of the citizens and national security. A great number of theoretical and practical research of current ecological security in

2 Rodoljub Šabić „Naše teme" broj 2 Beograd 2006. ISSN 1452-5275.
3 Dr Aleksandar Čudan „Distrukcije finansijskih transakcija na tržištu" strana 15, doktorska disertacija, Univerzitet u Novom Sadu 2006.

this part of the world shows that it is not at the desired level and that it is influenced by many factors: technical, technological, economical, political, etc.

Criminology as a scientific discipline is one of the most important when it comes to dealing with the influence of social changes on crime. As a synthetic science, it also uses knowledge from other sciences: law, economics, technical sciences, psychology and ecology.

Criminal activities against nature are considered to be among the most serious ones. Disobeying the rules in this field produces sociopathy which is usually manifested through economic crime.[4]

Ecological crime is a modern type of crime, which is becoming ever important, when it comes to its discovery and prevention. If we realize that ecological crime is developing, it instantly raises the number of criminal activities.

Over the past several years, the Earth has started wailing louder, and now it is time for us to hear its cry. All the devastated green areas, acid rains, great chemical accidents, animal extinction, landfills and barges sailing in order to find a suitable place to dump the toxic or radioactive waste. It is in Chernobyl, Bhopal[5], the British oil platform, Hungary, where its message was blown into our face.

The phenomenon described is a modern crime which consists of several characteristics that make it 'modern'. These are: constant expansion, adaptability to political and economic relations, dynamicity, and innovativeness with all the necessary elements of organization.

Humankind has learned, over the past two thousand years, that it is sometimes necessary to presuppose other people's actions, or to see them as equal to ours. That actually means that not everything that is poetic or morally correct must be part of our sphere of interest. Without ethics and protection of nature, through prevention of ecological crime, we would be tempted to do something extremely harmful to satisfy our own short-term interests.

Generally speaking, ecological ethics represents a systematic description of moral relationship between human beings and nature surrounding them. Ecological ethics holds a belief that moral norms manage human behaviour towards nature. The theory of ecological ethics tends to explain the character of those norms. Different theories of ecological ethics offer different answers to these questions.

If there is a practical behaviour in accordance with the knowledge and the current ecological situation, there is also the story about ecological consciousness. The limitations connected with the ecological thought are listless, starting from the inner man's censure, to the outer conditions and surroundings which can limit the attitude and manifestation.

In sciences such as philosophy and ethics, humans tried to pose some questions and give answer to them throughout relationship with others. Never before has ethics, as a subject, been more interesting to others. New experiences can be explained with the help of the old language. The practice has shown that the best defence from crimes and erosion of trust represents the introduction of new ethical processes.

There is an extensive literature dealing with different aspects of ecological crime and ethics, and the discussion is still open.

4 Dr Aleksandra Ljuština „Prevention and reppression of ecological crimes using crime-detection methods" st. 186 Science Security Police, Journal of Police academy – Beograde 2003. YU ISSN 0354-8872

5 In the greatest ecological incident in India, in Bhopal, more than 4,000 people died in one single moment, and after a few years the number of victims raised to 16,000. The residents of this area are going to feel the consequences for years to come.

Prospection of the further development of prevention

If we want to define prevention, we could say that it consists of many state organs and society itself, who tend to remove the causes, conditions and surroundings of some negative appearances. Prevention in general, altogether with prevention of different kinds of destruction, has its own place in state's efforts to delete this negative trait. Undoubtedly, prevention is necessary, so we should modernize it and strengthen it. Although prevention is highly influential, it cannot be completely confronted with the problems targeted. Consequently, all the tasks and activities are necessary to be applied and modernized.

Many countries' surveys and experiences have shown great potentials and a great number of nuances in the creation of ecological strategies. The main task of science is to develop its theoretical basics for this sensitive material, so that its effects could be applied in practice.

Repressive activities, as additional activities, are focused on consequences dealt with reactively after the crime (*post festum*). The basic characteristic of prevention is planning all the possible measures to stop the crime (*ante delitum*). Modern trends are focused on prevention.

Essential presupposition for prevention of various social problems is the will of the society. It is about the potential of society to organize prevention of activities against nature. Repression was not quite fruitful, so new solutions must be found, and the most successful one is prevention, alongside dealing with causes and possibilities for crime towards nature, where the main role is given to ethics and moral standards. Due to efficacy and rationality of prevention, those mechanisms must be supported with repressive mechanisms, too. Activities must be balanced both on legislative and institutional level, but first of all the areas exposed to criminal must be identified.

The basic condition for success and avoiding the ephemeral response of prevention is the will of the public to apply preventive interventions. It is expected that public opinion, citizen's consciousness and protests play an important role in transmitting the resistance of surroundings on decisions. There are many reasons why this is happening. The lack of consciousness, motivation, will to act, the lack of tools and ignorance in general, are just some of many social categories, and even communities. It can be manifested through ecological ignorance towards decision-making.

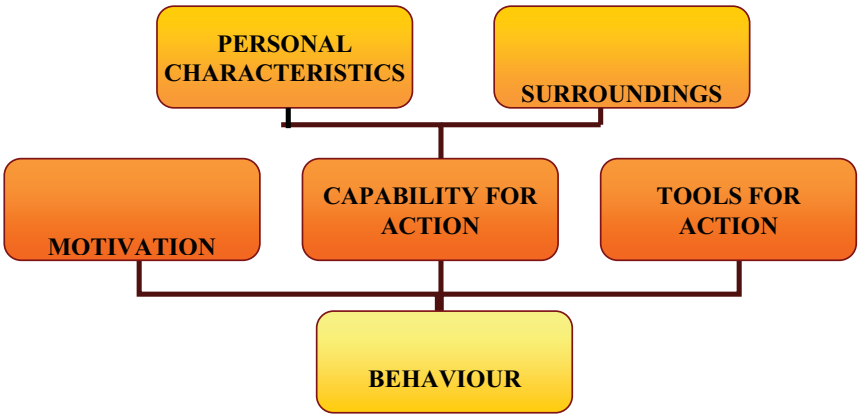

Figure 1- Relationship between motivation and capability to act and behave

The supporters of the preventive kind of state and society give priority to the

widest operation of all factors. When reaching the preventive goal in the protection of the environment, police cooperates with certain subjects in the sphere of economy and beyond, while the repressive task is being realized by pressing charges for economic crimes and it necessitates initiating court proceedings when all the important elements are gathered from the law dealing with environment. It would be quite naive to attribute prevention of ecological crimes to the police and judiciary, because it is very complex. Society is responsible, too. Public discussions, scientific gatherings and media can have strong influence on ethic behaviour and opinion of the public about ecological crime and possible measures for its prevention.

Long-term prevention in this field is impossible without family, educational institutions, government, police and judiciary. The role of the police is quite specific in this case, and also very important in the chain of long term prevention. Prevention of crime is one of the most important tasks of the police and its duties must follow certain laws and regulations.

This approach enables efficient prevention of dangerous and unacceptable behaviour. The effort is made to analyze ecological crime in its widest sense and pinpoint the influence of prevention of ecological crimes, especially by promoting ethic values.

Ethics and legal aspects of ecological security in the republic of Serbia

With the creation of modern state, the society gets an adequate answer in the sense of legal regulations. Law is human creation, created when society had to raise its consciousness to survive. The ideal of many important theoreticians of law was a close intertwining of ethics and law, and there was a need to build legal norms on the basis of moral norms. Harsh reality did not allow it to happen. In all societies, legal process came as a result of the relations of power, and that is the reason why economic, political and other interests had stronger influence than ethics on the creation of legal laws.

It can be concluded that the connection between ethics and ecology plays an important role when it comes to regulating protection of the environment. Legal regulations, both on international and national level, should be based on ecological measures (which is not yet the case) because economy, politics and other non-ecological interests still have the strongest influence on ecology. Because of that, it is necessary to make laws which would protect the environment or at least slow down its degradation.[6]

If we perceive ecological consciousness as an attempt of the humankind to understand and define its relationship with nature, and thus create and regulate its behaviour accordingly, including the legal aspect of ecological security, we could follow the evolution of ecological consciousness through the history of cultures. It is not problematic to define ecological norms, the problem lies in the underdeveloped ecological approach which is one of the main influences on ecological security.

Security, as the basic social value, is being understood only when it is endangered. That is the result of poor ecological consciousness. Ecological security needs effort and attention and it is necessary to find the most efficient way to protect the ecosystem.[7]

6 Both philosophy and literature wrote a lot about the relationship between justice and if justice is powerful, if power is unjust, etc. Pascal wrote: „Justice without force is powerless. Force without justice is tyrannical. Justice and power must be brought together, so that whatever is just may be powerful, and whatever is powerful may be just ".

7 Marija Blagojević „Upravljanje ekološkim resusima" Bezbednost 2/2007 Ministarstvo unutrašnjih poslova Republike Srbije

Legal aspects of ecological security at the territory of the Republic of Serbia are defined by regulations at three levels:

- constitutional-legal level
- criminal-legal level
- international-legal level

- Constitutional-legal frame is set by the Constitution of the Republic of Serbia. It exists in the light of the freedom and rights of the individual to the healthy environment and its protection. The state is obliged to ensure protection and security of its citizens.
- Criminal-legal frame which is set by the system of imperative legal norms, without noticing challenges in the sphere of security and new types of endangering ecological values, can be enough if the preventive-repressive activities are present, too.
- International-legal frame of ecological security is wide and can be placed in the phase of making changes in the orientation, so that the large set of international legal regulations concerning protection of the environment of the European Union could be grasped.

Since 2005 the Criminal Code of the Republic of Serbia has significantly deepened incrimination of the environment. It introduces new criminal acts and classification of criminal acts against the environment. Chapter 24 of the Criminal Code of the Republic of Serbia consists of 18 criminal acts in this sphere, including the criminal acts from the previous Code, systematized in other chapters.[8]

In order to offer the right picture of the ecological crime in Serbia, the statistics about the number of criminal acts must not be neglected, as well as the structure of criminal acts which are defined as ecological crimes by the Ministry of Interior. The main goal of this paper is to define the situation in the Republic of Serbia concerning ecological crime, which are its basic types and how widespread they are in our society. The answers on the above-mentioned questions are necessary so that we can understand the current situation and, on the other hand, to create a set of laws to prevent it.

Practice has shown that there are very opposite opinions and attitudes of the police in opposing ecological crime. Law experts and criminologists share opinion that the role of the police is to explore, prove and prevent these crimes.

It can be concluded that the Republic of Serbia has referential legal system with necessary components needed to define the ecological security which is ever open for changes.

8 The Parliament of the Republic of Serbia amended the Criminal Code of the Republic of Serbia on September 29, 2005 (Službeni Glasnik RS broj 85/05), valid from January 1, 2006. godine. By amending the Code the scientific public's long-term wish to codify criminal law had been satisfied.

TABLE 1. Criminal charges for ecological crimes as opposed to the total number of criminal charges on the territory of the Republic of Serbia

YEAR	Total number of criminal charges	Criminal charges for ecological crimes	%
2006	99060	880	0,88
2007	104118	665	0,63
2008	106015	858	0,80
2009	103016	986	0,95
2010	100401	938	0,93

Source: The Ministry of the Interior of the Republic of Serbia

TABLE 2. The structure of criminal charges which belong to the ecological crimes according to the Ministry of Interior's nomenclature

Year	Total number of criminal offences against the environment	Pollution Article 260	Not taking measures against prevention of pollution article 261	Damaging the environment article 264	Bringing dangerous materials into the Republic of Serbia and processing and storage of dangerous materials article 266	Devastation of forests article 274	Stealing woods article 275	Illegal hunting article 276	Illegal fishing article 277	Other crimes
2006	880	3	3			37	704	70	27	35
2007	665	7	3	1		20	471	70	38	55
2008	858	8	3	2		16	643	74	38	72
2009	986	8	2	1		21	729	101	38	86
2010	938	1	1			22	657	94	34	129

Source: The Ministry of the Interior, the Republic of Serbia

TABLE 3. Structure misdemeanours and charges for economic crimes pressed by inspectors of th eMinistry of Environment and Spatial Planning for 2010

Number of inspections	Number of records	Misdemeanour charges	Economic crime charges	Criminal offences
15324	2991	406	97	28

Source: Ministry of Environment and spatial planning, Sector for control and supervision

CONCLUSION

The basic goal of this paper is to offer a clear introduction into philosophical problems concerning ecological questions. Previous discussion gave basics for certain conclusions whose goal is to develop opinions about relationship between ecology, ethics and prevention.

Thus, ethics is a very important scientific discipline. Ethical values cannot simply be positive or negative, they are equally important both for the developed and underdeveloped countries. The importance of ethical values is especially pinpointed in the prevention of crimes against the environment. With prevention, it is necessary to take into account scientific experience in this field, and to use positive experience of other countries. It can be concluded that when there is no prevention, or if it does not function, consequences can be fatal.

Essential questions and general interest of ethical theory are to be followed, although we are going to focus our attention on ecological crime. Ethical values and its application in the process of prevention are not created for people to passively believe in them, but they are signposts for realizations in life. These values are part of the idealistic goals, altogether with choosing the probable and avoiding the absolute values. That is a never-ending dialogue. We are searching for answers, both from science and ethics.

Most of the developed societies, such as Serbia, ethics and ethical principles are used as one of the basic tools for prevention. This is the case mostly because sanctions and repression did not show the expected results.

Although the majority thinks that ethical consciousness is desired, the aims for its stimulation vary depending on national identity, culture, religion, etc. We need many investigations to define the effects of this process. Ethics is not transient, it is eternal.

Regulations and application of ethics achieve many goals, starting with the basic ones which enable domination of truth above lies, over ethical education and ethical values. Main goal, however, is to create defence from any kind of crime.

It is more than sure that these problems necessitate omni-dimensional approach and synthesis of results from different sciences such as law, economy, sociology, ecology. The reason for that is intertwining on the international level and criminal activities, so that only legal-technical rationality of the universalist approach has some chances to stop unethical behaviour in the environment. Surmounting these problems is possible only if we act together, relying on ethical principles, because we are dealing with complex issues, with the evil which generates even greater evil.

Law is neither the beginning nor the end of the process of filling in the vacuum

in rules and regulations of ethics. Ethical analysis precedes law and represents basics for the creation of law. Challenges for the future are enormous, and after one decade, it is high time for new measures to appear.

The main goal of this paper is to introduce the subject and pinpoint its importance, as well as to make it concrete in the eyes of those people dealing with it on a daily basis.

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POLICE RESTORATIVE CAUTION

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Abstract: In recent years, there has been growing interest in restorative justice initiatives in the context of crime control and prevention. Restorative justice is an approach that focuses on the needs of victims and offenders. This approach is based on the reconciliation, healing, rehabilitation, and restoration of relations harmed by a criminal act.

Police restorative cautioning schemes aim at diverting an accused person from formal prosecution in return for his admission of the guilt stated in the charge and agreeing to undertake certain actions. He is expected to take responsibility for his actions and to repair the harm by making an apology or reparation to the victim, community service, donation to charity or the like. Caution should make accused persons ashamed of their behavior in a way that promotes their reintegration into community. Police restorative cautioning has a number of distinct advantages over the traditional cautioning practice, which has been described by some authors as a "degrading ceremony". The research has demonstrated that restorative processes can be more successful than traditional police cautions in reducing the likelihood of re-offending. However, the evidence has shown certain disadvantages of this police practice. In different forms and different names, restorative caution is in use in America, United Kingdom, Australia, New Zealand and other countries. This paper explores some issues in the application of police restorative caution as a means of diversion from formal prosecution.

Keywords: police, diversion from prosecution, restorative caution, final warning

INTRODUCTION

Responsibilities of a police officer may differ from country to country. Typical duties relate to maintaining the public order and peace, law enforcement, protection of persons and property, and the investigation of crimes. In the context of crime control, police have the power to investigate the case, to collect evidence, arrest the suspect and refer him to prosecution. However, not all offences are to be handled by courts. There are ranges of alternatives police can use to address minor offences committed by youths or adults. In England and Wales, for example, these alternatives include for adults: simple cautions, conditional cautions, cannabis warnings, penalty notices for disorder, fixed penalty notices (for driving offences) (Home Office, 2011).

Under the police diversion scheme, police withdraw cases from prosecution in return for the accused person agreeing to undertake certain actions. These actions include an admission of the guilt stated in the charge, an apology or making of reparation to the victim, community service or donation to charity.

Police diversion is an option generally used in cases where the charge would result in a first conviction for an offender and enables the person to avoid conviction. Police diversion has a positive aspect in that it enables the first time offender to make reparation and rehabilitate. Application of diversion measures helps effective use of community resources.

Traditional cautions consist of a formal warning to an offender by a police officer.

Under restorative cautioning everyone affected by an offence, including members of the victim and offender's families are invited to participate in the conference, which is facilitated by trained officers. In contrast to traditional cautions, restorative cautioning aims at encouraging the offender to take responsibility for repairing the harm caused by their offence. A restorative caution is a meeting facilitated by a trained police officer, based around a structured dialogue about the offence and its implications (with active involvement from the offender and the victim, if present) (Wilcox et al., 2002).

Background

Police cautioning schemes derived from the police-led model of restorative cautioning developed in Wagga Wagga, Australia in the early 1990`s. Wagga Wagga model was influenced by family group conferencing, particularly associated with the development of restorative justice models for young offenders in New Zealand. The goal of initial Wagga Wagga model was to find a way to improve the police cautioning process so that those directly affected might feel better satisfied as a result (O`Connell, 1998). The use of police-based conferencing outside Australia began in the mid 1990`s following a series of training sessions in Pennsylvania and Minnesota. The practice of restorative cautioning was widely spread in the United Kingdom introducing Wagga Wagga model in Thames Valley (O`Mahoney, Doak, 2009).

A theoretical basis for restorative cautioning practice could be found in criminological theory of reintegrative shaming developed by John Braithwaite (1989). Braithwaite theory posits that inducing a sense of shame is the best way of controlling crime. Reintegrative shaming is best achieved when censure is "imposed by relatives, friends or a personally relevant collectivity that have more effect on criminal behavior than sanctions imposed by remote legal authority" (Braithwaite, 1999: 69). Promotion of restorative principles and raising of awareness that victims need to have greater role within justice system have had another impact on developing cautioning practice. General aims of restorative justice are to reduce re-offending, to restore the relationship between the victim and the offender that was disturbed by the offence, and to improve victims' experiences with the criminal justice system (Miers, 2004). Victims should have the chance to express their views about the offence, to have their anxieties and fears addressed, to receive information and compensation, and to be consulted on decisions that affect their interests. Restorative justice holds the promise of restoring victims' material and emotional loss, safety, damaged relationships, dignity and self-respect (Hoyle, 2002). Inviting victims to restorative cautions potentially advances all of these goals, and, in addition, may increase the likelihood that offenders will come to feel shame for what they have done (Miers, 2004).

Police cautioning practice

We may define a police caution as a formal disposal of a criminal case determined by the police without the involvement of either prosecutors or the courts. The purpose of a police caution is to deal quickly and simply with less serious offenders, to divert these offenders from unnecessary appearance in courts and to reduce the chances of their re-offending (Hoyle at al. 2002: 6). One of the aims of cautioning is also to prevent the overburdening of the court system. Statistics shows that one third of all criminal cases have been dealt by the police, which considerably release the pressure on the justice system.

Cautions are administered in person by a police officer, usually at a police station. The cautioning police officer is supposed to invite all those affected by the of-

fence, including the offender, victim, and family members to the cautioning session. The police officer would then use a prepared script to facilitate discussion about harm caused by an offence. If a victim is present, the cautioning session is termed a restorative conference. When the victim does not attend the session (including cases where there is no identifiable victim), the session is called a restorative caution. Restorative conference is conducted under the structured script described well by Hoyle: The officer (who is the facilitator of the process) first sets a re-integrative focus for the meeting. The emphasis is that participants are not there to judge whether the offender is a good or bad person but rather to discuss the harmful effects of the offending behavior and to work towards repairing that harm. This is intended to guard against any stigmatic shaming of the offender. The facilitator then asks the offender to describe their thoughts and feelings at the time of the offence and afterwards. This allows the offender to take responsibility for the offence prior to anyone else speaking, which may serve to alleviate the anger that other participants might be feeling. This may serve to maximize the chance that they will make constructive contributions later in the process. The others present are then invited to talk about the harm the offence caused. In a restorative caution, the views of any absent victim should be notified at this stage in the process. The offender is then asked if there is something to say in response, and this sometimes prompts apologies or other reparative gestures. The participants are then encouraged to explore the issue of repair further. Whilst the discussion about the offence and its implications is meant to induce a sense of shame in the offender, the apology and reparation stage is designed to foster a sense of re-integration (Hoyle at al. 2002: 6).

There are several preconditions for police caution to be applied. First, there must be evidence that an offender is guilty. In addition, the offender has to admit that he has committed the crime, and give agreement to receive a caution.

When a person is given a simple caution, a police will officially warn him about the unacceptability of his behavior. A simple caution may be used to deal quickly and simply with those who commit less serious crimes. The aim of simple caution is to divert offenders away from court, and to reduce the likelihood that they will offend again. If a person offends again, the police will likely lay a charge instead of passing a second caution. A repeated caution could be given only if the second offence is a minor offence unrelated to the previous one, or if more than two years have elapsed since the original offence (Home Office, 2011).

A conditional caution differs from a simple caution in that that a person must comply with certain conditions to receive the caution and to avoid prosecution for the offence he committed. The conditions that can be attached to a conditional caution are rehabilitative or reparative in nature. Conditions could be used to prevent reoffending, help offenders change their behavior and reintegrate into society. Rehabilitative conditions could also include attendance at drug or alcohol misuse programmes. Reparative conditions include the reparation of damage caused by a criminal act. The offender should take responsibility for his actions and to repair the harm by making an apology or reparation to the victim, provided this is acceptable to the victim. Where the result of offending is the damage or loss of community property, reparation could be performed through community service, donation to charity or the like. The police can administer a conditional caution after consultation with the Crown Prosecution Service when they think it is the most appropriate way to address certain behavior or to make direct reparation to the victim of the crime. The views of the victim are also relevant. If a person does not comply with the conditions attached to the conditional caution, he will be charged with the original offence and the case will go to court (Home Office, 2011).

Police cautioning for youths

The great majority of children and young people who offend do so only once or twice. For them, a caution or an informal warning administered by the police is sufficient to prevent further offending. Statistics shows that approximately 80% of young offenders who are cautioned for the first time do not re-offend within two years of the caution. Subsequent cautions have been shown to be progressively less effective (Home Office, 1997). Police cautioning for youths in England and Wales has been put on the statutory basis by the Crime and Disorder Act 1998. Over time, the established cautioning approach was seen as unsuitable and the concept of warnings with various interventions was soon practiced successfully under the title of cautioning plus. Today, there are several types of police measures for youths aged 10 to 17: reprimands, final warnings, penalty notices for disorder (for those aged 16-17) (Home Office, 2011). When applied to youth justice practice, a number of potential problems with this new approach to police cautioning appear. The nature of the reprimand and final warning scheme means that, if a young person comes to police notice on two occasions, then the third time, regardless of the offence, he would be sent for a court appearance.

In the Northern Ireland, the police operate Youth Diversion Scheme, which is made up of group of youth police officers who consider all juvenile cases that come to the attention of the police. They have four different options available. They can decide to take "no further action" when there is insufficient evidence to establish that a crime has been committed, or the offence is trivial. Secondly, the police may give an "informed warning" which is usually given to a young person and his parents, and does not result in formal criminal record. The police may decide to give a "restorative caution" to a young person when there is sufficient evidence to prosecute, the young person admits to the offence, and his parents give informed consent to the caution. The last option is to refer the case to Public Prosecution Service for processing through the courts (O`Mahony, Doak, 2009).

Outcomes and practical issues of cautioning

The main positive outcomes of restorative cautioning practice are that offender is diverted from formal proceedings and given a chance to repair harm done, either directly to the victim (apology, reconciliation, reparation, etc.) or to community by performing unpaid work or donating to charity.

The Thames Valley initiative is the largest restorative justice program in the UK to date. This prominent police-cautioning scheme was subject to an intense evaluation from 1998-2001 (Hoyle at al., 2002). The initiative in restorative cautioning began in 1998. In the first three years, 1.915 restorative conferences were held where victims were present, and there were a further 12.065 restorative cautions, where victims' views were relayed by the facilitating officer. Evaluation of the Thames Valley Police initiative has found that victims and offenders mostly take a positive view of restorative sessions in the form of a structured discussion about the harm caused by an offence, and the way it could best be repaired. Offenders, victims and their supporters were generally satisfied with the fairness of proceedings and the results. Apologies were usually offered to the victims and were mostly viewed as the result of genuine remorse. One in three offenders entered into a formal written agreement to make some kind of reparation. However, the study also produced encouraging evidence that offenders who took part were only half as likely to be convicted or cautioned for further offences in the following year as those given a standard cau-

tion. The researchers noted that some of the positive findings from their evaluation could be explained by reference to the "research effect", the influence of police facilitator by observing closely their practice (Hoyle at al., 2002).

Another research based on the data from the Thames Valley Police examined whether restorative cautioning had an impact on re-sanctioning rates. This was explored by examining the policy of restorative cautioning (by comparing all cautions in the Thames Valley with traditional cautions in Sussex and Warwickshire) and the practice of restorative cautioning (by comparing restorative conferences, restorative cautions and traditional cautions within the Thames Valley). There was insufficient evidence to suggest that restorative cautioning was more effective than traditional cautioning in terms of reducing re-sanctioning rates. There was also no evidence that restorative cautioning had increased resanctioning rates. The study of re-sanctioning was unable to establish definitively that the restorative cautioning initiative made no impact on reoffending rates (Wilcox at. al., 2004). Despite these findings, an earlier research (Hoyle et al., 2002) suggested that the restorative cautioning initiative has broader aims than the reduction of crime. Other benefits to both victims and offenders such as formal reparation agreements may be indicated as positive outcomes.

However, there are certain disadvantages and practical issues in application of restorative cautions. Despite the fact that a caution is not a criminal conviction, a person must be aware that the case will be recorded by the police. This record will remain on the police database along with photographs, fingerprints and any other data. If a person is on trial for further offence, the court may consider information about a previous offence. There is also legal obligation for the police to give information about the offender if the victim wants to sue him in civil court (Home Office, 2011).

The act of accepting caution includes an admission of the guilt (which may not be made if the charge has been laid). This admission of the guilt can come up later in the person`s life in another context and potentially have some serious consequences (employment in certain areas, visa permission etc). A person who does not admit the guilt might have otherwise obtained a discharge without conviction. A person may think that if he admits the guilt, there will be no further action against him and no criminal record will be kept. Therefore, it is necessary to explain to the offender the consequences of admission of the guilt.

It is of crucial importance that the police have evidence that a person has committed the crime. There is always a possibility that an innocent person could accept somebody else`s guilt for any reason, or to simply avoid inconveniences of court proceedings. Therefore, a thorough police investigation of the case is necessary.

Application of the police discretion to consider and offer an offender a caution must be applied on a principled and publicly known basis. The research has shown that there are inconsistencies in the way in which this initiative operates in different centers. Practices of cautioning were discredited in some centers and viewed as being too unstructured, their criteria for intervention were considered too vague and their outcomes too imprecise (Home Office, 1997). A person charged with the same offence may be offered cautioning in one centre and refused in another. Setting rules and standards is important for a consistent application of cautioning. Some authors argue that current agenda of finite, inflexible rules that impose certain types of restorative justice on certain types of offenders, for specific offences, does not reflect the true meaning or intention of traditional restorative justice. (Fox at al., 2006).

Diversion schemes are intended to divert offenders away from the criminal justice system. Some authors suggest that diversion programmes are actually widening the judicial net, absorbing those offenders who would not have been entered the

system if these measures were not in place. In the case of restorative cautioning the concern rises that their implementation could increase the potential for the judicial net widening and disproportionate punitive outcomes received by young people (Fox at al., 2006). Hoyle and colleagues warn to the danger of unethical net widening when it becomes accepted that restorative justice can produce substantial benefits for all the various stakeholders to an offence. Nobody's long-term interest is that people are cautioned for offences they have not committed. The risk of wrongfully cautioned persons far outweighs any good that a restorative process might do in such cases (Hoyle at al., 2002).

The core concern expressed by critics of police-led restorative conferencing is that it is allowing the police to become "judge and jury in their own cases", because the police already control the processes of arrest, detention and investigation. As Ashworth argues, to give police the right to oversee the outcome of their investigation through a restorative conference is to concentrate too much power in one agency (Morris, Maxwell, 2001). There are arguments that the process of restorative conferencing might be intrusive to the point of being experienced as punishment. This is because of the powerful role and authority of the police officer. Others think that the concern that police are becoming "judge and jury" is overstated.

The evaluation of the Thames Valley Police initiative has demonstrated that implementation of the restorative cautioning initiative proved problematic. In the first year especially, police facilitators tended to dominate the conferences, reducing other participants to passive observers. Additional training and a revised script helped to reduce these problems but did not eliminate them altogether (Hoyle at al., 2002). The influence of a police officer's authority on the restorative conference outcomes would be minimal if they avoid to use "police version of event" to set agenda, to dominate the interactions, or to undermine someone`s story when this is not being contested by other participants (Young, 2001).

CONCLUSIONS

This paper has presented some aspects of the police work regarding the practice of cautioning. A review of research and literature on the police-led restorative schemes has been presented, focusing on the best practice of the Thames Valley Police, the largest restorative initiative conducted in the UK to this day. Based on the restorative justice principles, restorative cautioning was developed in order to improve traditional cautioning practice. Its main aims are to divert first time offenders from formal prosecution, give them a chance to repair damage they have made and reduce the likelihood of reoffending. The research has demonstrated that restorative cautioning practice could have positive outcomes on victims, offenders and community. However, the evidence has shown certain disadvantages of the police cautioning practice. The experiences of countries where the police apply this form of diversionary measures may be helpful in planning restorative initiatives in our country. Evidently, the reform of our criminal justice system will likely follow the practice of modern European jurisdictions. Overburdening of domestic courts is another reason for considering alternative ways of addressing of minor criminal cases. Police cautioning with incorporated restorative principles give additional benefit to all parties affected by crime.

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POLICE ATTITUDE TOWARDS THE CRIME VICTIMS – THEORETICAL AND PRACTICAL ASPECTS

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This article considers the role of the police at the first moments after the criminal act has been committed. The police come at the crime scene first and see the crime victim in blood, in tears, under stress. The first words of compassion are important support for the victim. Later, the same police officers who comforted the crime victim are the witnesses during the criminal procedure. The crime victim has to see the police officers as her or his own protectors and as persons who will tell the truth, especially if there is no other material evidence of the crime. There are a lot of situations when the defendant claims no guilty, when there are no other witnesses except the police officers who have to tell everything what they have seen and what their impressions about victim's condition are. Once the victim reports a crime to the police, the police take over victim's case. The article's issue of researching is the victim's perception of police action, its importance and efficiency. The second part of the police role is giving comfort and support to the crime victim at the police station right after the crime is committed. The article makes suggestion: to consider the necessity and the possibility of forming the special police department for giving comfort and support to the crime victim at the first moments of her or his new legal role – how to be the victim without serious mental damages.

Keywords: the police officer, the crime victim, the witness, comfort, support

INTRODUCTION

The normal behaviour does not include committing crimes, but people often do many things against law and order. When the crime is committed, there are a few things that one can do to improve the situation. One of these things is helping victims to survive the incident and to understand their new position. The victim does not have information about rights of victim and the righst of defendant. When the victim has finally understood his or her rights and duties, the criminal procedure is happening. The aim of this research is to learn some old and well-known things about people who are the objects of criminal act, to learn their rights before the criminal procedure has started and what they can expect from police service. We are going to explain the basic conceptions about victims, witnesses, police action and victim's perception of police action. There are some suggestions for future police action in order to help victim to survive new situation. The research is based on victimology and criminal psychology facts with influence of criminal law.

The concept of victim

From the aspect of criminology, the victim is a person who is harmed by deliberate acts of predation. It is a traditional meaning, but there are many different situations when the victim can appear. It has been broadly invoked for large classes of people, minorities and women[1] who could be exploited, abused or persecuted in some way. The word „ victim" has its roots in Latin from the word „victima". The

1 V: Nikolić-Ristanović, V.., *Žene kao žrtve kriminaliteta*, Beograd 1989, str. 30-47.

sense of this word contains in ancient religious notions of suffering, sacrifice and death. In each civilization the victim was a person who deserved to be made whole again by the offender. The „crime victim" is a person who has been physically, financially or emotionaly injured and/or had their property taken or damaged by someone committing a crime.[2] „The crime victim in the true sense of the word is every person whose some good or right was threatened, demaged or distroyed by crime."[3]

The victimology and the victims' rights movement have been almost exclusively directed toward victims of conventional predatory crimes. They have dominated by a conservative ideological outlook and they have been more successful in promoting harsh penalties for conventional offenders than in truly helping crime victims to recover from their expiriences. Every one of us could be unwillingly thrown into criminal procedure as a victim. Then each participant must try to help people who need other's compassion and help. It is not easy to change behavior which has been existing a long period of time. There are some opinions that victim provokes situations in which criminals hurt person who immediately becomes a victim.[4] We can often hear that victims of rape "probably" provoke the rapist. This situation explains the concept of "victim precipitation" which refers to a victimization where the victim causes, in part or totally, their own victimization.[5]

Some researches of victimization have shown that police, prosecution and courts should cooperate with social care institutions in order to help crime victims.[6] Victimization could be provoked by depression and person who suffers from depression could become "real, accidental, intended victim or victim – accomplice".[7]

The crime victim is faced with misunderstanding of people from surrounding, people who are involved in pre-criminal and criminal procedure. We cannot forget the fact that without victim's cooperation, there may be no criminal procedure. The society must try to facilitate victim's juridical and emotional status. The Criminal code of each state regulates juridical part of this problem. Emotional status is complicated and victim needs help of psychologist and social worker in order to survive new situation without serious damages.

There is a problem known in theory as "secondary victimization" when crime victim is in contact with police, court and medical care institutions. These institutions expect from crime victim to explain what she was going through without any mistake. Crime victim faces to new sort of violence which is called "structural violence" and its origin is in violence in the structure of society.[8]

Declaration of basic principles of justice for victims of crime and abuse of power

The Human Security Report 2005 [9] states that one out of three inhabitants of the cities across the world is hit by crime every year. The statistics is against efforts of police and judicial system. The reality is more serious and threatened because each of us could be a victim of crime.

The United Nations have recognized this problem and recommended the mem-

2 Dussich, J., *Victimology-Past, Present and Future,* www.unafei.or.jp, February, 2011, p. 118.
3 Šeparović, Z., *Viktimologija. Studije o žrtvama,* Zagreb 1987, str. 99.
4 V: Nikolić-Ristanović, Vesna., *Žene kao žrtve kriminaliteta*, Beograd 1989, str. 123-128.
5 Dussich, J., *Victimology-Past, Present and Future,* www.unafei.or.jp, February, 2011, p. 118.
6 Van Dijk, J., *Kriminalna viktimizacija: globalni osvrt,* "Temida", Beograd 1999, br. 1, str. 14.
7 Spasić, D., *Depresija kao uzrok i posledica viktimizacije,* „Temida", Beograd, br. 4/07, str. 47.
8 Galtung, J., *Violence, peace and peace research,* "Journal of Peace Research", num. 6, prema Grewal, B., *Johan Galtung: Positive and Negative Peace,* www.activeforpeace.org, February, 2011
9 www.hsrgroup.org, February, 2011

bers to incorporate in their judicial systems basic principles to facilitate victim's position in criminal law system and in a society.

The United Nations passed a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power at 96th plenary meeting on November, 29 in 1985. This Declaration is not an international contract and the member states do not have an obligation to ratify it.

The Declaration proclaims the victim's rights. The victim has the right to be treated with respect and recognition, to be referred to adequate support services, to receive information about the progress of the case, to be present and give input to the decision-making, right to counsel, to protection of physical safety and privacy, right of compensation from both the offender and the State.

We are most interested in point 16 which declares that police, justice, health, social service and other personnel concerned, should have training to become sensitive to the needs of victims, and guidelines to ensure proper and prompt aid.

Police should receive training in order to understand, listen and help victim. Proper and prompt aid is a condition and without it police work would be useless.

Modern times bring new sort of criminal acts and different problems for victims. The police must up-to-date to new circumstances and approach to this problem with the right answer. The victim has to answer police questions, but police has an obligation to fulfill victim's expectations. We cannot just stand and watch what the rest of the world do, but we have to accept their innovative techniques from the aspect of victimology and human rights. Although this Declaration[10] should not be ratified, all UN member states must apply and incorporate Declaration in national law system, because Declaration has the law power.

Police officers at first moments after the crime is commited

The victim will call police right after the crime has been committed, but there are many situations when a person who has been attacked does not have strength to make a telephone call. A person who calls police for help is witness who will help in further investigation .The first contact with the victim and the person who called police is precious in sense of getting valuable information of crime and the offender.

The police officers come to the crime scene in a short period of time immediately after the offender has done something against the criminal law. There, they find the victim, alone or with some witness or even with the offender. At first moments it is very important to speak with each of them in an appropriate way. All of them have the information about crime, the offender and the victim. It is important to apply the right criminal tactic of collecting important information.[11] The police officer must be capable of talking to person who wants to answer all questions, but who is in fear of the offender. This first conversation is much more valuable if there is no material evidence of crime. The right approach can be learned, but the professional must be interested in learning new, modern techniques for interviewing.

10 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
11 V:Vodinelić,V., *Kriminalistika,* Beograd 1984, str. 304-311.

Techniques of interviewing crime victim

It is very important to conduct an interview with a victim of violence in order to get information which will be useful later in criminal procedure. Police officer must behave in a way which shows a victim that someone will help her or him. Victim is in fear and police officer has to reassure the victim and get all relevant information. The level of cooperation which the officer will receive from the victim at the crime scene is depending on his or her conduct during the interview.[12] This interview can influence later on victim and victim's willingness to cooperate during the criminal procedure.

In cases of violence, the police officers must have approach in order to show seriousness of the offense and to inform the victim of its consequences for the victim. It is often a case that the victim is afraid of offender and must not call for help, especially police. Then police officers have to use special techniques to overcome victim's fears and reluctance to report a crime and offender. Police officer has to be capable to handle the situation in a manner that victim understand officer's behavior as helpful and positive. The victim is often a victim of sexual or domestic violence and the questions which she or he must answer have to be direct, subtle asked with calm, gentle and supportive tone of voice.

The police officer must not ask victim questions which blame the victim like: "What did you say or do to make offender to hit you or to shout at you?" This kind of question can make victim intimidate and obscure the important evidence. The questions should not be accusing and hostile, rhetorical and ambiguous. When most people are asked if they are okay, they will automatically say they are fine. Victims are in shock, surprised, frightened. They expect and cry for help. Earning victim's confidence depends on type of questions and tone of voice person who asks a question.

A victim must overcome feeling of self-blame for things that have happened to her or him. This person must not feel hopeless or helpless, embarrassed, guilty or shamed of anything. The police officer has to emphasize that the victim is not guilty or responsible for the violence. If victim has doubts that the police will help her because of her previous experience, the police officer has bigger problem. To make this type of victim to cooperate and to tell everything she knows is serious challenge.

There are different types of victims depending of what kind of crime has been committed. Victims can be affected by a residential break-in, sexual assault, physical assault, robbery, theft, homicide, traffic fatalities, child abuse, threats, and domestic violence. The most delicate cases are when the victim has suffered some kind of violence. In these cases when victim is a child or a woman, when they survived sexual violence, police approach has to be highly professional and human. [13]She needs immediate help and understanding. Emotional suffering is more serious than physical wounds. The right approach should consider sensitive side of person, emotional status, expectations and intention to hide some aspects of crime if victim is familiar with the offender.

Police conduct with children who are crime victims or witnesses is specific and it demands special training for police officers. It is difficult and embarrassing for children to talk to strangers about violent or sexual assault which they have survived or which they have seen. In these situations children can easily become an object of "secondary victimization".[14] Children have to talk about unpleasant and traumatic event over and over again, to representatives of different institutions.

12 V: Kostić, I., *Kriminalistička psihologija,* Beograd 2000, str. 205-229.
13 Stevanović, I., *Osvrt na neka pitanja seksualnog nasilja prema deci,*Temida, br. 3/02, str. 39.
14 Stevanović, I., *Osvrt na neka pitanja seksualnog nasilja prema deci,* „Temida", br. 3/02, str. 39.

Police officers are the first persons who contact children and their approach has to be highly professional and tactful.

Nowadays, unfortunately, sexual and domestic violence are presently relevant. It seems that whole Europe, Balkan and North American continent have the same problem: how to make smaller the number of sexual, and especially, domestic violence victim. The Criminal Code of each country regulates the rules of pre-criminal and criminal procedure, but how the society could help victims to survive the present time and prepare for the future. The problem is complex, but solution could be so simple and not so expensive.

Victim recovery

One of the most important key concepts in victimology is concept of "Victim Recovery".[15] Persons who have been victimized differ according to their mental health, intellectual capacity, wealth. Victimization affects each person in a different way and provokes different injuries and traumas. Firstly, it is necessary for victims to try to regain their previous level of functionality. Then they try to learn from their misfortune and help other with the same problems. The victim has to regain her previous mental condition. She need to trust other people like she used to, must have self autonomy, individual initiative, self-identity, control over personal situations, successful relationships, safety in daily activities.

It is very complicated for everyone to overcome consequences of victimization, called victim trauma. This victimology concept refers to emotional and physical experiences that produce pain and injuries. Emotional injury is a response to an extremely abnormal event. A painful or frightening emotional experience strikes a victim and such experiences have a long-lasting effect on life of the victim. It is obvious that the more direct is the exposure to the traumatic and violent event, the higher is the risk for emotional injuries and prolonged effects of victimization.

In Serbia, Criminal Procedure Code[16] regulates the victim's or, more precisely said, damaged person's rights during criminal procedure. This law rules do not manage the victim's problems which appear immediately after the crime is committed. That first period after a person has become a victim is precious for further understanding the concept of a victim. The offender will be punished eventually, but what will happen with a victim. The victim cannot be left alone, without help and without comfort.

Canada, the United States of America and the United Kingdom are the states which offer interesting example how to deal with problems of crime victim. The criminal procedure is complex, sometimes it lasts to long and a victim does not know what to expect.

The foreign experiences

If we want to accomplish some good solutions, we must study others experiences. Maybe the best way to help victim, to encourage persons who have been crime's object, has the state very distanced in kilometers, but similar because of problems with victims.

15 Dussich, J., *Victimology-Past, Present and Future,* www.unafei.or.jp, February, 2011.
16 Zakonik o krivičnom postupku, „Službeni list SRJ", broj 70/2001, 68/2002 i „Službeni glasnik Republike Srbije", broj 58/2004, 85/2005, 115/2005, 49/2007, 20/2009 i 72/2009

The City of Winnipeg, the capital of Manitoba, Canada, has the special service for helping victims, called Winnipeg Police Victim Service Unit.[17] It is dedicated to helping victims. This Service provides emotional support, information of victim's case, help to understand "the system", court updater. Service officers explain police procedure, the court process, injury compensation, locations of shelters. The point is to make a confusing juridical system less overwhelming for victims.

In the United States of America there is similar service in Hamilton, called Hamilton Police Victim Services Branch and special unit-Mobile Independence Safety System.[18] This unit is specialized for helping victims of high risk domestic violence through unique and innovative solutions. This program has been designed to provide enhanced safety through the use of cutting edge wireless technology. The intention of this program is to secure safe lifestyle for the victim, within and outside the home environment. The victims get the cellular phone equipped with Global Positioning System-GPS, access to 911 and real-time messaging. This service provides its clients with up-to-date information about the offender: police information about offender's activities, information which belong to Probation and Parole Services or other Community Agencies. The cellular phone will be equipped with important and necessary phone numbers of agencies and services which could help the victim when time comes.

The Metropolitan Police Service[19] in London provides support for victims and witnesses explaining concepts of sexual assault hate crime, stalking and harassment, survey feedback for victims of crime and links to other organizations which offer help to crime victims.

CONCLUSION

Police professionals learn how to deal with a victim, how to talk to a victim at moments when this person is in tears and fear. According to new standards of UN Crime Prevention, each member state has to develop standards for police, lawyers and health professionals and to establish appropriate training and educational courses.

Apart from knowing rules of pre-criminal and criminal procedure, police officers must be acknowledged by main concepts and principles of criminal psychology and victimology. These sciences offer justified approach to complex problem of victim and her inner life and relationship with her surrounding. After a crime nothing will be the same and the victim finds out this fact in most cruel way. An interview with victim, police officers conduct at crime scene and at the police station have to be subtle and appropriate to the situation and all circumstances.

Police officer's professional commitments are already serious and complicated, but training and need for organization of educational courses are inevitable in future. Police professionals apart from learning Criminal Code and criminal law have to study basic principles of criminal psychology and victimology. The training and education have to be continuous and comprehensive followed by personnel structure of police units according to victim needs.

The next step is to form special police units for offering help to crime victims according to foreign practice which we have presented: The United States of America, Canada and The United Kingdom. Each police station would be equipped with special rooms for victims to come and stay for a while at first moments after a crime is

17 www.winnipeg.ca, February, 2011
18 www.hamiltonpolice.on.ca, February, 2011
19 www.met.police.uk, February, 2011

committed. There will be police officers, trained to help victims in an appropriate way to survive emotional and physical torture by offender. Calm and sensitive talk to victim, consolation, comfort and words of encouraging would make the basic principles of functioning of this special police unit.

There will be specially trained police officers who will work with victims. They will talk to victims, give legal advices about victim's rights in pre-criminal and criminal procedure, and take victims to hospital or social institutions of social care and shelters. These innovations cost but the welfare of citizens is at the first place of social priorities in every modern state. In this way we would be closer to European and North American states which have special police units for helping and giving advice to victims. The same aim connects police and institutions of civil society. Therefore, police, Victimology Society of Serbia and Autonomous Women's Center have to cooperate in order to help crime victims by giving information and comfort. We hope that in future, the number of organization which help victims will increase because that means quality of help and intensity of comfort will increase also.

Maybe these propositions are so much futuristic for our legal system, but this sort of experience and the way of helping people in need are rightful approach to new criminal and victimology demands.

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THE POLICE ROLE IN REDUCING THE LEVEL OF CRIME FEAR

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The paper elaborates the issue of the police role in the reduction of crime fear. Since the fear of crime is one of the indicators suggesting people's feeling of safety, the question remains whether, beside the primary function of the police to protect the basic human rights and freedoms, it is necessary to underline this issue in basic police functions. The paper analyzes not only previous traditional work methods and their indirect effects on the reduction of the level of crime fear, but also the new foreign work methods and approaches that can be implemented by the police of the Republic of Macedonia that show effective results on the plan for the reduction of crime fear.

It can be concluded that the police in their preventive policy must implement special strategy that will exclusively refer to the reduction of the level of crime fear and to the reduction of the rate of victimization among general population.

INTRODUCTION

Providing security for citizens and local communities is a fundamental feature of the modern state. The police are the key authority responsible for the public safety, and are therefore strictly related to the welfare of the individuals and the local communities through their regular provision of preventive, administrative and legal services, including the conduct of criminal investigations, recovering of stolen property and bringing suspects to justice.[1] However, the question is whether the police as an authority should be burdened with an additional function, apart from those they currently have?! Therefore the question would be why it is so important for the police to target the fear and to aim at reducing it when the fear is just a feeling. Moreover, the question is what can we expect from the police to do in this regard? In the literature some arguments can be found which indicate that targeting and reducing the fear of crime, as one of the tasks and aims of the police, should not be listed at the top of the objectives of policing. One of the arguments states that the fear of crime is a concept that is very short existent, vague and untouchable so as to deserve attention. There is a consideration that the fear of crime is often a tool that serves the politics to achieve some of their targets precisely through the manipulation of public fears. Perhaps the media have an impact on creating the fear of crime among citizens through broadcasting sensational events, in the race for getting publicity among citizens. Since all today's phenomena are analyzed from a financial point of view, as it is the fear of crime, it should be taken into consideration that more money and human resources are spent in the fight against the fear of crime than in the fight of the crime itself.

1 Caparini, M. Marenin, O. "Crime, Insecurity and Police Reform in Post- Socialist CEE", Journal of Power Institutions in Post-Soviet Societies, Reflections on Policing in Post-Communist Europe, Numero Issue 2, 2005, p. 2

Arguments for and against the reduction of crime fear as a police function

There is an argument according to which it is unjustifiable to have the fear of crime as a priority target of policing considering the fact that that fear of crime is the reflection of crime itself. Consequently, for the fear to be reduced, we should reduce the crime first. Arguments which are favorable to having the fight against fear of crime as a priority for police work cite that: - Fear of crime has behavioral and tangible consequences. With some careful efforts and researches such consequences can be defined and measured and an effort for the reduction of crime fear will be logical, rational and measured. The key is to keep the level of fear in proper balance with the actual degree of risk. The degree of risk varies for different individuals or groups, depending on various factors such as age, sex, occupation, environment in which they live, etc. Consequently, the efforts to reduce the fear of crime should not be arbitrary, but in line with the real ratio between fear and the victimization rates. Normally, reducing the fear of crime should not be the sole priority of the police, since the fear of crime can be a more serious problem in some local communities rather than in others, and consequently reducing the fear of crime may be a greater priority in such police stations than in others. The argument which supports the idea that by reducing the level of the real crime, the level of fear of crime will also be reduced can be criticized in the sense that they represent two different targets of the police, and therefore different ways and methods should be applied to achieve these two objectives. There are cases when we cut down on the crime rate but we mark no decrease in the level of fear of crime.[2]

The role of the police in macedonia in the reduction of fear of crime

The police in Macedonia are one of the bodies that have a huge and most important part in the protection of human rights and freedoms, protection of personal safety, protection of legal order, preventing and detecting crimes and maintaining public peace and order in the society. Those are the basic goals of the police work in Macedonia, which are determined by the Law on Police[3] and the Code of Police Ethics[4]. The main function of the police is specified in Article 3 of the Law on the police "*the basic function of the police is to protect and respect the fundamental rights and freedoms of man and citizen guaranteed by the Constitution, laws and international agreements, protection of legal order, preventing and detection of criminal offences, undertaking measures to prosecute perpetrators of such crimes and maintaining public order and peace in the society.*"[5] When it comes to the role of police in the Republic of Macedonia in reducing fear of crime which associates with their preventive function there are certain contradictions. Generally, people think of the police primarily as the "repressive crime fighters."[6] At a local level there are two sets of priorities for policing in the opinion of the people. The police should quickly and adequately respond to emergency situations and should be available, approachable and visible. People like to have a police station in their area, they like to know police officers by their names and they prefer to have "their own police officer"

2 Cordner, G. "Reducing fear of crime- Strategies for Police", U.S Department of Justice, January, 2010, p. 5
3 Закон за полиција, „Службен весник на РМ" бр. 114/06
4 Кодекс на полициска етика „Службен весник на РМ" бр. 72/07
5 Закон за полиција, „Службен весник на РМ" бр. 114/06
6 Mesko, G. Fallshore, M. Rep, M. Huisman, A. "Police efforts in the reduction of fear of crime in local communities- big expectations and questionable effects", Sociologija, Mintis iv veiksmas, 2007/2 (20), p. 78

in their neighborhood, as well as more pedestrian patrols to be in contact with the residents. But apart from the significance of the perception of citizens concerning the police, it is also important to have the perception of the police officers themselves of their role. Do police officers generally perceive the role of the police as a body that should quickly and effectively act in the discovery and disclosure of criminal offences and that this should be their priority task, or do they also recognize the importance of preventing crime and reducing fear of crime? What role do the police have in reducing the fear of crime among citizens, as part of their proactive police work, when we cannot see a clear perception of police officers in view of what is a priority function of the police?

The data showing that police officers believe their role is preventive and repressive[7], suggest that the intention and the priority of the police is not the prevention, but the prevention and the repression are brought at the same level. Yet, the priority of the proactive work of the police can be identified through interpretation of the provisions of the Law on Police of the Republic of Macedonia and other laws, through which the police are urged not to wait for a breach of right in order to take actions against crime offences and against crime offenders, but to take actions to prevent violations of its provisions.[8] What the police in the Republic of Macedonia should do first is to take activities that will change the overall philosophy of the police work, which will have its effect in the manner of operation of the police officers. Then, to find ways for greater appreciation of the preventive actions of police officers, rather than, under the current principle, for its underestimation, which goes up to the point of sanctioning those police officers who have not managed to meet the requirements for solving a certain number of crime offences. Once the philosophy of the functioning of the police is changed, then we can say that the preconditions are met for the introduction of reducing the fear of crime as one of the important functions of policing. Reducing the fear of crime should be the responsibility of the chief of the police in certain areas who should know that making their residents feel secure is one of their duties / responsibilities and one of the criteria on which their performance will be evaluated. The same applies to the armed police officers. If they know they will be taken responsible for recognizing and locating the fear of crime in their areas, they will have a more serious approach to the matter. The methods and ways of police work for increasing security of citizens and reducing the fear of crime should be logically and strategically synchronized for a successful outcome which will be of the benefit to the local community's citizens.

Police approaches to reduce the fear of crime

The reactions of the police should be consistent with the nature and the causes of the fear of crime, which might be determined through information and analysis. The approach to solving problems requires greater involvement of the local community which also shares the responsibility for the feeling of security among the citizens. In literature and in the police practice several primary methods of policing which may have some effect on reducing the fear of crime can be identified. Different studies show different effects of such approaches in policing. *The traditional approach of the police* puts forward the idea that the fear of crime can be reduced by reducing the crime itself. Surely there is a fundamental link between the level of crime and fear of crime, which should not be denied. But it was often noted that the increase or the decrease

7 Стојановски, Т. „Полицијата во демократското општество", 2 Август С, АСТОР, Штип, 1997, стр. 19
8 Стојановски, Т. „Полицијата во демократското општество", 2 Август С, АСТОР, Штип, 1997, стр. 19

of crime rates from year to year does not correspond respectively with the fear of crime. There are many examples to suggest that there is a low rate of victimization among some categories of people and yet among them there is a higher degree of fear, as opposed to others (women, elderly).

Foot patrol, motor patrol police activity as a method of reducing the fear of crime.

Foreign research and international experience has shown that variation in the number of police motor patrol has no effect on crime or public perceptions (Kelling, Pate, Dieckman, and Brown, 1974). According to the research of "The Police Executive Research Forum" it was found that rapid reaction rarely has certain effects in the detection of the perpetrators or the satisfaction of citizens (Spelman and Brown, 1982). Investigation of The Rand Corporation found that 80% of reported criminal events remain unsolved and that police officers have a limited contribution to solving the crime (Greenwood and Petersilia, 1975). Preventive patrol experiment that was conducted in Kansas City in 1972/1973 showed that the number of patrol units had no effect upon the fear of crime among the citizens. Most notably, the public did not notice varying levels of patrols. Residents of Kansas City were not aware of any changes in the police work and felt neither safer with the increased number of patrols nor did they feel greater fear due to a decreased number of patrol units.[9] Contrary to the research on motor patrol in Kansas City, two other studies examined the effect of increasing or decreasing the foot patrol in terms of whether residents were aware of the increase or decrease and whether it had an impact on fear among citizens. The efficiency of having foot patrols has been marked in many reports (The Newark Foot Patrol Experiment) "... A significant reduction in the severity of the problems associated with crime is noticed among persons who live in areas where foot patrols are visible." Similarly, the report of the experiment in Flint, Michigan found that almost 70% of residents- respondents claimed that during the last year of the survey they felt more confident because of the implementation of the Program of foot patrol. Moreover, many of the respondents said they felt especially confident when a foot patrolling officer was well known and visible.[10]

The main objective of the foot patrols is to integrate the police officers in the local communities and establish interaction with citizens. It is assumed that by doing so the police officers will move around into their districts, meet residents, become visible in that region, and consequently affect the prevention of crime by making people aware that police officers are in the area in case they need them, which at the end has a positive effect in reducing the fear among citizens.[11] It is believed that patrol police officers make part of the community, they attended meetings, identify problems and come out with long-term solutions, organize citizen initiatives, make reports to appropriate social services and involve residents in crime prevention. The result is - the more citizens have closer contact with the police officers the more secure they feel. Even though the framework of policing in Macedonia provides for foot patrols, some reproach can still be made for their invisibility and lack of their

9 Moore, H., Trojanowicz, R. "*Policing and fear of crime*", Perspectives on Policing, National Institute of Justice, U.S. Department of Justice, june 1988 no. 3, p. 4
10 Trojanowicz, R. "An Evaluation of the neighborhood Foot Patrol Program in Flint, Michigan", Michigan State Univesity, 1982, p. 86
11 Howard, J., "*Fear of crime*" Society of Alberta, 1999

proactive role, although it is formally planned.[12] The reasons for malfunctioning of this police activity, which use to function well in the former system, may be located at many levels. Insufficient number of police officers, lack of knowledge in view of the importance of the preventive function and the manner of its implementation, or lack of motivation of police officers based on improper valuation of their labor are just a few of many reasons that can be pointed out as reasons for the insufficient functioning of the foot patrol in Macedonia, particularly in urban parts of the capital Skopje. Should this activity to the police be carried out well, it will certainly contribute to reducing crime and increasing the feeling of security among the citizens.

Community policing concept as a method for reducing the fear of crime

Within the police work there is a concept which is based on different foundations and principles from those established in traditional policing. The concept of "community policing" is manifested in four dimensions (philosophical, strategic, tactical and organizational). However, it should be noted that this concept is of a recent date. As a concept it existed long ago, but systematic research on its potential and on the principles on which it rests, in practice relates to the '80s in the works of Wilson, Keling and Goldshtain and especially through the broken windows theory and the concept of problem-oriented policing. These theories contributed to the idea that the police have to rely more on cooperation with the citizens and on that basis to try to solve their problems.[13] A central assumption of community policing is that involvement and participation of local community in increasing security and addressing crime that is most dominant in the local community is very important in order for the police to be able to perform this task. The basic idea of the concept is the cooperation between the police and the citizens in solving basic problems of the local community. In order to achieve such a partnership, the police must be better integrated into the local community and strengthen their legitimacy through working in cooperation with the citizens and improving their task as a public service. Accordingly, the police should:

- be visible and accessible to the public;
- know and be aware of the public;
- meet the needs of the local community;
- learn the concerns of citizens;
- engage and mobilize local communities;
- be accountable for their actions and the outcome of these activities.

Benefits to the public, police and other organs arising from such a concept of policing

- The ability of local communities to inform the police about their concerns and become partners in finding customized solutions to their problems can lead to improved prevention of crime and improved safety.
- Strengthening of informal social control within local communities, which can improve their ability to confront social problems and pressures that may lead to crime in the future.

12 Правилник за начин на вршење на полициските работи „Службен весник на Р.М" бр. 149/07
13 Никач, Ж. „Полиција у заједници", Криминалистичко-полицијска академија, Белград, 2009, стр. 37

- Improve relations between the police and the public, increase the public confidence, which is particularly important for the relations between the police and smaller local communities which have been burdened with conflicts in the past;
- Creating procedures with other authorities for solving the problems which can result in resource saving.
- Increasing public information and moral support for the police action;
- Improving the effectiveness and efficiency based on technology benefits for problem solving and preventive action;
- Increasing the satisfaction from the work of police officers due to good cooperation with the public, increasing the sense of security and self-confidence due to greater awareness of potential and actual threats, generally improving the work climate of police due widespread responsibilities and increased communication and cooperation between the authorities as well as between police officers from the lowest rank with their supervisors, as well as greater opportunity for career developments due to the greater variety of tasks and additional responsibilities. [14]

The foot patrol is among several important elements within the community policing. This method of patrolling was greatly reduced in most police organizations in the late 70s and the focus of police work was transferred to rapid response, coverage of larger areas through motor patrol. However, studies showed that motor patrol and rapid response have not proven to be truly efficient. [15] Over a period of five years, renewed interest in foot patrol raised in widespread acceptance of community policing. Many police organizations have estimated that the foot patrol will be with limited usefulness for them but have seen other ways to conquer some of the values of foot patrol. This resulted in the introduction of bicycle patrols, mini-police station, beat teams, specialized community policing police officers, and other alternatives to routine motor-patrol. However, in order to establish a real concept of community policing it is important to make changes in police culture in the police system of values and to develop positive examples within the police on all hierarchical levels. Yet, the police as an organization are influenced by the traditional inferiority conservative attitude as well as suspiciousness. This can lead to inflexibility in their treatment of citizens, to narrow or block the readiness and ability to criticism regarding their actions. This explains why it is important for police officers to be open to constant critical review of the resulting situations. However, in order to improve the police culture and a new way of thinking and acting, the first step has to be made from the head supervisor who serves as an example to his associates and in a way is the creator of the work methods of the police officers of a lower rank. [16] No matter how positive are the solutions offered by community policing, they will be of no use if their substance and effects are not well understood by those who need to implement them. This concept of police work existed long ago, through close communication between citizens and foot patrol officers on a foot patrol region and trough confidence in foot patrol officer to resolve certain problems in the local community, which would be an important quality for successful prevention and reducing fear of crime between residents of one municipality. Some authors stress the difficulties and limitations in applying this concept and model. According to Kešetović, this

14 Carty, K. „Good Practices in Building Police-Public Partnerships“ OSCE, Vienna, May 2008, p. 14
15 Cordner, G. "Reducing fear of crime- Strategies for Police", U.S Department of Justice, January, 2010, p. 23
16 Стојановски, Т. „Полициска етика и деонтологија“, 2-ри Август С- Штип, 2006, стр 41

concept has not fulfilled the expectations and it is mostly due to the remnants of the traditional way of carrying out police tasks and the resistance within the police organization. According to Milosavljević, great limitation to the concept can be seen in terms that it is built as a strategy of action in the narrower community, not for performing tasks within the police function in the wider community. Another important restriction which the author cites is that "this approach is not suitable for the use in situations interest conflicts between social groups in the community and where there are no directed positive interactions between the police and members of these groups.[17]

The community policing necessarily has to develop the following concepts:

- Police contact with the citizens,

The better the approach, quality and quantity of police contacts with citizens, the better the effects of police work. However, it must be noted that as the police and police officers have an obligation and are expected to provide security for persons and property of citizens, the citizens should also fulfill their obligations and comply with prescribed rules, because they have responsibility for what happens. It is necessary to enchase the contacts between the police and citizens if we want them to feel secure in the areas they reside. Contacts between the police and citizens can be direct and indirect.[18] The simplest example of direct contact with citizens is through the presence of foot patrol officers in the region and of foot patrol or routine contact. It is the simplest form of direct communication that is basic for both the police to fulfill their functions and to increase confidence and improve the image of citizens in relation to police work. Through direct contact with citizens the police can acquire certain perception for proximity, visibility, availability and interest of the police for the problems they face. This approach in a large percentage will have a feedback effect to win over citizens as an informal agent of social control in society. This activity enabled the gathering of information, and simultaneously it provides rational information and advice as a necessary basis for a strategic approach for solving problems and prevention of their strengthening. The contacts between the police and community can be established through organized bodies and authorities, such as safety tips or through advisory meetings between groups of citizens and the police. The establishment of such direct contact between the police and citizens according to the model of organized meetings in small local communities with predefined issues represents important form of work of the police, significant to identification of needs of that community for security and other problems and for development of trust between these two subjects. The development of external communication for police work is a priority that depends on whether the police will be well informed about the security situation, the feeling of security and the fear of crime among citizens and how quickly and efficiently will they act towards real problems and needs of citizens and the community.

- Increasing citizens' confidence in the police,

If we have successful communication between the police and citizens as well as intensive contacts (direct or indirect, formal or informal) and meetings, this should normally contribute to creating a positive climate between them and the increasing trust of citizens in the police, both in terms of effectively performing their functions and in terms of creating an image of the police as a real protector of the rights and freedoms of citizens and improving the safety of citizens and reducing the fear of

17 Никач, Ж. „Полиција у заједници", Криминалистичко-полицијска академија, Белград, 2009, стр.
18 Бачановиќ, О. „Полицијата и жртвата", 2 Август, Штип, 1998, стр. 202

crime. The police as an organization and police officer as an individual must be fully aware of this need for good public relations. It is essential for a police officer to understand that good public relations allow better and safer to performance of his/her function as a good police officer. [19]

- Public notification of the citizen,

The basic standard of police ethics, among other things (respect for the man, strictly obeying the law) states transparency of police action in terms of accountability of police work. [20] The relationship with the media must be highlighted since they are common entities that transmit information in terms of police working. According to the concept of community policing, the police take care of their public image, the manner in which the public perceives the police and they are also responsible for timely informing the media about their activities and results.

Problem oriented policing as a method of reducing a certain kind of criminality and indirect effect on the fear of crime.

Police work in the community is based on two important components - partnership between the police and community and problem-oriented policing. Problem oriented policing is a strategy that arises from this concept. It implies common interactive access and action of the police in the community in identifying and solving specific security problems. For the first time this method or strategy is introduced by American criminologist Goldshtain who defines problem-oriented policing stating that "the basis of this approach is the research of the problems of a particular community, that careful analysis of specific problems facing a local area (begging, prostitution, drug addiction, juvenile delinquency) and analysis of the specific expectations that citizens have from the police and based on that analysis to determine the means and methods for an adequate response to the identified problems " [21] It is here that we can sense the possibility of this method and of police work to identify the real causes of the fear of crime among citizens in the local community. A problem oriented approach starts from a simple guess-the fear of crime is a problem worth addressing (down). Thus, problem-oriented approach uses well-known SARA process (or program) (Scanning, Analysis, Response, Assessment)

- Scan - to determine whether the fear of crime is a problem if the rate of fear increases or decreases, where it mostly occurs, which groups or types of people suffer the most.
- Analysis-to identify more specifically the reasons for the problems identified with the fear of crime; identification of these reasons may vary between different local communities, whether they change over the time and whether they vary between different categories of citizens
- Responses / reactions - that are tailored and focused on specific causes and issues for fear of crime.
- Evaluation of responses, once implemented, to determine whether work towards reducing the fear of crime and if not, why.

19 Кешетовиќ, Ж.„Односи полиције са јавношћу", Виша школа унутрашњих послова, Београд, 2000, стр. 142

20 Стојановски, Т. „Полициска етика и деонтологија", 2-ри Август С- Штип, 2006, стр. 39

21 Никач, Ж. „Полиција у заједници", Криминалистичко-полицијска академија, Белград, 2009, стр. 52

CONCLUSION

When it comes to the fear of crime as a phenomenon which is an indicator of a sense of safety among the citizens, without any doubt this has to be one of the functions of the police. But there are dilemmas and discussions in relation to which methods in police work would give optimum results for reducing the fear of crime among citizens in the local community. It can be concluded that it is necessary to fulfill several prerequisites. First, the transformation of the police work philosophy, not only trough legal change, but through a real change in their actions toward citizens in the local community should be considered. The priority for preventive and proactive police work should not only be determined in legal form, but it needs to be implemented specifically in the local community. Everyday communication of police officers with residents of the local community and increased confidence in police-citizen relationship is crucial. Strengthening the links between these residents can improve the cooperation between citizens and the police and at the same time improve the informal social control, given the fact that citizens share responsibility in efforts to secure environments in which they live. Such cooperation is achieved in several ways: in the community meetings, key individuals, controls of the environment, routine contacts with the public which may prove very useful resource to determine the concerns of local residents on specific issues. A foot patrol officer who through direct communication with residents, not only gets information from citizens, but also provides rational information to citizens about the risk of victimization and measures that could be taken care of, has an important role in reducing the fear of crime. All information about the fear of crime in the local community can be used to identify socio-demographic groups in specific neighborhoods or areas where there is the fear of a particular type of crime. All these previous conditions contained in the concept of community policing which, if truly implemented together with problem-oriented policing and implementation of SARA may affect the improvement of the sense of security and general quality of life in local communities. Some studies have found that good health, wellbeing and quality of life are associated with lower levels of the fear of crime. Taking care of basic needs of citizens and quality of life issues are especially closely related to any particular fear and the fear of crime. We should not forget the role of media and politics in creating the fear of crime. However, in this segment the police role is not as great as the role of other bodies and organizations in our society.

Still, positive outcomes of the reduction of the fear of crime requires systematic approach that will include coordinated and synchronized actions and measures from the police, citizens within a local community and other bodies and authorities.

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DRUG ABUSE AS A SECURITY THREAT: FACTORS AFFECTING THE MISUSE OF DRUGS BY HIGH SCHOOL STUDENTS

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Abstract: Research has examined potential risk factors of drug abuse with the goal of facilitating productive prevention and reduction of threats to the security of citizens and their property. Analyzed sample included 512 students of Belgrade secondary schools. Drug abuse was measured by six indicators related to trying, usage and selling of drugs, and it was expressed as a score on the first principal component of these indicators. Descriptive data of the behavior was analyzed on two indicators that best define this component. The sample of possible risk factors was selected based on the settings of Eysenck's personality and crime theories. The sample was represented by three personality traits and 26 socio-psychological characteristics that describe a family, school and peer micro environment. The data was analyzed using multiple regression analysis. According to these results, only ten variables have a significant impact on drug abuse. Among them, the greatest impact have bad grades in school, frequent change of school, running away from home, criminal behavior in family, alcoholism, gambling, drug addiction and crime in their peer group. The personality traits of introversion and psychotism were significantly associated with drug abuse, but their influence on behavior is weak. The resulting multiple correlation between the pattern of risk factors and drug abuse is .627, which allows you to explain 39% variance of this behavior.

Key words: drug abuse, personality traits, socio-psychological factors

INTRODUCTION

There is no doubt that the disturbances in behavior of students in general, and especially of high school students, are relevant to the phenomenon of security. This primarily refers to those that are considered as status offenses, but also applies to drug abuse. The connection between drug abuse and the phenomenon of security seems so logical that it does not need to be proven. And yet, here are some data that confirm this relationship. The research of the structure of registered and dark figures of crime (Radulović, Hošek, Momirović, 1998) recognized four types of crime that dominate the criminological scene in Serbia. Their second type was defined by property crime and drug abuse. The structure of the second type of crime was dominated by behavior of drug addicts who committed variety of property crimes (theft etc.) with the purpose to purchase drugs. The third type, that is very interesting for use, is defined by very violent offenses and drug abuse. Among the violent offenses were dominant severe cases of robberies, theft robberies and murders. The structure of these two types of behavior strongly confirmed relationship between drug abuse and endangering the safety of citizens.

The above research results were obtained on adult offenders who are already serving prison sentences. The results were obtained in the form of regularities which

universally apply across the entire scale of age of offenders*. Based on this follows that the same structure of correlation between crime and drug abuse exists also between members of younger population, and that relationship between drug abuse and safety at the level of high school is a real problem, which is important to study.

Theoretical concept and definition of cases

the described relationship of drug abuse and security of citizens is considered proven no matter how the phenomenon of security is understood. As a ''*process and the state of protection of personal and social values of the individual from all forms of threat*" (Stajic, Mijalkovic, Stanarevic, 2006) or in a wider context than that as a ''*state of protection of individuals against the dangers threatening and/or damage to their physical, mental and spiritual integrity, and privacy, dignity, security, freedom and rights, and of protection of his/her property from alienation, destruction or damage without his/her control*' '(Stajic, Mijalkovic, Stanarevic, 2006).Therefore, this paper will not deal with the proof of that relationship. What interests us are the risk factors of a disorder called drug abuse. On these risk factors, namely their elimination or mitigation, are based several models of prevention of conduct disorder or criminal behavior, primarily the so-called. social model of prevention (Zunic-Pavlovic, V., 2010., Popovic-Ćitić, B., 2010.). This model is the basis for some important theories of behavioral disorders, including criminal behavior. Among them are 1) the theory of antisocial potential, 2) interaction theory, 3) theory of informal social control, 4) theories of learning, including Eysenck's theory of crime, the theory of observational learning, the theory of differential association and others, 5) theory of anomie, 6) theory of subcultures, 7) theory of self-control and social relationships, 8) theory of attachment, 9) theory of learned helplessness and others. They are all well-known social and psychological theories that have offered a number of risk (and protective) factors underlying the different sub model or prevention programmes. Very significant contribution to identifying these risk factors was provided by empirical research particularly that of longitudinal and multivariate character. These risk factors can be tentatively classified into six groups: 1) individual factors, primarily the personality traits, 2) factors in a family environment, 3) factors that originate from the school environment, 4) peer groups and their influence, 5) factors that act in the living environment or local community, and 6) macro-social factors whose range is very broad and includes cultural institutions, economic and political influences and the like.

It is logical that all those factors cannot be analyzed in the scope of a paper for one scientific meeting, and that only some of them must be chosen. The choice is our sample of independent variables that will be discussed later. What is important at this moment is to say that the selection was made with full appreciation of Eysenck's theories of personality and crime. According to Eysenck (1977) criminal behavior develops as a result of multivariate interactions between environmental conditions and the inherited characteristics of the nervous system. His insistence on the inherited characteristics of the nervous system does not mean the position on the innateness of crime, but the **legality** proven in research that the characteristics of this system affect the personality traits and ways of reacting to stimuli from the social environment. In his research, he identifies the central and vegetative nervous system as important sources for learning **rules of** socially unacceptable behavior, while reactivity processes (inhabitation and excitation) and sensibility are identified as directly responsible for this learning. In addition to these processes, an important

* The universality of the obtained **laws** provides applied model of canonical analysis.

source for learning these **rules of** unacceptable behavior is process of socialization, or better said, errors made in that process by family, school, peer groups, cultural institutions and others.

Starting from the basic assumptions of Eysenck's theories of personality and crime (Eysenck, 1970, 1977, 1983, 1989) with the goal to analyze risk factors for drug abuse were selected personality traits that Eysenck cited as important determinants of criminal behavior and some unfavorable socialization influences in the area of family, school and peer groups. Accordingly, the scope of this work can be defined as determining the nature of the relationship between extraversion-introversion, neuroticism and psychoticism and a number of variables in the field of family, school and peer groups, on the one side, and drug abuse on the other. What are the specific variables in question is obvious from their names given during the presentation of results.

Solution methodology*

1. Dependent Variable

The dependent variable is drug abuse. Given the fact that high school students are subjects, the legal definition of this concept is not entirely adequate. This is why drug abuse is defined somewhat differently: as a minimum of twice bringing drugs into the body in any way (by smoking, swallowing, sniffing, inhalation or intravenous) and/or giving or selling drugs to other people regardless of the purpose (profit or some others). The definition used the term "*provision of drugs*" (by sales) as its constitutive element, because the gift or giving drugs in the form of lending can be action to ensure new users. The term drug means a substance that introduced in the organism may cause changes in any of mental and/or somatic functions, and in any direction (Bukelic,2004).

Indicators for testing of drug abuse defined in this way were: 1) trying drugs, 2) frequency of drug use, 3) age at the time of the first trying of drugs, 4) The gift or loan of drug to another, 5) Selling drugs and, 6) knowledge about the price of drugs on the streets of Belgrade.

2. Independent Variables

Independent variables were selected from four areas**: 1) In the field of personality traits (extraversion-introversion, neuroticism and psychoticism), 2) From the area of family relations, 3) The areas of the school environment, 4) From the area of peer groups and peer influence.

In addition to variables from these areas were used two variables of sociodemographic characters: sex and age.

3. The Sample of Respondents

The analysis of different risk factors of drug abuse was performed on a sample of 512 secondary school students in Belgrade. Four schools that participated in testing were selected because that could provide a sufficient number of male students in the sample, while their administrations were willing to cooperate. Therefore, selected schools represent a deliberate pattern of Belgrade schools. This method of selection was allowed because testing was not intended to provide an answer of how is drug

* The paper does not propose any hypotheses, therefore this part of the work does not contain any hypothesis

** Definition of each independent variable will not be given due to limited. It seems that this is not necessary since all dimensions are well known or clearly understandable based on their name

abuse spread throughout Belgrade, but to establish relations of that behavior with the assumed risk factors. Selection of classes within schools, including the selection of students was, however, totally random. Sample size is 512 respondents, as mentioned above. This number will sometimes be lower because of skipped answers in the questionnaire. Dropout of sample is not more than 5%.

4. Instruments of Data Collection

Testing of students was done with two instruments. First, the personality test (EPQ-R) (Eyscenk, SBG, Eyscenk HJ, Barret P, 1985), or more precisely his version of the EPQ-103 which is standardized for the Serbian area (Bar, P., 1998, 1992). The reliability of each subscale of the test is above 0.84, which means that they are satisfactory, but not highly reliable. Second, the questionnaire that is specifically designed for the purpose of this study. With this questionnaire were examined all other variables, other than personality traits.

5. Data analysis and processing

Initial data analysis was done by classical descriptive methods such as calculating frequencies, percentages, arithmetic means and the like. Subsequent processing and analysis was performed according to the nature of the variables. If the variables were of nominal nature, their relationships with drug abuse were analyzed by contingency tables and Chi-square. If variables were of a numerical nature, these relationships are analyzed using multiple regression analysis.

Results and discussion*

1. The basic characteristics of drug abuse in secondary school students

The seriousness of the consequences that drug abuse causes is entirely disproportionate to the existence of data or number of research papers dealing with this problem. In Serbia, there is no systematic monitoring of drug abuse. The only data based on which can be predicted magnitude of the problem is the data from the police and the few health facilities that deal with treatment of addicts.

Rare academic researches of drug abuse show that children at the age of 13-15 years already have experience with drugs in the volume of about 10% **. Only serious research dated in year 2004, on a sample of 3111 respondents, aged between 17 and 37 years, gave a very devastating results concerning trying of drugs: 32% of respondents have tried marijuana (Jugovic, 2004). Last assessment of the incidence of drug abuse show that there are about 80,000 drug addicts, of which about half was in Belgrade.

1.1 Frequency of trying and usage of drugs

Although data on drug abuse in our country are rather poor, it is still possible to conclude that the high school population is most frequently represented when it comes to trying or abusing drugs. Because this paper is predominantly concerned with this population, it is important to determine what is the frequency of trying and usage of drugs, and whether there are differences in these behaviors depending on sex and age of students.

* Most of the data were obtained in empirical research within the project "Correlation of personality dimensions of Eysenck's model and behavior disorder in school" (Radovanovic, I., 2010 - Master thesis).
** The data of the Federal Bureau of Health Care in year 2000.

Table 1. Trying of drugs

Answers	N	%
Not once	367	77,1
One time	35	7,4
Two times	18	3,8
Three times	10	2,1
Multiple times	46	9,7
Total	476	100

Table 2. Usage of drugs

Answers	N	%
Did not try drugs	361	74,0
Not using drugs	62	13,2
Using - rarely	26	5,6
Using - occasionally	25	5,3
Total	474	100

The information referred to in these two tables clearly show that the abuse of drugs is a serious problem at the high school population of students. The fact that even 23% once or twice tried drugs is really worrying. Also troubling is the fact that 10% of students use drugs. If you still consider that by obtained data, high school students not only occasionally use drugs, but they also sell it, and that 4.3% of them seem to have (or "almost has") status of Dealer, because they sold drugs more than once, it is logical to conclusion that a significant number of them in the immediate future can be a major threat factor to the stability not only in school but also outside it.

1.2 Drug usage and gender of students

The number of students that tried or abused drugs (5 or 10%), bearing in mind that we are talking about numerous population, represents the unforeseeable social harm and high risk in terms of security due to the connection between drug abuse to the commission of criminal acts. Prevention of this behavior is therefore of primary importance. Of course, the models and prevention programs must be adjusted to gender of the students who abuse drugs. Image of the abuse, based on gender can be seen in the table below.

	Gender					
	Female		**Male**		**Total**	
Answers	N	%	N	%	N	%
Have not tried	135	87,7	226	70,6	361	76,2
Do not use drugs	14	9,1	48	15,0	62	13,1
Use drugs - rarely	3	1,9	23	7,2	26	5,4
Use drugs - occasionally	2	1,3	23	7,2	25	5,3
Total	154	100	320	100	474	100
Level of significance of differences: p=0.001						

*Table 3. Drug abuse and gender of students**
(Have you used drugs till now?)

The first thing to note from this table, since it is not mentioned above, is that the sample included approximately one third of female and about two-thirds of male respondents. That is important because the number of female subjects (154) allows the application of this type of analysis. Secondly what is important is that there is

* For the analysis of relationships with gender as variable, the indicator was chosen that best describes the abuse of drugs

a statistically significant difference in all modes of response to a question about drug use among students of different gender. Most attention, however, attracts a big difference in the mode of use "sometimes". Male students in this mode use drugs five times more frequently than do female students. Although these differences are probably not a novelty, we draw attention to them since violent criminal acts are usually carried out by men.

1.3 The age of students and drug abuse

Age difference for secondary school students is naturally limited from four to five years and is probably the main reason that between those ages no significant differences in trying or usage of drugs exists. When it comes to trying drugs percentages of students per age varies from 21.2% (at the age of 17) and 24.7% (at the age of 19). The average for all five years, that is the age range of students in our sample, is 22.8%. Statistically insignificant differences between ages exist and when it comes to drug use. The percentages of students who rarely or occasionally use drugs vary from 7.6% (in the age of 19) to 12.9 (in the age of 18). The five-year average this time is 11.1%.

What is more interesting than these differences in sampling and drug use by age, is the age at the time when the student first tried a drug. This age is a good indicator of severity of the disorders. In this case, these data are truly indicative and deserve to be presented separately.

Table 4. Age when drug was tried

Age	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**Σ**
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

According to the testing results trying of drugs happens very early, at the age of 11 to 14 years. At that age, 16.3% of students use drugs. Although the number of such cases per year is very small (ranging between 2.2 and 5.4%), this phenomenon can be considered very dangerous, given the nature and consequences of addiction that follows. Most cases of trying the drugs were at the age of 15, 16 and 17. The percentages of those who do so are from 21.7 to 26.1. If we take into account the fact that at these ages are the students in the middle of their educational process, but also in the midst of the process of psycho-physical maturation, then these data are very disappointing for these processes and for society as a whole. One good thing about these data is that they suggest that in these years must be the focus of preventive actions, if we want to reduce the number of students who are potential drug addicts.

2. The influence of personality traits and micro-social factors on drug abuse

The behavior of each individual, even those who abuse drugs, in many ways is conditioned by factors of different nature. Because of that in this section are together analyzed connection between drug abuse and all other variables including personality traits and characteristics of all socio-psychological characteristics in the field of family, school and peer groups.

Before this analysis, it is necessary to specify two details how the results would be understandable. The first detail is that the six indicators of drug abuse, was necessarily reduced to a common measure because of their heterogeneity, and because it would be totally unreasonable to have six different types of analysis. The best way of reducing to common measure is the process of factor analysis, otherwise calculation of the first principal component of the six individual indicators of drug abuse. A result that was obtained by this procedure almost perfectly describes the dimension which undoubtedly has the meaning of "drug abuse". The evidence for these claims are given in the table below.

Table 5. The structure of the first principal component variables drug abuse *

Variables	**R**	**h^2**
Trying of drugs	.752	.565
Usage of Drugs	.810	.656
Age when drug was tried	-.558	.311
Giving or borrowing of drugs	.831	.691
Selling of drugs	.785	.616
Informed about price of drugs on the market	.710	.504
Statistical parameters: λ=3.343; % variance 55,7		

Another important detail is that the factor scores of students on the first principal components are grouped into three categories 1) The low level of drug abuse, 2) Medium level of drug abuse, and 3) A high level of drug abuse. Manifested meaning of these categories are: 1) Not tried and not using drugs, 2) tried and rarely uses, 3) Uses and participates in the sale of drugs.

Relationship of so obtained categories of drug abuse, with personality traits and socio-psychological characteristics of micro-environment, were tested using multiple regression analysis. The results are given in Table 6.

* R is a linear correlation between variables with the first principal component, h^2 are the communality of variables

Table 6. The influence of personality factors and sociopsychological factors of micro-environment on drug abuse *

	Drug abuse			
Variable	**R**	**Rp**	**β**	**p**
Extraversion	-.079	-.166	-.145	.001
Neuroticism	.115	.031	.028	.529
Psychoticism	.358	.007	.008	.878
Gender of respondents	.197	-.014	-.014	.771
Success in School	.274	.108	.097	.029
Relationship to respondent by family members	.194	.044	.038	.365
Physical punishment of respondent	.080	-.037	-.033	.440
Socio-psychological behavior in family	.154	.003	.003	.949
Sociopatological behavior in the group	.343	.175	.169	.000
Crime in the peer group	.303	.089	.083	.067
Attentive in class	.249	.054	.054	.264
Regularity in learning	.197	-.016	-.018	.742
Regular homework	.174	-.055	-.059	.259
Running away from home	.379	.143	.132	.003
Decline in success in learning	.212	.072	.062	.138
Social victimization	.219	.054	.050	.267
Psychological victimization 1 (mocking)	.118	-.059	-.090	.050
Victim of physical violence in school	.207	.036	.040	.453
Victim of violence outside the school	.289	-.004	-.004	.934
Psychological victimization 2 (threat at school)	.288	-.004	-.044	.934
Psychological victimization 3 (threats outside school)	.323	.038	.042	.934
Change of school for behavior	.343	.169	.155	.000
Punishment of reprimand at school	.408	.163	.164	.001
Crime in the family	-.079	-.166	-.145	.001
Multiple correlation Rm=.627 Rm^2=.393				

The first thing we can see from the presented results is that a large number of variables have no significant association with drug abuse. Among them are: a personality trait (neuroticism), patient gender, family relationships to the respondent, the physical punishment of subjects, social pathology in the family, attentiveness in class, regular learning, and various forms of victimization (physical violence in or outside the school, threats in and out of school).

To this group of variables should be added those variables that had no basis to enter into this analysis due to zero correlation with drug: age students, the relation-

* Symbols in the table have the following meanings: R is a linear correlation between variables and drug abuse, Rp is the partial correlation, β is the coefficient of partial regression, p is the level of significance, Rm is the multiple correlation between these variables and drug abuse, and Rm^2 coefficient of determination of the abuse using these variables, or percentage of variance explanation if it is multiplied by 100

ships between adult family members, a tendency to cheat in school work, participation in extracurricular activities and sports during the school. For professionals who deal with the creation of prevention programs this can be particularly interesting result. The absence of association with drug use involvement in extracurricular activities and involvement in sports, challenge the generally accepted notion that sports are a powerful protective factor for criminal behavior, including drug abuse. Perhaps it is time to abandon some stereotypes and to search for answers on the question why this is so. Why have sports and other forms of creative and organized use of leisure time lost their preventive function?

It is obvious that the misuse of drugs is a very specific form of behavior, when so many variables of the micro-environment have no influence on it. That basically means that for the roots of this behavior one has to look in other areas or in the same, but with the variables of a different nature than this.

Yet the results can be described as very important, because the ten variables are intrinsically linked with drug abuse. This conclusion stems from the fact that the multiple correlation is Rm = .627, and that with the use of these variables can be explained even 39% of drug abuse among students. Among those variables that significantly contribute to this behavior are two personality traits (introversion, and psychoticism), poor academic achievement, socio-pathological behavior in their peer group (alcoholism, drug addiction, gambling, etc..), running away from home, mocking and teasing by peers, frequent changes of schools, punishment and reprimand in school, and crime in the family and peer group. Particularly important impact have bad grades in school, social pathology in a group of peers, running away from home, crime in family, and changing schools. Judging by the low relation between personality traits, it would seem that the influence of micro-social factors still outweigh when it comes to drug abuse. If this conclusion is correct, one might say that students will abuse drugs more frequently, if they run away from home and if in their family are people who are involved in crime, if they have a worse success and frequently change schools, and if they belong to peer groups in which some members often drink, use drugs, gamble, are idle or deal with crime.

CONCLUSION

In the criminological empirical studies there is evidence that drug abuse is an important means of threatening the security of citizens and their property. This work was aimed at identifying some important risk factors that should be taken into account during the programming and implementation of prevention activities of that behavior.

Drug abuse is defined as intake of any narcotics at least twice, and/or at least once given, lent or sold any amount of narcotics. The survey of drug abuse, defined in that way, on a sample of 512 secondary school students in Belgrade led to the data that 23% of these students at least once tried some kind of drugs, that about 14% of male students and 3.2% of females rarely or sometimes even now use drugs, and that drug trying begins at the age of 11 to 14 years (on average about 4.3%), but that impact is on age 15, 16 and 17 when more than 20% of students use drugs in the course of their life. As for the risk factors the greatest impact in the direction of drug abuse, have poor grades in school, frequently changing schools, running away from home, alcoholism, drug addiction, gambling and crime in their peer group. Some, but significantly less significant impact than the previously mentioned factors, have personalities of Eysenck's model - introversion and psychoticism.

Although the previously mentioned variables can explain as much as 39% of drug abuse (Rm =. 627) it is necessary to continue with studies of risk factors for this behavior. It is also necessary to organize systematic monitoring of drug abuse among young people, in order to create the more appropriate prevention programmes when that conduct is in question.

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THE RIGHT TO EXPRESS SEXUAL ORIENTATION

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Freedom of people to exercise their rights depends on good cultural understanding of frameworks they are often limited by. Are individuals or groups of people seeking protection of the right to express their sexual autonomy in Serbia "traitors of their own culture" because they approve Western values or are they just ordinary people seeking protection of their right within their own culture? The European Court of Human Rights is not the final distributor of justice over violations of the rights guaranteed by the European Convention on Protection of Human Rights and Fundamental Freedoms, but undoubtedly, by setting legal standards, it ensures respect of human rights in European countries. Views of the Court when it comes to recognizing the rights of homosexually oriented population will be analyzed. While Pride parades in the world are commercialized, festival and carnival events, in Serbia public exposure in a form of a "parade" of people of different sexual orientation is an issue expressed in a sense of moral fear and rejection. The author will try to explain the relation towards sexually marked social minority with value turbulences and divisions in society. Can we first of all change ourselves, and then cherish the culture of dialogue and tolerance? Starting from an opinion that "human rights concern what is right, not what is good", the author discusses the issue of influence of the Serbian Orthodox Church on resolution of important issues we consider to be challenges of the contemporary world. The Church's attitude is that individual rights cannot be opposed to family values and interests. Does respect of human life require the idea of the God and theological foundation of a view of the world or is it someone's own experience of pain and ability to imagine pain of the others sufficient?

Key words: human rights, sexual autonomy, the church, protection of rights.

INTRODUCTION

With the establishment and protection of basic human rights, legal entities confront the state absolutism. Human dignity and equality are essential values of the idea of human rights. Freedom of a person, bearing in mind that one lives in a social community, should be understood as a possibility to do all those things that do not harm others. Human rights have not reached the point of normative perfection, but to this day, they represent a peculiar combination of elements of law, politics and values of the international community.[1]

With the right to respect private life, autonomy of an individual, i.e. freedom of people to live as they wish, without interference of public authorities into their lives, is protected. The scope of protection of the right to private life includes the identity, physical and moral integrity of an individual, one's intimacy, communication and sexuality; thus, the values that most people keep jealously, protecting in such a way their personal dignity, respect, peace and happiness.[2]

1 Kreca, M., *International Public Law*, Belgrade 2010, pp. 535.
2 See: Paunovic, M., Krivokapic, B., Krstic, and., *International Human Rights*, Belgrade 2010, pp. 203-233.

Although the positive law secures protection of the rights of homosexually oriented population, Serbia still has the epithet of a homophobic environment.[3] Application of international legal standards is contrary to traditional culture and values the society sees as its own. Constant internal struggle for social rejection of people of different sexual orientation,[4] respect of diversity and intimate aspects of peoples' lives, to the point where they do not threaten to harm others, are some of the phenomena and attitudes due to which the author has decided to discuss the right to express sexual orientation in her paper.

Sexual orientation represents a recent basis for prohibition of discrimination, which is not explicitly mentioned in the Article 14 of the European Convention on Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention),[5] but it is recognized in practice of the European Court of Human Rights (hereinafter: the European Court). [6] Proceedings before the Court can be started by the state, NGOs, individuals or groups of individuals who claim to be victims of violations of the rights stipulated in the Convention or the Protocols thereto, and made by the contracting State.[7]

The attitude of the Serbian Orthodox Church is that individual rights cannot be contrary to the values and interests of the society and family. Does respect for human life require the idea of the God or is personal experience of pain and ability to imagine the pain of others sufficient?

The right to express sexual orientation

For successful application of international legal norms on human rights, besides the regulated legal system, it is also necessary to cherish the culture of respecting human rights, i.e. the society's sympathy of protection of human rights proclaimed by the international community[8]. Thus, the guaranteed freedom of thought, conscience and religion is incomplete if one cannot act according to his/her conscience and beliefs. Laws and applied enforcement measures are not sufficient to change a society that cherishes intolerance toward other people, contempt towards ethnic, religious groups or people of different sexual orientation.

3 *Gay-straight alliance* and the Center for Free Elections and Democracy (CeSID) in March 2010, on a representative sample of 1,405 respondents conducted a research seeking an answer to the question 'is Serbia a homophobic society?' About 20% of citizens of Serbia is ready to support or justify violence against homosexually oriented people. Although science has determined that homosexuality is not a disease, nor a mental disorder or emotional problem, 2/3 of the respondents (67%) believe that homosexuality is a disease. More than a half of the population (53%) believes that the state should work on repression of homosexuality, while 38% think that homosexuality is a Western invention used for destruction of family and a Serbian tradition. Number of people who believe that the Church is right in condemning homosexuality has increased over the past two years from 60% to 64%.

4 Sexual orientation refers to the ability of each person for a deep, emotional and affectionate or sexual attraction and intimate and sexual relations with persons of different or same sex or more than one sex. See: *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity,* March 2007; http://www.yogyakartaprinciples.org/principles_en.htm (December 17, 2010).

5 See: Jaksic, A., *The European Convention on Human Rights - a comment*, Belgrade 2006.

6 The European Court of Human Rights was established in 1959 and does not constitute an instance over domestic courts. Court decisions can be used to present the state in question with solutions in its legislation that are believed to be inconsistent with the European Convention on Human Rights and Fundamental Freedoms. It is the only supranational court in the world which can potentially be addressed by more than 800 million people from 47 different countries. Ratifying the Convention in 2004, the Republic of Serbia obliged itself to respect the legal standards of the European Court. A total of 46 judgments regarding the Republic of Serbia have been brought so far (one in 2006, 14 judgments in 2007, nine in 2008, 16 in 2009 and six in the first half of 2010). Violation of provisions of the Convention was established in 43 judgments.

7 Law on Ratification of the European Convention on Human Rights and Fundamental Freedoms ("The Official Gazette of Serbia and Montenegro", International Treaties, no. 9 / 2003), Article 33 and Article 34

8 See: Paunovic, M., Krivokapic, B., Krstic, I., *Fundamentals of International Human Rights*, Belgrade 2007, pp. 53.

More than one third of the text of the Constitution of the Republic of Serbia[9] consists of provisions on human and minority rights and freedoms. It is important to guarantee and protect the rights, not only to "list" them in a document. The Constitution is not written to be "liked by the people", but it has to be an expression of deeper socio-political compromise and should clearly define constitutional concepts.[10]

The right to respect private life protects the autonomy of an individual, i.e. one's freedom to live the way one wants. How sexual autonomy[11] is protected will be analyzed through judgments of the European Court. With its long-standing practice,[12] the European Court has secured respect of human rights and set legal standards. The state, therefore, with ratification, i.e. implementation of international documents, revokes court sovereignty to the benefit of international judicial protection, particularly for the benefit of the European Court of Human Rights.[13]

The right to express sexual orientation is not explicitly recognized in the legal order of Serbia, but it is protected by the Article 8 of the Convention.[14] States hardly manage to justify interference in voluntary sexual relations between adults of the same sex before international bodies. According to the practice of the European Court of Human Rights, restriction of sexual autonomy has to be anticipated by the law, necessary and proportionately to the legitimate goal[15] sought to be achieved. Restriction is easily justified regarding the abuse of minors,[16] but hard in comparison to the intimate relationship of adults.[17] The incrimination of sexual relations with a minor is allowed to protect the rights of children and adolescents.

Discrimination based on sexual orientation in our law is explicitly prohibited by the provisions of the Labor Law[18] and Law on Prohibition of Discrimination.[19] It is not mentioned in the Article 14 of the Convention,[20] but it is recognized as a serious basis for prohibition of discrimination in practice of the European Court. Just to be noted, no universal international document on human rights contains different sexual orientation and gender identity as a basis for prohibition of discrimination.[21]

It is known that in Serbia, the Law on Prohibition of Discrimination is passed with opposition of the Serbian Orthodox Church, other religious communities and some political parties. Several brutal attacks on foreigners are consequence of intol-

9 The Constitution of the Republic of Serbia ("The Official Gazette of the Republic of Serbia" no. 98/06)

10 Petrov, V., *Constitution and human rights today - are human rights the most important part of constitution?*, section: Constitutional and international legal guaranties of human rights, Nis 2008, pp. 320.

11 Most often mentioned forms of sexual autonomy are the following four: heterosexuality (attraction of persons of the opposite sex/gender), bisexual (attraction of persons of both sexes), homosexual (attraction of persons of the same sex/gender) and asexuality (lack of attraction of persons of any sex/gender).

12 Since it started working (1959), the Court has brought more than ten thousand judgments; See: http://www.echr.coe.int/echr/Homepage_EN; (January 13, 2011).

13 See: Paunovic, M., Caric, S., *The European Court of Human Rights: jurisdiction and procedure*, Belgrade 2007.

14 See: Judgments Dudgeon v. the United Kingdom, no. 7275/76 of October 22, 1981 and Norris v. Ireland, no. 10581/83 of October 26, 1988.

15 See: Jaksic, A., *Op.cit*, pp. 345-346.

16 See: *Human Rights in Serbia 2009-law, practice and international standards of human rights*, Belgrade 2010, pp. 134.

17 The European Court was the first international body that ruled that criminal codes prohibiting voluntary sexual relationships between adults of the same sex represent violation of human rights, i.e. they are contrary to the right to respect private life. See: Dudgeon v. the United Kingdom of October 22, 1981, Series A no. 45, pp. 24, paragraph 67-70 and Norris v. Ireland of October 26, 1988, Series A no. 142, p.20, paragraph 46.

18 Labor Law („The Official Gazette of the Republic of Serbia" no. 24/2005, 61/2005,54/2009), Article 18

19 Law on Prohibition of Discrimination ("The Official Gazette of the Republic of Serbia" no. 22/2009), Article 21

20 "Enjoyment of rights and freedoms anticipated in this Convention is secured without discrimination on any basis, such as gender, race, skin color, language, religion, political or other opinion, national or social background, relation to another national minority, property status, birth or other status."

21 See: Vuckovic-Sahovic, N., *Principles of international law regarding sexual orientation and gender identification*, Legal Life, no. 10/2007, Belgrade 2007, pp. 383-393.

erance of people towards everything that is contrary to the traditional culture.[22] In a short time period, a few foreigners were beaten and injured in Belgrade.[23]

Another important segment of discrimination regarding sexual orientation is also the adoption of children.[24] The attitude of the European Court is that states are free to decide on this legal issue, because there is still no consensus regarding the resolution of such. However, in some cases, it has determined that it is not justified to deny custody to parents of homosexual orientation.[25] When it comes to inheritance rights, the European Court's position is that non-recognition of inheritance rights of heterosexual partners is a violation of the Article 14, and in regard to the Article 8 of the Convention. The obligation of the state is to present a legitimate goal that would justify the exclusion of homosexual couples from the right to inheritance.[26]

Homosexual communities are not acknowledged in Serbia. By the Constitution[27] and the Family Code[28] marriage is conditioned by gender diversity of the spouses, and gender sameness is one of the reasons of absolute nullity of marriage. Practice of the European Court and judgments in cases of marriages of homosexuals and transsexuals are not unique.[29] However, although not in one case it has ruled in favor of homosexuals' right to marriage, the Court all the more flexibly interprets provisions of the Article 12 of the Convention[30] with a tendency to allow marriage to transsexuals. Serious invasion into private life may occur where internal law is in conflict with some important aspect of personal identity. Stress and alienation arising from the disparity between the position within a society held by a transsexual after surgery and the status imposed by the law, refusing to recognize the gender change cannot, in the opinion of the Court, be considered a "minor inconvenience" that arose out of mere formalities. Regardless of the biological criteria, if a person changes gender and is considered to be a woman within a social context, one has the right to marry, as one would have that right if one was a biological woman (totally irrelevant is the fact that a transsexual cannot have offspring biologically).[31]

For now, in our country, the question of trans-sexuality problems refers to surgical interventions (undertaken with the aim of gender adjustment) and to sporadic practice of issuing a decision by municipal administrative organs. Bu the decision, transsexual persons are allowed gender change registered at birth in the registry.[32]

22 See: Hasanbegovic, J., *Culture and/or ideology of human rights – rhetoric and reality*, Annals of the Faculty of Law in Belgrade, no. 4/2009, Belgrade 2009, pp. 81-92.

23 Surely the most terrifying example of the young French citizen Brice Taton, whose life was taken; See: *Human rights in Serbia 2009-law, practice and international standards of human rights*, Belgrade 2010, pp. 322.

24 In the case Frette v. France, no. 36515/97 of February 26, 2002, the European Court confirmed the decision of the national court, which, starting from homosexual orientation of the plaintiff, denied the request for issuing permit for child adoption, with justification that his "choice of the way of life" is not such as to provide sufficient guarantees that he can provide the child with a proper home. Regardless the fact that violation of the Article 14 has not been determined, this judgment is considered controversial, what can be seen from the results of the voting: four vs. three.

25 See: Judgment Salgueiro Da Silva Mouta v. Portugal, no. 33290/96, of December 21, 1999.

26 See: judgments (Simpson v. the United Kingdom), no. 14688/89 of 1989; Mata Estevez v. Spain, no. 56501/00, of 2001 and Karner v. Austria, no. 40016/98 of July 24, 2003.

27 The Constitution of the Republic of Serbia ("The Official Gazette of the Republic of Serbia", no. 98/06), Article 62

28 Family Code ("The Official Gazette of the Republic of Serbia", no. 18/2005), Article 3

29 See: Judgment Cossey v. the United Kingdom, no. 10843/84 of September 27, 1990

30 "Men and women of suitable age have the right to marry and start a family in compliance with the internal laws that regulate exercise of this right."

31 See: Judgment Christine Goodwin v. the United Kingdom, no. 28957/95 of July 11, 2002; amended position of the Court regarding the judgment Rees v. the United Kingdom, no. 9532/81 of October 17, 1986. Position of the Court is that, since the state allowed treatment and surgical procedure that will alleviate problems of a transsexual, financed or helped in financing the operation and allowed artificial insemination of a woman who loves a transsexual (who previously surgically changed from a woman to a man), it is not logical to deny acknowledgment of legal implications of results of such medical treatment.

32 The first case of legal gender change was recorded in 1992 in Belgrade municipality of Savski venac

Trans-sexualism as a disorder of gender identity[33] appears most often in early childhood. People of transgender population in Serbia are subject to misunderstanding and condemnation of the environment, as well as rejection by family and friends.

Pride parades in the world[34]

Pride Parades are annual festival celebrations of LGBT[35] people which are held in major cities around the world. In homophobic environments, focus is mainly put on the political significance of such gathering, while in environments with greater level of acceptance of LGBT people, parades have mostly entertaining, i.e. festival and carnival character. With street parade, music, fancy costumes and dance, participants draw attention of the public to political issues such as homosexual marriages, discrimination and homophobia, strengthening identity and creation of an accepting environment, especially for young LGBT people.

The first parade took place in New York (1969). It was important for the emancipation of LGBT people and for placing a request for respect for the rights of people of different sexual orientations. Some, especially large Pride Parades, are financed by governments and influential companies and they are promoted as a major tourist attraction in the cities they are organized in. The biggest event with 3.5 million participants was the Pride Parade in Sao Paulo (2007). Particularly attractive for tourists is the parade in San Francisco (*San Francisco Pride*). Since the early '80s of the last century, annual Pride Parade and Festival of the LGBT community have been organized in Sydney as *Sydney Gay and Lesbian Mardi Gras*. Due to the large number of tourists from around the world, Sydney realizes significant financial profit. As homosexuality has become acceptable in Australian society, apart from representatives of the LGBT community, representatives of the police force also take part in the parade.

On the day of the Eurovision Song Contest finals in May 2009, a Gay Parade in Moscow took place, what resulted in arrests of many participants. Now former Mayor of Moscow, Yuri Luzhkov, [36] named the gathering of homosexuals satanic, believing that walks organized by gay and lesbian communities disturb public order, health, moral, rights and freedoms of citizens.[37]

Europride is the biggest international LGBT Pride Parade taking place in Europe. Every year, it is hosted by one of the European cities, famous for its tradition of holding pride parades. The First *Europride* was held in London (1992),[38] and then later in Berlin, Zurich, Amsterdam, Cologne, Paris, Stockholm, Madrid, Oslo.

Last year's gathering of people of different sexual orientation in Berlin,[39] the metropolis that has been famous for its liberal and tolerant attitude towards sexual minorities since the 19th century, was accompanied by the slogan "normal is differ-

33 International classification of illnesses and related health problems, chapter V, part F00-F99, code F 64.
34 See: http://sr.wikipedia.org/sr/Povorka_ponosa (November 23, 2010).
35 LGBT is an acronym for **lesbian, gay, bisexual, and transgender people**
36 From 1992 to 2010, he was the Mayor of Moscow.
37 In October 2010, acting according to the complaint by Nikolai Aleksejev (an activist of the LGBT community), the judges of the European Court of Human Rights ruled against the state of Russia because of the prohibition to hold the Pride Parade in Moscow. They pointed in the decision to the importance of freedom of gathering and holding non-violent gatherings. Security reasons were considered of secondary importance in the decision of the authorities who were primarily led by moral values of the majority. The Court ordered a compensation of 12,000 Euros for moral damages Aleksejev had suffered.
38 London will be the host of the World Pride in 2012; http://www.pridelondon.org/about-us/world-pride2012 (January 1, 2010)
39 Public attention was drawn by the official announcement of a long-term relationship of the Head of German diplomacy, Guido Westerwelle with his partner Michael Mronz. Homosexual couples in Germany cannot get married, but they can officially register their relationship since 2001, achieving in such a way the same rights in many fields as married spouses of different genders.

ent." Noted were also gatherings in Rome and Vienna. In Holland, the majority of the public supports equal rights of LGBT people. In deeply religious and traditional Poland, in November 2010, a march for equal rights of gay population was held with the slogan "equality is not a privilege" printed on banners.

Among the former Yugoslav republics, only Slovenia (since 2001) and Croatia (since 2002) regularly organize pride parades. A group of about 500 people attended the Pride Parade held last year in the Croatian capital, under the slogan "Croatia can swallow that." Similar events have never been held in Bosnia and Herzegovina, Macedonia, Albania and Montenegro.

Pride parade in Serbia

The first Pride Parade in Serbia was held in 2001. The second planned meeting (2004) was canceled for security reasons after mosques in Nis and Belgrade were burned. Finally, in October last year, a Pride Parade in the Serbian capital took place with security of some 5,000 police officers.[40] Consequences of the assembly of activists who advocate the rights of LGBT people were riots and violence in the streets of Belgrade. 132 police officers and 25 citizens were injured, and the estimated material damage was around one million Euros.

Question was raised whether Serbia is homophobic and intolerant society and who are the young people eager for demonstration of force? It is believed that culprits of vandal disorders are hostages of the violated value system and those who were born and raised in time of visa sanctions. The conflict of culprits with the police represents an attempt to exit from anonymity, given that one gets a sense of strength and power when in a group. Young people have no clear concept of unique values, symbols and moral principles. Aggression and dissatisfaction are consequences of social tension in Serbia. Violence is a manifestation of fear of loss of life chances, mostly directed towards minorities or the authorities. The potential targets of aggression become all those who are different on any basis and homosexuals are the most transparent evidence of such diversity.

Human rights regime cannot survive without a minimum commitment to respect and tolerance. Willingness to argue with opponents does not only depend on tolerance. It is important that we respect them as interlocutors who we want to get in constructive relationships with. If there was agreement on the issue of human rights content, tolerance would be enough.[41]

40 According to international standards, the state not only has the obligation to abstain from unjustified limitation of freedom of peaceful gathering, but also to protect participants of peaceful demonstrations from violent threats by third parties. The right to gathering cannot be restrained because there is a social group that does not support beliefs promoted in a gathering. According to the established practice of the European Court of Human Rights, "it would be incompatible with the values protected by the Convention if enjoyment of the rights on the basis of the Convention by a minority group could be conditioned by a permit of the majority".

41 Ignjatijef, M., *Human rights as politics and idolatry*, Belgrade 2006, pp. 27 sq.

Opinion of the Serbian Orthodox Church on respect for human rights[42]

Given that the church has been a dominant social organization "imposing" itself as a mediator and a corrector of social relations, the question is to what extent the Serbian Orthodox Church today (hereinafter: the Church), as one of the cornerstones of traditional society, participates in resolution of important social issues arising as challenges of modernity.

The Constitution of the Republic of Serbia (Article 11) stipulates the principle of worldliness of the state and established prohibition of state religion.[43] Religious communities are autonomous in relation to the state institutions, but the state authorities are also independent in regard to religious communities. Agitation of the clergy in party politics is certainly undesirable. It is dangerous that the Church as an institution of spiritual salvation looses identity. An institution of the highest reputation [44] cannot be uninterested in a destiny of its people, state and society. The Church is particularly trusted, exactly because of fidelity in Christian tradition and steadfast and persistent commitment to its people.

Holy Archbishopric Assembly of the Russian Orthodox Church (2008) issued an official document on human rights titled "Fundamentals of the Russian Orthodox Church's teachings on the dignity, freedom and rights of a human." [45] The aim was for the document to be generally acceptable to all Christians. In the East-Christian tradition, "dignity" is a term of moral nature. Claim of the church that human dignity is primarily a moral issue is contrary to the universality of human rights, [46] because if human dignity is a moral issue, then it does not depend on what a human is, but on what one does. Does this therefore mean that human rights only belong to those who are "morally right", but not to the immoral ones?

View that the Church is a place of moral perfection with broader meaning of the term is not disputed, but one cannot ignore the knowledge that many peoples and nations, and the religion itself, languished on the issue of moral decadence. [47] Respect is given to money and quick success in life, as if the new God is called profit. In Serbia, it is time for the church clergy to start a mission of renewal of Orthodox spirituality. This will reestablish confidence in personal and social moral. Otherwise people will become spiritually tired and insensitive to the God's commandments.

Presenting negative attitudes about people of different sexual orientation, the Church says that it is unacceptable and dangerous interpretation of human rights as the supreme and universal basis of social life which religious attitudes and practices should subjugate to. The beginning of social life is a family as a community of men and women's lives where natural conditions for normal upbringing of children are created. The Serbian Orthodox Church Metropolitan, Amfilohije Radovic, just be-

42 The Serbian Orthodox Church is administratively independent (autocephalous) orthodox church; it is in the rank of patriarchy with eparchies and parishes in all ex-Yugoslav republics, as well as in other countries of the world where its believers live. The head of the Serbian Orthodox Church is the Patriarch of Serbia Irenaeus. He was elected at the beginning of last year as the 45th Patriarch of Serbia. Among Serbian people, Patriarch Paul (predecessor of the Patriarch Irenaeus) was a moral model to all church and state dignitaries.

43 "The cxistence of state religion in Europe is mainly the residue of tradition (...) Announcement of a religion for state religion is essentially contrary to the freedom of consciousness and religion and represents discrimination towards members of other religions." See: Dimitrijevic, V. et al., *International right of human rights,* Belgrade 2006, pp. 230-234.

44 The results of the last year *Balkan Monitor* research show that the army and the church are the most trusted institutions in Serbia; http://www.balkan-monitor.eu/; (January 1, 2011)

45 See: website of the Christian Cultural Center, http://www.ccc.org.rs/ (November 26, 2010)

46 See: Tomusat, K., *Human rights between idealism and realism*, translation by Dimitrijevic V., Jerosimic A., Milanovic M., Belgrade 2006, pp. 105-127

47 After the death of the Patriarch of Serbia, Paul, Serbian public was introduced to and surprised by numerous church affairs, accusations of church dignitaries for sexual abuse, as well as greedy thriving of a part of the clergy.

fore the Belgrade Pride Parade (2009), stated that it was the parade of shame and the procession of Sodom and Gomorrah, [48] calling homosexual love barren and saying that "the tree that does not bear fruit is cut down and thrown into the fire."

CONCLUSION

Protection of human rights is conditioned by historical and cultural connectional relationship, as well as socio-political circumstances. Through the topic of free expression of sexual orientation, the question of maturity of Serbian society for a clear perception in the perspective of civilization, intellectual and cultural relationship to the challenges of modernity is inevitably raised.

No civilization should impose the way of life organization on another one. Realization of individual rights cannot be contrary to values and interests of a state, society and family. The protection of human rights should not be an excuse for attacks on religious shrines, cultural values and characteristics of people.

If 'Pride Parades' are held aiming to improve the inadequate position of minority sexual orientation and to promote respect for human rights and tolerance, the message is not offensive. If they only represent an object of political struggle or a way to offend the religious views of the majority, then there is no culture of reason or respect for dignity as an attribute of humanity. Let us accept the attitude of the Church that human dignity is the base of human rights. Let us not give up the true moral renewal. Without respect, tolerance and culture there is no happy family or social community.

People of different sexual orientation are not morally deviant or mentally disturbed. They are human beings who do not bear responsibility for their characteristics and nature. Homosexuality is not mental or physiological disorder, but an acceptable diversity of a smaller part of human population.

Discussing the issue of rights of sexual minority with opponents, hoping that in future we will find a way to understand each other better, we express respect for them, as for human beings. Life in isolation, social exclusion and fear are obstacles for optimal development of human beings' potential. We naturally tend to take care of those closest to us by blood, ethnic or religious origin, but what about the others?

We do not belong to the dogmatic intolerance period that classifies the scientific thought into a labyrinth of different discriminations. The development of our consciousness and conscience is impacted by family, public opinion, media, church, political maturity, moral emancipation, confidence in the legal norms ... The attitude towards homosexually oriented population is an indicator of value turbulences and political divisions. Given that human rights are a part of daily existence and politics, they have also become an object of political struggle. However, in building and nurturing value criteria, we must finally get rid of various ideologies and policies. Social values are the values just because they are persistent. They should be constantly adopted, outreached, confirmed and improved. We must not forget the responsibility, both personal and public. In any social doctrine or an existing political option, we will not make a mistake if we support the ideas and activities of an unselfish vision of the society.

48 According to the Bible, Sodom and Gomorrah are the towns that the God destroyed due to lecherous people who lived there. These words describe human immoral and especially sexual depravity. The term "Sodom sin" marks all kinds of homosexual relations (See: The Bible, Genesis 19:1-13)

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THE COURT'S ROLE IN PROSECUTORIAL INVESTIGATION[1]

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Abstract: In recent decades, especially in the last few years, the prosecutorial concept of investigation has become dominant in relation to the judicial concept of investigation in the countries of the continental Europe. The court's role in conducting the investigation is very limited, while the public prosecutor, together with the police, is the main subject. This paper will deal with certain issues regarding the functional jurisdiction of the court in investigation led by the public prosecutor, the scope of engagement, as well as authorities the court should possess in preliminary criminal procedure in order to achieve grater efficiency of criminal procedure, which is one of the main reasons for introducing prosecutorial investigation. The paper will also point to specific common characteristics regarding the jurisdiction of authorized judge while conducting investigation in different countries, as well as certain differences and controversial solutions in terms of efficiency of criminal procedure. Special attention will be given to the authority of the judge to undertake specific evidentiary actions in this type of investigation, and conditions that have to be fulfilled so that the judge in prosecutorial investigation, beside the public prosecutor and the police, would appear as active subject.

Key words: preliminary criminal procedure, prosecutorial investigation, investigative judge, preliminary proceedings judge, evidentiary actions.

INTRODUCTORY OBSERVATION

The efficiency of criminal procedure depends upon numerous objective and subjective factors, but it is certain that its efficiency is greatly affected by investigation, as a phase of preliminary criminal proceedings. Therefore, in criminal procedural law theory, there are many debates in terms of finding the most adequate and the most optimal concept of investigation, which should contribute to better efficiency of criminal proceedings, and for the same purpose, there are different solutions in criminal procedural legislation in different countries. In this respect, it should be pointed out that the contemporary criminal procedural law is characterized by the existence of two basic models of criminal procedure: the first, inquisitorial (*civil law*) system that was created and prevails in Europe, and the second, accusatorial (*common law*) system that prevails in Great Britain and its former colonies. Countries such as South Africa, Argentina, Egypt, Russia, Japan and China have different systems of criminal procedure, i.e. combination of these two models, which is getting more frequent nowadays.[2] In inquisitorial model, the court seeks to establish the truth as to what really did happen in terms of specific criminal matter, and based on that, reaches the decision, while in adversarial model, criminal procedure is seen as a dispute between two confronted parties, on which the court should reach a decision.

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2 Craig M. Bradley, (2007), *Overview,* Criminal Procedure A Worldwide Study, second edition, edited by Craig M. Bradley, Carolina Academic Press, Durham, North Carolina, p. xvii.

Although it is obvious that here we have two different traditions, the mutual taking over of solutions between these two systems has become widespread, so that at this point, there is not a one law on criminal procedure which is absolutely based on the principles of only one of these two models. Contemporary criminal procedure is characterized by a mixture of different elements of these two basic models.

Depending on the accepted model of criminal procedure, different is the organization of preliminary procedure in various countries, in other words, there are different concepts of investigation. Therefore, the court's role in investigation is regulated differently. In this regard, there are certain differences in the countries of continental Europe in terms of whether the investigation is conducted by the investigative judge or the public prosecutor. Consequently, one can say that there are two concepts of investigation: judicial and prosecutorial, but there are also different modalities of prosecutorial investigation, and depending on the jurisdiction and powers of the police in the prosecutorial investigation concept, one can also speak of prosecutorial and police investigation.[3]

In addition, in terms of powers that the court possesses in criminal procedure, in procedure-related theory there is a clear distinction between two concepts: English and French. In some legal system, a judge is nothing more than an arbitrator in court hearing and the responsibility for the correctness of the decision is not up to him, but up to the jury, which is characteristic for the English concept. On the other hand, in some legal systems, a judge is obliged to lead and actively participate in the main hearing, and he is also responsible for correctness of the decision, which is characteristic for the French concept.[4]

In the context of the previous introductory explanations, and from the aspect of the topic of this paper, in the following part of the paper special attention will be dedicated to the court's role in conducting investigation, undertaking certain evidentiary actions in investigation, as well as authorities related to ordering measures of procedural coercion in preliminary proceedings in countries where the prosecutorial concept of investigation is primary. Also, a brief overview of the court's role in judicial investigation will be given.

Overview of the court's role in judicial investigation

The judicial investigation concept is still present in Serbian criminal proceedings legislation. However, under the influence of the trend of accepting the prosecutorial investigation concept by many countries and pointing out its significance for greater efficiency of criminal procedure, as well as under the influence of the critics of the judicial investigation concept by eminent specialist in matters of criminal procedure, favourable conditions were created to introduce the prosecutorial investigation concept in our legislation. In judicial investigation concept, regardless of the fact that the public prosecutor submits a request for initiation of investigation to the investigative judge, the main subject of investigation is the investigative judge who issues a ruling on instigating the investigation, directs investigation and conducts investigative actions. However, he may also entrust conduct of some actions to the police, which depends upon the content and requirements of each particular case.

3 Dr Aleksandar Bošković, (2010), *Saradnja javnog tužioca i policije u krivičnoprocesnim zakonodavstvima sa konceptom tužilačke istrage,* Međunarodna i nacionalna saradnja i koordinacija u suprotstavljanju kriminalitetu, Internacionalna asocijacija kriminalista, Banja Luka - Kelebija, p. 578.

4 Denis Salas, revised by Alejandro Álvarez, (2005), *The Role of the Judge,* European Criminal Procedures, edited by Mireille Delmas-Marty and J. R. Spencer, Cambridge University Press, Cambridge, paperback edition, p. 505.

In judicial investigation concept, investigation is the first phase of preliminary criminal procedure. It occurs when, upon the request of the authorized prosecutor, a ruling is issued on instigating the investigation against a person due to existence of grounds of suspicion that he/she committed the criminal offence,[5] which points to the fact that the investigation is instigated by a ruling of the investigative judge.[6]

Besides submitting a request for conducting investigation, the public prosecutor may be present during the conduct of investigative actions and propose their conduct. In terms of the role of the police in preliminary criminal proceedings, it is important to emphasize that the investigation is so designed that it entirely belongs to the judicial procedure, thus the possibilities of police involvement in preliminary criminal procedure are kept to a minimum.

The investigative judge concludes the investigation when he finds that the case has been sufficiently clarified in the investigation, and he delivers all case files to the public prosecutor. The public prosecutor may propose that the investigation should be supplemented, he may discontinue the criminal prosecution, and may also raise the indictment, which, again, depends upon the evidence gathered during the investigation. The further course of the preliminary criminal proceeding can only be continued if the public prosecution raises the indictment. The Criminal Procedure Code provides for further proceedings upon the indictment, and the time of its entering into force. This is very significant, given that by entering into force of the indictment, the preliminary criminal proceeding is concluded, and the main criminal proceeding begins.

However, the concept of judicial investigation, as primary in the continental legal system, is losing its significance more and more, so the French procedural legislation is often used as an example in favour of such understanding, which is considered to be the cradle of investigative judge and judicial investigation concept, where the concept of judicial investigation is still maintained, but the authorities of investigative judge were reduced by introducing the new institute, i.e. judge of freedoms and detention. This judge is responsible for deciding on confinement, detention, search, entry into apartment and seizure of objects, as well as on some issues outside the criminal proceedings.[7] In this context of consideration, it is interesting to bring up the opposite opinion, according to which the introduction of judge who decides on limitations of human rights during an investigation does not undermine the judicial investigation concept, but quite the contrary – it makes it stronger, since only the investigative judge is still deciding whether a criminal offence exists. It is irrelevant, and even unnecessary that he decides on the detention too. Therefore, it is out of question that by introducing this judge the concept of judicial investigation is getting weak, but on the contrary, its objectivity is increasing.[8]

As one may notice, in judicial investigation concept, during an investigation, the court realizes its role through the investigative judge. Undertaking of evidentiary actions during the investigation is primarily under the jurisdiction of investigative judge, and only under specific circumstances, some actions may be entrusted to the police.

5 Dr Stanko Bejatović, (2010), *Krivično procesno pravo,* Službeni glasnik, Beograd, p. 405.

6 Besides this opinion of the mentioned author, there are some opinions by others experts in matters of criminal procedure, according to which the preliminary criminal procedure also begins by issuing a ruling on instigating the investigation. See: dr Tihomir Vasiljević i dr Momčilo Grubač, *Komentar Zakonika o krivičnom postupku*, Službeni glasnik, Beograd, 2010. p. 531.

7 Dr Goran Ilić, *Položaj i uloga policije u pretkrivičnom i prethodnom krivičnom postupku u francuskom krivičnom procesnom zakonodavstvu,* Policija i pretkrivični i prethodni krivični postupak, VŠUP, Zemun, 2005. p. 301.

8 Dr Đorđe Lazin, *Sudska istraga (dileme i problemi),* Revija za kriminologiju i krivično pravo, br. 2. Udruženje za krivično pravo i kriminologiju i Institut za kriminološka i sociološka istraživanja, Beograd, 2006. p. 75.

In this regard, even in the foreign proceedings-related theory, there are some opinions that speak in favour of advantages of judicial investigation concept, i.e. that the phase of investigation, at least in theory, is neutral, because it is conducted by the investigative judge, which uses state resources to discover all evidence which may lead him to establishing the truth. Also, the later direct testifying is not necessary, since the statements of witnesses taken during the investigation are contained in the case.[9]

Furthermore, the investigative judge has the jurisdiction to order specific measures of procedural coercion towards the defendant, above all, to order detention, and he can do it on his own initiative or upon the proposal of the public prosecutor. In countries where the concept of judicial investigation is present, it is not possible for the public prosecutor to undertake evidentiary actions during the investigation, but the investigative judge is *dominus litis* of the investigation.

Considering this concept of the court's role, i.e. the role of investigative judge in the judicial investigation concept, the next chapter will be dedicated to actions a court can undertake in prosecutorial investigation concept, as well as its role in determining the measures of procedural coercion, which, after all, is the subject of the paper.

The court's actions in prosecutorial investigation

The prosecutorial concept of investigation is becoming more and more widespread in Europe, and many countries have adopted it, with less or more differences. Some countries have turned largely to adversarial type of procedure (Italy, Portugal), and some have adopted the medium, less radical solutions (Germany, Russia). In any case, this issue has also become current at the territory of the former Yugoslavia, thus the prosecutorial concept of investigation was introduced into the Criminal Procedure Code of the Republic Srpska in 2003,[10] that is, Federation of Bosnia and Herzegovina.[11] In addition, the new Criminal Procedure Code of Montenegro[12] has introduced the prosecutorial concept of investigation, as well as the new Criminal Procedure Code of the Republic of Croatia.[13] The new Criminal Procedure Code[14] of the Republic of Serbia was passed in 2006. It provided for the prosecutorial concept of investigation and entered into force on 10 June 2006, and was supposed to be implemented since 1 June 2007. However, the implementation of this Code was postponed for several times, and eventually it was revoked[15], so that Serbia continues to apply the concept of judicial investigation.

One of the basic characteristics of prosecutorial investigation is that during its conduct, as same as during the conduct of judicial investigation, a number of subjects participate, but the public prosecutor is the main subject, since he issues a ruling on instigating the investigation, directs investigation and gives power to the police to conduct certain evidentiary actions. In this regard, it is very important to determine precisely jurisdictions and authorities of public prosecutor, police and investigative judge in the concept of prosecutorial investigation. However, the main role in this concept belongs to the public prosecutor, and the police in certain domains act on their own initiative or upon request and authorization of the public prosecutor.

9 Craig M. Bradley, *Overview,* Criminal Procedure A Worldwide Study, second edition, edited by Craig M. Bradley, Carolina Academic Press, Durham, North Carolina, 2007. pp. xvii-xviii.
10 ''Službeni glasnik Republike Srpske", br. 50/03, 111/04, 115/04, 29/07, 68/07, 119/08, 55/09, 80/09, 88/09 i 92/09.
11 „Službene novine Federacije BiH", br. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07 i 9/09.
12 ''Službeni list Crne Gore", br. 57/09. This Criminal Procedure Code was passed by the Parliament of Montenegro on 27 July 2009, and it entered into force on 26 August 2009, but its implementation was postponed for a period of one year from the date of its entry into force, i.e. until 26 August 2010.
13 „Narodne novine", br. 152/08 i 76/09.
14 ''Službeni glasnik Republike Srbije", br. 46/06.
15 ''Službeni glasnik Republike Srbije", br. 72/09.

Besides the public prosecutor and the police, the court also has its own role in the prosecutorial investigation. The name the judge responsible for undertaking appropriate actions in prosecutorial investigation is different, so that in Germany the expression investigative judge has remained *(Ermittlungsrichter),* in Italy we have the judge for the preliminary investigations,[16] while the new Criminal Procedure Code of the Republic of Croatia provides for „the judge of investigation". It seems that the term judge for investigation is the most suitable for a judge responsible for conducting prosecutorial investigation, so we will use this term.

One of the crucial issues for the successful implementation of prosecutorial concept of investigation is the issue of jurisdiction and authorities that the judge for investigation should possess during the conduct of the investigation by the public prosecutor. Specifically, engagement of the judge for investigation should neither be too extensive, nor it should be entirely left out. Although the investigation has the prosecutorial character, certain evidentiary actions in investigation may have judicial character, given that the court evidence principally is always stronger than the one presented by the public prosecutor, who is, generally, less impartial than the judicial body.[17]

In this sense, it is interesting to point out that with the reform of criminal procedural legislation in Italy,[18] investigative procedure, conducted by investigative judge whose main role was gathering of evidence that were later presented before the court at main hearing (trial) by the public prosecutor, was replaced by the concept of prosecutorial investigation. Hence, the investigative judge was replaced by the judge for the preliminary investigations, whose main task was no longer the gathering of evidence, but control of actions of the public prosecutor, that is, his compliance with the rules governing the rights of the person against whom investigation is being conducted,[19] while the main subject of investigation is the public prosecutor, who was given a choice to entrust certain investigative actions to the judicial police. It is very important to emphasize that actions undertaken by the parties in preliminary investigations do not have the evidentiary significance until the beginning of the court hearing. In other words, in order for them to be treated as evidence, they have to be presented before the court. However, the Code also provides for some exceptions for specific investigative actions which could not be repeated later, and they can be presented as evidence, such as seizure (temporary confiscation of objects), search, technical controls that could not be repeated or telephone tapping.[20]

The judge for the preliminary investigations mostly decides on those issues related to personal rights and freedoms of a person against whom the preliminary investigation is conducted, i.e. the suspect. In this context, the judge for the preliminary investigations decides on the deprivation of liberty, conduct of search, use of

16 Italian name for the Judge for the Preliminary Investigations is *giudice delle indagini preliminary* and in Italian scientific literature the abbreviation *g.i.p.* is often used for this judge. It should be pointed out that there is the institute of preliminary hearing in Italy (*udienza preliminare),* whose most important function is to pose as "filter" directed towards prevention of unsustainable charges. Italian name for the Judge of the Preliminary Hearing is *giudice delle udienza preliminare* and in Italian scientific literature, the abbreviation *g.u.p.* is often used for this judge. Also, it should be emphasized that these two judges are completely different, i.e. these two functions can not be performed by the same person, i.e. the same judge. Likewise, the trial judge cannot be a judge who during the procedure has already performed the function of the Judge for the Preliminary Investigations or the Judge of the Preliminary Hearing.

17 Dr Milan Škulić, (2007), *Komentar Zakonika o krivičnom postupku*, Službeni glasnik, Beograd, p. 840.

18 *Codice di procedura penale - Gazzeta ufficiale della Repubblica Italiana. N. 250 del 24. ottobre 1988.* The Italian Code of Criminal Procedure was passed in the accordance with the guidelines established by the law from 16 February 1987, No 81, which contains a total of 12 articles which elaborate the framework and strategic guidelines for the new criminal procedure legislation. This Code was established by the Decision of the President of the Republic of Italy No. 447 from 22 September 1988, and it has been implemented since 1989.

19 Adelmo Manna, Enrico Infante, *Criminal Justice Systems in Europe and North America, Italy*, The European Institute for Crime Prevention and Control, affiliated with the United Nations, Helsinki, Finland, 2000. p. 20.

20 Adelmo Manna, Enrico Infante, *Criminal Justice Systems*..... p. 18.

special investigative techniques, prolongation of the preliminary investigation etc. Therefore, the judge for the preliminary investigations does not conduct the investigation, but participates as a supervisory body over the actions of the state prosecutor and judicial police, and guarantees rights and freedoms of a suspect, as well as protection of his privacy.

In German criminal procedural legislation, one of the most important changes of the Criminal Procedure Code *(Strafprozeßordnung – StPO)* was made in 1975,[21] when for the purpose of achieving greater efficiency of criminal procedure, judicial investigation was abolished and replaced with prosecutorial investigation, which actually means that since then the investigation was no longer under the jurisdiction of the investigative judge. One of the main reasons that led to this change was emphasizing of the fact that there was no need for duplication of investigation already conducted by the prosecution and the police, because in this way the proceeding was unnecessarily prolonged.[22]

In the course of the investigation, the state prosecution can indirectly undertake the investigative actions, i.e. by state prosecutors and their deputies, or it can entrust them to the police,[23] while if it considers that in certain cases it is necessary to undertake certain judicial actions, it can submit such request to the basic court located in the area where these actions should be undertaken. In this regards, it should be pointed out that the procedural position of the police is very strong and active in the criminal procedural legislation of Germany, and with such position, the police plays a very important role in the preparation of public charges by the public prosecutor.[24]

Also, it should be emphasized that the court is not authorized to undertake investigative actions on its own initiative, except in the case when there is a risk of delay, and it is not possible to contact the state prosecutor. In order to decrease the court's role in prosecutorial investigation, and avoid the dilemma regarding the fact when the court, on its own initiative, can undertake certain investigative actions in the course of investigation, the legislator has set two conditions. The first condition is that the risk from delay has to exist, and the second one is that the state prosecutor is not available, provided that both conditions have to be fulfilled in order for the court to undertake certain investigative actions without the request. As one can see, the investigative judge in Germany can undertake evidentiary actions during the investigation on its own initiative only exceptionally, under the above-mentioned cumulative conditions.

As has already been said previously, the Criminal Procedure Code of the Republic of Srpska, which has been implemented since the mid-2003, has introduced the concept of prosecutorial investigation, terminated the institute of investigative judge and introduced the judge for preliminary proceedings, which has completely different jurisdictions and authorities in relation to the investigative judge in the concept of judicial investigation. Specifically, the judge for preliminary proceedings helps in the investigation by issuing warrants for search of persons, apartments and other premises, warrants for seizure of objects, rules ordering detention and special

21 This novelty of the German Criminal Procedure Code was passed in December 1974, but entered into force in 1975.

22 Joachim Hermann, *Federal Republic of Germany,* Major Criminal Justice Systems, edited by George F. Cole, Stanislaw J. Frankowski and Marc G. Gertz, Beverley Hills and London: Sage publications, 1981. p. 100.

23 The vast majority of police officers in Germany are at the same time investigators at the prosecutor's office *(Ermittlungspersonen der Staatsanwaltschaft),* who lead the investigation together with the state prosecutor, and have at their disposal a number of powers, based on which, in cases of emergency, they may act even without the court's permission. Only the lowest in rank members of the police are not at the same time investigators at the prosecutor's office, thus they do not have any special powers.

24 Dr Stanko Bejatović, (2005), *Položaj i uloga policije u pretkrivičnom postupku i prethodnom krivičnom postupku u nemačkom krivično procesnom zakonodavstvu,* Policija i pretkrivični i prethodni krivični postupak, VŠUP, Zemun, p. 265.

investigative measures. Besides, the judge for preliminary proceedings supervises the legality of the investigation by conducting a revision of situations in which the authorized officials acted without the warrant because of the risk from delay, and undertakes special investigative actions, as well as decides on whether the results of the investigation corroborate the reasonable suspicion that the suspect has committed the criminal offence, in order to confirm the indictment.[25]

These experiences of Italy, Germany, Republic of Srpska and many other countries that are implementing the prosecutorial concept of investigation, and that could not be mentioned here due to the limited nature of this paper,[26] indicate that the judge for investigation appears as important subject in prosecutorial investigation, but with the far less powers than he had in the concept of judicial investigation. The judge for investigation no longer decides on instigation of investigation, nor he conducts it, but he can only, in cases provided for by the Code, order or carry out certain actions requested or proposed by the public prosecutor. This mainly refers to those actions that infringe the rights and freedoms of citizens, such as search of apartment, other premises and persons, temporary seizure of objects, exhumation of a body, ordering detention, as well as certain evidentiary actions if certain circumstances indicate that such actions could not be repeated at the main hearing, or the presentation of evidence at main hearing would be impossible, or significantly difficult. Somewhat more extensive engagement of the judge for investigation in the prosecutorial concept of investigation would not be compatible with the nature of such investigation, and would not have a positive effect on the efficiency of criminal procedure, which is one of the main reasons for transition to prosecutorial concept of investigation.

The court's role in ordering measures of procedural coercion

It seems that regarding this issue, i.e. the role of the court in defining measures of procedural coercion in prosecutorial investigation, there are small differences between certain countries. Specifically, the judge is the one who has the exclusive authority to order a certain measure of procedural coercion, by ordering a court injunction or by ordering detention of a suspect until the trial. Generally, in each phase of criminal procedure, a court's decision is required in order for some person to be deprived of liberty.

However, there are certain differences in terms of authority that initiates these measures, i.e. that proposes ordering of detention. For example, the German Criminal Procedure Code provides for measure of temporary deprivation of liberty *(vorläufige Festnahme),* which in some cases can be undertaken without the court's order.[27] A person deprived of liberty, unless he is released, should immediately, without delay, no later than the following day upon deprivation of liberty, be brought before the judge at the basic court in the district in which he has been apprehended. If the judge considers that there is no reason for his deprivation of liberty, he will issue the order for his release, whereas in opposite situation, he will issue the order for remand prison, upon the proposal of the state prosecutor, and if he is not available - *ex officio*. Based on all these, one can draw three very important conclusions. Firstly, in Germany, a person deprived of his liberty is not being brought before

25 Dr Miodrag Simović, (2004), *Krivični postupci u Bosni i Hercegovini*, Privredna štampa d.d. Sarajevo, p. 221.
26 See more on models of investigation in Germany, Italy, Republic Srpska, Russia and England in: dr Aleksandar Bošković, *Tužilačko policijski koncept istrage i efikasnost krivičnog postupka*, doktorska disertacija, Pravni fakultet, Kragujevac, 2010. pp. 254-430.
27 The state prosecution and police officers in Germany are empowered temporarily to deprive a person of liberty if there is a risk of delay and if there are preconditions for issuing order for remand imprisonment or confinement to a hospital or institution for care and treatment.

the state prosecutor, but before the investigative judge. Secondly, in order for the investigative judge to issue the order for detention to a person deprived from liberty, the proposal of the state prosecutor is required, and only exceptionally, if the public prosecutor is unavailable, the investigative judge can issue the order for detention on his own initiative. However, it seems that in prosecutorial investigation, ordering of custody by the investigative judge should be conditioned by the existence of the state prosecutor's proposal. And thirdly, the Criminal Procedural Code of the Federal Republic of Germany does not precisely define the deadline within which a person deprived of liberty should be brought before the investigative judge, but only prescribes that such person must be brought before the investigative judge not later than the following day, so that the duration of detention depends upon the time when a person was apprehended and time when he was brought before the investigative judge of basic court the following day, but such determination indicates that detention may not exceed a period of 48 hours.

On the other hand, in the Republic Srpska, this issue was regulated in a slightly different manner. Specifically, detention, upon the proposal of the prosecutor, is ordered by the judge for preliminary proceedings, if all conditions for ordering detention are met.[28] The possibility of the police ordering custody is excluded. However, the police can, under legal terms, deprive a person of his liberty, but is obliged, without delay, but within 24 hours at the latest, to bring such person before the prosecutor. If such person was not brought before the prosecutor within a period of 24 hours, he must be released. The prosecutor shall decide within 24 hours whether such person will be released, or will put a request for ordering detention before the judge for the preliminary proceedings. The judge for the preliminary proceedings is also obliged to immediately, and within 24 hours at the latest, decide whether against a detained person custody will be imposed. As one may notice, in the Republic of Srpska, the members of the police are not bringing a person deprived of liberty before the judge, but before the prosecutor, which has the obligation to bring him before the judge for preliminary proceedings. Furthermore, detention is ordered by the judge for preliminary proceedings, but only based on proposal from the prosecutor, which is actually in the spirit of prosecutorial investigation. And finally, if one analyzes the whole procedure in case a person is detained, and deadlines within which the prosecutor and the judge for preliminary proceedings should decide on proposing or ordering detention, then in the worst case the deprivation of liberty of such person may last up to 72 hours.

In the Republic of Italy, this issue was regulated in the following way. The Italian Code of Criminal Procedure makes a distinction between the deprivation of liberty (*arresto*) and detention of person who is suspected to have committed a criminal offence (*fermo di indiziato di delitto*).[29] Judicial police within 24 hours brings a person deprived of liberty, or detained person, before the state prosecutor. The state prosecutor can decide to examine such person, and must inform his defence council on that fact, and he may also establish that legal conditions for ordering deprivation of liberty, or detention, were not fulfilled, when he issues an explanatory order in which he orders release of such person. In cases when a person can not be released, the state prosecutor is obliged to, within 48 hours at the latest, demand a confirmation from the judge for preliminary proceedings, who urgently, but within 48 hours at the latest, orders a hearing and informs the state prosecutor and defence council.

28 The Article 189 of the Criminal Procedure Code of the Republic of Srpska standardizes the grounds for issuing an order for detention.

29 The Italian legislator makes a distinction between the mandatory and optional deprivation of liberty, and clearly defines the conditions that must be met in order to issue order for detention of a person who is suspected of having committed a criminal offence.

Hearing on confirmation is carried out at the Council Meeting, with the presence of the state prosecutor, defence council and detained person. If it is determined that all legal requirements are fulfilled, the judge will confirm the detention of a person, while in the opposite case, he will issue a order to release such person. One may notice that in Italy, a person deprived of liberty, or detained person, is not being brought before the judge for preliminary proceedings, but before the state prosecutor. Also, the judge for preliminary proceedings decides on custody, i.e. prolongation of detention, exclusively upon the request of the state prosecutor. Finally, it can be concluded that the judicial police may detain a person up to 24 hours, when it must bring him before the state prosecutor. This person can be detained by state prosecutor for another 48 hours, when the state prosecutor must request a confirmation from the judge for preliminary proceedings, which means that the judicial police and the public prosecutor can detain a person for maximum 72 hours.

CONCLUDING REMARKS

In prosecutorial concept of investigation, where the public prosecutor and the police are the main subjects in undertaking investigative and evidentiary actions, a specific role belongs also to the court, i.e. the judge for investigation. As it has already been said, there are different models, based on which the court's role in prosecutorial investigation was defined and determined. In that sense, by analyzing the previously said, and at the same time having in mind that the prosecutorial investigation is in question, one can draw certain conclusions in terms of what the court's role in prosecutorial investigation should be.

First of all, the court could accomplish its role in the concept of prosecutorial police investigation, above all, through the judge for investigation, and in certain cases, through the pre-trial committee.

Furthermore, the judge for investigation could, upon the request of the public prosecutor, undertake only those investigative actions which infringe the basic human rights (for example, issuing an order on search of apartment, other premises and persons, temporary seizure of objects, exhumation of a body etc.). It is very important that the judge for investigation undertakes these actions exclusively upon the request or proposal of the public prosecutor, and not on his own initiative, because by providing such possibility, the prosecutorial investigation could turn into judicial investigation in practice, which would undermine the structure of prosecutorial investigation, and would bring into question the entire concept of investigation ordered and conducted by the prosecutor. Such an activity of the judge for investigation could not contribute to a greater efficiency of a criminal procedure.

In prosecutorial investigation, the judge for investigation would also undertake actions of judicial providing of evidence, where there is a risk of delay. In addition, in this case, the judge for investigation would not undertake these actions on his own initiative, but upon the proposal or request of the public prosecutor. Regarding this particular issue, it should be considered whether the judge for investigation can exceptionally, and only if the public prosecutor is not available, undertake these evidentiary actions on his own initiative.

Finally, in prosecutorial investigation, the judge for investigation would undertake actions that limit the freedom of a suspect, this referring primarily to issuing a order for detention. However, ordering of detention should be conditioned by previous proposal or request of the public prosecutor, before whom persons deprived of liberty should be brought, and he would then either bring them before the judge for investigation or release them, if he sees that conditions for ordering detention were not fulfilled.

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COOPERATION BETWEEN THE POLICE AND THE PUBLIC PROSECUTOR'S OFFICE IN PRELIMINARY CRIMINAL PROCEEDINGS

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Summary: Preliminary inquiry prior to formal criminal proceedings is in charge of the main subjects of the proceedings - the police and public prosecutor who take formal and informal activities in order to clarify the criminal event to the level of reasonable doubt. For crimes which are prosecuted ex officio, the public prosecutor is responsible to manage the preliminary inquiry.

Leadership role of public prosecutors become more and more important because the duty of the police and other entities participating in the preliminary inquiry is to inform them about each undertaken action in the preliminary inquiry, and to act according to every demand of public prosecutors. The management of a preliminary inquiry implies the participation in the process, determining the reasonable grounds of a crime through active involvement in formal and informal measures and actions, making proposals, the coordination of work with other agencies, initiation of arrangements, contacts with other entities, etc. In the practical implementation of the provisions of the Criminal Procedure Act, the controlling role of the public prosecutor does not come into play. The public prosecutor is informed about the evidence gathered by police (e.g., suspect interrogation), and the delivery of criminal charges when police consider that the event is clarified. The paper will survey the legal powers of police and public prosecutor in the preliminary inquiry, and then we will talk about a way of implementing the provisions of the Criminal Procedure Act and about cooperation between police and public prosecution in the practice. In concluding remarks we will propose measures for improving cooperation between police and public prosecutors that will be up to date, regardless of the choice concept of future investigation.

Key words: police, public prosecutor, the Criminal Procedure Act, preliminary inquiry, investigation.

INTRODUCTION

Police activities to confront the crime in our legal system are largely regulated by the Criminal Procedure Act.The Criminal Procedure Act is a basic legal act which regulates the police activities, as determined by the normative framework and powers the police undertake in order to detect and prevent crime and provide evidence for a successful launch and completion of criminal proceedings. In addition to this law, police actions to battle the crime are also regulated by other laws and regulations that regulate police activities.

The police role in detecting a crime and finding the perpetrators is significantly affected by Article 225 of the CPA and it is to be conducted in the very process. These actions and measures are formally administrative in character, governed by regulations on pretreatment and are in accordance with the rules of criminal procedure. Police activities in the fight against crime are not being

conducted in the criminal procedure law which is precisely regulated but in a separate administrative and criminal procedure, whose task is to initiate a criminal procedure. This process is called preliminary inquiry which precedes the criminal proceedings and represents an exclusive unofficial process.

The police investigation procedure to gather evidence on a criminal offense and on a certain person as a potential offender begins with a basis for suspicion that a criminal act and that person has a possible offender. The existence of the ground for suspicion that the crime was committed is a fundamental condition for starting preliminary inquiry. The ground for suspicion represents the bases for police preliminary inquiry in order to begin the work on gathering information and undertaking operational and tactical measures and actions, and if it meets the legal requirements and evidence gathering to suspicion grew into a higher level of knowledge at a reasonable doubt.[1]

A reasonable suspicion as a higher degree of probability is a condition for the initiation of criminal proceedings or preliminary inquiry and investigation as its first phase. A reasonable suspicion is based on well established facts and circumstances of documented evidence in the form set out in the phase of pretrial proceedings. A reasonable suspicion is based on evidence suggesting that the relationship between crime and the offender is established. An objective basis and the basis of reasonable suspicion represent the proofs of such quality that enable making a decision on conducting the investigation or the immediate withdrawal of the indictment.[2]

The goal of the police activities in the preliminary proceedings is to be in the cooperation with the public prosecutor's office and to explain the criminal event, to gather all the facts and evidence, to enable the initiation and completion of criminal proceedings. The criminal proceeding depends on the police activities in the preliminary proceedings and its cooperation with the public prosecutor's office, and that is why the police activities in the preliminary proceedings and cooperation of police and public prosecutor's office have great importance both for criminal proceedings, and crime prevention in general. The cooperation between these two subjects in the preliminary proceedings should be a guarantee of a successful and lawful completion of any criminal matter.[3]

In this paper we will try to answer the questions: does and how the public prosecutor implements a leading role in pretrial proceedings? What is the cooperation of police and public prosecution in the pretrial proceedings like? What are the practical problems in the preliminary proceedings that affect the cooperation of police and public prosecutor's office? In the concluding remarks there are the proposed measures for an improving cooperation between police and public prosecutors, which will be taken regardless of the choice of the future concept of the investigation.

1 " Official Gazette of SRJ", no. 70/01, 68/02 and Official Gazette of RS, no. 58/04, 85/05 i 115/05, 85/05, and et. Law . 49/07- and et. Law 72/09.
2 Milidragović, D.: *Kriminalistička delatnost policije i saradnja sa organima pravosuđa u pretkrivičnom postupku*,Magistarska teza, Beograd: Kriminalističko policijska akademija, 2007., str.. 1.
3 Vasiljević, T., M Grubač.: *Komentar zakonika o krivičnom postupku*, Beograd: Službeni glasnik, 2003, str.. 418.

The status and the authority of a public prosecutor and police in the pretrial proceedings

Each procedure has its subjects which contribute to the process with different rights and duties, without which one cannot imagine achieving our basic task. In criminal proceedings, each stage has its own entities that have statutory rights and obligations of the fund. The subjects participating in the process intend to take a part in the proceeding and want to contribute to its solution. In the pretrial proceedings where the police are legally authorized to act on a number of entities involved, also, with different powers and obligations and various contributions in the process of discovering and clarifying the crime. The main subjects of pretrial proceedings are the public prosecutor and the police on whose activities and cooperation rests a successful completion of pretrial proceedings or acquittal of specific criminal acts.

The police initiate their actions with the acknowledgment of a basis for suspicion that a criminal act which is prosecuted ex officio. The main and the most important task of the police in pretrial proceedings is to enlighten the crime to the level of a reasonable doubt, which allows the starting of criminal prosecutions.

In order to accomplishes this task, the police are obliged to undertake informal operational-tactical measures and actions to find and catch the offender, to make sure that the offender or an accomplice does not hide or flee, to discover or provide evidence of criminal acts and objects which might serve as evidence, and to collect all information that could be useful for the successful conduct of criminal proceedings.[4]

The Criminal undertakings of police in the pretrial proceedings are not exhausted only by taking informal measures and actions**.** Still, police can take actions and support[5] the statutory conditions in pretrial proceedings.

In addition to the main subject of the police pretrial proceedings, there is a public prosecutor. The public prosecutor, who under the provisions of the CPA is in charge of crimes prosecuted ex officio, conducts pretrial proceedings, The Public Prosecutor's Office is an independent state agency which prosecutes perpetrators of criminal and other punishable actions, and takes measures to protect constitutionality and legality. (Article 2, paragraph 1 of the Law on Public Prosecution).[6]

The public prosecutor is a public authority who, on behalf of society and in the public interest, ensures the application of the law where the violation of the law carries a criminal sanction, taking into account the rights of individuals and the necessary effectiveness of the criminal justice system. In the preliminary phase the public prosecutor is authorized to manage the pretrial proceedings for crimes that are prosecuted ex officio. The leadership role of the public prosecutor gains more significance along the important duty of police and other entities participating in the proceedings, to inform the competent public prosecutor about every single undertaken action and to act according to his every single request. If they do so, the public prosecutor may inform the competent head of organizational unit if necessary, depending on the specifics of the request it may inform the Minister, the government or the competent parliamentary body (Article46CPA).

Because of the powers and duties of these two subjects, the relations and cooperation between public prosecutors and police in pretrial proceedings are the most important at this stage of the proceedings. The authorization of the Public

4 Milidragović, D.: Kriminalistički i krivičnoprocesni aspekti osnova sumnje i osnovane sumnje u novom zakoniku o krivičnom postupku. U:Nauka, bezbednost policija (Beograd), br. 3 (2008), str..113.
5 *op.cit*., p.114.
6 Milidragović, D.: *Kriminalistička delatnost policije i saradnja sa organima pravosuđa u pretkrivičnom postupku*, *op.cit*., str.2.

Prosecutor to direct pretrial proceedings affects the quality of pretrial proceedings in respect of legal and quality provision of the necessary evidence needed to initiate and conduct criminal proceedings. The leadership role of public prosecutor in the preliminary proceedings can be regarded as its operating activity which applies to both: the individual measures and actions in pretrial proceedings in relation to the detection and the resolved cases and finding the perpetrators, as well as the coordination of the activities of police and other entities, then granting of certain guidance, instructions, initiating various forms of cooperation, contacts and others.

Pretrial procedures precede formal criminal proceedings or in the previous process the investigation as the first stage of preliminary proceedings. The investigation is the first phase of criminal proceedings, initiated by an examining judge at the request of the prosecutor, against a person, when there is reasonable suspicion that the person has committed an offense which is prosecuted ex officio. In addition to the roles in the criminal proceedings, the judge has a certain duty in the pretrial proceedings. Its role in the pretrial proceedings has been reduced to a decision on the measures of the public prosecutor and other agencies, which seek to restrict the constitutional rights and liberties of the suspect. According to the current Criminal Procedure Code in the Republic of Serbia, the investigation is the responsibility of examining judges. Today, in the modern world there is a wider trend of non-judicial bodies entrusted with the investigation. The surrounding countries, i.e. ex-Yugoslav republics, have adapted the concept of prosecutorial investigation.[7]

In 2006 the Criminal Procedure Code[8] was passed, whose main feature was responsibility transfer of the investigation, from an examining judge to a public prosecutor. This is the first attempt to introduce the concept of a prosecutorial investigation. The implementation of the CPA in 2006 was delayed several times. The current CPA was passed in 2009, and the Code in 2006 ceased to exist. Another attempt to introduce the concept of the prosecutorial investigations into our criminal procedural legislation started in 2010 by drafting the new Code of Criminal Procedure.[9]

With regard to the attempts and efforts to change the concept of investigation in our criminal legislation, in the next part of the discussion, the paper perceives the critical role of the public prosecutor in the pretrial process, which served as a suggestion to the solution in the conclusion remarks.

The practical aspects of cooperation between the public prosecutor and police in the pretrial process

The public prosecutor is competent to manage the pretrial procedure for crimes that are prosecuted ex officio.[10] In this part of the paper we will try to give answers to the questions if and exactly how the public prosecutor should assume a leading role in the pretrial proceedings. The cooperation between the public prosecutors and police in this part of the paper is observed through the cooperation between

7 See Article 225 of the CPA
8 See Article 238 of the CPA.
9 Official Gazette of RS, no. 116/08, 104/09 i 101/10.
10 By introducing the concept of prosecutorial investigation in Europe came in the second half of the twentieth century, first in Germany 1975th year. After Germany, the introduction of the concept of prosecutorial investigations continued in other European countries: Spain, Denmark, Italy. From the former Yugoslavia, the concept of prosecutorial investigation was first introduced to the criminal procedural legislation of the Republic of Serbian, Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Brcko District. In 2008 Code of Criminal Procedure by which the jurisdiction of the investigation was transferred from an examining judge to the public prosecutor was passed in Croatia. In the Republic of Montenegro, Law on Criminal Procedure passed in 2009 transferred the responsibility for investigation from an examining judge to the public prosecutor.

the two entities during the public prosecutor's notification about the criminal act: the interview with a suspect and filing of a criminal complaint.

The basic assumption for a legal, efficient and a qualitative implementation of the pretrial proceedings is a solid cooperation among the most substantial subjects in the pretrial proceedings: the public prosecutors and police, within the limits of the law that is provided for the fund of mutual rights and duties. The actual criminal process will depend on a successful cooperation between the police and the public prosecutors in the pretrial from the moment of learning about the grounds for suspicion that a criminal act was committed to the protection of necessary evidence and the filing of criminal charges. A well-conducted pretrial proceeding by the public prosecutor and the police facilitates and accelerates the implementation of the criminal proceedings. Therefore, the cooperation of the prosecutor and the police are of the most vital importance for a good and legal resolution of criminal offenses and for protection of evidence which will enable the initiation and completion of criminal proceedings.[11]

The initial cooperation between police and the public prosecutor after the notification of the committed crime ex officio begins with the police learning of the committed act. Upon learning about a crime, police officers on duty will notify the public prosecutor by a telephone, while the public prosecutor will only decide on the type of the criminal act in order to resolve the crime. Sometimes in the practice, it happens that the public prosecutor after being informed of a crime qualifies the event as a criminal offense after which, he qualifies the same event to a line operation worker as a second offense, without changing the originally specified condition.

The Code of Criminal Procedure Article 226 par 9, obliges police to inform a public prosecutor about the hearing of a suspect, which the prosecutor may attend. In practice, this provision is consistently implemented by the police, the public prosecutor is regularly informed of the hearing of a suspect, although he never attends, even when perpetrators are being examined for more serious offenses or in case of serial offenders (serious theft, armed robberies etc.) or suspected police officials.

A goal for the interrogation of a suspect on the basis of already collected indications, information and different versions is to check their validity, in other words, to clarify further circumstances that are supposed to either confirm or refute a doubt that he or she is a perpetrator. The interrogation of a suspect is performed for the purpose of checking his/her alibi; the clarification of a modus operandi, motives and other reasons, and other elements that are significant for confirming his or her guilt. The confession of a suspect or his/her voluntary surrender can also cause r an interrogation, or the verification of these facts.[12] An interrogation of a suspect is initiated after all evidence has been collected, which indicates the existence of an established suspicion that a certain person is a perpetrator of a criminal act, persecuted ex officio.

The presence of a public prosecutor at the interrogation of a suspect is a guarantee for a legal and qualitative implementation of these actions since the facts a suspect is charged with, should be clarified with equal attention as those that can be of use for him (the public prosecutor). Because of this objective interrogation of a suspect, the presence of a public prosecutor would be a guarantee for proper and fully established facts, after which a public prosecutor as the head of pre-trial proceedings should make decision about a future outcome of the procedure.

11 Official Gazette of RS, no. 46/06, 49/07, and 122/08.
12 / / www.mpravde.gov.rs / from 10.02.2011.year.

As in most cases in practice, the public prosecutor does not attend the interrogation of a suspect, and with no regards to insufficiency of evidence, the police file the criminal charges to a competent prosecution for the purpose of demonstrating self-effectiveness, measured by percentage of resolved criminal crimes. The success of the police organizational units, especially the criminal police, as well as the operational staff themselves working on crime reduction, is measured by a number of solved crimes committed by offender John Doe monthly. In the police practice, because of notching up monthly operating performance of workers and organizational units of the police, they (police) file criminal complaints with no evidence of wrongfully accused persons with a criminal past for crimes that are committed, by which they intend to prove a higher percentage of crimes solved, a way higher than the real one.

The decision whether to file criminal charges against a certain person should result from whatever the public prosecutor and police agree on a criminal charge which would gain proper quality. Criminal charges that have been filed against a particular person would be supported by the evidence to such degree of probability that one could conclude that the person against whom criminal charges were filed is an offender. The cooperation between the public prosecutors and police at this stage would eliminate the filing of criminal charges whose only goal is a "notch" in police records, in other words, an artificial increase in a percentage of solved crimes. The reasons for such treatment by the police in our opinion are: 1. incompetence of operational workers and managers of organizational units of the police; 2. desire for better results, expressed in the percentage of solved crimes.

Two hundred and fifty people have been polled[13] in the research on the attitudes of the criminal police PU Belgrade regarding major issues of the democratic police reform One of the issues within the research pertained to the assessment of the criminal police co-operation with the public prosecutor's office. The results are presented in Table 1.[14]

Table 1 - How do you assess the cooperation with the public prosecutor's office?

Offered answers	Number of respondents answered	%
I am very satisfied with this cooperation	58	24
Not bad, but could be better	166	68
I am very dissatisfied with this cooperation	21	9
Total	**245**	**100**

The degree of satisfaction by the existing cooperation with the public prosecutor's office is not satisfying. The dominant belief is that this cooperation could be much better, and the percentage of those who are completely dissatisfied with this

13 The Dictionary of the Serbian language, the word manage means: 1 someone, something, to be led, lead, lead and manage. 2. induce, arouse, promote and encourage. Vujanić, M., Gortan-Premik, D., Dešić, M., Dragičević, R. Nikolić, M., Nogo, Lj., Pavković, V., Ramirez, M., Stijović R., Tešić, M ., Fekete, E.: *Rečnik srpskog jezika* , Novi Sad: Matica Srpska, 2007., str..1177.

14 Milidragović, D.: *Kriminalistička delatnost policije i saradnja sa organima pravosuđa u pretkrivičnom postupku*,*op.cit*., str.137.

cooperation[15] should not be neglected.

In a pretrial process the operation of a public prosecutor is not expressed in terms of public prosecutor conducting leadership roles, which reflects the quality of actions taken and the final outcome of criminal charges filed by police.

CONCLUDING REMARKS

At the time of writing this paper the new Code of Criminal Procedure was drafted. One of the main features of the new Criminal Procedure Code is the transferal of responsibility for investigation from an examining judge to a public prosecutor. Although we have criticized the activity of a public prosecutor in pretrial proceedings, we have also suggested improvements for the cooperation between police and public prosecutors which remains to be of the utmost importance regardless of whether the new Criminal Procedure Code will be passed or the CPC will remain in force.[16]

In the preliminary procedure, it is evident that the public prosecutor does not execute a leading role in his actions; his actions are aimed at the classification of a criminal act, the receiving of information given by police on undertaking of certain established acts, pending of a criminal charge and the report as a supplement to the criminal charges.

In addition to a passive role of the public prosecutor in the pretrial proceedings, the deficit of criminal competence is obvious on the public prosecutors' side and as well as non-appearance of the specialization of public prosecutors for certain types of crime.

According to the project "*Police and pretrial and preliminary criminal proceedings*", it has been discovered that a very small percentage of the criminal police staff has a university degree or any formal legal or criminological education. In order to resolve this problem, the police need to create a strategy for education and recruitment of personnel.

According to the current state in the prosecution after the prosecutor's office carried out the reform and the internal organization and job classification, deputies of public prosecutor, particularly in major cities are increasingly burdened with cases (pretrial proceedings, investigations, court representation, appeals, property and legal requirements, etc.) . For a successful implementation of the public prosecutor's role in pretrial or preliminary investigation proceedings, in an investigation or a trial, it is necessary to systematize an appropriate number of deputy public prosecutors and associates.

One of the key problems to be solved for a better implementation of pretrial or pre-trial proceedings and an investigation is a better organized link between police and the public prosecution. In the pretrial process the role of a public prosecutor is passive. In order to conduct the pretrial or pre-investigative proceedings better, a greater effectiveness of the public prosecutor is needed. A possible solution may be the systematization of specific organizational units within the Prosecutor's Office, with different competencies, for example, one organizational unit would be responsible for managing pretrial or preliminary investigation proceedings and for the investigation, the other would represent case at trial and the third would perform other tasks within the scope of the prosecution. In addition to criminological training and specialization of public prosecutors for certain types of crime, such a solution

15 *op.cit*., str.62.,63.

16 Because of the uncertain situation regarding the change in the concept of the investigation and adoption of the new CPC, the solutions in this section will focus on improving the existing pre-trial proceedings and the preinvestigative proceedings and investigations provided for in the draft new Criminal Procedure Code.

would represent a combination of detective skills and experience that is on the side of police and public prosecutors of criminological experience, and it would be the basis for successful and lawful direction and implementation of pretrial or pretrial proceedings and investigation. Thus, the office way of working for public prosecutors would be overcome, the controlling role of the public prosecutor would increase, that would affect the quality and legality of actions taken and composed of criminal charges, which would be submitted only upon receiving of adequate evidence.

If the perceived weaknesses in the pretrial proceedings are not resolved, by normative and practical solutions, the quality of pretrial or pretrial proceedings and investigations will be significantly weaker and responsibility for operations at this stage will transfer from police to prosecution, and vice versa.

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MODERN SEE-SAW: SECURITY VERSUS HUMAN RIGHTS[1]

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Abstract: The paper discusses the current and sensitive issue of adequate protection of human rights and freedoms in the circumstances of increased necessity for protection of contemporary society against terrorist threats. The attack of 9/11/2001 in the US has changed the practice and approach of contemporary state to combating terrorism to a large extent. These changes implied new normative regulations in terms of passing numerous laws (the so-called counter-terrorist legislation). The new laws have brought about substantial expansion of the scope, jurisdiction and methods of police and security intelligence agencies. They support more efficient combat against terrorism, but also raise the issue of whether the solutions they offer are justifiable, especially in the light of existing international standards for protection of fundamental civil rights and freedoms. There have been numerous disputes as to whether the rule of law, as an undisputable maxim of the contemporary society, is facing a serious crisis due to the tendency of certain states to place priority on efficient combating of terrorism, even at the cost of compromising basic civil rights and freedoms. Following a theoretic analysis of the mentioned issues and dilemmas (modern 'see-saw'), the paper analyzes strategic framework actions and practice of EU Member States in the wake of 9/11

Key words: security, human rights, police, rule of law

"The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counterterrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing"

(United Nations Global Counter-Terrorism Strategy, 60/288)

We live at a time in which certain values have been established since long time ago and the promotion of which presents a universally recognized goal of contemporary states and societies. One of the most important values among these is the rule of law. Many see the rule of law as a viable concept the main goal of which is to achieve adequate normative and procedural protection of fundamental human rights and freedoms. The role of state authorities within such a concept of the rule of law is focused on the achievement of this goal, and the way and extent to which it is achieved present a criterion for determining the level of democracy and civilization of a society.

However, the time we live in is also burdened by numerous threats and challenges to democracy and the rule of law. These challenges include the phenomena of the so-called global terrorism and transnational organised crime. The main reason for perceiving these social evils as challenges is not exclusively related to their de-

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 leader of the Project is Associate Professor Saša Mijalković, PhD.

structive consequences, which in themselves present serious violations of basic civil rights and freedoms. They should also be regarded as challenges with respect to the manner in which many modern states have decided to combat them. This is an area in which numerous controversies concerning contemporary democratic societies arise, bringing into question the legitimacy of this combat from the perspective of protection of fundamental rights and freedoms as the basic principle underlying the rule of law. The paper which follows presents an attempt to grasp the very essence of this issue and offer reasons due to which the combat against global terrorism and transnational crime can be seen as controversial.

Prioritizing – security or human rights – the core problem of the contemporary 'see-saw'

History abounds in events which changed the course of development of the humanity over night. For many individuals, the terrorist attack against the US of 09/11 presents such an event. The attack was initially referred to as an act of the so-called global terrorism which was not launched against only one state or nation, but presented an outburst of terrorism which called for response not only on the part of the US, but other world powers as well, requiring them to be alert and ready to repel security threats. Soon afterwards it became perfectly clear that the terrorist attack of 09/11 had brought about not only massive destruction and human fatalities, but also far-reaching consequences to the security policies of the major world powers. Terrorism reached global proportions and so did the combat against it.

Obviously, the US took up the lead in this combat, being most affected by the attack. The combat spread across a number of spheres. Soon after 09/11, the existing legislation pertaining to activities of police, security and intelligence changed to a large extent when a large number of legal acts (the so-called counter-terrorist legislation) were passed. The main purpose of these changes in legislation was to introduce a change in the national security strategy and extend powers of police and security agencies in order to combat terrorism more effectively.

Based on the National Security Strategy, National Strategy for Homeland Security and National Strategy for Combating terrorism, the central part of the US counterterrorist legislation presents US Patriot Act – Uniting and Strengthenin America by Providing Appropriate Tools Required to Intercept and Obstuct Terrorism – P.L.107-56, signed by the former US President George Bush on 26 th October, 2001 (Uniting and Strengthenin America by Providing Appropriate Tools Required to Intercept and Obstuct Terrorism, 2009). Beside the Patriot Act, vitally important for prevention of terrorism in the US is the Homeland Security Act from 2002, as well as a range of other statutes that define measures and means of terrorism prevention in different spheres (transportation, health system, defence, etc.). The Intelligence Reform and Terrorism Prevention Act from 2004 are of great importance because it accurately outlines and offers innovative solutions with respect to 1978 Foreign Intelligence Surveillance Act. It broadens the investigative measures performed by security intelligence agencies with a view to provide national security and combat terrorism.

As far as the United Kingdom is concerned, its counterterrorist legislation consists of a number of more prominent acts: Terrorism Act 2000, Antiterrorism, Crime and Security Act 2001, Prevention of Terrorism Act 2005), and Terrorism Act 2006. Other important documents include Countering International Terrorism: the Unit-

ed Kingdom's Strategy of 2006 and CounterTerrorism Bill 2008.[2] As for the role of the UK's Ministry of the Interior in combating terrorism, the above listed acts and documents define MI5 as the security agency primarily responsible for combating terrorism in the UK territory, together with MI6, GCHQ and the Joint Terrorism Analysis Centre – JTAC. They are obliged to protect British interests, resources and British subjects from this global threat in keeping with the existing legislation.[3]

Similar situations occurred in other states that passed counterterrorist statutes. In Australia, the key role in the prevention and suppression of terrorism was assigned to Australian Security Intelligence Organisation – ASIO. Namely, ASIO is in charge of realization of activities defined in the National CounterTerrorism Plan and a new set of acts which deal with suppression of global terrorism. These statutes, as well as ASIO Act of 2002, granted ASIO broader powers related to forced entry, surveillance, storage of data pertaining to terrorist activities, search of premises, control of mail, tapping and recording telephone calls, intercepting electronic mail, control of computer data, secret surveillance of persons and the use of tracking devices on their vehicles, detention for 48 hours without reasonable doubt that they have committed acts of terrorism, inluding children, and the power to interrogate persons in the absence of their legal counsels. These provisions have turned ASIO into an agency of law enforcement in the sphere of suppressing „politically motivated violence", espcecially terrorism.[4]

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 said changes have once again posed the question of the role of police and security services in the contemporary society, that is, the question of priorities they should make. On the one hand, there is no doubt that police and security agencies should protect security of person and property of all citizens, as well as their rights and freedoms, but, on the other hand, they should efficiently combat crime and protect public order. The obvious problem regarding these goals is that, very frequently, they cannot be achieved at the same level of efficiency and success. The society rightfully expects the police to pursue these legitimate goals. However, achieving certain goals is hampered and a success in the realization of one goal can be achieved at the expense of another. For instance, successful combating of terrorism as a global threat to the contemporary society, requirements for prompt and efficient police action in performing their duties, or maintaining public order can sometimes be achieved only by granting law enforcers more freedom and extended powers, which in turn may imply violation of civil rights and freedoms and some-

2 For more detail, see Berriew, Carlile Q.C., (2008), "Report on the Operation in 2007 of the Terrorism Act 2000 and of Part I of the terorism Act 2006", internet: http://security.homeoffice.gov.uk/news-publications/publication-search/terrorismact-2000/lord-carlile-report-07/lord-carliles-report-2008?view=Binary

3 Compare: Countering International Terrorism: The United Kingdom's Strategy, July 2006, Internet 13/02/2011, www.intelligence.gov.uk/agencies/~/media/assets/www.intelligence.gov.uk/countering%20pdf.ashx

4 For these and other powers of ASIO see: Младен Бајагић, *Шпијунажа у XXI веку – савремени обавештајно-безбедносни системи*, Београд: Bok&Marso, 2008., p. 181.

times even excessive use of coercive means.[5] This is a specific phenomenon which can be summed up as a dilemma of how to choose priorities: the dilemma between efficiency of police actions and the need for proper protection and upholding of human rights and freedoms, which Skonick sees as one on the most prominent challenges and issues related to the role of police in a democratic society guided by the role of law.[6]

The appearance of global terrorism has additionally aggravated this dilemma and rendered its possible solution even more controversial. This conclusion becomes evident in the light of responses of certain world powers to terrorism-related threats. As it has already been pointed out, the initial reaction of world powers to 09/11 was a swift and fundamental reform of legislation aimed at more efficient combating of terrorism. However, numerous solutions of this reform have given rise to new questions, one of the crucial ones being: does the requirement for efficient combating of terrorism makes those modifications of legislation which, according to many, have initiated the process of serious erosion of civil rights and freedoms legitimate?

Supporters of civil rights and liberties point out another danger of this practice - that is a latent need to regard such a state of affairsas 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'.[7] Furthermore, the conflict with terrorism becomes a war, leading to the use of corresponding terminology. The war against terrorism, according to Chaskalson, was conceived not only as a war against nations, but also against organizations or persons considered to be the enemy. There are two concepts of war: one against a nation and the other against terrorists. No state or terrorist were specified. The entire world is a potential battlefield.[8] 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 have preceded them and bypassing the gradual lawmaking procedures.[9]

Numerous sholarly 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.

5 This can be illustrated by a hypotethical example of abduction of a child given by Neyroud and Beckley in their study. The kidnapper demands a large sum of money from the abducted girl's parents prohibiting them to contact police in any way. The kidnapped child is left in unfavourable conditions with a minimum of food and drinking water. The parents contact the police nevertheless and they take over the ransome action, arrest the kidnapper, but he refuses to reveal the location of the child in threat of imminent death. The time which the police have according to the law to keep the suspect in detention is running our and the police are facing a dilemma – whether to observe the legal norms and restrictions of their powers, thus continuing the agony of the child, or to use 'more efficient' interrogation methods in order to obtain the information about the child's whereabouts as soon as possible. Neyroud, P. Beckley, A. *Policing, Ethics and Human Rights*, Collompton 2001. p. 39.

6 Skolnick, J. *Justice Without Trial: Law Enforcement in Democratic Society*, New York, 1966. p. 6

7 Such concers were clearly voiced at the International Conference of the Rule of Law dedicated to topical issues of combating terrorism, taking place in Chicago in Sept. 2006. See: Lary Robinson, *Striking a Balance in an Era of Terrorism, The International Rule of Law Symposium: A Plan for Action Organized by the American Bar Association and the International Bar Association*, Chicago, September 16, 2006. Available at: http://www.abanet.org/rolsymposium/docs/mary_robinson_keynote.pdf

8 Chaskalson A. *The Widening Gyre:Counter-Terrorism,* p. 78-79.

9 Haubrich, D. *September 11, Anti-Terror Laws and Civil Liberties: Britain, France and Germany Compared*, Government and Oposition, Vol 38, Issue 1, 2003. p. 8-10

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.[10] 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.[11] 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 period from 2001 to 2005, 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.[12]

The problem of finding a balance between norms, standards and implementation: the EU practice after 9/11

In the post 9/11 era the issue of finding the balance on the dichotomy "security or human rights" is visible not only in strategic documents of national states, but also in international organizations such as the United Nations (UN) or European Union (EU).[13] The central question and dilemma is whether the increase of citizens' safety is going at the expense and violations of their human rights and freedoms? Will the increasing security of the citizens affect the human rights protection?

The solution of this "conflict" cannot be found only in determining main international and worldwide recognized principles and standards in fighting non-traditional or soft security threats – illegal migrations, trafficking in human beings and illegal narcotics, transnational organised crime and, maybe the most important, terrorism.[14] It is necessary to find "equilibrium" between the international norms of, for example policing of terrorism and practice of the law enforcement agencies in the implementation of counterterrorism policies. This is important since terrorism directly attacks the main principles and rights of the Charter of the United Nations, and particular the rights to life, liberty and physical integrity.[15]

10 P.A.J. Waddington, *Slippery Slopes and Civil Libertarian Pessimism*, Policing&Society, Vol. 15. No. 3, 2005. pp. 353-375.
11 Haubrich, D. *Anti-terrorism Laws and Slippery Slopes: A Reply to Waddington*, Policing&Society, Vol.16. No.4. 2006. p. 407.
12 Ibid., p. 409.
13 For example see: Part IV of the "United Nations Global Counter-Terrorism Strategy (60/288)", General Assembly, 20 September 2006, or 9/11 Commission report "Report of the National Commission National Commission on Terrorist Attacks upon the United States", p. 395.
14 On implication of "soft security" threats on Europe see study: Graeme P. Herd, Anne Aldis (eds.), *Soft Security Threats and European Security*, New York, London, Routledge, 2005.
15 UN Office of the High Commissioner for Human Rights, "Human Rights, Terrorism and Counter-

The terroristic attacks on the US affected the EU through the acceleration of the process of adoption of different legislative, operational and tactical counterterrorism mechanism. At the very beginning, the European Commission (EC) proposed framework decision for establishing a common definition of terrorist act, together with criminal sanctions for these.[16] Eight days after the attacks the EC presented two proposals for the design of the European Arrest Warrant (EAW) to the Council for Justice and Home Affairs.[17] Political agreement of the member states on the EAW was reached after three months of negotiations with final decision that procedures of extradition will be replaced by the EAW. Finally, the Framework Decision on EAW was adopted in June 2002. The first case of the EAW implementation was registered in 2004 when a Swedish citizen was arrested in Spain and after extradited to Sweden.

This part of the paper will elaborate the current strategic and some aspects of operational level of the EU road to find the balance between security and human rights. Through the implementation of the Stockholm Programme and Internal Security Strategy the EU tried to resolve the "two-level puzzle" on the strategic level – how to find the balance between the protection of human rights and at the same time preserve security.[18] However, the European Civil Liberties Network (ECLN), Statewatch and the EU Future Group (the watchdog organizations) opposed the Stockholm Programme because of its intention to attack the civil liberties and human rights. In line with the implementation of these two strategic documents there was a debate between the EC, USA and European Parliament (EP) on the SWIFT agreement – dealing with the bank data transfer between the EU and the USA for antiterrorism purposes. Moreover, the counterterrorism mechanism of "terrorist-profiling" and "terrorist-blacklisting" raise doubts on their effectiveness and possible impact on protection of human rights.[19]

The presence of citizens' safety concept in the EU strategic framework in the field of justice, home affairs and security

In the last communication from the EC to the EP and the Council in the field of justice and home affairs, namely "The Internal Security Strategy in Action: Five steps towards a more secure Europe" it is planned for more than 40 measures aimed at combating the main security threats in the EU to be implemented. These are, according to the document, serious and organised crime; terrorism and cybercrime; the management of the EU external borders; building resilience to natural and man-made disasters. It is highlighted that all actions for implementing must be based on the rule of law and respect for fundamental rights as lay down in the EU Charter of Fundamental Rights (which is after 1 December 2009 an integral part of the Lisbon Treaty).

terrorism", *Fact Sheet*, No. 32, July 2008, Internet, http://www.unhcr.org/refworld/docid/48733ebc2.html, 11/02/2011, p. 7.

16 See: "Council Framework Decision of 13 June 2002 on combating terrorism 2002/475/JHA", *Official Journal of the European Communities*, no. L 164/3.

17 "The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order", Article 1 of the: "Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA", Official Journal of the European Communities, no. L 190/1.

18 See: "The Stockholm Programme – An open and secure Europe serving and protecting the citizens 17024/09", Council of the European Union, Brussels, 2 December 2009, and "The EU Internal Security Strategy in Action: Five steps towards a more secure Europe COM(2010) 673 final", European Commission, Brussels, 22 November 2010.

19 See: Tuomas Ojanen, „Human Right Dilemmas in Terrorist Profiling", in: Martin Scheinin et al, *Law and Security – Facing the Dilemmas*, EUI Working Paper LAW 2009/11, pp. 81-96, and Ben Hayes, „Time to rethink terrorist blacklisting", *Statewatch Journal*, Vol. 20, No. 3-4, pp. 1-3.

Current state of affairs is the result of the EU member states' efforts to use the holistic approach to the security, with special focus on "soft security" and understanding of the EU as a "civil power". This approach is understandable, considering the fact that the EU does not have military capacities that, for instance, the USA has. The holistic approach to security should become a recognizable feature of the "European Security Model" in relation to the other security actors in the world – states and international organizations.

The presence of citizens' safety as the priority in the EU strategic documents is on different level – from minimalistic to developmental up to advanced. In the Tampere Programme (1999) security of the EU citizens, but others as well, is viewed as a new challenge in line with the accomplishments of the EU until 1999 as a unique market, economic and monetary union, as well as the start of implementation of the right of free movement of persons. European Security Strategy from 2003 defined security of the member states as a priority. Indirectly, through the central role of a state to protect its citizens, the elements of their safety can be found. Protection of human rights is considered within the context of dealing with regional conflicts as one of the main security threats. The Hague Programme from 2004 makes the first "breakdown" in determining the order of priorities – security or human rights. The expectations of the EU citizens are growing, particularly after terrorist attacks in New York in 2001 and Madrid 2004. Citizens' security should be increased and their human rights protected. Soft security threats are included in the list of 10 top priorities.

The Stockholm Programme is the third five-year EU strategic plan for building and preserving the European Area of Freedom, Security and Justice (AFSJ). It defines strategic guidelines for legislative and operational planning within the AFSJ until the end of 2014. In the Stockholm Programme the safety of citizen is mentioned directly for the first time in the EU strategic framework in the field of justice and home affairs.

The main focus of the EU is to increase cooperation in the field of justice and home affairs through developing more efficient mechanism in combating organized crime and terrorism. It is envisaged to strengthen cooperation through more intensive and secure data exchange, together with direct recognition of judicial decisions of other EU member states. Moreover, the Stockholm Programme has identified terrorism, together with fight against organized crime, as one of the main priorities of the next financial perspective of the EU. The aim is to design effective financial instruments for support operational projects developed outside the EU in order to serve and protect the citizens of the EU. In this context we can conclude that main security challenges, risks and threats for the EU come outside the AFSJ.[20]

However, the programme emphasises the principles of the rule of law and protection of human rights. It explains that the current priority is setting up "the citizen in the heart of the AFSJ" through creating "an open and secure Europe serving and protecting the citizens". Future actions and plans should be directly oriented to the citizens. The first priority in this process is the protection of human rights in order to fully implement the right of free movement of people and create an area that respects the differences between people and protect hard to reach groups. In that sense, the EU strictly prohibits the discrimination, racism, anti-Semitism, xenophobia and homophobia. On the list of top priorities are protecting the rights of children and vulnerable groups, particularly Roma, as well as the protection of personal data and privacy. Finally, the Stockholm Programme identified the indisputable

20 For more information on the EU perception on terrorism threat see: "EUROPOL TE-SAT 2010: EU Terrorism Situation and Trend Report", EUROPOL, The Hague, 2010, Internet, http://www.consilium.europa.eu/uedocs/cmsUpload/TE-SAT%202010.pdf.

need for formulation of a common immigration and asylum policies that will allow equal status for all in all Member States and creates an accurate legislative framework for legal immigrants. The Internal Security Strategy from 2010 is continuation of the Stockholm Programme with a stronger emphasis on the protection of human rights, rule of law and the principle of solidarity. New security challenges, specifically violence and natural disasters that directly threaten security are mentioned.

"Watchdogs" on the Stockholm Programme

The Stockholm Programme was criticized from the civil society organizations and think-tanks, especially those that deal with monitoring of protection and respect for human rights – Statewatch, the ECLN and EU Future Group. Followed the briefly analysis of "watchdog" comments.

There were two drafts of the Stockholm Programme in the public debate from June 2009 until the adoption of the document in December 2009. Statewatch opinion is that the emphasis of the first draft was on protection of human rights, while the second is aiming to create a balance between protection of human rights and security. These changes of the EU rhetoric put security prior to liberty which is most visible in the Action Plan implementing the Stockholm Programme. Opening of the document uses recognized principles such as "the duty to protect and project our values and defend our interests" and to ensure that peoples' "rights are fully respected and their security provided". But, the problem lies in the practice of the EU and mismatch between the declared values and their implementation. One of Statewatch conclusion is "there may be a bit more freedom and justice but there will certainly be a lot more security".[21] Moreover, Statewatch thinking is that in the second draft almost nothing is said about the new role of the EUROPOL and European Public Prosecutor.

However, the citizen-oriented security is visible in the new legal framework of EUROPOL which made it a law-enforcement agency of the EU, starting from 1 January 2010. The rhetoric has been changed, which is clearly demonstrated in the new focus on the EU police cooperation. Nicholas Dorn, a professor at the University of Cardiff, claims that "organised crime in the EU has come to an end".[22] The change of the rhetoric is reflected in the shift of the objective of the police cooperation from organised to serious crime, where EUROPOL priorities can be defined on the basis of the seriousness of crime and harm caused to an individual or the community.[23]

The ECLN was even sharper than Statewatch. According to this network, the EU has already taken a dangerously "authoritarian turn, putting in place militarised borders, mandatory proactive surveillance regimes and an increasingly aggressive external security and defence policy".[24] In the process of implementing and harmonizing the EU legislation in the national legislative system, state agencies are starting to build up a detailed profile of the private and political lives of their citizens, often in the absence of any data protection standards, judicial or democratic controls. This is, according to the EU Future Group, just the beginning of a 'digital tsunami'

21 Tony Bunyan, "Statewatch Analysis on Action Plan on the Stockholm Programme: A bit more freedom and justice and a lot more security", Internet, http://www.statewatch.org/analyses/no-95-stockholm-action-plan.pdf, 6/2/2011.
22 Nicholas Dorn, "The End of Organized Crime in European Union", *Crime, Law and Social Change*, Vol. 51, No. 2, pp. 283-295.
23 Ibid., p. 284.
24 "Statement by the European Civil Liberties Network on the new EU five-year plan on Justice and Home Affairs", ECLN, April 2009, Internet, http://www.ecln.org/ECLN-statement-on-Stockholm-Programme-April-2009-eng.pdf, 6/2/2011, p. 1.

and "fortress Europe".[25]

For the purpose of implementing the Stockholm Programme and the Internal Security Strategy it is planned to create a new body in the Council of the EU – Standing Committee on Internal Security (COSI) in charge of internal security issues. The tasks of COSI, according the Council Decision and Article 71 of the Lisbon Treaty are to: (1) facilitate and ensure effective operational cooperation and coordination in EU internal security; (2) evaluate the general direction and efficiency of operational cooperation; (3) assist the Council in reacting to a terrorist attack or a natural or man-made disaster.[26]

According to the Statewatch, COSI is going to be a "very powerful body overseeing and directing operational actions on internal security across the EU".[27] Because of that, it should be accountable especially to the EP, but also to the national parliaments. The members of the European Parliament (MPs) should have an oversight role and its documents should be publicly accessible. The dilemma of COSI oversight and control is very similar with the situation of the Serbian Council of National Security. According to Djordje Popović, this body could be beyond any kind of democratic control because the Law on the Basic Organisation of the Security and Intelligence System of Republic of Serbia does not contain any provision on that, including the role of the National Assembly of Republic of Serbia in control and oversight of the Serbian Council.[28]

The "SWIFT" debate

After the 9/11 the United States adopted a programme for tracking the financing of terrorist activities that involved accessing confidential databases of the US branch of the Belgium Company SWIFT (Society for Worldwide Interbank Financial Telecommunication). The aim of the programme was to follow up and trace suspicious transactions. In 2006 the American daily newspaper "The New York Times" published text on US operations through which they access to the SWIFT database without prior knowledge of the EU.[29] That was a reason why the SWIFT changed their policy of the database safety. All information on transactions conducted on the European territory would be kept only in the company's headquarters in Belgium. Due to this, the US decided to start immediate negotiations with the EU on the new agreement which would permit the continually flow of the SWIFT data from the EU in the US.

At the EP session on 11 February 2010 the MPs denied the interim agreement between the EU and US which regulates the data exchange on financial transactions through SWIFT Company. The debate over the signing the SWIFT agreement in the fight against terrorism and the role of the EP, since the beginning of 2010, has shown that there will be many "steps" in the development of the European Security Model as the Internal Security Strategy's main goal. According to this agreement, the US can trace financial records of persons under suspicion of terrorism, through their bank data gathered by the SWIFT (which is used by over 8000 financial institutions). In evaluation of objections of this agreement the EP expressed its concern

25 Ibid., p. 2.
26 "Council Decision of February of 25 February 2010 on setting up the Standing Committee on operational cooperation on internal security 2010/131/EU", *Official Journal of the European Union*, no. L 52/50; "Consolidated version of the Treaty on the Functioning of the European Union", *Official Journal of the European Union*, no. C 115/49, Article 71 (ex Article 36 TEU).
27 "Role of new EU Internal Security Committee being decided by the Council - in secret", Statewatch, Internet, http://www.statewatch.org/news/2005/sep/08eu-cosi.htm, 6/2/2011.
28 Đorđe Popović, "Savet za nacionalnu bezbednost Republike Srbije", Centar za civilno-vojne odnose, Beograd, Internet, http://www.ccmr-bg.org/upload/document/cv_savet_za_nacionalnu_bezedno.pdf, 8/2/2011.
29 Eric Lichtblau, James Risen, "Bank Data Is Sifted by U.S. in Secret to Block Terror", The New York Times Online, June 23, 2006, Internet, http://www.nytimes.com/2006/06/23/washington/23intel.html?_r=1, 8/2/2011.

regarding the possible invasion of privacy of citizens' data.

After sixth months of this "security gap", as written by Valentina Pop from the EUobserver, and negotiations with the USA, the MPs approved SWIFT agreement on 8 July 2010. The results were 484 votes of in favour, 109 against and 12 abstentions. This decision was welcomed by Barack Obama, the USA president. He indicated that this agreement provides additional safeguards to protect privacy, but at the same time allows continued fight of the EU and USA against terrorism.

The new agreement stipulates that EUROPOL is the main EU body which approves or rejects requests from the US Department of the Treasury for the data dissemination. On the other hand, the EU will appoint its officials in Washington to monitor and control the use of banking data in the US. Additionally, the citizens of the EU will be able to dispute access to their personal data in front of the American courts.

The matter of reconciallation

As Lazarus and Goold stated, the problem of finding the balance or the "search for a language for reconciliation" is not only post 9/11 concern for the states, international organizations and think-tanks. That problem always existed at the centre of the liberal democratic rationale.[30] In that context we must understand the Article 5 of the European Convention of Human Rights which underlined that "everyone has the right to liberty and security of person". The main question is do citizens 'have a new right? How can citizens understand the "right to security"? The explanation lies in the reconciliation where counterterrorism measures "must be taken in transparency, they must be of short duration, and must respect the fundamental rights embodied in our human rights norms. They must take place within the framework of the law. Without that, the terrorists will ultimately win and we will ultimately lose – as we would have allowed them to destroy the very foundation of our modern human civilization".[31] That was specified by Sergio Vieira de Mello, the High Commissioner for Human Rights. He himself, together with 21 other persons died during the terrorist attack on the UN offices in Baghdad on 19 August 2003.

30 Liora Lazarus and Benjamin J Goold, „Introduction: Security and Human Rights: The Search for a Language of Reconciliation", in: Benjamin J Goold, Liora Lazarus (eds.), *Security and Human Rights*, Hart Publishing, Oxford and Portland, pp. 1-26.

31 Richard Goldstone, "The Tension between Combating Terrorism and Protecting Civil Liberties" in: Richard Ashby Wilson (ed.), *Human Rights in the War of Terror*, Cambridge University Press, New York, 2005, p. 166.

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IV POLICE AND CONTEMPORARY SECURITY CONCEPTS

ORGANIZED CRIME – THE WAY TO OCHLOCRACY

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Summary. Organized crime is a very complex social phenomenon that cannot be understood nor explained other way than by a multidisciplinary approach. Organized crime is explained from a sociological, criminological, criminal investigation, criminal justice, political and other theoretical aspects, but it is rarely spoken of as a matter of security. Organized crime, like any other security phenomenon, threatens certain social values. Therefore, by taking into account these values and the intensity of threats, the security events are classified according to the danger they represent to the social and national values.

Organized crime has different forms, from those that threaten the civilian property security, to other forms that threaten the social order and democratic procedures in the society. The organized crime becomes the main danger when criminal groups achieve great financial power, which they try to transfer to the political terrain. When organized crime groups expand their influence in politics and economy using corruption, the democratic procedures and normal functioning of state institutions are threatened. Such a political form, which is a result of a degeneration of the institutions under the influence of organized crime, we call ochlocracy.

This work is a contribution to the risk analysis, the risk which organized crime represents to democratic procedures and the normal functioning of state institutions.

Keywords: organized crime, corruption, state institutions, ochlocracy.

Organized crime, although there are records on such activity throughout the whole history of mankind, represents a relatively new phenomenon for science, which has been studied since the beginning of the XX century. Study of organized crime was dealt with by criminologists and experts from the field of criminal law sciences, while in the security studies, the organized crime appears just recently as the subject of studying.

Reasons for that should be searched in the fact that the security studies are still constituted as special scientific discipline stemming from international relations, military sciences and other social disciplines, which haven't ever dealt in criminal studying, so that they do not have developed methodology for this topic, or "intellectual habit" of dealing with it. The second reason lies in the fact that the security studies are traditionally linked to studying the state and the method in which its values are endangered and protected. All forms of crime, even the organized crime which claims, since its studying, to be the most serious and socially most dangerous type of crime, were not considered to be the threats to state, that is, public values, but were always, sometimes tacitly, sometimes explicitly placed in the domain of private values, that is, it was perceived as a threat to values of a human-individual, and in the most serious case as a threat to closer or wider social communities and their interests.

The third reason should be searched in the fact that the organized crime, until the 1990s, actually didn't pose a threat to state sovereignty and to constitutional order. A new form of organized crime that appeared after the dissolution of USSR and Yugoslavia has become a serious threat to establishing and sustaining demo-

cratic procedures, which makes it far more dangerous than all so far known forms of organized criminal activity.

Security studies and practices deriving from them, until the 1990s dealt solely with studying forms of endangering and methods of protection of state sovereignty, territorial integrity and constitutional order, which is not surprising, bearing in mind that the security studies have originated within international relations. Development of the concepts of human and societal security as legitimate fields of study of the security studies also involve personal and property safety of citizens, economic and social rights, environmental protection, different social groups' identities and other values related to individual human and social groups.

Different understandings of organized crime concept

Just a glimpse into criminal definitions is enough, in order to see that they define the crime as a threat to social values related to individual human, social organizations and public morale. In the existing criminal definitions, constitutional order and sovereignty are not mentioned as values endangered by this phenomenon.

According to the most general definitions, crime is a social phenomenon covering perpetration of crimes by an individual, by which it is interpreted as individual act and social phenomenon. Accordingly, the crime is manifested dually: in *the first* qualitative sense as individual case, and in *the second* as its quantitative expression, sum of delicts close in between them by relevant characteristics of the phenomenon.[1] From the literature, it is obvious that in determining the concept of crime, legal and criminological approach dominate. In legal definitions, the base consists of norms of material criminal law, and common for them is that all determinations of the concept start from the fact that those are phenomena endangering social values which have been legally envisaged as criminal act.[2] Thereby, by analyzing this legal theory approach, we can acknowledge that there are *narrower* and *broader* definitions of the crime term. In the narrow sense, crime is defined as criminal acts, and in wider one, all acts punishable by the law, including infringements and offences.[3]

Criminologists start from the standpoint that the crime is "serious violation of morale or law, an infringement punished by the law, or disapproved by the morale" Litrre;[4] "that what hurts strong and defined states of collective consciousness" Durcheim;[5] "aggression by an individual, member of a certain social group, against generally accepted values in that group" Lagache.[6] According to Tardeu[7] a crime is "violation of a certain right or duty". In his book *Psychology of Crime*, Felden says that there is no unique definition of criminals, acceptable to everyone.[8] In fact, crime is everything forbidden or punishable by the judicial system. Crime is an act, which might be monitored by criminal procedures. Some of our authors consider that "criminality manifests itself in individual behaviour, which is incriminating in positive legislation. Those are specifically perpetrated criminal acts, and their ba-

1 See more in: Boskovic, Milo: *Socijalna patologija (Social Pathology)*, Faculty of Law, Novi Sad, 2002., p. 93, in Vujaklija, M.: Leksikon stranih reci i izraza (Lexicon of Foreign Words and Phrases), Prosveta, Belgrade, 1976, page 486.
2 See more in: Document, UN, A/CONF, p. 144/25, 1990, p. 35.
3 See more in: Lazarevic Lj., Srzentic N., Stajic, A.: Krivicno pravo Jugoslavije (Criminal Law of Yugoslavia), Belgrade, *Savremena administracija*, 1996, p. 43
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sic elements are acts and perpetrators of those acts. Milutinovic further states that through individual acts qualitative side of criminality is manifest, pertaining to all perpetrated criminal acts in a certain time and in a certain space, as well as regarding the persons who have perpetrated those acts".[9]

Serbian Criminologist Ignjatovic also underlines that an important trait of the crime is that it is an individual phenomenon[10].

In his book *Organizovana kriminalna grupa – pojam i tipologija* (Organized Criminal Group – Concept and Typology), Manojlovic analyzes common traits of sociological and legal definitions of crime and comes to the conclusion that the crime is social, historical and universal phenomenon representing a set of individual events. Based on this analysis, Manojlovic determines crime as "negative social phenomenon representing a set of activities of one or a group of people in a certain time period, which are contravening legal norms, and the disrespect and violation of them, which result in criminal sanction".[11]

Based on presented determinants of the concept of crime, it is clear that it is perceived in scientific literature as threat to individual or group interests and public morale, which have been legally protected, and the violation of them, which represents a criminal act.

Organized crime is determined as more serious form of criminal behaviour, bearing in mind the fact that criminal acts are performed by several perpetrators in a longer time period, and that, as a rule, those are the most serious criminal acts. In theory, there is no unified attitude regarding the definition of organized crime[12] although this phenomenon is in focus, in the last decade, of empirical researches implemented by lawyers and criminologists, by which knowledge about this phenomenon is significantly completed, which still haven't resulted in an universal organized crime definition. Besides theoretical definitions of organized crime, which are as many as there are authors who wrote about this phenomenon, much more significant are legislative definitions found in criminal laws of states which set aside organized crime as a special type of criminal acts. Some states, including Serbia, have passed special laws on the fight against organized crime and established special police forces, special prosecutor's offices and special judicial departments dealing solely in fight against organized crime. Determinations of organized crime found in laws, from the aspect of fight against this phenomenon, are the most important and it is very important that the legislations and organizational structures within the state apparatus fighting against organized crime should be harmonized with the same legislations and organizational structures of other states, in order to successfully fight against transnational organized crime. Definitions of organized crime passed by international organizations significantly contribute to harmonization of national legislations, police and judiciary procedures.

Finding unique and comprehensive definition of organized crime is not possible, if it is at all necessary, due to several reasons. As first, every researcher in researching organized crime starts from the scientific methodology it belongs to, so that in the centre of research those aspects of the phenomenon are placed, which are the most important from the aspect of scientific discipline and the tools which are used for researching organized crime. Second, the organized crime is different in different

9 Milutinovic, M.: Kriminologija (Criminology), Belgrade, sixth edition, Savremena administracija, Belgrade, 1998, p. 203-239.
10 Ignjatovic, Dj.: Organizovani kriminalitet (Organized Criminality), Police Academy, Belgrade, 1998, p. 31.
11 Manojlovic, D.: Organizovana kriminalna grupa – pojam i tipologija (Organized Criminal Group – Concept and Typology), Official Gazette, Belgrade 2008, p. 10.
12 Roland Huff, "Historical Explanations of Crime", New York, 2003.

states or regions, so that each researcher researches those phenomenal forms of the organized crime that are characteristic for the environment he belongs to. Third, political reasons often influence determinations of organized crime, which is visible in difference existing between theoretical and legal definitions of organized crime. Many states have negated, and some are still negating that there is organized crime on their soil, due to political and ideological reasons. In the end, serious objections are stated on definitions of organized crime passed on supra-national level – that they pertain only to states which have participated in passing such definitions and that they cover only those phenomenal forms of organized crime characteristic for states that have participated in the meeting.

International organizations have tried to determine the organized crime concept, for more successful fight against its transnational forms. The main organized crime characteristics containing those definitions have been summarized by Manojlovic in several basic attitudes: a) Organized crime represents perpetrating criminal acts by a criminal association, in order to profit and/or to gain power, with the use of violence or by using special position in the society, through inclusion in legal economic, political and other activities, with pre-constructed system of protection against prosecution; b) Organized crime is non-ideological association of a certain number of persons, who among themselves achieve very close social interactions, organized on hierarchy base, of at least three levels, and with objective to secure profit and power, thanks to participation in illegal and legal activities. Hierarchy positions and positions of functional specialization must be assumed (transferred) based on kinship or friendship, or rationally transferred (entrusted) bearing in mind the skill of the individual to whom certain position is given. Permanence of membership is understood, and the members try to maintain integrity of their association and activity by following the organizational objectives. The organization evades competition and strives to monopoly in relation to certain industrial branch, that is, on a territorial basis. The organization is willing to use force or bribe for achieving its objectives or for securing discipline.[13] Membership is of restrictive character, although non-members can be included in the activities in extraordinary situations. There are explicit rules, verbal or written, whose application is secured by threat with adequate sanctions, including murder.[14]

Link of organized crime and state officials

In these definitions, organized crime is perceived as criminal activity of smaller or larger group of people who want to achieve profit and power. Inclusion of the concept of power in the organized crime definition gives it certain political connotations, as well as "the inbuilt system for protection against criminal prosecution", which means a link with state authorities, that is, individuals in the state power system.

According to the opinion supported by Eliot, Schneider, Kaiser, Fiandeka, Savonae,[15] organized crime implies, besides existence of criminal organization with high degree of organization, hierarchy, delegated tasks, discipline and profit planning, also a certain link of criminal organization with the state and its individual authorities (employees), legally covert or illegally. Eliot argues that the link can be achieved in the form of cooperation of the law enforcement authorities with those who disrespect the judiciary and want to trick

13 See more in: Abadinsky, H.: *Organized crime*, Third edition, Nelson–Hall, Chicago 1990, p. 5.
14 Manojlovic, D. Ibid, p. 16.
15 Boskovic, Mico: Organizovani kriminalitet (Organized Criminality), Police Academy, Belgrade, 1998, p. 4.

it;[16] Schneider sees the connection as activities directed to neutralize possible actions of the judiciary, police, which is followed by corrupting the power, in order to make the organized crime undiscovered and enter legal economy, finances and other jobs enabling laundering of money acquired by criminal activities;[17] Kaiser states that in researches he has implemented, he found that the link is established by influencing politics, public information media (printed and electronic media), public administration, judiciary and economy;[18] Savona and Fiandeca ascertain that based on research they have implemented, they have observed that the link is observed in using violence and corruption of the police, judiciary and political executive power, by which the organized crime is preventively protected from action of legal norms.[19]

Second opinion is advocated by Rosman, Vens, Schuler, Springourm, Kiney. They conclude that for existence of organized crime, contrary to the first group of authors, it is not necessary to have a link between the state and its authorities and the criminal organization, in order to claim that there is organized crime in the state, but it suffices that there is a criminal organization, which in order to gain illegally gained estate and profit, performs various forms of organized criminal activity. By giving closer theoretical determinations, Kiney[20] says that he has come to results based on research showing that the criminal organization performs certain criminal activity, like gambling, prostitution, trafficking, and racketeering. Researcher Rosman[21] states in his works that the criminal organization itself can have strong internal structure, very clear labour division among members, with expressed discipline and very present forms of planning. By accepting the mentioned research results, Schuler–Springorum[22] add that the criminal organization uses violence, resorts to refined methods of influence in order to install its activities into legal economy. [23]

In materials from Organized Crime Seminar, in Sazdal in 1990, organized crime is defined as: "relatively large group which continuously performs crime for profit and tries to build system of protection from state control with the use of violence, corruption and the like".[24]

However, all authors, regardless if they consider that for determining the link between organized crime and state authorities is necessary or not, point out to intentions to link organized crime with holders of state functions in order to protect illegal profit and neutralize actions of police and judiciary authorities against them. Besides that, organized criminal groups strive to input the illegally acquired money in legal economy flows, because of which they need support of state officials and people from the banking-financial sector. Regardless of the fact whether the criminal organizations have direct link with state officials, they must have such links, following the logic of their operations, in order to spread and protect their criminal operations. That imposes inclusion of organized crime in political flows, that is, at least a try to influence political life in some way, which expands the concept of organized crime from the criminal law and criminology terrain to the terrain of security studies, because in that way it endangers the fundamental values of state order of every democratic state.

16 See more in: Eliot, M.A.: Zlocin u savremenom drustvu (Crime in Modern Society), Sarajevo, 1962, p. 114-117.
17 See more in: Schneider, H.: Organized crime, New York, 2003, p. 123.
18 See more in: Kaiser, G.: Kriminologie–Ein Lehrbuch, Heilderlberg, 1993, Skopje, 1996, p. 19.
19 See more in: Savona, E., & Fiandaca, G.: Criminalita a controlle penale, L' indice penale, 1991/1, p. 5 – 31.
20 See more in: Kiney, J. C.: Crime in Modern Socity, New York, 1962, p. 114.
21 See more in: Rosman, E.: Taschenlexicen der Kriminologie, Hamburg, 1974, p. 136.
22 See more in: Schuler – Springorum, H.: *The Evolution of Criminal Justice Systems* – in: Fifth Conference end Criminal Policy, Strazbourg, 1995, p. 19 – 21.
23 Quoted from: Manojlovic, D. Ibid, p. 20.
24 See more in: UN. ESC, E/ CH, 15/1992, (1)., Quoted from Manojlovic, D. Ibid. p. 29.

Organized crime and terrorism

The second serious crossing of organized crime into political terrain can be seen in terrorist activities of organized criminal groups, that is, in organized criminal activities implemented by terrorist organizations. Terrorist organizations, which are politically motivated groups of bullies, use organized crime activities for gaining money necessary for implementing terrorist activities. Besides that, terrorist organizations also use dirty money for corrupting politicians, media, political parties, civil society and other influential organizations and individuals in order to achieve their political objectives. Terrorist organizations recognize corruption as a virus weakening the state, endangering democratic processes and creating ideal ground for operation of these organizations.

In modern security studies, border between terrorism and organized crime is drawn according to the criteria of political objective existence. Existence of the political objective is the criterion which is today more used in didactic purposes, than it has practical value, bearing in mind that in practice it is not possible to find a terrorist organization which does not deal in some form of criminal activity, or seriously organized criminal group which is not involved in politics. All this shows that the modern organized crime is a serious security problem and that in the last two decades its axiological dimension is seriously changing.

Organized crime of ochlocracy type

The dissolution of USSR and Yugoslavia has opened up a new page in the history of organized crime. Formation of organized crime "from the top" has created a completely new social, political and security reality.

The most serious asymmetric security threat in the region of ex-Yugoslavia originates from organized crime. According to reputable authors from Balkans states, who wrote about organized crime problems, during the 1990s a one-of-a-kind "criminal revolution"[25] happened. The organized crime, in circumstances of weak and incomplete state, represents a serious security threat due to political aspirations appearing in main criminal activities' organizers. Political aspirations of carriers of organized crime activities are implemented by corruption, by which they overtake the most profitable branches of economy and, besides legalization of illegally gained money, disable economic base of institutional strengthening of the state. Corruption covers political parties, media, civil society, and religious organizations, educational and healthcare system and in that way a new form of totalitarianism appears. Organized criminal groups in the Balkans are very dangerous also due to the way of their originating. The organized crime originated in the Balkans parallel to the war in the region of former Yugoslavia. Crime that has developed in the region of ex-Yugoslavia has been organized "from the top" and, right from the start, at that time current political elites and parts of security structures have been involved in it. In Serbia, organized crime "blossomed" during sanctions, when the state structures have organized paramilitary formations, which have besides performing dirty job in war operations' zones, also dealt in trafficking of oil, cigarettes and other goods under the UN sanctions regime. Example of Serbia shows how much economic sanctions are counter-productive because they enable

25 See more in: Radomir Milasinovic: "Uzroci mogucih drustvenih sukoba u zemljama Jugoistocne Evrope" (Causes of Possible Social Clashes in South Eastern European Countries), Faculty of Security 2009 Yearbook, Belgrade 2009, p. 11.

political elites against whom they are allegedly directed, to get rich and put the whole society under their control. After fall of Slobodan Milosevic, his paramilitary formations have continued to deal in organized crime, but instead of trafficking oil, they traffic narcotics. Organized crime has succeeded to survive "democratic" changes in Serbia and even to assassinate the Prime Minister Zoran Djindjic. In Croatia, organized crime has developed alongside the beginning of war, when the structures close to the power at that time, got rich based on trafficking of weapons and violating the sanctions on arms and military equipment.[26] In Kosovo and Metohija, organized crime was a means by which OVK has financed itself and its armed rebellion. Organized criminal groups of Kosovo and Macedonian Albanians dealt in trafficking of narcotics, people, trade in organs, illegal prostitution and other criminal activities, out of which one part of money has been used for financing OVK and armed actions in Kosovo and Metohija.

However, the most worrying thing is creation of regional criminal cartel in which criminals from all Balkan areas are included.[27] This fact significantly determines the security identity of the region and necessitates much better cooperation between the Balkan states, because this is a security problem that seriously endangers each individual state in the region, and requires unified response of all states, regardless of their mutual differences.

The process of origin of organized crime in post-communist regimes is significantly different from the process of origin of mafia, which has been developed "from the bottom", and just with growing financial power, criminal groups try to maintain and strengthen themselves by political connections, but they never seriously enter politics, because the politics just serves them as an instrument for maintaining criminal operations. Post-communist organized criminal groups originate from political establishment, which is deeply in the politics, and they use criminal activities, besides for enrichment, also for maintaining political influence. In Serbia, international sanctions represented a special wind in the back of all forms of organized crime. During the sanctions, different "mafias" were organized by the political establishment of that time, which have created huge wealth controlled by the state top itself by trafficking oil, cigarettes and other goods, which were lacking under sanctions.

Criminal groups of this type use violence as a method of their fight, which is in essence para-political, but also with money they have, they try to "buy" the state, that is, to fake democracy by corruption. Inflow of dirty money in political parties, media, non-governmental sector, education, religious organizations, sport, culture and other fields is seriously polluting public life. Possibility that the organized criminal groups should take over control of political life of one state by corruption, in that way that they shall "buy" or organize the most important political parties, media and non-governmental organizations, appears as a possibility of occurrence of new totalitarianism, which we could, lacking better term, call "ochlocracy".

Ochlocracy is a name used for the rule of mob or a mass of people, that is, its ability to influence the constitutional authorities. Ochlocracy appears when democracy and its values collapse, and the mass of people influencing the power does not have for objective the interest of all, but only its own and of its own

26 Example which shows in the best way in which way organized crime in Croatia has originated, is "case Zagorac" and "Lads from Knezija". See more on this issue in: Ljubisa Milanovic: "Organizovani kriminal kao bezbednosni problem u Hrvatskoj" (Organized Crime as Security Problem in Croatia), FB, Belgrade, 2009.
27 Proofs for this claim are murder of Journalist Ivo Pukanic, hiding of members of "Zemunski Clan" in Croatia and many other examples showing excellent cooperation existing between the criminals in the region.

groups. Aristotle spoke about corruption of political forms, and so, monarchy is transformed into tyranny when the monarch starts to rule according to his will, disrespecting the laws or interests of the majority of the people, aristocracy is transformed into oligarchy when the ruling minority rules lead solely by its interests, and in the end democracy transforms into ochlocracy when the power is taken over by mob, which disrespecting the law and democratic procedures takes care only of protecting its own narrow interests. Such a society occurs, according to Plato's view, when the democratic virtues start decaying, and the power falls into the hands of mob, that is, the worst in one society.

Organized crime development in post-communist states leads directly into this type of rule, because it is obvious that the criminal organizations create such social environment in which democratic values don't have any chance. Special threat is represented by the fact that this is about excellently organized groups, with extensive political experience, influence on the economy and social flows, and that they act in societies which have just formally exited totalitarianism, without developed democratic institutions and without developed democratic culture.

The question remains open whether the organized crime creates ochlocracy or ochlocracy creates organized crime.

In any case, criminal activities, primarily corruption, prevent economic progress and development of state and social institutions. Totalitarianism of organized crime shall not destroy democratic institutions if that was done by totalitarianisms of XX century, but shall devoid them of power. There shall be Parliament, Government, political parties, media, without formal censorship, spreading kitsch and vulgarity, high degree of auto-censorship. There shall also be organizations of civil society and other social organizations that shall create the illusion of democracy, but the real power shall be in the hands of those who yield large quantity of dirty money. Such degenerated democracy in which there is a shell of democratic institutions without the real power and influence, we can call ochlocracy, because in the modern language we cannot find a better term.

This form of organized crime has completely different axiological dimension than the so-far known forms of organized crime, because it endangers the values that were considered that can be endangered by external aggression, armed rebellion or terrorism. Those are the values of constitutional order, human rights and freedoms, of economic system stability and even of territorial integrity, if we have in mind that the groups dealing in organized crime have endangered the territorial integrity of Serbia, however, not directly by organized criminal activities, but with money earned in that way. The mentioned values have been securitized also in classic security concepts, so we consider that this form of organized crime must be present in security strategies, and must be understood as serious security threat, which shall enable it to have a legitimate place of study subject in the security studies.

National Security Strategy of the Republic of Serbia recognizes organized crime as security threat.

"Organized crime in the area of the Republic of Serbia, and especially in Kosovo and Metohija, is manifested especially in the fields of forbidden trade in narcotics, trade in humans and illegal migrations, as well as in economic-financial sphere, proliferation of conventional weapons and possibility of proliferation of arms for mass destruction. According to its character, the organized crime represents a serious threat to security and to total development of the state and society.

Corruption endangers fundamental values of society and leads to decreasing trust in the institutions of state, aggravation of essential reforms' implementation,

slowing down of transition process, of economic development, inflow of foreign investments and integration processes and to destabilizing of circumstances in the country and in the region."

National Security Strategy treats organized crime as predominantly criminological problem, while less attention is dedicated to its security aspects. The main danger coming from organized crime is reflected in its political ambitions, that is, tendency of criminal organizations to, by corrupting political factors in the state, media and other institutions and individuals influencing passing of political decisions and creation of public opinion, establish control over political flows in the state. The next phase in developing this process is control of the entire political and economic life by organized crime groups. National Security Strategy of the Republic of Serbia sees in corruption a real danger for democratic values, while treating the other forms of organized crime solely as criminological problem, almost exclusively related to the area of Kosovo and Metohija, by which the essence of this appearance is somewhat blurred.

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THE TRANSITION AND THE POLICE, I.E. THE POLICE IN TRANSITION

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Abstract: The paper deals with the process of transition as a general process. The main interest is the transition process of the police and the police organization. Specifically, transition, or transforming from one social system to another, is a process that in the Republic of Macedonia has lasted long, say two decades. The process of change in social systems from one party to multi party has long been completed. But, the process of changing the ruling relations is developing slowly and with great difficulties. This process has been accompanied by society's and social tensions, but especially by the process of criminalization and corruption of the society.

What is the position of the police and the police organizations in this process? What are the conditions of the process of transforming the organization into the new social conditions? What is the relationship of the main political forces towards the police and the police organization?

This paper will specifically go over the research results, anonymous field survey of people's views on policing conducted by the Faculty of Security in Skopje in the period 8-17 January, 2011. In particular, we will actualize, "what is the opinion of the citizens of Macedonia about the police? When asked, if having a problem to solve, who will be the first to contact? - 480 or 40.20% said police station, then 302, or 25.08% said anyone, 158 or 13.23% said a neighbor. Other institutions (municipality, 113 or 9.46%, the mayor 69, and only 0.67% a responsible person). Maybe in that relation the percentage of citizens who feel safe at home is relatively high. The question, "Do you feel safe in an environment where you live and work", 834 or 69.33 responded positively, 190 or 15.79% did not feel safe, and 179 or 14.88% cannot evaluate. This issue can be brought in connection with the degree of agreement with the opinion: Crime in the country is a big problem, 651 or 54.07% of respondents completely agree with such a statement, 454 or 37.71% agreed, while the remaining 20% cannot evaluate, which means, they disagree or completely disagree with the statement that crime in the country is a major problem. Similar are the responses about the degree of agreement and the statement that "in our country corruption is on very high level"? About this question 1023 or 84.96% of respondents completely agree or agree. From the same view the degree of compliance with the opinion can be observed that "the basic obligation of the police is to prevent crime." 517 or 42.98% fully agree with this opinion, and 534 or 44.39% agree. The remaining 12.00% disagree or they cannot evaluate which the basic obligation of the police is. But in matter of effectiveness, the respondents were offered a position in which "the police are ineffective because there is corruption in police ranks." 316 or 26.27% totally agree with this statement, the majority of 444 or 36.91% agree, 277 or 23.03% cannot assess, 131 or 10.89% disagree and only 35 or 2.91% completely disagree with this paragraph, or believes that there is no corruption in police ranks.

In this context it is particularly important, as well as how much the police organization as a whole and within a given social context manages to sell itself as an organization in which work, order, discipline and accountability are the visible characteristics, or how it has "time" and willingness to focus on citizens and their problems.

Key words: transition, police, corruption, reform, citizens, public opinion

INTRODUCTION

All countries which transform from command to market economy, i.e. from socialism to capitalism are described **with the term** *transition (countries in transition)*. The transformation of the totalitarian non-democracies into democracy, then, the creation of conditions for market competition between the enterprises and their market rivals, and finally, the attempt to use knowledge and modernization can help overcome the century-old civilization gap between the developed and underdeveloped countries in relatively short a period of time. The term *transition* is most frequently used not only in science but also in public discourse especially after the political and theoretical euphoria which was the result of the fall of the Berlin Wall[1]. When we talk about "transition" societies, we above all refer to the countries in the real socialism which went through a process of structural economic, social and political changes on their way to develop by following the model of the well-known democracies. In the literature other synonyms are also used such as "post-socialistic societies", "societies in post-socialistic conditions", "societies in Central and Eastern Europe", " new democracies ", etc[2].

As a reaction to these stimulations, the countries in transition from Middle and Eastern Europe have started the process of transition towards the free market and private property. According to *Index of Economic Freedom,* only Estonia is included in the line of countries with a free market. We can only assume that these differences in the results of the transition are not a coincidence[3].

***Table. No. 1 - Index of Economic Freedom* Scores, 2000-2010**

Country	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
Albania	53.6	56.6	56.8	56.8	58.5	57.8	60.3	61.4	62.4	63.7	66.0
Bosnia and Herzegovina	45.1	36.6	37.4	40.6	44.7	48.8	55.6	54.4	53.9	53.1	56.2
Belarus	40.4	38.7	39.8	38.0	35.4	41.3	38.0	39.0	39.7	43.1	46.7
Bulgaria	47.3	51.9	57.1	57.0	59.2	62.3	64.1	62.7	63.7	64.6	62.3
Croatia	53.6	50.7	51.1	53.3	53.1	51.9	53.6	53.4	54.1	55.1	59.2
Estonia	69.9	76.1	77.6	77.7	77.4	75.2	74.9	78.0	77.9	76.4	74.7
Georgia	54.3	58.3	56.7	58.6	58.9	57.1	64.5	69.3	69.2	69.8	70.4
Latvia	n/a	55.0	62.4	63.4	64.2	63.4	66.4	65.0	66.0	67.4	66.3
Lithuania	n/a	49.7	57.3	59.4	61.5	61.9	65.5	66.1	69.7	72.4	70.5
Moldova	33.0	52.5	48.9	53.5	56.1	59.6	54.9	57.4	60.0	57.1	57.4
Macedonia	**n/a**	**n/a**	**58.0**	**60.1**	**56.8**	**56.1**	**59.2**	**60.6**	**61.1**	**61.2**	**65.7**
Montenegro	n/a	n/a	46.6*	43.5*	n/a	n/a	n/a	n/a	n/a	58.2	63.6
Poland	60.0	61.8	65.0	61.8	58.7	59.6	59.3	58.1	60.3	60.3	63.2
Romania	52.1	50.0	48.7	50.6	50.0	52.1	58.2	61.2	61.7	63.2	64.2
Russia	51.1	51.6	48.6	52.8	54.5	51.8	49.8	48.7	50.8	52.8	51.3
Serbia	n/a	n/a	46.6*	43.5*	n/a	n/a	n/a	n/a	n/a	56.6	56.9
Slovakia	53.8	58.5	59.8	59.0	64.6	66.8	69.8	69.6	70.0	69.4	69.7
Slovenia	58.3	61.8	57.8	57.7	59.2	59.6	61.9	59.6	60.2	62.9	64.7
Ukraine	47.8	48.5	48.2	51.1	53.7	55.8	54.4	51.5	51.0	48.8	46.4

Source: http://www.heritage.org/index/download [10.02.2011]

1 Nada Ler Sofronic, PhD: Tranzicijska paradigma i civilno društvo; www.boell.ba/... /Tranzicijska_paradigma_i_civilno_drustvo_NLS.pdf [22.10.2010], str.1,
2 Ibidem, str. 1
3 http://www.heritage.org/index/download [10.02.2011], str. 3,

The transition process from socialism to free market and private property requires the development of new institutions. These institutions create normative and real space for eliminating the increasing corruption and crime. When the transition enters its third decade, it is logical to concentrate on the question about who offered the best solution and how to focus on the question which deals with the way in which the transition should be carried out. If all these countries in the 1980s were more or less in the same situation then what has happened that made the transition more successful in some countries rather than in some other countries. Another question is the one about the countries which are in a phase of so called late transition[4]. There are a lot of articles, books, analyses dealing with transition and the authors, such as Jan Winieck, Enrico Colombatto and John Moore who are trying to explain the economic results of the transition within the new institutionalized theories and empirical researches. Jan Winieck's analysis underlines the increase of the number of new private firms which is at the same time a consequence of economic freedom as reason for economic prosperity. Colombatto claims that the economic policy based on the neoclassical economy opens the door to corruption and the way of dirigisme. It is believed that the success of transition depends on the following three factors: the speed of opening new private firms, freedom of making agreements, and the method of privatization of the existing enterprises[5].

The process of transition is differently defined. Hence, there are two different ways of defining the transition in the countries of Eastern Europe. The first is neoclassical. This approach incorporates two aspects of transition - the economic situation in the beginning of the transition process and the expected results at the end of the process. It is based on the difference between the real and expected results. Sometimes, this approach is called mainstream view and according to this approach the transition depends on the experts' success when planning the goals, the formulation of the policy with which these goals are to be achieved and monitoring of the economic trends.

The second approach is primarily focused on the rules of the game, i.e. the institutions. An object of interest here is the analysis of the effects which different institutions have on the behaviour of the individuals. This method of research does not identify the transition with previously defined goals but it does that via the passive role of the country[6].

What is the role of the police in the transition process?

So far the transition process has been very slow, accompanied by hunger and dramatic changes in the privatization of the social and state property. What prevails is the attitude that the privatization process is carried out with the help of the state and political monopole, i.e. all property creators are not given equal chances for allocation of their wealth. Apart from this, the others are employed in the education and administration. In such conditions a logical question is posed: What is the role of the police in the transition process? Especially, if we take into consideration that this is an organization with type of organization and personnel whose task is to prevent crime and criminal behaviours. Namely, in this work the police are defined "as complex system of professional type which is organized to maintain the public

4 Svetozar Steve PEJOVICH: TRANZICIJA, TRANZICIJSKI TROŠKOVI I KULTURA; *Financijska teorija i praksa* 27 (2) str. 235-250 (2003.)
5 Ibidem, str. 3-5;
6 Dr Veselin Vukotić Dr Steve Pejovich* Tranzicija i institucije: što dalje? www.vukotic.net/files/publikacije/1242821006_3887.pdf [10.02.2011]

law and order in the society and hence it is supplied with legal authorizations for the necessary resources including the coercion resources"[7].

In one centralized police system as our system was (and still is), when the corruption covers the highest levels, then it can easily spread in the police. Taking into consideration the citizens' perception of the police and its work, the police clerks' resistance towards corruption and corruptive states is theoretically and practically not subjected to research. In the last years some authors have treated corruption as subject in the process of eliminating crime and corruption in the society. There are small efforts regarding the research of the type of answer by the organization not only because of the fact that it is part of the society and the relations within it but also because of the absence of democratic capacity to speak publicly.

An important precondition for elimination of corruption is transparency. Having regular press conferences when and where the police announce or comment the state of crime is not transparency. However, the transparency within the police is achieved if the police are open and if their data regarding the corruption within the police (about the number of fined persons especially about those perpetrators who hold high positions) are presented.

A pioneer contribution in the research of the corruption in the police is the work of Berker and Roebucka[8] whose typology of the corruption is very popular even today. Punch[9] in the published results upgrades the typology of police corruption. A special contribution in the research of the corruption in the police was made by Karl B. Klokers and Sanja Kutnjak Ivković.[10]

As for the type of corruption in the police, there are almost no data. Even the data that can be found are of older date. There are few court processes in which corruption indicators can be used. The fragment statistics speaks about determining responsibility of the police and customs officers and their custody in the cases treated by the media rather than about some more serious social action. There is not specialized research of the corruption in the police in Macedonia or the so called police corruption. There are certain empirical and statistical data which are used in the studies and which basically use the non-governmental organizations (Transparency International, Gallup International and the like) whose object of research is the corruption in the state institutions in general.[11]

The official statistics of the Ministry of Internal Affairs of Macedonia concludes that in 2009 (there is not newer information) the police kept the positive trend in discovering the acts of classical corruption and the same year 25% increase of reported crimes is registered. Hence, in 2009 reports for 25 criminal acts were initiated (in 2008 there were 20) and 27 (26) perpetrators were reported. The structure of these crimes is 15 (10) criminal acts of "giving bribe", 7 (6) "receiving bribe" and 3 (4) "illegal mediation". If we have a more detailed look at the reported crimes (15) "giving bribe" we can conclude that there are 15 suspected perpetrators. Most of

7 *Bogoljub Milosević: Nauka o policiji,Policijska akademija, Brograd, 1977, str..39,*
8 Roebucka, J.B., Barker, T., (1974), A Tipology of Police Corruption, *Social Problems, 21, str. 423-437.*
9 Punch, M., (1986), *Conduct Unbecoming: The Social Construction of Police Deviance and Control,* London:Tavistock.
10 See more: Kutnjak Ivković, S., Klockars, B.C. (1998), The Code of Silence and the Croatian Police, U Pagon, M., (ed.), *Policing in Central and Eastern Europe: Organizationl, Managerial and Human Resource Aspects,* Ljubljana: Collage of Police and Security Studies; Kutnjak Ivković, S., Klockars, B.C., (2000), Comparing Police Supervisor and Line Officer Opinion about the Code of Silence: The Case of Croatia, U Pagon, M., (ed.), *Policing in Central and Eastern Europ: Ethics, Integrity and Human Rights,* Ljubljana: Collage of Police and Security Studies; Kutnjak Ivković, S., Klockars, B.C., Cajner-Mraovic, I., Ivanušec, D., (2005), Controlling Police Corruption: The Croatian Perspective, U Sarre, S. Das, D. K., Albrecht H.J., (eds.), *Policing Corruption:International Perspectives,* Lanham: Rowman & Littlefield Pub. Inc.
11 See: Фросина Ташевска Ременски: Судир на интереси и корупција во полицијата *(Случајот со Република Македонија), Годишник на Факултетот за безбедност, 2010, Скопје, стр. 227*

these perpetrators - 13 are police and customs officers, and the other 2 cases refer to a lawyer and a person in charge of a private company. Measures for eliminating the corruptive behaviour of the employees in the police were taken in 2009 and 20 police officers were accused of committing 12 crimes of "violation of the function and their authorizations[12]".

Research method

Survey-research of the attitudes of the citizens regarding the work of the police has been carried out at the Faculty of Security in Skopje from 8th to 20th January for the fourth year in a row. The survey list is standardized research instrument for examining the public opinion regarding the work of the police. It is structured in a way in which via several battery questions the variations in the citizens' attitudes regarding the work of the police can be determined especially regarding the model of community policing. This instrument is compact with the survey lists which are used by certain international organizations such as the mission of the OSCE in Macedonia. What especially varies in the survey lists is the battery of questions regarding the perceptions of the criminalization of the society. What especially deserves attention within these research activities is the fear. Therefore the results are often compared with these findings, i.e. they are used as indicators in the process of defining the attitudes. The survey is carried out face to face. The selection of the respondents is done on the basis of the defining of the research cores in the region using the principle of random selection of the citizens whose birthday date is the closest. Every year the sex, the nationality, the regional density and the education are taken into consideration whereas the age is not always included. The editorial team keeps records for the collected data in the survey diary and in the respondents' reports.

Results and discussion about the results

The research results indicate such findings. The variations regarding the feeling of security are also very interesting. The following answers were given to the question "Do you feel safe in the area where you live?" by the respondents both men and women: 14.5% respondents in 2010 answered negatively, i.e. that number increased to 17.5% in 2011. In 2010, 70% answered that they felt unsafe, and that number decreased to 66.2% in 2011. In 2010, 15.3% did not know the answer to this question and in 2011, this number increased to 16.3%. Although this increase of uncertainty is insignificant, it is still an indicator of the personal feeling of safety.

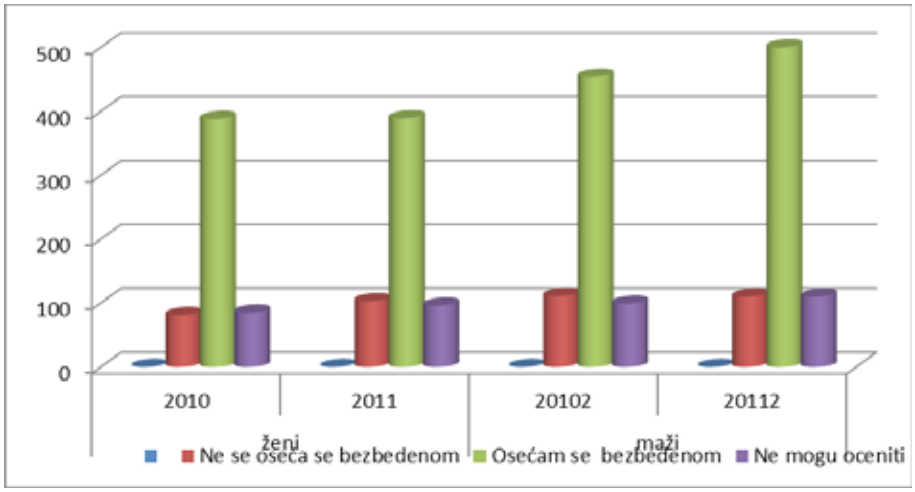
The allocation of the answers of the male respondents moves in the following order. In 2010, 16.7% answered that they did not feel safe, and in 2011 that number decreased to 15.3%. The feeling of safety is positive for 68.3% of the male respondents in 2010, i.e. this number increased to 69.3% in 2011, and this tendency can be noticed among the respondents who did not know the answer. Namely, this answer was noticed in 14.9% of the respondents in 2010, i.e. it increased to 15.3% in 2011. The manifestations of feelings of security, i.e. the impossibility to estimate the safety are visible among the respondents of this group, too.

12 „The conditions in the area of corruption in the six months of 2009", http://www.moi.gov.mk [10.02.2011]

Chart No. 3 - Do you feel safe in the area where you live and work?

			2010		2011	
2. Gender:			**f**	**%**	**f**	**%**
female	Valid	I don't feel safe	81	14.6	103	17.5
		I feel safe	388	70.0	389	66.2
		I can't evaluate	85	15.3	96	16.3
		Total	**554**	**100.0**	**588**	**100.0**
male	Valid	I don't feel safe	111	16.7	110	15.3
		I feel safe	454	68.3	500	69.3
		I can't evaluate	99	14.9	110	15.3
		Total	664	99.8	720	99.9
	Missing	System	1	0,2	1	0,1
	Total		**665**	**100.0**	**721**	**100.00**

Although the insignificant negative feeling for (un)safety is present among the women, too, among the men the number of respondents with positive feeling of safety is increased and it cannot be estimated what might be the reason for the differences in the perceptions of the social reality.



Graph No.1- Do you feel safe in the area where you live and work?

The level of confidence was measured via the citizens' attitudes about who they believe in most and who will they turn to for help when solving certain problem. Table No.3 presents the allocation of the answers given to the question: " If you have problem to solve , who will you turn to first?" in 2010 and 2011.

Table No. 3 - If you have problem to solve, who will you turn to first?

		2009		2010		2011	
		f	%	f	%	f	%
Valid	Goverment	9	0.68	7	0.53	14	1.1
	Parlament	13	0.99	9	0.69	11	0.9
	Mayor	74	5.61	62	4.74	69	5.7
	Municipality	87	6.60	92	7.03	114	9.4
	Political party	38	2.88	23	1.76	40	3.3
	Police station	472	35.81	557	42.55	490	40.3
	Neighboor	144	10.93	158	12.07	159	13.0
	Secular person	/	/	/	/	8	0.7
	No one	280	21.24	391	29.87	303	24.9
Missing	No answer	201	15.25	10	0.76	11	0.9
Total		1318	100.00	1309	100.00	1219	100.00

Research results from 2009, 2010 and 2011

In Table No.3, we present the allocation of the answers given to the question about who will they turn to first for help. In 2009, 0.68% would turn to the Government, in 2010 this percent is a bit smaller, i.e. 0.53%, and in 2011 this number increased to 1.1%. In 2009, 35.81% would turn to the police station, in 2010 that percent slightly increased, i.e. 42.55%, and in 2011 it fell down to 40.3%. Similar tendencies are noticed when deciding to turn to the neighbours. The proportion of answers is as it follows: 10.93% in 2009, 12.07% in 2010 and 13.0% in 2011. In the research conducted in 2011 we set possibility for choosing a secular person, but only 8 or 0.7% answered positively which is an indicator of the influence of these structures in the process of problem solution.

Closely related to this is the question about the way the respondents experience the contact with the police. Table No.4 presents the answers to the question: What is your experience with police:

Table No. 4 - Please, tell us what is your opinion (experience) about police?

		2010		2011	
		f	*%*	*f*	*%*
Valid	Police is service who take care for me and my property	184	14.1	161	13.2
	Police is responsible state organ	539	41.2	531	43.6
	Police is service to ruling party	168	12.8	156	12.8
	I think police serves more to the interests of the state	256	19.6	242	19.9
	I can't evaluate	162	12.4	128	10.5
	Total	**1309**	**100.0**	**1218**	**100.0**

Results from surveys in 2010 and 2011

In the citizens' perception the police is seen as responsible state organ by 41.2% of the respondents in 2010, i.e. 43.6% in 2011, and 19.6% think that the police serves more the interests of the state in 2010, i.e. 19.9% in 2011, and only 14.1% think that the police serves the interests of the citizens and their property in 2010, i.e. that number decreased to 13.2% in 2011.

On the basis of the results in many researches about the behaviour of the police officers the citizens expect above all high level of professionalism, cultural and human behaviour, ability to understand their problems and the like. "Ideal police officers from the point of the citizens' expectations should be: (1) strict, just, unscrupulous law officers, (2) sacrificed keepers of law and order and (3) people who serve the interests of all categories of citizens. Among the demands which impose as most important for the adequate approach of the police clerk towards the citizens and gaining their respect are the ones which refer to their appearance, performance and behaviour as well as those which refer to their moral and other personal qualities."[13].

We posed a battery of questions regarding the perception of the citizens about the corruption in the country and in the police organization.

Table No. 5 - Choose the level of agreement with this attitude? – In our country corruption is very high increased

		2010		*2011*	
		f	*%*	*f*	*%*
Valid	I don't agree at all	11	0.84	18	1.5
	I don't agree	50	3.82	41	3.4
	I can't evaluate	128	9.78	130	10.7
	I agree	504	38.50	427	35.0
	I agree at all	616	47.06	603	49.5
	Total	**1309**	**100.00**	**1219**	**100.00**

Results from survey in 2010 and 2011

It can be concluded that 86.56% of the respondents in 2010, i.e. 84.5% in 2011 completely agree with the attitude that the level of corruption in the country is very high. In 2011, the number of respondents increased who have positive attitude and accept the claim that the corruption in the country is very high.

Table No.6 - Police are inefficient because corruption exists in police ranks

		2010		2011	
		f	*%*	*f*	*%*
Valid	I don't agree at all	18	1.38	117	9.6
	I don't agree	118	9.01	282	23.1
	I can't evaluate	329	25.13	397	32.6
	I agree	444	33.92	291	23.9
	I agree at all	399	30.48	131	10.7
	Total	1308	99.92	1218	99.9
Missing	System	1	0.08	1	0.1
Total		**1309**	**100.00**	**1219**	**100.00**

Research in 2010 and 2011

13 *Bogoljub Milosević: Nauka o* ... Ibidem, p. 249; Besides successfully having gained all necessary skills and knowledge for his work the police officer must be human, patient, polite, anticipating and well-mannered when meeting and contacting the citizens, he must show readiness for self-sacrifice and help, understanding and attention for the human troubles, he must know how to behave in the street and any other place, he must not be rude and he must always be aware that his function and uniform do not give him the right to act self-willingly not only towards the innocent citizens but also towards the criminals. The police officer must be neat and have adequate physical appearance, he must be sober, carefully choose the words and know how to address the citizens, communicate on the phone properly, etc. (Ibidem, p.250)

As for the question if the police are inefficient due to the existence of corruption within its lines, we can conclude that 64.44% agree completely with this attitude. If we add the determined level of distrust which is manifested in the attitude that the police are seen as structure which basically goes only after the small criminals then 69.4% of the respondents believe that the criminality level in the country is influenced by the disinterest in going after the big criminals. When determining the attitudes about the distrust in the police, we also present the attitude: "In your opinion how do you evaluate the work of the police?" - and we concluded that 28.34% do not agree with the claim, but almost the same percent 26.82% agree with the claim which indicates very interesting perceptions of the citizens.

As for the question how do you evaluate the work of the police especially the level of agreement with the attitude: if I try to report crime in my area, the police officer will inform the reported person, 20.63% in 2010 agree with this attitude, i.e. 21.3% in 2011. In 2011, the percentage decreased to 19.4% of respondents who disagree with this attitude in comparison to 20.70% in 2010. These claims need to be reviewed in the context of being a consequence of the political changes in the country when there are thorough personnel changes at all levels in the political organizations and when the responsibility is not applied in compliance with the function, i.e. there is strong connection with the party leadership and the chief of the party[14].

CONCLUSION

Research has confirmed the starting point that the police and police organizations in the new social conditions are centralized structures, in accordance with their position in society that is closely related to central political process. It is focused on combating crime in the country, especially the manifestation of its new forms. Bearing in mind that in practice, a part of the media announced and guided actions (such as an action "Snake's Eye") and not ending decisions on organized crime, to the scientific community there are lots of questions and tasks implied concerning why it happens. But, it seems that upgrading the capacity to investigate crime and implementing the standards of professional organizations, expressed by organizing a chamber system of professionals, building a system of education and reduction of schemed forms of training, will create conditions for the effectiveness of investigations and a more effective policing.

We can conclude that the citizens' opinions regarding the work of the police are undoubtedly an indicator of the condition of the society, but they are also important instrument for building the trust between the citizens and the police. The research showed that in the process of creating a concept for policy in the field of security, especially when promoting the police and the police organization what is important is to take into consideration the attitude of the citizens as peculiar feedback for the initiatives and the actions of the police, but also as an indicator of existence of the possibility that would enable increase of the level of participation of the citizens within the process of solving the security problems.

The contemporary police organizations in Macedonia pay attention to the process of providing information for the activities and fight against crime. However, the citizens' participation is very small not only in terms of strengthening the possibility for crime prevention but also in terms of achieving the concept of community policing when the police and the citizens could work together in the process of solving the security issues.

14 The Prime Minister called the Minister of Transport and Communications to account but he publicly declared that he will take responsibility if that is requested by the chief of the party. These days that kind of statement was released from the Deputy Minister of Internal Affairs.

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NATIONAL SECURITY AND CONTEMPORARY CONCEPTS OF SECURITY OF PEOPLE[1]

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Abstract: Within the traditional concept of national security from the Cold War period, that appeared with the Peace of Westphalia and the so-called Westphalian sovereign state in 1648, protected were, above all, the sovereignty, territorial integrity, constitutional order, and foreign policy interests of a country in chaotic international relations. The main characteristic of the behaviour of states was *the struggle for power*, based on selfish state interests, on which the current model of international system and its bipolar cold war structure rest. National security is primarily entrusted to the armed forces, intelligence services, police, judicial and diplomatic bodies. In such circumstances, the security of man, compared to the security of a state, is marginalized. This concept of national security, until the end of the Cold War, was the dominant one in the entire international system, especially in the real socialist countries.

In the post-Cold War era, the transition of the traditional into the contemporary concept of national security happened. The former "state-centred" approach to the security has been transformed into the "human-centred" concept, which focuses on human. In that way, the process of democratization and universalization of the post-socialist and post-conflict societies has initiated the development of concepts of security of individuals, social groups and societies, known as "individual security", "societal security" and "human security". National security has been entrusted to various subjects of military and civil, governmental and non-governmental sectors of the national security system, and they are dedicated to the security of both men and state. This has radically changed the scope and the content of the terms national security and national security system, and created a new post-Westphalian security.

Key words: national security, national security system, individual security, societal security, human security.

INTRODUCTION

State security, i.e. national security belongs to the so-called *old, traditional approaches to security*. According to *the orthodox version* of this concept, security is focused on state, that is, its „survival", vital values (sovereignty, territorial integrity, political independence, survival of the state, national unity) and state interests in foreign policy which should be protected from direct threats that come from other countries. The primary mean in (self)protection of countries was their „strength", which was, generally, brought down to military, and later economic power. Therefore, this concept is also called *state-centred* approach to security.[2]

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 leader of the Project is Associate Professor Saša Mijalković, PhD.

2 See – Mijalković, S.: *Nacionalna bezbednost*, Kriminalističko-policijska akademija, Beograd, 2009; Baldwin, D. A.: The Concept of Security, *Review of International Studies*, No 23, British International Studies Association, 1997, pp. 12–17; Bajagić, M.; Kešetović, Ž.: Rethinking security, *Dilemmas of Contemporary Criminal Justice* (eds. in Meško, G.; Pagon, M.; Dobovšek, B.), Faculty of Criminal Justice, Maribor, 2004.

The concern for everyday security of a society and individual was put aside. Armed attack from outside or different forms of "subversion from within, supported from the outside" (and vice versa) were considered to be the greatest threats and dangers to national security, rather that economic, social, ecological, educational, health, food, physical security problems and other problems of a society. In this respect, national security was identified with the so-called *external security of a country*, and citizens were the instruments for the purpose of country's security and defence. Besides diplomacy, intelligence, military and defence functions stood out as primary sub functions of national security, that is, protection of vital social values. At the same time, *economic power* was considered to be equally important for national security, and individual was a mean for its achievement and increase.

While many countries "led a race for armament" and prepared for a war against external military attack, they crumbled from the inside. It turned out that the greatest threats to national security were in fact ethnic and religious nationalism, political turmoils, increase of (organized) crime, lack of unity and opportunism of social groups, economic and social contradictions and crisis that, unfortunately, often turned into brutal armed conflicts. Results of this are numerous civil wars, civil revolutions, violent changes of political power, dissolution of countries, collapse of national economies and pollution of the environment. Mostly the real socialist countries have suffered this faith.[3]

The national security concept in its traditional model became unsustainable, so it was necessary to broaden it in three directions: "upwards" (towards regional, international and global security), "downwards" (towards societal, human and individual security) and "sidewards" (towards cultural, political, economic, environmental, health, energetic and other security spheres). The contemporary national security is, in fact, the crossroads of the mentioned security concepts, in whose focus is a human.

Therefore, the contemporary concept of *national security* includes the synthesis of security of citizens and security of a country, as well as contribution of a country to the international and global security. It is a certain state of protection of the vital national values and interests which is being optimized by the function of state and non-state sectors of the national security system.

National values[4] are of vital importance for the survival and development of society and state, and their endangerment would bring into question the existence of a state as international subject, as well as existence and survival of a society – its citizens. These are, above all, peace and freedom; rights and security of citizens and social groups; quality of life; national unity, dignity, pride and identity; healthy environment; energetic stability; economic and social prosperity; legal system; territorial integrity; political independence and sovereignty.

National (state) interest[5] is the need of a nation or a country, that is, a benefit, gain, convenience of a special significance for the survival of a nation. They include

3 Examples that prove this thesis are fresh: we are witnesses of the development of situations in Soviet Union, Czechoslovakia, Romania, Albania, „the second" and „the third Yugoslavia", Serbia. See – Milašinović, R.; Milašinović, S.: *Uvod u teorije konflikata*, Fakultet civilne odbrane, Beograd, 2004.

4 *Values* are ideal features of certain objects, activities and contents of consciousness that people (individually and/or collectively) attribute to them, which makes them desirable for people, because they use them to improve life or enjoy them. For example, "the so-called *Cold War security* focuses on: territory and state boundaries; external state security; military security factors; human factors; East-West relationship; state's readiness for action and state's central role in ensuring security. The so-called *post-Cold War* security focuses on: individuals and communities; inner security of the state and translational security; multidimensional security factors; natural and environmental factors; global security; preventive and revitalizing role of the state, with non-state security subjects." Law, D. M.: Ljudska bezbednost i reforma sektora bezbednosti, deset godina posle, *Ljudska bezbednost*, broj 2, Fakultet civilne odbrane, Beograd, 2004, p. 96.

5 *Interest* is, generally, a long-term direction of will, attention and activities of an individual or community towards specific goal, whose achievement is very important to them. The content of interest orientation greatly depends upon the existing value systems of individual or community, which also defines the interest. Tadić, Lj.: *Politikološki leksikon*, Zavod za udžbenike i nastavna sredstva, Beograd, 1996, pp. 78–79; Pavlović, V.: Interes, *Enciklopedija političke kulture* (grupa autora), Savremena administracija, Beograd, 1993, pp. 428–429.

achievement, improvement and protection of national values, and may be political, economic, military, social, cultural, scientific, educational, energetic, ecological, demographic and other interests.

A country traditionally protects its security through national security system. It is *a form of organization and functioning of a country and a society in implementation of preventive, repressive and sanction measures and activities in order to achieve, develop, provide their usage, protect from security challenges, risks and threats, revitalize if endangered, the key national values and interests*. Traditionally, national security system consists of five sectors: military, police (public and secret police), judicial, foreign policy and economic, which is, from the aspect of modern state, just one narrow determination.

Besides traditional function, contemporary security systems participate in a more dedicated manner in securing the core of life, i.e. the state of minimum living conditions of citizens.[6] Thus, contemporary national security systems include subjects and functions of state and non-state, civil and military security sectors that protect social and state values and interests from military and non-military security challenges, risks and threats. Those are the so-called *conventional* security subjects (the police, intelligence services, military, foreign affairs agencies, customs, inspections, prosecutor's office, court and penal and correctional institutions); *unconventional* (parliament, government, head of the state) and *supplementary* security subjects (local community and local authorities, public services, companies and other organizations, non-governmental organizations, educational system, church and citizens). Today, security of human is protected within individual, human and societal security concepts.

Individual Security Concept

The individual security concept focuses its attention on human individual. Therefore, it is also called "human-centred" concept. Man is a natural, social and rational being, which means that he has a wide range of personal needs, values and interests, which have to be continuously protected. This was symbolically confirmed by Rousseau's famous line, by which "Man is born free, and everywhere he is in chains".[7] At the same time, an individual is the lowest – basic level of security analysis, without which the other, higher levels of security are pointless.[8]

Security of an individual includes certainty of fulfilment of his needs, achievement and protection of personal values, and sense of personal security. This refers mainly to his life, possibility of easy fulfilment of basic physiological needs (feeding, movement, rest, health, biological reproduction, which is often conditioned by work and provision of income), inviolability of mental and physical integrity and personal property, free decision making, conduct and expression and self-affirmation. It is a product of instinctive needs, acquired reflexes and experience, without which the human life is unthinkable.

In short, it is the state of *personal* (physical, mental and health) *integrity* and *material and existential* (property, legal, economic and social) *status* of an individual and his family, i.e. protection of "*identity and sovereignty of an individual*". This state can be observed in at least two levels – as subjective absence of fear from danger, or as absence of objective – natural, social, technical or technological threats.

6 King, G.; Murray, C. J. L.: Rethinking Human Security, *Political Science Quarterly*, Vol. 116, No. 4, The Academy of Political Science, New York, 2001/2002, pp. 585–610.
7 Rousseau, J-J.: *The Social Contract*, E. P. Dutton, New York, 1950, p. 3.
8 Buzan, B.: *People, States & Fear – An Agenda for International Security Studies in the Post-Cold War Era*, Lynne Rienner Publishers, Boulder–Colorado, 1991, p. 49.

It is obvious that individual security is determined by human freedoms and rights. Given that they are in close correlation with survival – life and quality of living, security of human could also be defined as being protected from threats to human rights and freedoms. At the same time, it is his protection from natural, technical and technological threats, which are "not covered" by the human rights concept.

Human rights are legal rights contained in legal acts, and every human is entitled to them. They are universal and belong to everyone, regardless of the race, sex, religion, ethnicity or personal beliefs. Exercising of these rights has no limits, besides those that provide for the same rights to other members of a society, and those that are defined exclusively by the constitution and laws. The human rights concept tends comprehensively to regulate freedoms and rights in all human life spheres. Therefore, the contemporary concept of individual security includes civil, political, economic, social, cultural and solidarity rights, as well as individual and collective rights in peace and war (international war and humanitarian law – the so-called Hague and Geneva law). Therefore, "human rights do not imply anything else but certain standard, or minimum of basic presumptions necessary to fulfil, in order to protect every human life and ensure minimum of personal safety".[9]

Individual security and exercising of their rights are conditioned by security of a state and society they belong to, legal system, the rule of law and national security system function. Furthermore, they are the object of self-protection, as well as protection by other individuals (security culture).

Finally, the international community also looks after individual security, by prescribing international standards of achievement and protection of human freedoms and rights, and by intervening in the situations when a state violate these rights and freedoms or is not able to protect them (through diplomatic means; measures of political, economic and military coercion; and criminal law measures).

Approach to individual security based on human rights gives rise to some doubts in "tetragon individual – society – state – international community": the spread of freedoms and rights of individual is limited by freedoms and rights of others; a country is obliged to ensure exercising of freedoms and rights to individuals; in performing security function, the state inevitably infringes them; human freedoms and rights are guaranteed by the international law. Here we have at least three dilemmas: How to enable individuals to enjoy their life, freedoms and rights and not endanger the other's? In what way should a state perform its security function, and not illegally infringe human life, freedoms and rights? Could a state detect and sanction all cases of threats to life and security of an individual? The answer is: a democratic country seeks to provide all of these through its legal system, the rule of law and security system. However, who could guarantee that a country will comply with its legal system, that the national security system will tend to optimize its function, or that the international organizations and community will detect systematic or individual violations of human rights and react to it? It is only certain that a country creates both security and insecurity for an individual.[10]

It is also indisputable that numerous threatening phenomena violate many human rights and endanger life of an individual. Besides, violation of certain rights may cause new threatening phenomena, and destructive reactions of endangered individuals. We can rightly say that violation of human rights is both a cause and consequence of security endangerment. The fact that "one of the main current issues in the area of human security is incapability to mobilize the total world public

9 Stajić, Lj.: *Osnovi bezbednosti*, Policijska akademija, Beograd, 2003, p. 323.
10 Mijalković, S.; Keserović, D.: *Osnovi bezbjednosti sa sistemom bezbjednosti Bosne i Hercegovine*, Fakultet za bezbjednost i zaštitu, Banja Luka, 2010, p. 66.

to support and improve human rights"[11] creates a new concern: passivity towards human rights protection contributes to their violation and endangerment of both individual and collective security.

Finally, between human rights and security of people there is no equals sign, for human rights, unlike the security of people, lean on correlative obligations. Human security includes human rights, as well as relationship towards threats that human rights are not primarily dealing with (for example: natural catastrophes, disease, hunger, poverty).

Human Security Concept

The next level of security of people is more known as *human security* concept. It focuses on security of individuals and community, which is exposed to (primarily non-military) direct and indirect threats coming from the state and non-state actors. It is characterized by three streams (approaches).[12]

According to the first, human security is achievement of a wide range of human rights. This approach is based on the rule of law and tends to strengthen the normative international and national framework, judicial system and influence of international organizations in terms of defining and imposing human rights standards to the countries. Human security is protected by criminal courts, or International Criminal Court.

The second approach is based upon humanitarian grounds. Therefore, security of nations (absence of fear), i.e. fundamental human rights, including the right to survival – life, is the main goal of international intervention. War is the greatest threat to human security, where mostly the innocent people get hurt, while the international community is obliged to protect them from violent threats. This approach was later broadened (the so-called *integral approach to human security*) by recognizing "economic poverty, social injustice and political pressures" as threats to human security, in addition to conflict and emergency situations. It was "finalized" by the United Nations in 1992, by taking a stand that "non-military sources of instability in the area of economy, society, humanitarian work and ecology have also become threats to the peace and security". The goals and protection of human security are connected to military intervention, humanitarian help and support in emergencies, post-conflict restitution of peace and prevention of conflicts.

Finally, the broadest is the concept of human security as "sustainable human development" – protection and improvement of life quality by achieving, protecting and improving the economic, social and environmental rights. At the same time, "human development is broader concept, and it implies the process of widening the range of people's choices (*freedom from deprivation*), and human security means that people can exercise these choices safely and freely (freedom from fear)". The greatest threats to human security are diseases like AIDS, drug trafficking, terrorism, global poverty and degradation of the environment. Human security is protected by measures of redistribution of wealth and revenues between the rich and poor, and by new participatory authority structures at local, state and global level.

Most commonly, human security is understood in the spirit of the UNDP *Human Development Report* from 1994, where it was determined as "survival and dignity of people through *freedom from fear (violence)* and *freedom from deprivation (poverty)*", or as "people's safety from all possible forms of threats, such as threat to

11 Ogura, K.: A Pacific Perspective, *The New Challenges to International, National and Human Security Policy*, The Trilateral Commission, Warshaw, 2004, p. 59.

12 Cited from – Hampson, F. O.: Višeznačnost pojma ljudske bezbednosti, *Ljudska bezbednost*, broj 1, Fakultet civilne odbrane, Beograd, 2003, pp. 12–13, 29; Hampson, F. O.: Human Security, *Security Studies – An Introduction* (ed. Williams, P.), Routledge, London–New York, 2008, pp. 229–243.

life, health, income, personal security and human dignity". In this sense, it consists from at least two components: freedom from chronic security threats, such as hunger, disease and repression, and protection from sudden and hurtful disruptions in the pattern of daily life (in job, in home or neighbourhood).[13]

Important determinants of human security and life quality are economy, environment and society, and its spheres are: *economic security,* i.e. a sufficient and assured income, secure employment, safety and health at work, covered social insurance, satisfaction with the level of income, income disparity and competitiveness; *environmental security*, i.e. its protection from pollution and degradation, as well as ease access to sanitary safe water, clean air and unpolluted ecosystem; *health security,* i.e. protection from diseases and infections, availability and quality of health care, people's health status, developed healthcare system; *food security*, which implies physical and economic access to food, i.e. availability and quality of food and purchasing power; *education*, i.e. availability of education, level of education, correlation between education and work opportunities, development of national educational system, innovations and currency of curriculum; *community security*, i.e. stability of family, quality of housing, quality of life in local community, safety of cultural identity, effects of ethical codex of a community, development and freedom of media and communications, freedom and effects of syndical organization;; *political and institutional security*, which includes development and protection of human rights, impact of politics on quality of life and impact of formal social control bodies (above all military and police forces, intelligence services and judiciary system) on security of people and *personal and collective security*, i.e. absence of fear from threats to life by violence or torture, protection from crime or self-destructive phenomena, traffic safety etc.[14]

Based on these indicators, the Human Development Index (*UNDP HDI*) was developed, which measures a country's capability to ensure security to its citizens: health and life expectancy, level of education and level of life standard.

Although the human security concept was often disputed and seen as „artificial hybrid" of specific components of other security concepts, it came across many positive critics coming from scientific institutions, governments, non-governmental and inter-governmental organizations, and countries that practically implement it.[15] Its constructivism, humane idea and practical dimension are indisputable. Democratic countries are exercising the United Nations law that protects human security.

Societal Security Concept

Societal security concept focuses on protection of society and social groups, i.e. all human communities characterized by common identity, values and interests. [16]

It is based on "shortcomings and vagueness" of the national security concept, which did not pay much attention to *non-state actors*. It has been forgotten that numerous threats to national security were at the same time threats to society. On the

13 Bajagić, M.: *Osnovi bezbednosti*, Kriminalističko-policijska akademija, Beograd, 2007, pp. 64–66; United Nations Development Program, *Human Development Report*, Oxford University Press, New York, 1994, pp. 25–33.

14 *Indikatori ljudske bezbednosti u Srbiji – Izveštaj za 2004*, Fakultet civilne odbrane, Beograd, 2005, pp. 11–12.

15 See – Đorđević, I.: Realizacija koncepta ljudske bezbednosti u praksi, *Ljudska bezbednost*, broj 1, Fakultet civilne odbrane, Beograd, 2004, pp. 115–122; Bähr, K.: *Redefining Security in a World of Global Threats – An Outline of the Debate about Three Different Concepts: Traditional Security, Broadened Security and Human Security*, Heinrich Böll Foundation North America, Policy Paper 22, Washington, 2003, pp. 8–12.

16 *Identity* is the sameness of important, determining characteristics; it is a conscious or unconscious experience of essential identicality and continuity of self over time, regardless of its changes in different periods and under different circumstances. It is based on the observation of identicality and continuity of human existence in time and space and perception of the fact that other people perceive and recognize it. Trebješanin, Ž.: *Rečnik psihologije*, Stubovi kulture, Beograd, 2001, pp. 179, 226–227.

other hand, state security is inseparably linked to sovereignty, and societal security is linked to its identity. Survival of state is a question of sustaining the sovereignty, and survival (life) of society is a question of identity survival. When a state loses its sovereignty, it is no longer a state, and when a society loses its identity, it did not survive. Therefore, the identity has rightfully become a security issue, a high policy issue, around which the societal security concept was constructed.[17]

At the same time, „the parallel integration and fragmentation processes according to economic, regional, national and religious criteria, that are characteristic for modern world, indicate the need for paying greater attention to the societal security concept, and even its placement in the centre of security analyses, not only at ethnonational level, but at the global society level ".[18]

Therefore, societal security is security of human communities, that are determined by common identity (narrow definition), or national identity and unity (broader definition), because of which individuals and communities are endangered by other individuals and communities with different identity. At the same time, *endangerment of societal security is endangerment of identity* (for example, denial of the right to freedom of religion), *i.e. endangerment of life and security of individuals and communities because of their identity* (for example, discrimination, terrorism or war against members of other religion).

More specifically, "the societal security is the ability of a society to survive and maintain its essential character under the changing conditions and possible or existing threats. This implies sustainability of traditional forms of language, culture, forms of association, religious and national identities and customs, within acceptable conditions for development".[19] The criterion of identity does not have to be only nationality, but also religious, ethnic, racial origin, membership in social groups and classes, political orientation, geographic criteria etc. In recent time, the context of human and societal security has been dealing with the issues of security of sexual minorities, as well as gender and sex-related insecurity. This means that identities can be *traditional* and *newly constructed* (newly created), which points to the fact that the contents of societal security is variable.

The legal frame of societal security may be found in *the Universal Declaration of Human Rights:* everyone is entitled to freedom of thought, conscience and religion; this first includes freedom to change religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance; everyone has the right to freedom of opinion and expression, which includes the right to hold opinions without interference, as well as the right to seek, receive and impart information and ideas through any media and regardless of frontiers; everyone has the right to freedom of peaceful assembly and association; no one may be compelled to belong to an association (Articles 18–20). These norms have been incorporated into constitutions and legal systems of democratic countries, and are practically implemented within the contemporary national security concept.

Many theories have been linked to the societal security, such as biological, clash of civilizations, cultural imperialism, cultural predominance, new world order etc. It is also being brought in connection with numerous phenomena that endanger life of communities and groups, such as racism and xenophobia, ethnic and religious conflicts; demographic explosions and implosions; voluntary and forceful – legal

17 Weaver, O.: European Security Identities 2000, *European Security Identities* (eds. Burgess, P.; Tunander, O.), PRIO Report 2/2000, Oslo, pp. 29–55.

18 Baylis, J.: International and Global Security in the Post-Cold War Era, *The Globalization of World Politics* (eds. Baylis, J.; Smith, S.), Oxford Press, New York, 2001, pp. 253–276.

19 Møller, B.: Nacionalna, socijetalna i ljudska bezbednost – Opšta razmatranja sa prikazom balkanskog slučaja, *Ljudska bezbednost*, broj 1, Fakultet civilne odbrane, Beograd, 2003, p. 52.

and illegal migrations; "ethnic cleansing" and genocide; violent assimilation of minority indigenous population, migrants or national minorities; religious and ideological fanaticism and extremism; nationalist extremism and separatism; pretensions towards territories of other states; discrimination and violence towards sex, gender and sexual minorities etc.

One of the major issues of societal security is the flourishing of nationalist forces, which leads to divisions in ethnic, religious and cultural groups. If this issue results in violence or other forms of serious threats, then we have *a societal security dilemma* - "security of one group turns into threat to security of other group". The products of this situation are often ethnic cleansings and genocide. If this state results in fight for secession, it threats to grow into issue of political security of state system, or in other words, national security. Threats are greater in the so-called "babushka effect" situations (fragmentation of larger territorial and political units), which create tendencies towards greater fragmentation, even to creation of small political entities, that are difficult to sustain. Problems of division in one community often have the tendency of internationalization, especially when the oppressed and deprived ethnic groups seek for help and support from their "mother country" or the international community. This actualizes numerous unsolved territorial disputes, which may encourage wars of conquest.[20]

Problem of societal security is growing in Europe: nations no longer have the opportunity to seek from the countries to solve certain issues, which they no longer control, since they are under the jurisdiction of the European Union. Result of that are new security challenges and threats, which are focused on the identity. These are: the fear that the European future will become as European past, where integrations would be suppressed by re-nationalisation and balance of power; the fear from integrations and the need to defend national identity; globalization and immigrants as threat to national identity; ethnic conflicts that would lead to disintegration of Europe and issue of traditional state security. Therefore, today cultures can only be defended by culture. If it is considered that the identity was threatened by internationalization and Europeanization, the national expression must be strengthened. Thus, culture has become a security policy.[21]

CONCLUSION

It is beyond doubt that security is the basic need, interest and value of man, both as individual and community. Insufficient protection of people within the traditional national security concept, the break-down of real socialism in the world, the transition of social systems of real socialist countries and universalization of democratization, have caused the development of the so-called individual, human and societal security concepts in theory and practice of the post-Westphalian security.

Individual security is the certainty of fulfilment of needs of individual, achievement and protection of his personal values, and sense of personal security. It is the state of personal (physical, mental and health) integrity and material and existential (property, legal, economic and social) status of an individual and his family, in other words, safety of „identity and sovereignty of an individual". This state can be observed from at least two levels, including subjective absence of fear from threat, and as absence of objective – natural, social, technical and technological dangers. Personal security exists when life, physical integrity, dignity, health, political, social and economic status in a society, legal security, freedom of expression, thought and

20 *Ibidem*, pp. 54–55.
21 Weaver, O.: European Security Identities 2000, pp. 371–372, 384–385.

beliefs, as well as other relevant factors are protected to that extent that a human being can freely develop and express its personality.

The human security concept is directed towards protection of survival and dignity of people through *freedom from fear (violence)* and *freedom from deprivation (poverty),* in other words, towards protection of people from all possible forms of threats, above all threats to life, health, income, personal safety, and human dignity. Freedom from chronic threats to security, such as hunger, disease and oppression, as well as from sudden and hurtful disruptions in the pattern of daily life (in job, home or neighbourhood) is protected under the so-called *economic, environmental, health, food, educational, community, political, institutional, personal and collective security concepts*.

Finally, the societal security concept is directed towards the protection of life and quality of living of individuals and communities from threats that come from people (other individuals and communities), because of the differences between their identities. It is the security of human communities, determined by a common identity, because of which individuals and communities are endangered through discrimination, sex, gender and religious violence, hate crimes, genocide, wars etc. by other individuals and communities with different identity.

Unlike the traditional national security concept, in which the values and interests of state were protected mainly by military, police (secret and public police), judiciary, foreign policy and economic bodies, the contemporary security systems participate in more dedicated manner in securing the minimum life conditions and security of citizens. In this sense, the contemporary national security systems encompass subjects and functions of state and non-state, civil and military security sectors that protect social and state values and interests from military and non-military security challenges, risks and threats, including: the police, intelligence services, military, foreign affairs agencies, customs, inspection, prosecutor's office, court and penal and correctional institutions, parliament, government, head of the state, local community and local authorities, public services, enterprises and other organizations, non-governmental organizations, educational system, church and citizens. Furthermore, security of people is also protected within the international and global security concepts. Finally, human is no more just a passive subject protected by state bodies from various forms of threats, but active protector of his own, environmental and national security.

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EUROPEAN DEPRIVATION OF LIBERTY STANDARDS

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Abstract: *The right to liberty and security of person, proclaimed under Article 5 of the European Convention on Human Rights, guarantees that nobody will be arbitrarily deprived of liberty, while exceptions may be made only in specifically listed cases in which a physical person may be deprived of liberty in accordance with a legally regulated procedure. Since the European Court of Human Rights gives an autonomous meaning to the deprivation of liberty in its interpretation and especially in distinguishing between this notion and the restriction of the right to free movement, the temporal and spatial elements as well as the level of duress applied in the concrete case are taken into account. The starting point for distinguishing between these notions is the specific situation and all elements, such as the type, duration, consequences and ways of execution of the reviewed measure. It is very important that domestic courts, and especially those that decide in legal remedy procedures, dedicate appropriate attention to all aspects of lawfulness of the deprivation of liberty, because any exceptions and violations of this right are reviewed by the Constitutional Court of Serbia and, ultimately, the European Court of Human Rights.*

Keywords: deprivation of liberty, arrest, democratic society, European Convention on Human Rights, European Court of Human Rights, lawfulness, procedure, grounds for the deprivation of liberty.

INTRODUCTORY REMARKS

As a Council of Europe member-state, the Republic of Serbia has the obligation to harmonize its criminal legislation with the standards set under the European Convention for the Protection of Human Rights and Fundamental Freedoms[1] (hereinafter referred to as: the Convention). This obligation is even more important if we know that the protection of fundamental rights and freedoms is realized through the effective judicial control carried out by the European Court of Human Rights (hereinafter referred to as: the ECHR). Therefore, it is rightfully stressed that fundamental freedoms and human rights constitute the applicable law in Europe.[2]

Although it is not dedicated strictly to criminal matters, the European Convention on Human Rights has completely altered the perspective of the European

1 The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed at a ceremony in Rome on November 4, 1950 and took effect on September 3, 1953. At its December 26, 2003 session, the Assembly of Serbia and Montenegro adopted the Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms with its Additional Protocols (Official Gazette of Serbia and Montenegro, No. 9/03).

2 F. Sudre, *La Convention européenne des droits de l'homme*, Quatrième édition corrigée, Presses Universitaires de France, Paris, 1997, 3, 7.

criminal law area. The case law of the Strasbourg-based Court has had the crucial influence, because it helps harmonize legal solutions in the field of criminal procedure law in two ways. If a state is condemned for violating fundamental rights and freedoms, the ECHR's direct influence is reflected in the pointing to the weaknesses of the national criminal procedure, which, indirectly, builds the concept of the European criminal procedure[3] based on the fair process model.[4]

The right to liberty and security of person, proclaimed under Article 5 paragraph 1 of the Convention, guarantees that nobody will be deprived of liberty arbitrarily, and, under the case law of the European Court of Human Rights,[5] the term liberty has conventional meaning, i.e. physical liberty of a person. Exceptions from the right to liberty and security may be made only in specifically listed cases in which a physical person may be deprived of liberty in accordance with a legally regulated procedure (Article 5 paragraph 1 *in fine* of the Convention). The way in which this provision is edited points to the conclusion that the existing list of deprivation of liberty cases is exhaustive and that it could not be expanded.[6] In addition to this, the conditions and list of specified cases must be interpreted restrictively.[7] These are the following deprivation of liberty cases: on the basis of conviction by a competent court (Article 5 paragraph 1 item a) of the Convention); due to the non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law (Article 5 paragraph 1 item b) of the Convention); for the purpose of imposing detention (Article 5 paragraph 1 item c) of the Convention); for the purpose of educational supervision of a minor or for the purpose of bringing him/her before the competent legal authority (Article 5 paragraph 1 item d) of the Convention); for the purpose of preventing the spreading of infectious diseases, or of persons of unsound mind, alcoholics or drug addicts, or vagrants (Article 5 paragraph 1 item e) of the Convention); for the purpose of preventing a person from effecting an unauthorized entry into the country or deprivation of liberty of a person against whom action is being taken with a view to deportation or extradition (Article 5 paragraph 1 item f) of the Convention).

Theory has observed that the redactors of Article 5 of the Convention have mostly focused on the right to liberty, while the right to security is mentioned only in the first sentence of paragraph 1 of the above mentioned provision.[8] Furthermore, in its case law, the European Court of Human Rights has focused almost exclusively on the right to liberty, although according to the understanding of the European Commission of Human Rights (hereinafter referred to as: the Commission),[9] and the Court itself,[10] the terms liberty and security represent a whole and must be interpreted as physical liberty and physical security. Ac-

3 M. Delmas-Marty, *Introduction*, *in* M. Delmas-Marty (sous la direction de), *Procédures pénales d'Europe (Allemagne, Angleterre et pays de Galles, Belgique, France, Italie)*, Presses Universitaires de France, Paris, 1995, 28-30.

4 For further reading, see: G. Ilić, *Uticaj prakse Evropskog suda za ljudska prava na harmonizaciju odredaba krivičnog procesnog zakonodavstva*, *in* Primena međunarodnog krivičnog prava u nacionalnim zakonodavstvima, Belgrade, 2005, 263-275.

5 ECHR, July 1, 1961, *Lawless v. Ireland*, A series, nº 3, § 14; ECHR, June 8, 1976, *Engel et al. v. Netherlands*, A series, nº 22, § 58; ECHR, October 24, 1979, *Winterwerp v. Netherlands*, A series, nº 33, § 37; ECHR, November 6, 1980, *Guzzardi v. Italy*, A series, nº 39, § 92.

6 ECHR, June 8, 1976, *Engel et al. v. Netherlands*, A series, nº 22, § 57.

7 ECHR, October 19, 2000, *Wloch v. Poland*, Recueil 2000-XI, § 108.

8 J.-F. Renucci, *Droit européen des droits de l'homme*, 3e édition, L.G.D.J., Paris, 2002, 180; J. De Meyer, *Article 5 § 1*, *in* L.-E. Pettiti, E. Decaux, P.-H. Imbert (sous la direction de), *La Convention européenne des droits de l'homme Commentaire article par article*, 2e édition, Economica, Paris, 1999, 190; J. Pradel, G. Corstens, *Droit pénal européen*, 2e édition, Dalloz, Paris, 2002, 345; A. Jakšić, *Evropska konvencija o ljudskim pravima Komentar*, Centar za publikacije Pravnog fakulteta u Beogradu, Belgrade, 2006, 121, 122.

9 Human Rights Commission, July 16, 1976, *Adler and Bivas v. Germany*, 5573/72 and 5670/72; Human Rights Commission, October 9, 1984, *Dyer* v. *United Kingdom*, 10475/83.

10 ECHR, December 18, 1986, *Bozano v. France*, A series, nº 111, § 54.

cordingly, liberty referred to in Article 5 paragraph 1 of the Convention refers to the absence of arrest or deprivation of liberty, while security refers to the protection from any arbitrary infringement of this liberty.[11]

Before reviewing this issue in more detail, it is necessary to remove any dilemmas that might result from the fact that Article 5 of the Convention uses the terms *arrest* and *detention* in the English version, and *arrestation* and *détention* in the French version to denote different types of exception from the right to individual physical liberty. Unlike that, the Serbian translation uses the terms *hapšenje* and *lišenje slobode* (arrest and deprivation of liberty) which, according to some authors,[12] do not cover completely the field of protection offered by Article 5 of the Convention. Namely, an exception from the right to liberty may be a result of either the deprivation of liberty or holding in custody, where the latter should be understood as the defendant's stay at detention. However, in view of the fact that the current Serbian Criminal Procedure Code[13] (hereinafter referred to as: the CPC) envisions that other measures of procedural duress may be applied against a defendant during the procedure, like, for example, house arrest (Article 136 of the CPC), custody (Article 229 of the CPC) or the placement of a defendant with unsound mind into an appropriate health care institution or a room appropriate for his/her medical condition (Article 505 paragraph 3 of the CPC), the solution should be found in an essentially different determination of the terms *hapšenje* and *lišenje slobode*. In other words, *hapšenje* would correspond to the terms *arrest* and *arrestation*,[14] while the term *lišenje slobode* should be understood as a generic term with wide and narrow meanings. Interpreted narrowly, the term *lišenje slobode* would correspond to the terms *detention* and *détention*, and would denote custody, ban on leaving one's apartment, detention and any stay in an institution that can be described as detention. On the other hand, the wide interpretation of the term *lišenje slobode* would, in addition to all the above mentioned cases, also include arrest. This is the *ratio legis* of Article 2 item 23 of the Draft Criminal Procedure Code (hereinafter referred to as: the Draft CPC), where the deprivation of liberty means arrest, ban on leaving one's apartment, detention, stay in an institution that can be described as detention, and, finally, the criminal sanction of deprivation of liberty.

The notion of deprivation of liberty

One of the difficulties that come up in determining the notion of deprivation of liberty results from the need for distinguishing it from the restriction of the right to free movement, regulated under Article 2 of the 4th Protocol to the European Convention on Human Rights. According to the European Court of Human Rights,[15] these terms differ only according to their degree or intensity, rather than according to their nature or substance. Since the Court gives an autonomous meaning to the

11 On the importance of the right to security, see: J.-F. Renucci, *op. cit.*, 180.

12 See: A. Jakšić, *op. cit.*, 121.

13 Criminal Procedure Code (Official Gazette of the FR Yugoslavia, No. 70/2001 and 68/2002 and Official Gazette of the Republic of Serbia, No. 58/2004, 85/2005, 115/2005, 85/2005 – state law, 49/2007, 20/2009 – state law, 72/2009 and 76/2010).

14 This notion is used also in the case of European arrest warrants. It refers to a judicial decision adopted by one EU member-state for the purpose of deprivation of liberty and transfer of a requested person by another member-state, for the purpose of criminal prosecution or enforcement of a criminal sanction of deprivation of liberty or decision on the imposition of detention. See: B. Banović, *Evropski nalog za hapšenje*, *in* S. Bejatović (glavni redaktor), Krivično zakonodavstvo Srbije i standardi Evropske unije, Srpsko udruženje za krivičnopravnu teoriju i praksu, Intermex, Zlatibor – Belgrade, 2010, 256-265.

15 ECHR, November 6, 1980, *Guzzardi v. Italy*, A series, nº 39, § 93.

term deprivation of liberty in its interpretation and especially in distinguishing between this notion and the restriction of the right to free movement, the temporal and spatial elements as well as the level of duress applied in the concrete case are taken into account.[16] The starting point for distinguishing between these notions is the specific situation and all elements such as the type, duration, consequences and ways of execution of the reviewed measure.[17]

The deprivation of liberty indisputably represents a stay at a correctional institution, such as a prison, detention facility or another similar institution where a person's physical freedom of movement is restricted.[18] The fact that a person has voluntarily turned himself/herself in to the police, however, does not rule out the application of Article 5 of the Convention, because the right to liberty has such a great value in a "democratic society."[19] The notions of democratic society and the rule of law play the leading role in the interpretation of the European Convention on Human Rights and the Court sets no limitations to the interpretation of its provisions in order to promote these ideals. This gives the right to some authors to say that there is a creative tension,[20] between the democratic idea and human rights, which essentially means that a fair balance needs to be found between defending democratic institutions in the common interest and protecting individual rights.[21]

Although the forcible keeping in an unconfined area is in principle considered to represent a restriction of free movement,[22] rather than deprivation of liberty, there are exceptions from this rule. E.g., the forcible stay of a person at an almost completely unpopulated island for 16 months without a chance of making adequate social contacts, apart from the members of this person's family, has been assessed as the deprivation of liberty in the sense of Article 5 of the Convention.[23] Even if a person is kept excessively long at the airport transit zone and the judicial control of his/her request for refugee status is delayed, the case may turn from a restriction of free movement case into a deprivation of liberty case.[24] House arrest, which corresponds to the ban on leaving one's apartment referred to in Article 136 paragraph 1 of the CPC, does not, as a rule, represent the deprivation of liberty, but may get this character after the assessment of circumstances *in concreto*. If the court decides that this is a deprivation of liberty case, the violation of the European Convention on Human Rights will exist *ipso facto*, since house arrest cannot be found in the list of exceptions from the right to liberty referred to in Article 5 paragraph 1 of the Convention.[25] On the other hand, the obligation to wear an electronic bracelet, which in our criminal procedure may be imposed as an independent measure

16 S. Trechsel (*with the assistance of* S. J. Summers), *Human Rights in Criminal Proceedings*, Academy of European Law European University Institute, Oxford University Press, Oxford, 2005, 412. Instead of the degree of applied duress, Jakšić talks about the legal position of the person who is subjected to a measure. A. Jakšić, *op. cit.*, 123.

17 ECHR, June 8, 1976, *Engel et al. v. Netherlands*, A series, nº 22, § 59; ECHR, November 6, 1980, *Guzzardi v. Italy*, A series, nº 39, § 92; ECHR, June 25, 1996, *Amuur v. France*, § 42.

18 C. Ovey, R. C. A. White, *The European Convention on Human Rights*, Fourth Edition, Oxford University Press, Oxford, 2006, 123.

19 ECHR, June 18, 1971, *Wilde, Ooms and Versyp v. Belgium*, A series, § 65.

20 O. Jacot-Guillarmod, *Règles, méthodes et principes d'interprétation dans la jurisprudence de la Cour européenne des droits de l'homme*, *in*, L.-E. Pettiti, E. Decaux, P.-H. Imbert (sous la direction de), *La Convention européenne des droits de l'homme Commentaire article par article*, 2e édition, Economica, Paris, 1999, 57.

21 ECHR, November 29, 1988, *Brogan et al. v. United Kingdom,* A series, nº 145-B, § 48.

22 ECHR, December 18, 1986, *Bozano v. France*, A series, nº 111, § 54.

23 ECHR, November 6, 1980, *Guzzardi v. Italy*, A series, nº 39, § 91.

24 ECHR, June 25, 1996, *Amuur v. France*, Recueil-III, § 49.

25 ECHR, November 6, 1980, *Guzzardi v. Italy*, A series, nº 39, § 97-104. Thus, in the *Lavents v. Latvia* case of November 28, 2002, the ECHR determined that the 11-month house arrest represented the deprivation of liberty in the sense of Article 5 of the Convention, according to the stated: F. Lič, *Obraćanje Evropskom sudu za ljudska prava*, Knjiga 1, Beogradski centar za ljudska prava, OSCE Mission to Serbia, Belgrade, 2007, 222.

under Article 136 paragraph 11 of the CPC, would represent a restriction of the freedom of movement.[26]

Some of the previously presented cases confirm that frequently the duration of the restriction of liberty represents the decisive criterion for determining whether something belongs to the deprivation of liberty or restriction of the freedom of movement. The largest number of dilemmas in practice are caused by short-term exceptions from the right to liberty such as taking in (Article 135 of the CPC), and police custody of a suspect (Article 229 of the CPC) or persons found at the scene of a crime (Article 231 paragraph 1 of the CPC) etc. Although the previously mentioned cases are considered to be the deprivation of liberty cases, this should not be taken as a rule; instead, the key parameter for determining the character of a measure should be the reason why it is being taken.[27] In that sense, the measures of police control, such as the restriction of movement in a certain area for a necessary time period (Article 225 paragraph 2 of the CPC), do not belong to the field of protection provided by Article 5 of the Convention, and instead represent a restriction of the right to free movement.[28]

A person deprived of liberty without being taken to a judge, or kept in custody under a decision of a non-judicial body for the purpose of preventing activities that are detrimental to the maintenance of the public order and peace or security of the state, falls under the guarantees offered by Article 5 of the Convention.[29] An exception is possible only if the measures have been taken in accordance with the derogation clause referred to in Article 15 of the Convention.

In connection with this, one should also say that the deprivation of liberty under a judicial decision does not rule out the additional application of the "urgency" requirement, i.e. the judicial control of the deprivation of liberty in accordance with Article 5 paragraph 3 of the European Convention on Human Rights. It was due to such an omission that the Court has decided that rights referred to in Article 5 of the Convention have been violated in the Vrenčev v. Serbia case. Namely, it's not just that the defendant was not interrogated when the ruling on detention was issued or when the court decided on his complaint against the ruling on detention, but that he was taken to a judge after as many as twenty days and even then the judge was not to review the grounds for detention, but to hold a trial.[30] As a result of this decision, the Criminal Procedure Code was amended, or, more precisely, a provision was inserted saying that a decision on the imposition of detention shall be made by an investigative judge or panel upon interrogating the defendant (Article 142a paragraph 1 of the CPC). Since this legal formulation has led to some dilemmas regarding the subject matter of the interrogation in the practice of domestic courts, Article 212 paragraphs 1 and 2 of the Draft CPC says that the court shall decide on the imposition of detention and that the decision shall be made once the defendant is interrogated in connection with *the reasons for the imposition of detention*.

The placement of a minor at a child psychiatry ward at the request of the mother who had parental authority at the time is not tantamount to the deprivation of liberty in the sense of Article 5 of the Convention.[31] However, the placement of a minor at a punitive or correctional institution under a court decision or legal provision would

26 J.-F. Renucci, *op. cit.*, 181.
27 See: A. Jakšić, *op. cit.*, 124.
28 ECHR, February 22, 1994, *Raimondo v. Italy*, A series, nº 281-1, § 39.
29 ECHR, January 18, 1978, *Ireland v. United Kingdom*, A series, nº 25, §§ 194-196, 202-224.
30 ECHR, September 23, 2008, *Vrenčev v. Serbia*, § 81-84.
31 ECHR, November 20, 1988, *Nielsen v. Denmark*, A series, nº 144, § 64.

represent the deprivation of liberty in the sense of Article 5 of the Convention.[32] As for the members of armed forces, they are indisputably subjected to certain restrictions of the freedom of movement within military discipline. Therefore, Article 5 of the Convention may be applied if an imposed disciplinary sanction or measure had the character of deprivation of liberty in the sense of the above mentioned provision and if it represented an exception from the normal living conditions at armed forces.[33] Some authors believe that Article 5 of the Convention is very important for the position of missing persons and it should not be limited only to the cases of formal deprivation of liberty, because its scope would thus be unjustly narrowed.[34]

Lawfulness of the deprivation of liberty

The lawfulness of the deprivation of liberty in the sense of Article 5 paragraph 1 of the Convention is assessed in the light of two criteria; the first refers to a precise list of cases in which it is allowed and the second means that the deprivation of liberty was carried out within a legally prescribed procedure. The requirement for a lawful (*régulière*) deprivation of liberty imposes the obligation to observe the national and international material and procedural law that regulates the matter. If the national law is not in accordance with the fundamental principles of the European Convention on Human Rights, the deprivation of liberty is not regarded to be lawful in the sense of Article 5 of the Convention.[35] The lawfulness of the deprivation of liberty may also be assessed in the light of existence of a custom, so that practice based on a tested custom may constitute a basis for the persons who are convicted and sentenced in one state to serve the sentence in another state.[36]

In order for the deprivation of liberty to be lawful, it must take place in accordance with a procedure prescribed by law (*selon les voies légales*). This is the procedure defined in the national law, which must, among other things, offer guarantees from Article 6 of the Convention.[37] Therefore, the European Court of Human Rights has the competence to determine whether the national bodies have properly applied the national law in the deprivation of liberty procedure.[38] This competence is very limited, because the primary competence to assess the lawfulness of the deprivation of liberty belongs to national bodies, primarily courts, which interpret and apply the relevant legal norms.[39] As a result, the European Court of Human Rights comparatively rarely gets the opportunity to determine a violation of Article 5 of the Convention that results from the violation of the national law.[40] Even when it gets this opportunity, the Court rarely assesses whether the deprivation of liberty was in accordance with the provisions of the national legislation, except if the exact

32 See: K. Rid, *Evropska konvencija o ljudskim pravima – vodič za praktičare*, Knjiga 1, Beogradski centar za ljudska prava, Belgrade, 2007, 278, 279.
33 ECHR, June 8, 1976, *Engel et al. v. Netherlands*, A series, nº 22, §§ 18, 59, 63.
34 F. Sudre, *Droit international et européen des droits de l'homme*, 5e édition, Presses Universitaires de France, Paris, 2001, 217.
35 ECHR, October 24, 1979, *Winterwerp v. Netherlands*, A series, nº 33, § 45.
36 ECHR, June 26, 1992, *Drozd and Janousek v. France and Spain*, § 106.
37 ECHR, December 18, 1986, *Bozano v. France*, A series, nº 111, § 58.
38 Jakšić stresses that the application of the European Convention on Human Rights so far indicates that there is a trend of stricter control of the implementation of the applicable national law and any major violation of provisions of the national procedure results in the unlawfulness of deprivation of liberty in the sense of Article 5 of the Convention. A. Jakšić, *op. cit.*, 126.
39 F. Sudre, *Les libertés de la personne physique*, *in* F. Sudre, J.-P. Marguénaud, J. Andriantsimbazovina, A. Gouttenoire, M. Levinet, *Les grands arrêts de la Cour européenne des Droits de l'homme*, 2e édition, PUF, Paris, 2003, 137.
40 ECHR, September 27, 1990, *Wassink v. Netherlands*, A series, nº 185-A, § 27; ECHR, February 21, 1990, *Van der Leer v. Netherlands*, A series, nº 170, § 23; ECHR, September 23, 1998, *Steel et al. v. United Kingdom*, Recueil 1998-III, § 54.

description of the violation has been clearly stated in the appellate procedure before the domestic court.[41]

It needs to be said that the European Court of Human Rights has stepped up its control of lawfulness of the deprivation of liberty procedure by making a connection between this notion and the "quality of law." This refers to the requirement to make the national law sufficiently accessible and precise in order to avoid any danger from arbitrary actions.[42] Therefore, in a number of its decisions the Court took the position that the provisions of written and unwritten law must be sufficiently precise to make it possible for citizens to foresee the consequences of certain activities to a reasonable degree, in view of the circumstances of the case.[43]

One of the important elements of the lawful deprivation of liberty is the record of persons deprived of liberty, which must contain the date, hour and place of the deprivation of liberty, reasons that justify the taking of this measure and data on the responsible person who has made such a decision.[44] In addition to this, the record must make it possible to see at any given moment where the person deprived of liberty is.

CONCLUDING REMARKS

The right to liberty and security has a special importance in a democratic society that rests on the rule of law, which, among other things, includes the existence of a judicial system which offers effective protection in case of the violation of the right to liberty and security. The rule of law also includes the possibility of making an exception from the right to liberty and security, and the person deprived of liberty must have appropriate guarantees for the protection of his/her right.

If the implementation of the applicable legal provisions in Serbia is viewed in the light of the presented European deprivation of liberty standards, it may be said that the case law of domestic courts in principle follows the requirements from Article 5 of the European Convention on Human Rights. Namely, the courts stand on the position that an unlawful deprivation of liberty by an official person can be a result of the lack of legal basis for the deprivation of liberty or of the unlawfulness of the deprivation of liberty.[45] However, domestic courts frequently make decisions that use general terms to "justify" exceptions from the right to liberty,[46] which can hardly be assessed as being in accordance with the deprivation of liberty standards set out in Article 5 of the European Convention on Human Rights. For example, the courts hold different positions regarding the possibility of applying the grounds for detention referred to in Article 142 paragraph 1 items 5 and 6 of the CPC.[47] Although detention may be ordered after the completion of the first instance criminal procedure in case of existence of especially difficult circumstances of the crime, on condition that *a sentence of five or more years of prison has been imposed* in the first instance judgment (Article 142 paragraph 1 item 6 of the CPC), there is a position in the case law that after the imposition of a *sentence of less than five years of prison* detention may be

41 K. Rid, *op. cit.*, 282, 283.
42 C. Ovey, R. C. A. White, *op. cit.*, 128.
43 ECHR, June 25, 1996, *Amuur v. France*, Recueil 1996-III, § 50; ECHR, March 6, 2001, *Dougoz v. Greece*, Application, nº 40907/98, § 57.
44 ECHR, February 27, 2001, *Çiçek v. Turkey*, quoted according to: J. Pradel, G. Corstens, G., *op. cit.*, 349.
45 Belgrade District Court, Kž. 869/04 of March 31, 2004, quoted according to: I. Simić, A. Trešnjev, *Zbirka sudskih odluka iz krivičnopravne materije – 500 odluka* -, šesta knjiga, Belgrade, 2005, 76.
46 A. Jakšić, *op. cit.*, 135.
47 M. Majić, see: http://misamajic.blogspot.com/2011/02/142-1-5-6.html (available February 20, 2011).

imposed if especially difficult circumstances of the crime are referred to. As the last, but not the least, we will mention the Matijašević v. Serbia case,[48] in which a decision to extend the detention was supported by the claim that the defendant had "committed the crimes he was charged with," and this mistake was not corrected even by the Supreme Court of Serbia in the appellate procedure. The defendant was thus not just kept in detention, but also declared guilty even before being convicted by a final judgment, which violated the presumption of innocence referred to in Article 6 paragraph 2 of the Convention. Therefore, the case law, and particularly the courts that decide in legal remedy procedures, must dedicate appropriate attention to *all* aspects of lawfulness of the deprivation of liberty, because any exception from and possible violation of this rule are reviewed by the Constitutional Court of Serbia and, ultimately, the European Court of Human Rights.

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48 ECHR, September 19, 2006, *Matijašević v. Serbia*, § 47-50.

THE ROLE OF THE POLICE IN TIMELY DETECTION AND PREVENTION OF TERRORISM

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Abstract: Modern security concepts, from the aspect of counterterrorist strategy, should enable fundamental protection of the citizens, legal subjects and states, nationally, regionally and globally. Within these frameworks, the position and role of the police is unavoidable, being an integral part of the national security system, in the efficient detection, monitoring, documentation and prevention of the advocates of terrorism, in the different stages of planning, organisation and carrying out of concrete acts of violence. Thereby, the police must be observed in the context of a coordinated and synchronised action with the other two segments of the national security system – the intelligence and the security counterintelligence segments. Particularly important is the part of the police responsible for the control and security of the state border (border police), then the criminal police and the special counterterrorist units (antiterrorist police). In practice, there must be qualitative feedback between the said structures of the police and the intelligence and security-counterintelligence segments, which would together be integrated into a Counterterrorist Centre, as a subsystem of the national security system. This is necessary in order to achieve a rapid, decisive and efficient response to terrorist threats, which the classical setup of the national security system cannot achieve, according to the opinion of the author. If the police are set up adequately in this subsystem they will play their role more efficiently in the field of timely detection and prevention of terrorism.

Key words: police, terrorism, security, system, counterterrorism, strategy, intelligence, counterintelligence, threat, protection, citizens, state.

The modern security concept implies structure and functionality of the integral parts of the system which will be able to respond most efficiently to the current risks and threats, among which is, certainly, terrorism. The police, as an integral part of the national security system, play particularly important role in this regard, together with the security-counterintelligence service and the intelligence service, which are also integral parts of this system. These three segments of the national security system should not be observed isolated, but as a functional whole, that is, as a subsystem of the national security system, the basic goal of which will be – timely detection, monitoring, documentation and prevention of terrorism. The realisation of this goal, in this contribution, will be elaborated through three levels – strategic, operational and tactical, whereby the emphasis will be on the operational and tactical levels, where the role of the police should be particularly prominent. In order to approach these issues, it is necessary to start in brief from the characteristics of the threat – terrorism in modern world.

1. Terrorism – a global phenomenon and a concrete criminal offence

Terrorism is an extreme phenomenon in the sphere of social pathology, as it is a systematic use of violence by individuals, groups and organisations, which is politically motivated and aimed at realising certain political goals. Its roots lie in political, social, ideological, ethnic, religious and cultural discrepancies existing in given states and regions. In recent history, which means from the second half of 18th century until present day, terrorism has been encountered through diverse forms and with different intensity of the violence applied, from the "revolutionary terror" during the French Bourgeois Revolution to the massive attacks on unselective targets in the first decade of the 21st century. Terrorism crossed local and state borders a long time ago, gaining an international dimension, and is rightfully called a global phenomenon.

With a view to seriously get to the heart of the nature of terrorism, a multidisciplinary approach is required in the study of given conflicts from historical, political, sociological, security, criminal-legal and criminological aspects. Thus, it may be possible to detect and establish the regularities of the emergence of the conflicts and tendencies on a given territory and in a given time period. On that basis, it is possible to set seriously founded hypotheses with regard to the emergence of concrete forms of illegal terrorist organisation and activity, with an assessment about the impact and consequences nationally, regionally and worldwide.

As a matter of fact, this concerns the need for strategic (intelligence) analyses in view of terrorism, in particular when conflict areas are in question that cover the territories of two or more states and threaten to have a destabilising effect over a longer period of time. In this sense, the author of this article, in one of his appearances in 2005, at a scholarly symposium[1], advocated to set up multidisciplinary research groups composed of scholars and experts in given conflict areas covering one or several states, which would work continuously and create joint information database for the said issue.

From a criminal-legal aspect, terrorism is envisaged in the criminal codes of modern states mainly as a criminal offence in the chapter "Criminal offences against the constitutional order and security" and in the chapter "Criminal offences against humanity and international law". The area of criminal liability covers not only the very execution actions, but also the actions of preparation as well as rendering assistance to the perpetrator of the offence following its commitment (accessory), which is particularly important from the aspect of the present topic.

For instance, in the Criminal Code of RM, Article 313, criminally liable is a person who, "with the intention of endangering the constitutional order or the security of the Republic of Macedonia, causes or seriously threatens to cause an explosion, fire, flood, or some other generally dangerous act or act of violence, creating a sense of insecurity or fear among the citizens.

In view of the preparatory actions, Article 18 paragraph 3 of the Criminal Code of RM notes that "preparation consists of procurement or adaptation of means for the commitment of a criminal offence; removing hindrances for committing the criminal offence; making agreements, planning or organising together with other perpetrators of a criminal offence; as well as other activities with which conditions are created for direct commitment of the criminal offence, and which do not represent an action of commitment. "

Article 325 of the Criminal Code of RM sanctions the hiding and abetting of

1 See: Tome Batkovski, "Criminal aspects in detection, clearing up and prevention of terrorism in the stage of preparation of the criminal offence", Collection of works "Criminology in Theory and Practice", High School for Internal Affairs, Banja Luka, 2005, pp.69-78.

perpetrator(s) of the offence of "terrorism", whereby it specifies the actions: "providing shelter, food, money or other means, maintaining contact, taking actions for the prevention of his discovery or capture, or in some other way providing assistance."

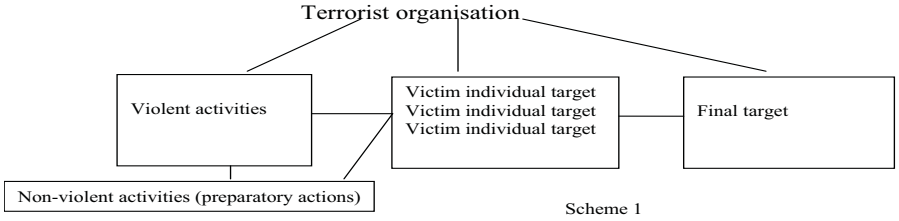
The Criminal Code of RM provides for separate criminal offence "international terrorism" (Article 419) included in the chapter "Criminal offences against humanity and international law". This criminal offence would be committed by any person who kidnaps a person or commits some other act of violence, causes an explosion or fire, or with some other generally dangerous action or by generally dangerous means causes danger to the life of people and to the property to a significant value, with the intention of causing a detriment to a foreign state or some international organisation".

The area of criminal liability includes the very formation of an illegal organisation with a view to committing criminal offences directed at threatening the constitutional order and security of the state, and thereby carrying out terrorism. Thus, the illegal association is sanctioned in the Criminal Code of RM in Article 324 as "Association for hostile activity".

The area of criminal liability of the perpetrators of the offence "terrorism" is extremely important for the operation of the police, that is, it is an area of their direct conflict with the perpetrators of terrorist acts, and thereby it is their area of legal liability.

2. Technique and technology of terrorist acts

A vast majority of terrorist acts in modern world is the product of the activity of illegal groups and organisations operating nationally, regionally and globally. Their programme basis consists of extremist political, social, ethnic, religious and ideological stances, the realisation of which they expect to take place through systematic application of violence against selective and unselective targets. Each terrorist group or organisation sets final political goals in front of its members and sympathisers, which should be realised through a number of systematically orchestrated and perpetrated individual acts of violence as part of the phased targets. That means that the final act of violence is only the peak of the previously completed host of activities in the field of programme, organisation, finances, propaganda, logistic, and training. In this sense, there may be a division made of the activities of illegal organisations (groups and organisations) using the terrorist method of violent and non-violent activities.



Scheme 1

Violent activities include the application of a means of attack (weapons, explosive device…) against the victim – the target of attack (selective or non-selective) with a view to physically liquidating him or seriously injuring him.

Non-violent activities include the taking of a decision on carrying out an attack on certain target (selective or non-selective), determination of an organiser or com-

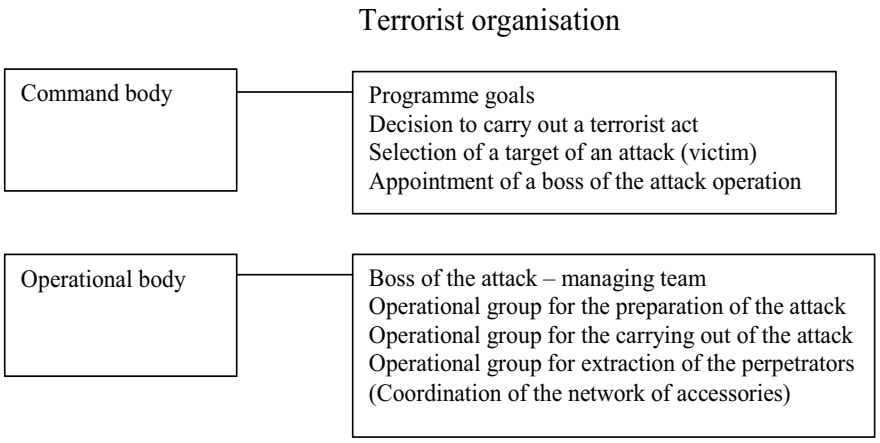
mand staff for the realisation of the terrorist act with special teams for the execution of the preparatory activities and a team for direct execution of the act of violence (direct executors) and a team for acceptance of the direct executors after the commitment of the offence and providing them with shelter (hiding).

Non-violent activities of illegal organisations with regard to violent ones are certainly much more numerous and take place totally undercover, and the following may be noted:

- collection of data and information on the target of attack;
- collection of data and information on the protection of the target of attack;
- selection of the means for carrying out the attack;
- procurement and storage of the means of attack (weapons, ammunition, explosive devices…);
- training of the persons – direct executors;
- camouflaged accommodation of the persons – direct executors during training and immediately prior to the commission of the offence (safe houses);
- procurement and usage of communication means and determination of ciphers and codes;
- making a detailed plan for arrival on the spot where the offence is to be committed specifically establishing the tasks of each executor individually;
- detailed plan for extraction of the executors following the commission of the action with tasks for the members of the logistics team;
- procurement of camouflaged means of transportation that will be used by the members of the illegal association;
- provision of funds;
- preparation of forged documents for the executors of the offence;
- detailed plan of the network of associates and their use after the perpetration of the offence.[2]

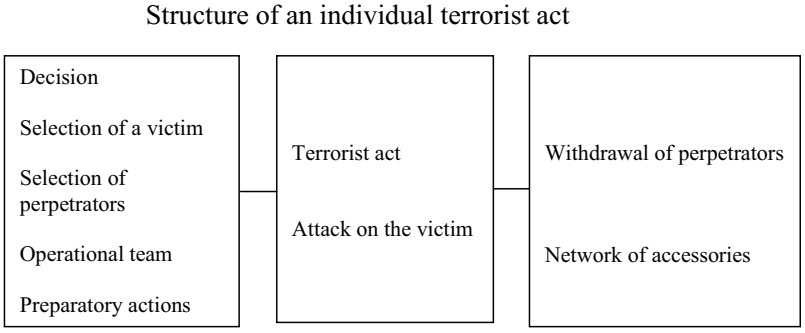
The organisational structure of illegal associations, in particular organisations, implies that the programme determinations and decisions for carrying out concrete terrorist acts are within the domain of the leadership (command, direction, administration…), while the realisation is left to the operational part and the special "striking and logistic groups", which are trained for certain illegal activities – collection of information on the facilities that are target of attack; procurement and storage of weapons, ammunition and explosive devices; forgery of documents; illegal crossing of the state border; weapons and explosives handling; instructions and training; kidnappings, finding and maintenance of illegal apartments; procurement of funds… Thereby, it is understandable that the command cadre of terrorist organisations is deep underground and is difficult to be accessed by the police and the Security and Counterintelligence Service, while the members of the operational part, naturally, expose themselves to a big risk of being uncovered, that is, of realising "hot contact" with police officers and inspectors of the security service.

2 M.Mijalkovski names non-violent activities as "non-lethal" and violent ones as "lethal", stating that 1% of the activities of terrorist groups and organisations are "lethal", while 99% are "non-lethal". See: M.Mijalkovski, "Terrorism and organised crime", FB, Belgrade, 2010.



Scheme 2

The organisational structure of the terrorist association should enable, first, efficient realisation of the goals set through direct carrying out of acts of violence and, second, a high level of protection of its own members and activities against detection by the intelligence service, security and counterintelligence service and the police.



Scheme 3

Terrorist associations make efforts to ensure that the final acts of violence, that is, the attack on the victim, should be surprising and spectacular, whereby the effect in the wider environment would be stronger and longer, and the humiliation of the legal authorities of government maximum. The latest means of mass destruction, ranging from nuclear to chemical and biological ones that may be easily accessible to terrorist associations additionally increase the danger of their unscrupulous application.

3. The broader security zone of terrorism and the area of criminal liability

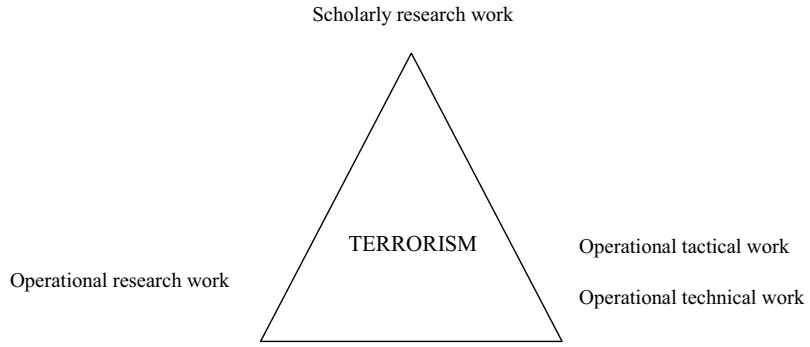
The thorough approach to treating terrorism requires a comprehensive study of this complex security phenomenon in the wider range of social conflicts as sources of extremist activity to the formation and illegal activity of illegal associations. In this direction, it is clear that terrorism may be located in a broad security zone, on

the one hand, and, on the other hand, in a narrower area in which extremist activities interfere into the area of criminal liability. That may be achieved only if there is a creative back link among scholarly research on terrorism, operational study and direct operational-tactical and operational-technical activity in its prevention.

Operational research work should rely on the results of the scholarly research process and be brought closer to the phenomenology of conflicts that may lead most rapidly to the generation of extremist forms of organisation and activity, including terrorist ones within a period on a given territory. More specifically, operational research work consists of the application of methods that will result in the collection of valid data about the terrorism-related criminogenic areas and about the potential perpetrators of the criminal offence of terrorism. From a criminological point of view that means to come to reasonable doubts that some illegal associations and individuals are connected with preparatory activities for carrying out terrorist acts.

The third stage, operational-tactical and operational-technical work, which is logically attached to operational research work, should lead to the establishment of valid facts that will jointly build reasonable doubt that certain individuals and illegal associations take part in organising, planning and preparing a direct terrorist act and in concrete procurement of means for the commitment or adaptation of means for the commitment of this violent criminal offence.

These three stages should not be observed isolated and mechanically, but from the aspect of their dialectical connection and interdependence.



Scheme 4

What logically arises from this approach to the treatment of terrorism is the need to form a stronger counterterrorist subsystem within the national security system, which would integrate the intelligence, security-counterintelligence and police components.

4. The police in a counterterrorist subsystem[3]

Given the presented relevant characteristics of terrorism as a global phenomenon and the technique and technology of carrying out terrorist acts, the national security system should be efficiently positioned in disabling and eliminating the relevant elements that the advocates of terrorism wish to accomplish, namely:

3 In this part the author, in addition to the theoretical foundation related to the terrorism issue, also uses rich knowledge from his direct experience working in the intelligence and security-counterintelligence sphere.

- to prevent the element of surprise;
- to prevent the carrying out of the final terrorist act in the preparation stage;
- to document the preparatory acts by providing valid facts (legally relevant facts) that will serve for the processing of the perpetrators (criminal prosecution); and
- if the terrorist act is carried out, to take rapid action for the purposes of locating the perpetrators and depriving them of their liberty or liquidating them physically if they give active armed resistance.

It is clear that the realisation of such complex and responsible tasks before the national security system logically belongs to realm of its segments tasked with intelligence, security-counterintelligence and police activity. Thereby, it must be stressed that these segments of the security system should have the initiative in the conflict with terrorist associations, and by no means to find themselves in a passive situation and only respond to the violence manifested.

Here the police should play a very important role first of all with regard to the execution of its tasks in view of the zone of criminal liability in which the members of terrorist organisation enter with their illegal activity. I would in particular emphasise the role of the border, criminal and counterterrorist police, which should be most closely networked into the counterterrorist subsystem.

Through the efficient control of the national border and the persons crossing it, the border police contribute to the prevention of the element of "surprise" timely disabling the frequency of persons involved in terrorist activity. Concomitantly, should there be finalisation of the act of violence the border police should prevent the perpetrators from leaving the national border.

The criminal police have huge contribution to the timely detection of preparatory actions for the terrorist act and provision of legally relevant facts necessary for the processing of the perpetrators. It concerns a wide spectrum of activities, ranging from detection of smuggling and illicit trade of weapons, ammunition, explosives and explosive devices, radioactive materials and other means of attack, through money laundering, to detection of clandestine caches for diverse illegal material and safe houses. This area also encompasses the identification of the links between criminal associations from the field of organised crime and terrorist associations, in the very realisation of preparatory actions. Namely, criminal associations already have illegal infrastructure for committing different criminal offences, so they make it available to terrorist associations, with some mutual interest, of course.

Concerning the role of counterterrorist units, it suffices to mention that they must be prepared (tactically and methodically) and properly armed at any moment, in order to be able to eliminate efficiently the armed segments of the terrorist association within the shortest time possible, optimally avoiding unnecessary losses within their ranks and among the citizens.

In the wider sense, the role of the financial police, the directorate for the prevention of money laundering and the customs service should certainly be emphasised.

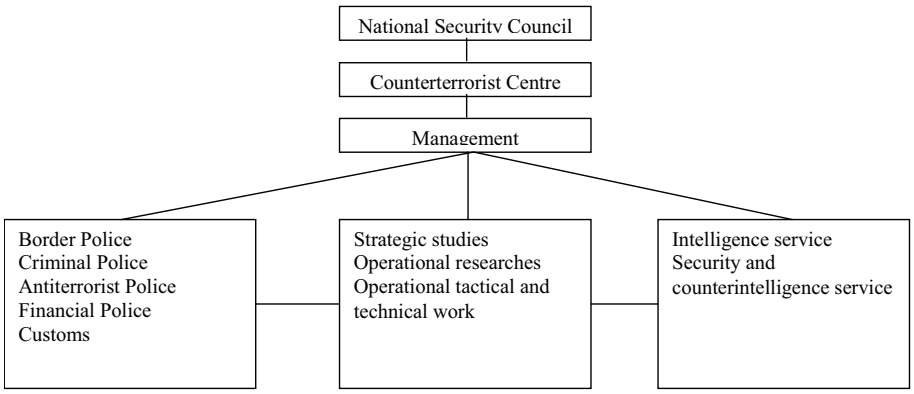
All the said activities of the police are certainly within their professional sphere of activity. However, in the context of the counterterrorist setup and the meeting of the principles of timeliness and efficacy, they should be networked into the counterterrorist subsystem. That means that there should be not just simple cooperation between the police and the security-counterintelligence and intelligence segments, but also a high level of joint planning, organisation, coordination and synchronisation of the activities. Experiences arising from a lot of terrorist acts carried out worldwide show that major failures, mistakes and lack of coordination have occurred in this respect. For instance, most often there has been an untimely sharing

of data on persons and activities of security concern; untimely acting upon the data obtained; misjudgement of security situations; unfair rivalry between the police, intelligence and security-counterintelligence segments… In this sense, as an illustration, after the most recent terrorist act at the Domodedovo Airport in Moscow (January 2011, 35 killed and 150 injured citizens), according to open sources, there have been mutual accusations among the members of the transport security, the security service at the airport and the FSB over whose mistake it was that resulted in the failure to prevent the perpetrators of the terrorist act, although prior to that the competent services had available information and an announcement that one of the airports in the capital of Russia would be attacked.

The counterterrorist subsystem, within the frameworks of the national security system, should operationalise the strategic research, operational research and operational tactical and technical activities in the field of timely detection and prevention of terrorism. Within these frameworks the proactive role of the police will be possible to be realised to the maximum.

Namely, the so far practice in the functioning of the national security systems has demonstrated that they are rather slow (inert) when they should respond to serious threats that are characterised with the element of surprise, such as terrorism. Therefore, the author believes that a counterterrorist subsystem should be set up within the frameworks of the national security system, in order to enable a rapid and efficient response to terrorist threats, with minimum consequences upon the lives of citizens and the overall security situation in the state.

The schematic diagram of the antiterrorist subsystem would be as follows:



Scheme 5

As seen from the scheme, the Counterterrorist Centre would have its own managing body (management), composed of members of the segments participating in the subsystem, including the police. Vertically, the Centre would be connected and subordinated to the National Security Council, and would act upon its requirements and be answerable to it for the tasks performed.

The structure of the Centre includes special departments for strategic researches, operational researches and operational tactical and technical work, in which the police would also have its permanent representatives.

The Counterterrorist Centre would have its own information base, specified for the strategic and operational research and for operational tactical and technical work. The information base will have to be timely updated and available to the

users, so that not a single segment of this subsystem would be in a situation of information deficit. The networking of the data, along with the application of the analytical-synthetic method in their processing, is a certain foundation for the timely taking of qualitative decisions of the counterterrorist management, composed of top experts of the segments comprising this subsystem, including the police ones.

The sphere of work of the Counterterrorist Centre would include, on the one hand, the adoption of a counterterrorist strategy, taken from the aspect of protecting the vital state interests, and, on the other hand, planning, organisation, and realisation of a concrete counterterrorist activity in the operational field. Such a setup would enable to realise to the maximum the principles of integrality, timeliness and efficacy in the fight against terrorism, as one of the basic tasks of modern security concept.

POLICING AND THE RULE OF LAW – OSCE'S PERSPECTIVE

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Abstract: The rule of law is a hallmark of a modern democracy. The police are the foundation of the rule of law and play a vital role in establishing it. The police can support the rule of law only by being accountable for their actions, adhering to internationally recognized standards, and demonstrating respect for human rights.

The rule of law presumes that the police should serve the citizen and remain free from the influence of the political establishment. It creates the requirement for transition from the concept of a "police force" to that of a "police service", which means a change in the philosophy and the culture of policing: from protecting the state to serving people.

The OSCE's involvement in policing started in the Balkans and focused on post-conflict restoration of the rule of law through rebuilding and reforming police forces.

The OSCE growing police-related activities in South-Eastern Europe resulted in establishment of the post of Senior Police Adviser (SPA) in the OSCE Secretariat. The activity of the SPA is supported by a team of police officers and civilian policing experts jointly referred to as the Strategic Police Matters Unit (SPMU). The SPMU was set up to improve the capacity of participating States to address threats posed by criminal activity and to assist them in upholding the rule of law.

In this paper, OSCE's police related activities will be analyzed trough the mandate and tasks of the Senior Police Adviser and Strategic Police Matters Unit. Also, the main areas of SPMU activities such as community policing, organized crime, as well as police training will be considered.

Key words: policing, rule of law, OSCE, strategic police matters unite, senior police adviser.

INTRODUCTION

The OSCE views security as comprehensive and takes action in three "dimensions": the military-political, the economic and environmental, and the human. It therefore addresses a wide range of security-related concerns, including arms control, confidence- and security-building measures, human rights, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.

The OSCE takes a broad approach to the military-political dimension of security, focusing on arms control, border management, combating terrorism, conflict prevention, military reform and policing. OSCE police operations are an integral part of the Organization's efforts in conflict prevention and post-conflict rehabilitation. The OSCE's police-related activities focus on challenges posed by trans-national and organized crime, by trafficking in drugs, arms and human beings, failure to uphold the rule of law and by human rights violations. Activities include, also, police education and training, community policing and administrative and structural reforms.

The OSCE is involved in policing mainly because it is an important factor in conflict rehabilitation. The reasons why the OSCE does policing are several. Firstly,

there is a clear and present threat that needs to be addressed and not ignored. Secondly, without law enforcement there is no comprehensive security and lastly, there will be no rule of law if there is no law enforcement. Also, policing can be seen as an important step in between preventing conflict and building democracy. The Istanbul Charter for European Security[1] signed in November 1999 laid the basis for OSCE police-related activities.[2]

Policing and the rule of law

The rule of law and a strong justice sector are fundamental to a well-functioning modern democracy. They are vital to providing a safe and secure environment, especially in countries in transition towards democracy and a free market economy. This basic security and stability is needed for countries to progress socially and economically.

Respect for human rights and fundamental freedoms, democracy, and the rule of law are at the core of the OSCE's comprehensive concept of security. Strong democratic institutions and the rule of law play an important role in preventing the emergence of threats to security and stability. Weak governance and a failure on the part of states to secure adequate and functioning democratic institutions that can promote stability, may in themselves constitute a fertile environment for a range of threats.[3]

The objective of establishing the rule of law requires not just law enforcement capacity and institution-building, but comparable and synchronized improvements across the entire criminal justice sector. The new paradigm further requires shifting priority attention to crime prevention rather than detection. To protect a person from becoming a victim of crime represents the ultimate effort to safeguard a basic human right.[4]

The police are the foundation of the rule of law and play a vital role in establishing it. The main purposes of the police in a democratic society governed by the rule of law are:

- to maintain public tranquillity and law and order in society;
- to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;
- to prevent and combat crime;
- to detect crime;
- to provide assistance and service functions to the public.[5]

The police can support the rule of law only by being accountable for their actions, adhering to internationally recognized standards, and demonstrating respect for human rights, especially the rights of minorities and vulnerable groups. Wher-

1 Organization for Security and Co-operation in Europe, *Charter for European Security*, SUM.DOC, Istanbul, November 1999. All OSCE document are available at http//www.osce.org

2 Ibid., para. 44.

3 OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, available on line at: http://www.osce.org/mc/17504

4 Organization for Security and Co-Operation in Europe, *Annual Report of the Secretary General on Police-Related Activities in 2005*, SEC.DOC/2/06, 2 November 2006, para. 1.7.

5 Council of Europe, Committee of Ministers, *Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics*, 19 September 2001, Section 1, Objectives of the Police, para. 1.

ever truly effective policing has been achieved, it is invariably based on a partnership with the public that is characterized by mutual trust and respect.[6]

The rule of law presumes that the police should serve the citizen and remain free from the influence of the political establishment. It creates the requirement for transition from the concept of a "police force" to that of a "police service", which means a ground-breaking change in the philosophy and the culture of policing: from protecting the state to serving the population. The need of such transition must be recognized and accepted by both the population and the political establishment.

The OSCE and policing

Co-operative security and good governance are two of the OSCE's main supporting pillars, and policing has a contribution to make to both. The *Charter for European Security* adopted by the Istanbul Summit Meeting (1999) represents the platform for the OSCE involvement in policing. It, in a way, offered the first vision of the OSCE's police-related activities, and was followed by a steadily growing number of Ministerial Council decisions[7] that aimed to put that vision to work. The *Charter* contains the commitment of the OSCE participating States to enhance the OSCE's 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:

- police monitoring, with the aim of preventing police from carrying out such activities as discrimination based on religious and ethnic identity;
- police training, which could include the following tasks, among others:
  - improving the operational and tactical capabilities of local police services and reforming paramilitary forces;
  - 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; and
- promoting respect for human rights and fundamental freedoms in general.[8]

The OSCE's involvement in policing started in the Balkans and focused on post-conflict restoration of the rule of law through rebuilding and ultimately reforming police forces. The situation was bad. There was a lack of authority, unknown number of weapons was in public hands, unemployment was high, and the economy was in decline. Corruption, a lack of trust in public institutions, and the rise of organized crime in collusion with political elites led to an increase in delinquency and insecurity, ultimately generating more political instability. In order to address these challenges, comprehensive chapters devoted to the reform and monitoring of the public security system, and particularly of the police forces, were included in the Dayton Peace Agreement, the Rambouillet Accords and the Ohrid Framework Agreement.

When the OSCE participating States decided to extend the Organization's participation in police development to the Southern Caucasus and Central Asia, the

6 *Annual Report of the Secretary General on Police-related Activities in 2005*, ibid., para. 5.9.
7 See: Annual Report of the Secretary General on Police-Related Activities in 2009, SEC.DOC/2/10 3 August 2010, APPENDIX 2: OSCE MC and PC Decisions and Action Plans with a Focus on Police-Related Activities, pp.104-107.
8 Organization for Security and Co-operation in Europe, *Charter for European Security*, SUM.DOC/1/99, Istanbul, November 1999, para. 44.

focus had to be changed and new approaches sought. In these regions, the OSCE thus had to focus on defusing internal tensions and preventing the flare-up of conflicts by promoting and supporting the gradual introduction of the principles of democratic policing.

The OSCE places particularly strong emphasis on the protection of human rights, which is truly a crosscutting issue for the Organization. Even the fight against organized crime does not relieve the police from the need to observe human rights. In order to facilitate access of the participating States, especially criminal justice system practitioners, to relevant internationally recognized standards, norms, and good practices, the OSCE has compiled the *Guidebook on Democratic Policing by the Senior Police Adviser to the OSCE Secretary General*.[9] The *Guidebook* is designed to assist OSCE staff dealing with police and law enforcement issues as well as police practitioners and policy-makers working to develop and strengthen democratic policing. It is intended to serve as a reference to good policing practice and internationally adopted standards. The *Guidebook* articulates the objectives of democratic police services, the importance of their commitment to the rule of law, policing ethics and human rights standards, and the essential nature of the police's accountability to the law and the society they serve. Furthermore, the *Guidebook* elaborates on structural and managerial tools that are necessary for achieving and sustaining democratic models of policing. The document is open to the inclusion of newly adopted standards and future examples of good practice.

The role of the SPMU - mandate and tasks

In December 2001, the participating States of the OSCE declared their intention to strengthen police-related activities. The goal was to improve the protection of participating States against the emerging new risks and challenges posed by transnational and organized crime, arms, drugs and other forms of trafficking, the failure to uphold the rule of law, and human rights violations. So, the post of Senior Police Adviser (SPA) in the OSCE Secretariat in Vienna was established.[10] The activity of the SPA is supported by a team of police officers and civilian policing experts jointly referred to as the Strategic Police Matters Unit (SPMU).

The Strategic Police Matters Unit was established in 2002 within the office of the Secretary General in the Secretariat in Vienna. The Unit was set up to improve the capacity of participating States to address threats posed by criminal activity and to assist them in upholding the rule of law. The aim is to enhance key policing skills, including respect for human rights and fundamental freedoms.

The SPMU's primary role is to provide support in policing matters to the OSCE Secretary General, the Chairman-in-Office (CIO) and the OSCE field operations and to respond to requests from participating States by providing needs assessments, expert advice and on-site assistance on police-related activities.[11]

The SPMU's basic tasks include:

- increase and promote co-operation among participating States in countering new security challenges;

9 Guidebook on Democratic Policing by the Senior Adviser to the OSCE Secretary General, Vienna 2006, available online at: http://polis.osce.org/library/details?doc_id=2658.

10 Organization for Security and Co-operation in Europe, Permanent Council, Decision No. 448, *Establishment of the Seconded Post of Senior Police Adviser in the OSCE Secretariat,* PC.DEC/448, 4 December 2001.

11 The OSCE Strategic Police Matters Unit, Factsheet, pp.1, available at: www.osce.org/spmu

- provide advice or arrange for the provision of expert advice on requirements for effective policing;
- encourage the exchange of information among participating States regarding lessons learned and best policing practices.

The tasks of the SPA and the SPMU are defined in the growing list of decisions of the Ministerial Council and the Permanent Council and in OSCE Action plans.[12]

The SPMU supports policing in all OSCE participating States as part of the rule of law and fundamental democratic principles and, through assessment, expert advice and assistance, develops accountable policing services that protect and aid their citizens. The Unit has a network of police advisers in several OSCE missions or field operations. They frequently respond to requests from participating States for specific expert advice on policing and police-related activities. Its mission statement is to:

- Assist and advise the OSCE Secretary General and other departments within OSCE police activities.
- Provide assessment, training and onsite police expertise in the development and rehabilitation of police agencies that request assistance.
- Identify, recruit and maintain a consultant staff of police experts to facilitate the objectives of the Strategic Police Matters Unit.
- Establish and provide the benefits of an institutional memory collected during the course of the OSCE missions, projects and programmes.
- Support the OSCE in its mission of building democratic institutions, protecting human rights and combating transnational crime.

It all starts with a preliminary visit to where the mission will be operating in order to enable the host country to communicate what they believe are their needs and what should be achieved. This is followed by an assessment of the situation in the area before an assistance programme is developed.

The long-term goals of the SPMU aim to provide a democratic vision of policing for the whole OSCE region and to put that vision to work. Assistance to OSCE participating States in police capacity- and institution-building and improving police co-operation is placed in the broader perspective of strengthening national criminal justice systems. Implementation of this vision will help to create the competencies required to tackle new threats to stability and security, which include organized crime and terrorism.

The SPMU medium-term plan of action involves the provision of support in the development of baseline police capacities across the OSCE region. The aim is to help participating States to develop an institutional capacity that will improve their ability to comply with the requirements and obligations that they have accepted by ratifying fundamental international legal instruments. Collecting and disseminating good practices and guidelines to police agencies in the OSCE participating States is complemented by provision of direct support to capacity- and institution-building in the core elements of police organizations.

12 See: Annual Report of the Secretary General on Police-Related Activities in 2009, ibid., pp.104-107.

Main areas of SPMU activity

Community Policing

The introduction of community policing methods has been a core element of the OSCE's strategy since the start of its involvement in police development. The police have the responsibility not only to detect crime, but also to prevent it. Successful crime prevention greatly contributes to the reduction of the fear of crime and can improve the quality of life in a community. Crime prevention requires shared commitment and ownership of the police and the public as well as sustained effort. Establishing trusting relationships with all members of society is a top priority in democratic policing. With its focus on establishing police-public partnerships, where the entire police organization, all government agencies and all segments of the community (including minority and vulnerable groups) are actively co-operating in problem-solving, the concept of community policing has emerged as a major strategic pillar of policing practices.

Large projects on community policing, including projects with a particular focus on Roma and Sinti communities and other minority groups, have been implemented in South-Eastern Europe (Kosovo, Serbia, Montenegro, Republic of Macedonia, and Croatia). The concept of community policing has also been introduced in Central Asia and the Southern Caucasus (Kyrgyzstan, Georgia, Armenia, and Azerbaijan and presented in Kazakhstan).

A commitment to community policing is equivalent to a sweeping police reform that involves some very far-reaching changes. For one thing, it brings about a dramatic change in the structure and culture of the police: the service mentality. Beyond that, it includes setting up a human resource management system based on transparent recruitment, promotion on merit, and a career path protected from arbitrary re-assignment or dismissal. Last but not least, community policing includes the introduction of a system of public oversight of the police, starting from the local level.

Community policing is a complex, multi-faceted concept, and its implementation is inevitably a slow and contradictory process that should not be expected to show instant results. In early 2007, this complexity has led to the beginning of a policy debate within the OSCE regarding whether the OSCE should not limit its advocacy to the creation of police-public partnership, rather than the complete community policing "toolkit". [13]

Organized Crime

Organized crime presents a major non-military threat to security in the OSCE region that affects all of the OSCE participating States. It includes offences prominently recognized by the OSCE such as trafficking in human beings, sexual exploitation of children, drug trafficking, and others such as the smuggling of stolen vehicles or high-tariff goods, that enjoy less notoriety but are nevertheless tremendously damaging to societies and economies.

As a result of globalization and technological change, particularly in the area of communications, criminal activity increasingly transcends physical and political boundaries. Organized crime investigations now commonly have a significant transnational component. This makes the pursuit of targets, drugs, and criminal as-

13 K. Carty, *Strategic Police Matters - Addressing Threats to Security and Stability* available online at: http://www.core-hamburg.de/documents/yearbook/English/07/Carty_en.pdf

sets around the globe necessary. To address this threat, the Unit supports the OSCE field operations, participating States and specialized partner organizations that are engaging in anti-organized crime activities. The SPMU provides expertise, creates networks, shares information and promotes co-operation among OSCE participating States and Partners for Co-operation[14]. While each of the OSCE participating States will retain primary responsibility for fighting organized crime at the national level, its very nature demands these efforts to be combined in order to create a common law enforcement space.

The international community has developed powerful legal instruments to fight transnational organized crime. The first of them is the United Nations Convention against Transnational Organized Crime and its protocols. The Unit encourages participating States to implement the international legal conventions which they have ratified, in particular the UN Convention on Transnational Organized Crime. Thus, the SPMU regularly organizes international conferences and regional training courses to provide technical assistance to the participating States in this task. In addition to supporting the establishment of the necessary legal frameworks, the SPMU helps build the capacity of law enforcement agencies to co-operate on combating organized crime.

In this field, the SPMU co-operates closely with a number of international organizations, non-governmental organizations and the business sector.[15] The SPMU serves as the OSCE's central contact point on organized crime in the Secretariat and assists the Secretary General in co-coordinating the Organization's activities related to the fight against organized crime.

In recent years, production, distribution, and downloading of child pornography via the internet has become a growing problem that has been recognized by the OSCE. For several years, the SPMU, in close co-operation with the International Centre for Missing and Exploited Children[16], has been conducting activities aimed at increasing police capacity to investigate crimes involving the sexual exploitation of children. As the internet is a relatively new medium, law enforcement officials, prosecutors, and judges are faced with two major problems while investigating and prosecuting the production and distribution of child pornography: the lack of comprehensive international legislative strategy aimed at combating child pornography and the technical complexity of dealing with new technology.

Trafficking in illicit drugs

Trafficking in illicit drugs poses a serious threat to global security, both within and beyond the OSCE region. Associated violence and corruption threaten security, undermine good governance and the rule of law, and hinder the development of prosperous, democratic societies. In addition, criminal and terrorist networks frequently rely on funds generated by trafficking to finance their activities. Today, trafficking in narcotics and chemical precursors across Afghanistan's borders poses a particular threat, not only to the long-term security and stability of Afghanistan, but also the long-term security and stability of the entire OSCE region.

14 The OSCE maintains special relations with 12 countries, which are known as Partners for Co-operation. Six of them are in the Mediterranean region, and five are in Asia, in addition to Australia. See: http://www.osce.org/who/84

15 See: Annual Report of the Secretary General on Police-Related Activities in 2009,SEC.DOC/2/10, 3 August 2010, pp.21-22, available online at: http://www.osce.org/spmu/71045

16 The International Centre of Missing & Exploited Children (ICMEC) is leading a global movement to protect children from sexual exploitation and abduction. See more at: http://www.icmec.org/missingkids/servlet/PageServlet?LanguageCountry=en_X1&PageId=1222

Clearly, drug trafficking is a shared problem. It affects all OSCE participating States. Moreover, a shared problem brings with it a common and shared responsibility. It requires a shared response and a long-term commitment to finding a solution.

The SPMU addresses the threat posed by drug trafficking by working closely with the United Nations Office on Drugs and Crime (UNODC) to assist participating States in implementing the UN international anti-drug conventions. The SPMU also helps with information sharing and technical capacity-building.

The SPMU provides expertise to the OSCE field operations and thematic units[17] within the OSCE Secretariat to develop and evaluate project proposals and activities related to illicit drugs and the illicit manufacturing of drugs. The SPMU is also a strong supporter of international and regional organizations in their activities to combat illicit drug supply. In addition, the SPMU assists participating States in developing drug- demand reduction programmes and strategies.

The OSCE has been an international partner of the UN Paris Pact Initiative[18] since 2003. The Paris Pact consists of 55 countries, 49 of which are OSCE participating states. These states have committed themselves to increase action and support throughout the Central Asian region in combating the problem of Afghan heroin. The SPMU is the OSCE's Paris Pact "Focal Point".

The SPMU co-operates with the Paris Pact Initiative, which facilitates a consultative mechanism among all affected countries at expert and policy levels. One of its more important activities is supporting a field-based computerized system, known as ADAM (the Automated Donor Assistance Mechanism)[19]. ADAM co-ordinates all donor assistance in the region, including detailed inventories of training and equipment provided.

Police assistance programmes and Police Training

The Unit helps participating States share good policing practices. It also supports police capacity- and institution-building. Based on in-depth needs assessments in response to requests, the SPMU formulates police assistance programmes and projects. This work supports OSCE field operations.[20] The support of field operations also includes:

- assistance in the search and selection of new personnel;
- advice on the formulation and implementation of new projects; and
- support in extracting and sharing of lessons-learned.

Police training remains a key element in improving police services and making them more democratic, public-oriented, and professionally effective. Promoting professional police training is a core activity of the SPMU. Up-to-date and effective police training courses are the foundation of a good culture of policing in the

17 Units based in the Secretariat include: Action against Terrorism Unit (ATU), Conflict Prevention Centre (CPC), External Co-operation Section, Gender Section, Office of the Co-ordinator of OSCE Economic and Environmental Activities, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and the Strategic Police Matters Unit (SPMU), see at: http://www.osce.org/secretariat/35775

18 The Paris Pact was initiated by France in 2003 with a ministerial conference in Paris devoted to the "drug routes from Central Asia to Europe", and has become the main framework for exchanges and cooperation aimed at curbing heroin trafficking from Afghanistan. It brings together all the European countries and Russia, the United States, Canada and the Central Asia States neighbouring Afghanistan, and several international organizations (in particular the United Nations, Interpol, WCO, OSCE and FATF). See more at: https://www.paris-pact.net/index.php?action=cms_render&section=85&mm=mm3

19 See more at: https://www.paris-pact.net/index.php?action=home_page&section=43&mm=mm1

20 By the end of 2009, 15 out of 18 OSCE field operations undertook police-related activities, see at: http://www.osce.org/spmu/71045

OSCE region. The Unit facilitates this objective by providing forums in which experts share their experiences and ideas about best practices.

The SPMU provides police training experts to participating States that request support in their efforts to enhance their police training activities. The Unit also provides technical expertise related to evaluating project proposals that are developed by the OSCE field operations.

To maintain consistency throughout the police educational process, the SPMU facilitates the harmonization of training programmes targeting different categories of police staff. The SPMU focuses on enhancing training curriculums for new police recruits, which stress the need for providing basic police knowledge and skills. Human rights, democratic policing, police-public partnerships and modern interactive teaching techniques are emphasized.

The OSCE supports police training mostly through the activities of its field operations. Corresponding components in police assistance projects and programmes focus on the building of the capacities of national police training institutions and include renovation of police training facilities; provision of necessary training equipment, teaching aids, and literature; implementing a modern interactive training methodology; training local instructors; assisting in improving the management of the training process; and developing new training curricula.[21]

The SPMU has established working links with a number of police training associations and police training institutions, including CEPOL, the Association of European Police Colleges (AEPC), the International Training Centre (ITC), the International Law Enforcement Academy (ILEA), and national police academies and training centres in Germany, Switzerland, the Czech Republic, Russia, Romania, Estonia, and Slovenia. The key objective is to collectively try to find out which methods work well and which do not and to inform police training institutions in the OSCE region, thereby helping them to improve the quality of their training and consequently the level of professionalism of uniformed police who have the most contact with the public.

Policing OnLine Information System – POLIS

During the last decade, the OSCE has accumulated a wide range of knowledge and experience in the field of police and law enforcement related assistance. The lessons learned and examples of good practice gained from the OSCE field operations in the four South-Eastern European states of Croatia, Serbia, Montenegro and Republic of Macedonia need to be preserved, stored and shared so that institutional knowledge can further benefit the OSCE and its participating States.

The creation of a central repository for police-related knowledge has been one of main priorities of the SPMU's activities since 2003. On 24 November 2006, the OSCE Policing OnLine Information System, known as POLIS[22] was presented to the chiefs of police of the participating States and partners for co-operation at the OSCE Chiefs of Police Meeting. POLIS is maintained by staff of the Strategic Police Matters Unit.

The OSCE Policing OnLine Information System is a comprehensive, multi-lingual resource that consolidates all aspects of law enforcement activities within the OSCE area, including police assistance, training techniques and funding opportuni-

21 One new method of approaching the development of new training curricula, pioneered by the SPMU, is a twinning partnership. In a pilot project, such an arrangement was created between the Police College in Prague and the Centre for Induction Training in Baku, which proved very fruitful.
22 See: http://polis.osce.org.

ties. It is a common portal to serve a community of practitioners and policy-makers in storing and accessing the knowledge, best practices, and lessons learned assembled from the field operations of the OSCE and other international organizations.

The main objective of POLIS is to make this vast storehouse of information available to interested parties and create a virtual community of policing expert. POLIS assists police agencies in improving the effectiveness and efficiency of their services through the exchange of information. In addition, it contributes to improving international police cooperation by facilitating the sharing of knowledge, practices, and expertise among the international police community.

POLIS as a knowledge management tool created in response to the needs of the OSCE field operations staff involved in law enforcement/police related-activities provides:

- Information resources – a repository of information on all policing-related activities previously or presently being undertaken in OSCE field operations. It identifies lessons learned, good practice and external sources of specialized knowledge;
- Policing Experts Database – a database of international law enforcement experts available for short-term assignments, needs assessments, new mission start-up planning or inspections;
- Events Calendar – a section where all policing-related events, organized by the OSCE institutions and field operations are advertised, accompanied by relevant materials. The Events Calendar is closely interlinked with the Digital Library providing access to the related documents.

POLIS is an on-line resource centre for police and law enforcement officers, policy analysts, policy makers, evaluation experts, and donors in the field of policing and rule of law, helping them to plan reforms and access feedback on existing initiatives.

To better facilitate the sharing and exchanging of views and experiences on police-related matters among POLIS users, the SPMU has also begun developing new interactive features in POLIS, including online thematic portals[23] and online forums and conferences.

CONCLUSION

The OSCE operates on the premise that respect for human rights and fundamental freedoms, democracy and the rule of law, as well as an effective and accountable criminal justice system are fundamental to a well functioning modern democracy. Democratic policing, which serves the people rather than just the state and respects human rights, fundamental freedoms and the rule of law, is central to protecting life and property, detecting crime, preserving public order as well as preserving social stability during crises and emergencies, and supporting post-conflict reconstruction and rehabilitation.

In recognition of the importance of the rule of law and democratic policing, police-related activities have become a key component of the OSCE's post-conflict rehabilitation operations and have gained increasing relevance in the organization's democratization and rule of law activities in states of transition, as well as in the promotion of international co-operation in the fight against terrorism and organized crime.

The rule of law and a strong justice sector are fundamental to a well-functioning modern democracy. They are vital to providing a safe and secure environment, es-

23 Thematic portals are special pages that aggregate all information from the Digital Library, Events Calendar and offer some new features related to a given topic. They are designed to ease access to and save time for the visitors interested in these topics.

pecially in countries in transition towards democracy and a free market economy. Without this basic security and stability, countries cannot progress socially and economically, nor can they attract investors or properly protect their citizens.

The SPMU approach to supporting policing development should continue to stress "police serving people". Its focus should be regional while its actions should be local and pragmatic, emphasizing the development of basic policing skills. The Unit should focus on cultivating a fluid, flexible working style that allows it to foresee and respond rapidly to newly emerging needs and crises. Strategically, over the longer term, the SPMU should continue to emphasize the importance of co-operation and dialogue, both within the Organization and with external partners.

The SPMU's support aims to strengthen law enforcement activities within an OSCE participating State or region. Its growing repository of knowledge and experience will help to contribute to improving criminal justice systems and providing a democratic vision of policing for the whole OSCE region. In co-operation with participating States and international partners, the SPMU vision is ultimately to transform the philosophy of policing throughout the region.

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ALBANIAN EXTREMISM – A CONSTANT THREAT TO THE SECURITY AND HUMAN RIGHTS IN THE COUNTRIES OF WESTERN BALKAN

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Abstract: In the last two decades Albanian extremism, i.e. chauvinism and terrorism, in Kosovo, Metohija and the municipality of Pcinja is linked to different types of organized crime and ethnic cleansing. It represents a permanent danger to the safety of the population, human rights and political stability, not only in Serbia, but also in other countries in the region of West Balkans. Terrorist attacks, kidnapping, murders and similar incidents as well as armed provocation on the territory of Serbia (and Macedonia), once again confirm that within the national program of the Great Albania there is no room for any other nation except Albanian. Besides that, the terrorism of Albanian extremists is characterized by explicit primitivism and brutality. Terrorists are regularly treating their victims with bestial ruthlessness and sadism. Among other things, it is proven by the report of Dick Marty to the Parliamentary Assembly of the Council of Europe from December 2010 about trafficking in human organs in Kosovo and Metohija and Northern Albania.

Key words: Albanian extremism, terrorism, organized crime, the "Great Albania", KLA, ANA.

INTRODUCTIONS

At the beginning of the XXI century, it has become evident that there is an ever smaller number of traditional terrorist organizations and networks with a firm organization and guided from one center, and a growing number of "domestic", ethnically and religiously inspired terrorists. Recently, the boundary between terrorism and organized crime has been lost, above all the illegal trafficking in narcotic drugs ("narco-terrorism"). In this context, notable are specific "symbioses" between terrorist organizations and mafia clans. The same situation is in Kosovo and Metohija as well as in the territory of of Preševo, Medvedja and Bujanovac. [1]

Terrorism is ever more frequently used to cover up weaknesses and inability to impose one's own position or policy to a society. A typical example of this are the terrorist acts of Albanian extremists in the countries of Western Balkan, since, depending on the current international political situation, the terrorists from this region more or less enjoy the support of some international. Such support to the existing terrorist organizations is manifested mainly in financing, arms deliveries, training, logistic support and others, while, at the same time, direct terrorist support.

Such an activity on the international level is conducive to the strengthening of the practice of the so-called double standard: one kind of terrorism is condemned while the other kind is supported. Or, some countries are supported while others are punished for the same categories of terrorism. This applies to the terrorism of the Albanian extremists in the countries of Western Balkans. Such unprincipled position of certain states and, under their pressure, of a broad international community contributes that international conventions and acts on suppression of terrorism are

1 About Albanian terrorism in the municipality of Pcinja see more in: Prelević B.; Čolić B. (2000), *Extremism: The attacks, incidents and armed provocation in the ground security zone*, Belgrade: MIA, p. 25 etc.

ineffective. Among other things, it is also proven by the report of Dick Marty about trafficking in human organs in Kosovo and Metohija and Northern Albania.

Continuity of terrorist organization of Albanian extremists

Albanian extremist and separatist movement in former Yugoslavia, have from the very beginning used ethnic cleansing and terrorism as a method for achieving political goals, which can be sublimed in one main strategic goal, and that is the secession of Kosovo and Metohija from Serbia, and its annexation to Albania, i.e. the creation of the so called Great Albania in the West Balkans, to the detriment of territories of the neighboring countries (Serbia, Montenegro, Macedonia and Greece).

Terrorism as the dominant means of political fight of Albanian extremists, the transformation and the dramatic expansion of which the countries of Western Balkan are faced with over the last few years, escalated in its most serious form in Kosovo during 1999. The major contribution to the Albanian terrorism at that time was the Kosovo Liberation Army (KLA).[2]

KLA was founded by the most extreme members of the National Kosovo Movement (NKM) with the programmed objective to „fight against Serbian intruders". It logically appears that, in comparison with all other political parties in Kosovo and Metohija the National Kosovo Movement is the only one with the so-called political continuity, since it has grown out of the former leftist illegal organizations such as the Red Popular Front and the Popular Front for the Republic of Kosovo, founded during the seventies and eighties.[3] KLA troops were the largest during NATO bombing when they were 20,000 strong.

The arrival of international forces to Kosovo and Metohija resulted in the disintegration and formal demilitarization of KLA, but the organization has not yet discontinued its activities. About 10,000 troops were included into the transformation of KLA into the Kosovo Protective Corps (KPC) and the Kosovo Police Service (KPS).

Late in 1999, the dissolution of the KLA was followed by the formation of the Liberation Army of Preševo, Medvedja and Bujanovac (LAPMB) and the National Liberation Army (NLA) in charge of the initiation of armed conflicts in the South of Serbia and Western Macedonia. In the stated organizations, the command was taken over by persons from the local communities who had received KLA military training and acquired the necessary experience.

A relatively universal model of terrorist operations in the world - which is, as a rule, usually funded from criminal sources (trafficking in drugs, arms and people, as well as in excise goods) - was applied, at one time, by the leaders of the KLA, LAPMB and NLA, and is being applied now by the leaders of the Albanian Liberation Army (ANA).

The foundation of ANA, as a terrorist organization, was facilitated by the fact that the organizational and operational core composed of the members of the former KLA determined to implement their previously set goals and complete the ethnic cleansing of Kosovo and Metohija and other allegedly Albanian territories. Also, the ANA organization mimics the KLA model, uses the same methods of operation, the same channels for smuggling weapons and even the same bank ac-

2 On the continuity of the holders of Albanian terrorism for more details see: (2003) *Albanian Terrorism and Organized Crime in Kosovo and Metohija*, Belgrade : (s.n.), pp. 11-18 etc.

3 About Red Popular Front and Popular Front for the Republic of Kosovo see more in: Miloševic, M. (1991), Albanska ekstremna i teroristička emigracija, *Bezbednost*, br. 3, str. 288-297.

counts and allegedly humanitarian funds abroad by means of which they provide significant funding for their activities.

In an effort to become the so-called umbrella organization of all Albanian terrorist and separatist groups in the region, the ANA intensified its armed activities in 2003 which were accompanied by strong media coverage. The organization was founded in late 1999, but became more prominent in the second half of 2001[4].

From the organizational point of view, ANA is a military arm of a more comprehensive political group called the Front for National Unity of Albanians (FNUA) which also includes an intelligence service, called the Albanian National Security (ANS), and Albanian National Fund (ANF) as the central financial body. The FNUA was founded by the Revolutionary Party of Albanians of Tirana, whose sister party in Kosovo and Metohija is a highly extremist UNICOMB (the Party of National Unity).

The mining of the railroad bridge near Zvečan, which was carried out in April 2003, showed that a certain number of the KPC members were engaged in the ANA. After the action, the ANA was pronounced a terrorist organization by Michael Steiner and its operations were banned on the territory of Kosovo and Metohija.

Terrorism of Albanian extremists in the existing conditions

The terrorism of Albanian chauvinists and separatists is characterized by explicit primitivism and brutality. The terrorists are regularly treating their victims with bestial ruthlessness and sadism the example of which, among others, is the monstrous crime in the village of Klecka in Lipljan municipality, where an improvised crematorium (lime-kiln) is found, used for cremating the dead bodies of at least 22 kidnapped Serb civilians and also a mass grave where the bones that could not be burnt were buried.

In the camp of Klecka women and girls were raped and abused and Serb boys and other Serb hostages were cut ears and arms to the wrists and their eyes were removed. The dead body of the kidnapped police officer was also found who was firstly broken all ribs, then cut conch and nose, removed the left eye, broken clavicle and removed scapula, caused many stab wounds on both legs, broken cranium, and then cut throat.[5]

The continuity of Albanian terrorist crimes since the arrival of the KFOR forces in Kosovo and Metohija can be illustrated by statistical data. Namely, from June 10, 1999 to November 22, 2003, 6,736 terrorist acts were committed in Kosovo and Metohija. During the same period 1,211 people were killed (111 Albanians, 999 Serbs and 73 others), 1,148 persons were abducted (1,187 Serbs, 78 Albanians and 76 others) and 169 of them were killed.

Meanwhile, Albanian terrorism grew into armed outbreak and, after the KFOR came, into a kind of apartheid for non Albanian citizens. This does not surprise since terrorism is one of activities of those who should be fighting against it, for example the Kosovo Protection Corps (KPC). Namely, during the first half of Au-

4 In the middle of 2003, the members of the UN police in Kosovo and Metohija came to the conclusion that from November 2000 the activities of the Albanian extremist groups were expanding to the south of Serbia and to western Macedonia where the territory of Kosovo and Metohija was used as the sanctuary and base for enforcing these destabilizing operations.

5 About crimes committed by Albanian extremists in Kosovo and Metohija from January, 1998, to November, 2001 see: Novakovic, M. et. al. (1998) Terrorism of Albanian Separatists in Kosovo and Metohija and Methods of their Activity, Belgrade, Ministry of Interior, (report); Simić I. et al. (2001), *Žrtve albanskog terorizma na Kosovu i Metohiji*, Beograd: Komitet za prikupljanje podataka o izvršenim zločinima protiv čovečnosti i međunarodnog prava.

gust 2003, 300 Albanian trained guerillas – including some 10 mujahedin (non-Balkan Muslims) were infiltrated across the Albanian border into Kosovo, where many were subsequently seen in the company (and homes) of the members of the so called KPC, which was created out of Kosovo Albanian elements originally part of the KLA. In fact, the Kosovo Protection Corps seems almost synonymous with the Albanian National Army (ANA) the new designation for the KLA.

After withdrawal of the Yugoslav military forces and police units from the territory of Kosovo and from the territory defined as the Ground Security Zone, the Military Technical Agreement was violated by the Albanian extremists. The terrorist groups entered into the southeastern parts of the Republic of Serbia, more precisely, into the territory of the municipalities of Bujanovac, Preševo and Medveđa. Soon after that, terrorism resulting from Albanian expansionism expanded over to the northern and western parts of Macedonia.[6]

Terrorism is a primary way of political struggle of Albanian separatists in the municipality of Pcinja and its surroundings which escalated after January 26, 2000, when the so called Liberation Army of Preševo, Bujanovac and Medveđa (LAPMB) was "promoted". The terrorist activities of the so called LAPMB in southern Serbia had proportions of serious armed conflict. So in the period from the signing of the Military Technical Agreement and adoption of the UN Resolution 1244 until the end of 1999, there were 46, and from the beginning of January until December 15, 2000, 399 terrorist attacks and provocations.[7]

The attacks and armed provocations of Albanian extremists (LAPMB, ANA) continued even after the signing of the Cease-Fire Agreement on March 12, 2001. So, from January 25, 2001 until September 30, 2003, the municipalities of Preševo, Bujanovac and Medveđa, all in the Ground Security Zone or in its immediate vicinity, were attacked 1,326 times. The civilians were attacked 137 times: the Serbs and Montenegrins 79 times, the Albanians 53 times, and other civilians including the members of the international missions 5 times.

The police and the facilities of the Ministry of the Interior were attacked 954 times and soldiers and military facilities 235 times. During these attacks the Albanian separatists killed 20 people: 5 civilians, 9 police officers and 6 soldiers. At the same time, they wounded 76 people - 32 civilians. Finally, in the same period terrorists kidnapped 30 people, mainly civilians (28): 26 of these were the Serbs and Montenegrins and 2 were the Albanians.

The ANA publicly proclaims its connections with organized crime, as illustrated by the fact that after a bombing attack on the premises of the court in Struga, in early spring 2003, this terrorist organization undertook the responsibility for the attack stating it was a reaction to the arrest of two Albanian mafia bosses in Macedonia.[8]

6 Copley, G.R.,(2003),The coming new surge in European Islamist terrorism: The momentum has begun, *Defence & Foreign Affairs*, No.9, p. 12; Replay, T. (2001), KFOR Tested by Albanians Insurgents, *Janes Intelligence Review*, No.5, p.2

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CONCLUSION

Albanian terrorism in Kosovo and Metohija and parts of southern Serbia is linked to different types of organized crime. It represents a permanent danger to the safety of the population and political stability, not only in Serbia, but also in other countries in the region. The strategists of these activities want to ensure the legalization of their criminal activities and accumulated wealth and to enable the establishment of Greater Albania or Greater Kosovo in order to complete the territory they consider Albanian ethnic space.

Terrorist attacks, kidnappings, forced "military mobilizations", murders and similar incidents as well as armed provocations on the territory of Kosovo and Metohija, South Serbia and Macedonia, once again confirm that in the national program of Great Albania there is no room for any other nation except Albanian. It is also proven by Dick Marty's report to the Parliamentary Assembly of the Council of Europe from December 2010.

According to the data from the Serbian Government Commission for Missing Persons from January 2011, the fate of 528 Serbs and other non-Albanians from Kosovo is still unknown, of whom over 400 are missing after the arrival of the international community in Kosovo and Metohija. In Kosovo and Metohija, there were 144 camps for Serbs and all others that have been kidnapped by the KLA. In Albania there are parallel and terrorist training camps.[9]

Namely, the best known camps for training terrorists in Albania were Ljabinot near Tirana, Tropoja, Kuks and Bajram Curi near the Serbian-Albanian border, which are, at the same time, the headquarters of the command and units of the Albanian army and police for the northeastern part of Albania and the centers for recruiting extreme supporters of Sali Berisha.

Finally, the project of "Great Albania" i.e. "Independent Great Kosovo" as its transitional phase, based on the idea of "all Albanians in the same state" puts the existing internationally recognized boarders under question and threatens the stability of the entire West Balkans. Therefore, the Albanian extremism is constant threat to the security, and the greatest threat to human rights and democracy of the Western Balkans.

9 About this see more in: Mijalkovski M.; Damjanov P (2002), *Zločini i zablude albanskih ekstremista*, Beograd : NIC Vojska, p.129 etc; (1998), *Terorizam na Kosovu i Metohij i Albania* (bela knjiga), Beograd:SMIP, str. 23-108; 183-190.

THE SUPPORT OF THE ARMY TO THE POLICE IN THE CONCEPT OF CRISIS MANAGEMENT

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Abstract: The concept of crisis management is a set of special measures taken under pressure to resolve the problems caused by the crisis. Crisis means unstable situation in the political, social or economic affairs, a sudden or decisive change. This system should eliminate or prevent the successful transformation of the crisis in an open armed violence / war. This concept occupies an important place in the new strategic concept of security and defense of NATO. According to Alliance, crises and conflicts can cause a direct threat to the security of the territory and population. Therefore requires commitment from the appropriate combination of police-military, civilian and political instruments to assist in managing a crisis, to stabilize post-conflict situations and to support reconstruction.

The systems for national security in all modern states, in general, rely apart from the army and the police who have their place, role and tasks in maintaining peace and security on internal and external plan. As a result of the increased powers and responsibilities, institutions in the security sector objectively seek better cooperation, effectiveness, democratic supervision and control. The human and financial resources invested in the security sector require more efficient use of facilities. This increases the need for coordination among security institutions based on explicitly formulated strategy followed by coherent and responsible actions regarding the management circles and society in general.

Based on the management of crisis there is a possibility police to take certain measures and activities in cooperation with the army to deal with crisis situations. So, in a crisis situation when it is threatened the security of the state and state bodies have adequate resources and means for its prevention and management, part of the army participated in support of police and other bodies of state administration involved in this process. The police have a major role in the performance of security functions in the country.

Police and the army as participants in the system for crisis management, should provide early warning of potential threats and mutually supportive capabilities of parts of the police, army and civilian government. It should be clearly stipulated the facilities and forces and how they participate in light of the risks and dangers of Homeland Security (support to the police and the civil authorities by the army) and in support of external security (support in the mutual efforts of the international community).

The paper defines how army can provide support to the police in dealing with threats to the security of the Republic, which exceed the capabilities and police facilities. In addition, it is also being explored the manifestation of the support to the police in the intelligence sharing, border security, fight terrorism, execution of security actions over important facilities for defense and security, dealing with asymmetric threats (international terrorism and organized crime, illegal migration and drug trafficking, people, weapons and computer crime).

The lack of coordination between the police and army can lead to a number of negative effects in the process of planning and implementation of activities related to security and defense of the country, and thus in the process of making key decisions. There should be a clear division of the army from the police and police should be the main instrument for maintaining order and peace, not military. police should have missions that are fundamentally oriented to serve the citizens. There must be a civilian, not military police training in orientation and practice.

Keywords: crisis management, police, army, crisis support, joint force

The concept of crisis management is a complex of special measures taken under pressure for resolving the problems caused by the crisis. Crisis means unstable situation in the political, social or economic affairs, a sudden or decisive change. This system should eliminate or successfully prevent transformation of the crisis into an armed violence/war.

Crisis management occupies an important place in the new strategic concept of security and defense of NATO. According to the Alliance crises and conflicts can cause a direct threat to the security of the territory and population. Therefore, it requires engagement with appropriate combination of police-military, civilian and political instruments to assist in managing the crisis, to stabilize post-conflict situations and to support reconstruction.

In the scientific vocabulary, raising the issue of crisis in the context of post-conflict societies or pro-conflict societies is key issue that requires diagnosis and removal of the causes of the crisis. According to some opinions, it is the way in which international organizations and institutions (only those who have a mechanism for resolving the causes of crisis) and of course the national authorities, to which the crisis was a direct threat, simultaneously remove, or attempt to remove root causes of previous or potential for possible future crisis. But, at this time, the views of international organizations or donors and the views of "local" actors on a number of issues of post-conflict agenda vary. It would be logical to expect that, at best, local / national authorities can take responsibility for successful implementation of the strategy to stabilize or, at worst it can become impossible option due to various reasons.

In the past, Republic of Macedonia had the opportunity from firsthand to perceive the nature of asymmetric threats and face the consequences of lack of coordination of national security institucions and services.

Experience tells us that contemporary risks and threats act between department's competencies, exceeding the resources and capabilities of separate government departments and go beyond the boundaries of individual states. These threats do not concern only security and defense policy, but also policies in the domain of other resources: foreign, social and economic policy, Healthcare and environmental protection policy. Creating security system able to cope with these challenges and support the overall policy involves efficient coordination of all departments at the highest level.

Creating crisis management system that can promptly and effectively deal with risks and threats of the modern world means building security system that will be capable at the same time to: protect the interests of the citizens, to create conditions for sustainable development and implement state policies. The establishment of this mechanism involving police, military and other new security institutions, will provide central monitoring and assessment of threats and risks and data analysis, effective civilian control of the security system in crisis situations at the highest political level and coordinate the activities of system institutions and security services.

Based on the management of crisis there is a possibility police to undertake certain measures and activities in cooperation with the Army to deal with crisis situations. Therefore, in crisis situation when the security of the state is threatened and state bodies do not have adequate resources and means for its prevention and management, part of the Army participates into support of the police and other bodies of state administration involved in this process. The police have a major role in the performance of the security functions in the country.

Police and the Army as participants in the system for crisis management, should provide early warning of potential threats and mutually supportive capabilities of parts of the police, army and civilian government. It should be clearly stipulated which facilities and forces, and how they participate in interception of the risks and dangers of Homeland Security (support of the police and civil authorities from the army) and in support of external security (support in the mutual efforts of the international community).

Military force was traditionally a symbol and defender of the territorial integrity and sovereignty of the state. These categories undergo profound changes that have not yet been reformed in the armies of in most of the countries. The classic function of the military power, defense of territory and sovereignty also undergoes fundamental changes, because understanding of sovereignty is changing as well and external threats against the territorial integrity of states become greatly impossible.

Armed Forces of Republic of Macedonia, as part of a broader national security system, it's natural to adapt the modern understanding of the risk, challenges, threats to peace, security and stability of Republic of Macedonia. It is necessary to build and develop modern armed forces that meet the needs and opportunities of Republic of Macedonia and which, according to the new concept of cooperation with the police, i.e. with its function. That means building defense capability in peacetime, further, building and developing new capabilities to support homeland security, as well support of the civilian institutions.

Coordination between the president and government

Modes of engaging the Army of republic of Macedonia, and thus the jurisdiction of the President of the country for Army's participation is normatively regulated by the Law on Crisis Management of the Republic of Macedonia, where it was determined that "Part of the Army participates in supporting the police in terms when the crisis has threatened the security of the Republic, the state administration bodies don't have adequate resources and means for its prevention and management. Proposal to the Government on the need for participation on the part of the Army, according to the Strategic Defense Review of the Republic is given by the Managing Committee.

The proposal on the need for participation on the part of the Army, in particular contains: the type and number of forces and equipment of the army unit, purpose and tasks required and the activity and the engagement of the army unit. Firstly, the proposal to the Government for the duration of participation on the part of the Army for support to the police in dealing with a certain crisis, is submitted by the Managing Committee, based on the Strategic defense review missions are referred where you can engage the Army, such as : the support of citizens in protection against risks and hazards, including the ability to assist in events of civilian intervention (natural and other disasters, technological disasters, epidemics, etc.), helping and dealing with threats, risks and dangers arised from the problems of global security that appear as terrorism, international crime, all kinds of illicit trade

and border security and unconventional and asymmetrical threats.

In this context I point out that by raising of the proposal for the need of participation of the army in dealing with crisis, the government does not prejudice at any point the interference the president of the Republic as supreme commander of the Army. That is why, if conditions for participation on the part of the Army in dealing with crisis are met, it is decided by the President of Republic, by evaluating the type of crisis in each specific case.

On the proposal of the Government, the President decides for participation on the part of the Army in dealing with crisis. At any time, the President may reevaluate the need for participation on the part of the Army. The manner of participation of the Army in a crisis situation is governed by regulations issued by the President.

From this set of relations, it follows that the role of President of Republic as a separate and independent executive authority and supreme commander of the Army, has not been downgraded on the government. Also, dealing with crises is right and duty of all state administration bodies, the bodies of state power, force protection and rescue authorities of municipalities and the City, so in that sense and the Army of the Republic of Macedonia. Also, the submission of the report by the Government to the President of Republic is aimed at ensuring their coordination on issues on which they reach their responsibilities in implementing executive authority in the area of crisis management. This is especially taking into account the right of the Government to request the authorization of the Republic's president to authorize the participation of the Army to support the police in dealing with a crisis situation. Such authorization could not be realized without full awareness of the President of Republic for activities related to crisis management. Based on the above noted, we can conclude that in the law, the responsibilities of the Government and the President of Republic in the field of crisis management are clearly established with the determined commitment of the Government for submission of report to the President of Republic for activities associated with managing Crisis and it has basis in Article of the Constitution of Republic.

Armed forces and crisis management

Lack of coordination between the police and the army can lead to a number of negative effects in the process of planning and implementation of activities related to security and defense of the country, and thus in the process of making key decisions.

Such experience occurred in 2001, in Macedonia, when coordinated response in the political and security crisis and was left out by the security forces, police and military. The problem appeared in several different forms. From one side it came out as inefficient command with the armed forces so that the ratio of the President, the Defense Minister and the Chief of Staff in the chain of command and management was practically confused. On the other hand, the problem went out as a vague relationship between the key security institutions and the military police and the division of responsibilities between them. These problems have created a bad impression of a crisis simulation involving actors, but, unfortunately, with specific sacrifices and consequences.

Today in the missions of the Army's stated support of the police forces in dealing with threats, risks and hazards to the security of the Republic, which exceed their capabilities and capacities? Army interacts with the MOI through the following subtasks: performing special operations, intelligence sharing, search and rescue, closing of routes, aerospace support (landing, transport), and engineering support. It is planned by the Army for police forces to use: mobile infantry forces, Special

Task Force, Air Force helicopter combat support and aviation transportation (medical evacuation, search and rescue), support for military forces, forces for electronic reconnaissance, team unexploded lethal devices, engineer forces, forces ABHO.

Coordination in decision-making, guidelines, measures, activities in operations involving forces from the army, police performed while commanding the army units involved in operations, is under the formal command structures / commanders. Preparation, training and exercises on the possible participation of the army and its parts, in support of the police in crisis situations and humanitarian emergencies is realized on the basis of developed operating procedures for operation and coordination in the execution in which involved authorities from the General Staff of Army commands and units participate. The implication of tasks to the ARM arising from the Law on Crisis Management on the development of military capabilities in terms of supporting the police in dealing with threats, risks and hazards to the security of the Republic, which exceed their capabilities and capacities are given through:

- supporting the police with intelligence information;
- supporting the police with the resources and capabilities that exceed their capabilities and capacities;
- supporting the police in border security;
- supporting the police in combating terrorism;
- supporting the police in carrying out actions to provide facilities of importance to the defense;
- supporting the police in dealing with asymmetric threats:

Required skills and capacity to implement the task are:

- collecting, processing and analyzing intelligence data;
- surveillance, search and rescue;
- mobile forces trained to assist in border security;
- mobile forces trained to support the fight against terrorism;
- support for police and other security actions;
- support in dealing with asymmetric threats (international terrorism and organized crime, illegal migration and drug trafficking, people and computer crime).

Survey of public opinion

To realize what is the opinion of the concept of supporting police by military, research of public opinion has been done by the Macedonian Center for Peace and Euro-Atlantic integration in 2010. The 1,200 respondents (civilians, military officers, professional soldiers, uniformed police officers) were asked the following question: Do you support the concept of supporting the army to the police? Most respondents (72.1%) support this concept, while (13.7%) responded negatively, while only (14.2%) have thought about this topic. The increased powers and responsibilities of institutions in the security sector objectively seek better cooperation, effective, democratic supervision and control. Human and financial resources invested in the security sector require more efficient use of facilities created. This increases the need for coordination between institutions in the security sector based on explicitly formulated strategy followed by coherent and responsible actions regarding the management circles and society in general.

The process of coordination between the army and police and state administration bodies is very important variable. The Coordination for its basic purpose holds the alignment of more components and factors in a pre-conceived action. The results expected depend largely by the the degree of coordination, results which are imposed as an imperative by security institutions and authorities. The coordination between the army and police enables more efficient to realize the goals and reduces the risk that would be encountered in dealing with a particular situation. The coordination is especially important to keep constant communication with all authorities who have contiguous points in security and defense of the country.

The data showed that 515 (42.9%) respondents reported that there is cooperation and coordination; 457 (38.1%) of respondents believe that there is coordination, i.e. 228 (19%) do not hold attitude regarding the issue. Lack of coordination between police and the army could lead to a number of negative effects in the process of planning and implementation of activities related to security and defense, and thus in the process of making key decisions. This is especially important question given the fact that the new solution on border security, this commitment is fully implemented by the police and in such circumstances the Ministry of Defense and Ministry of Interior had a task to cooperate.

The establishment of civilian crisis management which will ensure civilian and democratic control over the activities and strengths will achieve coordination and efficiency of the system may sound too ambitious, but it is a general purpose, first to stop, and the other is to limit and resolve crises.

Regional crisis management of Southeastern Europe

Only in the last few years managing the crisis is a priority topic of the security agendas of international, governmental and nongovernmental organizations. The international management of crises, in particular, faced with threats that require much faster and more coordinated response and strategy for managing crises. Engagement in the prevention, management and post-conflict peace-building by international organizations, governmental and individual NGOs opened field of questions for which there are few relevant answers (lessons learned). This is one of the reasons why each answer is under the sign of question mark: would it be more successful than the previous?

Stated weaknesses impose the urge for taking concrete steps and new initiatives to build a fully operational system for regional security and crisis management. Namely, the challenge is that, the existing political will and mutual understanding can be used to build cooperative capacity to deal with crises of various kinds, in conditions of limited financial resources. In addition, funds and equipment can remain in possession of the states, but to be "declared" and well prepared, and constantly available to deal with crises in the region of Southeast Europe.

It is considered the governments of the region to launch an initiative for Co-operative crisis management in South Eastern Europe, which would mean implementation of the Strategy for the development of capacities for crisis management in the region. The adoption and acceptance of the strategy mentioned by all countries in the region would serve to identify priorities utilization of available national funds, and funds allocated for this purpose by international organizations.

The initiative should imply supporting cooperation between the countries of Southeast Europe to prevent and deal with risks and threats in cases of: organized crime, money laundering, illegal arms trafficking, suspension of corruption and the financing of terrorist and illegal armed activities, illegal transfer of conventional weapons, illegal migration, corruption and others.

Experiences from Sweden

Regarding the experience of the organization and operation of crisis management in the text will analytically cover several countries. Sweden is probably not the primary target of terrorism, although the threat still exists and must be taken seriously. Potential targets may be, for example, foreign institutions such as embassies and multinational companies. Also Swedish institutions can become targets as a result of the Swedish engagement in support of peacekeeping operations. Analysis of Article 51 of the Charter of the United Nations resolutions 1368 and 1373 by the Security Council, gives the right terrorist attacks to be seen, or this kind of threats, as valid motive for the state to practice the right of self defense.

If a situation occurs, when there is no time to obtain approval from the Government of Sweden, to give opposition to direct threat, the armed forces should be empowered to act independently and support the police. Also, for other types of violence at sea or air (hijacking of aircraft or ships) when police do not hold additional resources to deal with the situation, the armed forces should be a means which can be used if the police ask for help.

As for the fight with "regular crimes" police Sweden may request assistance from the armed forces when it comes to special equipment, transport etc... But in such cases the use of force should be the prerogative of the police. Although the armed forces have a role in the fight against terrorism guiding principle should be: the armed forces should fight, but the responsibility is the responsibility of the police. The task of the police is to prevent and fight crime. Besides, the police are enabled with strengthening of specialists from ABHO threats. While civilian facilities are secured by the armed forces, they should have the rights as police.

Experiences from Hungary

In connection with the armed forces and police, the Constitution of the Republic of Hungary provides in case of armed actions, which goal is to change the constitutional order or in cases of blatant acts of violence made by use of weapons during an emergency, the army can be used, if the use of police is not enough. National Directorate General for dealing with disasters is directly subordinate to the Ministry of internal Affairs of Hungary who have close contacts with the ministries of defense, economy, transport, information technologies and communications, Health). In all these cases parliamentary control is significant.

Macedonian concept crisis management

For the realization of the concept of crisis management, according to Marina Mitrovska crisis management expert and professor at the University of St. Cyril and Methodius "Skopje undoubtedly requires range of assumptions, among which the most important are:

- Development of an efficient organization system for crisis management;
- Providing legal and other requirements by the state to establish a crisis management system compatible with international standards;

- Permanent and mandatory staff training to work in this system.

A view from our experiences shows that:

- extensive preparation is required, equipping, training and planning of all institutions of the system to accept the challenges that bring conflict and crisis, because the development of predictable crises is difficult;
- need to build a system of complete transparency between all institutions involved in resolving the crisis, putting into operation of the available infrastructure and national resources;
- even in peacetime it should be fully regulated- the status of citizens as a consequence of the crisis for political, economic, social, demographic, ethnic or religious motives will become subject to forced migration;
- the role of the institutions of the international community must be more efficient, timely and complete if you want the consequences of crises to be bearable boundaries;
- role in resolving the crisis and the consequences for the countries participating in the process must advance to be understood supported and financially compensated by the international community;
- issue of national security of all countries participating in resolving the crisis must be a priority and supported by the international community;
- experience shows that the regional approach in overcoming the crisis, regional contingents and regional coordination are key to exit from the crisis zones;
- coordination of activities and the planning of NATO, the EU and the OSCE has proved necessary to exit the crisis zone.

Hence, a question arises if this system for crisis management will be able to adequately respond to new security threats? What action will be taken and what resources will be used? The first dilemma is always the hardest when you have to choose between the political and security assets. If analysis shows that the situation can be stopped by political means, then it is better to be done, especially bearing in mind that we live in a region of tension that are sometimes irrational, religious and ethnic colored and they can always be solved by deployment of security forces. Hence, the positive side of the concept of crisis management is the fact that it starts from the conception to the provisions of the National Security and Defense, which, among other things, provides guidelines to regulate the area related to security and defense of the citizens, their property values and the state. Also, in one part of the contents of the Law on Crisis Management there are standardized solutions from some member states of NATO and the European Union.

CONCLUSION

Construction of synchronized security system in the Republic of Macedonia, integrated in the collective security systems is a strategic investment not only in the state security and stability, but also the security of Euro-Atlantic region. It is in the interest of NATO and the EU, but also collective contribution toward the Euro-Atlantic security.

The crisis management system, ie for safety should hold clear division of the Army Police and police, should be the main instrument in maintaining peace and order, not the military. Police should have missions that are fundamentally oriented to serve the citizens. There must be a civilian, not military orientation in the police training and practice. The structure of the system for crisis management is one of the

key steps in the process of adjustment of domestic regulations in safety and security system of the Republic of Macedonia to standards of the member states of NATO.

Improving inter-ministerial coordination is crucial issue not only for membership aspirants, but it is also the key challenge for the existing members of the Alliance. The establishment of civilian crisis management which will ensure the civilian and democratic control over the activities and strengths to achieve coordination and efficiency of the system may sound too ambitious, but it is a general purpose, first to stop, and the other is to limit and resolve crises.

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THE IMPLEMENTATION OF THE SITUATIONAL PREVENTION MEASURES IN SCHOOLS

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Abstract: The concept of situational crime prevention emerged in the '70s, gaining its popularity in the last few decades. Rising interest of the scientific and professional circles for situational prevention is followed by its' simplicity for understanding and implementation, low cost and effectiveness in the prevention and crime reduction. Special benefit is in the fact that situational measures can adjust to specific context or different types of crime. The first part of the paper will be devoted to the implementation capacities of the situational prevention measures in educational institutions. Starting from the basic situational prevention mechanisms and derived techniques, successful measures for school environment will be discussed. In the second part of the paper the main results of the research about the implementation of the situational prevention measures in elementary and secondary schools at the municipality of Zemun and Surčin (37 schools) will be discussed. The aim of this research was the examination (presence and quality) of the basic situational prevention measures: fencing, school police-officer or security officer engagement, video surveillance, alarm systems, etc. The results of the research show that most schools have implemented situational prevention measures: 32 schools are fenced, 25 schools have police officers, 22 schools have video surveillance and 5 schools have alarm systems. However, the quality of measures implementations varies from school to school (from sophisticated central video surveillance system connected with a police station to school facility interior surveilled only by cameras). In the end, according to the recognized limitations of the implemented situational prevention measures in schools, examples of effective practice and recommendations for further improvement will be given.

Keywords: situational prevention, school, fencing, video surveillance, school police-officer

INTRODUCTION

Situational approach to crime prevention and reduction, which emerged in the 70s of the 20th century, is inspired by the effectiveness of a problem-oriented approach to crime control and influential criminological theories such as rational-choice theory, routine activities theory, environmental design theory, lifestyle theory and the theory of breaches. At the beginning of the 21st century, this approach gained popularity because of its wide range of applicability to various criminal situations in terms of type of criminal act and the execution context. According to the definition, situational prevention means to identify, modify and control factors influencing a situation associated with criminal behaviour (Cornish, Clarke, 2003). What distinguishes situational prevention of the new millennium is the complexity of the response to the contextual preconditions for the perpetration. Namely, the

intention is no longer to reduce simply the opportunities for crime, but also to demotivate offenders, thereby preventing crime displacement to another location. In order to make a specific situation discouraging for unmotivated individuals/groups or demotivating for already motivated potential offenders, it is necessary to use not only physical obstacles, but also different psychological and social mechanisms. This is the way to attain an approximation of situational, developmental and community crime prevention.

The literature describes various models of situational approach that are used in the prevention of certain types of crimes (e.g. criminal acts with elements of violence, cyber crime, organized crime) or in a particular context (e.g. school, community, prison). The application of a situational approach is in line with modern trends of crime prevention in the world which emphasize the importance of crime prevention, but also the improvement of quality of life and strengthening of social cohesion. Situational prevention is recommended by the United Nations (UN, 2002) as one of the successful approaches to be applied in improving the security of residences, schools and other facilities.

Possibility of application of situational prevention in schools

Schools represent a specific context in which the security not only of students but also of the staff members or third persons can be jeopardized. Apart from peer violence, violence between teachers and students or by a third person, schools are exposed also to attacks that are directed toward the school property such as vandalism, arson, burglary, theft, vehicle damage and others. The described conditions may be considered as either external or internal threats, but the threats that are coming from outside the school are generally regarded as more dangerous (Lioyd, Ching, 2003:12). Previous experiences showed that, in many cases, underage persons are perpetrators of such offences. Bearing in mind the specificity of juvenile crime, being of mainly opportunistic nature, coupled with low self-control and lack of personal liability of minors, contemporary authors believe that the use of a situational approach is justified and desirable (Muncie, 2004). Shifting from purely opportunity-reducing approach contributes to more comprehensive application of situational crime prevention in schools and other educational institutions. It is important to note that the techniques of situational prevention are not age-specific (Stevens, Kessler, Gladstone, 2006).

The following part will show different situational prevention measures that can be applied in schools. For the sake of systematization, it starts with the basic classification of situational crime prevention techniques given by Cornish and Clarke (2003), distinguishing five categories and twenty-five techniques.

The first category of techniques making crime more difficult or changing a potential offender's perception of the effort he/she should make in order to commit a crime are as follows:

- target hardening: using various physical barriers (door locks, school lockers), securing the locks to prevent opening with improvised devices, locking the school after the shift is over;
- access control or denial of unauthorized entry into a particular area: electronic identification, attendance of the employees at the entrance, reduced number of entrances for easer control, installation of a fence resistant to vandalism;
- screen exits: separate exits for students and teachers, provision of a safe corridor for the passage of students, crowd reduction organizing exit in groups;

- deflecting potential offenders: planning locations of catering facilities and betting facilities at an adequate distance from schools, separate toilets and changing rooms for students of different sex, younger and older grades;
- control of tools and weapons: use of metal detectors at the entrance to the school, searching of students and students' lockers, control of sales of spray paint for making graffiti

The second category includes techniques that increase the risk to the offender so as to change his perception of the risk of being detected and caught while committing the offense. These include:

- extended guardianship: movement of students in groups, carrying alarm bracelets so that students could call for help, intensifying the surveillance by school police officers and teachers at critical times, encouraging students to report suspicious activity;
- assisting natural surveillance: illuminating the school and its surroundings, the use of motion sensors, fencing the school yard, architecture which prevents access to the roof, upper floors and areas vulnerable to vandalism;
- reduction of anonymity: wearing school uniforms with the emblem of the school, identification cards, reduction of the number of students in schools;
- secondary surveillance: surveillance by teachers, students and school support staff (e.g. caretakers);
- formal surveillance: engagement of school police officers and security service, with the introduction of video surveillance, alarm systems and metal detectors

The third category, which is specifically aimed at decreasing the rewards for the perpetrator, or reducing the expected benefit from the commission of the offense, includes the following techniques:

- concealing targets: restricted access to data about students and teachers, properly stored school records, provision of car parks for the employees and visitors to the school;
- removing targets: prohibition of carrying mobile phones and expensive items to school, leaving the things during the classes in closets that are locked, keeping the school property of great value in safes;
- identifying property: visible or hidden marking of students' property (e.g., writing names on the students' accessories and sports equipment), marking the school property (e.g. teaching aids and materials);
- disrupting markets: increased supervision over the operation of facilities where the perpetrators could resell the stolen school items (e.g. computers, sports equipment);
- denying benefits: graffiti cleaning, keeping duplicate school records, removing the consequences of cyber vandalism of the school website

The fourth category encompasses techniques that are aimed at reducing provocation or mitigating and neutralising the situational factors that may contribute to the execution of an offense, and they are:

- reduction of frustrations and stress: providing optimum air temperature, noise level, daylight, expanded seating, quality of food offered in students' restaurants, etc.;
- avoiding disputes: improving the school social climate, securing vulnerable groups of students (e.g. students with special needs, Roma);

- reducing emotional arousal: promoting ethnic and religious tolerance, encouraging decent behaviour at sports games, developing a critical attitude towards media contents;
- neutralizing peer pressure: strengthening of skills to neutralise negative social pressure, dispersing troublemakers in different classes, raising awareness of safe participation in traffic, appropriate sexual behaviour, etc.;
- discouraging imitation: rapid repair of vandalism, restricting access to newspapers, TV channels and Internet sites with inappropriate contents at school and at home

The last, the fifth category, includes techniques that increase feelings of shame and guilt of the perpetrator because of the offence he has committed, removing opportunities for rationalisation and excuse, and they are:

- setting rules: passing the school codes of conduct, informing on relevant legal and regulatory provisions;
- post instructions for behaviour in a particular environment: setting clear signs prohibiting entry into certain rooms, smoking and taking inside certain items etc., displaying guidelines for behaviour in certain situations (e.g. fire) and in cabinets that contain potentially hazardous equipment or materials;
- alerting conscience: clear orders prohibiting theft and destruction of school property, violent behaviour, carrying alcohol, weapons, spray paints for graffiti drawing etc.;
- assisting in compliance with the rules: placing litter bins, construction of a sufficient number of toilets, planned painting of some school walls with graffiti;
- control of the use of drugs and alcohol: control of enforcement of the ban on sale of alcohol beverages and cigarettes to minors, periodic urine analyses.

The text below further elaborates the implementation of public surveillance in school security. In the presented classification, the techniques of public surveillance belong to the category which aims to increase the perceived risk of a crime for the offender and appears in three forms: formal, natural and secondary surveillance. Formal surveillance refers to the work of police and security services, using modern technological means. Natural surveillance or surveillance *per se* means lighting, fencing and other measures to improve visibility, protection and control of hot spots. Secondary surveillance means monitoring of place by persons to whom it is not the primary task, but they perform surveillance function along with other tasks.

Purpose of the research

The purpose of the research is to assess the existence and quality of application of basic situational prevention measures, or public surveillance measures in schools. Special attention was paid to some formal surveillance measures (engagement of a school police officer, physical and technical security, video surveillance, and alarm systems), natural surveillance measures (lighting and fencing the school area) and secondary surveillance measures (duty caretakers and students surveillance). Public surveillance measures that are routinely used in all schools, such as the duty teachers were not taken into consideration.

Methodology

The research was carried out during the school year 2010/2011 in elementary and secondary schools located in the territory of two Belgrade municipalities – the Municipality of Zemun and the Municipality of Surčin. The two municipalities have a total of 37 schools and they are: 22 primary schools, 10 secondary schools (2 high schools and 8 secondary vocational schools) and five other schools – four schools for students with disabilities (3 primary schools and one secondary school) and one adult basic education school.

The data were collected by analysing the documents of the Belgrade Police Department, the Zemun Police Station. For the purpose of this research, the existing data were updated and amended on the basis of interviews conducted by the police officers with school staff in Zemun and Surčin.

Methods of descriptive statistics, frequencies and percentages were used for the data processing.

Results of the research

Table 1 shows data on the application of formal, natural and secondary surveillance in certain types of schools. The data indicate that the formal surveillance measures are applied in almost all primary and secondary schools. Contrary, the formal surveillance exists in only one of other schools. Of all the schools in the sample only one secondary school was not found to have natural surveillance applied. Secondary surveillance is applied in most of secondary schools and other schools, as well as in half of primary schools.

Based on these data, it can be said that most of the schools that were included in the survey used measures of natural surveillance, followed by formal and secondary surveillance. Generally, formal surveillance is implemented in 29 schools (78%), natural surveillance in 36 schools (97%), and secondary surveillance in 21 schools (57%). 17 schools (46%) apply all the three types of public surveillance – formal, natural and secondary. It may be noted that primary schools and schools belonging to the group of other schools pay more attention to natural surveillance than secondary schools in which formal surveillance is predominant. It is also interesting that the secondary surveillance is more present in secondary schools and schools from the group of other schools than in primary schools.

Table 1 - Type of public surveillance according to the type of school

Type of public surveillance	Primary schools				Secondary schools				Other schools			
	Yes		No		Yes		No		Yes		No	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Formal	19	86,4	3	13,6	9	90	1	10	1	20	4	80
Natural	22	100	0	0	9	90	1	10	5	100	0	0
Secondary	11	50	11	50	7	70	3	30	3	60	2	40

Table 2 contains information on the application of some measures of public surveillance in primary, secondary and other schools. Among the formal surveillance measures discussed in this paper, the most commonly used is the engagement of a school police officer which was applied in a total of 25 schools, or in 18 primary, 6 secondary and one school from the group of other schools. Another measure of formal surveillance, the engagement of professional security service, is applied in 17 schools (10 primary and 7 secondary schools). Video surveillance is applied in 22 schools (13 primary and 9 secondary schools), and alarm system exists in 5 schools (1 primary and 4 secondary schools). There is no school from the group of other schools that has security service, video surveillance or alarm system. Investigating the application of natural surveillance measures, it was noticed that only one secondary school was not lighted at night, while one primary and four secondary schools were not fenced. Secondary surveillance in form of engaging the caretaker is present in 10 schools (four elementary, three secondary and three other schools), and the students' surveillance is regularly used in 18 schools (11 primary and seven secondary schools).

The measures of public surveillance that are most commonly used in primary schools are lighting and fencing of the school, and engaging a school police officer. In most of the secondary schools, the measures applied include school lighting, video surveillance, security services and students' surveillance. In schools belonging to the group of other schools, the most present are lighting and fencing of the school, and engaging the caretaker.

Summarizing the data for all schools, the most common measures are two measures of natural surveillance – lighting (97%) and fencing of the school space (86%). The second in frequency of application are two measures of formal control – engagement of school police officer (68%) and video surveillance (60%), while the employment of security service is less utilised (46%). The third in frequency are the secondary surveillance measures, with more frequent utilisation of students' surveillance (49%) than engaging the caretaker (27%). Of all the tested public surveillance measures, the schools most often apply lighting (97%), and the least common is installation of alarm systems (13%).

Table 2 – Frequency of application of public surveillance measures according to type of school

Measures of public surveillance	**Primary schools**				**Secondary Schools**				**Other Schools**			
	Yes		No		Yes				Yes		No	
	No.	%	No.		No.	%	No.		No.	%	No.	
School police officer	18	81,8	4	18,2	6	60	4	40	1	20	4	80
Security service	10	45,5	12	54,5	7	70	3	30	0	0	5	100
Video Surveillance	13	50,1	9	40,9	9	90	1	10	0	0	5	100
Alarm system	1	4,7	21	95,3	4	40	6	60	0	0	5	100
Lighting	22	100	0	0	9	90	1	10	5	100	0	0
Fencing	21	95,4	1	0,6	6	60	4	40	5	100	0	0
Caretaker on duty	4	18,2	18	81,8	3	30	7	70	3	60	2	40
Students surveillance	11	50	11	50	7	70	3	30	0	0	5	100

Despite some trends in the implementation of public surveillance that are common to all schools in the sample, there are great differences among the schools in the method or the quality of application of certain measures.

A total of 20 police officers of the Zemun Police Station are engaged in performing the duties of school police officers in schools in the municipalities of Zemun and Surčin. School police officers are uniformed and armed. While 16 school police officers are on duty in one school each, the other 4 school police officers cover two nearby schools each. The school officers of the Zemun Police Station are engaged from 8:30 to 16:30 in schools operating in two shifts, and from 8:30 to 15:00 in schools operating in one shift. In schools that share one school police officer, the surveillance is organized in alternate visits to schools by the police officer. The most important tasks of school police officers include: support to secure carrying out of the teaching process, protection of the school property, student traffic safety, preventing the sale of products harmful to pupils' health, etc. (Nikač, 2009). In order to perform these tasks successfully, it is recommended that the school police officer is present in the school at the beginning and at the end of classes, during the breaks and in other situations assuming a great number of students. Therefore, it may be assessed as a better solution to have one school police officer engaged in only one school.

There are differences in the ways the schools employ security officers. Out of the 17 schools that have security guards, four schools have night watch provided, while the others have only day surveillance, during the working hours. What is also interesting is the fact that four schools have only security service provided, while in 13 schools, in addition to the security officers, there is also a school police officer engaged.

According to the results of the survey, video surveillance exists in 22 schools in the sample, with only 10 schools connected to the central monitoring system of the Zemun Police Station and they are monitored 24 hours a day by police officers. There is a possibility of monitoring within the school itself. The central monitoring system has many advantages because it allows simultaneous monitoring of areas covered by all school cameras, zoom frame, rewind, retention and storage of records. However, only five schools have cameras placed outside the building, to record the entrance, school yard and school car park. In other cases, cameras cover only the interior of the school, mostly the hallways, stairs and other places with the highest frequency of students. It is expected that the other 12 schools having the capability of video surveillance are connected to the central monitoring system of the Zemun Police Station by 2011. For now, these schools have cameras installed only inside the building and they are fixed, meaning that there is no possibility to change the angle of recording. It should be noted that schools at Surčin generally do not have video surveillance (except one), which could be associated with the location of the school and security assessment.

Generally, alarm systems rarely exist in schools, which is especially true for schools from the group of other schools and elementary schools. Out of five schools that have alarm systems installed, four have the fire alarm, and one has fire alarm and anti-theft alarm. The alarms are sound-based and connected to the place monitored usually by two persons (a duty teacher and caretaker). Activating the alarm implies automatic dialling of the responsible persons' contact telephone numbers.

Out of 36 schools that have night lighting, 29 schools can be assessed as fully lightened, and seven schools as partially lightened, because these lights are not installed in all parts of the yard, the school car park, etc. There is no significant difference in the way of illumination of certain types of schools.

The differences are also evident in the way the schools are fenced. Out of the total number of schools that are fenced (N=32), 15 schools have the fence installed

along the whole perimeter of the school yard, while 7 schools are only partially fenced. Between primary and secondary schools, there are no major differences in terms of fencing, but it should be noted that all schools for students with disabilities are fully fenced.

Duty hours of the caretaker and students are organized in the same way in all schools where these measures are applied. The caretaker is on duty for 24 hours, and students only during the classes.

CLOSING REMARKS

Based on the results of this research, it may be concluded that our schools commonly use the public surveillance measures, with natural surveillance more present than the formal and the secondary one. Measures that are most often used are lighting and fencing of schools, hiring of school police officers and video surveillance. The following section gives the examples of effective practice from other countries, with consideration of the effectiveness of some public surveillance measures and recommendations for the improvement of this way of securing schools.

Unlike the developed countries, where the introduction of school police officers started in the 50's and 60's of the 20th century, Serbia started with an experimental programme in some schools in 2002. Today there is a total of 311 school police officers employed in 558 schools in Serbia (MUP RS, 2011). One of the largest and oldest school police departments in the USA and the world, located in Los Angeles, has a service of 340 school police officers who are on duty 24 hours a day in 1250 schools with around 678.000 students and 69.000 staff (LASPD, 2011). National Association of School Police Officers conducted a survey on a sample of about 1000 schools in 47 US states regarding the results of police officers in schools. The results of this study showed the following: the activities of school officers lead to the enhanced safety in schools, prevention of violence and crime; that school police officers have strong positive relationships with students and school staff, and somewhat weaker with parents; about half of the total number of police officers has about 100 contacts a day with students; reporting of crime to the police is largely driven by their activities; their role is both reactive and preventive; they resolve annually 1-25 violent incidents among students, between students and staff or by a third person (Trump, 2001).

Security officers are supposed to do the following: assist the police in resolving potential incidents in school; visit critical locations in school, car parks; keep the school administration informed about potential problems; provide information to students how they can exercise their rights and refer them to the appropriate staff; promote the school code; escort visitors; assist the school administration in searching student closets, etc. Compared to the school police officers, they have limited powers, they are not as visible, they do not wear uniforms or weapons, and therefore their capacity for formal control is lower (Nikolić, 2010:235).

Over the last two decades, the use of video surveillance has increased as a modern technological innovation with the potential for crime prevention in educational institutions worldwide. Advantages of the use of video surveillance in the school environment are: improved feeling of safety of students and teachers, intimidation of those who do not belong to the school, provision of evidence of the incident, reduced number of place managers and saving money (Green, 1999). Technical recommendations for the use of video surveillance are: the camera should produce a recognizable image of individuals; possibility of active surveillance through a variety of centralized systems or internally within the school; excluding the personnel

participating in the educational process from monitoring; regular maintenance of the system; encouraging of its application in medium-risk schools; reinforcing effects of video surveillance by improved lighting; securing entrances/exits, and other measures (Lioyd, Ching, 2003). In the contemporary literature, there are very rare quality studies of the effectiveness of video surveillance in schools, and the same goes for universities and government agencies (Welsh, Farrington, 2009). However, some surveys done in America during the last century suggest that the application of video surveillance successfully prevents unauthorized entry to schools, theft and vandalism (Nieto, 1977).

In relation to our schools, alarm as a security technology is far more used in schools in the developed countries. By the late '90s of the 20th century, most of the public schools in the largest American cities had anti-fire and anti-burglary alarms (Vera Institute of Justice, 1999, according to: Coon, 2004). According to the national investigation concerning the use of security technologies in the US schools, approximately 68.1% of schools had the classrooms equipped with some sort of alarm systems, 63.3% of schools had anti-burglary alarm, and in 18.1% of schools the alarms were mounted at the entrance/exit door (Coon, 2004). The UK experience has shown that the installation of the so-called "silent" alarm systems in classrooms with children who have emotional and behavioural problems reduces incidents with staff as well as vandalism (Lioyd, Ching, 2003). In situations where sound of an alarm cannot be heard (deafness, rooms resistant to noise), the use of visual alarm systems is recommended (Gips, Nodvin, Rubin, 2006:393). In Finland, an alarm in the form of a bracelet or a wrist watch by which a victimized pupil can automatically call the duty teacher proved as a successful measure in the prevention of peer violence (Bjorkqvist, Jansson, 2003:193).

School lighting increases the visibility, automatically increasing the risk to the perpetrator to be identified, caught in the commission of the offense and captured. Some authors argue that partial lighting can be worse than the non-lighting variant, because it provides enough visibility for the offender to commit a crime, and most often prevents his capture (Purpura et al., 2004:218). Setting the appropriate lighting can reduce theft, vandalism, unauthorized use of school property, etc. The use of sensor-based automatic lighting proved generally successful, when motion detection sensor signalises the police and others where the offense takes place (Atlas, Schneider, 2008). In Marion County, Florida, public schools have implemented the mentioned approach of "the dark yard," with the subsequent energy savings of 46.000 dollars a year, while the vandalism was reduced by 50% (Erwin, 2006). When placing the lighting fixtures, it should be ensured that the outside walls of schools and other vertical surfaces are illuminated, and that light falls under the appropriate angle so as not to dazzle the persons doing surveillance or suppress the effect of natural light, moonlight (Schneider, 2006). It is recommended that the school building and garden are illuminated from the early evening to the early morning.

Fencing of schools provides designation of the territory of the school, separation of the school property from the surroundings, protection of students from attacks and injury, preventing the entrance of unwanted visitors, etc. It is strongly recommended that the fence construction should not disturb the natural surveillance neither externally (by citizens), nor internally (by school personnel). It is recommended to install an iron fence, because it allows natural surveillance, it is resistant to vandalism and presents an inadequate surface for painting graffiti. In order to enhance the natural surveillance it is desirable to remove the optical barriers from the school windows, and encourage people in the surrounding buildings to do the same (Schneider, 2006). According to the research by the UK National Commission on

Education, fencing of the school premises proved to be one of the most successful measures, although there are differences depending on the height and position of the fence. Installation of 2.4 m high iron railings along the entire perimeter of the school, incorporating sensors, proved to be the most effective (Lioyd, Ching, 2003). The results of this study show that fencing of schools not only reduces crime and other violations, but also reduces the risk of injuries to students (syringes, glass) during the breaks and affects the awareness of students and staff of social care for the school atmosphere.

Lighting and fencing of schools directly influence the effectiveness of formal surveillance. For example, under-lighting jeopardizes the use of video surveillance and police and security services (Schneider, 2006). Sensors for lighting can be connected with an alarm device that will sound together with turning on the lights.

In the literature, there is little information about the secondary surveillance by the support staff (caretakers), teachers and students. According to the results of existing studies, students rarely choose to commit the offense if they are aware that they can be identified and caught. In one study, which was conducted in five secondary schools in Arizona, it was discovered that all violent incidents (a total of 166) occurred in the absence of teachers and other adults (Astor et al., 1999, according to: Schneider, 2006). Secondary surveillance can be improved in various ways, such as connecting of alarm systems with phones of duty personnel. On the other hand, adequate secondary surveillance makes effects of formal surveillance better.

It can be concluded that the criticism directed to the application of public surveillance measures in schools is mainly positive. However, it should be noted that these studies have been carried out in other countries, so the question is whether their findings are relevant to Serbia. Therefore, further studies of application of these measures in our schools are needed in order to determine their effectiveness and efficiency, but also the potentially negative effects, such as crime displacement, violation of civil rights and so on. This would undoubtedly contribute to getting an objective picture regarding the importance of public surveillance in the maintenance of schools security as well as successful use of these measures.

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USAGE OF SLIAR MATHEMATICAL MODEL IN COMBATING INFLUENZA'S EMERGENCY

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Abstract: Contemporary theorists and practitioners in the concept of security have placed the issue of outbreaks of communicable diseases, as a matter of exact importance to human lives. Two years ago, the emergence of influenza in Mexico and its expansion, depending on the state to state, showed how these security entities are able to respond to this safety problem. In addition to the probability of impact to the state, it was necessary to determine, how fast and how to respond to this security challenge. The closest way to predict is using of mathematical models. SLIAR model is a model that considered include: uninfected (S), latent (L), infected (I), asymptomatic (A) and recovered (R) members of a community affected by the flu. In this case, it is taken a population of 2,000 people and development of this model, revealed a possible course of the epidemic of influenza and its subsidence.

Key words: influenza, security concept, the mathematical model, the matrix, infection period, vaccination.

INTRODUCTION

The menace of diseases caused by naturally or deliberately released microorganisms poses serious challenges to society. Besides the fact that biodefense measures must cope with a threefold menace that may originate from states, non-state actors, or natural developments, the complexities of a comprehensive biological defense stem from its cross-sectored nature that affects many diverse government entities in areas ranging from the public health and civil protection sectors to law enforcement and intelligence agencies as well as the military, but also including research institutions, veterinary offices, and export control organizations.[1]

One of the challenges of a comprehensive management of biological incidents lies in the variable manifestations of biological risks, encompassing state use, terrorist attacks, and natural developments. In order to secure society from these risks and successfully cope with them, we must consider the similarities between different scenarios, but also the particular aspects of each individual threat source, as well as the specific problems associated with each of them.[2]

Understanding the transmission characteristics of infectious diseases in communities, regions, and countries can lead to better approaches to decreasing the transmission of these diseases. Mathematical models are used in comparing, planning, implementing, evaluating, and optimizing various detection, prevention, therapy, and control programs. Epidemiology modeling can contribute to the design and analysis of epidemiological surveys, suggest crucial data that should be collected, identify trends, make general forecasts, and estimate the uncertainty in forecasts.

1 Pampel C. Fred, *Disaster Response*, Facts On File, New York, 2008.
2 Bonin Sergio, *International Biodefense Handbook*, Center for Security Studies, Zurich, 2007.

Based on previous studies of outbreaks of communicable diseases, the cause of disease results from the state of health and disease, which is a product of constantly interacting forces and their mutual reactions of the ecological systems that make people as hosts with all elements of the animate and inanimate nature. As a basic principle of it become necessary ecological approach to explaining the disease or pathological condition. Thus, an event of constructing several epidemiological models is in question.. First, mathematical models clarify the interaction between the factors responsible for the current incidence, and to assess possible epidemiological situation. These models are used for the prediction of the effects of some interventions, such as the effectiveness of alternative measures to prevent and combat the disease. This is a very developed theoretical concept with remarkable practical benefits, but it is recommended to use these models approaches epidemiologist with strong knowledge of mathematics with the assistance of mathematicians or bio-statics.[3]

Mathematical sliar model

In many sciences experiments can be performed in order to gather information and establish appropriate hypothesis. However, experiments with the spread of infectious diseases among humans cannot be made. Data obtained from the outbreaks of epidemics that occur naturally are usually incomplete with regard to the need to obtain a complete picture about the epidemic. This absence of reliable data prevents the estimation of parameters of the epidemic so that it is only possible to estimate the range of values for some parameters. How repeatable experiments and true information is not available in epidemiology, mathematical models and computer simulations must be used to realize the necessary theoretical experiments. The necessary calculations can be easily carried out for different values of the parameters and data (Brauer 2008).

Mathematical models have limitations and shortcomings which we need to be aware of. Thus, the modeling of epidemics of infectious diseases we must know that the interaction of transmission in the population is very complex, and it is extremely difficult to cover the enormous scale of the dynamics of disease spread. Spread of infectious diseases involves not only factors based on disease, such as agents and ways of transmission, but also social, cultural, demographic and economic factors. It is known that the probability of getting the disease is not constant in time. The common experience is that some diseases are more often in winter, the other in summer, that is, depending on weather conditions. For children's diseases, there is a huge influence of school calendar while during school vacations the probability of getting these diseases are declining. So, for many groups of diseases we should consider the strength of infection depending on the periodic (seasonal) varying the number of contacts. For these reasons, we are forced to model with many simplifications, like when we use an epidemiological model for the microscopic description (role of a single infection) and then use it to predict macroscopic behavior of the spread of disease in the population.[4]

The study of disease is called epidemiology. The epidemic is unusually large, short-term income of disease. Models of epidemic analyses can be deterministic and stochastic. They differ in the relationship between the sizes of which occurs in

3 Jaćimovski S., Kekić D. *A Mathematical SIR Model for Epidemic Emergency,* NBP, No. 3, 2010, pp. 65-76.
4 Herbert W. Hethcote, *SIAM Review*, Society for Industrial and Applied Mathematics, Vol. 42, No. 4, pp. 599–653, 2000.

the analysis of epidemics. Deterministic models are expressed by differential equations, while the stochastic models are expressed by difference equation.[5]

This paper will use a deterministic approach. It is assumed that the population exposed to infection is large enough so that the variables that can occurred be are continuous. The paper analyzes influenza infections as one of the most common occurring and in recent years is a real danger and lead to emergency situations in many countries. Especially since the influenza virus has constantly been mutating and appearing in new forms and very easily spread.

Population exposed to flu is divided into five groups:

1. S - uninfected members (susceptible);
2. L - latent (infected but not carriers of the virus);
3. I – infected;
4. A - asymptomatic group (infected but not immune and are affected);
5. R – recovered.

SLIAR model is based on the following assumptions:

6. In the population whose total number of K, a small initial number of infected is I_0
7. The number of contacts per unit time per individual is constant and is β
8. Individuals in the group L is not considered to be infected
9. Members pL from L exceeds the group infected with speed k, and the rest $(1-p)k$ goes into an asymptotic group
10. In Group I, one part $f\alpha$ is recovering and exceeding to the group R, and another part $(1-f)\alpha$ is dying due to complications from influenza
11. Members of group A are reduced in proportion δ to the percentage η exceeding the group R.
12. Graphic model can be presented as follows:[6]

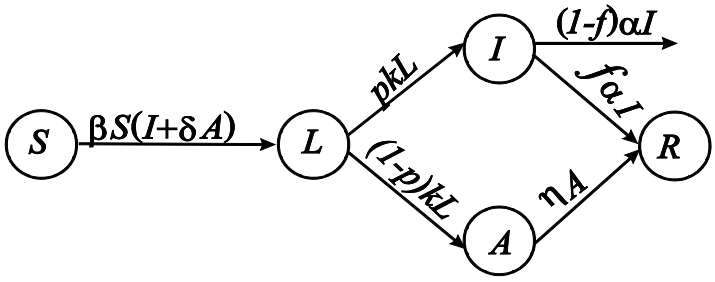

Figure 1 Graphic representation of the model SLIAR

5 Zhien Ma, Jia Li, *Dynamical Modeling and Analysis of Epidemics*, World Scientific Publishing Co. Pte. Ltd., 2009.

6 Fred Brauer, Jianhong Wu, Pauline van den Driessche, *Mathematical Epidemiology*, Springer-Verlag Berlin Heidelberg, 2008.

The corresponding equations for this model are:

$$\begin{aligned} S' &= -S\beta(I + \delta A) \\ L' &= S\beta(I + \delta A) - kL \\ I' &= pkL - \alpha I \\ A' &= (1-p)kL - \eta A \\ R' &= f\alpha I + \eta A \\ N' &= -(1-f)\alpha I \end{aligned} \tag{1}$$

The initial conditions are:

$$S(0) = S_0, L(0) = 0, I(0) = I_0, A(0) = 0, R(0) = 0, N(0) = S_0 + I_0 = K \tag{2}$$

It should be noted that $N = S + L + I + A + R$, $0 \le S(t) \le N(0), S(\infty) \ge 0$

The central issue of this model is to determine so-called reproduction number, and the constant contacts between individuals β. Based on[7] reproduction number can be found from Eq. if all parameters are known of the addition β.

System (1) can be written in matrix form as

$$\begin{aligned} x' &= \Pi D\beta(x, y, z)bx - Vx \\ y' &= -Dy\beta(x, y, z)bx \\ z' &= Wx \end{aligned} \tag{3}$$

The paper[8] has proven to beis system can be a general method to determine the reproduction number R 0 as:

$$R_0 = \beta(0, y_0, z_0)bV^{-1}\Pi Dy_0 \tag{4}$$

Other equations, except equation (3), necessary for determining the constant contacts between individuals is defined as:

$$\begin{aligned} \ln\frac{y_i(0)}{y_i(\infty)} &= \sigma_i\beta bV^{-1}\Pi(y(0) - y_\infty) + \sigma_i\beta bV^{-1}x(0) \\ y_i(\infty) &= y_i(0)\left(\frac{y_1(\infty)}{y_1(0)}\right)^{\sigma_i/\sigma_1} \end{aligned} \tag{5}$$

Equation (5) is often called the equation of the literature of the final size.

7 Fred Brauer, Jianhong Wu, Pauline van den Driessche, *Mathematical Epidemiology*, Springer-Verlag Berlin Heidelberg, 2008; Gerardo Chowell , James M. Hyman, Luıs M. A. Bettencourt, Carlos Castillo-Chavez, *Mathematical and Statistical Estimation Approaches in Epidemiology*, Springer, Dordrecht, Heidelberg, London, New York, 2009.

8 Julien Arino, Fred Brauer, P. van den Driessche, James Watmough, Jianhong Wu, *Mathematical Biosciences and Engineering*, Volume 4, Number 2, pp.159-175, 2007.

Sliar mathematical model for epidemic influenza

Specifically, for the alleged cases of infection with influenza, we can determine the matrix system (3) as

$$x=\begin{bmatrix} L \\ I \\ A \end{bmatrix}; b=\begin{bmatrix} 0 & 1 & \delta \end{bmatrix}; \Pi=\begin{bmatrix} 1 \\ 0 \\ 0 \end{bmatrix}; D=1;$$
$$V=\begin{bmatrix} k & 0 & 0 \\ -pk & \alpha & 0 \\ -(1-p)k & 0 & \eta \end{bmatrix}; x(0)=\begin{bmatrix} 0 \\ I_0 \\ 0 \end{bmatrix} \quad (6)$$

From (4) and (6) it is found that the reproductive number is

$$R_0=\beta S_0\left(\frac{p}{\alpha}+\frac{\delta}{\eta}(1-p)\right) \quad (7)$$

The equation for the final size of the previous case given as

$$\ln S_0-\ln S_\infty=R_0\left(1-\frac{S_\infty}{S_0}\right)+\frac{\beta I_0}{\alpha} \quad (8)$$

Solving the system of equations (7) and (8) can be found β and R_0. If R_0>0 there will be of epidemic and it is necessary to take measures to prevent it. In the event of an $R_0 \leq 1$ epidemic will not occur.

For specific analysis we will take a population of N (0) = K = 2000 people, which is the initial point is infected I_0= 12 people. Also, we take the latent period of influenza 1.9 days which gives $k=\frac{1}{1.9}=0.526$ and that period of infection is 4.1 days which gives $\alpha=\eta=\frac{1}{4.1}=0.244$. We shall take the following values for the parameters $p=\frac{2}{3}, \delta=0.5, f=0.98$. These values are adopted on the basis of known types of infection and previous experience. Based on the superior values of the parameters we find that $R_0=1.35, \beta=1.99\cdot10^{-4}$. It is obvious that there will be an epidemic if it does not take the vaccination of the population. For the adopted parameter values numerically solves a system of nonlinear differential equations and their solutions are given graphically in Figure 2:

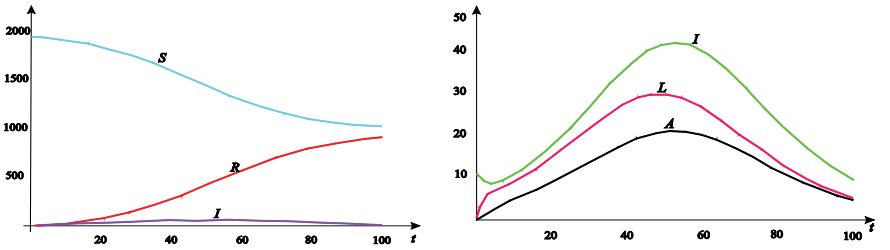

Figure 2 graphic representations of certain groups depending on the time

In Figure 2 shows that the observed spread of infection within the population after about 100 days, and that number is greater than the number of infected people in the group L and the number of people in group A and less than the number in group L and I.

We will now analyze the situation when the vaccination was carried out before the flu season. Prophylactics require that each year a certain proportion of the population vaccinated from 3 types of flu that are considered potentially dangerous at a time[9]. Because of carried out vaccinations number of sensitive (susceptible to the flu) is reduced, since reducing the likelihood of infection in contact with infected persons. It also reduces the number of susceptible to infection and other groups that we analyzed in the model. This fact leads to the need for grasping the new classes[10]:

1. S_T-it consists of members of the group S that are exposed to the flu and who are vaccinated;
2. L_T - are vaccinated members of the group L;
3. I_T- vaccinated members of the group I, and
4. A_T-vaccinated members of the group A.

All classes with an index of T are members of the respective groups that were vaccinated before the flu season. In addition we will introduce some assumptions:

1. Vaccinated members of the group subject S to reduce infection, the factor
2. The groups I_T; A_T reduced the number of members for factor, σ_I; σ_A respectively. It is reasonable to assume that $\sigma_I < 1$; $\sigma_A < 1$
3. The percentage reduction in group L_T, I_T, and A_T is k_T, α_T, η_T. We shall consider the $k \le k_T; \alpha \le \alpha_T; \eta \le \eta_T$
4. Percentage recovered from illness that left the group I and I_T are f; f_T. We will assume that $f \le f_T$.
5. Vaccination reduces the number of group L by a factor τ of where $0 \le \tau \le 1$.

Introduce the label in order to shorten $Q = I + \delta A + \sigma_I I_T + \delta\sigma_A A_T$ .....(9)

Graphic presentation of the situation when the performed vaccination is given in Figure 3

9 Diana H. Knipl, Gergely Rost, *Mathematical Biosciences and Engineering,* Volume 8, Number 1, 2011 pp. 123-139; Julien Arino, Fred Brauer, P van den Driessche, James Watmough and Jianhong Wu, *J. R. Soc. Interface*, Volume 3, pp. 453-457, 2006.

10 Julien Arino, Fred Brauer, P van den Driessche, James Watmough and Jianhong Wu, *J. R. Soc. Interface*, Volume 3, pp. 453-457, 2006.

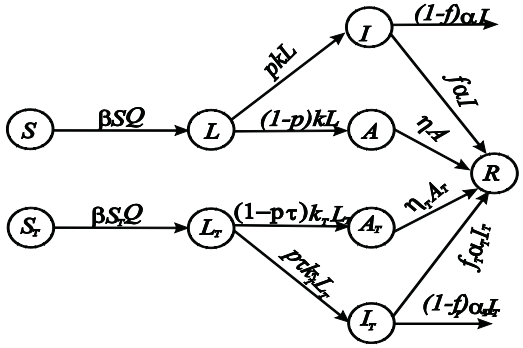

Figure 3 Graphic representation of the model SLIAR flu analysis of spreading infection when vaccination is carried out

For this case we can write the following system of nonlinear differential equations

$$
\begin{aligned}
&S' = -\beta SQ\\
&S_T^{'} = -\beta\sigma_S S_T Q\\
&L' = \beta SQ - kL\\
&L_T^{'} = \beta\sigma_S S_T Q - k_T L_T\\
&I' = pkL - \alpha I\\
&I_T^{'} = \tau pk_T L_T - \alpha_T I_T\\
&A' = (1-p)kL - \eta A\\
&A_T^{'} = (1-p\tau)k_T L_T - \eta_T A_T\\
&R' = f\alpha I + f_T\alpha_T I_T + \eta A + \eta_T A_T\\
&N' = -(1-f)\alpha I - (1-f_T)\alpha_T I_T
\end{aligned}
\tag{10}
$$

The initial conditions are given as

$$
\begin{aligned}
&S(0) = (1-\gamma)S_0;\ S_T(0) = \gamma S_0;\ I(0) = I_0;\ N(0) = S_0 + I_0\\
&L(0) = L_T(0) = I_T(0) = A(0) = A_T(0) = 0
\end{aligned}
\tag{11}
$$

Also, from model follows that $N = S + S_T + L + L_T + I + I_T + A + A_T + R$

$$
x = \begin{bmatrix} L\\ L_T\\ I\\ I_T\\ A\\ A_T \end{bmatrix};\ b = \begin{bmatrix} 0 & 0 & 1 & \sigma_1 & \delta & \delta\sigma_A \end{bmatrix};\ \Pi = \begin{bmatrix} 1 & 0\\ 0 & 1\\ 0 & 0\\ 0 & 0\\ 0 & 0\\ 0 & 0 \end{bmatrix};\ D = \begin{bmatrix} 1 & 0\\ 0 & \sigma_S \end{bmatrix}
$$

$$
w = \begin{bmatrix} 0 & 0 & (1-f)\alpha & (1-f)\alpha_T & 0 & 0 \end{bmatrix}
$$

$$
V = \begin{bmatrix}
k & 0 & 0 & 0 & 0 & 0\\
0 & k_T & 0 & 0 & 0 & 0\\
-kp & 0 & \alpha & 0 & 0 & 0\\
0 & -p\tau k_T & 0 & \alpha_T & 0 & 0\\
-(1-p)k & 0 & 0 & 0 & \eta & 0\\
0 & -(1-p\tau)k_T & 0 & 0 & 0 & \eta_T
\end{bmatrix}
\tag{12}
$$

Same method [11] seeking reproductive number is expressed through the corresponding parameters, we find

$$R_u = \beta S_0[\frac{p}{\alpha} + \frac{\delta(1-p)}{\eta}] = R_0$$
$$R_v = \sigma_S \beta S_0[\frac{p\tau\sigma_I}{\alpha_T} + \frac{\delta(1-p\tau)\sigma_A}{\eta_T}] \quad (13)$$

R_u - the reproduction of non-vaccinated population, R_v - vaccinated population. How infection begins in the population which is not sensitive, then all the talk about reproductive control as a crucial issue for the analysis of the size of the epidemic: $R_c = (1-\gamma)R_u + \gamma R_v$ (14)

where γ is the number of population that is vaccinated. If $R_c \le 1$ there will be no epidemic, if $R_c > 1$ there is a pandemic. Another important relation between S_0 and S_∞ is the equation and is the final size and is given in this case on the basis of (5) as

$$S_0[\ln(1-\gamma)S_0 - S_\infty] = \frac{S_0\beta I_0}{\alpha} + R_u[(1-\gamma)S_0 - S_\infty] + R_v[\gamma S_0 - S_{T\infty}]$$
$$S_{T\infty} = \gamma S_0[\frac{S_\infty}{(1-\gamma)S_0}]^{\sigma_S} \quad (15)$$

The number of those who have symptoms of the disease is defined as:

$$I_0 + p[(1-\gamma)S_0 - S_\infty] + p\tau[\gamma S_0 - S_{T\infty}] \quad (16)$$

and the number of deaths caused by influenza can be found in (Brauer, 2008):

$$(1-f)I_0 + p[(1-\gamma)S_0 - S_\infty] + (1-f_T)p\tau[\gamma S_0 - S_{T\infty}] \quad (17)$$

For the adopted parameters

$$\sigma_S = 0.3;\ \sigma_I = \sigma_A = 0.2;\ k_T = 0.526;$$
$$\alpha_T = \eta_T = 0.323;\ \tau = 0.4;\ f_T = 0.98 \quad (18)$$

we can find the right size that interests us. It is essential to find that the population should be vaccinated to avoid outbreaks of influenza. For the immunized population reproductive number is $R_v = 0.047$, and for non-vaccinated $R_u = 1.373$. Data for the γ we find from conditions is $R_c = 1$, as in our example is $\gamma = 0.28$. So it is necessary to vaccinate 28% of the population to avoid flu pandemic. The number of people with symptoms of the disease, according to (16) equal to 300, and the number of deaths according to (17) was 6.

Therefore, vaccination largely prevents the spread of epidemic influenza. Of course, it is necessary to build strategy of vaccination[12], and carry out prophylactic measures to avoid the danger of a pandemic. By numerically solving the system of equations (10) we can graph the time dependence of the corresponding values, as given in Figure 4.

11 Julien Arino, Fred Brauer, P. van den Driessche, James Watmough, Jianhong Wu, *Mathematical Biosciences and Engineering*, Volume 4, Number 2, pp.159-175, 2007.

12 Diana H. Knipl, Gergely Rost, *Mathematical Biosciences and Engineering,* Volume 8, Number 1, 2011 pp. 123-139.

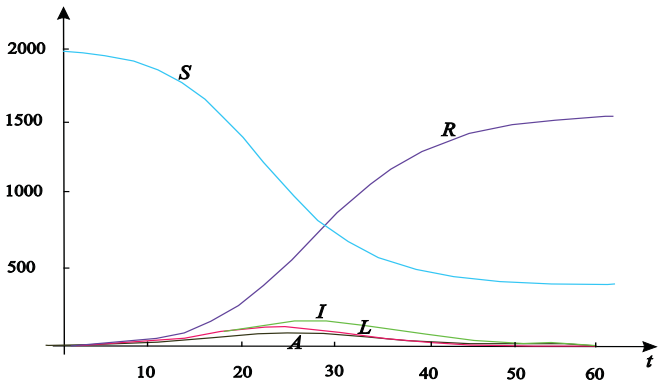

Figure 4 Graphic representation of the functional dependence of the time certain groups where the proportion of the population vaccinated

In Figure 4 is clearly seen that in our example, where the vaccination is partially applied, the infection is completed much earlier (60 days) than when it is not done (100 days).

CONCLUSIONS

The emerging and reemerging diseases have led to a revived interest in infectious diseases. Mathematical models have become important tools in analyzing the spread and control of infectious diseases. The model formulation process clarifies assumptions, variables, and parameters; moreover, models provide conceptual results such as thresholds, basic reproduction numbers, contact numbers, and replacement numbers. Mathematical models and computer simulations are useful experimental tools for building and testing theories, assessing quantitative conjectures, answering specific questions, determining sensitivities to changes in parameter values, and estimating key parameters from data.

We have shown how to calculate the number of members of each susceptible compartment that escape infection over the course of the epidemic and have illustrated our results with models for influenza with disease control measures as well as for models with vaccination and heterogeneous mixing. For general incidence, the final size relations are inequalities, but they become equalities for mass action incidence. This suggests that mass action is the natural setting for final size equations, and points to the importance of results to the effect that the final size relations are approximate equalities if disease mortality is small.

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MODALITIES OF ENGAGEMENT OF SUBJECTS OF PROTECTION AND RESCUE SYSTEM IN EMERGENCIES[1]

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Abstract: It is widely known that emergencies are a part of our everyday life, and that they are caused by events that disrupt the normal functioning of services and businesses, endanger the life of citizens, natural and material resources and represent a threat to the stability (sustainability) of a local, national and global development. Systematic approach to the problem of emergencies, as well as prevention, suppression and recovery from their consequences, allow the emergency services to properly respond to the event that has occurred, and field units that directly carry out actions to be adequately prepared and equipped with technical equipment, logistic support and training.

Key words: emergencies, protection and rescue forces, resources, protection.

INTRODUCTION

It is widely accepted that emergencies are part of everyday life and that the development of a state or society increases the sources, forms of their appearance, and the loss in human lives and/or huge material losses.[2] Events that entail not only material losses but, unfortunately, the loss of human life, require good organization to avoid or at least to minimize the damage that they cause. Activities are reflected in the formation of the emergency interventions other than tasks in eliminating the consequences of adverse events have increasingly tried to prevent the occurrence of such events, or to reduce the consequences of their occurrence.

Well organized service of protection and rescue in emergency situations is able to manage the organization and working methods of preventing the occurrence (if the cause of the event is known) as well as the further development of adverse events and rehabilitate its consequences taking into consideration the basic goal of protecting people, environment and property. Increasing development of humanity and technological development have created new risks. These risks are present in all spheres of social activity: social, economic, financial, educational and other. It should be noted that in most countries the use of measures and action plans in case of accidents, natural disasters and technical accidents, are referred to using the following terms:

- Civil Defence (Civil Protection) - French and Spanish speaking countries
- Civil Defence (Civil Defence) - English-speaking
- Civil Security (Civil Safety) - English-speaking

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 leader of the Project is Associate Professor Saša Mijalković, PhD.

2 Jakovljevic V, "The resources of critical infrastructure and their importance for disaster management, Yearbook of the Faculty of Security, Belgrade, 2010, pp. 63-81.

- The structures for disaster management (emergency management structures)-US.

Models of actions in emergency situations vary from country to country, depending on the type and specific threat to the national territory, climatic conditions, natural phenomena, and soil characteristics on the one hand, and the existing legal system, administrative traditions, political-territorial organization and social arrangement, the historical experience with emergency situations, on the other. Responsibility of each state or government for one of its basic functions - ensuring security of citizens - is realized and the establishment of an appropriate system for emergency response, to use all available resources of the given state and society in the best possible way in order to provide maximum possible protection of the civilian population and prevent waste of assets that allow the citizens a certain level of quality of life.[3] What is common to all countries is the fact that the first and main participants in joint actions of protection and rescue consist of: *the 112 service, police, fire department, ambulance, hospitals, and if necessary, local communities and other specific services*. In the case of an escalating emergency there is a need for rescuers who are trained to respond in specific situations.[4]

According to the way in which national systems of protection and rescue in emergency situations are organized and according to their position in the administration, these systems can be classified in the following groups:

- A specialised ministry or public administration for the protection and recovery,
- A specialised state agency for the protection and recovery,
- State administration for protection and rescue within a ministry,
- Management of protection and rescue as an organizational unit of the Ministry.[5]

The present paper views the models of protection and rescue in the Republic of Serbia and the Republic of Montenegro, where the system is organized under the Ministry of Internal Affairs and the model that operates as an independent organization, as in the Republic of Croatia.

Model emergency management in Serbia

Experience from previous emergencies in the territory of the Republic of Serbia have shown that the application of existing regulations in the protection and rescue in emergency situations created a problem unique function of all relevant services in emergency situations, primarily because of shared responsibilities between different ministries and other state agencies. Thus, the competencies of the Ministry of Internal Affairs, the field of civil protection authority of the Ministry of Defence, the area of flood water in the Directorate of the Ministry of agriculture, water and forestry, in the event of chemical disaster response is the responsibility of the Ministry of environment and spatial planning.[6] These facts were critical to the standardization in the field of emergency situations, because the existing legal regulations mentioned area was outdated and obsolete. Law on emergency situations and civil protection[7] are clearly defined and established systems obligations of protection

3 Kesetović, Ž., "The legal framework of the system for emergency response - Comparative Experiences", Legal Bulletin No. 1 / 2010, 21-33.
4 Blagojević, M., Galić, V., "Subjects of the system of protection and rescue in emergency situations in the Republic of Serbia", Proceedings of the III. International expert scientific group, Safety and health, Borik - Zadar, 2010, p.57-65
5 Op. cit. forward 2
6 Blagojević, M., "The role of special forces Ministatrstva Interior Repblike Serbia in terms of peacetime emergencies", Master thesis, Faculty of Security, 2009. Belgrade, pp. 46.
7 The Law on Emergency Situations and Civil Protection, Official Gazette of RS, no. 111/09.

and rescue, first of all public administration bodies, bodies of local self-government and business entities that are required to develop plans for protection and rescue. This law created the basis for an integrated disaster management system.[8] Activities of the Department in managing the emergency include the establishment of a unified system for management of emergencies at the national level, manage and control all rescue units, the establishment of command and operations services, which will run all operational activities, reorganization and reconstruction of existing regional, city and municipal services notification. An important moment in the workflow management is striving for coordination of all entities that are activated in emergency situations, from local to state levels, coordination of protection plans and operational plans, regional, urban and local self-government bodies as well as harmonization of operational plans with subjects acting in emergency situations such as police, medical science, military, Red Cross and others. The formation of the Department of emergency management as a unique system of communication authorities, relevant institutions and citizens, as well as exchange of information on what is necessary for adequate and timely intervention in emergencies and other similar situations, aims to reduce the disastrous effects of natural, technical and technological disasters to a minimum. Applying lessons learned in exchanging experiences, skills and knowledge with other relevant departments, the Department aims to become a modern European service. All of this indicates steps and measures are being taken to encourage international cooperation.

There is no doubt that the role and tasks of law enforcement agencies in emergency situations are of security and strategic importance, both from the aspect of life, personal, property and every other human security, and protect other social values. The main tasks of the police unit in emergency situations, aimed at protecting the civilian population, as well as material and cultural assets, consist of the following:

- ensuring the security of citizens, or carrying out police activities in the maintenance and protection of public order, protection of life and property or combating crime and performing other tasks of importance for public safety which are identified and regarded to be various forms of danger and threat to the civilian population, as well as material and cultural goods; and
- participating in the realization of tasks of protection and rescue, assisting citizens and public authorities and achieving cooperation, coordination and synergies with other subjects of security, defence and protection.[9]

Bearing in mind the geographical position of the Republic of Serbia as a crossroads of regional roads, increasing the safety of passengers and transported goods is of great importance for further economic development and enhancing investors' confidence in the domestic economy.

Model emergency management in Montenegro

In Montenegro, the protection and rescue operations in emergency situations are under the jurisdiction of the Ministry of Internal Affairs. Bearing in mind that the rapid and comprehensive technological development inevitably implies certain adverse effects that can sometimes result in serious accidents and damages and the consequent severe disasters, there is increasing awareness of the need for emergency situation response force, able to react to various forms of epidemics in humans,

8 Maric P., "The Law on Emergency Situations", Legal Bulletin No. 1 / 2010, pp. 5-11

9 Blagojević M., Nikač Ž., „Legal and security aspects of engagement of the Ministry of interior of the Republic of Serbia in emergency situations", Second International scientific conference „Transport of dangerous goods and risk management", Second International scientific conference „Transport of dangerous goods and risk management", International thematic issue, Publisher: "Kirilo Savić" Institute a.d., pp. 151-161.

and mass disease of animals and plants, as well as to emergencies resulting from uncontrolled effects of a number of natural phenomena. In geographic areas that belong to the territory of Montenegro, such phenomena are usually associated with earthquakes, large movements of rock masses (slipping soil, landslides, etc.), floods, long-lasting extreme meteorological phenomena, avalanches, fires, regional and other large-scale natural disasters. Great technical failures that can result in disasters and emergency situations are related to accidents on the installations for petroleum products, damage in transport and storage of chemicals and toxic materials, explosives and radioactive materials, massive pollution of drinking water supply of villages, large traffic accidents, accidents in mines, industrial accidents caused by explosions, radiological, biological, epidemiological and other technical or technological disaster. Emergency situation may arise as a result of major outbreaks of communicable diseases (epizootic effects of mass disease of humans, animals and plants). The basic idea and the idea which led the Republic of Montenegro when defining the area of emergency situations, is to create an integral strategy of protection and rescue. Based on the estimates of the degree of threat, professional rescue units have been deployed so that they can arrive on the scene and take appropriate action at the shortest possible time. When it comes to earthquakes, fires, landslides, avalanches and other emergencies, the work of rescuers during the first hours after the accident, gives the best results in terms of saving human lives. In addition, such an established organization that unites all participants in the rescue activities and who care for equipping, training of members and their practicing. In addition to rescue areas, these units are trained to assist in repair and in providing paramedical assistance. What is required in order to ensure correct operation is the adequate machinery, transport equipment and well trained executives. Based on Article 94 of the Constitution of the Republic of Montenegro, the Law on State Administration (Official Gazette of RM no. 38/03) adopted the amendments to the provisions on the organization mode of public administration and the Regulation has been established that the Ministry of Internal Affairs shall be responsible, inter alia, for risk management and control during the protection and rescue operations in emergency situations. Accordingly, under the Ministry of Internal Affairs, the Department for Emergency Situations and Civil Security has been organised. This sector provides a single management for all activities on protection and rescue in the event of natural disasters and technological capabilities, as well as accidents caused by chemical, biological, radiological and nuclear contamination-emergency situations and directing the work of the appropriate authorities at the time of creation, the procedure and the elimination of consequences of emergency situations and coordination of all institutions on the state level and local levels and the individuals in case of emergencies and elimination of their consequences. This primarily involves:

- implement measures to address the consequences of emergencies;
- preparing and informing citizens to act in emergency situations;
- equipping units for operational work in emergency situations;
- training of units;
- supervision concerning the operation and equipping of units belonging to the local government to preserve the integrity of the protection system.

The Department for Emergency Situations and Civil Security performs the tasks relating to: the development of strategies, projects, programs and monitoring their implementation, monitoring the harmonization of the legal system to the legal system of the European Union and the identification and implementation of programs of cooperation with international and regional organizations, institutions and other subjects as well as participation in international and regional forums, bodies and

other forms of work, monitoring and enforcement of laws and regulations in the protection and rescue, risk identification and management of citizens.

In relation to this, the Department performs various activities, including: professional organization of public hearings, giving explanations, issuing technical guidelines and instructions for work and preparing opinions on drafting laws, bills and regulations in this area; protects life, health and property of citizens, and preserves the conditions necessary for life and work and takes measures to overcome emergency situations - earthquakes, fires, floods, landslides, droughts, avalanches, snow deposits, ice on rivers and other natural disasters, technical disasters, explosions, accidents, car accidents, accidents in mines and tunnels, damage to oil and gas facilities and other adverse effects of hazardous substances (toxic, poisonous, radioactive, infectious, etc.); makes preparations, plans and manages task forces and coordinates the activities of all parties to protect and rescue, through a single management body in order to protect and rescue in case of emergencies; coordinates the work and procedures for the elimination of consequences of emergency situations (the level of state and local levels); takes an active part in preventing emergencies and eliminating their consequences, the implementation of measures to address the consequences of emergency situations, preparation and notification of citizens to act in emergency situations; it equips operational units that work in emergency situations, oversees professional development and training, provides control and supervision over the operation and equipping units belonging to the local government to preserve the unique system of protection, collection, transmission, storing and processing of data based on modern technologies; it participates in international cooperation and exchange of information and data from organizations dealing with the emergency situations in other countries, helping these countries on the basis of the signed documents on an interstate mutual aid agreement in cases of emergency; it takes preventative measures against early stages of natural disasters (earthquakes, fires, landslides, droughts, avalanches, snow deposits, ice on rivers, flood, etc.), technical and technological disasters (explosions, accidents, car accidents, accidents in mines and tunnels, damage to oil and gas plants, etc.), and in order to prevent endangering the health of citizens and the environment by the action of toxins, radiological, chemical and biological contamination; it is in charge of rescue activities in the development of emergency situations, monitoring the production, trade and transport of hazardous materials, weapons and military equipment and protection of human life, property and environment from the effects of improper treatment of these matters and other duties in accordance with the regulations. These activities are implemented in the Department for emergency situations and civil security, which is composed of the following organizational units: Department of operations, Department of civil protection, Planning and logistics, Department of risk management, Section 112 - service for the reporting and notification, the Department for the prevention and inspection. [10]

Model emergency management in Croatia

In Croatia, the system for emergency response is normatively regulated by the Law on Protection and Rescue. It is organized largely within the National Protection and Rescue service (DUZS) which is a professional, independent and administrative organization with a mission to prepare, plan and direct the operational forces of protection and rescue, and coordinate activities of all participants in the protection and rescue. " DUZS - the leading organization for protection and rescue of people, material and cultural resources and the en-

10 National Strategy for Emergency Situations of the Republic of Montenegro, 2005.

vironment in the Republic of Croatia, in line with the needs of modern society, under this administration to protect and rescue work following services: Civilprotection,Firedepartment,System112,Collegeforfire,protectionandrescueand Joint service operations. The mission of this organization is to create and maintain a modern system of protection and rescue in the Republic of Croatia to be able to respond to the protection of people, material goods and the environment in terms of emergency situations, suffering and other challenges of modern society, and if necessary provide assistance to or receive help from other countries. This service directly manages the forces and material-technical means of the system of civil protection during an emergency or major disaster, implements and coordinates the mobilization of other operational search and rescue forces to be included in emergency situations. Service for the assessment of vulnerability and protection and rescue plans, standard operating procedures for the protection and rescue and system of civil protection operational plans. We also monitors the condition and appearance of the area of civil protection, identify the status of development and usage of shelters, and proposes measures to organize the preparation and training of citizens for personal and mutual assistance in emergencies and major accidents. If necessary, coordinate joint service activities with the Ministry of Defence and the Ministry of Internal Affairs and other state administration structures involved in the protection and rescue. In the administrative bodies and fire departments, whose job is to collect and process the information on fires, coordination entities are responsible for acting in the sphere of fire protection, as well as to develop international cooperation in this field. System 112 has certainly aroused the greatest interest of the public. The basic objectives are reflected in coordinating the receipt and transmission of all decisions, orders and reports. This service operation on the 24/7 basis collects and processes information and data. They analyse any potential hazards and their consequences, and if necessary inform the citizens, legal authorities, public administration, emergency services, civil protection authorities and other competent managers of the existing units of the state administration.

Similarities and differences in the organization of the service

Basic similarities among the emergency organizations in the world today are reflected in the jobs they perform. Namely, the action in an emergency situation is associated with the use of adequate equipment, depending on the type of emergency and the event in question. Throughout the world there are organisations which, although not necessarily defined as such, act as the services we described herein in terms of tactics and performance (recovery and rehabilitation of the consequences of the event) and there are no significant differences among them. The second and far more important is the issue of prevention and regulatory diversity in some countries, including the risks of accidents and the establishment of prescribed patterns of coordination in terms of information flow, both horizontally and vertically, and the performance of participants in the field from the moment of the first alert to an emergency, and until completion, or remedial consequences and outcome of legal and financial responsibility, after the investigation determined the actual cause of an emergency. The emergence of institutions registered, trained and equipped to intervene in emergency situations and distributed throughout the regional levels of state territory, created conditions for a different treatment, especially in the transport of cargo which is classified as hazardous. Services in the world have a very wide range of synergies of various units that make and contribute to quicker and solving of the problem. Among our regional services there is only sporadic cooperation

of fire and rescue personnel within certain professional organizations (emergency medical services, MAY, electric power, mountain rescue and others.). The tendency for the formation of such services, which would include all units is the basis on which we are to build a modern high-quality power to successfully oppose and prevent adverse events. Our protection and rescue services were established not long ago, and we believe that their quality is the same as that of similar services in the region and in Europe. The similarities are reflected in the basic tasks of these services: assessment of fire risk, natural disasters and technological disasters, vulnerability assessment of health and the environment from radiological, chemical and biological contamination, preparation of plans for fire protection, natural disasters and technical - technological hazards and protection against radiological, chemical and biological contamination, development of operational plans (plans, responses) to respond in case of fire, natural disasters, technical and technological disasters and the threat to public health and the environment, control the implementation of measures aimed at preventing defined by the laws, technical regulations and standards. There are also similarities in their defined rescue activities: fire protection for property and persons, the intervention in technical and technological accidents in order to prevent their spread and threat to property and personal intervention in natural disasters (earthquakes, floods, landslides, storms on land, drought, forest fires, avalanches, ice on rivers, etc.) in order to reduce the consequences for persons and property, intervention in cases of threat to public health and the environment due to radiological, chemical and biological contamination, providing medical treatment to the injured persons at the scene (paramedical assistance). Differences are reflected in the organization: the establishment of a unified management system in emergency situations at the state level which achieves integration of all services and manages and controls fire-rescue units; the establishment of a unified command operating centre from which to coordinate all subjects during the emergency, the furnishing of all units with the necessary technical equipment and devices, as well as providing vocational training, both theoretical and practical learning; the formation of certain databases within which data would be stored related to the units, their equipment, personnel, hazardous materials, areas with the highest percentage of potential threats to the environment. [11]

CONCLUSION

Bearing in mind that an emergency situation is a negative set of factors and events that endanger the lives of people, distort the conditions for their normal operation, preventing the production, economic and other types of activities and routines, and therefore represents a special type of activities and challenges in which not everyone can participate. Competence, professionalism, responsibility and dedication are characteristics which must be present among those who will perform these tasks. Emergency situations call for quick reaction of the forces within the community in order to ensure prevention, protection and rescue of people, material and cultural goods as well as the elimination of the consequences. Examples from other countries, as well as our previous knowledge and experience with the response in terms of natural and other disasters, show that it is not enough to deal with this problem only at the state level. There is a fundamental need to plan, implement preventive measures and build a functional system for managing emergencies at the local levels. The willingness of local communities to timely and adequately

11 Phillips, B. D., Disasters by Discipline-Necessary Dialogue for Emergency Management education, http://www.training.gov/EMIWeb/downloads/DenverFinal.doc

manage emergency situations is crucial, because this area should be seen as part of a comprehensive, sustainable community development. Floods, hail, wildfires and other natural disasters do not only threaten lives and property of individuals, but affect the entire socio-economic development and can disrupt the ecological balance of entire regions. The development of modern technology and training of personnel for emergency situations in the Department within the Ministry of the Republic of Serbia contribute to timely and efficient response in emergency situations, rapid relief of the consequences, but also to organized and strong preventive action. What is common in the respective areas in the three analyzed countries is readiness to apply the principles of responding to an emergency situation where it occurs, that is, at the local level and, if necessary. at the strategic level.

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PROACTIVE APPROACH OF POLICE IN COMBAT AGAINST FOOTBALL HOOLIGANISM

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Abstract: Hooliganism of certain fans at football matches has been decades-old problem faced by many countries of the world. Our country is not an exception. Moreover, this kind of threat to security in our country shows the tendency of escalation. It is evident from our experience that solely repressive model for solving the football hooliganism does not provide satisfactory results. Analyzing the security methods of major football competitions held in many Western European countries, it can be concluded that the proactive police operations in confronting hooliganism at football matches are much more efficient and provide more acceptable results. The paper analyzes the experience of the police organizations of Belgium, the Netherlands, Portugal and Germany acquired during the security of the European and the World Championship from the aspect of proactive police activity and generalization of experience on the ways of information collecting, processing and distribution on football hooliganism. In addition to this, the paper deals with the international police cooperation in order to share the intelligence databases on hooligans, primarily in the European Union; and it likewise provides guidelines on to which way our country's efforts should be directed in combat against hooliganism at football matches.

Key words: proactive approach, hooliganism at football matches, inter-police information exchange, fan violence, the European Union, the police

INTRODUCTORY REMARKS

Last year's incidents at the "Luigi Ferrari" stadium in Genoa, at the football match between the national teams of Italy and Serbia, caused by the Serbian hooligans, which resulted in interruption of the game and riots in the streets of the city, showed a few facts. First, Serbia still has a big problem with hooliganism; second, since it knows no borders, it is spread to other countries, often due to the cooperation of hooligans from different countries; third, a repressive approach of the Italian police has not proven to be adequate, and last, the omissions have come out in a proactive police actions of Italy and Serbia, which were reflected in the failure to achieve an adequate contact and intelligence sharing between the police of the two countries. Had a better link between the police been established and had they exchanged intelligence on hooligans, it would probably have reduced the likelihood of the emergence of violence in the stadium and the city itself.

From the very appearance of a problem with hooliganism, the police have generally applied the repressive measures in the fight against it, and therefore regularly suffered public criticism. Some police organizations, especially in the Southern and Eastern Europe and in Latin America, were characterized to use indiscriminate violence against the fans.[1] Police action on the problem of hooliganism has often

1 Spaaij R., *The prevention of football hooliganism: a transnational perspective*, Amsterdam School for Social Science Research University of Amsterdam, http://cafyd.com/HistDeporte/htm/pdf/4-16.pdf, January, 09, 2011, page. 4.

seemed like a simple police response to a problem that suddenly appears. In contrast to this former police action, in recent years we have witnessed a rise in popularity of proactive police activity that is based primarily on intelligence work, but also on undertaking other measures before the escalation of problems.

Violence can be seen in virtually all sporting events, but it is most associated with football[2]. National police units in the European Union, dealing with the problem of football hooliganism, more and more cooperate by exchanging intelligence information, especially in times when there is a big football event or on the occasion of the international matches. This concept of police work is likely to be extended to other countries because of the enlargement of the European Union, as well as the acceptance of this concept within the Football Associations that pay more and more attention to safety at football stadiums. Most experience in proactive actions can be seen in the British, Dutch, German and Belgian police units, which could serve as a model for other European countries. This style of police work seems to improve the strategy of combating football hooliganism to some extent. The police of different states apply different variations of a proactive approach to the problem of hooliganism, depending on, among other things, political priorities, training of police and other characteristics.

Proactive police tactics in confronting violence at football matches

Several studies have shown that proactive policing approach gives better results than formerly, reactive police actions[3]. It was the first time that such a profile of police operation was applied, on a large scale, at the 2000 European Football Championships held in Belgium and the Netherlands[4], based on practical experience and research. At the core of the profile was the idea that the police should act towards the supporters in a friendly way, but also make clear that any form of hooliganism would not be tolerated. This approach involved the use of small police units that monitored fan groups and who performed their activities in regular uniforms, while maintaining active contact with the fans. Special unit for intervention, with their equipment to break up riots, special vehicles, service dogs, water cannons, etc., were kept out of sight of fan groups as far as possible. The police approach was based on recognizing potentially violent situations and timely intervention, until the violence escalates.

During the aforementioned Championship two models of event security were used. The first model (applied in three cities) could be called "high profile" of the order maintenance characteristic of which was maintenance of public order with a large and visible police presence on the ground. The second model, a "low profile" (in five cities), has involved the maintenance of public order with small, poorly visible police force. "Low profile" provided 10 visible police officers per 100 fans, in places where they gathered in large numbers. "High profile" included the presence of three times more policemen per 100 fans. The difference between the models was, besides in numerical presence of police officers, the fact that police officers in the "low profile" made contact

2 The fact that violence is mostly connected with football fields was shown by the act "*European Convention on Spectator Violence and Misbehavour at Sporting Events, Particularly at Football matches*" (the Official Gazette of the SFRY, International Agreements, no. 9/90, of March 1, 1990). The convention is related to prevention of violence at all sporting events, but it especially recognized the violence problem at football matches, where it is the most expressed, which can be seen in the title itself.

3 More expanded: Adang O., Brown E., *Policing Football in Europe*, Politieacademie Apeldoorn, 2008.

4 2000 European Football Championship was held from June 10 to July 2 in Belgium and The Netherlands, which was the first time in the history that the European championship was organized by two countries.

with the fans in an easier way, showed more respect for different cultures and nationalities, played an important role in the prevention of violence and were more flexible and easier to adapt to different approaches to action fans. However, it should be emphasized that "low profile" was not a "soft" police response to violence and hooliganism. They responded to offences immediately by following the principles of zero tolerance for violence. The distribution of the police in "low profile" was based on intelligence received from the intelligence teams in the field and information received from the police of other countries. In the "high profile" there were three times more, mostly visible, police officers equipped with riot gear, with the presence of special vehicles, grouped into larger police forces, which made it difficult to establish contact with the fans.

Contrary to police estimations, during the Championships a small number of minor incidents took place. It could be concluded that the deployment of police forces contributed to the safety of events, that is, that the chosen police tactics had the expected effect. However, the correlation between a large number of officers present and the reduced number of incidents has not been determined. Analyses have shown that the increased presence of police does not necessarily lead to the reduction in incidents. The results have also shown that it is possible to maintain public order, using the model of "low profile", without creating a state of siege or without excessive interference with the activities of fans, but this could be achieved only with police officers who performed their activities in small groups and exercised an active contact with the fans. By this method it was easier to obtain information, and the possibility that the leaders of hooligans would remain anonymous or undetected was reduced. On the other hand, the supporters were clearly made aware of what may or may not be done, so the potential of escalating violence was minimized.

During the European Football Championship which was held in Portugal in 2004 a strategic approach which was based on "low profile" to ensure public order was applied. At the request of the Portuguese national police an independent study[5] on the behaviour of fans and the procedure of police units during the European Championships in 2004 was conducted. The study showed that an average of four officers supervised 100 fans, both in regular games and in matches with higher risk. This figure is slightly lower compared to the European Championship in 2000 when an average of six police officers had overseen 100 fans. At the European Championship in 2000 there was a difference between "low" and "high" profile, while in Portugal there was no such difference. Also, it was the fact that in Portugal there was the increased activity of plain clothes officers who covered the place where the fans gathered in large numbers. In places where the police were present, they were not in full interventional equipment, i.e. riot gear. During the championship in 2000 there was significantly greater presence of police forces for riot – whenever the "high profile" security order was used, as well as in situations where the analysis were conducted afterwards, the security assessment indicated the increased risk level. In Portugal, there was no difference between "high" and "low profile" for maintaining order in terms of visibility of emergency units because they were near the location where the fans gathered, but were positioned in such a way that they were not directly or easily visible by fans. The fact was also ascertained that during the Championship in Portugal there were almost no major incidents.

The Championship in 2000 was classified as successfully organized one as a low frequency of violence was registered, while in Portugal the absence of incidents was

5 Adang O., Brown E., *Policing Football in Europe* , Politieacademie Apeldoorn, 2008, page 214.

noted. The question is how the Portuguese police failed to stop rampaging hooligans, when other police forces previously failed to do so? One of the explanations may be sought in cooperation with other European police forces, above all, those of England and Germany, which prevented the arrival of registered hooligans. However, the arrival of a number of hooligans was prevented, but not all, but no incidents were reported anyway. A rapid and targeted police intervention in small skirmishes between fans, or situations that resemble the potential conflicts, was one of the key reasons for absence of major conflict. In this way the fans were clearly set rules of conduct that cannot be overstepped. Police strategies and tactics that were used based on the "low profile" public order maintaining, proved to be successful and contributed to the safe functioning of the championship in Portugal, with the contribution of other factors as well.

The experience gained in the Championships in 2000 and 2004 was later used at the World Cup in 2006 in Germany and in 2008 at the European Championship in Switzerland. Also, the experiences are adopted in the acts of the European Union as well, primarily through the improved version of the *Handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, which includes at least one European Union member states*.[6]

In 2006 a group of researchers from Sweden[7], while maintaining the Football World Cup in Germany, investigated a proactive police approach to the hooligans during the organization of high-risk matches. The research focused on two cities, Frankfurt and Dortmund. The strategy of the police in Frankfurt, as well as in other cities where matches were played, was based on the classical concept of separation of fans, i.e. on preventing contact between the fan groups in order to prevent hooligan outbursts. In contrast to this approach, the strategy in Dortmund was different. The police tried to enable the meeting of fans before the match, but under controlled conditions, or under the supervision of the police. This strategy was later assessed as a successful example of a proactive approach in combating violence and hooliganism.[8] The approach based on the development of communication between the police and supporters and it basically derived from a program that was developed by police in Dortmund in 1980s, to counter hooligans of the football club Borussia fans from Dortmund. The police, in cooperation with the local government which funded the program, secured the large open spaces, squares and parks where the fans could gather and where the fans of different football teams met. In these areas the fans were able to consume food and drink, and have fun before and after the game. Very often the concerts were held there. Thus, contacts between the various fan groups existed, but under controlled conditions set by the police. A large number of policemen in plain clothes mingled among the fans with a mission to gather information, but also to conduct and control the activities of certain hooligans or violent groups. On the other hand, at these locations there was a very small number of uniformed police officers and their task was to let the fans know that the police was present and wanted to make contact with them. The police acted in accordance with the "low profile" model which included a flexible response to

6 The first version of the handbook was issued by the EU Council at June 21, 1999, with the title"*The handbook for international police cooperation and measures to prevent and control violent behaviour in connection with international football matches*". The next handbook from 2001 had the title: "*The handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances at football matches with an international dimension, in which at least one Member State is involved*". Amended versions of the handbook with the same title were issued at December 4, 2006, and June 3, 2010.

7 Jern S., Näslund J., *Inter-group play and symbols of a mass event at the World Cup in football 2006*, The 6h Nordic Conference on Group and Social Psychology- *Dynamics Within and Outside the Lab*, Lund, 2009, page 117.

8 Hau S., *Communication as the most important Police Strategy at the Football World Cup Final 2006*, Institutionen för beteendevetenskap Linköpings universitet Forum för organisationsoch gruppforskning, 2008, page 1.

the treatment of fans and action depending on the behavior of fans. This flexibility stopped at the moments when the fans displayed violent behavior and then the police responded vigorously to the hooligans. The police in Dortmund did not show a large number of visible police force, and those that were visible achieved very close contact with the fans and informed them why certain measures and activities were taken, so that fans would not have a wrong impression and be upset because of them. Operational police officers in plain clothes were inside the fan groups; they gathered information about the activities of hooligans and informed other police units when something happened. Then specially equipped units undertook actions and adapted their tactics depending on the situation; i.e. they neither immediately used the force, nor immediately detained persons. And then, in critical situations, it was very important to communicate with fans. However, if a specific act of violence occurred, the police would react immediately, very vigorously and effectively. Such a tactic was used at the World Championship in 2006. The basic idea was to make the place for meeting of fans under the control of the police, which would facilitate the work of police officers, i.e. they would have to run from one to the other side of town to "put out the fire". A part of the idea was that the police officers conducted individual interviews with potential hooligans in order to let them know that they were under the police surveillance. The idea predicted that teams of police officers working in the field were in a fixed composition. This meant that the teams would be composed of the same officers throughout the World Cup. Each team was carrying out different set of tasks, but the team composition was the same throughout the season. In such a way team members built a routine and gained confidence in what they were doing. As a result, they perform their tasks more effectively, calmly and professionally. The teams comprised of police officers who had had a lot of experience in working at football matches, as well as knowledge to assess the behavior of fans. The presence of different kinds of police units guaranteed a flexible response of the police, depending on the reaction of fans. Plain clothes police officers followed the movement of fans and signaled the possible violent activities. At the same time, uniformed police forces were placed in different parts of the city.

From the previous remarks of the Netherlands, Belgium, Portugal and Germany police actions and different variations of their proactive action, the basic principles of proactivity in combating football hooliganism can be generalized:

- BALANCE – In a proactive approach to combat football hooliganism it has been shown that it is extremely important to maintain a balance between the need for visible forces, uniformed police officers, who will affect the audience in a preventive way and the fact that excessive presence of uniformed persons may adversely affect the fans. Despite the excessive presence of security forces, taking a large number of police measures may encourage aggression by the fans.
- ASSESSMENT – for a successful maintenance of public order, it is critical that the police are compliant with the relevant risk assessment, because in this way the possibility of incidents is reduced. It is of great practical importance to make an accurate assessment of the social identity of fan groups - the values and standards, goals, a sense of what is right for them, stereotypes and expectations of other fan groups, earlier incidents (time, place, objects, ways of manifesting it), etc.
- COMMUNICATION – In order to avoid conflict situations, it is important to establish communication with the fans in a proactive manner. Whenever possible, communication with supporters should be carried out by police officers who are familiar with fan groups or have even gained the trust of fans. In any

case, it is important that the communication is done in a language the fans understand and in an unambiguous way.

- ACCESSIBILITY TO THE FANS – in every phase of work, wherever and whenever possible, police conduct should be such as to facilitate the fulfillment of the aims and objectives of fans, if they are reasonable and legitimate. When the police need to enforce certain restrictions on the behavior of fans, it is important that they explain the reasons behind the implementation of limitations and that they provide another alternative means by which they can meet their legitimate goals.
- DIFFERENTIATION – In planning and making decisions about the police action, the specificities of different groups of football fans must be taken into account, according to different parameters (nationality, number, goals, cultural specificity, etc.). If these differences are not taken into consideration and if police activity planning approach is routine and stereotypic, the risk of an outbreak of incidents is greatly increased.

Common feature of all the aforementioned variants of the police action was that they were primarily pro-active, and only secondarily have had a repressive character. During the emergence of violence, the police applied targeted and rapid interventions to make it clear which rules of behavior are acceptable and which are not, and how to prevent escalation of violence. In all variants of action, small units for monitoring, in regular uniforms, were able to easily realize an active approach and make contact with fans. Also, there were decentralized units for intervention (with special equipment, riot vehicles, service dogs, and water cannons) located as far as possible away from the place of meeting fans or playing the match. In the preceding examples the planning activity of the police was based on the rapid flow of information received from the teams on the field or from other international police organizations, using the knowledge and experience with foreign police who cooperated. The basis for all variations of police activity is the use of the concept of "community policing" in addition to the traditional "criminal intelligence/investigative approach." The approach of community policing focus is on management of events at public meetings through direct and open interaction with fans.

Collecting data on hooligans

A prerequisite for proactive police actions is availability of full, accurate, timely information about fans and hooligans, their movements and activities. A very important information is the number of fans who will attend the game, whether they are organized, whether they acted violently in the past, if they intend to conflict with other fan groups and others, because on the basis of these data the security assessment planning and engagement of police forces are made. There are numerous methods of obtaining intelligence about hooligans. One possible method is the use of covert operations and infiltration of police officers in a hooligan group. Information obtained by this method can be described as the best, most reliable and in every way mostly used in police work. However, this method has drawbacks because of which in each specific situation it should be assessed whether to apply it. First, we should make selection of candidates from among officers who are mentally and physically prepared to voluntarily participate in this method. Wrong selection of candidates could adversely affect the execution of the task. Second, any error, infiltration of police officer or another from the police organization could endanger

the life of infiltrators. Third, for this method there is the need of special funds since the infiltrated police officer must completely change the way of life (car, clothing, and home address) in some cases. Fourth, in order to reach important information the infiltrated police officer must gain the confidence of the leader of a fan group, which is not at all an easy task that can take a long time (several months to several years) for which police often do not have time considering a number of tasks that are placed in front of them[9] nowadays.

Today, one of the major methods by which the police obtain information about hooligans is the use of police officers as "spotters", as referred to in the jargon. The system of "spotters" is designed so that every police officer who carries out this activity is associated with a certain football team. His task is to identify and monitor hooligans of a particular club, especially when traveling to the away games. These officers come into close relations with their local clubs, with the leaders of fan groups, and with registered hooligans. Such a system [10] is the most diverse in the UK where the National Football Intelligence Unit (NFIU) has been founded. All data that "the spotters" have collected in the field are submitted to the said unit. NFIU coordinates the collection and dissemination of intelligence information and forwards them, as appropriate, to other police units in England and Wales. This unit has a high level of cooperation with other similar units and provides them with necessary information. Similar units exist in Germany and the Netherlands. In preparation for a sporting event the unit collects information on traveling fans from several sources, including civilian airlines and other transportation companies. In addition to "the spotters", the unit uses mobile liaison officers as well, whose job is monitoring the fans at away games at home and abroad, who are responsible for:

- dissemination of information on sports fans who are expected to commit an act of violence;
- the disclosure or, if possible, identification of the already known hooligans, including the location of their meeting and accommodation during travel;
- the prevention of possible violations of public order in places where the fans gather.

Modern technologies are also an important part of the police fight against hooliganism. All major stadiums in Europe are covered by video surveillance, by which hooligans, counselors and every illegal act of fans can be identified. Some stadiums, such as, for example, Old Trafford, Manchester (United Kingdom), have a special police control room to monitor developments, both at the stadium and around it. To supplement the video surveillance at stadiums police officers in plain clothes use video cameras to capture anyone who exhibits suspicious behavior in the crowd outside the stadium. A similar role is played by front-line intelligence teams and teams to gather intelligence. The difference between these teams is that the first teams have a proactive role, and other a repressive role. Front-line intelligence teams are used to gather information on movement of fans or registered hooligans who are willing to engage in violence. These teams are deployed along with the teams for collecting evidence. Front-line intelligence teams consist of two or three uniformed police officers. They are trained in intelligence gathering on the change of mood among fans and hooligan groups, their movements, intentions, which are delivered to command headquarters after being collected. Based on the information obtained, the headquarters plan and deploy police forces depending on the situation on the

9 Јанковић Б., *Превенција насиља на спортским приредбама*, Гласник права, бр.3/10, page 142.
10 http:// The difference between these teams is that the first teams have a proactive role, and other repressive role. Front-line intelligence teams are used to gather information on trends and registered supporters or hooligans supporters who are willing to engage in violence.people.exeter.ac.uk/watupman/undergrad/rowlands/policingncis.htm, March 01, 2010.

ground. All the information recorded in the field (of incidents, identified hooligans and other information) are entered the intelligence reports after returning from the field. Their action is purely proactive, because their task ends when there is a disturbance of public order, when the units trained for fighting and suppressing the violent mass come into action.

The tasks of intelligence teams are as follows:

- to identify individuals and groups that may participate or may cause acts of violence;
- to establish a dialogue with individuals or groups in order to obtain intelligence information;
- to provide up to date information about events on the ground to managers of police units and headquarters in order to distribute power appropriate to the situation on the ground in an effective and successful way;
- to gather intelligence information by observing and communicating with fans, supported by videos, photographs or obtained by other technical means;
- to maintain contact with other police officers who secure sports event for possible identifications of hooligans who have been involved in violence;
- to seek and identify hooligans who have taken refuge at bus and railway stations, shopping malls and other public places;
- to monitor and identify areas where the hooligans gather before and after the breaking of completed matches;
- to identify solitary groups of hooligans after clashes with police and possibly follow them;
- to gather information on future activities of hooligans.

Databases are also very important in combating hooliganism. All persons involved or suspected of being involved in hooliganism should be recorded there. Information from databases can be shared with other international police organizations to exchange information about perpetrators or persons who are suspected to have links with violence at football matches.

International police cooperation aiming to share intelligence on hooligans

By the Decision of the Council of the EU in 2002, it was proposed to each member to establish a national office to exchange information on football competitions security (NFIP) that would be responsible for cooperation in the organization of events involving more than one EU country. Its role is to coordinate exchange of information on football matches at the national level, and when necessary to provide training and work of intelligence officers or "spotters". NFIP would have a role and be a channel for the exchange of information with countries not belonging to the EU. In the case that these countries do not have a specialized state body for the exchange of such information, it is necessary to designate the authority which will cooperate with the NFIP of the European Union countries. The European Championship held in 2004 became the first contest that felt the benefits of establishing offices. Indeed, compared with previous major events held on the European continent, in Portugal there were no major incidents. The decision from 2002 was amended in 2007 when it was agreed that each member of his office is to provide access to (different) databases of "risk" persons who are mostly found in the possession of the Ministry of Internal Affairs, and to ensure that Member States exchange offices begin analyzing critical situations that have occurred in previously held competitions and, finally, that

every office must make a list of recommendations (generalized from the previous experiences) which will then make available to partners via internet presentation or through the office requires. The amendment of the decision provided the deadline for assessing the effectiveness of members in respect of the decision letter[11].

Intelligence data have been submitted to other police organizations according to the established procedure, in accordance with the recommendation of the Council of Europe T-RV/97/1[12]. By this recommendation the classification of fans was made in the following order:

- Category "A" - peaceful, true fans;
- Category "B" - the fans at risk to harm the public order, particularly in cases when under the influence of alcohol, and
- Category "C" - violent supporters or leaders of the fans.

The intelligence concerning fans had been delivered in accordance with this division by 2006, when the existing "Handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances at football matches with an international dimension, which includes at least one European Union Member States" was updated with new research and has formulated a new classification of fans. Old category "A" fans is the new categorized as fans that were "not risky" and category "B" and "C" are classified as "risky" fans.[13]

Risky fans are known or unknown persons who may pose a potential risk for disturbing public order or antisocial behavior at football matches or in connection with them, whether they are planned or are spontaneously formed. Fans who are not risky are known or unknown persons who pose no risk for the occurrence of violence or disorder at football matches or related to them, regardless of whether they are planned or are spontaneously generated.

There are two types of information exchanged between police of different states – general and personal information. General information can be divided into three categories:

- strategic information – information that defines the event in all its dimensions, with special attention to safety and security risks;
- operational information – helping police officers at the operational level in making a risk analysis, and
- tactical information – helping police officers at the operational level to adequately respond to all security problems that arise during the event.

Personal data refer to information about individuals who are supposed to be a potential risk to the safety of events maintenance. They can contain information about individuals who have previously caused violence or disorder, or participated in them, and are connected with football matches. Information can be exchanged before, during and after the event. These three phases need not always be strictly separated.

The NFIP task of the organizing country, before the events occur, is to send a request for information to other states at the strategic level, which will include fans' risk analysis and other relevant information concerning the safety of the event and

11 Савковић М., Ђорђевић С., *На путу превенцији насиља на спортским приредбамае: предлог регионалног облика сарадње*, Београдски центар за безбедносну политику, Београд, 2010, page 20.
12 http://www.coe.int/t/dg4/sport/Resources/texts/sprec97.1.memotrv_en.asp#TopOfPage, March 01, 2010.
13 *Council Resulution concerning an updated handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved*, Official Journal of the European Union (2006/C 322/01), page. 18.

a description of threats that endanger a sports event. At the operational level, the NFIP country which supplies this information should deliver accurate and timely information on movements of risky and non-risky fans, on tickets sale and other relevant information. A country that possesses relevant information about the fans must submit them to other countries even if there is no request for data collection. During the occurrence of the football event, the NFIP of the organizers may request confirmation of information previously provided, and the request to update the risk analysis. The organizer country must provide information on the return of fans that were banned to enter the country or were expelled, to the countries of origin or transit. After the event the organizer country must provide information about the behavior of the fans to other countries so that countries of origin could update the risk analysis of individual fans, as well as details of any incidents which were participated in or were caused by visiting fans.

CONCLUSION

Hooliganism at football matches could be reduced in a socially acceptable framework by quality and security assessment of risk level of the emergence of incidents, by monitoring and suppressing the extreme fans' intentions, their isolation and effective intervention, with the participation and coordinated cooperation of public authorities, sports organizations and clubs, care and educational institutions and the media. In confronting violence at football matches the repressive measures should not be totally ignored, on the contrary, but a proactive approach should be preferred. This approach allows the mutual interference of different, rival fan groups, it may not result in conflicts and the emergence of violence, i.e. the fans can work together to support their favorites and to establish good or at least friendly relations among them.

A large number of police officers, who are equipped with emergency equipment for riots and placed in a prominent place, do not guarantee that there will not be violence and disturbance of public order. On the contrary, a small group of police officers in regular uniforms, which are in contact with the fans, can ensure safe operation of the game. A continuous flow of accurate and timely information enables police forces to maintain control over the behavior of fans. Police officers, who ensure public order in a certain area, should not look menacing, but on the contrary, they should try to treat the fans, wherever possible, in a friendly way and to establish communication with them so that the atmosphere is relaxed. Information on the movements of known hooligans should be delivered to all police units and every police officer should be familiar with them, in order to implement well-organized, focused and limited intervention to these parties, without prejudice to other fans. It is important that during such interventions a mistake is not made of arresting or using the force to peaceful fans, which could lead to dissatisfaction with other fans and initiate an escalation of unrest.

Since joining the EU is a priority foreign policy objective to the Republic of Serbia, there must be rules and procedures agreed relating to the fight against hooliganism, in line with the EU standards in the future. The first step in these activities is the foundation of a specialized office to exchange information on security of football competitions (NFIP), but also the adoption of all other regulations of the EU. The fact that Serbia lacks such specialized office was found in Genoa in 2010 during a football match Italy-Serbia, when due to inadequate exchange of intelligence about hooligans the riots in the stadium occurred. The police of the Republic of Serbia have units that are capable of opposing the repressive hooliganism, but more work on a proactive approach must be done, which is not as adequately represented as in the EU countries.

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WOMEN POLICE OFFICERS NETWORK

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Abstract : The Southeast Europe Police Chiefs Association (SEPCA) has initiated the creation of the Women Police Officers Network (WPON) in SEE. On 26th November 2010 in Sarajevo, the South East Europe WPON was officially launched. The network is expected to function as an independent service under the umbrella of SEPCA members. The aim of this project is to assist in the setting-up of this network by providing support and expertise to the WPON in the initial phases of the inception as well as support for long-term institutionalization. By working in partnership with colleagues from police and/or law enforcement organizations in its member countries, WPON strives to facilitate positive changes in regard to gender mainstreaming, the management of diversity as well as optimizing the position of women.

Key Words: women police officer, network, police initiative, gender equality.

INTRODUCTION

Gender issues within policing have only recently become the subject of detailed academic scrutiny and there are still relatively few cross-cultural studies which undertake analysis of women police officers. The present paper seeks to make a contribution by reviewing the position of policewomen in some of the countries of Europe and, by taking historical and comparative perspectives, offer a model of the developmental stages of women's progression within the police.

Research studies on the position of SEE policewomen proved particularly elusive, and most of the original language material was made available through the activities of the European Network of Policewomen's documentation collection. To date, very little material was available on the position of women in SEE police organizations. There is a modest amount of material emerging from Eastern Europe on the role of women in the reconstituted police forces and this is referred to when appropriate.[1]

Countries vary in the dates of admitting women into the police, but the opposition to their admission was almost universal. The role of women in policing was to be an extension of the domestic sphere and organizationally they were to be kept within separate lines of management. Entry of women was often preceded by lobbying activity, but successes were probably due to concessions made on pragmatic grounds in response to some contemporary crisis. The development and expansion of women's roles within policing often occurred through the intervention of advocacy in the form of key individuals or legislation.

Network (Women Police Officers Network – WPON) was created as part of SEPCA and grew into an independent network of women police officers from 10

1 Brown J., "European Policewomen; A Comparative Research Perspective", *International Journal of the Sociology of Law*, 1997, 25, pp. 1–19.

countries and aims at linking them to work in collaboration to promote careers, gender equality, status and role of women in policing.[2] This kind of connection should contribute to the overall improvement of regional cooperation and understanding, especially in the fight against organized crime, corruption, terrorism and human trafficking. Key partners are the IAWP,[3] OSCE and UNIFEM.[4]

The Southeast Europe Police Chiefs Association (SEPCA) launched in 2008 the initiative to establish a network of women police officers of Southeast Europe (Network), whose objectives are to promote the application of the principles of gender equality and democracy for policing tasks in law enforcement agencies.[5]

General conditions for the formation of WPON

In the modern world, according to international conventions and many national legal frameworks, women and men have exactly the same rights and freedoms, and some of the basic premises of human rights are their equality and non-discrimination. In reality, however, the position of women often isn't equated with the position of men. It is therefore not surprising that the availability of certain jobs, high pay, promotion opportunities, representation of the functions, management (especially strategic) and political positions – are some of the issues that will inevitably move on the status of women.

As for the countries of Southeast Europe, there is relatively recent massive influx of women into the police service and there are many questions and concerns regarding the optimal solutions for their integration. Even more precious was the initiative of the Southeast Europe Police Chiefs Association (SEPCA) to establish a network of women police officers of Southeast Europe. The intention and desire to be more efficient and more economical in the realization of this important enterprise, to avoid wasting time, energy and patience in searching for "our" way of copying others, is probably good but not entirely appropriate.

Another attempt, perhaps the most important, convergence of women police officers in the region, was the organization of the conference on "Gender Equality in the Police Services – Application of National and International Legal Standards on Gender Equality", held on 21 and 22 December 2006 in Banja Luka. Thanks to the conclusions of the conference, surveys were carried out in recent years in some ministries of interior in SEE, and women became more present in public institutions. SEPCA initiative to approach the establishment of networks of women police officers of Southeast Europe is a positively evaluated at the very start by the Ministries of Interior of SEE. However, immediately evident was the need for establishing network access, both using the experience of existing similar associations as well as with respect to the specific (social, cultural, economic, etc.) countries, the future members.[6]

The Southeast Europe Police Chiefs Association (SEPCA) has initiated the creation of a Women Police Officers Network (WPON) in SEE. The network is functioning as an independent service under the umbrella of SEPCA members. The

2 Lopandić D., Kronja J., *Regionalne inicijative i multilateralna saradnja na Balkanu*, Evropski pokret Srbija, Friedrich Ebert Stiftung, Belgrade, 2010, p. 208.

3 The IAWP (International Association of Women Police) was founded in 1915 and serves to provide women with resources, networking and organization to help in promoting women in law enforcement. (more at: www.iawp.org).

4 The United Nations Development Fund for Women, commonly known as UNIFEM (from the French "Fonds de développement des Nations unies pour la femme") was established in December 1976 originally as the Voluntary Fund for the United Nations Decade for Women in the International Women's Year (http://www.unwomen.org/).

5 *Strategy and Work Programme RCC*, Internet, 09/02/11, http://rcc.int./index.php?action=doc_detail&id=149, p. 52.

6 *Uspostavljanje Mreže žena policajaca Jugoistočne Evrope – rezultati istraživanja*, Udruženje šefova policije jugoistočne Evrope-SEPCA, Belgrade, 2010, p. 34.

aim of this project is to assist in the setting-up of this network by providing support and expertise to the WPON in the initial phases of the inception as well as support for long-term institutionalization. The project supports the creation of basic statutes governing management and membership structures as well as specific efforts tasked with addressing the recruitment, promotion, retention and career building of women police officers in the region. It is envisioned that the WPON can also come to serve as an advisory body to the region's police services on matters related to gender and policing, and project initiating and facilitating. The project supports the development of relevant gender policy and guidelines based on best-practice experiences, including experiences from other existing regional networks for women police officers. SEESAC will also develop in partnership with the WPON a SALW (Small Arms & Light Weapons) course for women prosecutors and judges in SEE,[7] enabling them to gain in-depth knowledge on small arms and light weapons as well as the accompanying legislative frameworks.

As part of preparations for organizing the first regional meeting, a prior meeting was held in Belgrade on 26 and 27 March 2009, at which representatives of the SEPCA Secretariat, OSCE/ODIHR, OSCE Mission to Serbia, an expert from the Police Academy from Montenegro and the Ministry of Internal Affairs of the Republic of Bulgaria, Macedonia and Serbia participated. On that occasion, it was agreed that all countries interested in joining the Network to conduct research as objective review, with one side of the current status and role of women police officers in the national police services and the SEE countries, on the other hand, the possibilities for their future cooperation within the Network.

Establishment, objectives and mission

On 26th November 2010 in Sarajevo, the 1s Annual Meeting of the South East Europe Women Police Officers Network (WPON) was held, during which the WPON was officially launched. At the meeting, jointly organized by SEESAC, the South East Europe Police Chiefs Association (SEPCA) and the Administration of Federal Police in BiH, representatives of the nine police services members of WPON elected the first Executive Committee and discussed and approved the Annual Work Plan for 2011. A representative of the Ministry of Interior of the Republic of Serbia was elected as the first Chair of WPON, while the Deputy Chair is a representative of the Ministry of Interior of Croatia. The Executive Committee was completed with the election of a representative of the Ministry of Interior of the Republika Srpska (BiH) as Chair-Elect.

The establishment of WPON was initiated by SEPCA in 2008 and comes following a process of expert and technical meetings, which took place throughout 2009 and 2010. The Network's creation is supported by the recommendations from a regional study on the position of women in police services in SEE, which was conducted in 2009. The study provides the framework for the work of the WPON in advancing gender equality in police services and promoting gender sensitive police work.

The WPON vision is that national women police personnel associations collaborate through WPON to improve the status of women in police services and ensure security for women in the region.

7 The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) has a mandate from the United Nations Development Programme (UNDP) and the Regional Cooperation Council (RCC) to further support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe.

The WPON mission is to:

- Provide a platform for the exchange of experience and knowledge across police services in the region on the status, needs and priorities of police women in the SEPCA region;
- Facilitate the advancement of the position of women in police services and gender sensitive policing practices in SEPCA police services;
- Advocate for the implementation of gender equality and democratic principles in policing within SEPCA police services.[8]

The project of Women Police Officers Network offered assistance in setting-up the network by jointly identifying the needs of the network. The main component was the setting-up of the basic structure of the network and the capacity-needs analysis in order to establish what the priorities are and how they can be achieved. The data collection through questionnaire distributed to women police officers will provide the basis for such an analysis.

The project helped in organizing annual conferences for Women Police Officers in SEE, gathering representatives from Police service members of SEPCA as well as representatives of similar organizations from several EU countries.

The first annual conference served a double purpose:

- It served as a founding event for WPON, allowing the members to get to know the main aspects of the network, the key bodies which tasked with developing the basic documents necessary for the work of the network, and
- The first conference acted as a way for the members of WPON to develop contacts with other female police officers from the SEE region as well as to establish personal and institutional links with similar associations from other countries. Members are expected to benefit from the initial contacts, at the same time using the opportunity to start implementing some of the experiences and knowledge from female police officers in other forces.

The other annual conferences will help institutionalize the network as well as act as venues and conduits for discussion on the key challenges for female police officers. The project helped in organizing working group meetings. It is helping for developing meeting agendas and identifying experts who could contribute to the working groups.

The project supported the development of policy and best-practice guidelines in areas of career development for female police officers and in gender sensitive policing strategy, and it is now supporting the network in taking on an advisory role on matters related to gender mainstreaming.

Summary of the activities:

- Analysis of the current career development of women police officers in SEE police services.
- Analysis of current practice of policing and the role of women police officers.
- Identifying the key areas where improvement is needed.
- Research on best practices and international experience in implementing gender policies in police services.
- Recommendations on best-practice approaches.[9]

8 Internet, 08/02/11, http://www.seesac.org/news/recent-news/1-95/.
9 *Women Police Officers Network*, Internet, 11/02/11, http://www.seesac.org/activities/regional-gender-action/1/.

Meeting WPON

The Second Gender Expert Meeting on Women Police Officers Network (WPON) was held in Belgrade on 22 and 23 July 2009. Objective comprehension of current status and role of women police officers in the national police services of the countries of this region, as well as the perspective for their future cooperation were developed. Purpose of the Research was: providing the starting point for planning of future cooperation; focusing on activities which have been found important and necessary by all (or majority) of members; time, money, energy, etc. efficiency. The Target Groups were: Human resource management services, as well as Police Academies (PAs)/Police training centres (PTCs), Police officers – Women, Police officers – Men Chiefs.[10]

The research results were followed by specific recommendations for each of the subjects that was analyzed, and in the future can serve as a basis for guiding future activities of WPON members. At the end of the study, the recommendation was highlighted that the network as part of their future activities should consider recommendations relating to issues of choice and quality of training of women police officers, so as to formulate guidelines through a Network that would serve as a framework for further activities and information sharing on these issues.

SEPCA Women Police Officers Network (WPON) 3rd Regional Expert Meeting was held in Sofia on 2 and 3 December 2009. SEPCA Executive Secretariat sent out letter of invitation for the Interim Steering

Committee. Every SEPCA member (10) appoints one person to this committee – with one alternate. Membership have to be: voluntary; members are only women police officer and administratives; associates are foreign women police officers and male police officers (national and international); friends of WPON are (international) donors and supporters. WPON should have working relation and Memorandum of Understanding with RCC as political framework in the region. WPON will be open for cooperation with all organizations active in the field of rule of law and gender equality (local, national, regional). Communication strategy (membership drive) of WPON is as follows: per country basis – national meetings; internal (police) information exchange system (approval necessary); send email with information; own national intranet/institutional website; regional initiative: future advocacy campaign – leaflets, fact sheets (to potentially supported by UNDP); through national syndicates, other associations; SEPCA communication tools (communication liaison officer, SEPCA intranet); Future efforts: WPON's own communication strategy (own website, etc.).

On 9-10 June 2010 in Belgrade, the Interim Steering Committee of the Women Police Officers Network (WPON) in South East Europe developed a draft of the WPON Founding Document and agreed on a work plan for the period until the official launch of the WPON, which was tentatively planned for November 2010. The meeting was an important step in the institutionalization of the network and was organized in close cooperation with SEPCA, the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the OSCE Mission to Serbia.

On 7 October 2010, the Ministry of Interior of the Republic of Serbia, with the support of SEESAC organized the launch of the report **establishing the Southeast Europe Women Police Officers Network (WPON)**. The launch was followed-up

10 *2nd Gender Expert Meeting on Women Police Officers Network (WPON)*, Internet, 01/02/11, http://www.sepca-see.eu/events/76-2nd-gender-expert-meeting-on-women-police-officers-network-wpon.

by a seminar on the **Position of Women in the Police Services of the Southeast Europe and Mechanisms for the Promotion of Gender Equality**.

The launch of the report and the seminar were organized within the framework of a regional project implemented by SEESAC in cooperation with the South East Europe Police Chiefs Association (SEPCA). The project, **Support for Gender Mainstreaming in Policing Practice in the South Eastern Europe**, is financially supported by the UNDP Gender Thematic Trust Fund and the Norwegian Ministry of Foreign Affairs. The overall goal of the project is to advocate for gender equality and democratic principles in policing.[11]

Under the auspices of the President of the Croatian Government and with the support of the United Nations Development Programme in Croatia and the regional project of the Centre for the Control of Small Arms and Light Weapons in Southeast and Eastern Europe (SEESAC), the Ministry of Internal Affairs of Croatia organized on 5 November 2010 presentation of the report "Establishing a network of women police officers in Southeast Europe" and the Roundtable on "The position of women in police departments in Southeast Europe, and mechanisms for advancing gender equality".

The changes in roles and the general policy of the police in the employment of women is determined by attitudes by which the police work is no more exclusively "men's work" and that today there are no legal or any obstacles due to which women could not be employed in this dangerous occupation. Gender mainstreaming policy is indispensable in developing and improving the democratic police service. The obligations of the police is to consider both men and women as completely equal. Both men and women are expected to respect and implement the laws, to be professional, to improve, to be informed on developments in society, to be correct and specific, quick and efficient. Active participation of the SEE Ministries of Internal Affairs in the creation of networks of women and raising awareness about the importance of planning the integration of women in the police service is big and concrete step towards satisfying the requirements of the United Nations and the European Union and confirmed the maturity of the ministries in developing a responsible and positive work environment.[12]

In the line of WPON, presentation of the report was organized on 11 December 2010 in Sofia, Bulgaria, by the Bulgarian Ministry of Interior, SEPCA and SEESAC, with the financial support of the Swiss Development Cooperation (SDC). The roundtable was opened by Bulgarian Deputy Minister of Interior who expressed his strong support for the improvement of the position of women in the Bulgarian police as a means to increase police efficiency. The Head of the Public Order Directorate in the Bulgarian Ministry of Interior also addressed the meeting. SEPCA representatives stated that the WPON project was the most successful among the SEPCA initiatives and will be supported in future by the Chiefs of Police. They then gave an overview of the implementation of project activities in 2010 and presented the 2011 Annual Work Plan. Report findings were presented by the WPON Council members from Bulgaria. They took an in-depth look at the situation of women in police services in Bulgaria. The presentation was attended by 45 participants including representatives of the Ministry of Interior, police unions and NGOs. The discussion focused on the implementation of the report findings and the concrete steps that need to be taken in Bulgaria to improve gender equality in the police service.

11 *Launch of the Report - Establishing the Southeast Europe Women Police Officers Network*, Internet, 11/02/11, http://www.undp.org.rs/index.cfm?event=public.newsDetails&revid=8C59B9CF-971A-C0A9-5033BB8DEFE7DC2D.

12 *Okrugli stol o položaju žena u policiji*, Internet, 03/02/11, http://www.mup.hr/76639.aspx.

Finally, it was agreed that similar presentations and roundtable discussions will be organized in the regional police directorates throughout Bulgaria.

Possible task of the Network is that all interested ministries provide support in formulating strategies and campaigns aimed at receiving a greater number of women in the police, with special emphasis on those elements and aspects of police work that are attractive to women, but also to provide real, objective information about requirements, characteristics and risks of police work.

CONCLUSIONS

Having gained entry, women tend to be restricted to 'housekeeping' in terms of administrative and support functions, and operationally confined to domestic spheres such as working with children and women. Examples of opposition appear universal, as does the notion of restricted use of women officers. What seems to differ is the speed at which women's roles within policing develop. Further progress for women in policing is marked by the intervention of key advocacy, promoting the value of women police officers and encouraging an extension to their roles. Despite nearly 100 years of the involvement of women in policing in some countries, they are still a marginalized minority (for example in SEE countries).

As the number of women in the police increases and the ratio moves towards a tip-over from minority to gender balance, and as their occupancy of high rank and specialized roles would be expected not to excite attention, there appears to be a need to maintain external scrutiny through some watch-dog mechanism, policing the organization and making remedial interventions once policies and procedures have had a chance to influence the internal organization culture. It is an opportunity for WPON in improving the status of women in polices of SEE countries.

Future and existing tasks of WPON SEE are: exchange of experience and 'good practice' on the subject of violence against women within the police services in SEE; promotion of current knowledge, experience and expertise to achieve co-operation and co-ordination in this field in different countries; the exchange and extension of already developed or still to be developed adequate training programmes and material; the provision of support in the development of partnership programmes between the police services of SEE countries; the establishment of an international network of police officers, who – within their police work – want to be actively involved in combating violence against women.

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REFORM OF THE MACEDONIAN POLICE – INTRODUCTION OF THE CAREER SYSTEM

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Summary: The career system, as one of the key priorities addressed in the reform of the Macedonian Police, is a process of a career development of the police officer that is achieved at the beginning of the procedure for establishing an employment relation. In fact, career development in itself systematizes several aspects, such as: selection and election of individuals that shall establish employment relation in the Police, training, deployment, promotion, evaluation and cancellation of the employment contract.

Therefore, a need is being imposed for establishing a legal framework that will define in details all aspects of the process of a career development, with a particular attention to valuing the professionalism of the police officer expressed through the results achieved in his/her job performance, i.e. his/her successful and professional performance of the entrusted tasks, professional development at the working position and continuous work.

Key words: Police, Republic of Macedonia, reform, career system.

INTRODUCTION

The career system in the Macedonian Ministry of Internal Affairs (MOI) was firstly introduced in 2009 by adopting the Law on Internal Affairs (LIA).[1] Its explanation states that this act creates a legal basis for building a career system of the MOI's employees, which will provide the expertise, competence and professionalism to become key parameters in their promotion.[2] In order to further regulate the career system, three months after LIA's adoption (on September 17, 2009), the Minister of the Internal Affairs adopted the Regulations on the manner and procedure on fulfilling the career system of the authorized officials in the Ministry of Internal Affairs (Regulations).[3]

As stated in the MOI's Strategic Plan for 2009-2011,[4] in the period to come a strong will and a great efforts shall be needed for making important decisions that stand in front of MOI. In the group of these priorities, among others, the career system is included, or more precisely - improvement of the system of recruitment, selection and admission of a new personnel, further building of the career system and the progression within the service.[5]

1 Official Gazette of the Republic of Macedonia" no. 92/2009, 118/2009, 35/2010.
2 See: Draft - Law on Internal Affairs, submitted by the Government to the Parliament on May 8, 2009. LIA's draft version is published on the Parliament's website: http://www.sobranie.mk.
3 "Official Gazette of the Republic of Macedonia" no. 122/2009.
4 See: МВР: *Стратешки план за периодот 2009-2011 година,* Скопје, 2008, page 3.
The Strategic Plan, adopted in September 2008, is published on the MOI's website: http://www.moi.gov.mk.
5 According to Article 22 of the Recommendation Rec(2001)10: European Code of Police Ethics, adopted by the Committee of Ministers of the Council of Europe on 19.09.2001, police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.

Legal acts that regulate the career system

In fact, one of the basic steps of the implementation process of the Police Reform Strategy is a correct deployment of the human resources (personnel), i.e. establishing a personnel development system, establishing conditions for high-quality personnel management, and especially building of professional staff, its continuous training, determining career development rules and motivation of the MOI's employees. For purposes of calculating the staff distribution needed, a simple calculation formula is recommended, consisting of two criteria: a defined staff minimum and the actual need of manpower within a unit.[6]

Besides the basic legal acts dedicated to the career system (LIA and Regulations),[7] several acts were adopted by the Ministry in the period 2007-2010, and a Collective Agreement was signed with the Macedonian Police Union in September 2010.[8] It is a matter of a group of legal acts that regulate specific aspects of the career system, including:

- Guidance on the manner of conducting general and expert supervision in the Police,[9]
- Decree on the manner of acquiring the ranks and marks of the ranks of the police officers,[10]
- Regulations on the training in the Ministry of Internal Affairs,[11]
- Regulations on the manner and procedure for evaluating an authorized official, the content of the report on the carried out evaluation, the evaluation form and the manner of record keeping,[12]
- Regulations on the manner and procedure on selecting and electing individuals that shall establish working relations in the Ministry of Internal Affairs,[13]
- Regulations on the procedure and the working method of the commission for electing candidate for a police officer,[14]
- Regulations on the health and psychophysical capabilities which should be met by the individual who establishes a working relation in the Ministry of Internal Affairs, the manner of their determination, the manner for the control of the health and psychophysical capabilities of the authorized officials for performing professional or civil affairs and of the authorized officials for security and counterintelligence, as well as the manner of work of the health commission,[15]
- Regulations on the form and content of the personal files of the employees of the Ministry of Internal Affairs and the manner of their storage and handling.[16]

6 Quoted by: European Agency for Reconstruction - Police Reform Project: Reform of the Macedonian Police, Skopje, 2005, page 49, 179.
7 LIA categorizes MOI's employees in three categories: authorized official according to this Law (authorized officials for performing professional or civil affairs, authorized officials for security and counterintelligence and police officers), civil servant according to the Law on Civil Servants and employee according to the Labor Law.
8 "Official Gazette of the Republic of Macedonia" no. 126/2010.
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10 „"Official Gazette of the Republic of Macedonia" no. 140/2007.
11 "Official Gazette of the Republic of Macedonia" no. 120/2009.
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Regulations on the manner and procedure on fulfilling the career system of the authorized officials in the MOI

Unlike the Government's explanation of LIA, that binds the career system only to the promotion of the MOI's employees, the Regulations determines the career system as a process of a career development of the authorized officials, that is achieved at the beginning of the procedure for establishing an employment relation in the MOI, and includes in itself the following segments:

1. Selection and election of individuals that shall establish employment relation in the MOI,
2. Training,
3. Deployment,
4. Promotion,
5. Evaluation and
6. Cancellation of the employment contract.

Although the Regulations determine the six segments of the career system, it does not contain provisions for all of them. Instead of fully covering the subject that in Article 1 has obliged itself to regulate - the manner and procedure on fulfilling the career system of the MOI's authorized officials, this act dilutes its own content with frequent reference to other acts, therefore confusion can be noted in its provisions. Namely, it points to LIA and to the specific bylaws adopted according to LIA for the first segment (selection and election of individuals that shall establish employment relation in the MOI), and to LIA, Police Law[17] and Collective Agreement for the last segment (cancellation of the employment contract). The remaining provisions are dedicated to the manner and procedure of the career system, i.e. deployment (Article 5), promotion (Articles 6-15), as well as the procedure on fulfilling the internal announcement for deployment and promotion to another working position (Articles 16-30). It can be noted that in the Regulations, except for the Article 3, the other two segments have not been mentioned at all - training and evaluation i.e. it contains no provisions that regulate them, nor refers to other legal acts.

It is obvious that all of the six segments are bond to the profile on the working positions, to be exact - to the Act on systematization of the working positions. This Act should in detail prepare the profiles by describing the knowledge, abilities and experience required for the work performance of a particular working position.

Deployment of the authorized officials

Concerning the deployment of the authorized officials, Article 5 of the Regulations does not entirely regulate the subject in matter. On one hand, Paragraph 1 determines that deployment of the authorized officials is performed on a free or a vacant working position, through a transparent procedure, by announcing an internal announcement, and afterwards Article 3 gives an exception by which the transparency of the procedure does not apply to deployment of employees for a certain working positions in the Bureau for Public Security (Bureau) and in the Administration for Security and Counterintelligence (Administration),[18] that are

17 "Official Gazette of the Republic of Macedonia" no. 114/2006, 6/2009.

18 Article 5 Paragraph 3 uses abbreviations "Bureau" and "Administration", without notifying to which Bureau or Administration it refers to. That is done below in the text i.e. Article 9 Paragraph 1 states "Bureau for Public Security (further on: Bureau)… Administration for Security and Counterintelligence (further on: Administration). This is an obvious technical error, which should be removed in the future.

determined in a specific list. It is the same situation in LIA's Article 84, that provides two types of deployment of the employee to another working position, different from the one that he/she has previously worked, i.e. by a request of the employee him/herself and upon the MOI's needs. Once again, an exception is given, i.e. the transparency of the procedure does not apply to deployment of employees for a certain working positions in the Bureau and in the Administration.

Hence, where is this list defined? Who "draws" it? A partial answer is given in Article 23 Paragraph 3 of the Collective Agreement, which states that this list is determined by the Minister of the Internal Affairs upon a proposal of the Director of the Bureau/Administration, without determining the criteria that should guide the directors when they propose the working positions for which a transparent procedure does not apply. In my opinion, this specific list of working positions should not be mentioned only in the bylaws or in the Collective Agreement, on the contrary - it should be thoroughly covered by LIA.[19]

Promotion of the authorized officials

Concerning the ***promotion*** of the authorized officials, Regulations systematizes it as promotion to a higher salary rank (Articles 7-11) and promotion to another working position (Articles 12-15). The classification given in the Regulations, arises from the LIA, which in Article 3 Paragraph 1 Point 7 defines the "promotion" as a movement of the authorized official in the career system, as follows:

- On the present working position, moves on a higher salary level, where he/she acquires a career supplement and
- Is reassigned to another working position, which in accordance with the hierarchy determined in the Act on systematization of the working positions is one level higher from the position he/she has been holding before.

Also, LIA in Articles 95-105 defines the criteria for promotion, and specifically addresses to the promotion to higher salary rank (what is meant by a "salary rank"; conditions for promotion to a higher salary rank; time limit in which the authorized official cannot be promoted to a higher salary rank; time dynamic for revision of meeting the criteria for higher salary rank promotion and the procedure itself for promotion), and to another working position (conditions for promotion to another working position; categories of promotion of authorized officials to another working position; manner of promotion; prohibition for overstepping in the hierarchy of working positions). If a comparison is made between the provisions of LIA, Regulations and Collective Agreement, the unnecessary repetition can be immediately noticed.[20]

19 Comparison of Articles 84-94 of LIA (deployment to another working position; conditions for deployment of an employee; temporary deployment; deployment by a request of the employee; deployment according to the MOI's needs; deployment in other situations; deployment of MOI's employee outside of his/her place of residence; rights of the employee in case of deployment outside his/her place of residence; reasons for which an employee cannot be deployed to another working position; manner of performing the deployment; right to retaining the number of the achieved salary ranks from the previous working position) with Articles 22-35 of the Collective Agreement, indicates the repetition of the LIA's provisions into the Collective Agreement. As a matter of fact, it is a total repetition of the provisions, with a very little meddling of the used words.

20 An important segment in the professional development of a certain authorized official is his/her reward for the job performance through the salary received, composed by:
1. a basic component - a basic salary (an evaluation is made on the education and the complexity of the tasks of the working position on which the authorized official is deployed and his/her working experience), *an increase of 20% or 30% for authorized officials* (due to the type, nature and complexity of the tasks which are being performed, as well as the workload and the specific conditions under which the job is carried out) and *a career supplement* (an evaluation is made on the professionalism of the authorized official which would provide a stimulation for more successful and professional performance of the tasks, professional develop-

While LIA does not mention the procedure for conducting the internal announcement for deployment and promotion to another working position, that is done by the Articles 16-30 of the Regulations. Namely, this procedure begins with the submission of an initiative or request by the head of the organizational unit that has a free or vacant working position, or on the basis of established need to fulfill the free or vacant working position, and afterwards the authorized organizational unit for human resources begins and conducts the procedure.

Other segments of the career system

The other segments that comprise the career system are regulated by LIA, Collective Agreement and the relevant guidelines/regulations. Instead LIA to lay down the basics of these segments, and the other acts to further develop them - the repetition of the provisions is obvious. For example, if the second segment or ***training*** is taken into account, it is evident that the same provision may be found in three legal acts, for example - cases when the training is conducted in the MOI are given in Article 54 of LIA, Article 133 of the Collective Agreement and in Article 2 of the Regulations on the training in the MOI.[21] The same remark can be made on the fifth segment or ***evaluation***. Thus, the evaluation criteria of the authorized official are given in Article 108 of LIA and in Article 147 of the Collective Agreement. Furthermore, these criteria in Articles 6-8 of the Regulations on the manner and procedure for evaluating an authorized official, the content of the report on the carried out evaluation, the evaluation form and the manner of record keeping, are systematized into three categories. The first category is - evaluation of the managerial qualities of authorized official who performs management functions on the basis of a prepared profile of the working position, the second - evaluation of the working results of the authorized officials, and the third - evaluation of personal qualities of the authorized officials.[22]

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ment and continuous work) and
2. an exceptional component - a supplement on the work performance (an evaluation is made according to the task performed on the position he/she is working, or the entrusted tasks and his/her contribution in the overall work of the organizational unit in which he/she works and in the MOI in general), *a working supplement on the salary* (paid for the work in night-shifts, work on Sundays, work on official holidays, for the work in shifts, due to special working and life endangering conditions, or for existence of a high risk in performing the tasks and duties in a certain organizational units determined by the Collective Agreement) and *an additional working supplement on the salary* (paid for the work longer than the regular working hours - overtime job).

21 Training is one aspect of the career system that is conducted when a certain individual establishes an employment relation for the first time (training for probationer), when a certain person is selected by a selection procedure as a candidate for a police officer (basic training for a police officer), in order to train the employee for an independent job performance on a particular working position and for continuous training of an employee. See: Regulations on the training in the Ministry of Internal Affairs.
It is believed that the police education and continuing improvement will have a crucial role in determining the police culture in the future. The introduction of newly employed workers during their education in the principles of policing and syllabuses defined in accordance to the standards of human rights and freedoms, as well as the acceptance of guidelines and regulations regarding the use of force, can strengthen and bring their attitudes and behavior into unbreakable connection. The assistance in the police training should be towards providing sustainable development by transferring a modern training methods and syllabuses. Quoted by: МВР: Стратешки план за периодот 2009-2011 година, Скопје, 2008, page 3.
Recommendation Rec(2001)10: European Code of Police Ethics, regarding the training of police personnel in Article 16 states that the police training, which shall be based on the fundamental values of democracy, the rule of law and the protection of human rights, shall be developed in accordance with the objectives of the police.

22 The career system comes to expression through the evaluation of the authorized officials, that is done at the latest by the end of the first quarter of the current year for the previous calendar year on the basis of the prepared profile on the working position, the criteria referring to the results of the job performance and the personal qualities he/she has demonstrated during his/her work (expertise, workload - how much work he/she has completed, punctuality - when he/she completed the tasks, independency, creativity, accuracy, confidentiality, cooperation, work management, interdisciplinary, attitude towards other parties, communication and other job-related abilities). His/her immediate superior is performing the evaluation, using four

The career system in the MOI's strategic plan

Considering the challenges that MOI sets in the Strategic Plan regarding the career system, or establishing an effective police organization managed by professionals who shall have power of delegation and shall be free from a political influence, as well as establishing a modern system of human and material resources management, MOI at the same time identifies its strengths (incorporation of the current values as a base for a well structured Police; availability of experts in the police work; hierarchy based on discipline), its weaknesses (unclear standards regarding selection, dismissal, promotion, evaluation of the labor and the working results; lack of continuous training of police officers; irregular distribution of personnel; insufficiency of a personnel that has a high education, especially in the uniformed police) and threats to come (frequent changes of the legal acts and the need for regular, extended and specialized training).[23]

If success indicators for the Police reform concerning the human resources management are identified:

- Reducing the number of appeals to the election commission's decisions,
- Increasing the effectiveness and efficiency of the employees in their tasks performance by 10%,
- Reducing the absences from work by 15%,
- Increased motivation of the employee at his/her working position,
- Increased responsibility of the employee at his/her working position,

then it is necessary to establish a complete transparency in the election commission's work in the selection and admission of the staff, unification of the procedure for conducting an interview and for submission of an appeal to the election commission's decisions and guiding the employees in their career development, directing the working activities of the employees, improving the interaction with other employees, the working position standards, the facilities and equipment used at the working position, supervision of the employees, as well as developing the knowledge, skills and abilities of the employees, simplifying the procedure for monitoring of the effectiveness and efficiency of the employees and rationalizing the process of staff planning, establishing a training system within Bureau and sectors for internal affairs, developing the ability of the management staff at all levels to deal with professional challenges, establishing systems for prevention in sectors of internal affairs and creating a team of trainers prepared to apply modern methods of learning in the training of the employees.[24]

In order to fulfill all these tasks, MOI has to realize seven activities in the field of the human resources management: analysis of the implementation of the Strategy for human resources management and annual performance assessment; analysis of the system of professional and career development and the necessity for its redesign; analysis of the system of planning, recruitment and selection of human resources and the necessity for its redesign; analysis of the training system - basic and continu-

types of grades: exceeding, satisfying, partially satisfying and not satisfying. See: Regulations on the manner and procedure for evaluating an authorized official, the content of the report on the carried out evaluation, the evaluation form and the manner of record keeping.

23 See: МВР: *Стратешки план за периодот 2009-2011 година,* Скопје, 2008, page 5.

24 See: МВР: *Стратешки план за периодот 2009-2011 година,* Скопје, 2008, page 23.
According to: СТОЈАНОВСКИ, Т.: Полициска етика и деонтологија, Скопје, 2006, page 76, the system of development in the service is based on qualities in the work performance, by assessment done in a transparent procedure, conducted by the superior officers. The absence of complaints and appeals by the citizens is an indicator of the professionalism of police officers. The police officer should refrain from any behavior, activity or public expression, which disrupts the confidence in the police organization.

ous and the necessity for its redesign; analysis of the system of an annual evaluation of performance of the employees and annual assessment of performance; analysis of the immaterial compensation and strategy for motivation of the employees and its redesign, and the implementation of the education system for the employees.[25]

CONCLUSION

Defining itself as an institution with a built hierarchy, discipline, high culture and tradition, MOI emphasizes several principles and values, by which it governs its work, that include the responsibility and motivation of the employees, planning, development and education of the personnel and built hierarchy and high discipline. Therefore, if MOI wants to achieve the set up priorities, i.e. to complete the process of Police reform, then a modern model of a police organization must be built, which will incorporate neat flow of a career of the MOI's employees.

The analysis of the provisions of the Regulations revealed that it has not fulfilled the goal set in its Article 1- to stipulate the manner and procedure on fulfilling the career system of the authorized officials in the MOI. This is because instructive provisions are used too often, i.e. provisions that refer/point out to other legal acts. Thus, rather than creating a comprehensive unity that will fully regulate the subject in matter, its content is limited only to two segments of the career system - deployment and promotion, leaving to the other legal acts to regulate the remaining four segments: selection and election of individuals that shall establish employment relation in the MOI, training, evaluation and cancellation of the employment contract. The Regulations also fails regarding the two segments that it should regulate - it is not precise, thorough and comprehensive. That is why there is a need for drafting one legal act that shall sublimate all segments of the career system.

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25 See: МВР: *Стратешки план за периодот 2009-2011 година,* Скопје, 2008, page 96-97.
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CRIME MAPPING AND POLICE PATROL ACTIVITY IMPROVEMENT[1]

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Summary: If we take into account that almost everything police do can be addressed to someone, it is understandable why crime mapping and the spatial analysis of such locations play a key role in the police work today. Crime mapping is a powerful means in the hands of a crime analyst that can assist police departments in a variety of ways. This paper explores the ways crime mapping could improve the police patrol activity, and some obstacles to its successful implementation in police practice.

Key words: police patrol, crime mapping, crime analysis, GIS

Crime mapping and analytic support to the police patrol activities

Police patrol activity is a policing method that involves a systematic control of certain areas for the purposes of performing diverse activities in the field of crime prevention, crime suppression, keeping public order etc. The underlying principle behind the engagement of police patrols is that highly visible and mobile patrol units can show up at any moment and at any location over a wide patrol area creating a sense of police omnipresence. This may deter potential offenders from committing a crime and, concurrently, may relive citizens of the fear that there is a chance a criminal offence may be committed[2]. If we take into consideration the entire police organisation, it is the most visible element of policing; and often the first line of contact between the police agency and the community. Usually, they are the most numerous part of police agency, although, the least specialized one as well. Due to their close interaction with citizens and immediate insight into the problems in the field, the uniform police officers are considered to be the "eyes and ears" of the entire police organization. The efficiency of police organisation and the relationship between the police and the community largely depends on the manner in which uniform police officers tackle issues within their jurisdiction. This is why a patrol/beat area has become the policing epicentre, particularly in urban neighbourhoods.

A police patrol is considered the backbone of a police agency and nearly everything a police agency handles begins with a patrol officer. One of the key prerequisites for a successful patrol activity is the constant awareness of the security situation in the patrol area as well as the analysis of various forms of criminal activities and other public disorder behaviours which may endanger the quality of citizens' lives. The purpose of these activities is to recognize safety problems in an accurate and timely manner and to find the most suitable responses in order to deal with them efficiently. A police patrol officer shall be familiar with all problems in his/her patrol

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 leader of the Project is Associate Professor Saša Mijalković, PhD.

2 The basic purposes of police patrol have changed very little since 1829, when Sir Robert Peel founded the modern police department, and these purposes include: deterrence of crime by maintaining a visible police presence and the maintenance of public order and a sense of security in the community. However, during the last few decades, along with implementation community policing model, there is a clear tendency towards broadening police function in a manner that it includes provision of services that are not crime related.

area, their crime/disorder potential, actual and possible causes, crime hotspots and other forms of crime and quality of life risks relevant to his patrol area. Given the diversity of information a police officer shall be acquainted with, and the diversity of information sources (internal, external), there is a question to what extent a police officer is really familiar with various aspects of his/her patrol area, such as: existing and emerging crime and disorder problems, policing activities that are already undertaken or those that are in progress (operational, investigative, etc.) as well as other data contained in police records and other operational documents (crime bulletins, files, arrest warrants, etc). A belief that a police officer is most informed about all developments in the area under his/her jurisdiction – s(he) knows places and persons prone to causing troubles, knows what to inspect, where to look for relevant information, when and how criminal acts are committed etc., is widespread in the police practice. Even if this was possible in the past, nowadays it is more an ideal to strive for, especially in large police organizations. As a rule, a police officer is familiar only with the developments arising in the patrol area during his/her shift. To explain, let's analyse the following situation. Let's assume that, while on duty a "knowledgeable" police officer is always aware of what is going on in his/her area of jurisdiction. However, there is a question to what extent a patrol officer is familiar with the developments in the assigned patrol area while (s)he is off duty. If a police officer spends on duty 8 hours a day, this leaves additional 16 hours of the patrol work out of his/her focus. Besides, a police officer is entitled to two rest days a week and taking into consideration other occasions when (s)he might leave the patrol area (such as leave days, sick leave, special assignments, specific security assignments, temporary dispatch to another patrol area, training courses etc), one may raise a question whether the time police officer spends in the assigned area is sufficient to say that "he really knows his patrol area". The fact that criminal acts get committed 24/7 shall not be neglected, either. Consequently, when a police officer comes to roll call s/he may not be acquainted with the incidents and other developments occurring in the patrol area while s/he has been absent.

It is arguable, though, whether a patrol police officer, while on duty, is always familiar with all the developments in his/her area of jurisdiction. Namely, suppose that at the same time, several calls for service are dispatched. In that case, the assistance from neighbouring patrol areas is required. For instance, in a patrol area, a respective vehicle patrol might be engaged in an intervention, beat officers might be busy with another assignment while a vehicle patrol from the neighbouring patrol area might be called in to cover new emergency situation. Judging by the experiences from the field, a patrol police officer, who wasn't involved in all police interventions in his patrol area due to objective reasons, will rarely familiarize himself/herself with the details of emergency calls taken by his/her colleagues (i.e. what actually happened, who is the perpetrator, victim etc.). Also, we should bear in mind the potential lack of co-ordination and information sharing between CID and uniform police (patrol) officers. Therefore, it may happen that members of CID obtain information about certain criminal act and subsequently commence with its investigation, while their "field" colleagues (police sector leader, patrol police officer) are kept in the dark. With this in mind, we may acknowledge that certain policing activities still remain "hidden" from the patrol police officers who claim to "own" an assigned patrol area and are familiar with how it "breathes" every single second. In order to find out to what extent the police officers are really familiar with the developments in their respective areas some authors conducted a research. They took data about the criminal offences (contained in police files), placed them on crime maps and using crime mapping software they highlighted high crime areas (crime hot spots). Then they asked police officers to indicate areas they perceive as crime hot spots

on the separate map and finally the two findings (perceived vs. actual criminal hot spots) were compared. Summarizing the results of the research D. Paulsen stated: "… consistent with findings by other researchers, police officers do not appear to have a very good understanding of crime patterns within their jurisdiction[3]". Also, J. Ratcliffe and M. McCullagh, the authors of another research conducted with the same purpose, argued „...the point remains that in a majority of cases the perception of operational police differed significantly from the computerized hotspot generation process[4]".

Activities in the patrol area may get very dynamic, which is particularly obvious in the urban surroundings. Police officers, carrying out their everyday operational tasks, gather numerous data which they record in their daily reports and other files (criminal charges, misdemeanour charges, official notes etc). Besides, a situation in a certain patrol area may become a subject of reports filed by other entities, both within the police organisation (different fields of police work such as CID, traffic police etc) as well as external entities that are in close co-operation with the patrol police officers on a daily basis (for instance, social welfare centres, other government agencies etc). The nature and purpose of these data imply the need to be placed in a single place for the reason of their mutual comparisons and additions. Only in this way it would be possible to convert them into good analytical product which can be acted upon in an adequate and timely manner. Given the abovementioned, the importance of the analytical support to the police patrol activity is more than obvious.

One of the biggest issues in operational policing is the extensive "paperwork" which may be a heavy burden to everyday police actions. A large number of reports and other documents are requested and dispatched on a monthly basis from police stations to other police directorates and analytics departments of the Ministry. Data contained in this reports are the basis on which analytical reports are built and subsequently forwarded to those who are in charge of strategic decision making process. However, there is a question of what kind of analytical feedback comes to front-line police officers – those who work on streets and are responsible for our neighbourhoods' safety – if any. Do they receive appropriate analytical support which will enable them to target areas they have to intensify their patrol presence in, or where they have to be more visible in order to eliminate citizens' fear of crime? Even if these pieces of information reach them, do they reach them in a timely manner? This paper has already indicated that a police officer will not always be the most knowledgeable about crime and disorder problems in his/her patrol area. However, appropriate analytical support could significantly assist them to achieve that. Therefore, the police analytical activities at the tactical level (police station level) shall be enhanced. Unlike police analysts at the strategic level (MOI Analytics Department/Directorate), "local" analysts may be far better informed about the developments and circumstances in their respective areas. Consequently, a local analyst is in a position to provide better (analytical) support to his colleagues who are performing patrol activity. In other words, they are in position to identify emerging patterns, series, and trends in timely manner and to assist those who are responsible for developing effective strategies and tactics in identifying and addressing crime and disorder problems across police patrol areas. The proximity to the "the front line of the fight against crime and disorder" will allow tactical analysts to place available data in the most appropriate

3 Paulsen, J. D.: To map or not to map: Assessing the impact of crime maps on police officer perceptions of crime, International Journal of Police Science and Management, Vol.6, No.4, 2004, pp. 241-242.

4 Ratcliffe, J. H., McCullagh, M. J.: Chasing ghosts? Police perception of high crime areas, British Journal of Criminology, 41(2)\2001, p. 336.

(local) context (that is often unknown to an analyst who is working at police HQ), which will make their analytical products (bulletins, reports, crime alerts, etc.) problem-specific and more useful. Besides, the process of dispatching data to the central analytics department and getting feedback to the frontline police officers is often untimely. It is well known that even the best information, if belated, loses its use value. In this way, the decentralization of analytics could contribute to the decrease of time needed for data processing, which is in accordance with one of the fundamental principles of criminalistics – the principle of operativeness and promptitude.

The myriads of data "fill in" police records on a daily basis and are processed by police analysts. Processed, value-added data then turn into analytical products and eventually end in the hands of the patrol officer in the field. In this sense, the great analytical potential of crime maps comes to the foreground. If we want police officers to act proactively in the variety of events occurring in their patrol area, if we want them to identify place and time of crime and disorder occurrence, then they need to have a "road map", a tool which will bring them to the desired goal. In fact, such a "road map" is a crime map which provides police officers with the information on the geographical distribution of crime as well as with other crime-specific spatial features of the area. It provides information in more prompt and more convenient manner than it is the case with the crime bulletin "list" of the criminal offences, which are nowadays widespread in police practice. Crime maps provide a complete overview of all incidents occurring in a patrol area and therefore they can be considered its "dossier". They provide police officers with an easy way to familiarize themselves with the incidents occurring in their areas while they were off duty or with the incidents which were not brought to their attention due to the lack of communication and other internal issues.

The importance of the crime maps was acknowledged long time ago, which is confirmed by the fact that they have "decorated" the walls of police stations for more than a century[5]. However, with the increasing use of computers in police practice, crime maps "came down" from the walls of police stations and went into the hands of police officers in the field[6]. Merging information from various sources on a geographic basis and following the rule "picture is worth a thousand words", crime maps provide straightforward and prompt information about the crime and other incidents occurring in the field, helping police officers to identify problems, to identify and analyze their causes and to facilitate their efforts towards their solving. In other words, with the implementation of crime mapping in police patrol practice, police officers are given the opportunity to identify timely and react efficiently to the changes and challenges in their environment.

Since the beginning of the '80s policing has undergone revolutionary changes in terms of manner it has been performed, with the transition from frequently criticized professional (traditional) model to the model which shows more respect to the citizens' needs and attitudes, embodied in community policing paradigm. One of the fundamental requirements for the implementation of this concept is the

5 Keith Harries stated that the first use of crime maps inside police organizations dates at least from 1900. Harries, K.: Mapping crime: Principle and practice, US Department of Justice, Office of Justice Programs, Washington DC, 1999, p.1.

6 The old pin maps were useful for showing where crimes occurred, but they had serious limitations. As they were updated, the prior crime patterns were lost. While raw data could be archived, maps could not, except perhaps by photographing them. The maps were static; they could not be manipulated or queried. For example, it would have been difficult to track a series of robberies that might overlap the duration (a week or month) of a pin map. Also, pin maps could be quite difficult to read when several types of crime, usually represented by pins of different colors, were mixed together. Harries, K.: Mapping crime: Principle and practice, US Department of Justice, Office of Justice Programs, Washington DC, 1999, p.1

partnership between the police and the community. The essence of this partnership is that citizens (or their representatives) together with the police define safety problems and participate jointly in solving them. One of the key elements of this co-operation is the exchange of information. It is the information exchange process that the crime maps play an important role in. Providing the opportunity to the citizens to obtain clear insight into the spatial distribution of criminal offenses, crime maps easily refute their false preconceptions about places endangered by crime, and preconceptions formed under the influence of media, rumors, prejudices and so on. Besides questioning their (often false) preconceptions, crime maps may become a means for merging the efforts of the police and citizens in identifying, analyzing and solving the local community problems. Allowing citizens the opportunity to find out what places crime offences are repeatedly committed at, citizens become aware of the risks they are facing and therefore they become more prepared to protect their lives and property as well as to work jointly with the police in elimination of these risks. The experiences from meetings between the police and local community show that crime maps are well received among the citizens as an information exchange medium[7]. It didn't take much time for the crime maps to replace paper lists of crime incidents and frequent tense debates and persuasions. Crime maps enabled the police and community to recognize patterns of criminal behavior, as well as other issues that may lead to jeopardizing the quality of life in the community in a way that is simple, analytic, appealing and informative. Perhaps a certain pattern of crime may remain unnoticed by the police officer (analysts), but since citizens are deemed credible observers of circumstances inside their communities, they are able to provide a "key" to its identification. This key will not only facilitate the understanding of the dynamics of committing criminal acts, but will also indicate who the perpetrators might be and thereby facilitate crime detection and investigation. The police informs citizens about the place, time and manner the criminal act has been committed (e.g. specificities of MO), and provides with the advice on how to protect. At the same time, citizens may help the police in the identification of factors which cause crime and disorder problems in the community. Also, crime maps may motivate citizens to co-operate with the police (for instance, if crime maps show them that their neighborhood is a target of frequent burglaries, they will not only focus on the protection of their own property, but will also devote more attention to other unusual events in their neighborhoods, being extra vigilant). Crime maps may also encourage citizens in these activities (especially when they, after analyzing crime maps, recognize the results of their own efforts to making their neighborhood safer place to live in). Besides, crime maps may serve police as very convincing "proof" of their effectiveness in solving community problems. If we take into account that the efficiency of the police organization to great extent relies on the co-operation with and support from citizens, and the fact that police patrol officers, unlike other police officers (e.g. detectives), have much more opportunity to communicate with citizens, identify and solve community problems, then this can serve as the additional argument which points out the necessity of the implementation of crime mapping in the police patrol activity.

Increased number of police officers in an area means a higher probability of better policing. However, in circumstances when, due to the financial constraints, it is not possible to increase their number, looking for the most effective way of their engagement becomes the primary task of police managers. Therefore, constant

7 For example, take a look at: Rich, T.: Crime Mapping and Analysis by Community Organizations in Hartford, Connecticut, National Institute of Justice, Research in brief No. NCJ-185333, Washington, DC, March 2001.

analytical examination of spatial and temporal distribution of crime and disorder incidents is required on the one hand and the available number of police officers, vehicles and other resources on the other. The results of these analyses may indicate the optimal number of police officers in a certain area, as well as the necessity of reconfiguring the borders of police station areas, sectors, patrol areas, opening of new police sub-stations etc. The application of GIS technology and mapping techniques can make such analytical work much easier and more efficient. GIS uses layers, called "themes," to overlay different types of information. Each theme represents a category of information, such as crime locations, schools, etc. As with the old mylar maps, the layers which underneath remain visible while additional themes are placed above. A GIS can perform complicated analytical functions and then present the results visually as maps, tables or graphs, allowing decision-makers to see the relevant issues virtually and then select the best course of action. It allows the measurement and assessment of different features, as well as tracking their quantitative and qualitative changes in time and space. Unfortunately, in our practice, such analyses are often neglected and thus we witness some police patrol areas remaining the same as they were 20-30 years ago, although, in the meantime, urbanization, population and other factors have almost completely changed the policing environment. As a result, for instance, certain patrols have much more work and more interventions than others; some patrol areas haven't enough police officers and so on[8]. As a consequence, all citizens will not be provided with the same quality of police service and the disproportion, that has previously been discussed, may seriously jeopardize fulfilling the police mission in community.

Some obstacles to crime mapping implementation in the police patrol activity

Analytical support to police patrol activities enables police officers to receive quality analytical product in a timely manner which will allow them to respond adequately in a right place and at the right time with maximum efficiency. Crime mapping may become an important factor in bringing closer the analytic support to the "front line" police officers. Therefore, the mapping of crime should become a part of daily activities in police stations. It should become an integral part of police resource allocation, roll-calls, meetings with citizens etc. Police officers shall be encouraged to think analytically, to formulate hypotheses about potential causes of crime and disorder problems, possible perpetrators etc., and to make different queries in order to confirm them. For instance, if police patrol officers have spotted a problem (e.g. stealing vehicles from parking lots) they are expected to become familiar with all relevant data (criminal charges, official notes etc). Based on these data as well as on the intelligence data obtained through the operational work, they are expected to define a problem emphasising its key features (e.g. what types of car are stolen, time of the day vehicles get stolen, target attractiveness like places with no proper lightening, hidden from the public eye, etc. – whether there is one or more perpetrators, whether the stolen vehicles are later found, what is missing in vehicles etc.) and preliminarily determine the strategy to solve it. Crime maps, having the capacity to merge and display data obtained from various sources, in a visually receptive manner, may play a significant role in problem identification, its analysis, application of an appropriate response to it and later assessment of its effectiveness. However, there are police officers who

8 For more about the importance of GIS technology and mapping techniques to optimization of the police patrol activity refer to: Milić, N.: Aktuelni problemi organizacije i funkcionisanja policijske ispostave, Pravo i forenzika u kriminalistici, Zbornik radova sa naučnog skupa sa međunarodnim učešćem koji je održan u Kragujevcu od 15-17. septembra 2010, Kriminalističko-policijska akademija, 2010, pp. 115-128.

avoid dealing with such problems and they consider these maps, as well as other tools that can make their performance more productive, unnecessary. It is among these police officers that we can expect resistance towards introduction of crime mapping since they perceive it as a "waste of time" tool and as a burden to operational policing. Also, we have to mention those police patrol officers who, due to the lack of motivation, do not show interest in the developments and problems in their respective area. They do just what they have to do and when they have to, without taking much care about the quality of their work. They cannot be expected to become interested in any proactive police activity. Since they are not interested in raising their operational efficiency, they become opponents to all new methods and means which require them to invest an additional effort to familiarize with it.

Therefore, although crime maps can improve police patrol activities, we should not be too optimistic when it comes to their full-scale implementation. There will always be police officers who will consider crime mapping as "waste of time", that is, as one of "offspring of bureaucracy" which may jeopardize police profession, or another "reform attempt" which lasts as long as the funds from the foreign donation which initiated its introduction. Besides, the implementation of crime mapping requires police officers to master (computer) skills necessary for its use, as well as to obtain certain degree of analytical thinking, which again requires the investment of certain efforts and potential disruption of their working routine. This is mostly the case with older police officers while, under their influence, younger officers may start showing resistance towards mapping and crime maps as well. The fact that police officers take crime maps as a burden rather than a useful "tool" might come as a surprise to a person not familiar with the police sub-culture. Given that the implementation of any scientific and technological novelty in police practice often requires a change in the police daily routine, their rules of engagement and the adjustment of behavior then it is reasonable to expect police officers develop fear from the unknown, which can later raise their concerns and resistance. When it comes to the introduction of new technologies and ways of work in police practice, such a reaction is not uncommon. It comes as a result of the lack of dialogue between police managers and police officers – technology users. Namely, in order to facilitate the process of transition from "old" to "new" it is necessary to explain clearly what benefits the new technology offers as well as goals of its implementation. If police officers do not recognize the benefits of the new technology then there is a huge possibility that they will show resistance which may jeopardise its implementation. The implementation of any reform programme, without trust or support from the front-line police officers (patrol police officers) is often doomed to failure. That is why, prior to implementation of a new technology or introduction of any changes in the regular work procedures, police officers shall be talked to and thus remove any concerns and doubts they might have. Otherwise, the risk of implementation failure is increasing, and instead of using the benefits it offers, there is a strong possibility that the entire initiative will end up with the statement – it was another good idea spoiled by its poor implementation. Last but not least, it is not sufficient for crime mapping to be adopted only by the patrol officers. The support to its implementation must be in place at all levels of the **hierarchical chain**. For instance, if a deputy police station commander, a shift leader or a sector leader are not interested in the benefits new technology offers or if they are skeptical about it, then it is highly possible that their subordinates will "get infected" with such an attitude. However, in order to obtain support of subordinate police officers, it is necessary that they (subordinates) recognize the benefits crime mapping offers and sincerely believe it can enhance their performance.

CONCLUSION

It is estimated that approximately 80% of all information has a "spatial" or geographic component. Having this in mind it becomes clear that connecting places with people and events become a powerful tool in understanding, analyzing and managing the world we live in. The police recognized the importance of geographic components of crime long time ago and started to map crime locations on the city wall maps. With approximately 300-400 incidents happening daily in a big city, it is difficult to have a genuine picture of what is happening daily, weekly or monthly. These incidents are listed in daily crime bulletins and it is not an easy task to draw conclusions and to spot patterns in the occurrence of these events (especially those of geographical character). Considering the old adage "a picture is worth a thousand words" crime map becomes a list of incidents, which often require only one glimpse to see what is happening, where it is happening and when it is happening.. Nowadays crime maps are a powerful analytical tool that can enhance effectiveness of police organization in carrying out its everyday tasks. Since crime mapping became an integral part of modern police organisation, it is justifiable to raise the question what the situation in our country is when it comes to its implementation. In fact our policing practice has been familiar with crime maps for several decades. However, crime mapping was used only in isolated cases resulting from the enthusiasm of individual police managers. Namely, having realized the advantages of the crime maps in merging and presentation of relevant data, they used to copy commercial city maps and manually mark locations of criminal acts and other incidents they deemed relevant. These maps were placed in the roll-call rooms and served as an information sharing tool. Prior to starting the shift, police officers used crime maps in order to familiarize with the distribution of crime and disorder in their patrol area. However, over the time the enthusiasm of police managers dampened and crime maps slowly disappeared. Such a situation remained until recently when there was another effort to implement crime maps in an organized manner as a part of community policing and problem oriented policing implementation efforts. Nowadays, broader implementation of crime mapping and therefore more significant enhancement of policing will be possible only with the implementation of GIS technology, as a platform for computer crime mapping system. In this regard current efforts made by the Ministry's IT Department give us enough reason to be optimistic.

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EU INTERNAL SECURITY STRATEGY – A NEW CONCEPT OF INTERNAL SECURITY

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Abstract: EU internal security is a broad and comprehensive concept that aims to address major threats to the security of EU citizens by creating a security model based on the principles and values of the Union.

This concept developed by the EU's internal security is a new model which covers not only security but envisages States citizens' security in all its dimensions.

Complexity of risks and threats facing the EU now requires appropriate solutions, must reveal our ability to ensure security and stability in Europe and to work with our neighbors and partners to address the root causes of internal security problems that EU faces.

Key words: internal security, EU's internal security, Justice and Home Affairs

INTRODUCTION

Until the entry into force of The Lisbon Treaty, the European Union had only a security strategy, adopted in December 2003, which dealt with the external dimension of European security, since the internal security issues were assigned to the Third Pillar of EU Justice and Affairs which had a strong intergovernmental characteristic.

With the entry into force of the Treaty of Lisbon and guidance provided by the program due to the Stockholm and its Action Plan, the European Union now has the opportunity to take firm action in the field of internal security.

In February 2010, under the Spanish half-year presidency, the Council adopted the strategy of internal security, which was subsequently approved by the European Council on 25-26 March 2010, thus identifying the challenges, principles and guidelines to address these issues within the European Union. The Commission subsequently issued in November 2010 Communication entitled *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe* which identified the most pressing security challenges in the near future and the EU proposal to adopt a working agenda that identifies common strategic objectives and specific actions to implement national security strategy for the period 2011-2014.

The EU internal security strategy - a new European security model

EU Internal Security Strategy, adopted by the EU Council in March 2010, defines a European security model, which consists of common tools and a commitment to: a mutually reinforcing relationship between security, freedom and privacy, cooperation and solidarity between Member States, involving all EU institutions, not only addressing the causes of insecurity and its effects, improving prevention and anticipation, participation, since they are involved, all sectors have a role to play in the protection of -political, economic and social and greater interdependence between internal and external security.

Above all we must stress that the EU's Internal Security Strategy is a comple-

mentary document *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe* adopted in 2003. An important role for this new approach to internal security is increasingly blurring more than a very clear distinction between external risks to security and internal security risks of the states. Currently, the EU's overall security environment is marked by increasing opening borders and internal security matters of external security issues are closely linked[1]. EU Security Strategy highlights the need for close cooperation with neighboring countries or regions there since 2005 a document *entitled Strategy for the external dimension in the area of freedom, security and justice in the EU.*

EU aims to integrate security into relevant strategic partnerships and would be taken into account in the dialogue with external partners when EU funding is programmed in the framework of partnership in this regard, the priorities related to internal security must be addressed political dialogues with third countries and regional organizations.

National security concept must be understood in a broader sense and completely spanning multiple sectors to address these serious threats, and threats that have direct impact on the lives, safety and welfare of citizens, including disaster natural or human origin, such as forest fires, earthquakes, floods and storms.

This is a modern security concept that must not only be understood as focused on security in the nation and its institutions (as traditionally understood the concept of national security) but also in attention to citizens' security in all its dimensions. Another novelty is the fact that much of this responsibility lies with the European Union of nation states and not just as before[2].

A key element is cooperation on border control police authorities, judicial authorities and other service sectors such as health, social and civil protection. EU internal security strategy should exploit the potential synergies that exist in the areas of police cooperation, integrated border management and criminal justice systems. Moreover, in the space of freedom, justice and security, those fields are inseparable: the internal security strategy must ensure that they complement and reinforce each other.

The principles governing the EU's Internal Security Strategy are set out in EU treaties and enunciated in the Charter of fundamental rights such as:

- respect for fundamental rights, international protection, rule of law and privacy;
- protection of all citizens, especially the most vulnerable, with an emphasis on victims of crime and forms of human trafficking;
- transparency and accountability in security policies;
- dialogue as a means of eliminating the differences according to the principles of tolerance, respect and freedom of expression;
- integration, social inclusion and combating discrimination, as key elements of EU internal security;
- solidarity between Member States of the difficulties that can not be resolved by Member States through a separate action or if concerted action is the benefit of the overall EU;
- mutual trust, the corner stone for a successful cooperation.

1 European Security Strategy "A Secure Europe in a Better World", Brussels, 12.12.2003, http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf,, p.2.

2 see Karina Marczuk (Institute of Political Science University of Warsaw, Poland), Towards the EU's Internal Security Strategy: a new paradigm of internal security, "paper presented at the International Conference 'internal affairs and justice in the process of European integration and globalization", Academy Police "Alexandru Ioan Cuza", published in the conference volume, Publishing House, Bucharest, 2010;

Operational cooperation - strategic orientation of EU internal security strategy

Cooperation on internal security

An essential new tool is the Standing Committee on operational cooperation on internal security (COSI) [3]is to ensure effective coordination and cooperation between law enforcement and border management, including control and protection of external borders and where appropriate, judicial cooperation in criminal matters related to operational cooperation. Committee work will be based, above all, the threat assessments and priorities set at national and EU level.

All COSI is aimed at strict cooperation between EU agencies and bodies involved in internal security of the Union (Europol, Frontex, Eurojust, Cepol and Sitcen) to encourage coordination, integration and effectiveness of increasingly higher operations.

All these actors must continue to provide the specialized services of the Member States with an effective means to support improved. Capacity should be improved notably Europol to support Member States operations.

Judicial cooperation in criminal matters

Judicial cooperation in criminal matters within the Union is founded on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of laws, regulations and administrative provisions of Member States in certain areas[4].

For the operation of this model of European security, it is imperative that the judicial authorities of Member States should cooperate more closely, as Eurojust is necessary to value their full potential under applicable law. At EU level, operations and criminal investigations that have been successfully conducted awareness can serve as a potential model for collaboration between law enforcement services and border management and law enforcement authorities to prevent cross-border crime.

Integrated border management

An important role in the maintenance of security it has integrated border management, which aims to combat illegal immigration. Integrated border management mechanism should be strengthened, especially to facilitate the transmission of best practices among the border guards. On this issue, are so important agency Frontex and the European Border Surveillance System (Eurosur).

The eu internal security strategy in action or five steps towards a safer Europe

Following the adoption of EU Internal Security Strategy by the Council in 2010, the Commission will initiate action for implementation of these strategies that are presented to the Council and European Parliament by the document titled *The EU*

3 established by Article 71 of the Treaty on European Union through the consolidated version of the Lisbon Treaty;

4 see Chapter 4 of Title V Area of freedom security and justice, the Treaty on European Union version enhanced by the Treaty of Lisbon;

Internal Security Strategy in Action: Five steps towards a more secure Europe[5].

Commission proposes a plan to be implemented by 2014 and provides five objectives, each them being accomplished through specific actions to be implemented during 2011-2014[6].

The collapse of international criminal networks

It is a primary objective since the international criminal networks remain very active despite the increased cooperation between law enforcement and judicial authorities, and between Member States, international criminal networks remain highly active, achieving profits of crime.

The first action proposed by the Commission for achieving this objective is the *identification and dismantling of criminal networks*. In this regard, the Commission is planning for 2011, a legislative proposal concerning the collection of passenger name records for flights arriving or leaving its territory. The data in question will be considered by the authorities of the Member States to prevent and prosecute crimes of terrorism and serious crime.

Other items which the Commission intends to undertake this action is *to revise EU legislation to combat money laundering*, even direction is proposed a strategy by 2012.In addition, the international character of criminal networks requires to make more joint operations and common composition of teams involving police, customs authorities, border police and judicial authorities of different Member States and Eurojust, Europol and OLAF.

These measures would not be complete without the efforts of Member States to continue effective implementation of the European arrest warrant and the presentation of reports on its application.

A second action proposed by the Commission to achieve the first objective is to protect the economy against the infiltration of crime through measures such as monitoring and supporting the efforts of Member States to combat corruption by increasing government involvement and regulatory bodies (address management) and ensuring intellectual property rights to combat counterfeiting which distort the single market flows.

An interesting element is the Commission's initiative to strengthen the EU legal framework to allow for greater involvement in the case of seizure and confiscation of a third party extended to facilitate mutual recognition between Member States which do not require confiscation orders issuing a decision. A measure to implement these laws is the establishment of offices by the Member States to recover assets that have the resources, skills and training needed, and the ability to exchange information.

Preventing terrorism and combating radicalization and recruitment

A first action by the Commission proposed to achieve this goal is to create an EU network to increase public awareness about the radicalization, including a discussion forum and conferences.

At the institutional level, the Commission proposes to hold a ministerial conference and subsequently developed a manual of activities and experiences to support the efforts of Member States in the early stages of radicalization and recruitment to collapse, and to make possible the withdrawal and rehabilitation.

5 see Communication from the Commission to the European Parliament and the Council adopted on 02.11.2010 - COM (2010) 06;

6 in Annex COM (2010) 673, page 19,
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0673:FIN:RO:PDF

A second action *for blocking terrorists' access to finance and dual-use items and track their transactions* involving the establishment of a European network of law enforcement units specializing in chemical, biological, radioactive and nuclear (CBRN), which ensures that Member States shall take into account in planning their national CBRN risks. Another measure is the creation within Europol, a rapid alert system for law enforcement for incidents related to CBRN.

A third action relates to *ensuring the transport sector* is necessary and justified to take a more active European approach. So far, the work at EU level was limited to exchanges of information and best practices, reflecting concerns on subsidiary and the absence of comparable international organizations or the International Maritime Organization International Civil Aviation Organization, which requires a coordinated European approach. The Commission considers that, in a first stage of a future action would be useful to consider creating a standing committee on land transport security, led by the Commission and bringing together experts in the field of transport and law enforcement.

Increased security for citizens and business in cyberspace

EU would provide police, prosecutors and judges more effective means of combating cyber crime through courses and tougher regulation. The EU will also work with industry to improve online security and will strengthen the means by which to defend against cyber attacks. A new European center will bring together experts who will investigate and prevent computer crime. A network of emergency response teams in cyberspace will be involved in the event of attacks.

To achieve this objective, the Commission proposed the following actions:

- establishment of a central EU cyber crime-fighting;
- building capacities for investigation and prosecution of cyber crimes;
- reporting of cyber crime incidents and developing guidelines on cyber crime and cyber security (in progress);
- management of illegal content on the Internet;
- establish a network of teams of computer emergency intervention and the regular national contingency plans and recovery exercises;
- establishment of a European warning and information exchange.

Enhancing security through border management in Europe

We will refer only to the target number 4 entitled by enhancing border management issues with significant impact on the. Regarding the movement of persons, the EU can tackle migration and fighting crime as a dual objective of integrated border management strategy. This approach is based on three strategic issues:

- more use of new technologies for border checks [Schengen Information System (SIS II), the Visa Information System (VIS), the entry / exit and registered traveler program];
- more use of new technology for border surveillance (European Border Surveillance System
- EUROSUR), with the support of GMES security services and the gradual creation of a common medium for exchange of information for EU[7] maritime domain
- Improved coordination between Member States through FRONTEX.

7 Commission Communication "Towards integration of maritime surveillance: a common medium for exchange of information for the EU maritime domain "COM (2009) 538.

A first action by the Commission proposed to achieve this objective relates to the use the full potential of Eurosur sense that the Commission will present a legislative proposal establishing EUROSUR to contribute to internal security and combating crime. EUROSUR main goal will be to establish a mechanism whereby Member States authorities will exchange operational information on border surveillance and cooperate with each other and with Frontex, the tactical, operational and strategic[8].

A second pillar concerns *the strengthening of Frontex assistance* at external borders in the sense that a number of valuable information held by Frontex can not currently be used in the internal structures of states and other EU bodies will be recovered in future optimal.

The Commission proposes that, beginning in 2011, to use the joint contributions provided by Frontex and Europol and to present at the end of each year a report on specific cross-border crimes such as trafficking, clandestine immigration networks and trafficking in illicit goods. This annual report will provide a basis for evaluating the need to organize in the FRONTEX joint operations and joint operations involving police, customs authorities and other authorities specializing in law enforcement since 2012.

A third proposed the action of joint management of risk in terms of movement at external borders.

The Commission will perform at the EU level to combat customs common risk assessment. In order to strengthen border security, emphasizing the need to exchange information at EU level. From 2011 to strengthen the necessary customs security at external borders, the Commission will focus on options to improve risk analysis capacities and setting of objectives at EU level and proposals on the matter, if necessary.

The fourth proposed action aims at improving cooperation between national agencies.

This refers to the need for the Member States of common risk analysis, with a deadline end of 2011. Contributions to the preparation of these tests have all security authorities, including police, border guards and customs authorities, identifying hotspots and multiple threats to cross borders[9].

With the 2012 deadline, the Commission has set the task, the presentation of suggestions on how to improve coordination of border controls by different national authorities (police, border guards and customs authorities). Subsequently, by 2014, the Commission will, together with Frontex, Europol and the European Asylum Support minimum standards and best practices for cooperation between agencies. In particular, they should apply common risk analysis, joint investigations, joint operations and exchange of information.

Increasing the resilience of Europe in the event of crises and disasters EU governments will work together to ensure that they have the infrastructure, personnel and equipment necessary to react quickly in emergency situations internally and externally, either natural disasters or man-made.

To achieve this objective the following actions were proposed:

- submitting a proposal on the implementation of the solidarity clause;
- submitting a proposal for developing a European capacity for emergency response;

8 Commission proposals for the development EUROSUR and common development environment for the exchange of information (ISCE) for the EU maritime domain are contained in COM (2008) 68, respectively, in COM (2009) 538;

9 pathways such as illegal immigration and drug smuggling detected repeatedly in the same region at the same border crossing points;

- regular presentations on current threats;
- overall coherent framework for the protection of classified information;
- defining a risk management policy.

In line with the disaster response recently[10] adopted EU should establish a European capacity for emergency response based on resources of Member States on alert for EU operations and plans previously agreed.

Work is already under way for some of the 41 proposed actions under the plan and hopes they will be implemented by 2014. Annually, the European Commission will present the European Parliament and the Council of Ministers a report on progress.

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The main risks and threats facing crime in Europe today, namely terrorism, serious crime, organized crime, drug trafficking, cybercrime, human trafficking, sexual exploitation of minors and child pornography, economic crime and corruption, cross-border arms trafficking and crime, is adapted very quickly to changes in science, in their attempt to illegally exploit and undermine the values and prosperity of our open [11]societies.

Therefore, national security strategy is the EU response to these security risks by proposing a new European security model is an evolution of internal domestic security concept as it has been defined so far. This concept of security is one that is centered on security in the nation and its institutions (as traditionally understood the concept of national security) but the attention has been aimed to security of citizens in all its dimensions. Another novelty is the fact that much of this responsibility lies with the European Union of nation states and not just as it used to be. This concept does not eliminate nation states as the basic element of national security but adds another element that is equally important that international organizations not only have responsibility for external security but also have acquired a central role in internal security among national countries.

The security strategy is far from being perfect, and it has received numerous complaints in the sense that has challenged some of the information, analysis and reports which were the basis for their preparation. There are people who believe[12] that the relevance of the five objectives proposed by the Commission indicate significant differences for the EU given that just common support of all states is seen as a key to the success of this strategy[13]. This could be a major challenge to achieve the common model of the new EU internal security in the sense that not all states are interested in all these objectives.

Another reason is that this document is critical of the methods and models of cooperation that it proposes specific logic rediscovers former three pillars of the EU Justice and Home Affairs with the highly represent a government which would decline to possibilities The Treaty of Lisbon.

10 "Strengthening the European response to disasters: the role of civilian protection and humanitarian assistance" - COM (2010) 600

11 Doc 5842/2010 of the Council - the EU's Internal Security Strategy: towards a European model of security, p.14;

12 Elspeth Guild, Sergio Carrera, Towards year Internal (In) Security Strategy for the EU, "CEPS Paper on Liberty and Security in Europe, January 2011, p.8;

13 "EU Internal Security Strategy in action? Section should become the EU's joint program for the next four years. Its success depends on the combined efforts of all EU actors "- see COM (2010) 673 - EU Internal Security Strategy in Action: Five steps towards a safer, p.18;

We believe that these assessments must be reviewed and progress through the process of European integration policy is distinguished by small steps and that the real stumbling block will be the support and involvement of all Member States to ensure security of all EU citizens irrespective of nationality.

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ROLE OF THE POLICE IN THE REALIZATION OF THE HUMAN SECURITY CONCEPT

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Abstract: The fall of the Berlin Wall is not just a symbolic beginning of a new era in international relations; this event signifies a change of social-economic activity model of organization. Globalization is the word with which the processes that represent a paradigmatic change in people's lives and life of their communities are best described. Global place and time compression inevitably leads to a change in the role of national institutions. Risks and threats citizens are exposed to increasingly source outside the area controlled by states the citizens of which are being endangered. Indeed, it is the fact that human security threats are universal, nationality, citizenship and other individual features of the people notwithstanding that leads to the creation of another security concept, promoted by UNDP in 1994. Human security as a concept is based on the tradition of modern age struggle for human rights and civil liberties. State borders permeability for goods, people and ideas circulation exposes citizens to various risks that are a direct consequence of institutional mechanism deficiency in the existing conditions of doing global business, but also criminal activities. The police in compliance with their legal authorization and social role may contribute to controlling both global risk and local level threats so as to reduce them to a sustainable level. The concept of human security acknowledges seven facets based on which the security and/or insecurity status in a certain area is determined. Applying the method of theoretical analysis we will show the ways in which the police may significantly contribute to citizens' security in every single facet. In fact, by doing that we will prove that some elements of the classical state-centric security concept are not *a priori* in collision with the alternative, anthrop-centric human security concept. On the contrary, the realization of the human security concept is not possible without the use of mechanisms and institutions that are the benchmarks for the state security concept. The proposed theme social function is to promote the human security concept and argue for the police significance in its application in practice.

Key words: Globalization, Risks, Threats, Human security, Police.

INTRODUCTION

The fall of the Berlin wall, marks the symbolic end of an era, and is, at the same time, an introduction to regular forms of socio-economic practice and character of international relations. Three significant points can be perceived as a direct consequence of the fall of the Berlin Wall:

1. The international order based on the equilibrium of power is replaced by the absolute dominance of one power;
2. Disintegration of the Eastern Bloc leads to a mass destruction of state institutional systems that build their power on ties with the central power. This phenomenon is characteristic not only for the members of the Warsaw Pact, but for all those countries that build their strategic positions on ties with Moscow;

3. Opening of Eastern European territory to activities of transnational companies (TNCs) from the West contributes to a drastic increase of globalization momentum.

All three moments have a significant effect on the security of international subjects, but also on citizens as members of social groups i.e. residents of internationally recognized countries. The absolute supremacy of one country makes it the sole bearer of ideological hegemony that insists on realization of its own models of organization of socio-economic activities. A radical turnover in carrying out state functions leads to changing the old system with a new one without the necessary knowledge and skills of the reformists. Such situation, in turn, leads to a conflict between work of institutions and interest of citizens. What most commonly happens in practice is that predatory TNCs benefit the most from the newly existing situation because they make maximal use of the vacuum of power for the realization of their interests. A drastic division of population to transition winners and losers occurs, which incites a growth of tension, social disturbance and an escalation of suspect in system institutions. Such chain of events is made possible primarily due to global processes that are out of control, and gaining momentum along with the opening of former Eastern bloc economic space, and all their satellite countries. The lack of control over the global economy processes combined with the flaws on state level results in many problems in all facets of human activities.

The perceived trend serves as an inspiration to formulating a new approach to modern world security issues. UNDP experts appreciate the fact that the classical approach to security in the new set of circumstances does not offer a suitable framework for addressing these issues. First off, an up to now unknown situation occurs in which state institutions work directly opposite to the interests of the citizens whose interests they should be meeting, being under control of informal centers of power. National states are not capable of fully controlling the unwanted events due to the increase of transnational trading. The growth of TNC financial power makes their position in negotiations with state representatives superior. Faced with the fact that it is more and more exposed to financial losses in the budget, the state must resort to attracting foreign capital by offering various benefits. In most cases, it means privileges in tax and customs treatment, but seldom it means giving up on demands relating to the existing standards in the fields of human environment protection and workers' rights. Being aware of the fact that the existing institutional framework does not provide for the protection of citizens in realizing their human rights, the UNDP experts offer a new concept that draws attention to the rights of citizens as a universal category. With this new, alternative concept, the security focus shifts from the state, as the main security subject, to person.[1]

This does not mean that the new concept entails a breakup with all elements and aspects of classical security mechanisms. On the contrary, the facts state the opposite. Almost none aspect of human security can come to being without the institutional support of classical security instruments. Armed Forces, as well as the Police have their places in the new security concept, presuming that they are under the democratic control of legally elected people's representatives.

As mentioned before, the 1994 UNDP Report starts from the changed state of affairs on the global level. It points to the fact that the national state is no longer capable of controlling to the fullest the sources of security threats to its citizens. Also it is pointed that human security and/or insecurity status does not depend solely on elements present in the classical approach to security. Theoretically, it is possible that a state has a perfect security status by all classical indicators, and that the security of its citizens is threatened. It is for these reasons only that the authors

1 UNDP (1994): *Human Development Report*. New York – Oxford: Oxford University Press. pp.22-40.

of the Report offer a new methodology of determining the human security status. By this methodology, it is not just the security status in an area, and of the institutions that control this area that is important. Far more important are the elements of security relating to the quality of life of the people, and their security. Human security is viewed through the analysis of seven areas, based on indicators especially determined for each area. In this paper, we will try to point out the relevance and role of the police in the realization of the human security concept, i.e. the impact of their work on the change of some of security indicators.

Police and practical realization of the concept of human security

According to Human security concept, an objective insight in the status of security of people is attained by analyzing internal relations of the following seven dimensions:

1. Economic security;
2. Ecological security;
3. Health and food security;
4. Education as a function of security;
5. Social security;
6. Political and institutional security; and
7. Personal and collective security.[2]

Each of the stated areas is viewed through the optics of a special set of indicators so as to obtain as objective a picture of the actual status as possible.

The police, as an institution of power, are responsible for the security of people living in the area of their authority. In view of the global processes and risks spilling over the national borders, in performing their duties the police are more and more oriented to cooperation with the police of neighboring countries as well as of the countries from which the security of the people falling under their authority may be threatened. By all means, the police have no such powers to cover all aspects of security, but the important fact is the existence of consciousness of their role off the narrowly construed area of public security.

Economic security

In order to perceive the objective status of economic security, a set of almost two dozen (23) indicators is used. Due to limited space, we will point out only to a few groups of indicators the value of which depends directly on the efficiency of policing. Along with each group of indicators, there is a short explanation regarding the way in which the engagement of the police may contribute to human security.

1. When the move of economic indicators relating to the achieved level of economic activities and fair distribution of profit made by these activities is in question, the framework to police activities is set by the existing socioeconomic system. Successfully functioning in fighting business crime, the police contribute to a real presentation of achieved economic activities as well as to systemically determined basis of profit distribution. If the criminal activities remain unsanctioned, the budget income is reduced by the unregistered amount. This significantly affects the realization of social politics and functioning of public services. Among others, the police system too is left without means necessary for the procurement of modern equipment, and salaries. With the more ef-

2 Dulić Dragana...et. al. (2005): Indikatori ljudske bezbednosti u Srbiji, Izveštaj za 2004. Fakultet civilne odbrane, Beograd. pp.21-22.

ficient work of the police, the percentage of grey economy participation in business activities gets smaller, the budget income increases, the percentage of public spending participation decreases, and also the public debt.

2. Efficient police work contributes to economic stability, and foreign investment retraction owing to which, the standard of living increases, the unemployment rate decreases, and jobs become more secure. Owing to the money flow into the budget, inflation is kept under control more easily, prices in retail i.e. expense index remains within acceptable values and, consequently, the index of poverty is not high.
3. As a result of the rise of economic security level we get a stable community of people who do not fear for their jobs have stable incomes, and are more interested in participating in social flows and systematic finding solutions for community problems. In the opposite case, we have an unstable community, prone to manipulation in the existing set of economic circumstances which, in turn, jeopardizes the functioning of the system and the existence of the community (state) *per se*.

Ecological security

The status of ecological security is also analyzed by way of a much larger number of indicators (52) than the number we are enabled to present due to limited space. Therefore, we only draw attention to the way in which the work of the police may affect the ecological security of citizens. In this area, too, this work by and large depends on the systemic framework i.e. adopted legal norms in the area of human environment protection. Legislation and necessary standardization are within the authority of various specialized services and institutions. However, once the laws have been enacted, and the obligation of specified standards implementation established, any violation of those is not only the matter of inspection services and supervision. It is ecological crime that must be prosecuted by virtue of office, in the same way as any other form of criminal activity.

1. Subjects of economy may abide by every specified norm and standard, but their installed filtering systems may not always be fully operational due to high maintenance expenses. This is not just a temporary infringement and human environment endangering, but can be a direct attack on the health of the employed and the citizens who suffer the consequences of poisonous substance discharge. The role of the police in the system of ecological security of citizens may be the one of controlling, in the sense of preventing corruption in the services that control the level of poisonous fume discharge and gauge system manipulation.
2. Regarding the number of motor vehicles in streets, exhaust fume control and sanctioning violation of standards in this area may contribute considerably to the quality of human environment. Control in this area must not end in sanctioning only drivers, but also the organizations that are authorized for vehicle overhauls. Means of transportation control may be an important moment in preventive activities on chemical accident risks reducing and illegal disposing of waste. The control role of the police in shipping wood may contribute to the preservation of woods and, indirectly, to the reduction of effect of erosion on farming land, torrential floods, and also the preservation of biodiversity.
3. Carrying out the mentioned activities reduces the number of people ill with respiratory diseases as well as with the diseases caused by polluted drinking water, and that, in turn, contributes to the health security of citizens. Reducing the number of sick people relaxes the state budget and releases funds that can be used for other activities.

Health and food security

The effects of police work in the area of health and food security may be viewed through the optics of all seven dimensions of human security. For example, by reducing corporate criminal and expenses for curing the diseases that are a consequence of human environment pollution, more funds will remain for preventive activities in the area lf health protection. A better health system makes possible a decrease of mortality rate, and an increase of fertility rate, prolongs the life expectance. More funds in the state budget means a better social care system, a larger number of educational activities in the area of health protection, etc.

1. Preventive police work may directly affect the degree of corruption in the system of medical services as well as their quality. Cooperation with health system control organs may reduce the unnecessary spending health funds.
2. Also, a timely reaction may prevent any form of discrimination and violation of the right to medical care and treatment in the health system (members of national minorities, HIV positive persons, and of highly risk vulnerable categories of population).
3. Through an appropriate system of control, the police may contribute to working in compliance with the standards in the field of food industry. Also, policing may affect the work of public kitchens and social care institutions in the way that their work is in compliance with the determined standards.
4. By performing their systemic role, the police may contribute to a better supply on food market and better quality of food products. This can be done by controlling shipment routes and responding to reports backed up with evidence on corporate criminal cases in food industry, import, and distribution.
5. The link between reducing corporate crime and population life standard has already been discussed in this paper. Reducing the number of corporate crime cases affects the price of consumers' basket, i.e. the average percent of household food funding relative to its total income.

Education as a security function

When discussing education in security context, the pedagogical component of educational process must be taken into consideration first. If the students are introduced to the social role of the police in an early age, and the police show with their practice that they are in the service of the citizens and their security, then the conditions are created for a partnership between the police and citizens. It takes a lot of time and effort to reverse the police profession negative connotation that has its origins in the past. In other words, dishonest behavior of some members of the police creates odium towards the whole organization. Therefore, the police and citizens must build relations of mutual trust continuously on all levels and in all ages. Better educated citizens can perceive the useful aspects of police activities better, and can contribute to their efficiency. Younger generations are more suitable for building trust between the citizens and police, but for the same reasons, they are the target of various criminal activities. Criminal organizations try to recruit the young for their sinister goals, in other words, to misuse their youth and the lack of personal life experience. The outcome of this never-ending struggle between the society and criminal milieu depends on many aspects, but the police, as a part of the social organization in charge of the security of citizens must undertake permanent activities in order to introduce citizens to all kinds of threats. In this sense, educational institutions must be especially protected from the influence of unwanted

social phenomena and activities. The police should react in timely manner to any attempt of recruiting the young on the part of criminal organizations and individuals. Also, the police must engage in investigating suspicious activities of teaching staff and all other people employed in educational institutions where there are any. Police personnel permanent education and training are necessary for performing this social function. To this end, there has to be a close cooperation with all educational institutions that can contribute to a better police employee education so that they can always respond adequately to all contemporary challenges.

Social security

The most important role in achieving the status of social security is played by the family and institutions of pedagogical and educational system (all levels of educational process). Nevertheless, there are situations when the mentioned social framework does not produce satisfactory results, and when repression must be applied.

1. The role of the police is irreplaceable when social conflicts and conflicts in the family escalate. The police must react in the cases of violence in the family in order to stop any of those. The best way to do this is the kind of action performed in coordination with social service and experts who can assess to what extent the conflict has escalated in order to prevent a tragic outcome. The police ought to report to authorized services every intervention connected to violent behavior in the family so that the existing state of affair can be perceived objectively, and the appropriate measures be taken. Often, the victims of violence try to solve their problems through social work centers and/or various NGOs that offer help to the victims of violence; usually, asking help from the police means that the scope and intensity of the violent behavior has reached a critical level. Therefore, it is necessary to create a data base that would contain all forms of violence in the family the source of data notwithstanding.
2. The police should play an important role in controlling housing conditions and residing places of citizens. Policemen on the beat are the first to react to any appearance of illegal settlements. The police are not always in position to solve this kind of problem, but in any such case their duty is to engage the adequate social service. Illegal settlements and incomplete records on the people living in a certain area are a fertile ground for an increasing rate of crime. At the same time they hinder the solving of criminal cases.
3. When social security is in question, the work of the police organization should adjust to the conditions of cyber society. The wide-ranging use of the Internet places many classical criminal activities in cyber environment. For this reason, the police must protect the citizens from stealing their identity, disturbing their peace, and other forms of threatening their privacy by way of electronic media. The power of electronic media has drastically increased their effect on social flows. The possibility of manipulating the public opinion calls for a certain degree of social control of the media. Examining the origin and ways of funding, as well as reacting to any doubt as to the infringement of legal norms, does not always mean a pressure exerted on the media; often it means protection of citizens' interests and preservation of system stability. Also, a demand for timely and reliable information in certain situations entails giving protection to the press, i.e. creating conditions in which reporters can do their job professionally.

4. One of the regular police activities should be the protection of stability of social community basic elements such as the family, local community, organs of local self administration, social organizations, and religious organizations. This function is best carried out by way of cooperation and joint projects with a local community. People spend the largest amount of time and do the most of their activities in their place of living. The feeling of membership is a strong motive for preserving a community, and securing a stable prosperity and security of all its members, which is a good foundation of engaging all community members in carrying out actions by which security gets raised to a higher level.
5. The police needs to be a stability factor, as well as the factor of raising the level of tolerance in multinational and multicultural communities. With their activities, the police should contribute to eradicating discrimination based on belonging to different social groups. In turn, it should lead to eliminating the conflicts relating to ethnic and religious tensions within a local community.
6. With their activities, the police ought to facilitate a free and not interfered citizen organizing through the NGOs. In view of the fact that originally the concept of NGO presumes solving everyday problems in the local environment the police ought to give protection to all those organizations and their members who, due to their activities, may become targets to powerful individuals or organizations. Also, the police should protect workers' union activists who, within the framework of their legitimate activities, seek rights for the union members. On the other hand, if there is a doubt that the actions of those activists and/or such organizations are no longer legally acceptable the police have the obligation to investigate the matter and furnish the authorized instances with detailed information.

Political and institutional security

The greatest contribution of the police to political and instructional security of the citizens is creating and maintaining an ambiance in which abiding by the law is a moral imperative.

1. The police play their social role by upholding the norms that regulate the field of founding and working of political parties, as well as by safeguarding all legal political activities that exemplify the citizen's right to political engagement. By safeguarding political party activists, the police contribute to realizing the citizen's right to express their stands on existing social issues. Also, the police must react in the cases in which the work of a political party threatens the Constitution, or the political party activists manipulate the underage in order to realize party policy. The police should react if they establish for a fact that a violation of rules that puts the regularity of election process in question occurs. The police should enable a free and not interfered in work of election boards and secure the polling stations, when and where necessary.
2. Every citizen who becomes the subject of police investigation should have legal help. If such a citizen cannot afford it, they should be appointed a lawyer. When judicial proceedings is in question, with their action the police should enable the objective processing of every case, and protect the judge if there exists any indication that they might be physically threatened. Also, the police should take any precaution to protect citizens who appear as witnesses. If there is a reasonable doubt that any of the court of law, or police employees might be corrupted, a timely and proper investigation must be made.

3. The police also may react in all cases of administration suspicious doings. No one should have a privileged position, from the members of local administration to the highest offices. The struggle against corruption must be an imperative on all levels. Efficiency in suppressing corruption raises the level of citizens' confidence in government administration institutions.
4. Although Armed Forces make a separate system, in every situation in which there is a need to do so, the police must react to the end of preventing any criminal activity done by a member of the Military. In any case, the police should stick to existing protocols in handling such matters.
5. Adequate technical equipment and professional competence of the police are the prerequisite for doing police business successfully. The system of police organization and authority must be subject to hierarchy to such an extent so as to avoid any negative impact of local structures, but an equal amount of flexibility also must exist in order to meet local needs. Further, funding the police service must be in accordance with economic might of the state, citizens' needs, and assumed international obligations.
6. Efficient work within the framework of stipulated legal norms demands an internal police control and proper forms of parliamentary control. This suppresses the proliferation of corruption in the police, and timely responding to criminal reports against police members produces the same effect. Permanent control and education have a positive effect on the degree of violating human rights in doing police business. The police openness to the media contributes to a higher degree of confidence in the police by the citizens.

Individual and collective security

All already described police activities are aimed at raising the level of individual and collective security of the citizens. Among them, the primary ones are, by all means, those considered to be the classical police functions, and refer to the struggle against all forms of criminal activities. Efficacy in fighting crime contributes to personal security of citizens and has a preventive effect on all potential criminal act perpetrators.

1. With their regular activities, and in collaboration with other relevant institutions, the police influence the dissemination of anti social behavior such as prostitution, gambling, street gang organizing, unrests at sports events, begging, etc. Effectiveness in suppressing these anti social phenomena contributes to the rise of the level of confidence in the police and state organs in general.
2. Efficacy and/or inefficacy of the struggle against drug trafficking reflects significantly on the security of citizens and their families, but also on wider community. In every community with a large number of dope fiends, the problem is not the drug addicts themselves and the state their health is in, but also the increasing number of criminal acts performed to get the money for buying narcotics. In this area, the police should act preventively, participating in actions and educational campaigns in order to reduce the number of potential victims.
3. Human trafficking is a phenomenon that has a multiple effect on the security of citizens. Anybody can be a target of the people whose business is human trafficking, and the transportation channels are the source of various negative side effects.
4. Diligent police work contributes to the safety of people in traffic. Starting from the fact that the very presence of uniformed police officers in the streets and on open roads has a preventive effect, to the fact that they control the condition of

vehicles, and assess the work of mechanic workshops that deal with establishing the technical condition of vehicles at their registration. It needs to be said here that the police and such workshops must not lead the citizens to believe that they are unnecessarily ill treated for the sake of filling the state budget. The police activity in this area should be organized in such a way that the citizens themselves understand it is in their own interest. The work of the road police must not be directed only to the citizens, but also to the road infrastructure, i.e. the firms in charge of taking care of this infrastructure. Along with performing regular controls of vehicle condition, and acting in compliance with traffic regulations, the police may contribute to the effectiveness of struggle against different forms of smuggling, and organized crime.

5. With their work, the police should contribute to peaceful solving the conflicts between citizens on different grounds. The prevention of ethnically inspired attacks on citizens is of critical importance. Primarily this entails preventive activities in the cases of manipulating the citizens on national and confessional basis. The struggle against destructive cults is a significant contribution to the security of citizens.

CONCLUSION

The police, being an exponent of authorities that is in everyday contact with citizens, contributes to the stability of the system of government, and the citizens who live in the territory under its jurisdiction. In performing their regular tasks and duties, the police should have partnership relations with the citizens and local authorities in order to achieve the necessary degree of efficacy. With keeping the public law and order, police officers contribute to realizing the basic human rights and liberties. The struggle against organized crime, and aid given to citizens in critical conditions in which their security is threatened, is a direct function of the concept of human security realization. With their strict implementation of the law, the police affirm the democratic character of the system. Nobody is above the law, i.e. every criminal must be sanctioned their social and economic status notwithstanding. Discharging duties must be in compliance with the lawful authorization, and stipulated regulations and protocols so as to avoid any human right infringement. This is especially important due to the nature of police profession that presumes the use of means of coercion including lethal weapons.

In terms of globalization, which presumes larger mobility of people outside the territory of their states, the adoption of norms of discharging police duty international standards becomes critical for several reasons. One of the most important is that the citizens can predict the uniformed person's action with certainty, no matter which country this police officer is from; also, by establishing codified standards, international police collaboration in the struggle against international crime becomes more efficient. Legal business activity proliferation outside national state borders is accompanied by a more intense diversification of international criminal activities. In this context, the exchange of police information and experience on regional and global level is of utmost importance.[3]

Confidence of citizens in the police work is very important due to the fact that many criminal offences cannot be detected without inside information, the available technology and equipment notwithstanding. Identity protection of a citizen who points out to a suspicious event is a prerequisite for confidence between the

3 Committee of Ministers of the Council of Europe (2002): *The European Code of Police Ethics*, Council of Europe Publishing, Strasbourg. p.15.

citizen and institution. Having good connections with authorities, big corporate systems can always stage a favorable state of affairs in times of controls and inspections. Nevertheless, if a person, employed in such a system has the consciousness of detrimental effect of breaching the regulations to his or her own health, the health of their colleagues, and/or the destruction of their life environment, such person ought to have confidence in the institutions and not be exposed to additional problems for pointing to unlawful doings of the employer. Insisting on disclosing private information such as name and/or address does not contribute to police efficacy. Every piece of information should be checked, and the engagement of field police is according to the assessment of the information reliability. Every piece of information should be recorded, officially and in proper form even if there is a serious doubt that it is reliable. By cross-referencing the information obtained in the field investigation and other reports and information, some seemingly irrelevant detail may be the part of the jigsaw to crack a serious case.

In multi-party conditions and tendency to bring the police structures closer to the local self administration organs trapping the police into political matters of any kind must be avoided. The link of the police and the local administration must be only relative to as effective enforcing the law and protecting citizens' rights as possible. Professional policing presumes a high level of moral qualities as well as adequate knowledge and skills that are updated on regular bases. In doing their duty, the police must accomplish the highest level of collaboration with other institutions of the system. The Security Information Agency is a significant source of information that may contribute to a more effective policing. Also, the information coming from communal inspections, financial and other kinds of auditing may serve as good basis for a successful struggle against organized, corporate, and other forms of crime.

In the conditions of drastic change of work and life environment, and the state institution losing power relative to the increasing power of TNCs, the police can spare less and less time and effort to deal with entirely internal affairs. Transnational crime demands more and more international collaboration in detecting and destroying organized international criminal groups. It may justly be said that the police gain more and more importance in preserving the security and order in a country in comparison with military structures. There are less and less open threats with arms that endanger the security of citizens. But organized crime, drug trafficking, and human, chemical, radioactive, and other hazardous matter trafficking become more and more serious threats to citizens' security. For these reasons the concept of human security becomes more and more significant as a framework for protection of vital core of all human lives in ways that enhance human freedoms and fulfilment"... „in ethical terms, human security is both a 'system' and a systemic practice that promotes and sustains stability, security and progressive integration of individuals within their relationships to their states, societies and regions. In abstract but understandable terms, human security allows the individuals the pursuit of life, liberty and both happiness and justice"[4]

The concept of human security is based on ethic principles and legal norms, but also on the personal interest of every citizen to live and work in a healthy and secure environment. In this context, every self conscious citizen gives their contribution to security of the community and to removing the threats to personal security. Personal security does not depend only on us; it demands a broader contextual framework. Although the work of the police is primarily in the service of preserving the institutions, it contributes to an adequate degree of security of citizens who, in turn, may contribute to police efficacy by their engagement and collaboration, and therefore

4 P.H. Liotta and T. Owen (2006): „Why Human Security?", *Witehead Journa od Diplomacy and International Relations*, Winter/Spring, Seton Hall University, USA. pp.37-54.

to their own security.

The concept of human security does not offer universal solutions and models for solving all kinds of problems. The problem solving principles of modern world security are definitely the same everywhere, but their implementation in actual conditions depends on local circumstances. The system institutions are irreplaceable for solving many real life issues, the citizens' security among them. Although the sources of many forms of threats to this security are global, responding to them successfully is possible only by engaging local structures. By all means, these local structures should make global networks so that they could deal with new forms of security threats and challenges.

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RELATIONS BETWEEN POLICE AND PRIVATE SECURITY SECTOR IN THE REPUBLIC OF MACEDONIA

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Abstract: The relations between police and private security are of the utmost importance for maintaining stable security system which will guarantee optimal level of security. Considering the complexity of their mutual relations in terms of legal provisions, authorizations, rivalries and complementarities, we analyze the current state of affairs in this sphere, giving also some recommendations and possible solutions to the most important problems (such as privatizing security; inappropriate legal framework; lack of control and oversight; transgression of authorizations etc.) that private security sector faces nowadays in the Republic of Macedonia, which are, of course, related to a certain extent with the position and role of police in Macedonian contemporary security system. We strongly believe that having in mind the human and material resources that private security entities possess, they present themselves as the most relevant partner to public security sector and especially police as the core of it. The thin line between greater stability and alienating of security function in state and a society which depends on the relations between police and private security is evident everywhere including the Republic of Macedonia as well.

Keywords: police, private security sector, state security sector, problems, perspectives

INTRODUCTION

The enormous growth and development of the private security industry are obvious, and we anticipate an increase in its volume in years to come (Shreier, Caparini, 2005: 38). Private security sector is a pretty new development in the Republic of Macedonia concerning the reform of the security system that followed the fundamental and comprehensive socio-economic changes started before two decades. The very constitution of the private security sector as a subsystem of the single security system within the country, created new and previously unknown situation in terms of structure and functioning of the security system as a whole and of carrying out the security function in successful manner. Nowadays, looking from the present perspective, it is undeniable that private security sector has changed the security map and the security system in the Republic of Macedonia to the point when it is legitimate to ask about its limits and consequences to the security system and function, considering all the positive and negative aspects as well.

It took only two decades for the private security sector to reach and surpass the number of its personnel comparing to that of the police and to present itself as almost equal partner with state (public) security system, according to the reliable data gathered from the Macedonian Ministry of Interior and CoESS (Confederation of European Security Services). At this point, building and maintaining healthy relations between police and private security sector is a crucial imperative that must be met in order to guarantee optimal level of security. Although the private security sector has been rooted in private property and the need for higher degree of protection of it, the very fact that its authorizations are being delegated, or trans-

ferred from the state to the private security sector speaks about the state as spring or source, and the private security sector as a security entity that gained from the state some security functions in a scope and in a manner appropriate to the newly created security situation of the new market-oriented societies in Eastern Europe, and the Balkans especially. Even the phrases "private policing", "outsourcing" and "privatization of security" all mean the process where a state transfers some security functions to the newly formed private security sector. Specifically, when we talk about Macedonian experience with the privatization of the security function, we define it as "top-down privatization, that is to say, deliberately planned and government implemented privatization of security function" (Wulf, 2007: 35-40). This privatization of security function also opens a debate to what extent are public security and police on one and private security concepts on the other hand different in theory and practice, since they also have many similarities and overlapping in competencies, activities and integral security, and as Les Johnston rightly remarks, "the conceptual distinction between public and private spheres is less absolute than it might first appear, a fact which is becoming increasingly significant in the realm of policing" (Johnston, 2004: 45). In addition, since the private security sector is pretty new development in the world in general, it is more difficult to regulate, and usually it shows less accountability compared to police and state (public) security system. "The regulation of powers used by private security personnel is generally not as systematically controlled in comparison to police officers" (Button, 2007: 18).

Two decades is not much time to evaluate such a delicate and perplexed process of privatization of security function. As in many other countries, the Republic of Macedonia is also faced with numerous controversies and dilemmas concerning the status, role and function of these two segments of the single security system, summarized in the basic black and white picture of strengthening or weakening the whole or integral security. These dilemmas have been shown in the case with contemporary Macedonian security system on several occasions, mostly casting light on numerous anomalies and problems within private security sector and with its relations to the state security system. Mutual cooperation should exist in the form of partnership, but the practice reveals rivalries and in most cases, hidden or latent links between the participants in the state and security sectors, often undermining the whole security system from within. These irregularities mixed with some other negative social phenomena such as politicization and especially criminalization of the society, reflect very negatively on the public image and trust concerning the work of private security agencies. That is to say that much of the work still has to be done, in spite of the legal framework for the activity adopted a decade ago. Also, a high degree of cautiousness must exist because of the rapid growth and development of the private security sector that often leaves state (public) security system and police especially unprepared and, in some cases, even unsuccessful in control and oversight of the activity within the sector.

Present state of relations between police and private security sector in the republic of Macedonia

It is of the utmost salience to know that similarities between police and private security sectors in terms of authorizations help better understand the true position and function of the private security sector within the single security system, while, at the same time, their differences are common ground for complementarities and mutual acting in exerting the security function as an activity of wide societal interest. Contemporary security is multi-faceted phenomenon, where state, and police

especially, "are no longer the sole provider of security, since they have been not replaced, but supported by many other public/state, para-state, private or semi-private organisations" (Meško & Sotlar, 2009: 269-285). Thus, the private security sector also presents vital and complementary part of contemporary security systems and the one which is becoming the most serious partner to public (state) security system in guaranteeing security within the borders of each country (Spaseski, Nikolovski, Gerasimoski, 2010: 254). Moreover, considering the contracting-out of some of its functions outside the national borders, it represents more and more significant factor in global security, especially in war and conflict affected areas throughout the world. The fast-growing presence of private security companies (PSC), as well as private military companies (PMS) speaks enough of this.

The Republic of Macedonia started to reform its security system with the advent of the new socio-economic relations initiated two decades ago. The first decade saw somewhat spontaneous and uncontrolled growth and development of private security subsystem (sector), which happened in a period of the so called security vacuum (Gerasimoski, 2009: 316-328). It was characterized by absence of special legal framework and poor state control and oversight that lasted from dissolution of the former Yugoslavia in 1991 and proclamation of the independence of the Republic of Macedonia up to the end of 1999 when a legal framework for private security sector was finally established. The second decade is the one that spans from the end of 1999 until nowadays and is mainly characterized by continuous improvement of the work of private security sector in all aspects, of course, with inevitable problems that always accompany this sphere elsewhere, not only in the Republic of Macedonia. Among the problems that are of crucial significance for the whole security system, not only the private security subsystem, are also those related to inappropriate relations between public (state) and private security sectors. Overcoming these problems, as well as the problem that emerges from the complex relations within the trinity of state (public), private and civilian subsystems of the contemporary Macedonian security system, should provide stable functioning of the security system, creating and maintaining optimal security state. As a matter of fact, civilian security subsystem is still in a process of constitution, with basic preventive function (Spaseski, Aslimoski, Gerasimoski, 2008: 30-31).

When we look at the present state with private security sector in the Republic of Macedonia, several very interesting features are to be brought out. The main feature is concerned with the very uneven growth and development of the two activities within the private security sector; very rapid growth and development of securing persons and property activity and completely undeveloped private detective activity (Dorevski, 2004: 123; Tumanovski i drugi, 2001: 59). What is most perceptible is the very fact of the scope and size of this development concerning state (public) security system, which opens many questions and dilemmas of mutual relations between public (state) security system and private security sector (subsystem). Thus, official numbers indicate about 12.000 employed police officers, while the number of security officers employed in the private security sector is around 16.000, which means that, in terms of numbers, private security companies (agencies) overshadow police with a 1.1:33 police/private security ratio (van Steden & Sarre, 2010: 424-439; CoESS, 2008). Compared to European ratio of 1:0.76 or to that of some Balkan countries (Slovenia 1:0.73; Serbia 1:0.82 ; Croatia 1:0.84), the Republic of Macedonia is a leader in this sphere considering quantitatively, which cannot be said about the quality of development of the sector (Станаревић и Ејдус, 2009: 104). Macedonian situation concerning the volume of private security activity shows tendencies of further growth, although it seems far enough from the U.S. current situation in this sphere where there are almost three times more private se-

curity officers compared to that of the police (Abrahamsen & Williams, 2009: 1-17). This also indicates that the private security sector is becoming a respectful factor in guaranteeing security in the Republic of Macedonia and the appropriate relations with police whose role is crucial for the overall stability and security of the country. In Macedonian case, a precise legal framework and good practice is necessary precondition in order to develop not only coexistence, but sustainable partnership that would guarantee that their mutual relations will not produce instability or present any menace to state and society stability and security, but a pillar of security system, creating and maintaining of desired security state.

Comparison between police and private security sectors in the Republic of Macedonia reveals several areas where competencies are overlapping and several complementing areas. The overlapping could present serious potential of conflict of interests, while complementarities are always raising the question whether the private security sector is really capable of providing needed security and protection degree, or whether it could completely commercialize security as marketed security services, that could lead to different forms of privatizing the security as essentially negative phenomenon within the wider process of privatization (Gerasimoski, 2007: 32-39). As far as the authorizations are concerned, the state/public/ security sector, primarily recognized with police, bases its authorization on the right and obligation of the state to identify, apprehend and punish offenders, with major function to serve to state and societal interests, as well as to exercise security over anything of value within its national territory. The private security sector bases its authorization on the right of individuals to self-protection which is delegated to a security organization or detective on a contractual basis. To adopt a role wider than that stipulated within the contract would represent a violation of the law. This is because an individual's right to self-protection can be exercised only in situations where the state security sector cannot intervene (Spaseski, 2009: 305-315).

What is very important considering the current state of relations between police and the private security sector in the Republic of Macedonia is the significance of the public and the image of these relations. Apparently, the public opinion is formed mainly through media and their influence is strong especially when there are some negative comments and attitudes concerning certain anomalies related to individual cases of privatizing the private security sector. Although there have been no serious studies so far about the public significance and opinion encompassing the relations between police and the private security sector there is an overwhelming skeptical and controversial picture of the quality of these relations. This is supported by the frequent unsolved cases of the alleged involvement of some police officials in several serious robbery thefts of large amounts of money, transported by state companies (postal service especially) or privately owned banks and secured by private security agencies. There is a grounded suspicion about the presence of strong informal links between police officials and private security officials related to the clients, easy access and work of some private security entities, as well as other forms of covert and overt protection and support, thus making unfair competition in the market of security services. Together with controversial political influences they create an atmosphere where good and needed relationships between police and the private security sector still remain pretty far from the required state. On the other hand, this is to a certain extent, balanced with several positive forms of cooperation and practice between police and the private security sector. They are found in areas such as recruitment of staff (many former police officials and state/ public/ security officials are nowadays working in private security sector, thus transferring positive influence on private security workers through education, training and experience), absence of practice where police officers are working at the same

time in private security sector (meaning that they diregard the law regulations which forbid working in police and private security sector simultaneously), regular and good practices of cooperation between police and private security companies (agencies), especially when securing public events, mutual exchange of useful security information between police and private security sector and so on (Bakreski & Miloševska, 2009: 286-304).

As a summary, we can point out several characteristics that are crucial for the present state of relations between police and the private security sector in the Republic of Macedonia:

- There are clear professional and political affiliations between police and the private security sector that favour some private security entities over others, all that being at the detriment on existing fair market conditions within market of security services and at the detriment on whole security;
- Despite certain positive influence of a former state/public/ security official being employed nowadays in the private security sector concerning mainly transfer of working knowledge and experience, there is real potential and even practice, that these relations could be more abused than used for private interests; it is true that police and the private security sector have many similarities and similar functions, but it is also equally evident that they have different roles within the single security system (Swanton, 1993: 2);
- Previous developments of relations between police and private security agencies have revealed the lack of well-timed, regular and effective control and oversight from the Ministry of the Interior and police especially towards private security agencies (which is obligation according to the existing Law on Securing Persons and Property, adopted in 1999 and amended in 2007); Frankly, the question of providing the right level of state control of the private security sector continues to be one of the most delicate, since it should balance the necessary level of state control with the appropriate level of freedom and autonomy of the functioning of the private security sector (Avant, 2005: 5-7);
- Positive experiences have also shown the improvement of the needed higher degree of security and protection offered by private security entities to clients, meaning that, when speaking in terms of physical and technical security, private security agencies are constantly contributing toward complementing the security function and providing higher degree of security that police are incapable to deliver to these clients;
- Overall image of relations between police and the private security sector is not very positive, and though it is formed mainly through media responding to negative cases and practices in this sphere, it indicates many anomalies, drawbacks and controversies related to the privatization of the private security that needs to be reduced or surpassed in the future.

Possible solutions considering the improvement of the relations between police and private security sector in the republic of Macedonia

Two decades passed since contemporary Macedonian security system introduced the private security sector for the first time in its history. The first decade of legally unregulated and state uncontrolled private security created numerous anomalies that had to be purged. That period started in 1999 with the passing of the legislation governing the private security sector. Up to present, many of these anomalies, weaknesses and negativities still exist and probably it will take much

longer time to create a respectable and reliable private security sector. Establishing, maintaining and promoting stable and appropriate relations between police and the private security sector make very important part of these efforts.

There are many points of reforms considering mutual relations of police and the private security sector which are aimed at minimizing the negativities comprised in privatizing the private security sector. All these points of reforms should ensure the improvement of the security and the protection of values and goods, higher level of protection and respect of basic human rights and values, active contribution towards integral security and creating and maintaining of solid partnership between police and the private security sector. Nowadays, it seems that there is a partnership between police which are not so strong and which are often understood in a pretty pejorative way, meaning that this partnership is mainly aimed at realizing private and individual public interests. Creating and developing strong partnership between police and the private security sector in the Republic of Macedonia implies not only legal assumptions and their implementation in practice, but also, and not least important, creating and maintaining mutual trust and cooperation. This partnership is vital, "since the final aim is that of achieving a higher degree of security, irrespective of the providers involved" (Veič, 1994: 346). The existence and work of The Chamber for Securing Persons and Property in the Republic of Macedonia as co-regulatory body together with the Ministry of the Interior is surely a sound basis for further improvement in this direction.

Throughout these two decades, the private security sector in the Republic of Macedonia has also witnessed numerous anomalies visible in several affairs and incidents where police and state security officers (present or former) were involved in together with security officers from the private security sector. The widely commented and publicly condemned affair in Skopje discotheque "Process" in 2006 revealed all animosities, tensions and controversies between police and state officers on one and private security officers on other hand and showed that much has to be done yet to improve significantly their mutual relations. Also, rivalries and animosities between present and former state security officials (police or military) and private security officers still exist and their presence is a real menace for the stability of the whole security system. Of course, no one could prevent and foresee all detriment that could emerge in a case where only a tiny part of 16.000 armed private security officers provoke violence and exercise their authorizations by breaching legal provisions. Very important factors are the money and capital dependent on the development of this sector in the Republic of Macedonia and worldwide. Thus, it is estimated that in 2010 the total amount of revenues reached fabulous $202 billion and the turnover of the private security sector in EU is estimated to 15 billion euros (Born, Caparini & Cole, 2007: 1; Davidović i Kešetović, 2009: 235-251). Indeed, there are countries in which the size of the budgets and number of employees in private security companies exceed those employed in state (public) security (for example, in Israel, U.K., U.S.A. and South Africa) (Richards & Smith, 2007: 1-14).

Links of private security officers and some police officers with political parties and criminal structures also present a very serious problem for the relations between police and the private security sector. In deeply politicized and to a significant degree criminalized contemporary Macedonian society, this is quite a temptation for all security structures. A couple of serious and unsolved incidents where possible links of this kind were assumed, leaves room for suspicions of some significant hidden connections and interests which further undermine collective efforts to build a more stable and secure state and society. This will get more and more difficult to resolve as it lasts longer and as the negative public opinion about

this question becomes public stereotype. Then it would take doubling of efforts to change the negative perception and stereotype than in a situation when this is taken earlier. One serious research about the present perception and attitude towards the private security sector and its relations with police would probably confirm these presupposed attitudes.

The most possible and useful solutions towards the improvement of relations between police and the private security sector in the Republic of Macedonia that we are offering are as follows:

- Having in mind the evident lacking of usage of preventive security measures vis-à-vis repressive one by police and especially private security entities, there is a claim to strengthen the preventive function on both sides; that should lead to the creation of a state where "security is a valuable public good, a constitutive ingredient of the good society", and to result in something that Ian Loader and Neil Walker refer to as a "civilizing security" (Loader & Walker, 2007: 7);
- "Promoting mutual respect, cooperation, and communication between both sectors as well as increasing the knowledge of each other's functions" also represents clear and paramount imperative (Nemeth, 2005: 284); we could add that there is an urgent importance for the police to be aware of the fact that the private security sector is an indispensable segment of modern security systems and for the private security sector to be aware of its place, role and functions within the integral security system;
- Intensifying mutual cooperation in fighting against crime offenders and criminal acts also represent one field of common public security interest, since there are very similar authorizations and competencies between police and the private security sector, and since both are legally obliged to prevent and fight these offenders ex officio (surely, not to be forget that authorizations of private security officers in this field remain somewhat confined);
- Raising professional, ethical and technical standards (so called "interaction with technology") of work through intensive and quality cooperation between police and the private security sector also would create numerous advantages and contributions towards better functioning of both sectors (Mjurej i Mek Kim, 2003: 636);
- Wider control and supervision of police and the Ministry of the Interior over the work of the private security sector are indispensable so as to prevent all anomalies in the private security sector and leave enough space for the private security sector to develop in a well-defined market conditions of security services;
- Police and the private security sector should specially work both collectively and separately to implement and develop high moral and ethical standards in their work, as well as to develop and promote security culture in all areas in their work; this would create favorable climate in their relations and will raise the level of their mutual respect and respect towards the citizens and private security sector clients;
- Both the police as well as the private security sector should work hardly in creating, maintaining and promoting positive public perception and image of their mutual relations; this is possible only by reducing and minimizing all negativities related to privatization of the security function; superb relations between police and private security are useless in a situation of prevailing negative perception of such a relation.

CONCLUSION

The private security sector in the Republic of Macedonia and its further future and development depend on the level and quality of mutual relations with police to a great extent. Numerous fields of overlapping the competencies and similarities on one and many differences on other side present real security and societal force that should be governed in a subtle way in order to avoid privatizing the private security function and assure its contribution towards creating and maintaining stable security system. The question is very delicate and mutual trust between police and the private security sector is also a paramount task not only in the legal sphere, but also in the everyday practice. We have found not only positive developments concerning mutual relations between police and the private security sector, but also numerous negativities that must be overcome in years to come in order to ensure the right place, role and function of the private security sector (subsystem) within the singled security system of the country.

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CONTEMPORARY APPROACH IN PREVENTION OF VIOLENCE AND INDECENT BEHAVIOUR AT SPORT MANIFESTATIONS

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Abstract: Much has been done in the last several decades for prevention of violence and indecent behaviour at sport manifestations and stadia. Nevertheless, violence and indecent behaviour at sport manifestations still remain one of constantly present threats and present a significant security problem whose solving requires long-term and continued support of state institutions with active participation of law enforcement agencies, sport clubs, sport associations and groups of fans as well as citizens. Violence and indecent behaviour at sport manifestations and stadia is an international phenomenon; it differs in its nature and in the degree in which it is present in certain states. Although a harmonized and direct response to violence is needed on the part of international organizations, a prevention strategy must also be adjusted to local practice in the aim of satisfying local needs. Security of stadia and sport events presents a very complex activity, and in practice attempts are made to point out similarities and differences in the model and form of violence and undertaken measures depending on local conditions and needs, which have proved efficient in the prevention and curbing of violence and indecent behaviour at sport manifestations.

Key words: security, violent behaviour, stadium, sport manifestations

INTRODUCTION

Sports events have always attracted great attention of broad social masses. A man's need to prove himself through competition, the satisfaction that victory over a rival brings and dissatisfaction because of defeat, have been known since ancient times. Although they had a different meaning and different dimension at that time, attendance at sports events was extremely high. This is also proved by the capacity of sports facilities which were built to receive large numbers of people. With development of human society the sports industry has advanced significantly. Modern Olympic Games have contributed to popularization of sports, refurbishing of the existing and building of new sports facilities, especially stadia of significant capacities. The first modern Olympic Games were held in 1896, at a converted ancient Olympic stadium, Panathinaikos in Athens, with the capacity for 80,000[1] spectators, the second in 1900, in Paris, at the Velodrome de Vincennes, with 50,000 seats, while the Olympic Games in Berlin were held in 1936, at the stadium with the capacity of 110,000 seats. The largest stadium in the world today is Rungrado May Day, with the capacity of 150,000, and it was built in 1989, in Pyongyang, North Korea. The largest stadium in Europe (14th in the world) is the Camp Nou in Barcelona, with 99,354 seats.

1 Olympic Stadium, Panathinaikos was built in 566th BC, with the capacity of 50,000 seats. For the purpose of the first modern Olympics it was expanded to 80,000 seats. Now it receives 45,000 spectators.

Modern sports events at stadia, with such large numbers of people all at one place imply security risks, threats and dangers. There is the problem of indecent behavior, violence and hooliganism, particularly at football matches[2]. The biggest security problems occurred in the 80s[3] of the previous century, during the football matches in which clubs from Great Britain participated[4]. The accident at Heysel Stadium in Brussels took place on May 29, 1985, during the European Cup finals between Liverpool and Juventus, which was attended by more than 60,000 fans. Before the match began, in the stampede of fans which the police failed to prevent, 39 people were killed and many more were injured. Because of this all English clubs were banned from participation in European football competitions for the period of five years. The main reason for this tragedy was the inadequate distribution of seats. The biggest tragedy in the history of British football took place on April 15, 1989, during the match between the clubs of Nottingham Forest and Liverpool, at the Hillsborough stadium, when more than 2,000 people tried to enter by force to the part of the stadium where 1,500 fans already were. Spectators who were close to the fence that separated the audience from the playground were pressed by the masses and more than 200 people were injured, while 93 were killed. This event made the UK authorities pass a decision to request spatial rearrangement of all stadia in England and Scotland – from then on they may only have seats, while standing is forbidden.

In order to prevent violence and inappropriate behavior at sports events, particularly at football matches, The Union of European Football Associations (UEFA) adopted the Stadium Infrastructure Regulations.[5] In accordance with the standards, all stadia are ranked in categories from 1 to 4. The main competition of the UEFA European League, European Football Championship League and playoff matches in UEFA European Champions League may be held only at stadia ranked as the fourth (highest) category. The final match of the UEFA European League may be held only at stadia of the capacity of 40,000 at least, the Finals in UEFA European Football Championship League at stadia with the minimum capacity of 60,000 seats.

UEFA`s requirements which must be fulfilled for a stadium of the fourth category are: minimum capacity of the auditorium, exclusively seats - 30,000, out of which 22,500 are to be used; dimensions of the playing surface of 68m width and 105m length, entirely without the fence that separates the playground from the auditorium; natural or artificial turf in accordance with the standards; dressing rooms with at least 25 seats, separate room for UEFA delegates; separate room for doping control and first aid; optional CCTV system covering the area within and around the stadium, a special place for VIPs (at least 1,500 places for domestic team`s and 200 seats for visiting team`s VIPs), an area of at least 400 square meters for the visiting team's fans; illumination of at least 1,400lux toward fixed and 1,000lux toward mobile cameras; a space of at least 5x5x2.3m for at least three TV studios; in case of power failure during sports events, an independent, uninterrupted power supply must be provided; safe parking lot for at least 150 VIPs and 400 buses; Standing is not allowed. Stadia of lower categories are of smaller capacities and in accordance with security assessments adequate security measures are applied.

In addition to the above prescribed norms and standards for the design of safe stadia, for the purpose of prevention of violence at sporting events, access control

2 It is interesting that the first World football championship was held in 1930, in Uruguay, and the first European championship in 1960, in France. Football appeared at the Olympic Games for the first time in 1900 and 1904 as unofficial (demonstrative) sport, and in 1908, in London, it was officially listed as an Olympic discipline. Today it is one of the most popular sports.

3 In England it is known as "the decade of disaster".

4 Hall A. Stacey, *An Examination of British Sport Security Strategies, Legislation, and Risk Management Practices*,

5 UEFA Stadium Infrastucture Regulations, edition 2010.

has been enhanced with implementation of the system of physical-technical protection, while the following is particularly forbidden: expression of racism, political activities, use of fireworks and pyrotechnic devices, alcohol intake.

Violence and indecent behaviour at sport manifestations

The following is considered to constitute violence and indecent behaviour at sports events, in the sense of the Law on Prevention of Violence and Indecent Behavior at Sports Events[6], Article 4:

1. physical attacks on participants in sports events,
2. fights between participants in sports events,
3. throwing items onto the field which could endanger life and physical integrity of persons or property,
4. provoking hatred and intolerance that could lead to physical conflicts of participants,
5. damaging sports facilities, equipment, devices and installations,
6. causing disorder on arrival or departure from sports facilities or at sports facilities, disturbing the flow of sports events or endangering safety of participants or third persons;
7. unauthorized entry into the field,
8. unauthorized entry into official premises and official passages of sports facilities;
9. bringing in and consumption of alcohol or other intoxicating substances;
10. bringing in and use of pyrotechnic devices and other objects and substances that could endanger the safety of participants or interfere with sports events;
11. unauthorized entry into parts of stadia for fans of the opposing team.

Violence and indecent behavior at sports events include illegal activities and criminal behavior of fans before, during and after the game, at stadia or around stadia, resulting in accidents (death, injury, injury with fatal consequences). Violence can be spontaneous and organized.[7]

An analysis of cases of violence at sports events in the past has differentiated various forms: from violence of spectators against officials during matches, which prevails over the violence against fans of opposing teams, up to violence by groups of fans in their fights against each other, when police and other law enforcement officials must regain public order. Spontaneous violence and indecent behavior at stadia or around stadia is a disorder of a lower level, in comparison to organized violence, which is a much more serious form of violence, which is more and more prevailing, and which results in serious injuries and fatalities.

Violence and indecent behaviour at sports events have specific characteristics:

- Violence is not limited to fights of opposing teams` fans, but may also include attacks on police and officials, expression of racism, political affiliations, etc.
- Violent behaviour is not limited to stadia and around them, but may occur also at other public places where fans may encounter each other: city centers, railway and bus stations, restaurants, cafes, clubs, etc.

6 The Law on Prevention of Violence and Indecent Behavior at Sports Events, Official Gazette RS, No. 67/2003, 90/2007

7 We may note that degree of organization of sports fan groups varies depending on the region, local culture, etc. According to National Criminal Intelligence Service (NCIS), for example, there are groups in the UK whose level of organization varies widely: from highly disciplined, very hierarchical well-organized groups, whose members regularly meet at least once a week, to groups that meet periodically, on the eve of the match, with the intention to commit a violent act.

- Violence often involves symbolic commitment and ritual aggression which may easily equal actual violence. For many supporters, identification with violence in sports is more "a game" of confrontation and attempt to express their opposition in a physical manner.
- Violent behavior at sports events is often caused by certain spontaneous elements such as, for instance, unwanted results of the match, aggressive behavior of security services, etc.
- National differences complicate characterization of violence in sport. Supporters' groups in Northern and Central Europe have very similar characteristics, while in South America and parts of Southern and Eastern Europe there are groups of supporters of a specific subculture. In countries such as Italy, Spain, Portugal and southern France there are ultra-militant groups of fans with significant differences in manifestation of violent impulses. One of the main characteristics of these ultra groups is a high level of formal organization, including campaigns to attract people to join such groups, and official membership. Although official purpose of militant groups is to support a team, many of them are politically active, which often leads to clashes and mutual physical confrontation[8]. Sports and political leaders often use them to conduct illegal activities using violence and coercion.

Some groups of supporters often "agree" in advance, before a football match, on intergroup skirmishes. Because of its origin, this kind of violence is called "the English disease", but it took on a larger scale by spreading to other countries of Europe and the world where football is very popular.

Prevention of violence and indecent behaviour

For the purpose of prevention of violence at sports events European Council adopted the European Convention N 120 "On prevention of violence and hooligan behavior at sports events, especially football games (ETS N 120). The immediate reason for this were the unpleasant events on May 29, 1985, at the Heysel stadium[9]. The Convention covers three main areas: prevention, cooperation and judicial measures. Prevention measures include cooperation between the police and sports clubs in preparatory stages of international matches, including measures for separation of different teams` fan groups, control of access to stadia and prohibition of alcohol and potentially dangerous things. The Convention emphasizes the need to ensure that appearance and physical structure of stadia provides safety of visitors, stadia, and stipulates construction of barriers or fences, and provides opportunities for law enforcement action forces. As for cooperation, it provides for security structures to establish contacts before international matches in order to identify and prevent potential hazards and reduce risks. As for legal measures, cooperation is planned between judicial authorities, i.e., access to court records of persons prosecuted for violence.

Preventive measures aimed at prevention of indecent behaviour and violence at sports events are realised also through standards for the design and construction of stadia. These standards set parameters for the design and construction of sports facilities to reduce the probability, possibility and consequences of attacks. Apart from a clear functional scheme, the use of appropriate building materials, planning of an appropriate number of entries and exits, clearly marking of areas to facilitate orientation and evacuation in case of emergencies, the design should include implementa-

8 For example "Barras Bravas" in Latin America
9 Also known as "Heysel Convention"

tion of technical protection systems, especially video surveillance of the highest rank, with fully equipped control rooms and rooms for temporary retention of persons.

Successful implementation of violence prevention measures at UK stadia

The United Kingdom, with its unfortunate experience, stands out in the implementation of preventive measures against violence at football stadia. Implementation of legislative measures, the new methodology in the design of stadia, in terms of safety and risk management, and spatial adaptation to the needs of the modern society have proved effective.

Legislative measures

In terms of legislation, the British government adopted a series of regulations to combat violence, terrorism and crowd control.[10] They prohibit violence, classifying illegal activities for which persons may be put on trial, including threats by domestic and international terrorism, with the possibility of imposing bans on attending football matches in the UK and beyond. The most important paragraph in the legislation on security of stadia is the one stating that each football club must have a stadium with a Safety Certificate. The adopted "Guidance for safety of sports grounds" defines safety requirements for all clubs playing in England. To meet the security requirements defined in the Guidance, a club gets a Safety Certificate issued by a relevant local authority. In addition, a person responsible for security is allocated to each club, to help stadia managements carry out the strategy and apply security protection measures on the day of the match, and also responsible for selection and training of the arena`s security officers. The Law provides for establishing of the so-called Football Intelligence Unit, whose task is to collect and exchange intelligence and information which could affect the safety of the stadium and the space around it before significant matches.

Designing safe stadia

In the field of designing stadia there was a significant shift. At the initiative of the British Association of Chief Police Officers, standards were adopted for the designing and construction of stadia, defining the parameters which reduce the probability of realization of terrorist attacks and mitigate the problem of managing crowds. The introduction of the safety aspect in the design methodology included the concept of a series of changes in stadium construction and arrangement of space in the immediate surroundings. All stadia may only have platforms with seats, which allows for easy organization of ticket sales and better control of masses, because fans are accommodated in homogenous areas of space and are separated by empty buffer zones in relation to opposing teams` fans. The design must also provide for a security command, control center within a stadium, which allows law enforcement to exercise control within and outside the stadium through technical protection systems. It is known that football clubs cooperate with many companies, particularly with shopping malls and public services. Creating of multipurpose spaces in sports facilities, which attract people throughout the year, not only at the time of the match, especially middle class citizens who like to spend their leisure time there, contributes to creating a positive atmosphere and limits the possibility for expression of violence. Controlled sale of alcohol only in restaurants and restricting the

10 The Football Disorder Act (1989); Football Spectators Act (1989); Football Offenses Act (1991); Football Act (1999); Football Disorder Act (2000); Football Disorder Bill (2001)

distribution of alcohol reduce the probability of creating disorder in public places due to drunken individuals.

Risk management and security management

Managing structures of football stadia in the UK are conducting a comprehensive security assessment to determine specific risks, threats and vulnerabilities of each facility. Risk categories involve strategic, operational and financial risks. Strategic risks include comprehensive assessment of possible failures, operational relate to failures in the work process caused by human factors, while financial risk categories include analyses of financial operations and control the flow of money from funding sources. A manual was prepared for making of the plan of risk management, and rules, regulations and procedures are applied for security of public gatherings at British stadia and arenas[11]. At the same time assessment is being made of sporting events, grading each separately, based on different types of data related to the actual event (e.g. traditional, such as the rivalry of clubs, importance of the match, etc.), stadium capacity and the expected number of spectators. Such assessment helps stadia managements, security services and police to make adequate security plans and determine resources, necessary expenses and the necessary level of readiness. Accordingly, special attention is paid to access control, inspection of persons and vehicles, training of security services in emergency procedures, identification of suspicious persons and vehicles, solving the problem of managing the masses. Use of technical protection systems for fire detection, voice command system, access to public addressary, access to control systems for restrictive areas and CCTV, greatly improves and facilitates the work of security services. In addition to the main security control center in the stadium, if necessary, a mobile command center, i.e., a vehicle (the so-called "Hoolivan"), could be used, equipped with a video monitor and linked via radio link with all security services within and outside the stadium. Mutual cooperation and coordinated work of law enforcement are crucial for security of sports events.

Subjects in prevention of violence and indecent behaviour at stadia

The most important entities in the prevention of violence and inappropriate behavior at sports events are: sports clubs, police and law enforcement personnel, fans and social institutions, who can achieve the goal only through mutual cooperation. The dominant role of individual subjects is conditioned by social characteristics of the region and local conditions.

Police

The role of the police as an entity in prevention of violence at stadia should be based on prevention, especially intelligence, which has proved very successful in the work of the British police. Having learned from bad experience in the 80s, when a large number of hooligans was released of liability for lack of evidence and unreliable police records, British police began to base their work on intelligence, the so-called intelligence-led policing, collecting information on groups of fans, their members, intentions, and protection of information sources. In cooperation with other institutions, the police use various protected databases which are interlinked and valuable in detection, identification and prosecution of perpetrators. Due to increased security measures at stadia during sporting events realized through use of modern

11 National Counter terrorism Security Office. (2006). *Counter Terrorism Protective Security Advice for Stadia and Arenas*. Association of Chief Police Officers in Scotland. Avaliable at http://www.nactso.gov.uk/documents/StadiaDoc.pdf

technical systems for protection, which greatly facilitate identification of hooligans, militant fan groups satisfy their urge for violence and fighting outside stadia, at other public places, where they can meet. Video coverage of public spaces with cameras, use of video footages and the efforts of the British police to create a unique record of collected information proved successful - a large number of hooligans was sentenced for offences committed in the late 90s[12]. It is important to say that such work proved effective in the prevention of organized, but not spontaneous violence.

Local authorities and cooperation with sports clubs

In some European countries (Germany, Holland, Belgium and Scandinavian countries) programmes were developed for fans, the so-called Fan Projects, which deal with developing awareness among young people with regard to violence prevention and strengthening of links among young people, especially children, with football clubs. In this sense, football is seen as an important form of socialization and the means for prevention of crime. Although they have the same goal and a similar way for realization of the programmes with the help of institutions and certain social structures, programmes for fans vary substantially, depending on local conditions. In Germany efforts are made for improving the relationship between fans, clubs and police, in Belgium they are concerned more with prevention of direct violent conflicts, especially among young people, offering them alternative ways for development. In the Netherlands they concentrate on improving relations between the clubs and militant fan groups and in finding opportunities to develop abilities, careers and professional skills of accused hooligans. Coordinators are appointed in local fan groups, to maintain contacts with potential hooligans, while the police are responsible for introducing escorts - officials in civilian clothes who collect information on groups of fans. Two programmes have proven very successful, the ones linked with the FC Groningen and FC Cambuur Leeuwarden. In addition to local authorities, clubs, young employees, the police and public prosecutors, the programs include active participation of former hooligans working with mentors, who, in cooperation with the police, are offered help to develop their aptitudes, talents and abilities in order to direct them in socially acceptable ways. They, by setting personal examples and through direct contacts, should influence the behavior of potential abusers in risk fan groups. The aim of the measures of protection from violence and crime among potential perpetrators is to create an atmosphere of safety at domestic ground, which is achieved through campaigns against hooliganism, in primary schools, providing opportunities for former hooligans to get themselves involved in the so-called mentoring programme that can help them to recognize and to develop their professional preferences. This way, militant groups of fans whose ultimate goal is violence are separated from others and their relationship with the club they support ends. This programme was awarded in 2002, in the Netherlands as the most successful in the field of crime prevention.[13]

Football clubs

The influence of sports clubs in the prevention of violence at stadia is extremely important. Unfortunately, many football clubs have become generators, instead of main subjects of crime prevention in sports and main champions of the struggle against violence at sports events. The reasons are many. The core problem is that clubs lack the interest in preventing violence. Moreover, certain directors of clubs

12 Ramón Spaaij (2005) *The Prevention of Football Hooliganism: A Transnational Perspective*, Amsterdam School for Social Science Research University of Amsterdam
13 Ibid.

are known to cooperate with individuals from the underground in conducting their private businesses, often hiring them in the arenas` security services. Instead of attracting new groups of fans and sports fans by a good-quality game, display of spectacular sports events, clubs give their most ardent fans, in gratitude for the "loyalty" certain privileges: free tickets, organized trips to guest matches, use of certain official rooms within sports facilities, use of exclusive zones for certain groups of fans during matches. These benefits have led to the other extreme: expansion of militant fan groups whose reprisals clubs themselves begin to fear. Violence in football clubs is interwoven with other forms of crime, such as drug trafficking, theft, physical assault, extortion, blackmail. Therefore, the conclusion is that one of the main prerequisites for the struggle against violence in sports are changes in policies of clubs` managements toward violence, without involvement of people with criminogenic histories, imposition of external control of clubs` operations and a resolution by all club members to take active roles in suppression of all forms of violence in sports. One of the most positive examples concerns the FC Barcelona, which, through selection of J. Laporte in 2003, took a definite stance to prevent and combat violence and inappropriate behavior at sports events. Despite numerous threats, the club continues the implementation of "zero tolerance" toward violence and is considered to be the only Spanish club that remains consistent in all forms of violence expulsion from the Camp Nou stadium.

Fans and sports enthusiasts

Fans and sports enthusiasts are potential, powerful entities in prevention of violence at stadia. Groups of fans in some countries of Southern Europe have led at local levels strong, open campaigns against violence, racism and political actions at football matches, achieving constructive cooperation with sports clubs and their managements. They were offered support by some extreme groups of fans which completely changed their manner of support. There were numerous conferences, public hearings and educational programmes aimed at promoting the positive role of sports in society. An example of successful projects is "Curva Jove" football club RCD Espanyol de Barcelona, in which smaller and larger fan groups are unified around one common goal: to provide unconditional support to the team in a socially acceptable way. During the project implementation fractions were made within extremist groups because a significant number of fans gathered in the ultra group "Eternos" separated themselves from the extremist group "Brigadas Blanquiazules", promoting non-violent and apolitical culture of support, not allowing political symbols to become a part of the group identity. Aware of the fact that wearing of political symbols insults fans of different political affiliations and provokes anger of other group members, the majority has decided to stop expressing political attitudes during matches because the goal is to link up with other supporters and become a more numerous group, instead of becoming isolated and enclosed within small groups of people. This way, the group has grown from 200 to 2000 members and they were joined by a large number of young people, even women (around 20%) and members of minorities, as well as a significant number of supporters who formed the core of the most extreme groups.

CONCLUSION

Due to some great disasters and the loss of human lives during sports events, international organizations have joined together to seriously address the problem of violence in sports. UEFA has adopted a series of normative acts which are binding for all members. Having learned from bad past experience, some European countries actively implement strategies to combat violence at sports events. The United Kingdom, the Netherlands, Sweden, Germany and Spain were most successful in this, through implementation of these regulations and strategies adapted to local levels. British management structures implemented the necessary safety and security standards in order to simultaneously fight against violence and terrorist threats.

Bearing in mind the position of sports and the importance of sports events in Serbia, and a growing degree of organized and spontaneous hooliganism at stadia before, during and after sports events, which take human lives and cause great damage to society and the community as a whole, a decisive approach is necessary for solving the problem of violence at sports events.

For successful prevention of violence and indecent behaviour in sports, active participation of all subjects of prevention is necessary: sports clubs, fans, police and security services, local authorities, social institutions and all citizens, and sports supporters. Using administrative and legislative measures, adopting standards and norms in designing of safe stadia, creating social programs and enforcement campaigns to combat violence, especially among the young population, with open support by the media, social institutions, various associations and organizations, the problem of violence at stadia could be solved.

At the same time, potential terrorist threats in the region, by militant, extremist and nationalist groups and organizations, require sports collectives and the society as a whole to create new regulations and implement additional measures, using positive international experience in defence of human dignity and the fundamental social values and promotion of the positive role of sports in the society.

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PREVENTION OF ENDANGERMENT OF THE ENVIRONMENT IN TRADE AND TRANSPORTATION OF EXPLOSIVE MATERIALS

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Abstract: Explosive materials may endanger many vital interests and values of a society, as well as the environment. The explosion of explosive materials may cause a series of consequences to life and health of people, and in certain situations may also endanger the basic segments of the environment. This endangerment may be manifested through ecological criminal offences, economic offences and misdemeanours (ecological delicts). Explosive materials may explode during their traffic and transportation. Therefore, it is necessary timely to undertake adequate preventive measures in order to prevent possible consequences. The paper deals with topics related to trade and transport of explosive materials, the possibilities of endangerment of the environment by their explosion, preventive measures in trade and transportation of explosive materials, with brief overview of the provisions relating to the transportation of explosive materials in the new Law on Transportation of Dangerous Cargo that will come into force on 23 May 2011.

Key words: the environment, endangerment, prevention, trade and transportation of explosive materials.

INTRODUCTION

Explosive materials belong to the group of dangerous materials, and one of their important features is that, under specific circumstances, they can release a large amount of energy in the form of heat or gases, and thus cause substantial adverse consequences to life and health of people, animal and plant world, material goods, and endanger and pollute the basic elements of the environment, especially the air, water, land and forest. In any case, explosive materials with all their characteristics, among others, are very suitable tool for endangering the environment and committing specific criminal offences in the area of environmental crime. These criminal offences may include offences in which explosive materials were described as the means of its commission (poaching fish, entry of hazardous substances in Serbia and unlawful processing, disposal and storage of hazardous substances), as well as criminal offences in whose description explosive materials were not listed as the means of commission, but given the method of their commission, these criminal offences can be committed using explosive materials too (pollution of the environment, damaging facilities and equipment used for protection of the environment, poaching game).

The environment can be endangered and polluted by the explosion of explosive materials, which can be caused intentionally or by negligence, which is especially characteristic for warehouses and storages used for storage of explosive materials within trade, and for means of transportation, loading and unloading explosive materials while transporting them. Given that explosive materials belong to the group of hazardous materials, it should be pointed to the fact that the environment can be polluted by some other hazardous material without explosion, which is the case with toxic, gas, contagious or radioactive materials. In terms of possible pollution and endangerment of the environment by the explosion of explosive materials, one important characteris-

tic of explosive materials should be emphasized – their explosion may indirectly cause fire, which can also endanger certain elements of the environment.

All these indicate that the use of explosive materials in everyday life is exposed to specific risks, which are present in both trade and transportation of explosive materials. Therefore, it is necessary to dedicate a special attention to preventive measures, which should be organized at professional level, with the use of modern technology, implementation of security measures and mandatory respect of relevant regulations.

Defining the terms explosive materials and the environment

In scientific and expert literature, there are various definitions of explosive materials, but it should be also pointed that there are legal definitions of the term explosive materials. Limitation regarding the length of this paper makes it impossible to name some definitions of the term explosive materials contained in domestic and foreign scientific and professional papers.[1] By analyzing the definitions of explosive materials in mentioned papers, it can be concluded that there are some textual differences among them, as well as certain differences in the very approach to defining them, but there are no substantial differences in terms of their contents. Specifically, all these definitions contain identical elements and characteristics that are included in the content of the term of explosive materials.

For the purpose of this paper, absolutely suitable is the definition contained in the Law on Trade of Explosive Materials[2], which was passed as federal law and exercised at the territory of the former federation, and today, with certain amendments and changes, it is applied at the territory of the Republic of Serbia. According to the provisions of this Law, explosive materials are solid and liquid chemical substances that can, under the specific external influence, by explosive chemical destruction release energy in the form of heat or gases; objects filled with explosive materials and ignition means; fireworks and other similar items. When considering the legal definition of explosive materials, it should be pointed to the fact that the definition of explosive materials is also contained in the Law on Carriage of Dangerous Goods.[3] There are no substantial differences between the two definitions of explosive materials contained in the above-mentioned laws, because in terms of their contents, they are almost identical, but certain differences regarding the use of terms in their defining are present, in other words, differences exist mostly in the terminology.

It should be pointed out that the Law on Transportation of Dangerous Cargo[4] was passed in November 2010, and will enter into force on the one hundred and eight day from its announcement. According to it, transportation of dangerous cargo is carried out in the accordance with the provisions of ratified international agreements, provisions of this Law and relevant bylaws. According to the provisions of the ratified European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR), dangerous goods include both explosive substances and items containing explosives.

1 The following papers contain definitions determining the content of the term explosive materials: R. Jovanov, D. Ocokoljić, G. Jevtović, D. Šikanja, *Osnovi preventivne zaštite od požara i eksplozije,* VŠUP Zemun, 2000. p. 41.; Mr I. Bjelovuk, mr Lj. Stupar, *Forenzička obrada materijalnih tragova nakon eksplozije nepoznate naprave*, Zbornik, Kriminalistika u teoriji i praksi, VŠUP, Banja Luka, 2005. pp. 199-200.; Dr N. Korajlić, *Kriminalistička metodika otkrivanja, razjašnjavanja i dokazivanja eksplozija,* Centar za sigurnosne studije, Sarajevo, 2009. p. 17.; Mr N. Marstijepović, *Eksplozivne materije,* Perjanik, Policijska akademija, Danilovgrad, br. 22-23/2010, pp. 117-118.

2 Službeni list SFRJ, br. 30/85, 6/89, 53/91, Službeni list SRJ, br. 16/93, 41/93, 50/93, 24/94, 28/96, 68/02.

3 Službeni list SFRJ br. 27/90, 45/90 i Službeni list SRJ br. 16/93, 31/93, 41/93, 50/93, 34/94, 28/96, 68/02.

4 Službeni glasnik Republike Srbije br. 88/2010 od 23.11.2010 god.

Before proceeding to the determination of the term environment, it is necessary to examine the existing different terminology and inconsistency of this notion. There are several different terms, such as: living environment, human living environment, human environment, natural environment, human surroundings, natural surroundings, healthy surroundings, habitat, surroundings and ecosystem. The environment, by its very content, is broader concept than the concept of human environment, because it includes the entire environment in which people live and work, as well as all the other living beings – animal and plant life.

The environment consists of surroundings and conditions for life, which are characterized by natural and man-made values, populated by human, plant and animal life, with settlings, general goods, industrial and other objects. [5]

In the first part of the first two points of the Stockholm Declaration,[6] it is emphasized: Man is both creation and creator of his environment, which gives him physical sustenance and enables intellectual, moral, social and spiritual growth. In the long and turbulent development of the human race on this planet, a stage has been reached when man, through the rapid development of science and technology, has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural one and the one he made, are essential to his well-being and to the enjoyment of basic human rights and the right to life itself.

The Law on Environmental Protection of the Republic of Serbia[7] defines the environment as a set of natural and man-made values whose complex mutual relations make up the environment, i.e. area and conditions for life.

The existence of a number of different definitions is a consequence of the absence of one generally accepted scientific definition, which would, in an universal and comprehensive manner, define the content of this term, which would be acceptable for all subjects of the international community. However, among the existing definitions, there are no important discrepancies in terms of the key elements that define the content of the concept of the environment, besides the differences in methodological approach and textual formulation.

Possibilities for endangerment of the environment in trade and transportation of explosive materials

During acquisition, sale, usage, storage, keeping and transportation of explosive materials, it is very important to apply precisely prescribed security measures, up-to-date technology and high level of expertise of all persons dealing with explosive materials. Therefore, it is important that the trade and transportation of explosive materials is precisely regulated by law.[8]

5 Dr M. Bošković, mr D. Bošković, *Ekološki kriminalitet*, Fakultet za bezbednost i zaštitu, Banja Luka, 2010. pp. 14-15.

6 Documents from the United Nations Conference on the Human Environment held in Stockholm from 5 to 16 June 1972. At this Conference, the famous Stockholm Declaration was adopted, UN, Doc. A/Conf.48/14/Rev. 1.

7 Službeni glasnik Republike Srbije, br. 135/04.

8 The Law on Trade of Explosive Materials provides for conditions under which a company can deal with the trade of explosive materials and acquire permission from the Sector for Emergency Management of the Ministry of Interior, provided that it ensures a proper premise for storage and keeping of explosive materials and control the implementation of prescribed conditions. In addition, the Law provides for conditions under which an importer can import explosive materials produced abroad in Serbia, and trade with explosive materials produced in Serbia. Sale of explosive materials is limited – they can be sold to enterprises, economic companies, organizations, entrepreneurs and individuals who have the permission from responsible authorities for their acquisition. The Law on Transportation of Dangerous Goods provides for conditions for getting the permission from the Sector for Emergency Management of the Ministry of Interior for trans-

The trade of explosive materials includes as follows:

- acquisition of explosive materials;
- sale of explosive materials;
- usage of explosive materials;
- storage of explosive materials.

Transportation of explosive materials is carried out by road, rail, waterway and air traffic. Many international agreements on this subject have been adopted.

Explosion is a sudden increase in pressure and temperature due to the oxidation or other exothermic reactions. It is a sudden expansion of gas caused by rapid oxidation or decomposition reaction with or without the increase in temperature.[9] Pollution of the environment in trade and transportation of explosive materials occurs due to the explosion of explosive material. This may occur due to the negligent or premeditated activity of a person, and in some cases, due to the force majeure, in all segments of trade and transportation of explosive materials. The causes of explosion can be intentional or accidental, as well as caused by force majeure, and in this context, we will point to one interesting classification of causes of explosion. According to this classification, all causes are grouped in three groups, as follows: natural, accidental and fire-related, with particular classification of all unknown causes of explosions.[10] Actually, in terms of criminal investigation, explosion as chemical process that occurs under specific circumstances is very important, because explosive material, used as a mean to perform concrete criminal offence, leaves traces on the scene characteristic and important for identification of the material itself, on which the criminalistic operational significance of traces of explosive materials is based.

Trade and transport of explosive materials carries a certain amount of risk of initiation and explosion of explosive material, which may cause endangerment of the environment, in other words, its pollution beyond the limit of tolerance, which can be manifested in the form of environmental crimes. In trade of explosive materials, this risk is mostly present in domain of storage and sale of explosives, while in transportation of explosive materials, risk from explosion is present during loading, reloading, unloading, storage, as well as combined transportation due to use of several transportation means. Accidents in transportation of explosive materials can also lead to explosion, and causes can be divided into two groups. The first group includes those same causes that are otherwise present in traffic accidents: state and quality of roads, weather conditions, traffic density, technical validity of a vehicle, vehicle's speed, alcoholic intoxication and fatigue of a driver. The second group includes causes related to explosive material: type of explosive material and its sensitivity, handling of explosive material and type and quality of packaging. Therefore, it is reasonably pointed to the need to use smaller quantities of the more sensitive explosives, which are less stabile, thus there is a greater danger of their activation. These types of explosives are treated as primary explosives, while the stabile ones, which are more difficult to activate, are treated as secondary explosives.[11]

portation of explosive materials, while the Law on Transportation of Dangerous Cargo prescribes that the permission for transport of dangerous cargo is issued by the Department for Transportation of Dangerous Cargo, except the permission for transportation of explosive cargo. Permission for transportation of explosive cargo on the territory of the Republic of Serbia is issued by the regional police departments, while permission for transportation of explosive materials in international transportation is issued by the Ministry of Interior.

9 Dr D. Mlađan, *Sprečavanje i suzbijanja požara, havarija i eksplozija,* Kriminalističko-policijska akademija, Beograd, 2009. p. 27.

10 P. M. Kennedy, J. Kennedy, *Explosion investigation and analysis,* Investigations Institute, Chicago, 1990. p. 316.

11 H.J. Yalop, *Explosion investigation,* The Forensic Science Society, Edinburgh, 1980. p. 20.

In the above-mentioned Law on Transportation of Dangerous Cargo, threats from consequences of transportation of dangerous goods are classified in three categories. The first category threat is threat to human life and pollution of the environment, with consequences whose removal is long and expensive; the second category threat is threat from causing heavy bodily injure or substantial pollution of the environment, and from pollution of the environment at larger territory. The third category threat is threat from causing minor bodily injury or low pollution of the environment. This Law completely reasonably points to the possible impact on the environment of transportation of dangerous cargo, provided that all three categories of threats can be also caused by transportation of explosive materials as types of dangerous cargo.

In traffic accidents involving explosive materials, one should not rule out the possibility of pollution of elements of the environment (most often water and land) even if there is no explosion – there are various explosive materials whose physical and chemical changes occur under different circumstances and in short period of time. Actually, some authors point to the physical, chemical and ballistic characteristics of explosive materials, which, among others, include sensitivity to shock, friction, flame, spark, and moisture.[12]

However, in their trade and transportation, explosive materials can be stolen by the third person, who may use them for criminal activity and thus pollute specific elements of the environment. In terms of acquiring explosive materials, especially characteristic are their sale, storage and transportation with various means of transportation (trucks, ships, rail). For example, if the facility used for sale and storage of explosive materials or means of transportation used for their transport are not secured properly, there is a possibility for them to be stolen by commission of property criminal offences (theft, aggravated theft, robbery, aggravated robbery). Also, they can be stolen by a responsible person (abuse of office, embezzlement, accepting bribe).

Due to the explosion of explosive material, basic natural resources can be endangered and polluted to certain extent, i.e. basic elements of the environment – water, air, flora and fauna. The range of pollution of the environment caused by explosion of explosive materials can be expressed in different intensity and scope. Namely, it may range from the mildest form of pollution which is even within the limits of tolerance, to the worst forms of endangerment and pollution on a large scale, where the consequences are manifested through specific environmental crimes. The worst forms are manifested in ecological criminal offences which endanger certain natural and man-made values and negatively influence life and health of people, animal and plant life. Therefore, by explosion of explosive materials in their trade and transportation, regardless of the fact whether it happened due to the intentional or accidental activity of a perpetrator, specific elements of the environment may be significantly endangered, and the most serious criminal offences against the environment committed.

Explosion of explosive material, activated by a person who has obtained explosive material in an illegal manner, rarely can endanger the environment to that extent and scope as it can be in case of trade and transportation of explosive materials, since it is mainly smaller quantity of explosive material in question. Illegally acquired explosive material is often used for personal purposes (digging of well, blasting of rocky terrain, etc.), and the environment is most often endangered by commission of criminal offences such as poaching fish, poaching game, killing and torture of animals.

12 S. Spasić, P. Marić, J. Injac, *Promet eksplozivnih materija,* Vatrogasni savez Jugoslavije, Beograd, 1998. See more pp. 61-72.

Important preventive measures in trade and transportation of explosive materials for the purpose of environmental protection

In order to timely and preventively act in trade and transportation of explosive materials in terms of environmental protection, it is very important to conduct analysis of existing risks and assessment of threats from explosion and disposal of explosive materials, because this kind of approach enables assessment of possible dangers and timely undertaking of the adequate technical, technological, organizational, physical, legal and other necessary measures, which contribute to the development of the efficient protection system. This includes the existence of appropriate legal and sub-legal regulations, use of contemporary technical and technological equipment, as well as appropriate forms of education, above all professional training and development of all participants involved in any form of dealing with explosive materials. In both trade and transportation of explosive materials, measures may be imposed during the conduct of supervision by the competent authorities, under the conditions prescribed by law, and they may have a preventive, corrective and repressive character.

According to the provisions of the Law on Transportation of Dangerous Cargo, the Department for Transportation of Dangerous Cargo is established within the ministry responsible for traffic. Among others, this Department performs inspection monitoring over the implementation of this Law, international agreements and regulations passed based on this Law. However, the same Law determines that the Ministry of Interior conducts inspection supervision of participants in transportation of explosive materials and items, which means that the transportation of explosive materials is exempted from the authorities of the Department for Transportation of Dangerous Cargo. According to the provisions of the current law, supervision over trade and transportation of explosive materials is conducted by the Sector for Emergency Management of the Ministry of Interior, and it is authorized, under conditions determined by law, to order the removal of the established irregularities within a given deadline, prohibit further handling of explosive materials to persons who are not professionally trained for such handling, temporarily prohibit the performance of certain activities related to trade and transportation of explosive materials and prohibit the company to deal with trade or use of explosive materials, or prohibit the company, other legal person, entrepreneur or natural person to transport explosive materials. In terms of implementation of preventive measures in transportation of dangerous cargo, according to the Law on Transportation of Dangerous Cargo, the same powers has the Department for Transportation of Dangerous Cargo, provided that the minister of Interior prescribes special security measures in transportation of dangerous cargo with increased security risks.

The significant contribution to the prevention of transportation of dangerous cargo was made by one provision of the Law on Transportation of Dangerous Cargo. This provision prescribes that a participant in transportation of dangerous cargo in road, rail and water traffic must have at least one security advisor who will supervise and control the way in which participants in transportation of dangerous cargo deal with dangerous cargo, in accordance with laws and regulations, and provisions of international documents.

Explosive materials are stored in warehouses, storages and shops of business companies and organizations dealing with acquisition, storage and sale of explosive materials.[13] Facilities for storage of explosive materials must comply with prescribed

13 If a company or organization does not have its own warehouse that meets the requirements for storage of explosive materials, it can sign a rent contract with a company that owns such warehouse, in order to store

conditions, which is very important for prevention of explosion and disposal of explosive materials, thus indirectly eliminating important criminal factors of influence to endangerment of the environment. In this context, the Sector for Emergency Management can apply significant measures, such as suspension of construction and reconstruction of the warehouse or other premises for storage of explosive materials, ban of use of warehouses, storages, loading, reloading or unloading sites, and seizure of explosive material, all these under the legally prescribed conditions.

One of the most significant preventive measures that contribute to prevention of explosions of explosive materials is certainly ban of joint transportation of explosive materials and means of ignition, which does not mean that they cannot be transported by the same vehicle, if it contains several separate containers. Security measures are prescribed for the location of loading and unloading of explosive materials. Loading and unloading of explosive materials should be carried out at specifically determined locations, which guarantee greater safety, and by a rule, during the daylight.

In terms of preventive action in transportation of explosive materials, important is the obligation of the sender that gives the dangerous material for shipment to provide the document on transportation and instructions for special safety measures, provided that this document contains all information prescribed by law. Special significance for prevention of possible consequences that may occur during the transportation of explosive materials and manifest in the form of endangerment and pollution of the environment is the instruction for special safety measures, because it contains measures prescribed by the law, whose respect reduces the possibility of activation of explosive materials.

When the environment is endangered by explosion of explosive material or accident during the transportation of explosive materials without explosion, besides the above-mentioned authorities, the responsible inspection authorities, i.e. specialized environmental authorities, have very broad powers, above all, through performing inspection supervision. These bodies are empowered to undertake a series of preventive measures against legal personas, entrepreneurs, and natural persons in order to prevent pollution and endangerment of the environment. In fact, in many situations when explosive materials cause endangerment or pollution of the environment, cooperation between inspection bodies and internal affairs bodies, i.e. the Sector for Emergency Management and the police, may contribute to the more efficient clarification and determination of the facts, in all those cases when it comes to environmental crimes.

CONCLUSION

The presented possibilities of endangerment and pollution of the environment in trade and transportation of explosive materials, and overview of protective and supervising measures in trade and transportation of explosive materials by the responsible authorities, clearly indicate the significance of prevention and its contribution in terms of achieving higher level of security and prevention of explosions and accidents, from the aspect of more efficient environmental protection. It is certain that, besides preventive measures, which contribute to suppression of endangerment of the environment, repressive measures, especially in cases of environmental criminal offences, besides the purpose of punishment, act preventively on the perpetrator and influence other persons not to commit criminal offences. However, the very repressive measures undertaken, whether it is a environmental criminal

their explosive materials.

offence, economic offence or misdemeanour, have some impact on safer trade and transport of explosive materials, but on a larger scale they can not contribute to more efficient protection in all phases of trade and transportation of these materials. Therefore, it is very important to comply with regulations in all phases of trade and transportation of explosive materials, in other words, to timely and professionally apply all necessary preventive measures, and apply appropriate repressive measures against persons who fail to do so.

The provisions of the Law on Transportation of Dangerous Cargo should contribute to even greater safety during the transportation of not only explosive materials, but also all other kinds of dangerous cargo. The Department for Transportation of Dangerous Cargo appears as an important subject, and the Sector for Emergency Management should establish appropriate forms of cooperation with it. When it comes to the endangerment or pollution of the environment, then the relevant ecological inspection authorities should be involved in this cooperation, and if it comes to environmental criminal offence, then the criminal investigation police has a certain tasks too.

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PERSPECTIVES FOR THE DEVELOPMENT OF INTERNATIONAL POLICE COOPERATION IN SOUTH-EASTERN EUROPE

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Abstract: Despite the existing opportunities offered by international police organizations, the recent efforts of European countries are aimed at upgrading and improvement of the police cooperation. Because states individually do not have enough capacity to effectively deal with crime, the association of polices is an adequate response in dealing with domestic and international crime. To this purpose many of the states are more actively involved in the regional security initiatives and international police cooperation. According to the objectives that arise from dealing with crime, the bases for regional cooperation are specifics to certain forms of crime that go beyond national borders.

In the Balkans, the characteristics of the social changes that occurred in the last two decades were the products of the disintegration of former Yugoslavia related to the escalated armed conflicts and increased ethnic tensions, transformation of ownership that permitted the development of high occurrence of corruption and organized crime, national police and other law enforcement institutions are still adapting to the changes slowly, poor border control facilitates the development of human trafficking, trade with drugs, radioactive materials, and illegal weapons. Regarding the fact that the countries of South East Europe share many similarities, they actively expressed their commitment to fight against the crime. After the conflicts in the region, police structures had asserted that they were the most competent to overcome the security challenges on which the issues of crime dominated. Faced with the professional approaches of the national polices in solving their tasks, the states' issues related to national sovereignty and the barriers to cooperation that as a basis have unresolved bilateral disputes among the countries were interposed.

Through the comparative method and the method of content analysis, the paper makes an overview of current problems which are still an active obstacle for effective regional and international police cooperation. At the same time, it is an attempt to identify the future directions that should be an integral part of regional police cooperation.

Keywords: police, cooperation, security, crime, perspectives, obstacles.

Basis for the development of international police cooperation in Europe

Recently, because of globalization, dismissal of offenses related to transnational crime has become an important priority in the work of the national police forces. The influence of modern technological development, growth of transnational markets and the effects of social change are imposed as the main factors that dictate the dynamics of crime and characteristics of threats and dangers of the citizens and states. Technological and transportation advances will facilitate growth in transnational criminal operations. The ease of modern communications makes contact among criminal organizations easy, fast, and more secure. New digital technologies make it more difficult for law enforcement agencies to intercept communications

(Godson and Olson, 1995). In Europe, the changes that occurred during the past two decades were remarkable, such as: the fall of the Berlin Wall; the collapse of the USSR and Yugoslavia; commencement of democratic processes, the change of ownership, and declining standards of living; replacing the role of military with police in keeping state borders; changes in the national legislations regarding the criminal and procedural law (especially the parts pertaining to criminal prosecution and detention) in post-socialist countries under the processes of transition; market globalization associated with economic migration to larger cities; need for enhanced border control due to heavy rush of people to the developed parts of Europe; trade with the illegal goods and more. Thus, circumstances associated with the expansion of crime have become the foundation that has forced countries to cooperate in activities aimed to detect and combat crime.

In defining the concept of international police cooperation, there are several explanations. Thus, the international police cooperation can be termed as an organized activity of the police of certain countries on the international plot (Babovic, 1997: 101). Consequently to the activities carried out in accordance with the purposes of international police cooperation, it is a collaboration between the police forces of two or more countries in the fight against the forms of international criminality, based on bilateral and multilateral agreements, or membership of the state in international police organizations, with specified conditions of cooperation, defined roles and status of the entities that implement the cooperation and many other formalities and regulations.

Police cooperation covers a wide range of areas, from education to the unification of means and methods, and among the countries where there are smaller or larger differences in legislation and police practices that should be harmonized in the area of joint action (Stojanovski, 1997:334). The harmonization of procedures in the police action is a current trend in the creation of police strategies. Especially important is the creation of regional centers for police training or organization of regional police courses. Through the Minister of the Interior, police as the executive authority, has the opportunity to initiate the adoption of laws related to international police cooperation as an integral part of police work.

As a result of international police cooperation, the efforts of countries have resulted in concrete actions in the fight against crime and the formation of international police organizations. The adoption of key documents such as Resolutions of Interpol (although the first convention was adopted in 1951, the frequency of adoption of the conventions became more frequent in the early 1990s), the Europol Convention (1995), its acts and two Protocols (2002 and 2003), regulated international police cooperation in the function of the general security and fighting against crime. The main objectives of international police cooperation within international relations are connected with the protection of citizens and community from the dangers and threats caused by criminal acts. Because cooperation has an epithet "international", it further implies the establishment, development and improvement of relations between the state and its police organization(s) with neighboring and other countries, bilaterally and multilaterally, within regional and global organizations for the maintenance of public order, fighting against crime and improving the degree of regional and global security. In order to strengthen police cooperation and to define the terminology, a major step forward was made with the adoption of the United Nations' Convention against Transnational Organized Crime (well known as the Convention of Palermo) from December 2000. It was significant that it defined a challenge called "transnational crime" as the basis for the states and police organizations to introduce the concept of international police cooperation.

In the paragraph 2 of the Article 3 (the United Nations Office on Drugs and Crime [UNODC], 2004), an offence is transnational in nature if:

- It is committed in more than one State;
- It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- It is committed in one State but has substantial effects in another State.

Several factors explain the trans-nationality of organized crime. This type of organized crime has three basic differences with respect to previous manifestations of the phenomenon: it tends to operate at a regional or global level, mobilizing extensive cross-border connections and, above all, has the ability to challenge both national and international authorities (Godson and Olson, 1993).

In order for the effects of cooperation to be more impressive, the states and the international community embedded the institute "extradition" as an instrument of international law in the framework of international agreements. The tendency of development of international police cooperation goes so far that the traditional forms of cooperation are complemented by dynamic and less formal forms that interact heavily with the etiology and phenomenology of crime.

Contemporary needs of the concept of international police cooperation are contradictory to traditional notions of police work. According to traditional understanding, the international police cooperation would be impossible or difficult as a viable concept for policing because the national policing includes the legitimate monopoly of force in a country. In situations in which the foreign police units are involved in solving the crime, it comes to endangering the statehood, its interests and sovereignty. Contrary to traditional understanding of police work, the modern concept of fighting crime treats the question of sovereignty as a weakness and difficulty in the implementation of international police cooperation. In the analysis of advantages and disadvantages of international police cooperation the possibilities for abuse of expanded police powers by the national police organizations should be taken into account. Abuse of police powers imposes the question "Does police law allow convergence in terms of commitments and exceeding the powers in the implementation of international policing?" The tasks arising from international police cooperation should be based on police law, and situations that are not clearly defined or put in doubt the police officers in their work should be further regulated by bilateral and multilateral agreements. Therefore, the objectives of international police cooperation require clearly defined principles that are based on national and international laws. The content of the acts govern international police cooperation, but internal affairs have to be related to the legislation under which the courts and the prosecution work. Whereas all forms of transnational crime, including terrorism have thrived with globalization, the national mechanisms for cooperation between States still lack cohesion and are often ineffective. Yet international cooperation is essential to criminal justice practitioners faced with new forms of transnational criminality and terrorism. It is indeed unrealistic today to confine all criminal investigations or prosecutions related to terrorism within national borders. This is even more so as criminals profit from the advantages obtained for the protection of citizens within the framework of state sovereignty (the United Nations Office on Drugs and Crime [UNODC], 2009:2). For example, as a starting point for cooperation, all the situations may be taken when the suspect, the victim, the principal evidence, the principal witnesses, the principal experts or the proceeds of the crime do

not come under the authority of the country concerned to transnational crime. A prerequisite for effective interstate cooperation should be regulated national inter-institutional communication in dealing with transnational crime.

The international community has developed a series of mechanisms for international cooperation in criminal matters concerned in particular with extradition, mutual legal assistance, the transfer of criminal proceedings, the transfer of convicted persons, recognition of decisions of foreign criminal jurisdictions, the freezing or seizure of assets, and cooperation between law enforcement agencies. Those mechanisms relate to all types of criminality – international, transnational or national – including terrorism (the United Nations, 2005: paragraph 56). Police are forced to find a model that will be offered to the states and international organizations. That model should tackle transnational crime and its effects will become visible. It involves the simplification of procedures for international criminal prosecution and arrest the perpetrators of criminal acts, but also the creation of mechanisms to counter the "black holes" that are embedded in national laws, and they are contrary to the principles of international police and judicial cooperation.

Regional context and interests of the EU and the international community for police cooperation in SEE

Following the collapse of the former Yugoslavia and the independence of the countries that emerged from it, the 1990s were marked by the accession of countries in the region of Southeast Europe to international police organizations (primarily Interpol) and the achievement of bilateral and regional agreements on police cooperation with police organizations established within the EU and beyond. It involves cooperation with the Europol, the Frontex, but also with organizations that made a great contribution to the reforms of the police organization as: the United Nations Office on Drugs and Crime (UNODC), the Organization for Security and Cooperation in Europe (OSCE), the Geneva Centre for the Democratic Control of Armed Forces (DCAF) programmes, the donors from the EU countries, the United States agencies, Norway, Switzerland, other partners and developmental agencies. Although the region is still a sensitive area because of the past conflicts, ethnic tensions and political instability in the countries, the countries overcame the stigmatization by the international community and they had fought to create a strong base for the development and intensification of police cooperation. Countries' efforts resulted in: general democratic changes, democratically elected governments in all countries in Southeastern Europe, improving of security and political status, the general progress of countries, clear Euro and Euro-Atlantic orientations, participation in regional and international police associations and initiatives, openness to cooperation, promotion of bilateral and multilateral relations with neighboring countries and beyond, and more. These characteristics of the countries are the main prerequisite for reducing the possibilities for escalation of security threats and to strengthen the joined fight in tackling crime. The basis for the cooperation of police in the region is confronting with identical threats and dangers that arise from the similarities in the dynamics of social development, common history and traditional characteristics of the region. However, the problem of crime in the region in many areas of society is the main reason to which all relevant international actors point. Not one country in the region can define the national police priorities and security interests without establishing their dependence on security challenges and interests of other countries. A particular challenge to the region is facing instability as a result from long transition processes, which means its lag behind the developed part of Europe.

The Balkans in particular need to mark the creation of the regional initiatives that have a major impact on international policing, such as: the Southeast European Cooperative Initiative - SECI (1996), the Stability Pact for Southeastern Europe (1999), the initiatives that emerged from it and its successor the Regional Cooperation Council - RCC (2008) and other efforts of the international factors. As an epilogue in the dynamics of the development of regional police cooperation is represented by the adoption of the *Police Cooperation Convention for Southeast Europe* – PCC SEE (2006). A part of regional security initiatives includes components of international police cooperation and they are focused on the forms of organized crime and corruption that dominate the region.

As the vanguard of the processes, there were a number of meetings of the highest authorities of the European Union and a lot of adoptions of a series of strategic documents that had contributed to the development of regional initiatives in South Eastern Europe. In 2000, parallel to the Stabilisation and Association Agreement with EU, just one year after the launch of the Stability Pact, the EU made a framework which served to start the negotiations with Western Balkan countries until they would eventually join. In Chapter 24 - Justice and Home Affairs reports on the progress of candidate countries for EU membership has special emphasis on international police cooperation. According to the reforms that are a condition for starting negotiations, the cooperation takes part in the area of rule of law, particularly in fighting organized crime and corruption.

In 2008, with full support and commitment of the SEE countries, donors and other international actors, such as the European Commission, the Stability Pact promoted its transformation into its successor - the Regional Cooperation Council based in Sarajevo, which succeeded mandatory tasks relating to conflict prevention, assistance and strengthening the efforts of the SEE countries to preserve peace, democracy, respect for human rights and economic prosperity. At the end of that year, the European Commission launched a project in which the Western Balkan countries within the International Law Enforcement Cooperation Units (ILECUs) are strengthening the national platforms for international police and law enforcement cooperation. With the project police and other law enforcement agencies are integrated on the issues related to international requests for assistance and support to and from the countries.The project provides for the centralization of the contact with Europol, Frontex, Interpol and the SECI Center. The project establishes an international unit for coordination for law enforcement in the Western Balkans. Project goals include: improving cross-border cooperation in the fight against organized crime in Southeastern Europe and the introduction of international standards of quality. ILECU, as an integral part of national models for criminal intelligence, has been made to facilitate information exchange in international investigative activities and to facilitate communication at the operational level. It should be mentioned that the contribution of the Southeast Europe Cooperation Process (SEECP) is crucial for the political support of regional police cooperation among the countries.

With joint efforts, six regionally owned organizations and initiatives were setup to counter trans-border organized crime, corruption and illegal migrations, with effective operational mechanisms, common policies and proceedings on police and law enforcement cooperation, implementation of projects on anticorruption and combating illegal migration all in place. Within this context, the *Southeast European Cooperative Initiative's Regional Center for Combating Trans-border Crime (SECI)*/ the *Southeast European Law Enforcement Centre (SELEC)* (operational police andcustoms cooperation), the *Police Cooperation Convention for South East Europe* (*PCC* –addressing the security of borders) and the *Southeast Europe Police Chiefs*

Association (*SEPCA* – creating a framework for strategic cooperation at the highest levels of police) are particularly worth highlighting. Operational activities of the SECI/SELEC are supported through the *Southeast European Prosecutors' Advisory Group (SEEPAG)* facilitating prosecutorial part of cooperation and giving advice. The *Regional Anti-Corruption Initiative(RAI)* focuses on promotion of anti-corruptionand good governance, sharing best practices and promoting relevant international instruments. The *Migration, Asylum, Refugees RegionalInitiative (MARRI)* aims at strengthening cooperation and information exchange among the members in respective areas (Regional Cooperation Council Secretariat, 2010: 30).The work of these government organizations are down to joint action through projects financed by the states themselves, the EU, the U.S. and third-party partners who have an interest to be part of international efforts to combat crime. Organizations often face the problem of their financing, especially in the early stages when they need to win over the authorities to give financial support on the initiatives. Restrictive budget is also a problem, especially with budget cuts as a result of the global economic crisis of 2008. People who are delegated in these initiatives require funds to have greater mobility in the region where their role not only as national representatives, but also as experts, has great importance for international police cooperation. Also within the sharing of experiences in areas of common interest to two or more initiatives, it is important that there is openness among them to cooperate and exchange the ideas, information and advice. Although the region is not numerical population versus the number of states, it plays a key role for the stability of Europe.

In an interview with the director of the MARRI Regional Centre, Trpe Stojanovski, PhD, emphasized that the choice of regional police initiatives to be placed in one of the countries of the region, contributing to the employment of staff from countries and developing the secondary and tertiary activities in the host country. The number of employed people is symbolic but sends a message to the citizens and authorities in countries that are working on an initiative that multi-functionally serves to the countries. In the interview it was mentioned that with the presence on the "crime scene", police initiatives for international cooperation easier follow all the social, political, economic and security events relevant to the dynamics of transnational crime. That actively impacts on the police and political entities to implement activities that are part of the initiatives and are aimed at the prevention from transnational crime. On the other hand, the representatives of the initiatives are more informed and involved than in cases where the headquarters are located outside the region. Other experts explained that the displacement of the seats of police initiatives in Brussels, Vienna or other influential political centers, provided the political will of European partners which was essential for initiatives' survival and financing.

So today we can point out a few forms of regional cooperation that have good reputation among national police and the paramount importance of regional and international policing.

SECI Center objectives are (Southeast European Cooperative Initiative [SECI], 2011):

- Setting-up a mechanism based on enhanced law enforcement cooperation at national level to be used by the Parties in order to assist each other, in preventing detecting, investigating, prosecuting and repressing trans-border crime;
- Support the field activities of the law enforcement officers;
- Provide assistance to the Parties in order to harmonize their law enforcement legislation in respect to the EU requirements;
- Support national efforts in order to improve domestic cooperation between law enforcement agencies; and

- Support the specialized "Task Forces (TF)": TF on Human Trafficking and Migrant Smuggling, Anti-Drugs Trafficking TF, Anti-Fraud and Anti-Smuggling TF, Financial and Computer Crime TF, TF on Stolen Vehicles, Anti-Terrorism TF, Container Security TF, and Environmental Crimes TF.

The **Convention of the Southeast European Law Enforcement Center (SELEC)** was signed on December 9, 2009, by the representatives of the 13 Member States: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hellenic Republic, Hungary, Republic of Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia and Turkey.The SECI Center will transform into SELEC - Southeast European Law Enforcement Center - once two thirds of the Member States have deposited their instruments of ratification, acceptance and approval (the Convention of the Southeast European Law Enforcement Center [SELEC], 2011). The SELEC's objective is to provide support and enhance coordination between Member States in preventing and combating crime, including serious and organized crime, where such crime involves or appears to involve an element of trans-border activity. The SELEC Convention will enable the Center to create an analyses capacity using a broader data system and an adequate level of protection of personal data in accordance with EU requirements.

The **Police Cooperation Convention for Southeast Europe (PCC for SEE)** located in Ljubljana (Slovenia), envisages modern forms of cooperation among the Contracting Parties, such as joint threat analysis, liaison officers, hot pursuit, witness protection, cross-border surveillance, controlled delivery, undercover investigations to investigate crimes and to prevent criminal offences, transmission and comparison of DNA profiles and other identification material, technical measures for facilitating transbroder cooperation, border search operations, mixed analysis working groups, joint investigation teams, mixed patrols along the state border and cooperation in common centres. The full implementation of the Convention will thus help those signatory countries not members of the EU to accelerate their eventual accession (Police Cooperation Convention for Southeast Europe [PCC for SEE], 2011).The Convention entered into force on 10 October, 2007, after ratification by all seven signatory states (Albania, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Romania and Serbia). In addition, Bulgaria acceded to the Convention on 25 September, 2008.

The work of the **Regional Cooperation Council (RCC)** focuses on six priority areas: economic and social development, energy and infrastructure, justice and home affairs, security cooperation, building human capital, and parliamentary cooperation as an overarching theme. The priority areas will include: fighting organized crime, in particular through the activities at the South East European Cooperation Initiative (SECI) Centre and the South East European Prosecutors Advisory Group (SEEPAG); the SEE organized crime training network; anti-corruption activities, including cooperation with the Regional Anti Corruption Initiative (RAI); migration and asylum related activities, including close contacts with Migration, Asylum and Refugee Regional Initiative (MARRI) and observation of the EU developments in this area; and cooperation with SEE police chiefs association – SEPCA (Regional Cooperation Council [RCC], 2011). The RCC main goals are to provide technical expertise to existing initiatives, as well as assist them in gaining access to regional and international political, technical and financial support, required to fulfill their objectives. The fact that a smaller part of the RCC structure is present in Brussels, the initiative represents balance between wishes of the European partners and the need for regional cooperation in Southeastern Europe.

The **Southeast Europe Police Chiefs Association (SEPCA)** promotes police transformation with the view to enhance effective and democratic police services in

member countries in the region of Southeast Europe, for the benefits of the whole population. The SEPCA hence contributes to the regional security environment. The SEPCA aims to be the organisation steering police cooperation. With a flexible permanent secretariat and various sub-boards, it focuses on the strategic level. The SEPCA favours partnerships to reduce duplications and increase synergies: between public security institutions (border-police-prosecution) and with other international organisations and is the partner of the EU for strategic police cooperation (the Southeast Europe Police Chiefs Association [SEPCA], 2011). Strategic level of police cooperation allows easier exchange of ideas and expertise at the highest level in the police organization. Also at this level, it is easier to determine the guidelines for regional police action.

With entering into force of the Lisbon Treaty on 1 December 2009, the EU defined the values (the European Union [EU], 2008: Article 2) within the internal and external relations. By accepting the values and meet criteria for membership in the enlargement process, the opportunities are opening for future member-states to improve their societal state. As in relations with third countries, the EU is committed to introducing a high degree of compatibility for achieving political, security, economic and other cooperation. In general, the EU is open to providing any assistance and share experience from gained advantages from many areas in relation to other countries and regions covered by its cooperation and interest.The range of influence of the EU in the region of SEE has been upgraded with the establishment of strategic guidelines covered by the EU security policies (the European Neighborhood Policy, the EU's Common Foreign and Security Policy and the European Security and Defense Policy). The efforts of the international community for the development of regional police cooperation in Southeastern Europe are aimed at introducing a high degree of compatibility between the police and the region between the region and the EU, the U.S. and third partners. All the EU initiatives in the SEE are targeted to meet the vacuum on its borders which may cause its destabilization. The desire of the Union for peace in both Europe and the world has proved with the abandoning of the passive concept on the events that happen in its neighborhood and beyond. Indirectly, the Western Balkans within the framework of meeting the standards for membership, through police cooperation are adapting the national police and security strategies to the EU policies.Thus,with building the partnership relations with aspiring countries, the EU stimulates their progress in regional form and reduces differences in operational and strategic police actions in combat against transnational crime.

Future actions in regional and international police cooperation

in order to enhance international police cooperation, states and the international community should provide clarification on issues related to future directions that need to be developed. Or, whether it should cover only specific areas that should be the subject of cooperation, such as: joint performance of law enforcement tasks, negotiating when there is a hostage situation, investigations related to murders, police dog training, learning standards in communication and patrolling, special training sessions for standardization and compatibility of certain segments of the police structure, or it should be extended to other areas that give better results that are not now part of educational and ethical contents of police training. Additionally, within the framework of the cooperation it is very important to define:

- The types of police cooperation, i.e. the forms of transnational crime that are subject for cooperation;
- The type of information that will be exchanged, i.e. the degree of confidentiality according to the hierarchical level of police bodies participating in the cooperation. In this information their use should be accurately specified to eliminate possibilities of misuse of information;
- What are the rules for handling, storing and deleting data? It should specify the subjects, i.e. individuals who will be the administrators and users;
- Who is responsible or which institution manages the data. Within a state it is desirable to have one institution - the police, who will be responsible for the data. All other institutions, which would benefit from the international police cooperation, will obtain data through requests submitted to police authority responsible for managing data;
- The procedures for issuing requests and data. Procedures should be clear and unified to enable faster delivery of information to foreign police organizations. It would be good if the proceedings are conducted in a single language (for example, English) to save time. Within interviews for FP7 Security program's project titled **"Composite: Comparative police studies in the EU"**, several activities of international police cooperation related to regional data exchange were identified.The regional project which started in 1998 at the beginning was aimed to establishing of criminal intelligence database for the crimes related to drugs. The monitoring mission of the United Nations International Drug Control Program (UNDCP) visited the Anti-Drugs Department in MOI within the UN' Program for combating organized crime and drug trafficking. In that monitoring, they concluded that the Department and MOI work without any informatics support in this area. They proposed to MOI this project. The Ministry of Interior and Ministry of Foreign Affairs accepted the project and first steps were made by the group of enthusiasts in the Ministry of Interior (in Anti-Drug Department in MOI) as a consequence of the real needs in the combat against treats and dangers related to drugs. Even it was sponsored by the UN institution (technical support and financial aid), the Interpol was engaged with its instructors on the implementation. The Interpol instructors were deeply committed to the transfer of their knowledge. The instructors worked with the information technologists and enabled them to be administrators of the database. They learned the rest of the unit how to use it. This project was followed up by many other related projects and it shaped the basic criminal intelligence database. By expanding the project on the other acts related to transnational crime, but Macedonia, Bulgaria and Romania were not included. That was the reason that the project was extended several times. In order to achieve the maximum effects of police cooperation in the exchange of data, the idea was to import the data into English. Romanians inserted the information in Romanian. The logic was that it was easily available for operational employees and domestic law enforcement agencies if they entered the data in the native language. Macedonians submitted data in English until 2006, then in Macedonian but Latin letters. Bulgarians introduced into English, thus enabling the implementation and planning of joint police operations between Bulgarian and Macedonian police services. The services of the three countries met and participated in joint workshops, but in no case the base was used for common shares except when it came to the actions of the Macedonian and Bulgarian police. It is unfortunate that at that time there was no initiative, disposition and finance of the Ministry of Interior and other domestic institutions, but the aid came from abroad; and

- What kind of supervision will be agreed upon? Supervision should be defined in a legal framework that regulates police cooperation. For an equal representation, it is the international body responsible for surveillance which must have at least one representative from member countries in the regional police initiatives. It should not be the same as delegated to liaison officer, because of the essential differences in their tasks.

The idea of joint investigative teams was quite active the last time. Although it was derived by the Europol, recently it received a regional approach and internationalization. With them, police cooperation gets extra features, such as multi-disciplinarily, information and records can be directly shared, delegated members may be assigned to support the teams or to take investigative measures, and requirements of joint investigative teams to the members who participate in the Europol may be marked as a request coming from the national police. In regional terms, at the end of 2010, this concept was supported by Europol and Eurojust, in cooperation with the PCC for SEE from Ljubljana and the DCAF from Geneva. It will contribute to more efficient fight against organized crime and other forms of cross-border crime.

CONCLUSION

Regional initiatives on police cooperation to achieve the full effect must be seated in the region. This allows active monitoring of the field activities, gaining more information and opportunities for greater cooperation with authorities in the countries in the region. In the future, police cooperation among the countries of the region should be derived from their own efforts. The international community, particularly the EU, will always want to have a dominant degree of influence. Through the partnership ot the region with the Europol, Frontex and Eurojust, the EU is allowed to secure their borders and implement strategies in the area of foreign policy and security. In the future, when the region will become an intrinsic part of the EU and NATO, it will be directly exposed to problems as the surge of refugees from Africa and Asia, and it will serve as a gateway for combat against human trafficking, drugs and other goods. The role of police cooperation will contribute to strengthen the borders and control. Solidarity in the implementation of international police cooperation today can be seen in aid of personnel and equipment that the EU has given to Greece and other states within the Frontex to prevent illegal crossing of borders.

Agreed solutions between the countries in SEE, in the form of conventions and agreements, greatly clarify the problems that are facing to police services, such as: national sovereignty and territorial limits of authority. Extradition problem is still current issue in some national legislation because it is not properly resolved and it allows the perpetrators of criminal acts to survive in the regional and international space.

In the future, the national police organizations should make additional efforts to remove any shred of reservations and mistrust in the EU, the U.S. and third countries which support regional police cooperation in SEE. Through the execution of joint operational tasks, adapting national legislation in the field of policing and the fight against transnational crime, and other activities associated with the work of law enforcement agencies, the region becomes a serious partner of the EU who can effectively deal with challenges of crime.

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RESPECT FOR FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW TO ADOPT SECURITY STRATEGIES

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Abstract: New threats and risks to public safety caused by the scale and increasing globalization and cross-border dimension of crime, and the authorities react with plans materialized in security measures and strategies.

These strategies must reflect the principles of international law as having universal value and must be one of the basic parts of the side member to these threats to their security and its citizens.

Key words: principles, international law, security, strategies

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Principles of international law, and its other rules, are subject to continuous development, content enriched and enriches with new elements, new meanings in the restatement process and clarifying their application. The evolution of international law principles are expressions of the capacity to adapt to new requirements of society which is called upon to respond.

Since ancient times a man has felt a need for a code of law governing the situation and status of persons. From the basic principles of international law and territorial issues, to issues of population, from the rules of diplomatic and consular treaties and the right to peaceful resolution of disputes, from the laws and customs of war and peace right up to the international responsibility of states, all chapters of international law have met new regulations updating others older and, especially, have seen curdling into a coherent system.

The twentieth century is one in which international law has evolved exponentially compared to all ages and millennia where some regulations exist and systems of international relations, first interstate, too.

Gradually formed, as the world was plagued by wars, disputes, or genocide, international law has been evolving throughout the twentieth century. Each new crisis or conflict in international relations led to new developments, additions or improvements to the rules of international law and multilateralism as a system can be regarded as a creation of the recently ended century.

In the twentieth century, and especially in the second half, public international law emerged as a bible of relations between states, without neglect of basic human rights and individual rights, which have known, in turn, specific developments without historical precedent.

And in this XXI century evolution and dynamics of international law is one without a precedent, but not being always in a constant correlation with the principles established by international law.

Formed in time and as a result of practical relations between states, the fundamental principles of international law are a dynamic category, increasing in both numbers and content. International relations generate elements of development and enrich the category of theoretical principles.

Principles of international law are set out, in one form or another, by the United Nations Charter, as in other documents with vocation of universality.

Among the oldest principles is one abstracted by the Romans, which says that states have the obligation to comply in good faith the treaties they have signed. Cicero in „De oficiis" emphasizes the essentiality of good faith in relations between people and states: „Fundamentum est iustitiae fides, id est dictorum conventorumque constantia et veritas"[1]. In Latin and in modern international law this principle is known by formula „pacta sunt servanda".

Also Romans abstract principles „jus cogens" (right to collapse) on the compliance requirement of relations between states and „jus gentium" (law of nations) which applies to ethnic groups and peoples[2].

In the Middle Ages the principle of sovereignty is created and it is the main instrument, if not unique of the states. French jurist Jean Bodin in „The six books of the Republic" states that „the sovereignty means absolute and unlimited power which belongs temporal to the state". French Constitution of 1793 proclaimed the principle of non-intervention which, in 1823, is resumed by the „Monroe doctrine".

Most fundamental principles of international law are epoch following the general developments of human society: industrialization, transport, telecommunications, trade and globalization. The first document that defines the basic principles governing international relations was the UN Charter (1947) reinforced in 1970 by „UN General Assembly Declaration on Principles of international law concerning friendly relations and cooperation between states".

These fundamental principles and rules of conduct contain an imperative rule for the development of relations between states, while being good guarantee international coexistence. "These principles are interrelated and each principle should be interpreted in the context of the other."[3] They constitute a coherent system, are paramount and must be applied equally and without reservation.

The principle of sovereignty and sovereign equality

Essential attribute of state sovereignty consists in the supremacy of state power internally and independence of the state externally. Sovereignty is exclusive (cannot have more sovereignty in the same state), original (state belongs and not from outside), plenary (manifesting itself in all fields, political, economic, social, cultural, etc..) individual (not can be divided) and inalienable (can not be alienated). CSCE Final Act of Helsinki (1975) is the act that defines „sovereign equality" and „inherent rights of sovereignty"[4]

It should be noted that violations of this principle occurred quite often in the twentieth century and that the size of these violations has increased exponentially

1 The foundation of law is good faith, that the steadiness and sincerity of the understandings and agreements.
2 *GROTIUS*, Hugo - On the right of war and peace, ed. Stiintifica, Bucharest,1968
3 UN Charta
4 „The participating States will respect each other's sovereign equality and individuality and all rights inherent in sovereignty that comprise their sovereignty, including in particular the right of every State to juridical equality, territorial integrity, liberty and political independence. They will also respect each other's right to freely choose and develop the political, social, economic and cultural as well as the right to establish laws and regulations. Under international law all participating States have equal rights and obligations. They will respect each other's right to freely define and manage its relations with other states in accordance with international law and the spirit of this declaration. They consider that their frontiers can be changed in accordance with international law, by peaceful means and by agreement. They also have the right to belong or not international organizations, to be or not to participate in bilateral or multilateral treaties, including the right to be parties to treaties of alliance, they also have the right to neutrality. „

since the fall of the Iron Curtain. They should be reviewed especially in the border changes recorded in Europe since then, that have been made or not "in accordance with international law, by peaceful means" and „agreement „. This is particularly so since 1970 the UN Declaration on one principle defines as the obligation not to interfere in affairs within the jurisdiction of a Member in accordance with the Charter: „No State or group of States has no right to intervene directly or indirectly, for any reason, internal or external affairs of any other state. Therefore, not only armed intervention but also any form of interference or any threat against the personality of a State or against elements of political, economic and cultural rights is contrary to international law"[5].

The principle of non-recourse to force or threat of force.

At Helsinki in 1975 the definition of this fundamental principle alleviates much of the content given the same principle to the UN Declaration of 1970 which, instead of neutral wording such as „States shall refrain from" using the imperative „shall any State". In fact as its title stated that according to this principle „States must refrain in their international relations from the threat to use force or the use of force against the territorial integrity or political independence of any State or in any other way inconsistent with UN purposes. Renunciation of force or threat of force is an essential rule to ensure peaceful relations among peoples and a key link in world peace.

The principle of inviolability of borders is a natural extension of the two principles discussed above, and requires that participating States considered inviolable each other all boundaries and borders of all states in Europe, and therefore they will refrain now and in future from any attack against the border. Consequently, they will also refrain from any demand or any act of conquest and usurpation of the whole or any part of the territory an independent state. This should be commented as the second part of the principle, if we consider the case of Kosovo and the fire phenomenon[6].

The principle of respecting the territorial integrity of states

The territory of a State shall not be subject to military occupation resulting from the use of force contrary to the Charter. The territory of a State shall not be subject to an acquisition by another State because of the use of threat or use of force. No territorial acquisition obtained by threat or use of force will not be recognized as lawful. „

The principle of peaceful settlement of disputes.

Since ancient times this principle has been applied to resolve some conflicts before they become open. In 432 BC the arbitration is recorded between Sparta and the Peloponnesian League. In 1444 the French king Charles VII and the Swiss cantons have signed a treaty providing for mediation. The first codification of the means of peaceful settlement, with only those recommendations was made at the Hague Conferences of 1899 and 1907. Kellogg-Briand Pact, the prohibition of war (1928), is the first international document that speaks of the obligation of the parties to resolve disputes by peaceful means only.

5 The Diplomat's Dictionary, National Defence University Press, Washington, 2006
6 *ACHAR Gillbert*, The new could war. World after Kosovo., Ed. Corint, Bucharest, 2002

UN Charter defines the principle: „All Members shall settle their international disputes by peaceful means so that international peace and security, and justice are not endangered. The participating States will govern disputes between them by peaceful means so as not to endanger international peace and security and justice. To this end they will resort to means like negotiation, inquiry, meditation, conciliation, arbitration, judicial settlement or other peaceful means of their choice, including any regulatory proceedings previously agreed for disputes to which they are parties. „

Principle of noninterference in internal affairs

UN Declaration and the CSCE Final Act, allocates different explanations of this principle, the doctrine considering more comprehensive definition made by the UN: „No State or group of States has no right to intervene, directly or indirectly, for any reason, business internal or external affairs of another state. Therefore not only armed intervention but also any form of interference or any threat against the personality of a State, or against his elements political, economic and cultural, are contrary to international law. No State may impose or encourage the use of economic measures, political or any other measures to coerce another State to subordinate the exercise of sovereign rights and to obtain from it advantages of any kind. Use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and the principle of non-intervention. Every State has the inalienable right to choose its political system, social and cultural mix without any form of mixture from any other state."

The principle of human rights and fundamental freedoms.

Inclusion of human rights among the fundamental principles of international law is evidence that the development of international rights is ongoing. States should recognize the importance of universal human rights and fundamental freedoms, respect for which is an essential factor of peace, justice and welfare to ensure the development of friendly relations and cooperation between them, as among all states. They will constantly respect these rights and freedoms in their mutual relations and will strive, individually and jointly, including in cooperation with the United Nations to promote universal and effective respect for them. In the field of human rights and fundamental freedoms, States shall act in accordance with the UN Charter and principles scxopurile and the Universal Declaration of Human Rights. They will also meet the obligations as stated in universal declarations and agreements in this area, including, inter alia, international human rights covenants that they could be linked.

The principle of equality of peoples and the peoples' right to dispose of themselves

This principle derives from one which proclaims the equal rights of states and at the right of peoples to decide their own destinies. It devotes an unlimited right and indivisible developed especially after the Second World War and spurred by large colonial peoples struggling for independence. It was enshrined in the UN Charter and also included the 1970 UN Declaration and the CSCE Final Act in 1975. The principle of equality of peoples and their right to dispose of themselves, a principle enshrined in the Charter, all peoples have the right to decide their political status,

freely and without outside interference and to pursue development their economic, social and cultural life and every State has the obligation to respect this right in accordance with the Charter.

The principle of cooperation between states

It is also one of the new principles that govern or should govern relations between states. Subsumes rule is that of cooperation on the development of peaceful relations and its content is based on maintaining peace and cooperation and goes by that in the economic, social, cultural domain etc.." The participating States will develop their cooperation with each other and with all states in all fields, in accordance with the purposes and principles of UN Charter. In developing their cooperation, the states will attach particular importance to such areas as set out in the CSCE, each making its contribution under conditions of full equality.

The principle of good faith compliance with international obligations

It is one of the oldest fundamental principles governing international life. It has been applied since the ancient Chinese and Egyptians, Greeks and Romans, the last codifying it in the formula „pacta sunt servanda-treaties are binding"[7]. They will meet in good faith their obligations under international law, both obligations under generally recognized principles and norms of international law and obligations arising from treaties and other agreements, in accordance with international law which are parties. „

In addition to these principles, as the fundamental category is emerging: the principle of disarmament, the principle of good neighborliness, the principle of permanent sovereignty over natural resources and national wealth, environmental protection and conservation principle and the principle of the peaceful exploration and use of outer space.

International strategies resulting in the conclusion should be determined in accordance with these principles of international law which have been repeatedly reminded in the international forums. The dynamics of international relations has led many times to override self-interest of a state or regional interest in a particular area. The Balkans and by extension the Black Sea are most „alive" and active in this respect. This took place in recent decades being the most important acts which have resulted in a more detailed analysis by experts of international law, but also an „evolution" of it, considered by some authors, referring to events in the former Yugoslav space.

These areas are represented in the past and today, the meeting point of great-power interests, both strategy interest and interest in energy resources.

Thus in 2007 and 2008 will mark a new position in international politics of the Balkans. This is primarily due to concrete developments in the region and its proximity to the European Union. Approximation of Romania's and Bulgaria's meant to lead to five the number of Balkan states (Greece, Slovenia and Cyprus being the other), Croatia's accession negotiations, Turkey and Serbia.

The second advantage of the Balkans region is growing interest from both U.S. and NATO and Russia. It is an interest arising from the dispute over Kosovo, the emergence of the Black Sea, Bulgaria and Romania, the U.S. military installations and bases, and the increasing interest in the Black Sea and Caucasus in the energy world war, undeclared but actually generated dispute over Caspian oil and gas re-

7 *TOFFLER, Alvin* - Powershift, ed. Antet, Bucharest, 2008

sources and their transit networks from east to west.

The third advantage of the Balkans[8] lies in the deepening integration of the European Union by the Lisbon Treaty, a step necessary to give the EU new bases of operation as a distinct entity in the contemporary world and will allow remelting common policies to make the EU a superpower overall.

Among the strategies agreed upon at the end of last century the U.S. was that of preventive diplomacy and preventive attack. Thus, in 1992, the Security Council of the United Nations convened the meeting of Heads of State and Government, called for recommendations to strengthen United Nations capacity for preventive diplomacy operations and maintenance of peace[9].

In its report „An Agenda for Peace „, UN Secretary General, Boutros-Ghali, has given a special chapter of preventive diplomacy. Preventive diplomacy in this report was included on an equal basis with such concepts as peace (Peace Keeping) , the strengthening of peace (Peace Enforcement), the consolidation of peace (peace making)[10]. In his address to the United Nations General Assembly, former U.S. President John Bush stated: „Monitoring and maintaining peace in preventive herd before deploying battle may become particularly important in areas of risk"[11]. Returning to today, preventive diplomacy and preventive attacks were among the reasons that have been raised in a highly disputed missile shield project.

Russian-American dispute over the U.S. missile shield that it will install in Poland and the Czech Republic could not have reverberations for the Balkans and especially to the EU and NATO member countries here. Beyond the obvious hesitation before the U.S. firm Russian counterattack, sovereign member States of EU and NATO 17 years ago and barely escaped the Soviet military presence, is the fact that the U.S. missile shield does not provide protection on the eastern flank of NATO, but only the central and North Europe.

Surely such a situation could not arouse disorders in Romania, Bulgaria, Greece and Turkey, just left without protection in the context of Russian - American relations and tension between Russia and NATO default. And war power between the EU and Russia has an impact on the Balkans. Tensions and disputes have been downloaded through the account of Moscow-Warsaw where first has banned food imports from Poland in 2005 and the second blocked by veto Russia-EU negotiations to extend the Collaboration and Association Agreement.

Portuguese Presidency of the EU acknowledged that „relations with Russia have deteriorated" and worsen progressively. Against this background where Russian torpedo the European project Nabucco pipeline render several Balkan countries emerge from its ashes. Nabucco will carry gas from Turkey to Austria via Bulgaria, Romania, Hungary. Romania and Bulgaria are EU facades of Black Sea and as such any development of cooperation in the region comes to meet Union's general interest, given precisely the role of oil and gas tranzit to the Caspian and Central Asian countries played the Black Sea.

Black Sea geopolitical strategy is one of the most controversial and contentious in recent years, every actor here trying to fill an important place as possible „this piece, which combined with Balkan strategy plays an increasingly important role globally.

8 GALLAGER, Tom - , Balkans in the new millennium, ed. Humanitas, Bucuresti, 2009

9 *VELIŞCU Viorel*, "Preventive diplomacy - controversial issue in public international law of the third millennium", in volume Knowledge Organization, to the thirteenth edition international conference session 22 to 25 November 2007, the Land Forces Academy Publishing House, Sibiu 2007

10 Since then the United Nations deals with preventive diplomacy as a major policy priority of the Organization. This has found expression in resolutions 47/120 A and B adopted by the UN General Assembly on 18 December 1992 and December 20, 1993.

11 *KISSINGER, Henry* - Does America Need a Foreign Policy?, ed. Blackwell, New York, 2005

Bridge between Europe, Central Asia and the Middle East, between Christianity and Islam, between the Slavs, Turks, Caucasians and Latin, the Black Sea is an area with great geopolitical importance. Developments in the last decade of the twentieth century have made the region to know important changes of borders with a clear breeding geopolitical actors to become border Euro-Atlantic community and the first line of attack against international terrorism.

Economically launch of the Caspian Sea area as a new world-class energy reserves of the Black Sea gave the chance to be on natural course of major oil and gas transporters. The Black Sea has met new tensions arising from adjacent areas and components or geopolitical space, the Balkans and the Caucasus, North-Pontic area that the Moldovan - Ukrainian, and a new element is the orientation towards the Black Sea of U.S., NATO and the EU.

Events after 1990 have repositioned the two major powers of the Black Sea and caused the emergence of new zonal actors , Ukraine , Georgia and Moldova, countries detached from the former USSR[12]. In future, Crimea may play a special role, which is an autonomous republic of Ukraine and was the center of power, but Russia's Black Sea naval base continues to Moscow. Global players present at the Black Sea are Russia, which has the status of coastal and United States becoming more evident after the terrorist strike on 11 September 2001 and with bases in Romania, Bulgaria and Turkey (by NATO). With Romania and Bulgaria joined the European Union has become the Black Sea. Regional actors are states that through their share of their territorial, political, military, economic, etc., they claim also influences far beyond national borders, are Ukraine and Turkey. Romania is the regional actor and precisely this role is easily stressed by the current foreign policy orientation of the city. Black Sea geopolitical local actors are Bulgaria, Georgia and Moldova.

The major interest in the area is given by the oil and gas fields, and if you expand the geopolitics of the Black Sea and including Azerbaijan, this area contributes to energy production of the world 27.9% of its total export. The share of exported energy equivalent to 5.5% of global consumption. In large part the region's geostrategic interest comes from the fact the Black Sea is a tranzit region for Caspian oil and gas – Central Asia . Axis Rhine – Main – Danube navigable is dealing with the challenges in the transport of Caspian hydrocarbons produced an important geo strategic is geo economic increased .

RUSSIA, a major geopolitical actor for 200 years now, covered according to Peter the Great conquered the Straits and Constantinople, which would be made in the Black Sea a Russian lake. However the Black Sea was the 2nd fleet base of the Russian by controlling the entire north is north – eastern coast, the main political actor pontic. The collapse of URSS left Russia to the Black Sea only Ciscaucazia, as its main port Novorossiysk. In the last years Russia has shown a greater interest in the Black Sea fleet is still a significant military force. Among the reasons for Russia's Black Sea repositioning main problem is oil and gas pipelines.

Russia has a policy of „near abroad" to maintain and even increase Russian influence on Ukraine, Moldova and South Caucasus countries.

Russia has basically taken hostage through their supporting Georgia and Abkhazia and South Ossetia did the same with Armenia to support Azerbaijan Nagorno – Karabakh problem[13]. For these reasons Russia prevents resolving „frozen conflicts" between which is that in Transnistria, also remained as an important beachhead Russian Black Sea. Direct border with Russia by joining NATO has expanded in Bul-

12 *CLAVAL, Paul* – Geopolitical and geostrategic. Political thought, space and territory in sec. XX, ed. Corinth, Bucharest, 2001

13 *VLAD, Constantin* – XX Century diplomacy, ed. "N.Titulescu" Foundation, Bucharest, 2010

garia and Romania Atlantic Organization and hence the increased importance of the Russian naval base in Sevastopol, Crimea, is military bases at Batumi is Ahalkolak in Georgia, as the bases in Armenia, Abkhazia and Transdniestria.

UKRAINE inherited most of the maritime facade of the Soviet Black Sea. But Ukraine also point facade cracks, the most important being the Crimea[14]. Crimea the peninsula on the northern shore of the Black Sea , with special status in the state Ukraine, is an extremely important strategic location in the region, situated right in the Black Sea basin. Southern coast of Crimea is an equal distance from ports Sinope (south) and Skodovsk (north) and the distances between the Crimea and Balkan sea sides (west) and Caucasian (east) are also equal. Russia made the Crimea „military peninsula" an outpost of expansion to the Black Sea those straits to Constantinople. Traditionally the Russian fleet, the Crimea was used for the same purpose like the USSR and even if today is part of the independent Ukraine, it continues to be, on the basis of bilateral agreements, the Russian Black Sea fleet.

TURKEY is one of the pillars of the North-eastern Atlantic as a powerful regional leader. Turkish fleet has been continuously developed as the main objective of having security in the Straits and NATO's operational capability. Turkey is interested in managing oil and gas tranzit from Caspian Caucasus region. Turkey's objective is to combine the security of the Black Sea Straits regime governed through their 1936 Montreux Convention, which is vital to Ankara. Straits Convention has practically become a part of the Lausanne Treaty that establishes the very existence of Turkey as a secular republic and European state.

GEORGIA is dependent on energy imports, its long term strategy is linked to EU, NATO and U.S. and international transport corridors development for oil through the ports of Batumi and Poti. Georgia is also the guarantor of security on pipeline Baku - Tbilisi – Ceyhan route. Georgia, the country where U.S. influences grow, it has internal problems: Adjaria breakaway provinces, South Ossetia and Abkhazia.

BULGARIA lost along with collapse of communism and especially what we call Moscow protectorate. In terms of Tito's Yugoslavia breaking, Bulgaria was forced to conduct a policy of acceptance and even cooperation with new political entity in the Western Balkans, primarily with Macedonia. Sofia hoped firstly that ex – Republic Macedonia will return to the mother country when, in contrast was seen to put in a good neighborly treaty offered by Skopje in „two languages", that is, in Bulgarian and Macedonian, when he knows he always Bulgaria denied the existence of a Macedonian nation and created a language based on linguistics titoist Bulgarian spoken by locals[15].

The situation resembles that the Serbian language spoken in Croatia and in Bosnia is called Bosnian Croat, or the Dutch language spoken in Belgium is called Flemish. Bulgaria has chosen the path of peaceful coexistence in European recognized borders and the concentration of its efforts in the direction of reforms, market economy and its integration into Euro-Atlantic structures. After the terrorist strike on the U.S., Bulgaria has received, like Romania, an increased interest from U.S. forced NATO receipt of the two countries and negotiated the establishment on their territory for bases and military installations to combat terrorism and international crime. At the same time the growing interest of U.S. Black Sea from Central Asia to the areas as interface, the Caucasus and the Middle East led to a repositioning of Bulgaria and Romania as a partner of U.S., NATO and the EU.

14 Of the Crimean 1600000, 2500000 inhabitants are Russians (70%), 700,000 Ukrainians and 100,000 Tartars.

15 *FUKUYAMA, Francis* - Construction of the states. Twentieth century global order, ed. Antet, Bucharest, 2009

ROMANIA considers that „the Black Sea area is both an opportunity and a chance to risk interference situated at two strategic axes: Black Sea –Mediterranean , that NATO's southern flank, the area of strategic importance for the Alliance, but affected by the risks border, the Black Sea – Caucasus –Caspian tranzit area for Central Asian energy reserves, influenced by certain types of instability in Central Asia sub – regional just coming[16]". Romania aspire to a role in transit of Russian and Caspian oil to Western Europe. Romania's strategic value to the Black Sea has led Americans to choose to move here the installations and military bases from Germany. This strategic value is given by overlapping the Balkans, Black Sea, Caucasus and Central Asia has some unresolved problems: frozen conflicts, border crime, poor demographics.

In 1992 was born the project of Economical Cooperation at Black Sea - BSEC an ambitious installation projects within the ports of Istanbul, Varna, Constanta, Odessa and Sevastopol has a fiber optic communications network, funded by the Commercial Investment Bank of the Black Sea from Thessaloniki, network which will be connected to the underwater E M O S (East Mediterranean Optical System) which works through Greece and Italy to be extended by following Western Europe and the Middle East. In the BSEC working and the International Center for Black Sea Studies dealing with the promotion of cooperation between professional groups and economic development projects in the pontic region regarding the status.

In 1998 Turkey initiated BLACKSEA for Sea Naval Cooperation Task Group as part of Russia, Turkey, Ukraine, Romania, Bulgaria and Georgia. Between August 2005 and August 2006 Romania exercised command of this force. Shipyard Group has the objective of common action mutual understanding, strengthen trust and security, his actions were based on humanitarian issues of search and rescue, mine clearance anti –pollution actions. BLACKSEAFOR was thought that the formation of a multi national naval force status.

The Turkish initiative was established in September 1999 SEEBRIG South-East European Brigade, having as members Albania, Bulgaria, Serbia-Montenegro, Macedonia, Romania, Greece and Turkey, Slovenia and USA as observers.

Romania has proposed to extend Operation Active Eandevour (active effort) of the Eastern Mediterranean and Black Sea. Active Eandevour was founded by anti-American terrorist attacks of 11 September 2001, at the request of the U.S. in NATO. Participate in her U.S. warships, Turkey, Greece, Italy, Great Britain, Germany, Holland and Spain.

During this operation all commercial vessels have been monitored how they were moving in the eastern Mediterranean, those suspected of illicit trafficking in weapons, drugs, human beings, being checked, etc.

Strategies resulting for the Balkan region meet in conjunction with the Black Sea area in the broad principles of international law, but there are a number of violations of these principals such as Kosovo, which creates a dangerous precedent not only in this area, but also internationally.

In conclusion, we can estimate that the fundamental principles of international law constitute assembly, a true system, closely related, both in terms of content and process their application. So, for example, elements of the principle are set by another principle, but from another angle (such as the relationship between sovereignty, territorial integrity, noninterference, etc.). Most times they mutually filled in and round, no principle can be applied not with standing the contents of the other. It is not possible to rely on rule, in violation of other principles. Therefore, international

16 White Paper Security and National Defense, 2004

documents provide that these principles represent whole, that each of them shall be understood and applied in the context of other, in order to promote and guarantee international law.

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