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PREFACE

Dear readers,

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

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

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

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

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

Belgrade, October 2017 *Programme and Organizing Committees*

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Topic II

POLICE ORGANIZATION – STRUCTURE AND FUNCTIONING

THE FUNCTIONING OF THE MAIN GENERAL PRINCIPLES OF THE BORDER CONTROL ORGANIZATION

Gabor Kovacs, PhD, Associate Professor
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Abstract: The border policing organization of the Hungarian National Police works according to the general principles of border policing. This essay shows the most important general principles, which are based on historical and international experience. These principles have to be taken into account during the establishment of the organizations, the operation of the border control system/IBM system, their integration into the legal system and during defining their competency, responsibility and the organizational structure.

Keywords: general principles, complex security, complexity, continuity, mobility, activity.

INTRODUCTION

In the year of 2008 the independent Border Guard organization and the Hungarian National Police merged together. Before and after the formation of the mutual entity, the border policing part of the Hungarian National Police worked according to the general principles of border policing.

In the frame of the structure of the Hungarian National Police, the Department of Border Policing is an independent organization. At the external Schengen borders, the border policing organization provides strict border control at the border crossing points and at the green borders. In 2005 the part of the Riot Police was established, the Border Guard Mobile Forces, in order to support the work of border policing organization in the south part of Hungary, mostly at the Serbian and Croatian borders. In this area the Hungarian Government built temporary border fences. The number of the border policing staff increased (3000 border police non-commissioned officer). The Hungarian border policing staff and the Hungarian Army members patrol the border jointly, defending the Schengen external borders.

This essay shows the main general principles, which have to be taken into account during the establishment of the organizations, the operation of the border control system, their integration into the legal system and during defining their competency, responsibility and the organizational structure, border policing methods structure, equipment, and procedures of the border policing organizations.[1]

These main general principles are on the basis of historical and international experience. The border policing system is working effectively in the frame of Hungarian National Police.

1 Gabor Kovacs (2015): The basic principles of the border policing in the fight against the illegal migration. Border Guard Scientific Publications Pecs. 2015. XVI. pp. 221-231.

These main principles – used by the Hungarian National Police Department of Border Policing – are the following:

PRINCIPLE OF LEGALITY

In all democratic countries the basis of the operation of state authorities must follow of the law. Therefore this is a basic principle, which should be the basis of the manifestation of any other principles. In all other topics concerning the establishment or operation of border control systems or organizations, this basic principle of legality creates the boundaries and possibilities. In Hungary all the movement of the Law Enforcement organization is well defined. When the mass illegal migration arrived to the south borders of Hungary the Government changed the law and make it possible to use the military forces at the border surveillance tasks in order to support the work of the police.

In order to build the temporary border fence, the regulation had to be amended. During the mass illegal migration process the Government revised the other law regulations and changed that according the interest of the Hungarian citizens. Every operation must be supported by law.

PRINCIPLE OF CONTINUOUS GATHERING, PROCESSING AND APPLICATION OF INFORMATION

The Hungarian National Police is an organization which collects and analyzes all information. After the analyzation they evaluate and establish some different prognosis about it. The continuous gathering and processing of information is very important in the leadership of the organizations. Some information is gathered from risk analysis. The management is responsible for operating the system, which have to give up-to-date information to the state and to the executing organization(s). Therefore this can be also considered as a basic principle. An obvious point of friction is the sharing of information. In theory, information should be shared easily and freely for greater effectiveness for the greater good, but that is not how most agencies will see the matter. Information is what guarantees their survival and expansion, their professional autonomy and claims for specialised expertise.[2] The gathering of information is vital for all law enforcement organization.

PRINCIPLE OF COMPLEX SECURITY

The threats are complex. Realizing security, averting and management of dangers is the responsibility of appointed organizations. We have to examine what kind of factors can pose dangers to the particular state and which of these concerns the borders. Distinction of roles between organizations is possible only by the adequate application of this principle. If we consider complex security as an umbrella, we must take care that the border security sector fits completely to the other sectors even if it is only one segment of the umbrella of complex security.

2 Democratic Oversight and Border Management: Principles, Complexity and Agency Interests Otwin Marenin file:///D:/KovacsG/Downloads/02_paper_Marenin.pdf pp.19.

It is very important to create an organization for prevention and handling of particular threats that is most capable and competent in averting the possible danger. This organization is the one that should direct and coordinate the activities of all other organizations taking part in the prevention and management of the particular type of threats. The head of preventing and managing threats to border security should be the organization which is responsible for border control.

PRINCIPLE OF HARMONY BETWEEN CURRENT BORDER SITUATION AND APPLICATION OF FORCES AND RESOURCES

This principle provides a guideline to determine the relation of necessary and satisfactory. At those border sections, where the border situations, activity of persons or groups posing a threat to the border, or the mass of traffic do not indicate, it is not necessary to concentrate forces and resources[3]. On the contrary, wherever a significant amount or period of threat is expected, or the border traffic might rise for a longer period by a greater extent, forces and resources should be concentrated in time and space. This principle therefore also expresses the harmony of concentrating and dividing forces and resources. The realization of this principle might be a longer, strategic concentration, appearing for example in organigrams etc. or it can be tactical or operational concentration, which provide limited forces and resources in space and time. This concentration can be realized in particular directions, areas, crossroads or as a network. If the danger is grooving at borders, the border policing organization must to increase then number of border guards as happens at the south borders of Hungary. The efficiency of this principle is obvious.

PRINCIPLE OF CONTINUITY IN TIME AND SPACE, AT THE BORDER POLICING ACTIVITIES

From a legal point of view this principle is realized in the absolute sense, since the activities of border control systems and organizations are continuous.

In the geographical layout of border control organizations this principle also appears, since the areas of operation and competence of central, regional and local border control units and forces should be creating a line of control without any holes.

On the level of tactical and operational implementation of tasks the continuous control in space and time cannot be realized in a full extent because of the limited availability of forces and resources.

In the directions, sections, or areas where more intensive threat can appear, the continuity of activities with the concentration of forces and resources should be maintained until the particular threat or its higher risk disappears. It must be mentioned that the gathering of information should also be continuous in space and time.

3 Gabor Kovacs (2008) *The development and changes of the border control after "Schengen - some general principles.* Hungarian Law Enforcement VIII. (1-2.) pp. 131-144.

PRINCIPLE OF DEEP STRUCTURE OF BORDER CONTROL SYSTEM

This principle indicates that the border control system (surveillance in particular) should be established at a distance from the borderline, in order to filter persons trespassing illegally. Depending on the nature of illegal activities of persons and groups, by the necessary legal authority the control system can cover the entire area of the country; moreover, intelligence can be maintained even in the emitting countries.

Picture 1: The principle of deep structure of border control system

This principle can be applied and manifested in the structure of border control organizations by for example creating a multilayered surveillance patrol system depending on the regular direction of illegal trespassers, and the deployment of local units can be organized accordingly. The system of border policing can be extended inside the territory of country.

PRINCIPLE OF CONCENTRATION OF FORCES AND RESOURCES

This principle appears in all human activities trying to reach particular aims. In our case, concentration of forces should be realized in strategic and tactical levels in order to have a general realization of border security and prevent concrete situations of danger or threat.

On a strategic level concentration can appear in the dislocation of forces by taking into account long term prognosis, emphasizing areas where a more intensive threat can appear either at the border territory or at border crossing points.

On a tactical and daily (operative) level the concentration of forces and resources can be realized temporarily. A modern method of concentration is the deployment of forces to a network of crossroads. The limited amount of forces cannot ensure absolute cover, therefore the maintenance of operational reserves that can be alerted.

Border control systems and organizations are seemingly static, since their deployment is attached to the border. Dynamic activities in turn cannot be realized without creating and maintaining the capability and mobility. This is to be manifested both in the selection of equipment and the preparation of staff. This makes necessary not only the application of proper vehicles but also for example mobile information technology.

Technology has led to some significant advances in policing, for example DNA, Automatic Number Plate Recognition and a searchable Police National Database, however the police have historically been slow to embrace some of these developments[4]

PRINCIPLE OF ACTIVITY

From a system approach it is understandable that a system of criminal persons, groups, and organizations are matched against the border control system. The result of the clash of these two systems is relative security, which is assessed by the citizens of the country. From the opposition of the two systems it is logical that they try to win over the other any possible way. It is thus the task of the managers of every border control organization to take this principle into account and take the initiative in strategic, tactical, and daily activities. Their efforts should manifest in studying he methods of illegal activities connected to the border in order to uncover expectable directions, times, and methods of perpetration. They should be active in development and application of technologies in order to possibly prevent perpetrators using their new technologies and techniques. In escalating situations they should be fast in order to force their own will upon the perpetrators' course of action by continuously activated moves. They should maximally cover their intent of action, and by their action they should bring surprise to the "opposing system".

PRINCIPLE OF COOPERATION

In cross-border police cooperation in criminal investigation, sovereignty of the countries involved is the leading principle.[5] Cooperation is a coordinated planning, the organization and execution of tasks either inside or outside of the organization in order to reach a particular aim. Common activities can range from the level of patrols or passport controllers to highest management and should be continuously refreshed and updated. Cooperation should be organized with other, particularly neighboring countries by taking into account the competences and possibilities. There should be plans and schedules for the implementation of tasks and these should be rehearsed. Many managers consider cooperation as obligatory. Based on modern needs and management definitions one of the crucial elements of success is the ability to cooperate at all management levels. Therefore the cooperation is a philosophical thesis and also a lifestyle for all managers who would like to be successful in border control activities.

4 Policing in 2020 - what issues must be addressed now that will affect policing in England and Wales in ten years' time? http://www.paconsulting.com/industries/government-and-public-sector/protecting-our-borders-and-streamlining-immigration/policing-in-2020/

5 Michalowski, R. and Bitten, K., '*Transnational Environmental Crime*', in Reichel P., (ed.), Handbook of Transnational Crime and Justice, London, Sage Publications, 2005, p. 139 - 159.

There should be no doubts that the representatives of the opposing system cooperate quite well according to their well-realized aims. If they are to be stopped, the same should be achieved on the border control side. The Schengen Implementation Convention (1991) allows the police to exchange written information already in their possession on its own authority.[6] This use of this so-called "police-police" information is restricted to investigative purposes and cannot be used before the court without the consent of the competent judicial authorities.

For example in Romania, the Government Emergency Ordinance is to develop the legislative and institutional internal framework regarding the international police cooperation and it is applicable to the specific cooperation activities and international police assistance, according to national legislation, agreements or international treaties which Romania is part of it and to the relevant EU's legal instruments.[7]

PRINCIPLE OF COST EFFECTIVENESS

In the work of the border control organization, measuring cost effectiveness is difficult. According to some views security can be defined as a commodity, therefore its value could be expressed in money. The required level of border security is the responsibility of political decision makers. During budgetary planning, the amount of money the country is about to invest to the security of its citizens is decided. If this sum of money is enough to satisfy the security needs of the citizens is up to them. To the management of the border control organizations this principle means that in order to prevent and handle long and short term threats they must use available resources in the most effective way. There are states where the use of financial resources is based on norms. In other states top and high level managers have some influence and freedom in the use of material resources. In the case when a border control organization has an independent budget this principle can also appear as a basic principle, since this particular sum must be used to reach the expected (border) security level in the area of responsibility. Aside professional background, this aim requires enormous economical responsibility and competence.

The implementation of any task requires the use of forces and resources. This can mean anything from the acquirement and maintenance of facilities, through transportation, to providing the personal equipment of patrols and passport controllers even to the financing of office and authority costs in everyday activities. During the mass migration situation, it was required to set up temporary refugee camps with all its logistical needs (e.g.: including healthcare). It can be stated that in the everyday activities of border control organizations as well as in extraordinary situations, it is unavoidable to apply this principle to the best possible extent.

PRINCIPLE OF AIMED SELECTION AND PREPARATION OF STAFF

If we consider border guarding as an individual profession, recruitment and preparation of workforce should follow the same general norms and principles in border control as in other sectors of society. Considering border guarding as a profession is required more and

6 *Treaty of Amsterdam Amending the Treaty on European Union* http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf

7 *Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation* http://www.schengen.mai.gov.ro/English/Documente/Law/Police/GEO%20No.%20103%20.pdf

more by the needs and values of society. It requires the development of competences (knowledge, skills, and attitudes) according to the standards of border control profession as well as their lifelong development. It is important that in the course of the preparation of the staff sometimes quite different kinds of competences must be developed. During selection and recruitment the abilities, suitability and motivation all must be assessed. Before anything else the general intelligence level of applicant should be assessed to ensure they can acquire the required competences later on. Also, it must be tested if their physical, psychical, and mental abilities as well as their attitude match the requirement of the organization. This is especially important before the starting the selection of management training provided in an educational system[8].

Regardless of the particular system of selection and training, the establishment and operation of recruitment and education system must take into account social needs and possibilities, the traditions of the country, and the role fulfilled by the border control organization in the security system of the country, and the competence map of the different positions in the organization. Training systems show significant differences in each country. The creation of a unified school system is therefore hardly feasible. The unified definition of required competences, the promotion of the social respect for the border police profession, the matching of the education system to Bologna process, unified definition of learning outcomes and training objectives, developing compatible curricula, international accreditation of education and training programs: these are all elements of a progressive approach. School systems can be individual or integrated into other law enforcement training institutions. Anyway, like any other higher education program it cannot lack elements of general intelligence training, as well as extensive legal, law enforcement, and special profession oriented training. The content of training should be practice oriented at lower levels, while management- and science oriented at higher levels.

Specialized and update courses can be built in a system that matches gradual education and is parallel with it, depending on general training objectives. The adequacy and effect of this principle cannot be questioned. Its realization is the responsibility and competence of decision makers, similar to the establishment and operation of executive systems.

SUMMARY

Establishment, deployment, application, and methods of border control systems and organizations are determined or influenced by general and basic principles that are defined by historical experience and international research. The simultaneous application of all these principles can lead to the creation, legality, proper deployment and operation of organizations that are able to:

- Prevent threats to security that are related to state borders,
- Implement proper surveillance, checks, alien policing tasks and mobile operations,
- Implement criminal investigation and intelligence tasks,
- Adequately match into the security system and public security of the country,
- Successfully combat the newest threats to security and border-security

The application of these principles are necessary. With them the organization will be more effective, and we can avoid the failures. These failures are difficult to bear for border guards,

8 Kovacs-Schweickhardt (2014). *Organization and management system of law enforcement agencies* Budapest: National University of Public Service, *pp. 17-56.*

gendarme officers, customs officers, coast guards, and soldiers in our everyday work. Let us prevent our own failures!

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4. *Policing in 2020 - what issues must be addressed now that will affect policing in England and Wales in ten years' time?* http://www.paconsulting.com/industries/government-and-public-sector/protecting-our-borders-and-streamlining-immigration/policing-in-2020/
5. Michalowski, R. and Bitten, K., (2005). *Transnational Environmental Crime*, in Reichel P., (ed.), Handbook of Transnational Crime and Justice, London, Sage Publications, pp. 139 - 159.
6. *Treaty of Amsterdam Amending the Treaty on European Union* http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf
7. Government Emergency Ordinance No. 103 of 13 December 2006 on the measures for facilitating the international police cooperation
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POLICE PERFORMANCE MEASUREMENT IN INTERNATIONAL LITERATURE, ESPECIALLY ON THE INDICATORS OF LEGITIMACY. DOMESTIC ADAPTION OPTIONS.

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Abstract: The results of modern scientific researches have exceeded the use of mainly quantitative indicators that are "produced" when performing law enforcement tasks. Those researches have mostly taken scientific steps towards how qualitative indicators – e.g. "public satisfaction" or trust in the police – can be measured objectively. Up to the 90s, besides the "utilitarian" narratives of law enforcement efficiency, there was an increasingly obvious need for recognizing such elements as "processual justice" and social equity. In addition, it is a significant research finding that without recognizing sociocultural and geographical differences of crimes per territorial units, it is difficult or even impossible to gain correct results that are capable of validation. The current Hungarian legislation on the efficiency of the police has no developed methodology or it is outdated and basically has statistical approach. Regarding all the above mentioned, it is inevitable to develop a scientific method that can identify the efficiency of the police. Furthermore, it is timely to revise the indicator system according to international trends. This study, besides the interpretation of definitions, provides a short outlook on – especially the indicator of legitimacy – international literature on measuring the efficiency of the police. Then it proposes how legitimacy may be a measurable indicator.

Keywords: performance measuring, indicators, legitimacy, police, procedual justice.

INTRODUCTION

One of the most important question of the 21st century international literature in connection with the social role and participation of the police, is understanding the substance of trust. Trust, in point of fact, is nothing else than the collective feeling of "the social effects" of police activities. There are several researches, especially in the United States of America, trying to find out the connection between police activities and public opinion. Especially in such a society where even only one mistake of the police can immediately ruin the image of the police that was established with a careful communication strategy. The most important question is how trust in police can be improved and influenced in a complex democracy that is largely dominated by the media, in order to permanently and predictably assure the proper level of social acceptance, while community polarization is further catalysted by the media,

especially the Internet and social media. In addition, they are also able to create a widespread publicity of the unexpected violent incident involving the police, causing harmful social control mechanisms such as demonstrations or street violence.[1]

The key, thus, is to understand what makes an organization legitimate, and what factors influence community trust in them.[2] The purpose of this study is to approach the social effects accompanying police operations from the side of efficiency measurement, to provide the organization with real reflection. This will ensure more quick reaction to the negative social feedbacks that cause its immediate negative activities and actions in the society.

THE SIGNIFICANCE OF LEGITIMACY AND TRUST ACCOMPANYING THE POLICE

Even though legitimacy and trust are only perceived as a kind of "aftermath" accompanying the activities of the police organization, they play an indirect role in the socially harmful escalation of a negative event or incident. In this way it is emphasized what can be done in order to form public opinions that should support and not weaken the work of the police, and that the police should work effectively in the interest of public safety and with real and wide social authorization.[3] Police officers play not only "one kind of" role in a modern, pluralist society, therefore it would be a fault to regard them from only one point of view. Consequently, it cannot be generalized or the positive requirements can not be uniformly assessed towards public opinion. It is obvious that one who experienced a fast, effective police measure following an emergency call, will have a different opinion from the one who was given an on-the-spot fine for exceeding the maximum speed limit with 3 km/h. Significant researches have confirmed the hypothesis that even negative acts can be accepted (arrests, punishments, etc.) if the decision making processes leading to the result is made to be transparent and tangible, if they can be learnt and understandable for everyone. If the processes, legitimacy and impartiality are transparent, negative results may be accepted. To accept the processes, namely the procedural justice, surveys have established the following main criteria:

on one hand, one is given a chance to decide, so they are given full and thorough information, or explanations to their questions,

their dignity is respected during the procedure and they experience impartial and fair attitude as well,

they trust that those who create and implement acts are driven by neutral purposes.[4]

Procedural justice essentially comes with each police act, and as a dynamical coefficient it forms legitimacy and trust, and it is also the determining factor of public satisfaction towards the police. Legitimacy and trust may be developed if everyday interactions between the police and citizens are moved by this mentality. If they are not characterized by these features,

1 Brian A. Jackson: Respect and Legitimacy—A Two-Way Street Strengthening Trust Between Police and the Public in an Era of Increasing Transparency. 2015. Rand Corporation. Available at: https://www.rand.org/pubs/perspectives/PE154.readonline.html.

2 Dowling, John – Pfeffer, Jeffrey: Organizational Legitimacy: Social Values and Organizational Behavior, Pacific Sociological Review, Vol. 18, No. 1, January 1975, pp. 122–136.

3 Murphy, Kristina – Hinds, Lyn – Fleming, Jenny: Encouraging Public Cooperation and Support for Police, Policing & Society, Vol. 18, No. 2, June 2008, pp. 136–155.

4 Mazerolle, Lorraine – Antrobus, Emma – Benett, Sarah – Tyler, Tom R.: Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice, Criminology, Vol. 51, No. 1, 2013, pp. 33–63.

they may easily and quickly become obsolete. As a pioneer, Michael Lipsy has identified this dynamic interaction in case of several public servant occupations, thus not only in case of police officers, but also attorneys, judges and social workers.[5] In the current globalised world the question of trust becomes much more significant, and it is intrinsically linked to the third[6] and fourth[7] stations of police strategy evolution.

Undoubtedly, expectations in connection with the police were significantly rearranged in the latest decades, and police strategies are going on different routes. The community police model[8] of the 90s, whose gial was to have a close relationship with the members of the community, focused on reinforcing public opinion trust, but in the 2000s it was unable to fulfill the social expectations of rapid response reactive police actions required by the hazard of terrorism and social tension, and also the expectations of its techniques to decrease criminality.

Police models were moving on the next stages of development: basically community police model which meets the needs of the information society, shifted to crime control[9], then to "intelligence-led policing" aimed at intensive and quick application of adequate data that were targetedly obtained on spots with relatively narrow crime, i.e. "hot spots".[10]

During the evolution of each police strategy, the significance of police communication had also a new meaning**.** Its main purpose is to demonstrate neutral, fair and politics-free results, through creating the transparency of decision making processes. One significant research has shown that several factors were able to influence public perception on the police**,** such as negative experience in connection with crimes – including media news on police abuse – having happened to them, their friends or relatives. These factors have different negative effects in case of each ethnic and racial group.[11]

First of all, the most important thing is to determine what to display for the public, so that the police can persuade the public about its neutrality and impartiality, and explain its decisions and the results of performing their tasks. Starting with the key concept of procedural fairness**,** one will get to persuade the public, thus policing must be defined alongside the following questions:

- What do police do and why?
- What is the result of policing?[12]

5 Michael Lipsky, Street-Level Bureaucracy: Dilemmas of the Individual in Public Services, 30th anniversary expanded edition, New York: Russell Sage Foundation, 2010. Lipsky's book was originally published in 1980.

6 Kelling and Moore distinguished three eras in the history of the police: the era of political, reform and community problem solving. Due to the threat of terrorism there has been a fourth era since 2001. In: Kelling, George L. and Moore, Mark H.: The Evolving Strategy of Policing, Perspectives on Policing, National Institute of Justice and John F. Kennedy School of Government, Harvard University, November 1988.

7 Willard M. Oliver: The Fourth Era of Policing: Homeland Security, International Review of Law, Computers&Technology, Vol. 20, Nos. 1–2, 2006, pp. 49–62.

8 Even though its effect on crime reduction was not detected, reinforcing public trust was detected in certain surveys. In, e.g..:Gill, Charlotte – Weisburd, David – Telep, Cody W. – Vitter, Zoe – Bennett, Trevor: Community-Oriented Policing to Reduce Crime, Disorder and Fear and Increase Satisfaction and Legitimacy Among Citizens: A Systematic Review, Journal of Experimental Criminology, Vol. 10, 2014, pp. 399–428.

9 Weisburd, David – Telep, Cody W. – Hinkle, Joshua C. – Eck, John E. Eck: Is Problem-Oriented Policing Effective in Reducing Crime and Disorder? Findings from a Campbell Systematic Review, Criminology& Public Policy, Vol. 9, No. 1, February 2010, pp. 139–172.

10 Ratcliffe, Jerry H.: Intelligence-Led Policing, Trends and Issues in Crime and Criminal Justice, No. 248, Australian Institute of Criminology, April 2003.

11 Sherman, Lawrence W. – Weisburd, David A.: General Deterrent Effects of Police Patroling Crime „Hot Spots": A Randomized, Controlled Trial. *Justice Quarterly*, vol. 12, 1995, pp. 625–648.

12 In their study *Verschelde* and *Rogge* distinguish the concept of efficiency as exclusive cost efficiency, and the so called concept of efficiency that they identify with achieving certain police objectives, and

- How can the faults of individual and organizational policing be found and articulated? In other words, is there a normative framework with a public access to give a feedback on wrong operational effects?

Creating proper indicators offers the best chance of legitimate policing and of being able to measure positive social effects. As far as the legitimacy of policing and public opinion are concerned, we have to aim not only to reduce the number of crimes and improve statistic results, but also to show the process that leads to them and how they were obtained. A harmful – regarding its social "side effects" – police strategy, rejected by the majorities, may not be verified even if it improves statistic results.

The reform of measuring police efficiency and performance has been a challenge for years, so this scientific field has significant results. Several researches have aimed to grab the essence of social effects and legitimate operation by multiple measuring, but they have not been accepted widely.[13] Some researchers have called the attention to the lack of several significant data. For example, establishing a national data base that covers atrocities where police officers are involved, injuries or deaths caused by resisting a police measure.[14] In the United States, during the professional discussion on the negative side effects of police strategies, there were several proposals on federal level that aimed displaying further significant information[15]:

- territorial distribution of applying police force, regarding the whole population, the scenes of escalations,
- tracing complaints,
- police officers' opinion on police measure culture and the opinion of the community[16],
- the number of police activities compared to the size and feature of the community, police measures following emergency calls.

MEASURING EXAMPLES FOR THE LEGITIMATE INDICATORS BY POLICE (USA, UK)

Here, several researches concentrating on legitimacy will be displayed, thus highlighting those indicators that can be interpreted in the relation police–population. Most pilot researches have proved only the hypothesis that the lack of legitimacy is one of feature of police measures, and that racial, gender and ethnical based discrimination does not serve the developement of the social prestige of the police, or trust towards it, either. In these researches, legitimacy means

they do so regarding the performance of the police. In: Verschelde, M., & Rogge, N.: An environment-adjusted evaluation of citizen satisfaction with local police effectiveness: Evidence from a conditional data envelopment analysis approach. European Journal of Operational Research, 2012, pp. 214–225.

13 Maguire, Edward R.: Measuring the Performance of Law EnforcementA gencies," CALEA Update, Issue 83, September 2003. As of February 22, 2017: http://www.calea.org/calea-update-magazine/issue-83/measuring-performance-law-enforcement-agencies-part-1of-2-oart-articl.

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16U.S. Department of Justice, "Civil Rights Division Special Litigation Section Cases," web page, undated. Available at: http://www.justice.gov/crt/about/spl/findsettle.php.

social equity, integrity, fairness, and respect. From the 1970s, the following studies have included legitimacy as well, besides or instead of effectiveness and cost efficiency[17]:

- Pachon & Lovrich, Local (various regions, U.S.)[18]

- *Effectivness:* 1. Citizens' satisfaction with the quality of police protection. 2. Citizens' satisfaction with police response time

- *Social equity:* 1. Citizens' satisfaction with perceived respect and language used by police officers.

- Shin, Local (Decatur, Peoria, and Springfield, Illinois)[19]

- *Effectivness:* 1. Citizens' satisfaction with quality of police services

- *Social equity:* 1. Extent of variations in citizen satisfaction with the same service

- Gianakis, Local (Florida)[20]

- *Efficiency:* 1. Supervisor and police officers' self-perception of productivity

- *Effectivness:* 1. Supervisor and police officers' self-perception, of, e.g., driving skills, accident investigation, use of force, complaints, physical fitness, height/ weight ratio, self-defense skills, number of arrests, time-management skills, number of traffic tickets issued.

- *Social equity:* 1. Supervisor and police officers' self-perception of, e.g., protection of crime scenes or evidence, court demeanor, courtesy, integrity/ethics, judgment, fairness, self-control, sensitivity, knowledge

- Chandek, Local (Midwest region, U.S.)[21]

- *Effectivness:* 1. Citizen satisfaction with how police officer(s) handled the [entire] incident, 2. Citizens' perception of the response time of the police, 3. Response time of the police, 4. Citizens' perception of the investigative effort of the police.

- *Social equity:*1. Citizen satisfaction with the way police officer(s) handled the [entire] incident, by race of the victim and race of the police officer. 2. Citizen perception of police's response time, by race of the victim and race of the police officer. 3. Police's response time, by race of the victim and race of the police officer. 4. Citizen perception of police's investigative effort, by race of the victim and race of the police officer.

- Wang, Local (Florida) [22]

- *Effectivness:*1. No. of calls for police services, 2. Patrol miles per police employee, 3. No. of police investigations per year, 4. No. of arrests per a police employee, 5. No. of patrol dispatches per a police employee, 6. % of residents rating police service as excellent or good, by reason for satisfaction 7. % of crimes solved by police (clearance rate) 8. No. of reported crimes per 1,000 population (crime rate)

- *Social equity:* 1. % of residents who feel police are generally fair and courteous in dealing with them

17 Charbonneau, E., and Riccucci, N.M.: Beyond the usual suspects: An analysis of the performance measurement literature on social equity indicators in policing. Public Performance and Management Review, 31(4), 2008. pp. 604–620.
18 Pachon, H.P., & Lovrich, N.P.J. (1977). The consolidation of urban public services: A focus on the police. Public Administration Review, 37(6), 38–47.
19 Shin, D.C. (1977). The quality of municipal service: Concept, measure and results. Social Indicators Research, 4(1), 207–229.
20 Gianakis, G.A. (1994). Appraising the performance of "street-level bureaucrats": The case of police patrol officers. American Review of Public Administration, 24(3), 299–315.
21 Chandek, M.S.: Race, expectations and evaluations of police performance: An empirical assessment. Policing: An International Journal of Police Strategies & Management, 22(4), 1999. pp. 675–695.
22Wang, X. (2002). Perception and reality in developing and outcome performance measurement system. *International Journal of Public Administration, 25*(6), 805–829.

- Collier, Local and National (England and Wales)[23]

- *Efficiency:*1. No. of sickness absence of police officers, 2. No. of medical retirements of police officers

- .*Effectivness:* 1. No. of emergency calls to the police, 2. No. of crimes, 3. No. of public order incidents 4. No. of road traffic collisions, 5. Time spent by officers in public, 6. Response times, 7. Incidence of stop/search, 8. No. of arrests and detections

- *Social equity:*1. Adequacy and timeliness of case files for prosecution

- Orr & West (2007) Local (Providence, Rhode Island)[24]

- *Social equity:* 1. courtesy (citizen survey), 2. Fairness (citizen survey), 3. Treatment of the races (citizen survey), 4. Security feeling (citizen survey)

THE PRACTICE OF MEASURING POLICE EFFICIENCY IN THE UNITED KINGDOOM, IN PARTICULAR LEGITIMACY

The police efficiency measuring method that covers all the three segments of effectiveness, efficiency and legitimacy, currently exists only in the United Kingdom.[25] Performance evaluation indicators of the police are open to the public, as everybody can access them at a transparent internet link showing all the data. To the greatest possible extent, it ensures transparency as the main source of citizens' trust that is needed for policing. The evaluation system has three pillars. The first one is the scope of data representing effectiveness, that is created by mainly quantitative statistical data in connection with policing, and per mainly the number of population, but strictly per police units. It consists of not only highlighted data but also service centered crime prevention activities. The second pillar is financial efficiency, i.e. how much these police services cost for the population, so, regarding the costs, how efficient a police unit is. The third one is legitimacy and it covers people's trust, satisfaction and its source, social equity. Comparing the above mentioned three segments, the performance of a police unit is evaluated on a four- point scale.

THE ROLE OF LEGITIMACY

If the "foot" of legitimacy is scrutinised, the following statements may be made.[26] The police of the United Kingdom make legitimate policing the part of its transparent performance data, and they declare that fair and honest treatment is a central element of the whole police staff, for this purpose they are in favour of publicity and independent advisors, thus improving civil participation. Therefore, they assure communication feedback channels, furthermore, close cooperation, especially in a way avoiding abuse and corruption. They continuously monitor the layer of management and employees in order to map and filter out those organizational cultural elements that hurt fair and honest procedures, and they assure several advisory and information opportunities to collect and evaluate citizens' opinions. They acknowledge and

23 Collier, P.M.: In search of purpose and priorities: Police performance indicators in England and Wales. Public Money & Management, 26(3), 2006. pp. 165–172.

24 Orr, M., & West, D.M.: Citizens' evaluations of local police personal experience or symbolic attitudes? Administration & Society, 38(6), 2007, 649–668.

25 Available at: http://www.justiceinspectorates.gov.uk/hmic/.

26 Available at: http://www.justiceinspectorates.gov.uk/hmic/publications/peel-police-legitimacy-2016/.

apply the well-known scientific fact that more fair and more honest treatment used in procedures has a serious effect on the efficiency of crime reconnaissance and prevention.[27] What is regarded to be an ethical procedure is determined in the ethical codex of the United Kingdoom.[28] Unfortunately, public surveys show that, according to black and Asian people and minorities, the police tend to treat people less and less equally.[29]

The data of legitimacy are given by citizens' surveys[30] and independent organizations. Each police unit is connected to independent advisory organizations that can visit police custodies and lock-up rooms any time without notification, and can examine the circumstances of detention, and they can talk to people in custody and to people being under procedure. There is an annual report of it that is also the part of the field.

Legitimacy means ethical, fair and correct way of performing tasks not only to the community, but it also has significance in organizational culture. First of all, the attitude and respect of the leaders of the organization towards the employees, the sytem of recognition and the advancement system, dealing with the complaints caused by in-house harms, individual and system anomalies decisively determine the moral and attitude of its measures and behaviour towards a community.[31] There was an overwhelming survey among police officers that verified that equal and fair treatment inside the organization, seriously affects the culture of employees' measures/actions.[32] Studies showed inverse relation between police solidarity, infringements committed by themselves, and orientation towards the outside world.[33] It may hardly be doubted that in a hostile social environment being in opposition, all groups that are outsiders and being disliked regarding its tasks, tries to maintain its defending ability holding to its own interests and cohesion. Its consequence is the further reinforcement or reproduction[34] of hostile environmental factors, where it is completely unnecessary to wonder about faults or reasons, especially, if they go together with collective social or subcultural negative stereotypes. The efficiency of the Japanese police model has proved that intragoups' inner respects, approval, appreciation, and intensive identification based on the positive approval of values and traditions reinforcing the cohesion of the group, are directly proportional to the need for increasing outer orientation.[35] Consequently, if the cohesion-requirement of the

27 Andy Myhill and Paul Quinton: It's a fair cop? Police legitimacy, public cooperation, and crime reduction, National Policing Improvement Agency, September 2011. Available at: http://whatworks.college.police.uk/Research/Documents/Fair_Cop_Briefing_Note.pdf.

28 Code of Ethics: A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales, College of Policing, July 2014. Available at: www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf.

29 Crime statistics, focus on public perceptions of crime and the police, and the personal well-being of victims, Office of National Statistics, March 2017, Available at: www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendiumcrimestatisticsfocusonpublicperceptionsofcrimeandthepoliceandthepersonalwellbeingofvictims/2015-0326/chapter1perceptionsofthepolice#overall-confidence-in-the-local-police-by-background-characteristics

30 Only 56% of them said that the police fairly and equally treat citizens, according to 7 % do not at all, according to 38% this police attitude deteriorated.

31 Fair cop 2: Organisational justice, behaviour and ethical policing, College of Policing, 2015. Available at: http://whatworks.college.police.uk/Research/Documents/150317_Fair_cop%202_FINAL_REPORT.pdf; Organisational justice: Implications for police and emergency service leadership, Herrington C and Roberts K, AIPM Research Focus, Issue 2, 2013. Available at: www.aipm.gov.au/wp-content/uploads/2013/08/Org-Justice-Final.pdf.

32 Tyler, T. R. and Blader, S. (2000), Cooperation in groups: Procedural justice, social identity, and behavioral engagement. Psychology Press.

33 Schernock, Stan K.: An empiricalexamination of therelationshipbetweenpolicesolidarity and communityorientation. *Journal of Police Science and Administration*, vol. 16, 1988, pp. 182–194.

34 Ericson, Richard V.: Patrolling the facts: secrecy and publicity in police work. *The British Journal of Sociology*, vol. 40, no. 2, 1989, pp. 205–225.

35 Dion, Kenneth L.: Intergroup conflict and intragroup cohesiveness. In: Austin, William G. – Worshel,

police is not established by its defensive attitude towards social intolerance, normally this cohesion positively affects even the social embedding of the police. Based on it, in the efficiency model of the United Kingdom, the key field is supporting police work and increasing performance motivation. Involving staff into decision making processes, where their worries are heard and listened to, while it is transparent why leaders made a certain decision, undoubtedly has a positive effect on doing their own work correctly and honestly.[36] The question of organizational fairness has a wider scope than procedural fairness, it contains the fairness of distribution, i.e. the feeling how fair the distribution of resources, workpower, financial and mental dotation is inside the organization.[37]

The Oxford survey at Durham police is a demonstrative argument that organizational fairness, which contains the procedural fairness (being involved into decision making, informing, dealing) of the leaders and senior management, and the above mentioned distribution fairness, has a positive effect on organizational cohesion and on a more social and more cooperative organizational attitude and on behaviour types that radiate to the employees' work culture.[38] Another survey has also identified a statistically significant link between organizational fairness and identification with the organization at the police, and it effects organizational effectiveness: those police officers who trusted more in their own organization, supported more procedural justice garanties, legitimate procedures and applying proportionate force.[39]

Unfairness and the lack of organizational fairness at the police mean a significant organizational risk. The results of surveys suggest if employees feel that they are treated unfairly, they are not likely to have an incentive to deliver the quality public service. They will become more and more cinical, and they will be less dedicated to ethical policing. Ethical, legitime policing is in a close context with organizational culture, with ensuring inner procedural fairness.These are called "feedback loops", thus procedural fairness contains bigger social support inside the organization.

THE MEASUREMENT MODELL OF THE EFFICIENT OPERATION OF THE "LEGITIMATE POLICE"[40]

To define the efficiency of the police, four pillars are distinguished:

1. Effectiveness. The effectiveness of the police is the quotient of the number of effective police requisitions, measures that achive their goals, procedures that have ended up with

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Stephen (Eds.): *The socialpsychology of intergroup conflict*. Brooks/Cole, Monterey, 1979, pp. 221–224

36 *Fair cop 2: Organisational justice, behaviour and ethical policing*, College of Policing, 2015, page 11. Available at: http://whatworks.college.police.uk/Research/Documents/ 150317_Fair_cop%202_FINAL_REPORT.pdf

37 Greenberg, J., Organizational justice: The dynamics of fairness in the workplace, in: Sheldon, Z. (ed) APA handbook of industrial and organizational psychology, vol. 3: Maintaining, expanding, and contracting the organization. Washington, DC: American Psychological Association. 2011.

38 Bradford, B and Quinton, P.: Self-legitimacy, police culture and support for democratic policing in an English constabulary. British Journal of Criminology, 2014. 54 (6): 1,023-1,046.

39 Bradford, B., Quinton, P., Myhill, A. and Porter, G.: Why do 'the law' comply? Procedural justice, group identification and officer motivation in police organizations. European Journal of Criminology Vol. 11, 2013, pp. 110–131.

40 The study establishes negative correlation between investing more money into the police, and crime reduction, and mentions that social costs must also be taken into account. In: Eck, John E. – Maguire, Edward: Have changes in policing reduced violent crime? An assessment of the evidence. In: Blumstein, Alfred – Wallman, Joel (Eds.): *The Crime Drop in America*. Cambridge University Press, New York, 2000; Marvell, Thomas B. – Moody, Carlisle E.: Specification problems, police levels and crime rates. *Criminology*, No. 34, no. 4, 1996, pp. 609–646.

the suspect's responsibility, and all measures, requisions and procedures during the same period and place. Effectiveness is a variable depending on police requisitions, measures and on the outcome of procedures. Performance is measured with the currently limited number of statistic data, but basically in the ratio of the effective and the total. The indicator can be shown only by evaluating all those mentioned above. Basically, this indicator will appear as the outcoming statistic datum, and will inform about the effectiveness of the temporary activities done by the authority. Special indicators sufficient to each police tasks come under separate scrutiny.

2. Efficiency is expressed as the coordination and the sets of conditions of the investigation authority, and also the money spent on the sets of tasks. It mainly covers the quantitative and qualitative ratio of human resources and technical equipment, and also the cost recovery of successful procedures and measures, compared to inhabitants.

3. Legitimacy, which is realised as the community recognition and acceptance of the performance of the investigation authority. It may be recognized as the social integration, integrated operation and community approach of the police, and as the acceptance of the values of procedural fairness. This pillar will be separately analysed in the next chapter.

4. Additional/supplementary pillar: crime geography. Crime geography wishes to detect the contribution of circumstantial and social indicators determining crime, while it endevours to map dynamically the place-crime correlation, pointing out the macro factors and their ratio that typically influence the change of crime. Because of its supplementary significance, it highlights whether the determinating effect of macro factors that make the work of the local police easier or harder, exist or not.

THE LEGITIMATE PILLAR[41]

The pillars are in a relationship of interdependence, and according to it, in case of a higher legitimacy, the work of the police is better supported by the community, therefore effectiveness increases. Costlier but higher-quality law enforcement education and excellent career system also result in the improvement of reconnaissance, which increases outcome. Well-trained, intelligent, cultured, well communicating, calm and well-tempered police officers work with a citizen-friendly approach, because of their competences required by their work, in this way they increase the *legitimacy* of the police. Owing to the restricted length of this study, only the legitimacy pillar is analysed.

The indicators of the *legitimate* pillar:

1. Measures ending with using police force are weighted – in the ratio of the gradual approach of using police restraining devices.

2. The percentage of warnings, on-the-spot fines and prosecutions over all the measures.

3. The number of complaints in connection with police measures, infringement proceedings, administrative authority proceedings and investigations. Complaints are displayed for each police units as 1000 police officers/12 months.

4. Within organizational fairness: complaints, proceedings on employment matters, public surveys in connection with the fulfilment of the principles of fairness and equity regarding

41 Researching the cost correlations of the functioning of criminal justice, *Kövér* analysed cost and benefit. The primary objective of his research was to specify costs related to activities. One of his worthwhile establishments was that detectives perform several other tasks, therefore their functional cost-effectiveness is extremely low. In: Kövér, Ágnes: A büntető igazságszolgáltatás működésének költségösszefüggései. In: Irk Ferenc (szerk.) Kriminológiai tanulmányok No. 39. OKRI, Budapest, 2002, pp. 239–280.

the allocation rules (work, resources, duties), and in connection with the forseeability of the system of promotion.

5. On duty complaints and the number of proceedings started/1000 workplace during 12 months.

6. The percentage of shorter and longer illness periods compared to the total staff.

7. The percentage of fluctuation, with an outlook on years of pensionable service, including relocation requests applications and deployment applications, in the average of 12 months.

8. The average number of years/months spent in managerial or staff position at a given police station or headquarter, averaged over 12 months.

9. The percentage of employees at different status with higher education who are waiting for being appointed.

10. The percentage of unpayed overtime work.

Under regulation of the Hungarian Ministry of the Interior No 30/2011 (IX. 22.), a police officer is allowed to use the following restraining devices: physical restraint, handcuffs, chemical devices, a taser, a baton, a blade/sword, a police dog, a shotgun, a roadblock, reinforcement and riot control.

The graduality of using restraining devices:

1. physical restraint,
2. handcuffs if they are used under Staff Regulations Section 41 Article (1) a) and b)
3. Though the regulation does not distinguish the grades of using chemical devices, a taser, a baton, a blade/sword and other devices, but a chemical device – known as a pepper spray – is considered to be more lenient to overcome the resistance,
4. baton,
5. taser,
6. using a shotgun, including warning shots to prevent unlawful attacks.

Their weights increases by 1 in accordance with the above ranking, so physical restraint has a value of 1, but using a shotgun is given a 6.

INSTEAD OF SUMMARY

The problem of efficiency caused by the statistical approach may be basically explained by the compulsion to display the exact statistical indicators of the police.[42] Thus actual and real work performance and quality hiding behind the numbers are pushed into the backgrounds, which, unfortunately, because of the lack of recognition and reinforcement, does not encourage development. The current police efficiency is mainly case effectiveness based. It does not satisfy the public and scientific needs for presenting the legitimate operation. The world has changed a lot over the last decades, in an information society "selling" the work of the police should not be about the sound PR propaganda of statistical effectiveness. But it should be about more credibly establishing real social effects caused by our activities (satisfaction, trust,

42 The *Krémer-Molnár* researched are included that statistical approach ignores local circumstances, meanwhile local stations are forced into a pointless –according to the surveyed- competition, which often leads to the deliberately distorting statistical results, and results in fraud. In: Krémer, Ferenc – Molnár, Emília: Modernizálható-e a magyar rendőrség? – a rendőrök véleménye. Magyar Rendészet. 2000. No. 3–4. p. 92.

appreciation in the society). Community apperception and the results of police efficiency measurement shall be made in accordance with each other, that all the factors that influence subjective feelings must be mapped and understood. Firstly, it requires researches in order to detect/find out the factors that influence trust and supporting approach towards the police. Today any information can be quickly reached on the World Wide Web, and anyone can get optional quality of information and news.The importance of change is not any more insignificant from a political point of view: the possibility of sharing news on the internet is able to start tectonic social effects. An organization that falsely defines itself, embellishes its results, and is boastful with regard to positive data, is sitting on a powder keg which can explode at any time. It results in the increasing demand that governments should map the real social effects of crime control even if it depicts policing negatively, and even if it may actually downgrade the professional management of the police.

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MANAGERIAL ROLE IN POLICE: DIVIDING INTO FUNCTIONS

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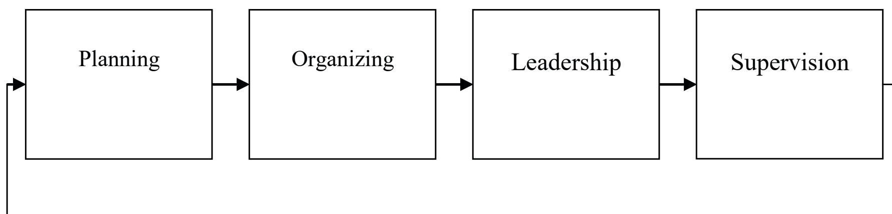
Abstract: The scope of this paper is to focus on the managerial role in the police, as part of duties of managers within predominantly the scope of work of top managers (police stations, police precincts) within organizational units of police force, with special attention to the ones of general jurisdiction. This paper analyses the overall scope and content of the following stages: planning (evaluation, assessment, decision making and planning), organizing (preparation for carrying out regular duties with respect to professional, moral, organizational and logistics framework), leading (command and coordinative function), evaluating (follow up, oversight, grading functions). Each of the above mentioned functions of police management roles has its roots in official acts (planning, orders and reporting documents). The impact of reporting activities on planning function was analysed using two different approaches: firstly, through keeping 22 different types of records (together with other 14) of managerial workers, which are being used in police stations and precincts, and secondly, through keeping nine spreadsheet reports (for regional police directorate), which falls under the scope of support function in decision making process of the regional police directorates' heads. All this points out the complex nature of reporting, which has an informative role regarding the work and achieved results of one organizational unit of police, but is also important for the decision making process as well as for planning activities. Regarding the decisions made and prior to planning activities, preparations for implementation of the given tasks are being carried out (training, structuring, supply chain, etc.) Managing at the level of police stations and precincts, which comes after organizing function, is related to updating the requests for carrying out official duties and tasks, as well as time and space coordination of activities and effective human resources allocation within a single organizational unit, in order to achieve the planned goals. Last but not least, control function of managing role encompasses the comparison of what is desired, expected, and planned with what has been accomplished. Regarding the previous, the paper also deals with the interconnectivity of the managerial roles, as well as the managerial algorithm in police.

Keywords: managing, activity, planning, organizing, leading, control.

INTRODUCTION

Managerial activity[1] in police force is most commonly associated with the following processes: planning (prediction/assessment, decision making and plan drafting), organizing (preparation of official assignments in professional, moral, organizational and logistical sense), leadership (giving orders and coordinating) and supervision (follow up, monitoring, evaluation/grading) as well as with everyday duties of a more complex nature. The process of managing within the police force could be formalized in the forms of diagrams and algorithms,[2] which graphically shows the procedures of the managerial process.

Acknowledging the peculiarities of organization and tasks of police stations, precincts and other units, the above mentioned managerial functions are carried out generally by the senior ranking officers who are holding management positions within the structure (i.e. department heads, police station chief, etc.) For certain organizational elements as well as for certain areas of operation, one can delegate coordinators from the mentioned managerial staff. Their role is to coordinate the following areas: general crime suppression, territorial operations, providing police assistance in the field described by the scope of police jurisdictions, physical-technical security, mentoring interns, as well as in other fields should need arise.



Picture 1: *Diagram of interconnection between managerial functions*

The next picture shows the algorithm of managerial functions.

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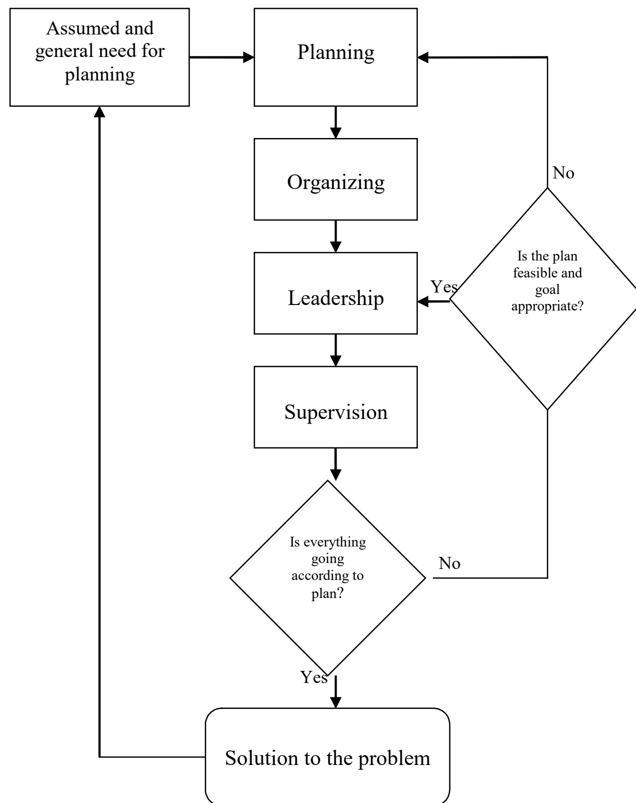
1 This paper is the result of the research on the following projects: "Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations", which is financed by the Ministry of Education and Science of the Republic of Serbia (No 179045), and carried out by the Academy of Criminal and Police Studies in Belgrade (2011-2014). The leader of the Project is Associate Professor Saša Mijalković, PhD and "Management of police organization in preventing and mitigating threats to security in the Republic of Serbia", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - The cycle of scientific projects 2015-2019.", which is financed by the Academy of Criminal and Police Studies.

For managerial activities, the abbreviation Ma is used in official documents (*Instructions for record keeping in police stations and other organizational units of police force*, MoI RS, Belgrade, 1995).

2[2] *Algorithm* (Arabic, Greek *rythmos* relation) – 1. the skill of computing, four basic mathematical operations and the schoolbook on the topic (the term comes from the Arabic mathematician Muhammad ibn Musa al-Khwarizmi); 2. *logical algorithms* an attempt to exchange logical operations with ciphers and computing methods, therefore, an attempt of a single *mathematical* or *symbolic* logic; generally adopted way of preparation for digital computers; in the medieval times, the expressions *algorism* and *algarithm* were also used (Vujaklija, M.: *Dictionary of foreign words and phrases*, Prosveta, Belgrade, 1996/7., p. 30).



Picture 2: *Algorithm of managerial function*

PLANNING AS CONTENT OF MANAGERIAL FUNCTION

In the domain of *planning*, managerial activity within the police stations, precincts and other units encompasses the creation and updating of the following: monthly plan of activities, daily schedule, overview of planned absences,[3] overview of plans for securing public gatherings, plans for protection of certain individuals, plans for securing money transports and other material goods, etc.

Planning, as an integral content of managerial activities, depends on reporting function. Namely, at the level of police stations/police precincts (PS/PP) the following information is being processed and delivered to the General Police Directorate (Regional Police Directorate for the city of Belgrade), or to the police departments (other regional Police Directorates/ RPDs):

1. Information regarding the security status in schools. It comprises of two segments: textual description of distinctive events that occurred in the territory of PSs, sorted according to

3 Overview of the leaves of absence consists of the plan for use of leaves of absence for the current and previous year, as well as the information regarding the implementation of the plan (point 14 *Manual for records keeping within police stations and other units of police, Ministry of Interior,* Belgrade, 1995.).

the criminal offences, misdemeanours, and other events, as well as textual description of preventive activities undertaken by the police officers;

2. Information on injured and deceased police officers, which consists of numerical values as well as textual descriptions of events leading to the death or injury of a police officer;
3. Statistical indicators as well as the achieved results in specific operations;
4. Overview and the number of seized weapons;
5. Overview and the number of criminal offences among individuals of different nationalities;
6. Overview and number of indicators in the area of criminalistic and anti-diversion techniques;
7. Overview of misdemeanours among individuals of different nationalities;
8. Overview of events that can be treated as international security related events registered in the territory of RPDs;[4]
9. Overview of police officers killed in terrorist attacks, as well as cases of obstruction of police officers in performing security related tasks and other circumstances;
10. Overview of indicators of breaches of conduct by sport supporters before, during and after sport events;
11. Statistics of severe breaches of public order on sport events as well as police interventions;
12. Comparative statistical overview of security events as well as preventive activities of police officers in the observed month for previous and current year in schools, with or without school police officers;
13. Statistical overview of application of means of coercion/consequences and measures taken after the application of the said measures, for all PPs, in the observed month as well as overview of types of means applied and the accordance with the law for their application;
14. Overview of joint activities with other inspection authorities;
15. Overview of complaints on police activities as well as the overview of processed complaints from the previous month;
16. Statistical overview of applied means of coercion;
17. Distraction, obstruction and assaults on police officers;
18. Disciplinary actions;
19. Complaints against police officers from the Ministry of Interior, sorted according to the organizational units;
20. Remonstrance on the conduct of police officers from the Ministry of Interior, which are not processed in accordance with the Rulebook on processing complaints;
21. Remonstrance which alludes to the corruption of the PD police officers;
22. Statistical overview of events reported by citizens – via police hotline 192, and
23. Logistical activities.[5]

Each of the designated managing officers in charge of his own domain is obliged to keep monthly records, and submit a monthly report from his jurisdiction to the person responsible

4 One can ask a question: How to deliver to the RPD, when their reports originate from PS/PPs? That report is compiled by the PD for all PPs in total (hence the name), based on their own reports. Besides, it is a document pertaining to the police of general jurisdiction.

5 Here we list the set of measures related to: HR related information of organizational units of police, dealing with labour/legal rights derived from police officers' status, follow-up of the plan of supplying necessary equipment, vehicles, material, spare parts and services, equipping the units of police with regular and special uniforms, etc.

for compiling data within the PS/PP, who enters the data in appropriate spreadsheets, thus allowing a complete overview of a PS/PP accessible through various spreadsheets. Each PS/PP delivers its own report and statistical spreadsheets to the PD. The data is rechecked in the PD for inconsistencies, and a summary overview for the entire PD is created, encompassing PS/PPs.

In PDs, the spreadsheets gathered from the PS/PPs are being used as a source of data for reporting purposes to the designated organizational unit of the Sector for Analytics, Telecommunications and IT.[6] Based upon that performance report, PDs create a draft of the plan for the following month, to be submitted to the PS/PPs, for further finalization of agendas for the following month. The advancements of modern IT infrastructure speed up the process of document delivery. Email and electronic documentation management system is being used. Alas, the data processing is still being handled manually in PS/PPs.

Another example of the mentioned interconnection between planning and reporting functions can be observed on the basis of drafting of the following documents:

1. Report of the degree of completion of the monthly work plan for the previous month (based on the above mentioned 22 tables, as well as from the tables originated from DOC management system, i.e. spreadsheets T-12.3, T-13 - T-15.1);
2. Statistical data related to the disciplinary responsibility of police officers in PPs;
3. Report on the monthly commendations for police officers within PS/PPs;
4. Overview of the performed misuses of firearms for the previous month,
5. Specific reports related to the police officers of the PP:

- criminal charges against police officers of the Ministry,
- misdemeanours reported against police officers of the Ministry,
- disciplinary responsibilities, as well as serious and mild breaches of official duty,
- material responsibility of the police officers of the Ministry,
- cease of employment of police officers of the Ministry,

1. Overview of security related activities and events in the vicinity of and in educational institutions (elementary schools and high schools);
2. Overview of achieved results in implementation of special operations pertaining to increased control during regular activities in restaurants;
3. Overview of attacks on religious and sacral objects;
4. Overview of results and measures taken for temporary seizure of firearms;
5. Special records of religious sects and informal social groups' activities;
6. Overview of the results of the cooperation with local administration;
7. Persons found based on wanted lists;
8. Reports about contacts of police officers with the members of the media (interviews and statements);
9. Reports on measures taken during specific operations (i.e. "Corruption").

The above mentioned 14 documents are compiled in PS/PPs. The process of compiling involves the police officer in charge of certain expertise, to manually handle the data during one month and submit them to the administrative worker. He then sorts them in the 14 spreadsheet reports. These reports are delivered to the organizational units of SATIT designated for

6 For instance, if we are talking about PD Smederevo, the designated organizational unit of SATIT is the Department for Analytics, Telecommunications and IT in the city of Kragujevac - Section for analytics and police records for the RPD Smederevo.

analytical tasks of the RPDs. These data are used for the analysis of the performance of the PD. To summarize, the data are first processed in the PS/PPs, then they are combined at the level of the PD, from within one RPD, and subsequently in the organizational units of SATIT in charge of analytical tasks for each RPD. The purpose of the analysis in one PD is to create the following documents: 1) report on the work from the previous month, and 2) drafting the work plan for the following month. The purpose of analysis in the organizational units of SATIT in charge of analytical tasks is compiling a *monthly report,* which is in fact, a report on performance of the entire RPD, as well as all subordinate organizational units (among which is the PD, as well).

Starting from August 1, 2016, submitting of spreadsheets PU 1-9 is mandatory for all RPDs on a daily basis.

The aim of their usage is:

1. To assist the heads of RPDs and other managers of their respective organizational units to adequately direct available resources with the goal of improving the overall security;
2. To provide a clear image on the overall security level in the entire territory of each RPD as well as on the manner and quality of work performed by the police officers;
3. To overcome weaknesses of existing reports which are unclear and have unstandardized data;
4. To systematically track certain activities and operations on a daily, monthly and yearly level, and to facilitate the comparison of these data with the previous period,
5. To automate routine tasks, due to daily input of data, while monthly, yearly and comparative tables represent a compilation of previously entered data;
6. To enable the upgrade and adaptation of spreadsheets for specific RPD or to generate new spreadsheets should the head of RPD find this necessary.[7]

Table 1: *Titles and basic elements of the PU 1–9 reports*[8]

Table	Title
T-1	Criminal offence bulletin
T-2	Arrested individuals
T-3	Overview of the performance of Unit Heads
T-4	Increase of the salary %
T-5	Checked individuals
T-6	Traffic violations
T-7	Misdemeanours
T-8	Administrative affairs
T-9	Vehicles

Criminal offence bulletin is a report indicating the structure and number of criminal offences. In order to use this report, it is necessary to stop using auxiliary register with false data regarding the overall security level, and to stop forging the numbers of criminal offences with known and unknown perpetrators. *Arrested individuals* is a report showing the number of persons held in accordance with various legal provisions, thus providing the data formatted based on the law upon which the individual was arrested. *Overview of the performance of Unit*

7 *Reports*, presentation, Police Directorate, Ministry of Interior Republic of Serbia, Belgrade, 4 July 2016, p. 4.
8 *Ibid*, p. 3.

Heads is the report displaying working hours of the RPD Chiefs on a daily basis. *Increase of the salary %* is the report which demonstrated the list of commended police officers in each RPD on a monthly level. *Checked individuals* is a report stating the list of all persons ran through MoI databases. *Traffic violations* is a report which includes statistical indicators of sanctioned violations according to the Road Traffic Safety Act on a daily, monthly, yearly level, and based on organizational unit. The listed violations are sorted by articles of the above mentioned act, thus providing a clear level of severity of sanctioned violations. Apart from these parameters, one must observe the number of traffic accidents, killed and injured persons, so that even in case of an increase in the number of traffic violations sanctions, together with an increase of the number of traffic accidents and related consequences, that can be a good indicator of ill-placed traffic control. *Misdemeanours* is a report showing statistical indicators of sanctioned violations according to other legal provisions on a daily, monthly and yearly level and based on organizational units. Misdemeanours are sorted by legal provisions since not all of them represent the same level of social threat. This report enables a clear tracking of status of the public order on a daily, monthly and yearly level, as well as of directing the available police resources. *Administrative affairs* represent a report that shows statistical indicators of completed administrative tasks (54 in total) on a daily and monthly level based on organizational unit. Finally, *Vehicles* is a report showing the status and the condition of the vehicles as well as mileage on a daily, monthly and yearly level, sorted by vehicle or organizational unit. This enables various monitoring capabilities. The purpose of this report is to rationalize mileage and to provide optimal exploitation of the car pool of the RPD.[9]

ORGANIZING AS CONTENT OF MANAGERIAL FUNCTION

Within the domain of *organizing*, the managerial activity in the police stations, precincts and other organizational units of police force encompasses: creating and updating the records on job classification and the percentage of occupied positions, evidentiary records,[10] employee lists[11] as well as the auxiliary police officers lists,[12] mentoring work with the students of the Basic Police Training Centre (whose work is being recorded via Professional development files 1 and 2), students of the Academy of Criminalistic and Police Studies (whose work is being recorded via Praxis logbook) as well as with other individuals whose praxis was approved to be held in the Ministry of Interior, interns (recorded via Practical training Report/Form 2a), which upon stamping is inserted into Internship logbook. It encompasses also the continuous training in the work place (practical lessons/Practical training logbook),[13] practical

9 *Ibid*, p. 5–55.

10 Evidentiary record contains certain personal and official information related to the workers of police unit. See more: point 13 *Manual for records keeping within police stations and other units of police, Ministry of Interior,* Belgrade, 1995.

11 Employee list contains: Last and first name, position, address and phone number of a police officer. The list of the members of the SWAT team contains the same data.

12 See more: point 13, 6 *Manual for records keeping within police stations and other units of police, Ministry of Interior,* Belgrade, 1995.

13 Practical lessons logbook contains the data about: educational sessions held in accordance with the professional development program; educational sessions held according to the “Professional development program for police officers”; knowledge check and skills of general and specific nature of PE; knowledge of guidelines and other documents that regulate the work flow of the Police Directorate; seminars beyond the scope of educational program; shooting exercises; roll calls; training and working meetings. In the practical training logbook one states the following: date and time of training session, minutes from the working session, time and date of roll call or other training; subject or working theme: number of attendees, absent due to legitimate reasons and absentees without excuse; name and position of the lecturers. When the practical training is held in two sessions, both sessions are logged, the time and place where it was held, as well as total number of attendees, absent due to legitimate reasons and

shooting exercise (orders to discharge the weapon[14] as well as the shooting logbook[15] which is concluded by noting the summary[16]), physical fitness evaluation, issuance and retracting of official IDs and badges, checking the weaponry and equipment, usage of motor vehicles and communication devices, auxiliary police officers, keeping records regarding all the above mentioned issues, etc.

LEADERSHIP AS CONTENTS OF MANAGERIAL ACTIVITIES

In the domain of *leadership*, the managerial activity in the police stations, precincts and other organizational units of police force includes order-giving and coordinating activities with respect to: creation and updating of orders for carrying out official duties, securing the designated sector, school police officers, on-call services, responding upon official documents and reports of all organizational units of the MoI (the Cabinet of Minister, Sectors, Secretariat, Service of Internal Revision, Criminal Police Directorate, Traffic Police Directorate, etc.), state institutions (National Assembly, the Government, Ministries, etc.) as well as other related organizations (SIA and others), handling files, acting upon orders and other court documents, and the requests made by the Prosecution Office (regarding the collection of necessary information pertaining to criminal offences and amending criminal reports upon which the police officers within the General Crime Suppression Department (existing in every police station) or the heads of various security sectors perform their duties[17]), acting upon letters rogatory, providing police assistance in enforcement cases, general crime suppression. Furthermore, the activity is visible in the operation code name *School, Mask, Car, Forest, Clock, Sport fan, Skinhead, Break, Seeker,* etc., securing public gatherings (including monitoring security related issued of strikes and ceases of work process), SWAT teams, security details of certain individuals, official money transport monitoring (and other material goods when necessary),[18] lectures and public speeches in elementary and high schools on various topics

absentees without excuse in both sessions. Overview of presence to the practical training contains the information regarding the date and type of training session as well as the attendance sheet. The presence is marked with the symbol „+“, absence with the symbol „-“, and leave due to justified cause with a symbol „o“ (point 10 *Manual for records keeping within police stations and other units of police, Ministry of Interior,* Belgrade, 1995).

14 Orders to discharge the weapons represents an order-giving document by which one stipulates the persons required to be on site at all times and their roles (master of shooting range, security of the shooting range, master gunner, ammo supplier, physician and medical technician, if needed and others) as well as the date, time and place of the shooting exercise.

15 Shooting logbook is a document where one is to keep records of shooting for each shooter, which also serves as a receipt for the ammo used.

16 Summary is sentence within the shooting logbook stating the quantity of the ammo used for each shooting practice.

17 Throughout the year there is a high volume of requests by the Prosecutor’s office that are related to a certain police officer, event or criminal offence, so the area of expertise that encompasses this matter is of great importance and takes over large chunk of the scope of one PS/PP operations, significant with respect to the general level of cooperation between police officers and Prosecution office in general crime suppression.

18 Regarding the above mentioned task, it is an obligation of the manager, upon the request presented by specific organization for securing the transport, to compile a safety evaluation, decision, plan, and to submit reports to the superiors, who are obliged to notify the designated organizational units of MoI RS regarding some of the crucial elements of protection detail plan. In lieu with this assignment, within the scope of managerial activities, official records are kept, reports are submitted and other activities are being completed, which are necessary for the performance of income generating activities for the benefit of the MoI RS. The grounds for this income are to be found within the tasks of official protection detail of money transports or other material goods *Regulation on the fees for the services that the Ministry of Interior provides with the aim of generating its own income.*, „Official Gazette of the RS“, No. 65/06

regarding general security issues. Finally, it involves physical technical security, safety checks, official trips and others.

SUPERVISION AS CONTENT OF MANAGERIAL ACTIVITIES

In the domain of *supervision*, the managerial activity in the police stations, precincts and other organizational units of police force envisions: *direct supervision* (monitoring of the security plans, justification and regularity of use of means of coercion, review of sick leaves etc., but also as a control activity: control activities plan, control activities report, control activities overview, roll call and report on roll call), *supervising activities regarding the discipline of the police officers* (reporting logbook, documents of increase/decrease of salary due to disciplinary actions, official proceeding for determining the material responsibility, official disciplinary actions, overview of employee accountability,[19] proposal for commending the officer of the month), *acting upon complaints and remonstrances* (complaints of citizens against the conduct of police officers, remonstrances made by citizens, overview of remonstrances[20]), *record keeping* (logbook of public order violations and other misdemeanours, overview of public gatherings,[21] overview of police powers application, overview of cases of obstruction of police officers in performing security related tasks,[22] program *Use of means of coercion,*[23] program *Records of transfer and detention of individuals*,[24] overview of police assistances provided in the cases of enforcement,[25] overview of found objects,[26] program for records on Court orders,[27] overview of foreign nationals, records of explosions and fires), *reporting* (employee records,[28] timesheets – related to working hours and absences,[29] injuries at work, records of sick leaves and retirement reports, summary of police officers' working hours), monthly report on the performance of organizational unit, reports on activities on security sectors, monthly reports on tasks of school police officers, minutes from monthly meeting, reports marked with highly confidential stamp, individual monthly reports by P-92 (search measures, cooperation with organizational unit in charge of search activities), monthly reports on individual operations (*Seeker, Excise tax* etc.), report of criminal offences or misdemeanours committed against religious subjects, reports of security detail of certain individuals, month-

19 See more: point 42 *Manual for records keeping within police stations and other units of police, Ministry of Interior,* Belgrade, 1995.
20 See more: point 41, *Ibid*.
21 See more: point 26, *Ibid*.
22 See more: point 40, *Ibid*.
23 Program *Use of means of coercion* represents the electronic record keeping system instead of paper one with the same name. A file is created upon the use of means of coercion.
24 Transfer and detention of individuals record is being filled in with the data on detained individuals and other relevant information. A file is created on detained individual containing: decision on detention; receipt on temporarily seized object from the detained individuals; misdemeanour charges; request for initiating misdemeanour proceedings and other related documents. This provisions can be found in the *Manual for records keeping within police stations and other units of police*, but one should also consider what is stated in the *Manual for treatment of transferred and detained individuals* (point 35).
25 See more: point 27, *Manual for records keeping within police stations and other units of police, Ministry of Interior,* Belgrade, 1995.
26 See more: point 28, *Ibid*.
27 It is already mentioned that there is a program *Records on Court orders* so these records are not managed manually, as it was the case with the *Overview of Court orders.*
28 Employee records contain the data regarding: job position, last and first name of the employee, type and the duration of activities as well as leaves of absences, but also expenses and summary of activity. This record is being used for verification of employees' alibis as well as for compiling timesheets.
29 Timesheets is a record formed on the data originating from the work list, to be used for the application of the *Special collective agreement for police officers* with respects to the implementation of provisions regarding salary determination

ly report Form 12a, 12b, and 12d, reports/spreadsheets (criminal offences, misdemeanour reports), reports of residences that are of security interest within different security sectors, report T12.3 – T15.1, etc.

CONCLUSION

Each of the managerial workers in charge of their own fields of expertise are to keep records throughout the month, and to make a final report at the end of the month and deliver it to the officer in charge for local activity in PS/PP. That officer will later enter the data provided by the managerial worker in the above mentioned spreadsheets, thus enabling a complete spreadsheet overview of a PS/PP. Every PS/PP is to deliver its own report and/or statistical spreadsheets to the PD. It is within the mandate of the PD to recheck all the data for inconsistencies and to form the overview for the entire PD, including all PS/PPs of general jurisdiction.

Compiled spreadsheet reports gathered in the PD are used as a source of information for the performance report, which is to be sent to the SATIT organizational unit in charge.[30] Based upon that performance report, PDs create a draft of the plan for the following month, to be submitted to the PS/PPs, for further finalization of agendas for the following month. The advancements of modern IT infrastructure speed up the process of document delivery. Email and electronic documentation management system is being used. Alas, the data processing is still being handled manually in PS/PPs.

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4. *Regulation on the fees for the services that the Ministry of Interior provides with the aim of generating its own income*, „Official Gazette of the RS“, No. 65/06.
5. Vujaklija, M.: *Dictionary of foreign words and phrases*, Prosveta, Belgrade, 1996/7.

30 For instance, if we are talking about PD Smederevo, the designated organizational unit of SATIT is the Department for Analytics, Telecommunications and IT in the city of Kragujevac/ Section for analytics and police records for the RPD Smederevo.

EFFECTIVNESS OF THE SCHOOL POLICE OFFICER PROGRAM[1]

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Abstract: The aim of this paper is to determine the effects of the "School policeman" program that is being implemented in the Republic of Serbia on safety in schools. Data on crime in schools from the official police evidence as well as attitudes collected during the survey of 572 members of school staff are analysed in the paper. The data on crime, based on the results of two-factor analysis of variance, are used to indicate the change of frequency in the number of crimes under the influence of activities of the school policeman. On the other hand, the surveyed respondents stated their opinion on perception of their own safety before and after the school policeman was engaged, as well as the effectiveness of his activities. There has been a significant increase in number of criminal offences in schools in which the school policeman was engaged. Nevertheless, a very high percentage of the surveyed respondents declared that they felt safer after the school policeman had been engaged in schools. There has been no studies that dealt with real effects of police officers' activities in schools in Serbia and wider so far. This paper, based on statistical data (objective indicators) and attitudes of school staff (subjective indicators), reveals that the "School policeman" program has achieved positive effects ensuring the increase of overall level of safety in schools.

Keywords*: school policeman, effectiveness, perception, school, safety.*

INTRODUCTION

In the past decade there has been an increase in socially negative phenomena directly affecting the safety and security of schoolchildren, resulting in increased public awareness of the problem and attention paid to it[2]. In 2007 and 2008, there were about 2,000,000 criminal offenses in educational institutions in the USA, 62% of them in public schools[3]. Certain media overestimated the problem of school violence despite a drop in the rate of such violence at a

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2 Jovančićević, O. i Reljić, L. (2008). Prevencija i rešavanje disciplinskih problema u nastavi. *Nastava i vaspitanje,* god. 57, br. 3, 338–356; Starčević, J. (2009). Činioci i oblici nasilnog ponašanja u školi i moguće preventivne strategije. Nastava i vaspitanje, god. 58, br. 2, 237–252.

3 Stevenson, Q. W. (2011). School resource officers and school incidents: A quantitative study. (Doctoral dissertation), The University of Alabama, Tuscaloosa.

national level[4]. On the other hand, the public attention is not sufficiently drawn to other types of school violence[5] although they are very frequent. The fact that during only one school year of 2009/2010 there were 433,800 serious disciplinary measures implemented in public schools in the USA supports the data about frequency[6].

The problem of violence in schools is widely spread in other countries as well. In Great Britain 6% of teachers declared they had been threatened or attacked in schools, 20% of students in Spain confirmed they had participated in vandalism, and more than 25% of French students were involved in physical assaults[7]. In the last several years, there have been numerous violent incidents recorded among schoolchildren in Turkey[8].

Under the influence of wars in the 1990s, difficult economic situation and social crisis in Serbia, there has been a significant increase of crime and violence. This increase has permeated all segments of social life, and has reflected in schools as well. Young people in Serbia grow up in conditions that encourage aggression (armed national clashes in the recent past, poverty, hooliganism at sports events and the like), and this has led to an increase in crime in schools[9].

POLICE EFFORTS TO IMPROVE SCHOOL SAFETY

Public perceptions of failing, disorderly schools and fears of increased school violence have created demands for the reform of safety measures in schools in certain countries[10]. One of methods for meeting these requests was the presence of the police in schools. Increased presence of the police in schools was first noted in the USA[11], but also in Great Britain, Portugal and in other countries of the EU[12], Serbia[13], Turkey[14] and South Korea[15].

4 Bracy, N. L. (2010). Circumventing the Law: Students' Rights in Schools with Police. Journal of Contemporary Criminal Justice, Vol. 26, No. 3, 294–315.
5 Chrusciel, M. M., Wolfe, S., Hansen, J. A., Rojek, J. J. & Kaminski, R. (2015). Law enforcement executive and principal perspectives on school safety measures – School resource officers and armed school employees. Policing: An International Journal of Police Strategies & Management, Vol. 38, No. 1, 24–39.
6 Shuler Ivey, C. A. (2012). Teaching, Counseling, and Law enforcement functions in South Carolina High Schools: A Study on the Perception of Time spent among School Resource Officers. International Journal of Criminal Justice Sciences, Vol. 7, No. 2, 550–561.
7 Petrosino, A., Guckenburg, S. & Fronius, T. (2012). 'Policing Schools' Strategies: A Review of the Evaluation Evidence. Journal of MultiDisciplinary Evaluation, Vol. 8, No. 17, 80–101.
8 Öğülmüş, S., Pişkin, M. & Kumandaş, H. (2011). Does the school police project work? The effectiveness of the school police project in Ankara, Turkey. Procedia - Social and Behavioral Sciences, No. 15, 2481–2486.
9 Milojević, S., Simonović, B., Janković, B., Otašević, B. i Turanjanin, V. (2014). Youth and hooliganism at sports events. Belgrade: Organisation for Security and Co-operation in Europe (OSCE), Mission to Serbia.
10 Bracy, N. L. (2010). Circumventing the Law: Students' Rights in Schools With Police. Journal of Contemporary Criminal Justice, Vol. 26, No. 3, 294–315.
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15 Brown, B. (2006). Understanding and assessing school police officers: A conceptual and methodological comment. Journal of Criminal Justice, Vol. 34, No. 6, 591–604.

The increased presence of police officers in schools was most often realized through the implementation of special police programs, which Shaw[16] classified in three categories: 1) school-based police officers, 2) police officers as teachers, and 3) programs in which the police and other social institutions worked together with schools. The first group of programs was the most widespread practice. The most famous such programs are School Resource Officers (SRO) – USA, School Liaison Officers – England, Safer School Partnerships – England, The School Agent – The Netherlands; School-Based Policing – Australia[17]. The program that has been implemented in Turkey since 2007[18] and the "School Policeman" program implemented by the Ministry of Interior in Serbia since 2002[19] belong to the same group.

The trend of more intense engagement of school policemen is noted in Serbia, regardless of the fact that safety conditions in schools have remained relatively stable. However, under the influence of media which assessed the situation in schools most attentively, and very often in a sensationalistic way, in 2002, the Ministry of Interior in cooperation with the Ministry of Education introduced school policemen to improve safety conditions. When the "School Policeman" program was introduced, 185 police officers were engaged[20], and in 2014 the number amounted to 354 (Table 1). Together with the increased presence of the police in schools, according to the data of the Ministry of Interior[21], a number of other activities have been undertaken in schools (Table 1) in which police officers have taken part in.

Table 1. Activities of the police in all schools on the territory of the Republic of Serbia

Type of the police activities	Year				
	2010	2011	2012	2013	2014
School policemen engaged	345	343	343	327	354
No. of lectures presented in schools	1960	2125	3004	3359	3294
No. of meetings held with the participants in educational process	2326	1621	2326	2621	2222
Participation in prevention projects and programs in schools	291	207	214	317	285

Although the concept of School Resource Officer (SRO) program is very popular in the USA, policemen involved in this program do not have the same assignments in all federal states. For example, in some places SRO are more focused on building relationships with students, while in others they act as a connection between law enforcement institutions with

16 Shaw, M. (2004). Police, Schools and Crime Prevention: A preliminary review of current practices. Retrieved March 10, 2015 from the World Wide Web http://www.crime-prevention-intl.org/fileadmin/user_upload/Publications/2005-1999/2004.ENG.Police__Schools_and_Crime_Prevention_A_Preliminary_Review_Of_Current_Practices.pdf.
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20 *Ibid.*
21 Ministarstvo unutrašnjih poslova Republike Srbije (2015). Statistički podaci o bezbednosno interesantnim pojavama na području škola, 04/2 br.: 050-4686/15-1, Beograd.

the aim to prevent potential problems[22]. However, the role of SRO is most often understood through the "triad model" which implies that SRO has the role of an advisor/mentor, a teacher, as well as the role of law implementation[23].

Unlike SRO in the USA which has a triple role defined through the "triad model", the role of the school policeman in Serbia is exclusively law enforcement. The school policeman in Serbia does not have a role of a teacher, or a students' advisor. Tasks of the school policeman are defined in such a way that they emphasize the preventive role of members of the police who do the job of the school policeman. Namely, the tasks are directed towards: (1) collection and analysis of data on situations which jeopardize the safety of participants in the process of education; (2) timely informing the immediate superior officer in the line of duty, school representatives or the local community on security-threatening incidents and (3) taking adequate measures to eliminate sources of threat to the safety of participants in the educational process[24]. The school policeman intervenes only when it is really necessary, and in order to protect students and the school property. As in the USA[25], even in Serbia there are neither comprehensive criteria for the selection of police officers who will perform the role of school policemen, nor the manner of conducting their further specific training.

EFFECTIVENESS OF THE POLICE PROGRAMS IN SCHOOLS

The latest research has shown that there is no evidence that the presence of SRO in schools contributes to the decrease of crime and violence[26] while there is an increase of certain forms of crime[27]. On the other hand, some studies have shown that the perception of safety has been on a higher level in schools after the introduction or increased presence of the police. Studies have shown that the presence of SRO reduces fear of crime and increases the feeling of safety in students while in school[28], and that they have a positive opinion about SRO[29]. Also, studies show that employees in schools, principals and teachers have a positive attitude towards the

22 May, D. C., Rice, C. & Minor, K. I. (2012). An Examination of School Resource Officers' Attitudes Regarding Behavioral Issues among Students Receiving Special Education Services. Current Issues in Education, Vol. 15, No. 3, 1–13.

23 Brown, B. (2006). Understanding and assessing school police officers: A conceptual and methodological comment. Journal of Criminal Justice, Vol. 34, No. 6, 591-604; Ruddell, R. & May, D. C. (2011). Challenging our perceptions of rural policing: An examination of school resource officers in rural and urban Kentucky schools. Kentucky Journal of Anthropology and Sociology, Vol. 1, No. 1, 5–18.

24 Bošković, G. i Simić, B. (2004). Iskustva u realizaciji projekata "Školski policajac-prijatelj i zaštitnik dece". Bezbednost, god. 46, br. 5, 761–774.

25 Raymond, B. (2010). Assigning Police Officers to Schools (U. S. D. o. Justice & O. o. C. O. P. Services Eds. Vol. 10). Washington: Department of Justice, Office of Community Oriented Policing Services.

26 Na, C. & Gottfredson, D. C. (2013). Police officers in schools: Effects on school crime and the processing of offending behaviors. Justice Quarterly, Vol. 30, No. 4, 619-650, Chrusciel, M. M., Wolfe, S., Hansen, J. A., Rojek, J. J. & Kaminski, R. (2015). Law enforcement executive and principal perspectives on school safety measures - School resource officers and armed school employees. Policing: An International Journal of Police Strategies & Management, Vol. 38, No. 1, 24–39.

27 Stevenson, Q. W. (2011). School resource officers and school incidents: A quantitative study. (Doctoral dissertation), The University of Alabama, Tuscaloosa.

28 Chrusciel, M. M., Wolfe, S., Hansen, J. A., Rojek, J. J. & Kaminski, R. (2015). Law enforcement executive and principal perspectives on school safety measures - School resource officers and armed school employees. Policing: An International Journal of Police Strategies & Management, Vol. 38, No. 1, 24-39; Raymond, B. (2010). Assigning Police Officers to Schools (U. S. D. o. Justice & O. o. C. O. P. Services Eds. Vol. 10). Washington: Department of Justice, Office of Community Oriented Policing Services.

29 Jackson, A. (2002). Police-school resource officers' and students' perception of the police and offending. Policing: An International Journal of Police Strategies & Management, Vol. 25, No. 3, 631–650.

presence of SRO, believing that they prevent students from bad behaviour and contributes to the reduction of crime[30].

The study into the effectiveness of the "School Policeman" program presented in this paper is founded on the assumption that school policemen perform their duties effectively because of the following: 1) data from the Ministry of Interior of the Republic of Serbia show that school policemen activities lead to a change in the number of criminal offenses committed in schools; and 2) opinions of staff in schools where school policemen are employed confirm an increased feeling of safety because of the effectiveness of school policemen in performing their duties.

SAMPLE AND METHOD

Data were collected in two ways. Statistical data on the number of criminal offences were obtained from the Ministry of Interior of the Republic of Serbia which has records and carries out the statistical processing regarding crime in schools all over Serbia. For the needs of this paper, the sample on which these data were collected was stratified in the following way:

- The data encompassed the period from 2007 to 2014 because the Ministry of Interior of the Republic of Serbia has started separated records on the number of criminal offences in schools with or without a school policeman since 2007;
- The data referred to 5 police directorates – Belgrade, Novi Sad, Pančevo, Smederevo and Jagodina. These police directorates were chosen because the largest number of criminal offences had been registered on their territory in the period from 2007 to 2014;
- The data on the number of criminal offences in schools which participate in the "School Policeman" program and in those who do not were examined in these police directorates.

The sample included 628 schools, out of which 285 were in the "School Policeman" program. The total of 180 police officers are engaged in these schools, bearing in mind that the same school policeman may be engaged in several schools situated in the imminent vicinity. A test method, the survey technique, was used to collect data on perception of school staff on the condition of safety in schools. The total of 572 respondents was surveyed, in schools with school policeman. Spatial distribution of schools in which survey was conducted is equivalent to the spatial distribution of data collected in the Ministry of Interior of the Republic of Serbia.

Bearing in mind that in schools with school policeman, which are covered by the sample, around 22,800 employees works, the interviewed population is a representative sample, with the confidence level of 95%, and the confidence interval of 0, 81. The spatial distribution of the respondents is shown in Table 2.

Table 2. The spatial distribution of the respondents

City	No. of Schools	%	No. of respondents	%
Belgrade	4	21,1	179	31,3
Smederevo	7	36,8	111	19,4

30 May, D. C., Rice, C. & Minor, K. I. (2012). An Examination of School Resource Officers' Attitudes Regarding Behavioral Issues among Students Receiving Special Education Services. Current Issues in Education, Vol. 15, No. 3, 1–13; Öğülmüş, S., Pişkin, M. & Kumandaş, H. (2011). Does the school police project work? The effectiveness of the school police project in Ankara, Turkey. Procedia – Social and Behavioral Sciences, No. 15, 2481–2486.

Novi Sad	2	10,5	144	25,2
Jagodina	3	15,8	73	12,7
Pančevo	3	15,8	65	11,4
Total	19	100,0	572	100,0

The survey was anonymous, and the respondents were given clear and unambiguous instructions on how to fill in the questionnaire. The questionnaire was designed on the basis of similar studies conducted in several countries[31]. Questions related to the feeling of safety in school before and after the introduction of the school policeman, the relationship of the school policeman with school staff and the effectiveness of school policemen work.

The data collected were analyzed using statistical tests: 1) descriptive statistics; (2) $\chi 2$-test to determine differences between answers given by respondents from schools located in different police directorates and 3) two-factor analysis of variance (ANOVA) of different groups to determine the influence of SPOs on changes in the scope of criminal offenses by year and by police directorate.

RESULTS

Two-factor analysis of variance of different groups was used to examine the influence of school policeman (the first factor) and years of occurrence (the second factor – time distribution) on the number of criminal offences done in schools. Time distribution of committing such offences encompassed the period from 2007 to 2014. The influence of interaction between activities of the school policeman and the year of occurrence was not statistically significant in relation to committing criminal offences in schools, $F(7.64) = 0.09$, $p = 0.99$. Statistically significant main influence of the school policeman was determined $F(1.64) = 6.98$, $p = 0.01$, and the influence is mean – partial eta squared = 0.1 (Cohen, 1988). Subsequent comparisons using Tukey's HSD test show that the observed years do not differ significantly. The main influence of the observed years $F(7.64) = 0.55$, $p = 0.80$ did not achieve statistical significance.

Two-factor analysis of variance of different groups was also used to examine the influence of the school policeman (the first factor) and the police directorate in which the offence was reported (the second factor – spatial distribution) on the number of criminal offences that happen in school. Spatial distribution of committing a criminal offence included 5 police directorates – Belgrade, Novi Sad, Pančevo, Smederevo and Jagodina. The influence of interaction between activities of the school policeman and the police directorate where the offence was reported was statistically significant in relation to committing criminal offences in schools, $F(4.70) = 26{,}91$, $p = 0.00$, at which the influence is considerable – partial eta squared = 0.61[32]. Statistically significant main influence of the school policeman $F(1.70) = 36.66$, $p = 0.00$ was also determined, and the influence is considerable – partial eta squared = 0.34[33].

31 Johnson, I. M. (1999). School violence: The effectiveness of a school resource officer program in a southern city. Journal of Criminal Justice, Vol. 27, No. 2, 173–192; May, D. C., Rice, C. & Minor, K. I. (2012). An Examination of School Resource Officers' Attitudes Regarding Behavioral Issues among Students Receiving Special Education Services. Current Issues in Education, Vol. 15, No. 3, 1–13; Öğülmüş, S., Pişkin, M. & Kumandaş, H. (2011). Does the school police project work? The effectiveness of the school police project in Ankara, Turkey. Procedia – Social and Behavioral Sciences, No. 15, 2481–2486.
32 Cohen, J. (1988). Statistical power analysis for the behavioral sciences (2nd edn.). Hillsdale, New Jersey: Lawrence Erlbaum Associates.
33 Cohen, J. (1988). Statistical power analysis for the behavioral sciences (2nd edn.). Hillsdale, New

There is statistically significant main influence for the police directorate in which the offence was reported F (4.70) = 45.56, p = 0.00, and the influence is also considerable – partial eta squared = 0, 72[34]. Subsequent comparisons using Tukey's HSD test show that the observed police directorates are significantly different. Namely, values of the test show that the police directorate of Belgrade and the police directorate of Novi Sad are significantly statistically different from other observed police directorates by the number of committed criminal offences in schools. At the same time, police directorates of Belgrade and Novi Sad do not differ from each other at the level of statistical significance. Likewise, police directorates of Pančevo, Smederevo and Jagodina are not statistically different from one another.

The results of processing answers to the question "Do you feel safer at school now or before the introduction of the school policeman?" collected during survey show that 91.1% of respondents stated that they feel safer after the school policeman had been engaged. The results of χ2- test used to compare answers to this question by the police directorates show that there is no statistically significant difference (χ2 (4, n = 572) = 20.59, p = 0.23).

Likewise, answers of respondents to the question "Assess the influence of the school policeman on the safety in your school," are distributed in the following way: "none" – 3.7%, "poor" – 8.9%, "good" – 57.5% and "very effective" – 29.8%. There is a statistically significant difference among answers of the respondents by different police directorates (χ2 (12, n = 572) = 84.58, p = 0.00), at which Cramer's quotient is V = 0.11 and points to the slight difference.

DISCUSSION

Figure 1 presents the total number of recorded criminal offences in schools in the period from 2007 to 2014 both with the school policeman program and without such arrangement.

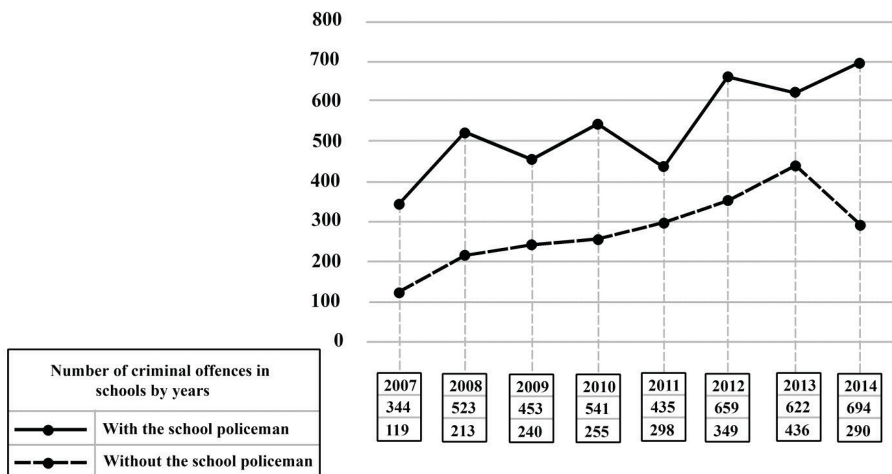

Figure 1. Number. of criminal offences in schools by years in five observed police directorates

Jersey: Lawrence Erlbaum Associates.
34 *Ibid.*

Figure 1 clearly shows that the number of recorded criminal offences is much larger in schools in which the school policeman is engaged, than in those where there is no policeman. The first thing noted observing the results of two-factor analysis of variance of the number of criminal offences committed in schools in time distribution is the fact that there is no statistically significant interaction between the activities of the school policeman and the year of occurrence. At the same time, there is statistically significant main influence of activities of the school policeman. This, in fact, means that the number of criminal offences in school does not depend on the observed year or on the activity of the school policeman in the observed year. This change is influenced solely by the activity of the school policeman.

Figure 2 shows the total number of committed criminal offences in school by the police directorates in which these offences were recorded, namely in schools with a school policeman and in those without.

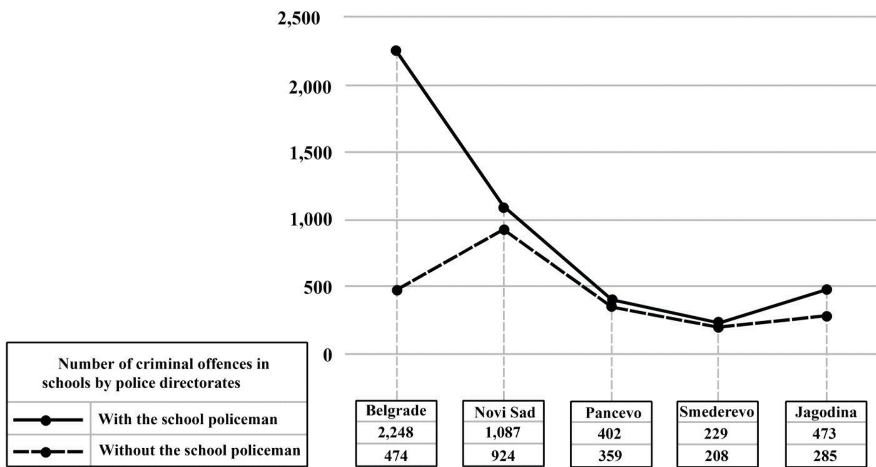

Figure 2. The number. of criminal offences in schools by police directorates in the period from 2007–2014

Figure 2 shows that the number of recorded criminal offences is larger in schools with the school policeman engaged than in those without the one. At the same time, there are clear differences between larger environments (Belgrade and Novi Sad) with a considerable number of such offences. At the same time, the difference in the number of criminal offences done in schools with the school policeman and those without one in Belgrade is much bigger. In other environments that difference is slight or not as much pronounced. Results of two-factor analysis of variance point to the statistically significant interaction of influence of the school policeman and the police directorate where the offence was recorded. This interaction can be explained if we examine the condition of crime by the listed police directorates for the observed period, as well as the analysis of responses given by responders who evaluated the school policeman work.

Figure 3 presents nearly identical trend of distribution of criminal offences by the police directorates such as the distribution of recorded offences in schools where the school policeman is engaged (Figure 2). That means that there is significance of interaction between the school policeman and the police directorate where the offence was recorded; in fact, it

shows that the state of crime in a police directorate is reflected in the safety in schools– the more crime in the territory of the police directorate, the more offences in schools and vice versa. This is confirmed by the result of χ2- test between the number of criminal offences in a school and the total number of criminal offences by the police directorates, which showed the existence of statistically significant correlation between them ($\chi2$ (4, n = 524123) = 334.55, p = 0.000), at which Cramer's coefficient is V = 0.03 and points to the average correlation. Therefore, the state of crime on the total territory of the police directorate is similar to the state in schools, and the image of crime in the police directorate is reflected on schools, which is partially a reason for high statistically significant interaction between the police directorate and activities of the school policeman.

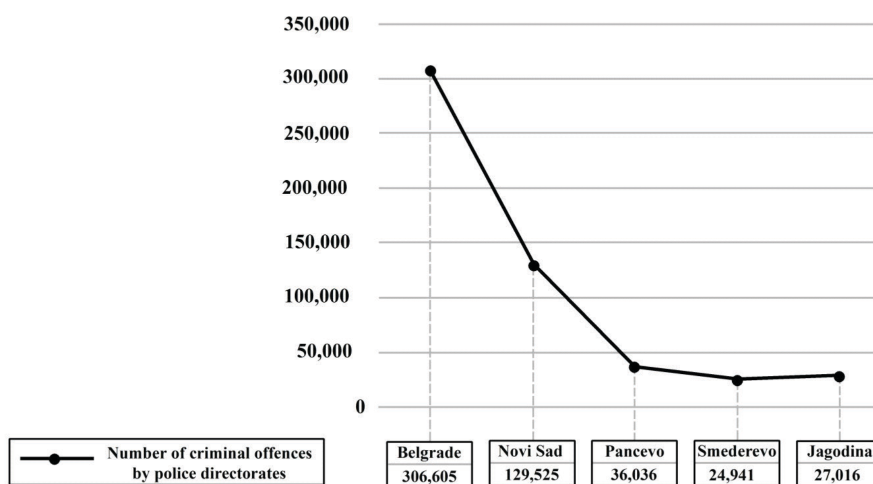

Figure 3. The total number of criminal offences in analyzed police directorates

On the other hand, that significance of interaction also marks the difference in quality and quantity of implemented activities of school policemen in certain police directorates, i.e. difference in the level of training, experience, motivation, dedication, ways of organising work of school policemen and the like. A small, but nevertheless statistically significant difference is shown in responses of the respondents from different police directorates on effectiveness of work of the school policeman. That difference is noted in responses of those from Belgrade and Novi Sad which are significantly statistically different from responses of those from other observed cities. At the same time, Belgrade and Novi Sad are not different on the level of statistical significance. Moreover, Pančevo, Smederevo and Jagodina are not different on the level of statistical significance. This shows that there are differences in quantity or quality of work of school policemen in large cities and smaller city environments. For example, as one school policeman is engaged in several schools, and has no official vehicle available, in large cities he loses a lot of time in public transport, on his way between schools, and has far less time to dedicate himself to solving safety problems in schools. In smaller cities, schools are relatively close to each other, and there is no such restricting factor. Moreover, in large cities schools have much more students, and the school policeman does not have the possibility to get to know them all. In smaller cities, the school policeman knows almost all students of one

school, especially those involved in deviant behaviour. Many such examples can be listed, and all of them may influence the quality and quantity of work of the school policeman.

On the basis of Cramer's coefficients, it can be concluded that there is a moderate influence of reflecting a crime in a police directorate on safety issues in the vicinity of schools and in schools themselves, and that there is a small, but statistically significant difference in quality and quantity of policemen's work by the police directorates. Resultant of these influences represents a big statistically significant interaction of influences of the school policeman and the police directorate where the offence was recorded. Values of F and partial eta squared point to the fact that the influence of the police directorate is stronger in interaction. However, since the main influence is statistically significant in both factors, it cannot be said that there is no significant influence of the school policeman on the number of criminal offences done in school regardless of interaction.

Statistically significant influence of activities of the school policeman on the change of number of criminal offences in their time and spatial distribution can be noted from previous considerations. Based on the above, we can use inductive method to conclude that activities of the school policeman influence the change in number of criminal offences in schools. Results of the analysis show that in schools with an active school policeman there is an increase of number of recorded criminal offences. There are similar results obtained in other studies that the increased presence of the police in schools does not lead to reduction of number of recorded criminal offences, but, on the contrary, certain types of crime are even rising[35].

If the obtained results of this and earlier studies are accepted, that the increased engagement of the police in schools leads to the increase of number of recorded criminal offences, the question we ask is: Why does it happen? There are two possible explanations for this increase. First of all, it can be concluded that the increase in number of recorded criminal offences is actually the consequence of the school policeman's activities that uncovers such offences, records them and solves them. Although at the first glance, without more profound understanding of the obtained results it seems that the state of crime is getting worse in schools in which there is a school policeman because the number of offences is increasing, it is actually the opposite – by revealing and solving these offences and recording them, the school policeman positively influences safety conditions in schools in which he is engaged. Such conclusion corresponds with the results of studies carried out in the USA[36] that states that official statistics obtained from the state bodies can mislead the researcher because they show the increase of crime. Also, the increase in number of criminal offences happens because delinquent activities were sanctioned by teachers and school administration which treated them as the breach of school rules in the past and now school policemen deal with these problems recognizing them as crime. These attitudes are in line with previous qualitative research[37], which determined that the presence of the police in schools leads to the fact that disciplinary sanctions are redefined as a problem of criminal law and not a social, psychological or educational problem.

Brown[38] provides another explanation which relates to the possibility that policemen in schools may manipulate with their reports on committed criminal offences to create a per-

35 Na, C. & Gottfredson, D. C. (2013). Police officers in schools: Effects on school crime and the processing of offending behaviors. Justice Quarterly, Vol. 30, No. 4, 619–650; Stevenson, Q. W. (2011). School resource officers and school incidents: A quantitative study. (Doctoral dissertation), The University of Alabama, Tuscaloosa.

36 Brown, B. (2006). Understanding and assessing school police officers: A conceptual and methodological comment. Journal of Criminal Justice, Vol. 34, No. 6, 591–604.

37 Kupchik, A. (2010). Homeroom security: School discipline in an age of fear: NYU Press

38 Brown, B. (2006). Understanding and assessing school police officers: A conceptual and methodological comment. Journal of Criminal Justice, Vol. 34, No. 6, 591–604.

ception in the public and their superiors that they do their job effectively, so as to justify additional financing of the crime prevention program in schools, as well as to show that their further engagement is necessary. Bearing that in mind, we should consider the fact that the effect of work of police officers in the Republic of Serbia is measured on the basis of number of recorded and solved criminal offences. In accordance with that, the increase of number of such offences in schools with the active police officer engaged can be interpreted as their attempt to exaggerate by presenting false numbers to show their effectiveness and successfully solved tasks given to them within the "School Policeman" program. The presented explanation can be denied by the results of the survey of the school staff on the effectiveness of school policemen. Similar research was carried out in Turkey[39], where 80.69% of the surveyed teachers stated that the school policeman does his job effectively, as well as in the research in the USA[40], where 76.5% of the surveyed school staff stated that SRO effectively influences the safety in schools. We should add results of the survey carried out for the need of this study which show that a very large number of surveyed respondents (87.3% cumulatively) declared that the school policeman does his duties effectively. This provides the foundation to reject the possibility of manipulation with the number of committed criminal offences because it cannot be applied for the Republic of Serbia.

Results of the survey clearly show that a vast majority of respondents feel safer after the introduction of the school policeman and that such an attitude is not statistically different in cities in which the survey was conducted. Together with objective effects confirmed by previous analyses, this shows that engagement of the school policeman subjectively influences participants in education process making them more secure about their own safety. As Jackson[41] points out, the school policeman has completely fulfilled one of the most important tasks during his engagement in schools, and that is improvement of citizens' perception about the police.

Therefore, since both objective and subjective indicators of the effective policeman work have been proved, it can be concluded with the great reliability that the "School Policeman" program effectively influences the state of safety in schools.

CONCLUSION

Special police programs directed towards the increase of safety in schools have evolved from a few experimental programs in certain countries to permanent programs that have been carried out all over the world. These programs can certainly help in overcoming safety problems in schools, although they cannot be an individual part, but only a constitutive part of the overall police work undertaken outside schools. At the same time, police work must be a part of comprehensive efforts of the whole society on increasing the level of safety, especially safety in schools.

Results of the study show that the number of discovered criminal offences has increased several times, but not because of lack of safety, but because the school policeman was introduced. This points to the fact that the "School Policeman" program is a model which certainly has positive effects on the safety in schools because the activities of school policeman include

39 Öğülmüş, S., Pişkin, M. & Kumandaş, H. (2011). Does the school police project work? The effectiveness of the school police project in Ankara, Turkey. Procedia – Social and Behavioral Sciences, No. 15, 2481–2486.

40 Johnson, I. M. (1999). School violence: The effectiveness of a school resource officer program in a southern city. Journal of Criminal Justice, Vol. 27, No. 2, 173–192

41 Jackson, A. (2002). Police-school resource officers' and students' perception of the police and offending. Policing: An International Journal of Police Strategies & Management, Vol. 25, No. 3, 631–650.

gathering evidence and solving cases which in school environment without him are qualified as a mere breaking of schools rules. Moreover, results of the study point out that the "School Policeman" program is a good model which, together with the function of protecting participants in educational process from crime and violence, has also the function of improving confidence of citizens in the police because of the increased level of safety in schools in students, school staff and parents.

Although the "School Policeman" program has positive effects, the Ministry of Interior of the Republic of Serbia has encountered a line of problems during its implementation. As a priority, it imposes the problem of economical implementation of the program. Therefore, the fact whether there is a real need for engaging policeman in a certain school should be carefully examined, i.e. the real indicators which should direct us to the need of engaging a school policeman should be determined. Does every school need a school policeman? Probably not. Therefore, it is necessary to define clear criteria on the basis of which police officers may be engaged in schools, i.e. parameters that would unambiguously define where the "School Policeman" program should be implemented.

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THE FORMS OF SPECIAL KNOWLEDGE USAGE IN THE RUSSIAN JUDICIAL PROCEEDINGS

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Abstract: The use of special knowledge is the work of knowledgeable persons involved in the process by order of persons conducting legal proceedings or carrying out other jurisdictional activities. A feature of this type of activity is its interprocess nature. This activity is characterized by a number of features, including an external form, as it proceeds in a certain form. The article contains the opinions of scientists on the classification of forms of special knowledge usage in Russian legal proceedings. A conclusion is made about the importance of classifications for the development of scientific thought and practical activity. Authors identify the forms of special knowledge usage, common to all types of legal proceedings. So, there are forms of procedural use of special knowledge, the main of which is judicial examination, in addition to which there are also the interrogation of an expert, the specialist's involvement in the production of investigative and judicial actions, and expert consultation. Non-procedural forms of using specialized knowledge may also affect proceedings, but there is no legislative regulation concerning them nor does the law give the results of their use the meaning that results from the application of procedural forms. Among such forms, non-judicial (alternative) examinations are allocated and specialist consultations are given to the parties. Non-procedural forms are of particular interest in the sense that the results of their application by an expert (specialist) may be involved as certain evidence that forms the internal conviction of the participants in the case of persons and of the court. The above forms of the use of special knowledge in Russia are the ones that are most frequently used. Many of them have legislative regulations, however, in spite of this, their use leads to difficulties and problems that need to be addressed, both by improving their legislative regulation, and by training, improving the skills of law enforcement officers, involving specialists and experts in legal proceedings.

Keywords: forms of use of special knowledge, judicial examination, specialist participation, specialist consultation

INTRODUCTION

The use of special knowledge is the activity of knowledgeable persons involved in the process by order of persons conducting legal proceedings or carrying out other jurisdictional activities. A feature of this type of activity is its interprocess nature. Its characteristic features include the following: activity proceeds within the framework of a certain procedural form, in stages, within time intervals, in a certain sequence, under certain conditions and involving

specific participants. Activity always appears in a certain form, it has an external expression. In addition, the institute for the use of special knowledge is also expressed in alternative dispute resolution, for example, in the mediation, arbitration proceedings and some others. The Institute for the use of special knowledge is a set of legal norms regulating public relations in the sphere of the use of special knowledge in legal proceedings and other jurisdictional activities, which is interprocess, special and complex, acting as a complex legal entity, including procedural integrated institutions and sub-institutions.

1. Classification of the form of special knowledge usage in legal proceedings: scientists' opinion

The allocation of forms of special knowledge usage is necessary to eliminate the problems of the practical implementation of the actions that constitute the activity for the use of special knowledge. Under such forms, it is necessary to understand the various external expressions of the cognitive (including evidentiary) and certifying activity of the subjects-participants in legal proceedings or other jurisdictional activities, depending on the classification criteria, which have their own purpose and ways of implementation.

In Russian legal proceedings, the procedure for the proceedings in the case as a whole and for individual procedural actions, as well as the requirements for procedural documents, is usually called procedural form. The procedural form is based on the system of principles of the process, the separation of procedural functions and ensures their implementation of the legal process in due process. The form of procedural regulation includes an indication of the purpose of the action, its participants, their rights and responsibilities, the sequence of actions, fixing the action in the relevant document and its requisites.

The scientists have paid attention to the question of the forms of using special knowledge. For example, V. I. Shikanov believed that eight forms of using special knowledge are known to our criminal procedure: 1) the direct application of special knowledge by the investigator, the prosecutor, the composition of the court, i.e. functionaries of procedural activity, who, in accordance with Art. 70, 71 of the Code of Criminal Procedure(CCP) are in charge of collecting and evaluating judicial evidence; 2) use of special knowledge of competent persons without involving them in participation in investigative actions (consultations, receipt of various kinds of certificates on special issues); 3) use of the results of non-judicial (departmental, administrative) investigations, as well as the results of studies of individual objects that were conducted in the course of these investigations or under other conditions (for example, the results of a pathological and anatomical study of a corpse); 4) the use of special knowledge of knowledgeable persons who are called to perform the procedural functions of a specialist (Article 133-1 of the Code of Criminal Procedure); 5) the use of special knowledge of knowledgeable persons who are involved in performing the procedural functions of a forensic (judicial) expert (Article 78 of the Code of Criminal Procedure); 6) the use of special knowledge of translators and persons who understand the signs of the deaf or mute (Article 57 of the Code of Criminal Procedure); 7) the appointment of an audit in accordance with the procedure provided for in Art. 70 CCP; and 8) the production of technical or other surveys[1] at the instructions of an investigator or a court.

Most authors agree on the division of the forms of using special knowledge into procedural and non-procedural. Thus, I. N. Sorokotyagin writes that in the process of conducting an inquiry, preliminary investigation and trial of a criminal case, the bodies of inquiry, the investigator, the prosecutor and the court are obliged to use special knowledge in the follow-

1 Shikanov, V.I. Actual issues of criminal justice and criminalistics in the conditions of modern scientific and technological progress. Irkutsk, 1978.P. 25, 26; Shikanov, V.I. The problems of using special knowledge and scientific and technical innovations in criminal proceedings: Dr. jur. Sciences. Irkutsk, 1980, p. 39.

ing forms: a) the participation of specialists (Article 133 of the Criminal Code of the RSFSR), b) the production of expertise (Articles 78.79, 80, 71, 82, 184-194 of the Code of Criminal Procedure of the RSFSR). Analyzing the civil process, I.N. Sorokotyagin noted that the legal institute for the use of special knowledge provided for two forms of implementing the achievements of science: in the form of expert conclusions (articles 74-78 of the CCP of the RSFSR) and the conclusions of the state administration bodies (art. 42)[2]. However, according to V. V. Yarkov, the analysis of the CCP and judicial practice gives grounds to single out one more form - in the form of a conclusion of specialists[3]. However, the procedural codes of the USSR and the Civil Procedure Code of the Russian Federation did not envisage the participation of a specialist as a subject of the civil process. The only mention of engaging a specialist is found in the GPC of the Lithuanian SSR, Article 64 and Article 201 provides for involving a specialist in on-site inspection[4].

E.R. Rossinskaya, E.I. Galyashina, A.M. Zinin believe that the procedural forms of using special knowledge, when the results of their application have evidentiary value, include: the use of special knowledge in the conduct of investigative or judicial actions; the use of special knowledge in drafting protocols on administrative violations and reviewing cases of administrative violations by members of collegiate bodies and officials; consultations and expert opinions; production of judicial examination[5].

According to E.V. Selina, the criminal procedure for the use of special knowledge is the system of rules for the application of special knowledge of knowledgeable persons in a certain way in the preliminary investigation and trial of criminal cases, fixed in the criminal procedure law. Such forms, in accordance with the Code of Criminal Procedure, include: judicial examination, the participation of a specialist in investigative actions and judicial proceedings, respectively, to assist in the detection, securing and seizure of items and documents, the use of technical means in the investigation of criminal case materials, raising questions to an expert, competently explaining to the parties and the court certain issues, as well as participation in the criminal trial of a psychologist, a teacher and an interpreter[6].

Depending on the subject of the use of special knowledge, the modalities of its use can be divided into: the use of special knowledge by order of the investigating authorities and the court; the use of special knowledge on the initiative of persons participating in the case (in the terminology of civil and arbitration proceedings); the use of special knowledge by the defense party in the criminal proceedings and the person against whom the proceedings are being conducted in the case of an administrative offense and his counsel and/or representative; the use of special knowledge by the victim and his representative. These forms are important for studying and regulating the legal status of the subjects involved in the process of using specialized knowledge.

E.A. Zaitseva believes that the most interesting issue is the classification of the forms of special knowledge in criminal proceedings on regulatory regulation. She believes that the procedural form of applying special knowledge is characterized by: the normative regulation, which is provided by the current criminal procedure legislation, the results of their applica-

2 Sorokotyagin, I.N. Criminalistic problems of the use of special knowledge in the investigation of crimes: doctoral dissertation in legal sciences. Yekaterinburg, 1992, p.401.

3 Yarkov, V.V. Communication specialist in the civil process / Application of expertise and other forms of special knowledge in Soviet legal proceedings. Sverdlovsk, 1984, p.105.

4 Sorokotyagin, I.N. This work ... P.23.

5 Rossynskaya, E.R. Theory of judicial expertise (The science of judicial expertise): textbook / E.R. Rossinskaya, E.I. Galyashina, A.M. Zinin; Ed. E. R. Rossinskaya. 2nd ed., Revised. And additional. M.: Norm: INFRA-M, 2016, p.16.

6 Selina, E.V. The use of special knowledge in the Russian criminal process: doctoral dissertation in legal sciences. Krasnodar, 2003, p.20.

tion appear as independent types (sources) of evidence (except for the participation of an interpreter), specifically provided for by the criminal procedure law - expert opinions and testimony, witness testimony. In this regard, the procedural form of using special knowledge includes: a) the appointment and production of judicial examination; b) the participation of a specialist in investigative and other procedural actions (rendering of scientific, technical and consulting assistance to persons conducting criminal proceedings and lawyers by a specialist); c) the participation in the criminal proceedings of witnesses with special knowledge (competent witnesses); d) the participation of an interpreter in the proceedings[7]. The non-procedural form is characterized by regulation in federal laws, departmental orders and instructions, the results of applying special knowledge are formalized in the form of acts provided for by federal laws (for example, auditor's conclusion) or departmental orders and instructions (expert's certificate, forensic medical examination certificate, audit certificate) which are involved in the sphere of criminal procedural evidence and used solely as other documents (or evidence documents) Art. 84 Code of Criminal Procedure. In this regard, the non-procedural forms, according to E.A. Zaitseva, can include: a) conducting preliminary (pre-examination) studies; b) forensic medical examinations; c) conducting documentary tax audits; d) appointment and production audits; d) conducting audits; e) carrying out of inventories; g) conducting non-judicial (including alternative or independent) examinations; h) conducting departmental investigations, etc.[8]

The given opinions of the authors on the separation of forms of use of special knowledge may indicate the use of different criteria (grounds) for classification, although, in fact, the separation should be carried out when these criteria are used together. The criteria of "the evidentiary value of the results of application of special knowledge" and "regulatory regulation (fixation)" should be taken into account together with each other, as they are closely interrelated, reflect the form and content of the classification for this reason. That is, the criterion of "evidence value of the results of application of special knowledge" is responsible for the content side of the classification, and the criterion of "regulatory regulation (fixation)" — for the formal one. The importance of this classification cannot be overemphasized for science and practice, it is expressed in the construction of a rigorous, well-established system within which it becomes clear which form of special knowledge is used for which purpose, which subject - the carrier of special knowledge - applies knowledge within this form and what its legal status is, what is the result of application and usage of particular form.

The special knowledge in procedural form is used to obtain information of evidentiary value.

1) *Classification of the form of special knowledge usage depending on the mandatory participation of a competent person.*

In Russian legal proceedings, there are actions that, according to the provisions of the law, the investigator or the court cannot perform in the absence of a knowledgeable person. Additionally, there is a link with the evidentiary value of the form of using special knowledge. Depending on this feature, the forms of use of special knowledge are divided into the following: mandatory participation of a forensic expert (forensic examination), compulsory participation of a specialist, compulsory participation of an interpreter (sign language interpreter), compulsory participation of a teacher and (or) a psychologist; recommended participation of the competent person in the investigation (for example, art. 179, part 3 of article 184, part 5 of article 185, part 7 of article 186 of the Criminal Code) and judicial actions (for example, articles 287 and 288 of the Code of Criminal Procedure, Part 2 of Article 58, part 2 of Article

7 Zaitseva, E.A. The concept of development of the Institute of judicial examination in the context of adversarial criminal proceedings, doctoral dissertation in legal sciences. Moscow, 2008, p.205.
8 *Ibid*. p.205.

81, Art.183, 184, 185, 186, 188 and other articles of Civil Procedure Code, art. 87.1.1 of the Code of Administrative Procedure); Permissible participation of a competent person in investigative and judicial actions (art.168, p.3 part 1 art.53 of the Code of Criminal Procedure, art.162 of the AIC, art. 74, 164,166, 169 CAS RF).

It should be noted that in Russian procedural legislation there are provisions that establish cases of compulsory participation of a competent person - a specialist or an expert - in conducting an investigative or judicial action. So, in the Code on Criminal Procedure of the Russian Federation these are the following cases:

- mandatory appointment and production of forensic examination (art. 196 CCP RF);

- mandatory participation of a specialist in investigative and judicial actions (Article 178, ch.9.1 st.182, p.3.1 st.183, 290 CCP RF);

- compulsory participation of an interpreter in investigative and judicial actions (art.18, 59,169, 263. 310, 389.13 of the Code of Criminal Procedure of the Russian Federation);

- compulsory participation of a teacher and a psychologist in investigative and judicial actions (articles 91, 280, part 3, article 425 of the Code of Criminal Procedure).

In the Civil Code of the Russian Federation, as well as in the agrarian and industrial complex of the Russian Federation, there are no cases of compulsory participation of a specialist, but there is a mention of the mandatory appointment and production of judicial examination when deciding whether to recognize a citizen as legally incapable (Article 283 of the CCP). CAS RF, following these codes does not regulate the mandatory appointment of a forensic examination. However, in some categories of cases, expert opinions received by the parties in the pre-trial order (Article 246 of the CAS RF) should be submitted. In the legal proceedings of the Russian Federation, experts and specialists are indicated as subjects whose special knowledge is used by law enforcers.

2) *Procedural forms of special knowledge usage*

There are a number of forms of procedural use of special knowledge, the main of which is forensic examination.

1) Forensic examination. This procedural form is fixed in all procedural codes (CCP, CCP, AIC, Administrative Code, CAS). The essence of the forensic examination consists of the analysis, on the instructions of the investigator, the inquirer, the court, the person conducting the proceedings in the administrative violation case, an expert (expert) of the material objects of examination (physical evidence), as well as various documents for the purpose of establishing the factual data, which are important for the proper resolution of the case.

The expert acquires procedural status from the moment he receives the decision on the appointment of a forensic examination, becomes the subject of rights, duties and is responsible for his actions. Based on the results of the research, the expert draws up an opinion, which is one of the types of evidence provided for by law.

2) Another procedural form of using expert expertise is the interrogation of an expert (fixed in all procedural codes - CCP, AIC, CAO, CAS).

Interrogation of the expert can be conducted only after the forensic examination is made and its content forms information about the actions of the expert on the production of forensic examination.

3) The procedural form of application of special knowledge is the involvement of a specialist in the production of investigative and judicial actions (this form has also been consolidated in all procedural codes - CPC, CCP, AIC, Administrative Code, CAS), where the specialist uses this knowledge and skills to assist in detection, fixation and seizure of

items and documents, the use of technical means, as well as assisting in raising questions to the expert and gives explanations to the parties and the court on matters falling within his professional competence.

In some cases, the specialist does not only provide assistance, but almost independently receives information in the process of producing the investigative action. Such actions include, for example, the examination and monitoring and recording of telephone and other negotiations carried out in criminal proceedings. Although Article 186 of the CCP RF does not say anything about such specialists, in item5, part 3 and part 4 of this article it is stated that the resolution on the necessity of control and recording telephone and other negotiations is sent to the appropriate body.

The information about the facts established by the expert and his explanations are recorded in the record of the investigative or judicial action.

The participation of a specialist in procedural actions is specified for some cases specified by law. In particular, these cases include:

- participation of an interpreter (sign language interpreter) in the processes, enforcement proceedings and activities of a notary;

- participation of a teacher and a psychologist in the interrogation of a minor.

The participation of competent witnesses as an independent procedural form, despite the fact that it is proposed by some authors, has been only provisional so far, since the legislation does not allocate a competent witness as an independent participant, unlike a witness in the general sense. However, no law contains a ban on interrogation of a person who possesses both special knowledge and information relevant to the circumstances of the case. At the same time the advantage of reliability, quality and value of the witness testimony of a competent witness in comparison with a witness who does not possess special knowledge and who does not have the opportunity to assess the circumstances about which he has some information using special knowledge is obvious.

4) Consultation of a specialist is presented in accordance with Russian legislation both in oral (Part 2, Article 188 of the Civil Procedure Code of the Russian Federation, Part 2 Article 81.1.1 of the APC of the RF), and in written form (Part 2, Article 188 of the Civil Procedure Code of the Russian Federation, 1 st.169 CAS RF).

In the criminal procedure (Part 3, Article 80 of the Code of Criminal Procedure), there is a kind of evidence designated as a conclusion of a specialist, but we believe that in this case it is also a question of consulting a specialist, since the legislator introduced terminological confusion by applying one term to two different phenomena. In our opinion, expert advice includes judgments, answers to questions posed to him by the court and persons participating in the case, presented by a specialist without conducting a research. In this definition, what is implied, according to the analysis of a number of provisions of the Criminal Procedure Code of the Russian Federation, is the legislator, calling it "the conclusion of a specialist". Explanations of a specialist represent information communicated to them in the process of questioning or providing technical or other assistance, clarifying the issues put to the expert by the court and persons involved in the case. The expert's explanations received from him during the interrogation are called expert testimony. So clarifications of the specialist are the concept of a smaller volume and are to some extent included in the consultation of a specialist.

In Chapter 25 and 26 of the Code of Administrative Offenses of the Russian Federation, nothing is said about expert advice, although this, of course, does not mean that it does not have a function in the proceedings for administrative offenses. So, for example, part 2 of article 29.7, as well as part 2 of article 30.6 of the Code of Administrative Offenses of the Russian Federation specifies that "when the case of an administrative violation is continued

... the expert's explanations are heard". Considering that explanations and explanations of a specialist are terminologically included in the concept of "specialist consultation", it can be concluded that the Code of Administrative Offenses of the Russian Federation allows such a function. However, due to the defectiveness of the legislative machinery, it does not regulate its implementation properly.

The oral form of obtaining specialist advice is realized in the legal proceedings of Russia through interrogation.

3) *Non-procedural forms of special knowledge usage*

Non-procedural forms of using specialized knowledge are those for which there no legislative regulation or the law does not give the results of their use the meaning that results from the application of procedural forms.

Such forms include non-judicial (alternative) examinations. This form finds its consolidation in some laws currently in force, for example, the Fundamentals of Legislation on Notaries, as well as in draft laws, such as "On Notaries and Notarial Activities". We also believe that this form should be fixed in the federal law "On Enforcement Proceedings in the Russian Federation", since, in fact, it already has a place in the enforcement proceedings when assessing the debtor's property.

Non- judicial (alternative) examinations can be conducted in order to obtain data for legal proceedings. For example, preliminary studies, audits, inventories, tax audits and audits that are non-judicial (alternative) examinations are held in the Russian criminal trial to obtain data on the signs of a crime.

The difference between judicial and non-judicial (alternative) expertise follows from the procedure for their appointment, the persons initiating the research, but, in general, should not differ in the nature of the research and the legal status of the expert.

In the non-procedural form, specialist advice can also be obtained. Basically, this is a consultation that the expert gives to the defense counsel - in the criminal proceeding before the initiation of proceedings in the case, to the persons participating in the case - in civil cases and arbitration without applying to the court, and also in cases before the commencement of the proceedings.

Non-procedural forms are of particular interest in the sense that the results of their application by an expert (expert) may be involved as certain evidence that forms the internal conviction of the participants and the court.

CONCLUSION

The above mentioned forms of the use of special knowledge in Russia are the ones that are most frequently used. Many of them have legislative regulations; however, in spite of this, their use causes difficulties and problems that need to be addressed, both by improving the legislative regulation, and by training and improving the skills of law enforcement officers who engage experts and experts in the legal proceedings.

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THE USE OF GROUP DECISION MAKING METHODS FOR MAKING DECISIONOF POLICE OFFICERS ON PREVENTING OR INTERRUPTINGPUBLIC ASSEMBLY IN THE REPUBLIC OF SERBIA

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Abstract: Public assemblies in the Republic of Serbia are regulated by the Law on public assembly adopted in 2016. Police officers have the legitimacy, if certain criteria are met, to prevent or interrupt assembly before or during its duration. Decisions on prevention or interruption of public assemblies are often made without legal explanation and without methodological base. In police organizations, most decisions are taken by a group work. Decision theory recognizes several methods that can be used for this decision-making process, such as Delphi, panel, brainstorming and others. Those methods are used in many areas that recognize a group decision making process, including the area of safety and policing. In the process of decision making on the prevention or interruption of public assembly in the Republic of Serbia usually a team or a group of police officers participate. The use of modern group decision making methods can be of great benefit in the decision-making process aimed at prevention or interruption of public assemblies. In this way we can minimize the possibility of errors and distortions of freedoms of citizens in the form of public assemblies.

Keywords: organizational change, performance, indicators, police officers, resistance

INTRODUCTION

Public assemblies in the Republic of Serbia are defined by one main law, but also have basis in the Serbian Constitution and few bylaw documents. In the Constitution public assembly, or more precisely the freedom of it, is defined as one of the main human rights. Citizens may assemble freely. Assembly held indoors shall not be subjected to permission or registering. Gathering, demonstrations and other forms of assembly held outdoors shall be reported to the state body in accordance with the law. Freedom of assembly may be restricted by the law only if necessary to protect public health, morals, and rights of others or the

security of the Republic of Serbia.[1] Based on this definition, some public assemblies should be restricted in case when negative impact occurs on people, material and cultural heritage. Also, it is precisely defined in the Constitution that the state body has to get official report about organization of public assembly before it starts. This state body are organizational units of the Ministry of Interior of the Republic of Serbia that have responsibility for police jobs of general jurisdictions. The organizational units are regional police departments and police stations which belong to them. After getting the report for public assembly, chiefs of regional police departments and police stations make decisions about the maintenance of a public assembly. Usually, they make decisions individually or with one or two colleagues. Sometimes, the decisions about prevention or interruption of public assemblies should be wrong. In the decision-making process only law and few bylaw documents are taken into consideration. It is correct procedure, but public assemblies are very complex for security and safety jobs which should be undertaken by police officers. The easiest way is to make restriction and prohibit some unsafe public assembly. But, after that police officer who made the decision about prohibition could be a target of the public and media. Also, another problem occurs when the decision is made about freedom of public assembly and during assembly security threats happen. So, it is very hard to expect from one or two persons to make an effective decision about public assembly. On the other hand, modern decision theory provides different methods which should be used in many areas. Managers realize that without decision methods appropriate decisions cannot be made. Also, in difficult situations, usually when it is necessary to decide about strategic goals or how to make reorganization, one or two persons could not finish this process adequately. In these cases management of a company forms a group of experts who are employees. This group have a task to make decision and usually has limited time to complete this task. In this regard, the group will use group decision making methods to make the decision which will create high results for the company in the future. In the Republic of Serbia companies which have private owners or are part of international organizations use concepts of group decision making methods in everyday activities. On the other hand, state body institutions very rarely accept decision making methods, especially those which are intended for group works. Police jobs usually need to be solved by a group of people, such as the duties connected with public assemblies. So, in this paper the authors will try to present the benefits of use of group decision making methods to prevent or interrupt public assemblies in the Republic of Serbia.

THEORY OF GROUP DECISION MAKING PROCESS AND METHODS

Many authors have tried to define the process of decision making. According to Harris "decision making is the study of identifying and choosing alternatives based on the values and preferences of the decision maker. Making a decision implies that there are alternative choices to be considered, and in such a case we want not only to identify as many of these alternatives as possible but to choose the one that best fits with our goals, objectives, desires, values, and so on."[2] So, at the start of this process there are so many alternatives and at the end only one should be chosen. The chosen alternative, from many of them, needs to fit the defined criteria. Maybe it sounds very simple, but in many cases there exists pressure or many restrictions. Decision makers have never had easy situation to decide which alternative will make the highest profit for the company, for example. During decision making process, they will try to satisfy

1 Constitution of the Republic of Serbia article 54 ("The Official Gazette of RS", No. 98/2006)
2 Harris, R., (1998). Introduction to Decision Making, VirtualSalt

different sides. For example, top management of a company orders a chief of one organizational unit to decide how many people will be fired. This person will have extremely hard task to make decision who those people are. He or she will have pressure from top management from one side, and also from the staff on the other side. Based on this definition, conclusion should be made that police officers in the Republic of Serbia are sensitive category in safety and security system faced with hard decision making processes every day. One example for previous conclusion is making decision about freedom of public assemblies.

In many cases there are groups of people who try to choose the best solution from many alternatives. This process in decision theory is known as group decision making. The first condition for starting of this process is to have a group of people with the same task – to make decision about some topic. But, without some method it will be very confusing to finish this process in an appropriate way. Group decision is usually understood as aggregating different individual preferences on a given set of alternatives to a single collective preference. It is assumed that the individuals participating in making a group decision face the same common problem and are all interested in finding a solution. A group decision situation involves multiple actors (decision makers), each with different skills, experience and knowledge relating to different aspects (criteria) of the problem. In a correct method for synthesizing group decisions, the competence of the different actors to the different professional fields has also to be taken into account.[3] So, a group starts to work with the same problem. This problem can be report for organizing public assembly. Usually, the participants of the group are people with different opinions. This characteristic is very useful. Somebody will ask why it is useful, especially in the area of safety and security. The area of safety and security in the last few years is very complex for work. It includes police organization as one very important holder of this system. On the other hand, it is not possible to expect from one person, who works in complex environment, to make appropriate decisions in every situation. It is better to make a group which will be responsible for decision making. It is not necessary to use this practice for every problem. Only when some complicated problems occur. Also, it is expensive to gather a group for every decision making process. Many decisions should be made only by one person. However, when assumed that consequences of bad decision will be huge for an organization, it is better to a make group of people who are competent for topic which needs decision. One more question occurs when a group starts with decision making process. Can they work without any method? Practice shows that some groups do not want to use any method when they make decision. At the end of the group decision making process we cannot expect the required results without a method. In order to optimize group decision making process, decision theory found a few methods which can help during it. Some of them are:

- Brainstorming,
- Nominal group method,
- Parallel comparison method,
- Sorting card method,
- Panel method,
- Delphi method.[4]

In many cases when police officers need to make decision about prevention or interruption of public assemblies, the listed group decision making methods should be beneficial. For

3 Fulop, J., (2002). Laboratory of Operations Research and Decision Systems, Computer and Automation Institute, Hungarian Academy of Science

4 Čupić, M. and Suknović. M., (2008). Decision making. Faculty of organizational sciences. Belgrade, p.362.

sure, it is not possible to use those methods in this area in their full theoretical form, but with some modifications they can be useful.

INSTITUTIONAL FRAMEWORK AND THE ROLE OF POLICE OFFICERS IN THE PUBLIC ASSEMBLIES IN THE REPUBLIC OF SERBIA

The situation with public assemblies in the Republic of Serbia was not defined precisely a few years ago. From October 23, 2015, to February 5, 2016, freedom of assembly was partly regulated by other laws (Public Order and Peace Law, Criminal Code, Public Order and Peace Act or the Road Traffic Safety Act). However, the system of notification was not regulated by any law.[5] It was a big problem for many actors who are involved in organization and protection of public assemblies. Without adequate laws and bylaws there occurred many obstacles for freedom of public assemblies. Also, there were many abuses.

In order to solve many problems connected to organising public assemblies, the Serbian Parliament adopted the Law on public assemblies early in 2016. This Law is harmonized with the Constitution of Serbia. Previous Law was outdated and needed to be modified to suit the present time. So, the only acceptable solution was to adopt a new Law. Which changes does the new Law bring? For the purpose of this paper the changes are very important which indicate institutional obligations for many tasks related to public assemblies. First of all, the Ministry of Interior of the Republic of Serbia is the most important state institution responsible for public assemblies. The Ministry of Interior has the main role in maintaining of assemblies. The affairs of protection of safety of persons and property, security of the Republic of Serbia, the protection of public health, morals, protection of the rights of others and all tasks related to the maintenance of assembly, are conducted by the Ministry of Interior. Police officers are entitled to submit the misdemeanour charges to the Misdemeanour court. The Ministry of Interior receives notifications, decides on banning gatherings, and decides on appeal. The Administrative Court is entitled to issue the judgment on the legality on final administrative decision.[6] In addition to those institutions, the Constitutional Court is included as well as the municipalities where public assemblies will be organized. The Constitutional Court has a task to decide about appeals of the organizer of public assemblies who complains about freedom of public assemblies. Municipalities have a role to decide about location where public assembly will take place, and they are obliged to provide communal services. According to previous experiences the new Law on public assembly is more restrictive than the old Law in terms of notification of assembly and misdemeanour proceedings. The new law prescribes that assembly must be notified about five days before the date it is scheduled at the latest and misdemeanour sanctions are much higher in the new Law, comparing to the old one. It also prescribes sanctions both for organization (legal person) and responsible person in organization (natural person).[7] The old Law describes that assembly has to be notified to the police station 48 hours before it.

Also, in this part of paper, it is important to emphasise which type of assemblies are actual in the territory of the Republic of Serbia. During elections, which are very frequent at this territory, political parties organize offensive campaigns. The important part of these campaigns are public assemblies where parties gather people who are their supporters. Statistics shows that this kind of assemblies are the most common in the Republic of Serbia. In the second

5 WESTERN BALKANS ASSEMBLY MONITOR PROJECT: Freedom of assembly in Serbia, 2016.
6 Ibid.
7 Ibid.

place are the assemblies organized by trade unions. Situation in the Republic of Serbia, as in the whole world, is affected by economic crisis. So, labour or trade unions combat for the rights of workers. For example, a few months ago police and army labour unions united their members and organized a few public assemblies near the building of the Government of the Republic of Serbia. They wanted better conditions for police and army officers. These assemblies are the examples of calm and peaceful assemblies. On the other hand, sometimes there are assemblies organized by trade unions in the course of which there appear many problems regarding safety and security because police officers need to react and probably interrupt the assembly. Public assemblies which start to appear in the territory of the Republic of Serbia, especially in the Belgrade as the capital city, are the public assemblies of nongovernment organizations and human rights assemblies. Human rights assemblies, especially public manifestations of LGBT activism, create many security problems at the territory of the City of Belgrade. Since 2014 Pride, LGBT assemblies were fully organized, with collaboration and negotiation with the Ministry of Interior and the National Assembly committees. They included key political stakeholders as supporters of high risk gatherings. Independent institutions gave support in the process of organizing and through direct participation in gatherings.[8] There are also public assemblies for women's rights which were organized a few times in Belgrade. And finally, there are many public assemblies with different reasons, from which we need to mention public assemblies and protests because of wars on the territory of the ex-Yugoslavia.

HOW TO USE GROUP DECISION MAKING METHODS IN THE POLICE OF THE REPUBLIC OF SERBIA WHEN MAKE DECISIONS ABOUT PUBLIC ASSEMBLIES

After describing theory of group decision making methods and institutional framework which is actual in this area it is necessary to provide information on possibilities of real use of group decision making methods in everyday work of police officers when they are obliged to decide about preventing or interrupting public assemblies.

When do the main problems about public assemblies in the Republic of Serbia occur? Firstly, in situations when the Ministry of Interior prevents or bans a public assembly. According to the official data, during 2014, 16 assemblies were prohibited. Media mainly reported on the banned assemblies. Most assemblies were banned because they might obstruct the traffic, be threat to public health, public morality or security of people and property, while some were banned because they were aimed at causing and inciting national, racial and religious intolerance and hatred.[9] We can conclude that there exist many reasons based on which police officers can prevent public assemblies. Similar reasons are connected with interrupting of public assemblies. However, police organization has many problems with different public groups, such as media, nongovernmental organizations and similar. They conduct strong campaigns with the goal to prove that police officers in these situations made mistakes and endangered human rights. As a consequence of those campaigns negative opinions appear in the public about the work of police officers. In order to increase positive opinions about the work of police officers, the management of police organization in the Republic of Serbia should think how to improve the process of decision making in many areas, especially regarding public assemblies.

8 Ibid.
9 Ibid.

Practice shows that when organizer of public assembly, regardless of what kind of gathering we speak about, submits a report to police station one person or a small number of people decide about freedom of it. Is it normal to expect from these people to make appropriate decisions for every kind of public assembly? The answer is negative. They are not experts for different types of public assemblies. All types of public assemblies have their respective special characteristics which have to be taken in consideration during the process of decision making. Some are potentially dangerous for normal traffic more than for property of citizens, while some of them are very important to be organized and some can be banned. In any case, we recommend to form a group of police officers who are the most competent for the reported public assembly. For example, when some police station in the Republic of Serbia, which has territorial jurisdiction, gets the report for organizing a public assembly, the chief of the police station should form a group of police officers who will be obliged to make the appropriate decision within the legal deadline. Then, they will have the first meeting where they have to make the appropriate decision about the organization of the reported public assembly. They can use some of group decision making methods to facilitate the process of decision making. On the other hand, it is not possible to expect from them to use all of the group decision making methods listed in the previous part of this paper. Some of them could be used, while others are not so applicable in this part of police jobs.

First of all, brainstorming, as one of group decision making methods, is very useful when police officers have a task to decide about organization of some public assembly. Brainstorming is a quick and easy way to generate novel ideas for problem solving and innovation. Responding to a single, specific problem or question, participants in a brainstorming session express their suggestions or ideas quickly and spontaneously, without much processed thought or reflection. Free association and building on the ideas of others are encouraged; criticism and censorship are forbidden. The assumption is that the greater the number of ideas generated, the greater the chance of producing a novel and effective solution.[10] May this group decision method be used when police officers must decide about allowance for organizing public assembly? The answer is yes. Territorially responsible organizational unit of police in Serbia has got a report about potential public assembly in the territory where it is in charge. The Chief of the police station with his assistants, based on law, has to make decision to ban or not public assembly. For some small and simple public assemblies there is no need to organize meeting where the decision will be made about the previous topic. But, in many cases police officers who are in charge of deciding about public assemblies have pretty hard work. Media and non–government organizations immediately start to monitor how they will decide and make big pressure. For the previous reasons, we recommend initial meeting where there will be all police officers who can be engaged in order to make the appropriate decision about a public assembly. During this meeting brainstorming should be used, as a group decision making method which will be helpful for police officers. One person will facilitate this meeting and lead this method. At the start of the meeting he or she will explain the details about further public assembly. Then, this person will request from all police officers attending this meeting to propose their ideas and also to mention all potential problems which could occur before, during and after the public assembly. All ideas are valid and there are no restrictions. It is useful to write all ideas and in this case the problems which some of police officers mentioned. In order to make the final decision it is important to cluster and process ideas and problems. At the end of brainstorming optimal decision is expected which will not jeopardize someone's rights. Maybe in some situations this method was used, but not in its original form. Certainly, brainstorming should not be some official method for solving these police duties. But it can help in order to avoid potential mistakes. Also, some persons should be trained how to lead this method when it is used.

10 Arivananthan, M., (2015). Brainstorming (Free-flowing creativity for problem-solving). UNICEF

Also, Delphi and panel method, which are similar with brainstorming, should be used when there is a need to decide about a public assembly. The Delphi method is based on structural surveys and makes use of the intuitive available information of the participants, who are mainly experts. There is not one Delphi methodology but the applications are diverse. There is an agreement that Delphi is an expert survey in two or more "rounds" in which in the second and later rounds of the survey the results of the previous round are given as feedback. Therefore, the experts answer from the second round are not under the influence of their colleagues' opinions.[11] Panel method starts with short description of the problem and then active discussion follows. All ideas will be generated and written on one panel in order to solve the problem. Discussion will be continued with combination of all ideas. Irrelevant ideas will be eliminated. The most interesting will be grouped for further consideration and discussion continues. Finally, three base ideas will be chosen and by voting the most interesting and useful will be selected.[12] These methods are very similar with brainstorming, but have some differences. They can be used, especially Delphi method, when it is necessary to decide about some public assembly by experts who work in police organization. When is there a need to engage experts whose opinion is very important about decision to prevent and ban public assembly or not? This is the situation characteristic for assemblies with the main themes as political demonstrations, war on territory of ex-Yugoslavia, LGBT gatherings and similar. It will be useful to have meetings at high level of police organization and by Delphi method insist from all high ranking police officers to recommend options in order to protect people, material and cultural heritage during assemblies.

All previous refers to process of decision making before public assemblies. It is time period when a responsible police organization has to make decisions about prevention of public assembly. On the other hand, many public assemblies make security problems while they are in progress. There are many examples in recent history when police organizations in the Republic of Serbia had to react during a public assembly. It was especially during the LGBT assemblies. The data show that public manifestations of LGBT activism were problematic until 2014. The Government banned Pride parade in 2009, 2011, 2012 and 2013 for security reasons. The 2010 Pride was held, but with a lot of problems with extreme groups who attacked the attendants in spite of high police protection.[13] In these situations the responsible police officers, who lead actions during the assemblies, have to make very prompt decisions about potential interruption of assembly. In many cases they do not have time to organize a meeting where they will use some of the mentioned group decision making methods. Also, when huge security problems occur during a public assembly, it is expected that the Minister of Interior will make a prompt decision whether to interrupt the public assembly or not. On the other hand, there is one possibility to use some of group decision making methods about the interruption of a public assembly. We recommend organizing of headquarters during the public assembly. The members of headquarters will be high ranked police officers from different organizational units that are involved in the organization of assembly. Also, the Minister or some of secretary of state should be part of this headquarters. The headquarters has to follow complete assembly and in case it is necessary to decide about the interruption of the public assembly. This is an opportunity to implement some of group decision making methods, but only those which should help to make an effective and prompt decision. For example, a short version of brainstorming is possible to apply. All members of headquarters will give recommendations within their responsibility how to solve the problem. At the end of the session, the chief of headquarters or the Minister will make the final decision.

11 Cuhls. K., (2008). Delphi method. Fraunhofer Institute for Systems and Innovation Research, Germany

12 Čupić, M. and Suknović. M., (2008). Decision making. Faculty of organizational sciences. Belgrade, p.363.

13 WESTERN BALKANS ASSEMBLY MONITOR PROJECT: Freedom of assembly in Serbia, 2016.

CONCLUSION

Group decision making methods are widely acceptable in many different areas. Nowadays, many organizations recognize why it is important to include several people with different opinions in a situation when it is important to make an appropriate decision. On the other hand, the police organization in the Republic of Serbia often has to decide about many public assemblies with different themes for gatherings. Responsibility for these decisions is expressed. Also, the public make big pressure about the decisions for freedom of public assemblies. In order to facilitate this process police officers can use group decision making methods. By them, responsible police organizational unit can make better decisions and reassure the public that the decision is still in the hands of one person. Also, during one meeting, using group decision making methods the opinions of different organizational units may be obtained which will be engaged for security organization of public assembly. Mistakes should be minimized and organization which depends on the police can also be better using brainstorming, Delphi or panel method. Group decision making methods cannot be the official way for public assembly's decisions, as part of laws or bylaws. These methods should be recommendations for police officers to use them in case of necessity. Especially, this refers to chief of police stations who are most commonly in situations to decide about some public assembly. Also, the management of the Police Directorate should be familiar with group decision making methods. In many documents, where analysis is made of freedom of public assemblies in the Republic of Serbia, it is mentioned that "in terms of the effectiveness of legal protection, it was emphasized that there was no constitutional and legal basis to prescribe a different decision-making procedure to ban a public gathering on the basis of case specific reasons to limit the freedom of assembly".[14] Currently, group decision making methods should be only recommendations for making decisions before and during public assemblies. Police officers who are in charge of these decisions should have some training for different methods of decision theories, as are group decision making methods.

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MOTIVATORS IN THE WORK OF POLICE OFFICERS

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Abstract: Motivation is one of the important factors in the work of police officers, therefore its neglect can have negative consequences for the police organization itself and the users of their services. Good motivation influences the readiness of police officers to invest maximum ability and effort to achieve the goals of their organization. The essential feature of stimulating motivation is undertaking an activity that will aim to achieve the satisfaction of an employee by an adequate valuation of his/her current and past work, which ensures his/her willingness to exert high levels of effort in the future. Employees in an organization differ from one another, so the motivators that are moving them differ as well. In professional literature, motivation is considered to be the topic of "everything about which is written", and therefore less attracts the attention of the researchers, while practitioners, knowing that due to the economic crisis and increasingly intense budget constraints little can be done about this problem, focus their attention on other priorities in their work. In this regard, the paper highlights the topicality of the motivation problem, points to some of the most important motivators in our police practice, emphasizes the problems that undermine their effectiveness and make recommendations in order to improve the current situation.

Keywords: police officers, motivation, motivators, wages, police reform.

INTRODUCTION

The necessity of daily, continuous and sustained police work requires that police officers perform duties and tasks within their competence during the day, night, weekends, holidays, in different atmospheric conditions (rain, snow, high temperatures), most often working according to one of the systems of "rotational" shift work. Bearing in mind the aforementioned specificities of the police profession, it is clear that the efficient work of the police officer requires good motivation. It positively influences the willingness of police officers to invest a maximum of their abilities and efforts at all times, as well as to use the available knowledge and skills to achieve the goals of the police organization (Milić, 2010: 123).

Motivation refers to the willingness of an individual to show a high level of effort in achieving organizational goals, conditioned by the ability to meet individual needs (Robbins, Coulter, 2005: 392). Motivation is a broad and complex phenomenon that is often defined in science as a "set of processes that encourage, direct and maintain human behavior to a goal" (Greenberg, Baron, 1988: 15). Motivation in organizations implies a process in which the aspirations of employees to achieve personal goals are linked to the organization's aspirations to

achieve its (organizational) goals (Stevanović, 2012: 222). The essential feature of stimulating motivation is undertaking an activity which will aim to achieve the satisfaction of an employee by adequately valuating his/her current and past work, which ensures his/her willingness to exert a high level of effort in future work.

Factors that motivate employees, but also managers, to achieve organizational and personal goals are particularly numerous and are commonly referred to as motivators. Motivators can be divided into: 1) internal (intrinsic), and 2) external (extrinsic). Intrinsic motivators are incentives whose source lies in the inner satisfaction or fulfillment of a person in relation to the work he/she performs (e.g., a sense of satisfaction after a well-done job, a sense of respect and appreciation by colleagues and superiors, enjoying the work, the challenges it generates, the feeling of competence and the like). Extrinsic motivators relate to incentives that come from the work environment (organization) and relate to rewards (money and other rewards, better working conditions in terms of a larger office, use of a company car, etc.), or punishment (e.g., the possibility of losing job or salary due to poor performance).

Taking into account the importance of motivation for performing any activity, including the police one, as well as the consequences that its lack may have on the efficiency of the work of a police organization, the paper investigates the influence of the salary, the system of remuneration for the achieved results (increase in salary coefficient), the possibility of promotion and job satisfaction (the attitude of the manager to the police officer, working conditions and the condition of the basic means of work), as the most important motivators in police practice, points to the problems of their practical application and gives recommendations aimed at improving the current situation.

THE NECESSITY OF CONTINUOUS MONITORING OF POLICE OFFICERS MOTIVATION

An inadequately motivated police officer will not be interested in using the knowledge and skills he/she has at his/her disposal, for example, to detect and resolve a security issue in the area where he/she is in charge, and if he/she does so (for example, under threat of disciplinary responsibility), this will be done in a way of not getting into the essence of the problem (situation) on the occasion of which he/she acts. Citizens cannot expect assistance and support in protecting their personal and property safety from such a police officer who may possess high professional knowledge and skills but is deprived of any initiative and creativity.[1]

Bearing in mind the importance of motivation for effective policing, each police organization should periodically review the level of motivation of its police officers, identify factors that show their positive or negative impact on motivation, and take measures and actions that will address the observed problems in a timely manner. Such tasks are, as a rule, placed under the responsibility of organizational units for human resources management.

An integral part of these efforts there must be an anonymous surveying of police officers, followed by interviews with their managers on identified problems and possible ways of resolving them. However, in our police practice, such research is missing, and when done, as a rule, it is done by "external" subjects, most often workers of scientific-research institutions directly or indirectly dealing with problems in the security sector, aimed at publishing their scientific works. Research undertaken by the employees of the Ministry of Internal Affairs

1 Fernando Capellan, the founder of GrupoM, engaged in the production of clothing in many countries of the third world, on the importance of employee motivation, said: All that we give to workers is returned to us in terms of efficiency, quality, loyalty and innovation, it is simply smart business (Robbins, Coulter, 2005: 391).

(hereinafter MIA), as a rule, is carried out in the context of the preparation of seminar papers, master, specialist or doctoral thesis or other obligations imposed by the study programs they have enrolled for the purpose of their education. Apart from being sporadically undertaken, these studies are of partial character (for example, they include only the members of a particular organizational unit), which prevents the creation of a complete picture of the (non)existence of the problem of motivation and its phenomenological and etiological characteristics. If it is added that the results of these studies usually do not become the object of attention of (strategic) managers in the police organization, who by the nature of their position may initiate a change in the current situation, the necessity to pay greater attention to the problem of motivation in the current reform of the MIA becomes apparent.

In the research conducted by the authors in 2011, which was significantly related to the motivation of police officers, on a sample of 415 police officers of the general jurisdiction police from the two largest police administrations in the MIA of the Republic of Serbia, the Police Administration for the City of Belgrade and the Police Administration Novi Sad,[2] when asked the question: *Are you motivated enough to do police work?*, more than half of the respondents (56%) said they were insufficiently or very little motivated. If we add 18% of respondents who are not motivated at all, we can conclude that almost 3/4 of police officers do not use the maximum of their abilities to protect the rights and freedoms of citizens (Table 1).

Table 1. *Motivation of police officers*

Offered answers	*Number of respondents*	*Result in percentage*
1. I am sufficiently motivated	*107*	*26%*
2. I am not sufficiently motivated	*143*	*34%*
3. I am very little motivated	*91*	*22%*
4. I am not motivated at all	*74*	*18%*
Total	***415***	***100%***

The structure of the answers provided points to the need for a more serious approach to viewing the motivation problem in police practice. The unsatisfactory material position of the police officers was also indicated 12 years ago in a part of the study "*Police and Pre-Criminal and Previous Criminal Proceedings*". In the concluding observations of this study, it is concluded that the material status of the police is such that it disables any meaningful action in its reform (Banović, 2005: 385).

In recent years, there has been no research into motivation in police practice. In professional literature, motivation is considered to be the topic of "everything about which is written", and therefore attracts the attention of the researchers less, while practitioners, knowing that due to the economic crisis and increasingly intense budget constraints little can be done about this problem, focus their attention on other priorities in their work.

2 Out of the total number of respondents, 260 police officers worked in the territory under the Police Administration of the City of Belgrade (62%), while 155 police officers interviewed worked in the Novi Sad Police Department (38% of respondents). The research included the following police stations in the Novi Sad Police Department: Stari grad, Detelinara, Klisa, Petrovaradin, Liman and Futog, and three police stations in the Police Administration of the City of Belgrade: Zemun, Stari grad and Novi Beograd.

BASIC MOTIVATORS IN POLICE OFFICIALS

Good motivation leads to the creation of a sense of belonging to a police organization. In this regard, police officers should be enabled to work in a positive atmosphere, that their work is adequately valued and rewarded. Otherwise, they will tend to "do" the job, trying to get intellectually, creatively and emotionally engaged as little as possible. In such cases, police officers cannot be expected to provide citizens with adequate protection of rights and freedoms.[3]

In order to raise motivation, different motivators are used, which can be divided into material and non-material. In the context of domestic police practice, the most significant influence on the motivation of police officers belongs to the following motivators: salary level, career prospects, job satisfaction and salary coefficient increase. The individual impact of these factors in practice is often very difficult to distinguish (for example, the level of salary affects job satisfaction, promotion results in higher salary which leads to higher job satisfaction and the like).

The level of salary, that is, the total amount of monetary earnings arising from the performance of tasks at a certain position, according to many is the strongest motivator.[4] In the survey conducted in 2011, the respondents were required to rank the most important motivational factors (salary, extraordinary promotions, job satisfaction and monetary rewards in the form of monthly salary increases) by priority.

Table 2. Ranking of motivation factors

Motivation factors	*Number of respondents*	*Result in percentage*
1. Salary level	*266*	*64%*
2. Promotion opportunities	*35*	*9%*
3. Job satisfaction	*27*	*6%*
4. Salary coefficient increase	*87*	*21%*
Total	***415***	***100%***

In response to this question, two-thirds or 64% of the respondents indicated money (salary level) as the strongest motivation factor, while one-fifth of the respondents, or 20%, indicated the increase in the salary coefficient as the most powerful motivation factor. A small number of respondents 35 (9%) and 27 (6%) pointed out the possibility of promotion and job satisfaction as the most important motivators. Ranking of the motivators in the above-mentioned way clearly shows that money or salary is the most important, i.e. the most important motivator for police officers (Table 2).

When asked question: *Are you satisfied with the earnings (salary) in the police*?, the majority of police officers surveyed (72%) answered not to be satisfied with the salary in the police, while 18% of the respondents belong to the category of neither satisfied nor dissatisfied respondents. Only 10% of the respondents are satisfied with the salary in the police (Table 3).

3 Searching for the best ways to motivate employees to perform tasks and achieve goals, with the appropriate reward, numerous motivation theories have arisen. The most famous theories are Maslow's theory of the hierarchy of needs, Herzberg's theory of "hygienic motivation", Theory of Justice, Theory of Expectations and Theory of Set Objectives. See more about these theories: (Maslow, 1954), (Herzberg, Mausner, Snyderman, 1959), (Greenberg, Baron, 1988), (Vroom, 1954), (Latham, Locke, 1979)

4 Earnings other than salary may include different bonuses, salary increments, and the like.

Table 3. Satisfaction with earnings in the police

Offered answers	*Number of respondents*	*Result in percentage*
1. I am very satisfied	19	4%
2. I am satisfied	23	6%
3. I am neither satisfied nor dissatisfied	74	18%
4. I am not satisfied	299	72%
Total	**415**	**100%**

The influence of money on motivation, that is, its significance and universal power in meeting the needs of people are much higher than previously believed (Stevanović, 2012: 223). Salary is often an indicator of status, reputation, significance which an individual has in the organization and it may, but not necessarily, be a measure of the work effort invested. Although the most common, salary is not the only form of material compensation for the work effort invested. In addition to salary, some organizations also use paid days off, a company car for use, medical treatment costs, and the like.

INCREASING SALARY COEFFICIENT

Aware of the unquestionable and proven high strength and impact of money as a motivator, almost all successful organizations in modern conditions develop specific systems of stimulating (motivational) rewarding of workers (Stevanović, 2012: 223). Managers in police organizations can increase the employee's basic salary coefficient for an additional achieved work contribution that significantly exceeds the standard of the regular level and the quality of work engagement. As salary increase can be a significant motivator, in the same way its reduction (e.g., punishment) can have significant effects on the work and commitment of a police officer.

PROMOTION

The ability to progress on the basis of accomplished merits in work positively influences the motivation and encourages the police officers to achieve better results in their work. Otherwise, the promotion of incompetent and inefficient police officers diminishes the motivation and productivity of the police officers and sends a message to employees that the expertise and results achieved are not as important as favoritism.

JOB SATISFACTION

In addition to the appropriate (fair) valuation of the employee's work, other factors also affect satisfaction with one's job. In the context of this paper, we will focus our attention on two: 1) The attitude of a manager to a police officer - respecting an employee, involving him/her in decision-making, consulting about matters from the scope of his/her competencies, experiences and the like can be a significant motivational factor.

An important motivational factor, which affects the job satisfaction of a police officer is also receiving feedback, which conveys the message that work and commitment are noticed and valued. Without feedback employees get the impression that although they work they "are not treated better than the ones who do not work", which ultimately leads to a loss of motivation. Providing feedback, along with an objective (fair) evaluation, are two important non-material motivators that create an organizational climate that "protects workers and punishes non-workers".

2) Job satisfaction is greatly influenced by working conditions and the state of basic means for work (uniform), company vehicles, radio connections, computer equipment, office furniture, and the like. Representatives of various police unions have been pointing to the poor working conditions and the poor condition of basic means for work.[5]

In a survey conducted in 2014, in all 27 police administrations of the Ministry of the Interior of the Republic of Serbia, 359 police officers, in the positions of managers in the Administration/Police Department (department chief, deputy chief, head), in PS (commander, deputy commander and assistant commander) and officers in the Administration/Police Department, were asked to answer the question: *Are you satisfied with the material status in the police and the condition of the basic means of work (uniform, vehicles and other equipment)?*

Table 4. Satisfaction with earnings and basic means for work

Offered answers	*Number of respondents*	*Result in percentage*
1. I am not satisfied with the material status or the condition of the basic means of work	330	92%
2. I am satisfied only with material status	29	8%
3. I am satisfied only with the conditions of the basic means of work	0	0%
Total	359	100%

Most of the respondents, 330 of them (92%), are not satisfied with the material status of the police and the condition of the basic means for work. None of the police officers are satisfied with the condition of the basic means for work (Table 4). In this survey, respondents were given the opportunity to provide proposals and suggestions for improving the organization and work of the police. This option was used by only 35 of the 359 respondents. Out of 39 respondents, 30 of them in the first place indicated the need to improve the material position of police officers.

Poor motivation and dissatisfaction with job are one of the main causes of "migrations" of police officers within the police organization, from lower paid jobs to more paid jobs, which is confirmed by the fact that some vacancies are difficult to fill (for example, for a number of years in the Police Administration of the city of Belgrade there has been a lack of police officers who would work in the community support or patrol activity), while at the same time

5 Some police stations are located in prefabricated buildings, whose expiration date expired long ago. Due to the lack of financial resources, police stations are not renovated or have never been renovated, because of which the roofs are leaking, the windows are not sealed, and the like. They do not have conditions for normal work. Company vehicles are not renewed, they are in poor condition, they are driven with summer tires in the winter, while, on the other hand, some individuals have a company car continuously available for 24 hours undeservedly. Police officers sent to southern Serbia to secure the administrative line are placed in containers, often without water, electricity and basic hygiene conditions.

there is pressure for filling vacancies in other organizational units or lines of work with higher salaries (criminal police, special units, Gendarmerie, and others). In the survey conducted in 2011, the question was asked *Do you think about moving to another organizational unit with better working conditions or higher salaries?* Most respondents (45%) answered that they were thinking about it (27% for better working conditions, + 18% due to better pay = 45%), while a significant number of them (36%) intended to do so if working conditions and salaries in their workplaces were not to be improved in the recent times (Table 5). The fact that 80% of surveyed police officers are willing to leave their own line of work and go to some other organizational units can be a significant indicator of motivation in the police organization. As such "migrations" can easily endanger the normal functioning of the police organization, preventing the transfer of police officers to other lines of work is resorted to. Such a situation additionally demotivates police officers, who becomes even less interested in the job that they are doing.

Table 5. Transfers to another organizational unit with better working conditions and salary

Offered answers	*Number of respondents*	*Result in percentage*
1. Yes, I am thinking of moving to another organizational unit where only the working conditions are better.	110	27%
2. Yes, I am thinking of moving to another organizational unit where only the salary is better.	76	18%
3. I do not think about moving to another organizational unit, regardless of working conditions and salaries.	78	19%
4. If the working conditions and salary do not improve, I would like to move to another organizational unit	151	36%
Total	**415**	**100%**

THE APPLICATION OF MOTIVATORS – CURRENT SITUATIONAND POSSIBILITIES OF IMPROVEMENT

Salary is today considered the main and most important motivator of the employees in an organization. This is understandable if one takes into account the fact that money meets the greatest number of human needs, whereby we should not ignore other motivators that have a significant impact on the creation of "will" for a better and more productive work (e.g., better working conditions, improvement opportunities, promotion opportunities, etc.).

However, the problem of money as a stimulus is usually that higher salary in the police is often not entailed by greater commitment or more quality work, it is mainly a consequence of the linear increase in the basis for payment by salary grade coefficient, years of service, which is more an award for loyalty; it must be an investment in the future behavior of police officers who are expected to give their contribution in carrying out specific security tasks.

In a police organization, an assessment of work was done for each workplace, based on which salary grades for all categories of employees in the Ministry of Interior were developed.

On the basis of thus made salary grades, certain categories of police officers who perform not so important tasks for the police organization have higher earnings in relation to police officers who perform essential, complex and responsible police tasks.[6] For example, a warehouse clerk in some organizational units has a higher monthly salary if compared with a commander of the police station of the first category. Education, work complexity, responsibility, knowledge, and everyday stress of these two categories of employees are incomparable. It should also be noted that such a situation is possible when the adequate monetary (material) valuation of work does not necessarily lead to an increase in the motivation of a police officer, but on the contrary, it can lead to its decline. For example, in a situation where two police officers (employed within the same or different organizational units within a police organization) are paid differently to perform the work of the same importance and complexity.[7]

From these examples, we conclude that in a police organization the assessment of the work of police officers and their valuation was not done in the right way. Precisely because of the different valuation of work, for years there have been pressures for filling vacancies in other organizational units with higher salaries. The problem of unequal earnings was the subject of discussion, disapproval, and dissatisfaction of police officers and managers who perform more complex and responsible jobs, but with lower salaries than other police officers. For this reason, in the reform process of the MIA in the forthcoming period, it is expected that all police officers with the same workplace will have equal salaries (for example, a warehouse clerk in the police administration and the one in a special unit should have the same monthly salary).

Police officers expect the correct evaluation of the monthly results of work and the rewarding of police officers who have achieved above-average results.[8] However, instead of the hard-working ones, in practice, there are cases of rewarding the privileged ones (for example, those who have good relations with the manager, etc.). Rewarding privileged workers, either with money or a better status in an organization, reduces work motivation and hence overall productivity and improvement of the work process. Awarding and promotion of police officers to better and hierarchically senior positions should be based exclusively on the work results and adequate professional qualifications. The awarding and promotion of incompetent and inefficient police officers cannot only reduce the motivation of other police officers, but as Vuković observes, can also lead to the manifestation of dissatisfaction of police officers towards citizens, and thus to the reduction of citizens' confidence in the police (Vuković, 2004: 97).

For many years, advancement in the police was based on the discretionary right of the manager to transfer, under his or her own choice, under the rationale "for the needs of the service", police officers to executive or managerial vacancies. Often the expertise and results of works were not the dominant categories for promotion, as much as favoritism or political influences were.

Also, promotion of police officers was based on the acquired formal education and length of service. As a consequence, it used to happen that a police officer with secondary education, after graduating from a faculty ranked as "other social faculties", was permanently transferred to a position with a high degree of qualification, and due to his length of service he was awarded a high officer's rank (major, lieutenant colonel, and even colonel). This kind of promotion has negatively affected the performance and motivation of police officers. However, in the

6 See more about job analysis and methods of analyzing: (Subošić, 2012: 74-79).
7 In our practice, we have the situation that when performing the tasks of securing a public meeting, one next to the other, there is a police community support officer (a member of the police intervention units), a member of the Police Brigade in the Police Administration of the city of Belgrade and a member of the Gendarmerie who can have the same level of knowledge, skills and experience for doing such a job, but in the money valuation of their work there are significant differences.
8 See more about measuring the performance of police officers and some of the methods used to show unrealistic results in the fight against crime (Milić, Milidragović, 2016: 112-123).

new Law on Police[9] this problem is noticed so permanent transfer or promotion of police officers is possible only through an internal competition[10] with the fulfillment of the necessary conditions for promotion to a higher rank and level of management.[11]

In addition to earnings and other benefits for work in state administration bodies, the essential for the motivation of police officers are the condition of the basic means of work (uniforms, equipment, vehicles, etc.), giving praise, recognition, respecting the employee, the possibility of participating in decision-making, and the like. In this sense, the lack of basic means for work, their dysfunction or the lack of functionality of the existing resources, the lack of respect for employees and their non-inclusion in the work can be a strong demotivation factor. In addition, it should be born in mind that the pressure from managers to subordinates to achieve better work results in inadequate conditions can increase frustration among police officers, cause too much repressive treatment towards citizens, and lead to the presentation of false performance results.

CONCLUSION

The material position of the police depends exclusively on the economic development of the very state. In our country, for the poor situation today many will look for an excuse in the perennial difficult economic situation, but a small number of them will make an effort to do more and better with more rational use of the available resources (e.g., reducing the number of total company vehicles and vehicles for personal borrowing, reducing unnecessary travels in the country and abroad, unnecessary formation of new organizational units, opening of new jobs, etc.).

Without improving the material position and introducing certain benefits, police officers will not be able to provide funding for a normal life for their families, which will reflect negatively on their satisfaction and the possibility of any improvement of the work process. On the other hand, a number of police officers will gain additional resources by abusing their official position during working hours or other illegal activities outside of working hours, which will negatively affect the reputation of the police in public.

In addition to earnings, lack or dysfunction of basic means of work can be a strong demotivation factor.

In the by-laws which regulate the field of the organization and salaries of the employed police officers, there are no defined criteria for assessing each position and salary that belongs to it. According to the current state, the most responsible and complex jobs, on which citizens' personal and property security depend, are often the worst valuated and poorly paid, which can be a factor that can reduce the motivation of the employed police officers who are doing their jobs in police stations.

In the end, apart from being extremely important, the efficient and effective functioning of a police organization, besides the motivation and material and technical means for work, requires appropriate knowledge and skills of employees. It is meaningless, for example, to motivate workers with any reward if they are not professionally trained in fulfilling the planned

9 'Official Gazette of RS' no. 6/16
10 The Rulebook on the Implementation of an Internal Competition among Employees in the Ministry of Internal Affairs ("Official Gazette of the Republic of Serbia", No. 73/16) prescribes the rules and manners for conducting an internal competition among employees of the Ministry of Internal Affairs
11 The Regulation on Career Development of Police Officers ("Official Gazette of RS", No. 11/17) defines the conditions necessary for advancement to higher ranking and levels of management. This regulation will apply from September 1 current year.

task or do not have appropriate means of work. Motivation makes sense only if there is an appropriate organizational climate for it (Stevanović, 2012: 232).

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CONTRIBUTION AND IMPORTANCE OF VIDEO SURVEILLANCESYSTEM IN THE SUPPRESSION OF ILLEGAL MIGRATIONSAND SMUGGLING OF MIGRANTS IN SERBIA

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Abstract: Armed conflicts occurred over the last ten years under the terror of so-called "Islamic State" initiated the exodus of million people coming from economically weakened and war-torn states of North Africa and the Middle East (Syria, Libya, Iraq, and Afghanistan). The public has witnessed everyday massive and complex migrations of people streaming to Western Europe over the Mediterranean Sea and moving through the Balkans (often referred to as "the Balkan route") via Serbia. These people are not only the refugees fleeing from war-torn Syria and northern Iraq in search for a better and safer life but they are economic migrants as well. The impression of hopelessness is evident in eyes of women and children recognized as potential victims of different criminal networks that through smuggling and trafficking see the opportunity for acquiring unlawful incomes. To prevent this, the police and the prosecuting authorities struggle every day with these by applying various measures and actions, including implementation of modern information and communication technology, video surveillance systems, thermal imaging, etc. These issues, as well as the possibilities of using and experiencing the practical application of video surveillance systems and thermal imaging in the suppression of illegal migrations and smuggling of migrants will be discussed in this paper in detail.

Keywords: illegal migrations, smuggling of migrants, refugee crisis, information and communication technologies, video surveillance system, thermovision.

INTRODUCTION

The need to adequately respond to crime, secure own capital, preserve political and economic interests, and strengthen control and monitoring, initiated the implementation of public video surveillance. All started in the late 1960s when people begun using the video surveillance system in the protection of their private and public space to create conditions

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for “safe investment” and reduce the fear of crime by reducing the rate of crime committed in the covered areas.[3] The first cameras were set up in American banks and Britain’s retail stores. Therefore, the initial model was primarily applied in the protection of private equity capital and only later implemented in the public space.

Today, no serious integral system for securing buildings, persons and property can be imagined or successfully implemented without a video surveillance system. In fact, video surveillance system is an electronic system for monitoring and recording events and situations in certain area and transferring signals from a camera to a predefined site. This practically means that the basic function of the video surveillance system is to provide timely information on security issues on the basis of which the user (usually physical security staff) or the owner of an asset will take appropriate protection measures.

During the analysis of security status of certain building and documenting various incident situations, the option of storing video information on security status has multiple purposes. Actually, video surveillance system can timely detect undesirable events occurred inside/outside the facility. Also, recorded media obtained this way can be used as evidence for criminal offense and violation committed or other damage caused. For this reason, in most cases, the police is the most frequent user of this information, since during the analysis – from the phases of determining the cause and committing criminal acts to the phases of identifying identities of participants and consequences, the police collect and secure relevant evidence for eventual initiation of criminal or misdemeanor proceedings.[4] Beside their usage on “critical” site, video surveillance systems are widely applied in many other situations, for example: control of vehicles entry and exit; supervision of patients in intensive care; supervision of goods in stores and warehouses; supervision of working with cash in banks, exchange offices; protection of customers from theft, supervision of vital production processes; loading/unloading of goods; surveillance of external spaces and open warehouses and parking lots; supervision of exhibited exhibits; supervision of workers in companies; supervision of visitors at a certain event, etc.[5]

Planning and designing a video surveillance system is a very complex process during which not only the results of the security analysis of vulnerability (building, persons or material goods) and special features of an object (its position and purpose) should be taken into account, but also work process of the supervised object.

The mere fact that the building is protected by the video surveillance system affects the awareness of persons having possibly bad intentions i.e. has psychologically preventive character in deterring perpetrator from performing illegal activities.[6] In spite of the fact that the video surveillance system is an expensive investment in the initial moment, in the long term, such a system, by reducing potential damage and more effectively controlling everyday business, is certainly worth it. Adding to this the fact that the extremely rapid development of technology in recent decades led to a drastic fall in the price of components in the domain of information technology, video surveillance systems today are much more accessible and more present in the business world.

The video surveillance system is an integral part of the state border control system and certainly a very important element in the prevention and suppression of human smuggling

3 Fajf, N., Banister, Dž.: *Oči uprte u ulicu, CCTV nadzor i grad*, Prizori ulice, Beograd, 2002.
4 Gligorijević, M., Maksimović, A., Vučković, J.: *Forenzički i pravni aspekti upotrebe sistema video nadzora u dokazivanju krivičnih dela i prekršaja,* Zbornik radova, Međunarodni naučni skup „Dani Arčibalda Rajsa“, Kriminalističko-policijska akademija, Beograd, 2016.
5 Welsh, B. C., Farrington, D. P.: *Making public places safer: Surveillance and crime prevention*, Oxford University Press, New York, 2009.
6 Armitage, R., Smyth, G., Pease, K.: *CCTV evaluation. Crime prevention studies*, 10 (1), Burnley, 1999.

and illegal migrations, especially in the collection of valid evidence for the prosecution of such forms of illicit behavior. There will be more to say about this bellow.

MIGRANT CRISIS AND THE PROBLEM OF SMUGGLING IN THE REPUBLIC OF SERBIA

Researches have shown that there were several "triggers" that caused the migrant crisis which started in the summer of 2015. First, the Macedonian authorities decided to allow the transit of migrants, thus making "Balkan route" more attractive, then, German Chancellor Merkel stated that refugees from Syria would not be sent back in the country of origin and finally, Syrian President Bashar al-Assad decided to expand the recruitment of the population for the war which led many opponents of his regime to leave Syria. Hence, it was clear that mass migrations were inevitable.

Considering the differing attitudes that the Member States had on this issue, European Union has failed to offer a comprehensive response to a newly created situation. A priority of the countries of southeastern Europe was to accelerate the migration across their territories, so any attempt to limit this process, such as Hungary did by closing its border and building a border barrier, caused strong diplomatic reactions of neighboring countries.[7]

Events occurring in 2015 and the first quarter of 2016 were caused by abolition of "open borders" and had an effect on the asylum and migration systems in Serbia. The state policy concerning migrants in 2016 was affected primarily by policies of neighboring countries and by decisions taken at the level of the European Union. Thus, an agreement ("EU-Turkey Statement") was reached in March 2016 composed of attitudes and promises of state officials and aimed at reducing the influx of refugees and migrants to the EU. This subsequently led to increased controls on the EU's external borders and to the "closure" of the "Western Balkan" route. The consequences of this essentially political agreement were reflected in a drastic decrease in the number of people who entered Serbia.

The transfer of migrants that took place illegally during the night worsened relations between Serbia and Croatia, as well as Croatia and Hungary. This was greeted with enthusiasm by the people from the criminal milieu in the Republic of Serbia, given that they were "given" the chance to gain unlawful benefits by smuggling migrants and transferring them illegally across the border. Many criminal clans who were fatal enemies instantly started cooperating and became the main allies, finding the great benefits and interest for each of them. To adequately respond to the emerging situation, authorities in the Republic of Serbia had to engage additional organizational, technical and personnel capacities, primarily from security structures. Some countries decided to raise fences to keep migrants out, such as Hungary, Slovenia and Austria.

Right wing political parties also saw this as an opportunity to gain benefits for themselves, playing with a card of endangered identity. On the other hand, the centre parties approached this crisis as in case of natural disaster, their members believed that the crisis would pass soon and they had no elaborated integration strategy for over a million people coming to the European Union.[8]

7 International Expert Workshop: Horizontal View: Facing the Refugees and the Migrant Crisis, Belgrade Fund for Political Excellence, 2016.

8 Djukanovic, D.: "*The harmonization of the Western Balkan countries with the Common Foreign and Security Policy of the European Union – between normative, declarative and real*", Annual of the FPN, 2014.

In the countries of destination, collision of different cultural habits and religious customs endangered the functioning of the social system in the area of security, health, education, social policy and the labor market. Also, the capacities of even the most developed EU countries were not big enough to integrate such a large number of immigrants. The problem was in fact that immigrants were coming in with different cultural practices ***which were largely unacceptable*** to the legal system of the countries of their destination, for example: different attitudes regarding physical violence against women and children or minority groups. Sanctioning these "differences" under the applicable laws of the EU would constitute a threat to the elementary rights and freedoms deriving from cultural and religious heritage. [9]

All these further increased the pressure on the countries of southeastern Europe, including the Republic of Serbia whose citizens live illegally within the European Union as economic migrants. Beside the fact that Serbia had to "take care", or "support" thousands of migrants stuck on the "Balkan Route", it also had to face an accelerated return of thousands of its own citizens who were economic migrants. Their integration into the poor Balkan societies that just got out from warfare proved to be very problematic in the period from 2011 to 2012, and there were no indication that things would be different in future.

EUROPEAN TRENDS OF THE DEVELOPMENT OF THE ICT SYSTEM AND VIDEO CONTROL SYSTEM IN THE CONTROL OF THE STATE BORDER

Considering that the safety of EU citizens is a permanent issue on the agenda of the European Commission's meetings, especially after numerous terrorist attacks and the escalation of the migrant crisis, President Juncker, in his State of the Union 2016 speech, announced that the Commission would propose the establishment of the *EU Travel Information and Authorisation System* (ETIAS)[10] "a system that will identify who is allowed to travel to the European Union". ETIAS is an automatic ICT system for identifying risks related to visitors who are *exempted* from the visa regime for traveling to the Schengen zone. All third-country nationals who are exempted from the visa regime and plan to travel to the Schengen zone will have to apply for a travel permit through this system before the travel. Data collected through this system, with full respect for fundamental rights and data protection, will allow for a prior check of potential security risks and risks of illegal migration.

The authorization granted by the ETIAS does not represent a visa. Citizens of countries that are subject to visa liberalization will still be able to travel without a visa, but they will have to get the authorization before the travel and it will be a mandatory requirement for entering the Schengen zone. When deciding whether to grant or reject a request for a travel to the European Union, the system will carry out prior checks, and then it will issue or refuse to issue a travel authorization. Although the final decision on the authorization or rejection of entry is on the national border guards who carry out border checks under the Schengen Borders Code, prior checks of third-country travellers exempted from the visa regime will facilitate border controls and provide a coordinated and uniform risk assessment of third- country citizens and considerably reduce the number of rejected entries at border crossings. A schematic representation of the steps in the decision-making system is shown in Figure 1.

9 Stevovic, M., Crnobrnja, M .: Security Policy of the European Union and the current refugee crisis, Megatrend Review, Belgrade, 2015

10 ETIAS - The European Travel Information and Authorisation System, European Commission, 2016.

Currently, the competent border and police authorities do not have enough data on persons exempted from the visa regime, while, on the other hand, they have information about people traveling with a visa.

By making pre-checking on passengers who hold a valid travel authorization required for all third-country nationals exempted from the visa regime, ETIAS will identify persons who may represent a security risk before reaching the border, and supplement the information about passengers exempted from the visa regime by gathering information that could be of great importance for the border and police services of the EU member states.

The focus of ETIAS is on its interoperability with existing systems and systems that are still developing, such as Entry-Exit System (EES)[11]. The EES will contribute to the modernization of external border management by improving the quality and efficiency of external border controls in the Schengen zone and helping Member States to adequately deal with an increased number of passengers, without the need to increase the number of border police officers. A schematic representation of the decision-making step in the EES system is shown in Figure 2.

Technically, ETIAS information system will utilize the hardware and software components of the EES system and its communication infrastructure to the greatest extent possible. Interoperability will also be established with other information systems that ETIAS consults, such as:[12]

- Visa Information System (VIS),
- *Europol* Information *System (EIS)*
- Schengen Information System (SIS),
- *EuroDac*
- European Criminal Records Information System (ECRIS)

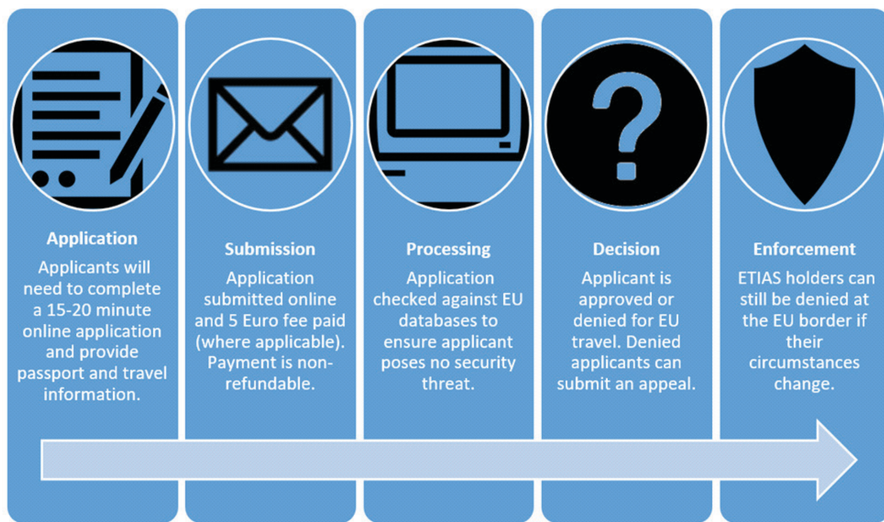

Figure 1. *A schematic overview of the necessary steps in the decision-making process in the ETIAS systemSource: www.etias.com*

11 EES – Entry-Exit System, European Commission, 2016.

12 *Feasibility Study for a European Travel Information and Authorisation System (ETIAS)*, European Commission, 2016.

ETIAS and EES will share a common archive of personal data of third-country nationals, additional data obtained from ETIAS application (e.g., residence data, answers about origin, IP address) and EES records of entries and exits that are stored separately, but are associated with this common and unique identification file.

Before arriving at the Schengen border, ETIAS will, by providing key information on security and public health risks of illegal migration, significantly provide missing information and key information necessary for the competent authorities of the Member States.

Better and more precise identification of security risks of third-country nationals exempted from the visa regime before they arrive at the external border of the Schengen area will improve the detection of trafficking in human beings (especially in the case of minors), assist in combating cross-border crime and generally facilitate the identification of persons whose presence in the Schengen zone could pose a security threat. ETIAS thus contributes to better security of citizens in the Schengen area and improves internal security in the EU.

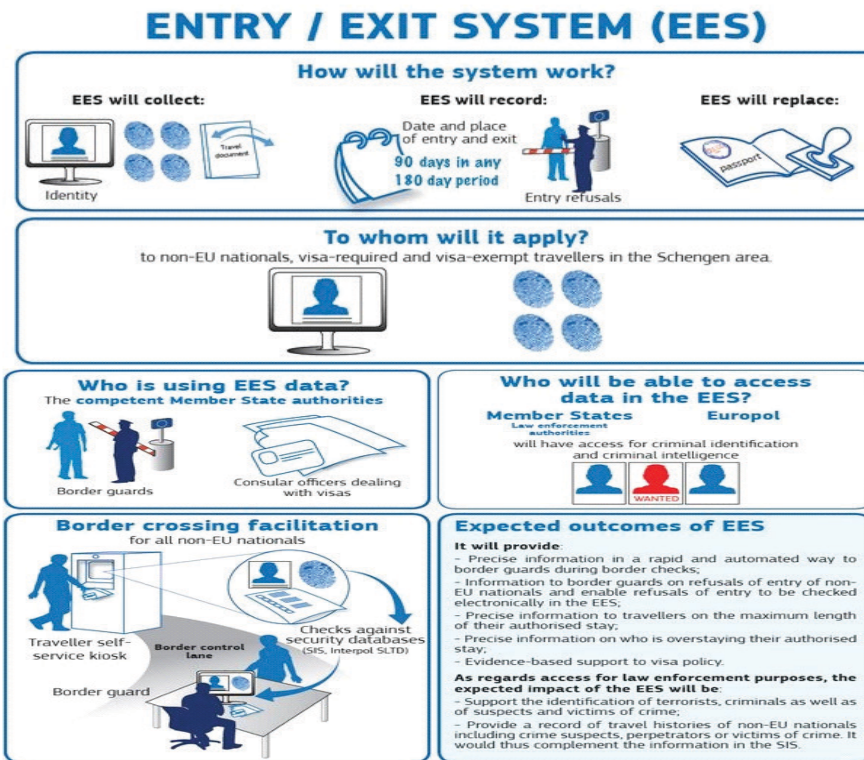

Figure 2. *A schematic presentation of the necessary steps in the decision-making process in the EES systemSource: www.mep.euwatch.eu*

EITAS data are stored with respecting principles of fundamental rights and data protection and are available to national police services and Europol when necessary for preventing, detecting or investigating terrorist offenses or other forms of serious crimes, as well as identifying perpetrators of terrorist or other serious criminal offenses. [13]

13 *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations*

By improving the dialogue on visa liberalization with third countries, ETIAS will strengthen the capacity of the EU in assessing and managing the potential migration and security risks caused by an increasing number of passengers exempted from the visa regime and at the same time facilitate the transition of external Schengen borders. Passengers will also have a reliable and timely indicator that they will be approved to enter the Schengen zone, which will considerably reduce the number of rejected entries. This represents a significant benefit for travellers compared to the current situation.

Period of five years is generally proposed as a period for retaining information on EITAS requirements. The retention period is aligned with the data retention period in EES records and records on entry authorization obtained on the basis of ETIAS travel authorization or ETIAS entry refusal. ETIAS will ensure the interoperability of data and technological infrastructure with the EES system, so these two systems will be parallelly developed. Synchronization (alignment) of the data retention is necessary for certain risk analyses performed by competent authorities and ensuring interoperability between the ETIAS and the EES system. After the expiration of a five-year period, the file on the request together with the personal data will be automatically deleted from the ETIAS central system.[14]

Police authorities of Member States and Europol will access to ETIAS under strictly and defined terms and only with the purpose of prevention, detection or investigation of terrorist offenses or other forms of serious crimes. The access will be approved only in case when search of national criminal databases does not result in the requested information. Certain authorities and Europol will seek access to ETIAS only when they justifiably believe that this access will provide them information which will significantly assist in the prevention, detection and investigation of terrorist offenses or other forms of serious crimes.

THE USE OF THERMOVISION VIDEO CONTROL SYSTEMS IN MONITORING STATE BORDER CROSSINGS

Thermal imaging is a non-contact method that in real time registers heat emission or infrared radiation. Monitoring of radiation emission is widely used in various areas of human activity, such as electronics, mechanical engineering, construction and architecture, and has a successful application in the field of defense and security. For instance, in the process of constructing a building or infrastructure, this method is widely used for identification of "bad" places, as well as for giving a rough estimate of heat loss.

Physically, thermo-imaging cameras are similar to the movie cameras, but thermo-imaging ones are specifically adapted to "see" the part of infrared spectrum which is invisible to the human eye (also called infrared cameras).[15] Thermo vision images are attractive by their color spectrum and the fact that they can show us things unavailable to the human eye. Their purpose is to detect the current state of heat emission in real time and by processing the information obtained by such cameras the appropriate conclusions can be made. Each thermogram represents a unique image because each has its own palette of colors, so two thermograms cannot be compared in color, even when it comes to the same objects. Therefore,

(EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624, European Commission, 2016.

14 *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011*, European Commission, 2016.

15 Solomon, C., Breckon, T.: *Fundamentals of Digital Image Processing: A Practical Approach with Examples in Matlab*, John Wiley & Sons, 2011.

each thermogram has its own scale of colors that connects the color with the temperature. To accurately determine the temperature, the thermovision camera also provides a temperature diagram which shows the change of object's temperature but only *along the lines drawn in the thermogram*. The more uniform the colors are, the more uniformly the heat is released. To establish an indicative measure of heat emission, the difference between the external and internal temperature of the wall and air (shot from outside and inside) must be taken into account. Bright and warm colors (yellow, red) indicate warmer places, while darker and cooler colors (blue, purple) indicate cold places.[16]

Thermal imaging devices were created to increase efficiency of cameras at night and in conditions of reduced daily visibility or bad weather conditions. The thermal vision device enables the visualization of thermal contrast thanks to the ability of the detector to convert the differences of the power (flux) of the received IC radiation into an electrical signal that can be adequately displayed in a way that the contrast of the visible image is generated (Figure 3 - thermal image) in proportion to the thermal contrast.[17] What infrared radiation emits the body depends on the temperature of the body itself. According to black-body radiation (radiation emitted by a black body), thermography enables viewing of the environment without visible light. As the temperature increases the amount of radiation increases as well, so thermography allows us to see the temperature's change. Viewed by a thermal imaging camera, warm objects stand out well in relation to the cooler background, so people and other warm-blooded animals become easily visible in relation to the environment, and especially during the day and night.[18] Therefore, it is not surprising that the thermography has a wide application in security structures (military, police and other security services), especially in the control of the state border and the prevention and suppression of illegal migration and smuggling of people.

Figure 3. *Thermovision picture* ***Source****: Ministry of Interior*

16 Miezianko, R., Pokrajac, D.: *People detection in low resolution infrared videos*, IEEE Computer Society Conference on Computer Vision and Pattern Recognition Workshops, 2008.
17 Коруга, Ђ., Васиљевић, Д., Шакота, Ј.: *Основи оптике, оптичких помагала и уређаја,* Handout 12, 2013.
18 Bebis, G., Gyaourova, A., Singh, S., Pavlidis, I.: *Face recognition by fusing thermal infrared and visible imagery*, Image and Vision Computing 24, 2006.

INDIRECT INDICATORS SHOWING THE ROLE AND IMPORTANCE OF VIDEO SURVEILLANCE SYSTEM IN COMBATING ILLEGAL BORDER CROSSING AND PEOPLE SMUGGLING IN THE REPUBLIC OF SERBIA

The real circumstances of the current migrant crisis and all the criminal activities and phenomena undoubtedly caused by this crisis can be best illustrated by analysing statistical data on the criminal offense of illegal border crossing and people smuggling, incriminated by Serbian criminal legislation. In this way, the evaluation of the efficiency of the use of the video surveillance and thermovision system can be indirectly carried out, which certainly represent the key tools and means of the prosecution authorities in taking measures and actions in preventing and suppressing these criminal activities. For this purpose, we will analyze and comment on the official statistical data of the Republic Statistical Office, through the judiciary *statistics* for 2016.

Criminal charges against adults, according to the criminal offense of illegal border crossing and human smuggling 2011-2015		
REGION	БРОЈ	%
Belgrade	82	13.6
Vojvodina	367	60.7
Sumadija and Western Serbia	20	3.3
Southern and Eastern Serbia	136	22.5
Kosovo and Metohija	0	0.0
TOTAL	605	100.0

Table 1. *Criminal charges against adults, according to the criminal offense of illegal border crossing and human smuggling 2011–2015.***Source**: *Judiciary Statistics, Statistical Office of the Republic of Serbia, No. 189, 2016.*

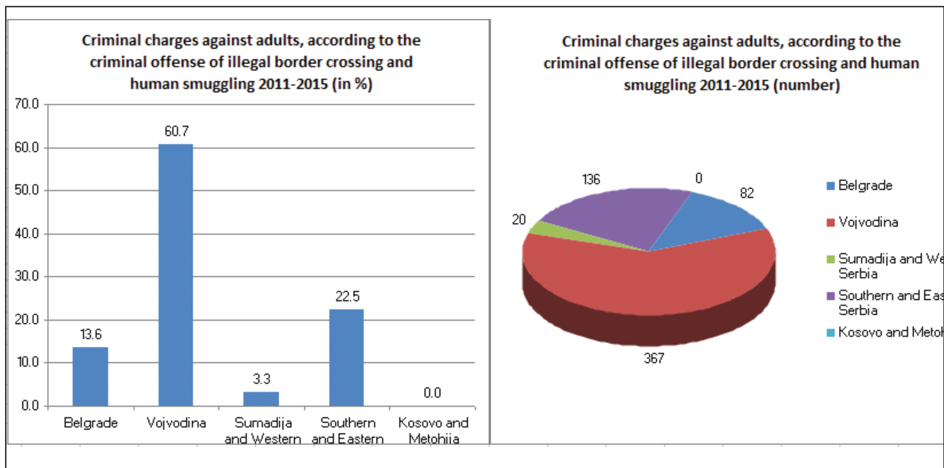

Chart 1. Criminal charges against adults, according to the criminal offense of illegal border crossing and human smuggling 2011–2015Source: Judiciary Statistics, Statistical Office of the Republic of Serbia, No. 189, 2016.

The analysis of the data shown below leads to the conclusion that in the period from 2011 to 2015, the most criminal charges filed for the criminal offense unauthorized crossing of the state border and people smuggling were registered in Vojvodina – 367 or 60.7% and South and East Serbia -136 or 22.5%). This fact is not surprising since the south-eastern and eastern Serbia as points of entry and ***northern Vojvodina** (*towards Hungary and Croatia) as points of exit were the most attractive for migrant and ***smuggling*** routes. 82 or 13.6% cases were reported in the region of Belgrade, while the negligible number of criminal charges ***were filed in the region of Sumadija and Western Serbia (20 or 3.3%), which is realistic and expected. Also, with regard to the use of video surveillance and thermovision systems, as the necessary means for detecting these crimes, we conclude that their use have assisted to the greatest possible extent to the police and prosecution authorities in detecting and filing criminal charges.***

Convicted adult persons for the criminal offense of illegal border crossing and smuggling of persons and imposed criminal sanctions 2015		
SANCTION	БРОЈ	%
Prison	165	40.5
A fine	4	1.0
Contitional sentence	160	39.3
House arrest	78	19.2
Community work	0	0.0
Court notice	0	0.0
Verbal court disipline	0	0.0
Found guilty but set free	0	0.0
TOTAL	407	100.0

Table 2. *Convicted adult persons for the criminal offense of illegal border crossing and smuggling of persons and imposed criminal sanctions 2015.* **Source**: Judiciary Statistics, Statistical Office of the Republic of Serbia, No. 189, 2016.

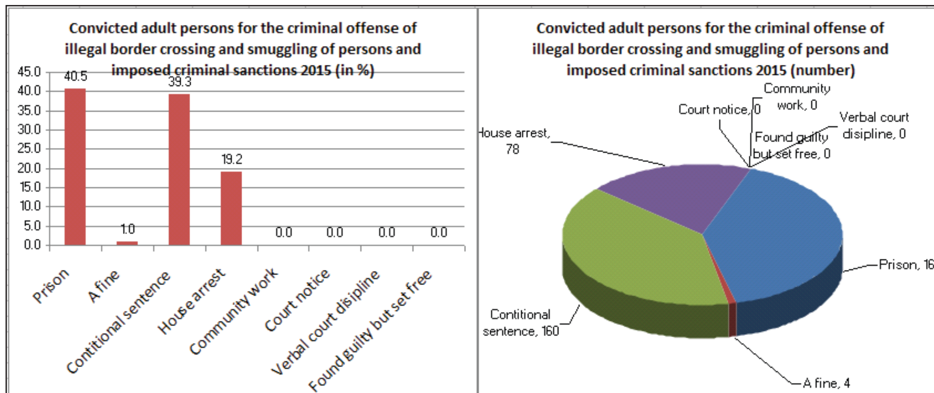

Chart 2. *Convicted adult persons for the criminal offense of illegal border crossing and smuggling of persons and imposed criminal sanctions 2015.**Source**: Judiciary Statistics, Statistical Office of the Republic of Serbia, No. 189, 2016.*

Taking into account data on adult persons convicted for the criminal offense of illegal border crossing and smuggling of people in 2015 we can come up with one very surprising conclusion. Namely, according to the data (Table 2), 165 persons or 40.5% were convicted to imprisonment for these crimes. Such convictions are expected due to the social danger and the harmful consequences of these offenses. But, almost the same percentage of persons

(39.3% or 160) were convicted on suspended sentences which is not logical since the criminal offence of smuggling people is mainly done by organized criminal groups or multiple returnees, and rarely beginners. Adding to this the fact that 78 persons or 19.2% were sentenced to house arrest, everything seems even more illogical since such a criminal policy makes senseless the existence of a criminal offense as such, and at the same time it sends a message to future potential perpetrators that this type of deviant behavior is worth doing.

However, according to statistics of the Ministry of Interior for 2016 and the first trimester of 2017, a much more realistic but also more optimistic picture has been created. Namely, during 2016, 6050 persons were caught in an illegal attempt to cross the Serbian state border, but 25.056 gave up after seeing security authorities. Such a trend continued during the first trimester of 2017, that is, 698 persons were caught trying to cross the state border, and 1.611 gave up after seeing security organs. All these indicators support the fact that members of the police, in whose jurisdiction is securing the state border of the Republic of Serbia, are extremely professional and committed to doing their job, and the results presented are certainly the product of using modern technical means, such as video surveillance systems and thermovision.

CONCLUSION

A modern man cannot imagine his everyday life and business activities without the use of the latest technical and technological achievements, as well as modern information and communication systems, otherwise the survival of a man in the harsh natural environment of today would be brought into question. For years, evolution and civilization have educated humankind to find new, better, more efficient and easier ways to tame nature. This undoubtedly implies the use of information and communication systems and achievements in the field of science and technology, including video surveillance and thermovision systems. Video surveillance and thermovision systems have revolutionary contributed to proving and prosecuting criminal offenses and violations. Research in this field has shown significant results, not only in repression by raising the level of effectiveness of proving and prosecuting crimes and violations but also in prevention through educating people. In the context of the protection of the state border of the Republic of Serbia, especially during the time when Serbia faces the problem of migrant crisis, video surveillance and thermovision systems have a very important role. They represent the necessary mean and tool of the police and prosecuting authorities in preventing and suppressing the criminal offense of illegal border crossing and people smuggling, which was shown through the analysis of relevant statistical data. In the end, it remains to hope that the investment in raising the technical and technological capacities of the Ministry of Interior will continue, since the use of modern information and communication technologies have no alternative today.

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MODEL OF POLICE STRATEGIC ENVIRONMENT ASSESSMENT

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Abstract: Strategic environment Assessment provides the overview of the situation at a given time to ensure the development of the police in order to respond to future security challenges, risks and threats. Model integrates a large number of scientific, statistical, mathematical and managerial methods, in order to objectively assess the future environment of the police. By identifying the environmental factors that most influence the mission and tasks of the police, as well as collecting data about the values of these factors in the past and determining the trends of their development in the future, the model creates the preconditions for the application of the scenarios method. Scenarios, in contrast to the classical predictions, provide possible options for the future, increasing the flexibility in the assessment of future challenges, risks and threats. This way, the model increases the objectivity and the probability of prediction of future environments. Despite the increase of objectivity, it is impossible to completely eliminate the subjective influence on the results of the environment assessment, particularly because of the application of group decision-making methods. The solutions presented in this paper represent the author's vision as a possible way to improve the assessment process of the police strategic environment.

Keywords: police strategic environment, environment assessment, trend analysis, scenario development.

INTRODUCTION

Solving the problem of prediction is the basis of successful planning in any organization. At the strategic level, it is almost impossible to predict with certainty how future environment will look like. Because of that, possible variants of the environment in the future are being developed. These variants of environment are called scenarios. A large number of authors deal with problems of environment assessment. The greatest number of the elderly, as well as some contemporary literature, often discusses the principles of predictions, which includes application of traditional methods of prediction, such as thread analysis. On the other hand, in modern literature are increasingly in usage methods of scenarios developing and decision-making.

The proposed model integrates standard methods of data collection and trend analysis, the methods of scenarios development and decision-making. Data collection and trend anal-

ysis are the basis for the application of scenarios development methods, by giving the potential value of environmental factors in process of designing morphological fields.

In regards to scenarios development method, the most commonly used are morphological analysis, as well as methods based on morphological analysis (FAR, Battelle). On the other hand, classification and clustering methods are the most frequently mentioned decision-making method in literature. The model provides an objective, structured and formalized approach to the environment assessment by developing a large number of possible scenarios of environment.

The development of a large number of possible scenarios is enabled by using morphological analysis, which results in a large number of configurations, each of which can be a potential scenario. Too many configurations make it difficult for further scenario development, as well as the usage in the planning process. The development of IT technology, as well as the method of data mining, enabled the broad application of decision-making method on large databases. In doing so, the successful integration of scenario development method is enabled with the methods of classification and clustering. This type of integration allows faster processing of the data obtained by the morphological analysis, as well as reducing the total number of configuration and selection of representative configurations.

The outcome of environmental assessment process are descriptive scenarios based on representative configurations of morphological fields.

POLICE ENVIRONMENT ASSESSMENT

In the literature, there are different approaches to the definition of environment as well as the classification of environments. The environment is usually classified as external and internal.[1] External environments are those factors and forces outside the organization that affect the performance of the police, and the police mission and tasks.[2] Internal environment is the level of environment police, made up of components that are found within the police organization and have a relatively specific and immediate impact on the management of the police.[3]

The external environment in the literature is usually viewed through two components: general and operational environment.[4] General environment is the level of the external environment of the organization, which consists of components that have a broad impact on the long-term organization management. Components of general environment are usually: economic, social, political, legal and technological.[5] On the other hand, the operational environment is the level of the external environment of the organization, made up of components that are relatively specific and immediate impact on the management of the organization.[6] In the literature, operational environment is often called the environment of the task[7] or specific

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2 Jaffee, D., Organization Theory, McGraw-Hill International edition, Singapore, 2001, p. 208-209.
3 Certo, S. C., Certo, S. T., Modern management concepts and skill (11th Edition), Pearson Prentice Hall, New Jersey, 2009, p. 228-232
4 Gomez-Mejia, L. R., Blakin, D. B., Cardy, R. R., Management (2th Edition), McGraw-Hill Irwin, New York, 2005, p. 281-298
5 Robbins, S. P., Coulter, M., Management, Pearson Prentice Hall, New Jersey, 2007, p. 73-78.
6 Certo, S. C., Certo, S. T., Modern management concepts and skill (11th Edition), Pearson Prentice Hall, New Jersey, 2009, p. 228-232.
7 Meyer, E., Ashleigh, M., George, J. M., Jone, G. R., Contemporary Management, McGraw-Hill Higher Education, Berkshire, 2007, p. 173-183.

environment[8]. It can be concluded that the operating environment is part of the external environment in which the police carry out their tasks.

Based on the above considerations it can be concluded that the strategic environment of the police involves key (strategic) issues related to external and internal environment of the police organization that may endanger the existence of the police and affect its functioning, or that threaten the security interests of the country.

In order to enable assessment of the strategic environment and extract the most important factors, the strategic environment is necessary to structure on levels. The levels of analysis are analytical construct a wholeness of strategic environment into the smaller parts in accordance to the some scale (eg. Micro, meso and macro). Usual levels of Security Sector (which includes the police organization) are: individual, national, regional and global.[9]

Besides the levels of the environment, in order to ensure a systematic approach in assessing the police environment, it is necessary to divide police environment into sectors. The sector is a way to unpack confusion of environment wholeness in such way that environment is broken up into several parts, which are separated analytically based on any particular aspect.[10] Sectors can be seen as a special kind of security partitions.[11] In security science there are a lot of approaches to divide security environment into sectors. In the view of some authors security sectors are: military, ecologic, economic, societal and political.[12] Some authors emphasize different division of security environment by sectors, which include: military security, the security of the regime, social security, ecological security and economic security.[13] In addition to these divisions of security environment into sectors it may also be given division into: single, human, societal, global, energy security and ecologic security.[14] In the management literature, for split environment into sectors, the most common tool is PESTLE analysis, which is used for the analysis of external influences and is an acronym for political, economic, social, technological, legal and ecological influence.[15] Contemporary trends in the literature dealing with the problems of defense indicate greater fragmentation of the strategic security environment into sector, which is manifested by an increased number of sectors that are used for strategic environment assessment.[16]

In the literature, there is a common understanding that the planning process is first necessary to look at how the future will look like, but there are different approaches to the process of future environment assessment. Some authors use the term prediction, so the planning process is divided into three mutually dependent stages: prediction, decision-making and development plans. Prediction establishes a future state, and foretells what will happen at a desired moment, if we choose some sort of action.[17] However, the use of the term prediction is not relevant in contemporary futuristic and strategic environment assessment, rather than predictions the term assessment are increasingly used now. In particular, the term assessments is linked to the strategic environment, because there are very few issues in the strategic

8 Robbins, S. P., Coulter, M., Management, Pearson Prentice Hall, New Jersey, 2007, p. 75.
9 Ejdus, F., Međunarodna bezbednost: teorije, sektori i nivoi, JP Službeni glasnik, Belgrade, 2012, p. 207-273.
10 Buzan, B., Weaver, O., de Wilde, J., Security, Lynne Rienner Publisher, London, 1998, p. 27.
11 Ejdus, F., Međunarodna bezbednost: teorije, sektori i nivoi, JP Službeni glasnik, Belgrade, 2012, p. 114.
12 Buzan, B., Weaver, O., de Wilde, J., Security, Lynne Rienner Publisher, London, 1998, p. 49-141.
13 Collins, A., Savremene bezbednosne studije, Politička kultura, Zagreb, 2010, p.151-233.
14 Bajagić, M., Međunarodna bezbednost, JP Službeni glasnik, Belgrade, 2012, p. 262-350.
15 Oxford University Press, Dictionary of Business and Management, Market House Books, Oxford, 2006, p. 357.
16 United Kingdom Ministry of Defence, Global Strategic Trends- Out to 2045, Crown Copyright Swindon, 2014.
17 Jovanović, B., Uvod u teoriju vojnog rukovođenja, Vojnoizdavački zavod, Belgrade, 1984, p. 150.

environment that can be reliably assessed with a high degree of probability so the term prediction could be used, and environment assessment is therefore the preferred term.[18]

Environmental Assessment is a step of strategic planning and consists of internal and external environments assessment.[19] Environmental Assessment can be defined as a stage in the process of strategic planning which is based on national interests, as well as information about events and trends in the organization surroundings, and which provides the required number of strategic situation.[20] It can be concluded that the Environmental Assessment is a part of police planning process in which is estimated how the environment might look in the future and what impact the environment has on the police organization, or on police capability to carry out the missions and tasks. The main difference between the prediction and assessment is that the prediction determines future state of the environment, while assessment estimates possible variants of how that environment might look like in the future. In practice, taking into account the specificities of the applied methods and techniques, Environmental Assessment can be divided into two parts: trends assessment and scenarios development.

TRENDS ASSESMENT OF POLICE ENVIRONMENT FACTORS

Trends Assessment is a part of Environmental Assessment process, which consists of the following phases: identifying environmental factors that affect the police organization, collecting historical data about the identified environmental factors, trends analysis of environmental factors within a certain time frame (Figure 1).

Figure 1. *Trends assessment process*

Identifying the factors that affect the functioning of the police is a phase of the trend assessment that broke down the complex environment of the police into sectors, and then within the sector identifies the factors that influence the police organization and its mission and tasks. To identify factors that influence the organization many different methods are applied. Some of the most common methods are content analysis, methods of group decision-making methods, DEMATEL and other methods. Best results are obtained by combining the above-mentioned method. The first, qualitative content analyses of available data sources are executed to obtain data about possible police environment factors. Different data sources can be used to collect data to determine police environment factors, including: intelligence reports, scientific publications and articles dealing with the forecasting and environment assessment problems, books and textbooks from security, economics, politics, technology, ecology and other fields, statistics publication of individual countries and others. After a preliminary determination of possible factors of police environment, the factors are classified by sector,

18 Kovač, M., Stojković, D., Strategijsko planiranje odbrane, Vojnoizdavački zavod, Belgrade, 2009, p. 19.
19 Bryson, J. M., Strategic planning for public and nonprofit organization, Jossey-Bass, San Francisco, 2004, p. 16.
20 Kovač, M., Stojković, D., Strategijsko planiranje odbrane, Vojnoizdavački zavod, Belgrade, 2009, p. 19-20.

enabling their amendment and verification by applying the method of group decision making[21] and DEMATEL method.[22]

Collecting data about the values of factors from the police environment is the second phase in trends assessment. In this step, historical data about the values of environmental factors, which have been identified in the previous step, are collected. Types of data that display the value of the police environment factors are usually numeric or text, in the form of attitudes. To collect information about the police environment factors values, first is to select data sources, determine data collection methods, which include development of instruments for data collection (eg. sheets for the quantitative and / or qualitative content analysis). Direct collection of data is carried out by searching data sources and recording data about police environment factors values in previously prepared instruments. Finally, data processing provides classification and grouping of data according to certain criteria. Also, during the data processing qualitative data by are transformed into quantitative by applying fuzzy logic.[23]

Trend analysis is a way to predict the extrapolation of trends from the previous period.[24] Two trends analysis techniques are mentioned in the literature, and they are: quantitative and qualitative.[25] Quantitative techniques for trend analysis are based on the collection and use of historical data about the factors of the environment. Different statistical methods are used, such as regression analysis and moving averages.[26] Results of quantitative analysis largely depend on the accuracy of input data. Qualitative trends analysis techniques use the judgments and the opinion of experts in order to foresee output information.[27] Basic methods that are used are the methods based on group decision-making. Qualitative analysis is used when there are limitations in the application of quantitative methods (e.g. because of the types of data, when constructed measures for factor values are used, if there is the lack of historical databases, if there is no stochastic connection between input data) or is difficult to obtain exact data.

Output from the trends assessment of are systematized environmental factors that may affect the police, as well as estimated or calculated factors values in a certain point in time by using trend analysis. Also, the values of factors from the police environment are transformed into numerical values and normalized for later use in the process of scenarios development.

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21 Fotr, J., Špaček, M., Souček, I., Vacík, E., Scenarios, their concept, elaboration and application. Baltic Journal of Management, volume 10, issue 1, 2015, p. 73-97.

22 Bagheri Morghaddam, N., Sahafzadeh, M., Shafici Alavijeh, A., Yousefdehi, H., Hossein Hosseini, S., Strategic Enviroment Analysis Using DEMATEL Method Through Systematic Approach: Case Study of an Energy Research Institute in Iran. Management Science and Engineering, volume 4, issue 4, 2010, p. 95-105.

23 Fotr, J., Špaček, M., Souček, I., Vacík, E., Scenarios, their concept, elaboration and application. Baltic Journal of Management, volume 10, issue 1, 2015, p. 73-97.

24 Bahtijarević-Šiber, F., Sikavica, P., Leksikon menadžmenta. Masmedija, Zagreb, 2001, p 28

25 Oxford University Press, Dictionary of Business and Management, Market House Books, Oxford, 2006, p. 433-434.

26 Certo, S. C., Certo, S. T., Modern management concepts and skill (11th Edition), Pearson Prentice Hall, New Jersey, 2009, p. 255-259.

27 Robbins, S. P., Coulter, M., Management, Pearson Prentice Hall, New Jersey, 2007, p. 238-243.

SCENARIO DEVELOPMENT OF POLICE ENVIRONMENT

The scenarios are hypothetical situations where the police forces could be used. The scenario development identifies the set of possible situations in the future, where each can happen, but none of which is a certainty.[28] Based on the Trends Assessment, it is not possible to reliably predict the future value of the environmental factors of the police. The value of environmental factors, because of the mutual influences of different factors in the environment, rather than a single value which is obtained by trends assessment, will be in a certain range and will be assigned a set of values from that range. The range of possible developments of the environmental factors value in the future can have a major or minor deviation from the value that is obtained based on the trend function. Also, the deviation from the trend can be positive and negative. This effect in the literature is usually called funnel model,[29] and is shown in Figure 2.

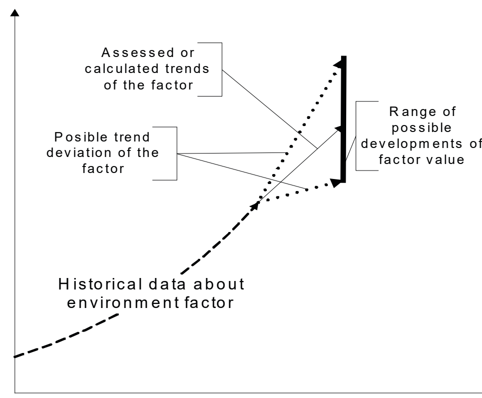

Figure 2. *Funnel model of trend development of environmental factor*

Because estimated value of the factor is not only a single value, but a set of values, a combination of different values of different environmental factors will result in a variety of scenarios of environment. The generated scenarios will also have its funnel model, which will be determined by the different values of environmental factors that can be combined with each other. According to the opinion of many authors, the best results in the scenarios development provide integration of several scenario methods, as well as methods of decision making. One possible model of scenario development is shown in Figure 3.

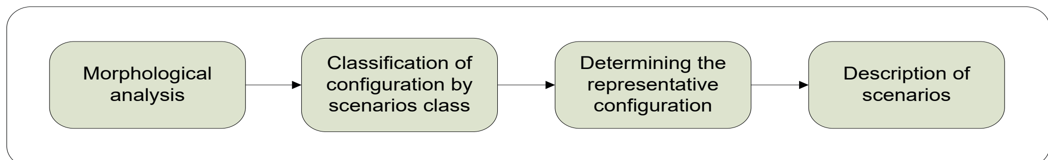

Figure 3. *Process of scenario development*

28 Kovač, M., Stojković, D., Strategijsko planiranje odbrane, Vojnoizdavački zavod, Belgrade, 2009, p. 435.

29 Kosow, H., Gaßner, R., Methods of Future and Scenario Analysis, Deutsches Institut für Entwicklungspolitik, Bonn, 2008, p. 15.

Phases of the scenario development process are: morphological analysis, classification of configuration by scenarios class, determining the representative configuration and description of scenarios.

First phase in scenario development process is **morphological analysis**. How environmental factors (parameters of morphological boxes) have been identified in the process of trends assessment, the first step in morphological analysis application is the determination of possible range of values of environmental factors.[30] Determination of the possible values of environmental factors comes down to identifying a possible set of values that is limited by maximal and minimal deviation of factors value in relation to the estimated (calculated) trends. The maximum and minimum deviation can be calculated using statistical methods or estimated by using method of group decision making.[31] After identifying a set of possible values of environment factors, the overall field of possible values is divided into three to five subsets. Based on this a matrix of morphological fields is formed, which is the basis for the assessment of consistency.[32] Consistency is estimated in a manner such that the value of the factors is associated with the values of all other factors. By using expert assessment the goal is to determine whether or not it is possible that the value of two test factor values simultaneously exist in a future scenario. An example of simple consistency analysis, with three factors (F) and each with three values (v), is shown in Figure 4.

		F1			F2			F3		
		v11	v12	v13	v21	v22	v23	v31	v32	v33
F1	v11									
	v12									
	v13									
F2	v21	-	+	+						
	v22	+	+	-						
	v23	+	+	-						
F3	v31	+	+	-	-	+	-			
	v32	-	+	-	+	+	-			
	v33	-	+	+	+	-	-			

Figure 4. *An example of consistency analysis using morphological analysis*

In practice, usually more than 90% of the configuration is not consistent.[33] Consistency analysis considerably reduces the total number of consistent combinations that are the subject of further analysis. But, when it comes to large morphologic field with ten or more factors, this causes problem with the large number of consistent configurations that are difficult to be further processed.

Classification of configuration by scenarios class is the second phase in scenario development process, and it can be done by applying classification method. Classification is the

30 Zwicky, F., Wilson, A. G., The morphological approach to discovery, invention, research and construction. New Methods of Thought and Procedure: Contributions to the Symposium on Methodologies, Springer-Verlag, New York, 1967, p. 273-297.
31 Čupić, M., Suknović, M., Odlučivanje, Fakultet organizacionih nauka, Belgrade, 2008, p. 262-263.
32 Zwicky, F., Wilson, A. G., The morphological approach to discovery, invention, research and construction. New Methods of Thought and Procedure: Contributions to the Symposium on Methodologies, Springer-Verlag, New York, 1967, p. 273-297.
33 Ritchey, T., Structuring using computer-aided morphological analysis. Journal of the Operational Research Society, 2006, p. 792-801.

process of assigning object to one or more prior specific categories.[34] Classification categories are the result from the analysis of the mission and tasks of the police and point to security challenges, risks and threats which the police have to confront in the future. Some of the classes of the police scenario may be: organized crime, terrorism, human trafficking, earthquakes, floods, road accidents etc. Taking into consideration different techniques of classification method, one of the techniques that can be used to classify the configuration of morphological fields according scenario class is decision tree. When applying decision tree techniques, in order to determine test attributes, multi-criteria decision making methods can be applied.[35] On the other hand, to determine the value of the environmental factors that will be the attribute test conditions, group decision making methods can be used. Multi-criteria decision-making is used to determine the weight of police environment factors for each of the possible scenarios classes. Weighting of factor can be performed by using the Saaty model.[36] Weighted factors from the environment, in accordance to particular class of scenario, will determine the order of test attributes in the decision tree for certain class of scenarios. Methods of group decision making is used to determine the value of environmental factors, as well as the condition (<= or >= of the estimated value) for testing by each attribute, which can lead to a certain class of scenarios. Based on the above assessment using multi-criteria and group decision making methods, decision trees for classification can be constructed for each class separately. Figure 5 shows simple decision tree for an example of scenario class "human trafficking".

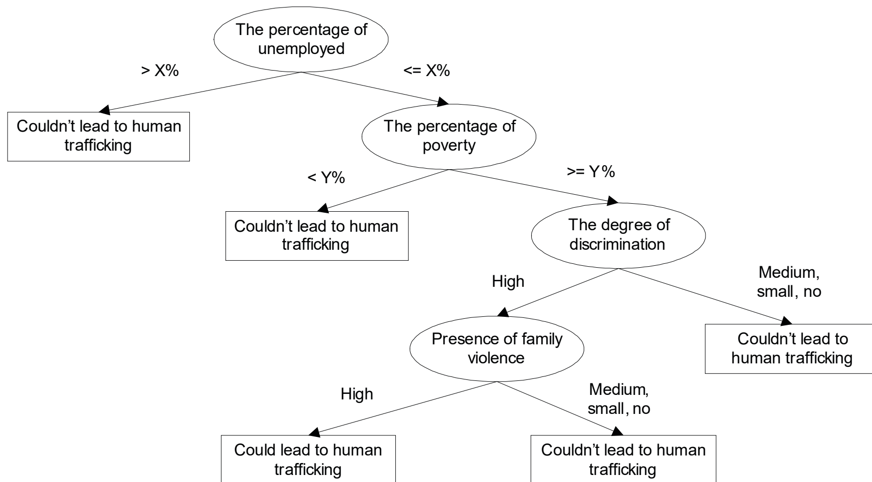

Figure 5. *An example of decision tree for human trafficking scenario class* [37]

Determining the representative configuration is a phase in the scenarios developing process which aims to reduce the number of configuration for each scenario class. The optimal number of configurations for each scenario class is three to five. In order to reduce the

34 Tan, P.N., Steinbach, M., & Kumar, V., Introduction to Data Mining, Pearson, New Jersey, 2006, p. 145-172.
35 Fotr, J., Špaček, M., Souček, I., Vacík, E., Scenarios, their concept, elaboration and application. Baltic Journal of Management, volume 10, issue 1, 2015, p. 73-97.
36 Čupić, M., Suknović, M., Odlučivanje, Fakultet organizacionih nauka, Belgrade, 2008, p. 187-198
37 Example of factor that can lead to human trafficking are taken from: Radović, I., Bogićević, J., Anđelković, M., Gligorić, M., Teodorović, M., Stojiljković, M., et al, Trgovina ljudima- priručnik za novinare, ASTRA – Akcija protiv trgovine ljudima, Belgrade, 2008, p. 12-15.

number of configuration the principle of similarities of configuration is applied.[38] To determine similarity of the configuration useful tool is clustering method. Clustering is a method based on a learning process, or data mining, with the aim of automated finding classes, as well as finding the most representative prototype of a certain class.[39] Taking into consideration different clustering techniques, K-means technique can be successfully used for clustering configuration of morphological fields. K-means technique is based on the presentation of the cluster through prototype.[40] As a prototype configuration in the application of K-means, most convenient is to use medoid, where the prototype is one of a pre-existing configuration. The first step in the K- means clustering technique is the selection of a certain number of K points (three to five), which simultaneously determines the total number of clusters. After determination a certain number of K-points, clustering algorithm is applied until it meets the requirement for the completion of clustering. Finally, in each cluster a medoid, or configuration that represents the cluster, is determined. Configuration that represent cluster is the basis for description of scenario (Figure 6).

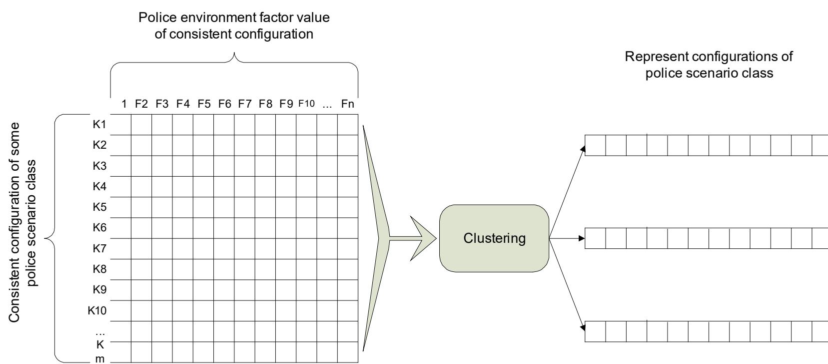

Figure 6. *Determining the representative configuration using clustering*

Description of scenarios is the last phase of scenarios development, which aims to compile textual description from the scenarios that are presented by factor values of certain configurations. Roadmap is the basis for scenario description and it is obtained by FAR analysis.[41] Roadmap is made within each class and for each specific cluster. The entrance to the roadmap is the mutual influences of the value of environmental factors under one representative configuration. Mutual influence of the environment factor value can be assessed using DEMETEL method.[42] DEMETEL method enable determination the values of the factors that most influence the other factors, the value of the factors that are mostly influenced by other factors, the value of the factors that have little influence and value factors with combined influence.

38 Nguyen, M.-T., & Dunn, M., Some Methods for Scenario Analysis in Defence Strategic Planning, Defence Science and Technology Organisation, Australia Department of Defence, Canberra, 2009, p. 16-17.

39 Tan, P.N., Steinbach, M., & Kumar, V., Introduction to Data Mining, Pearson, New Jersey, 2006, p. 487.

40 Ibid, p. 496-515.

41 Changyong, L., Juram, K., Sungjoo, L., Towards robust technology roadmapping: How to diagnose the vulnerability of organisational plans, Technological Forecasting & Social Change, volume 111, 2016, p. 164–175.

42 Bagheri Morghaddam, N., Sahafzadeh, M., Shafici Alavijeh, A., Yousefdehi, H., Hossein Hosseini, S., Strategic Enviroment Analysis Using DEMATEL Method Through Systematic Approach: Case Study of an Energy Research Institute in Iran. Management Science and Engineering, volume 4, issue 4, 2010, p. 95-105.

On the basis of those results by using FAR analysis it is possible to draw a roadmap.[43] On the X-axis of roadmap coordinate system shall be written a time scale of assessments from closer to the far future, while on the Y-axis shall be written different sectors of the environment. The values of environmental factors are entered into the coordinate system roadmap, depending on the sector they belong to, as well as the results of DEMETEL analysis. On the X-axis, the value of the factors that have significant influence on other factors shall be entered on the scale close future, while the value of factors where is the greatest impact of other factors on them shall be entered on a scale further future. An example of roadmap is shown in Figure 7.

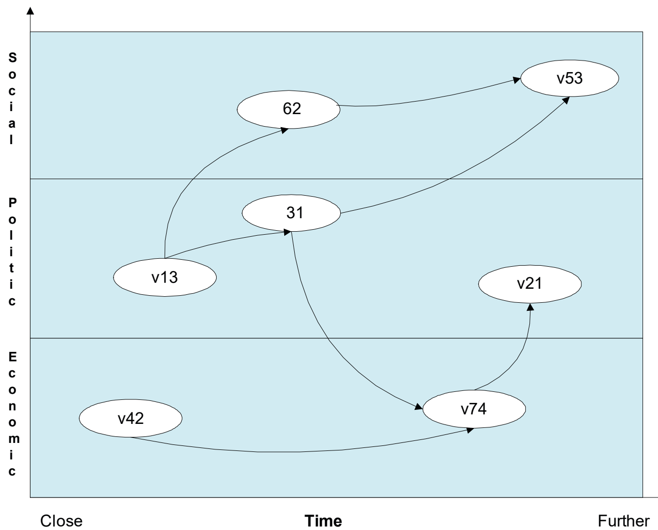

Figure 7. *Example of roadmap*

The roadmap is the basis for the implementation of creative-narrative method which a scenario that is expressed through the configuration transforms into a story.

CONCLUSION

The proposed model of police environment assessment provides comprehensive, systematic and formalized assessment of police environment. Model develops a larger number of scenarios in order to evaluate and compare more possible options of future environment. This approach in environment assessing, instead one variant, gives a large number of possible answers to the question how future police environment will look in the future.

In order to answer its basic purpose, model applies various scientific and managerial methods. Implementation of the model first requires proper identification of factors and value of factors from the environment, as well as their potential impact on the police and then collects accurate and reliable data about the factors and values of environmental factors. Identified factors from the police environment, as well as historical information about the values of factors are the basis for assessments and calculations of trends of factor in the future. Based on the trends of environmental factors, scenario development methods can be used for fur-

43 Nguyen, M.T., & Dunn, M., Some Methods for Scenario Analysis in Defence Strategic Planning, Defence Science and Technology Organisation, Australia Department of Defence, Canberra, 2009, p. 6.

ther scenario building. Scenario development methods that are usually applying are method based on morphological analysis.

The results of morphological analysis are a large number of consistent configurations, which is often impossible to efficiently handle and use for further scenario development. Decision making methods can be used to reduce the number of configurations of morphological field and determine representative configurations. Basic methods of decision-making that may be used to reduce the number of configuration are classification and clustering. Classification method allows routing configurations to security challenges, risks and threats that the police should oppose to protect national interests. These configurations, which are the most important for the police, are referred to as scenarios class. The classification distinguishes consistent configurations that can cause a certain scenarios class. By applying the method of clustering, configurations are grouped in a certain class by a predetermined number of clusters, thereby giving possible variations of how the individual scenario class might look like in the future. Configurations that are the representatives of clusters are the basis for further description of the scenarios for each cluster by using FAR analysis, DEMATEL methods and creative narrative method. The present model allows a more objective process of environmental assessment, as well as the rationalization of time and human resources. Also, the application of the model requires IT support, the high level of expertise of planners, engaging a large number of professionals from various fields, updated database of environmental factors values, as well as knowledge of various scientific and managerial methods and techniques. The disadvantage of the proposed model is that subjective influence planners and other participants are not completely removed.

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POLICE CONDUCT IN THE ROMA COMMUNITY AND RISKS OF THE OCCURRENCE OF DISCRIMINATION

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Abstract: The transition from government-centric security-oriented approach, in which the main objective was the protection of state security, to the human-centric oriented approach to security, entails the changed role of the police in the society. Security services and the police are no longer authorities that only oversee the protection of national security and combat crime, but they now have a much broader and greater social responsibility and importance. The paper analyzes the police treatment of the Roma community and provides recommendations for human-centric oriented police conduct in this community. The authors point to the sensationalism of the media in reporting on crime, where it is a common case that members of the Roma community are labeled as perpetrators, which more broadly affects the perception of police officers on the Roma population. The paper discusses security issues of Roma and the risk of discrimination in police procedures with emphasis on the analysis of the phenomena of romaphobia among police officers.

Keywords: conduct, police, community, security, Roma, risks

INTRODUCTORY OBSERVATIONS

Members of the police system of the Republic of Serbia today must have a multi-disciplinary knowledge, they are the guardians, someone who needs to listen, advise and understand the problems of the citizens.Different relations are established in police work with the most different classes of citizens and simply it is essential that police officers have procedures and knowledge that will enable them to recognize and respond to the threat or occurrence of discrimination. Practically, in the operational conduct of the police in Roma communities,there is always a risk that discrimination is present. Each of human rights may be limited to some forms of discrimination, because of that, in the context of work, it is crucial to point out the concept of discrimination.Discrimination is any unwarranted discrimination or unequal treatment, or omission (exclusion, restriction or preference) in relation to individuals or groups as well as their family members or persons close to them, in an overt or covert way, which is based on actual or perceived personal characteristic.[1]On the other hand, the media often contribute to the formation of prejudices about the character and nature of the perpe-

1 Article 2. Paragraph 1. of Anti-discrimination Law(RSOfficial Gazette, no. 22/2009).

trators by its sensationalist reporting on crime in public, which often has a negative impact on vulnerable and multiply marginalized groups.

Reporting on members of Roma communities is regularly based on stereotypes.[2]In the daily reporting, the media are prone to stereotypical representation of Roma as "thieves", "beggars", "child traffickers".[3] In the race for acquisition of interesting information and winning numerous audiences and readers the media always use the interest of the citizens for a crime, and often create their informative content in relation to the latest news in this field.[4]The creation of myths is done by creating and using criminal stereotypes, presenting opinions as facts, concealing their own attitudes by the selection of a sample, using a value-painted terminology, selection of presented facts, information management, referring to anonymous authorities, referring to the facts taken out of context and selective interviews.[5]In this paper, an analysis of the police system of the Republic of Serbia is conducted with an emphasis on the concept of community policing and the concept of human security as a proactive approach to addressing problems of discrimination. A number of significant researches on discrimination in society and the attitude of the police towards discrimination with emphasis on the actions of the police against Roma are presented here.

THE POLICE SYSTEM OF THE REPUBLIC OF SERBIA

Etymologically speaking, the root of the word "police" comes from the Greek word polis, politeia, which means the administration of a city, state, constitution.[6]At the very root of the word, it can be seen that the aim of the police was the rule of law from its earliest days.[7]One of the first modern definitions of the police was given by R. I. Mawby, back in 1885; according to him, the police are "a part of the community organizations that is directly concerned about the maintenance of good order, prevention and detection of violations of that order."[8]Just as Paul Valery points out, "the police are the best image of a society."[9] The police are the most visible part of the structure of government that takes care of public safety and as such, they must be guided by the principles of democratic control, the rule of law, respect for human and civil rights and freedoms.[10] The police perform the most complex tasks focused on preservation and improvement of the security system in a country. Formerly, the police authority included the military and state administration, which is not the case today.[11]Today, one of the main duties of the police is to maintain public order, to protect the fundamental freedoms and individual rights, prevent and detect crime, reduce fear, provide help and serve citizens.[12]Or, to perform all those activities that fall within the domain of internal security and internal affairs. Robert von Mohl puts police duties in three categories: "Those aimed at ensuring the physical personality of citizens, those who take care of their spiritual personality, and those

2 Discrimination of Roma in media, taken from: https://novinar.me, 10/01/2017, 11.30h
3 Discrimination of Roma in media, taken from: https://novinar.me, 15/01/2017, 17.15h
4 S. Vukovic, Criminal Prevention, Criminal Police Academy, Belgrade 2010, p. 116.
5 Dj. Ignjatovic, The Mythology of Crimes, Archive for Legal and Social Sciences (1-2), Belgrade 2004, p. 15
6R. Maslesa, Theories and Systems of Security, Magistracy, Sarajevo, 2001, p. 163
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9 S.Neskovic, Security and reforms in Serbia, Institute for Policy Studies, Belgrade, 2006, p. 76
10 Article 45. Charter for European Security, Organization of European Security and Cooperation, Istanbul, 1999.
11Z. Aleksic, I. Joksic, Detection and punishment of crimes in Serbia, Glossarium, Belgrade 2013, p. 11.
12 United Nations, The Universal Declaration of Human Rights (1949), Articles 19 and20; United Nations, International Treaty on Civil and Political Rights (1966), Articles 19, 21 and 22.

engaged in citizens' relationship to the material world".[13]In carrying out their tasks, the police must respect good practice and the standards of police conduct, taking into account generally accepted international standards of treatment that refer to: duty to serve the citizens and community, responding to the needs and expectations of the citizens, respect for legality and combating illegality over exercise of human and minority rights and freedoms, non-discrimination in the exercise of police tasks, the proportionality of the use of force, prohibition of torture and inhuman and degrading treatment.[14]In Article 45 of the Police Act, it is specifically emphasized that a police officer shall perform police duties in accordance with the law, other regulations and rules of the profession and with respect to provisions of Police Ethics Code which is a set of rules on ethical conduct of police officers.[15]When talking about the police organization, it is necessary to emphasize that the police system of the Republic of Serbia is a subsystem of the national security system and has, conditionally said, two components, one is a centralized police system embodied in the existence of the Ministry of Internal Affairs and unique for the whole territory of the Republic of Serbia, the other is of decentralized nature - the communal police which was established under the Law on municipal police from 2009 by the city administration on their own initiative. The police system is organized in such a way that reflects regional and security needs of the Republic of Serbia. The Ministry of Internal Affairs of the Republic of Serbia has been, for a number of years, reforming the police in the direction of applying the concept of community policing. Zeljko Nikac points out that the end of the twentieth century gave birth to significant changes in the society, after which the process of democratization, economic transition and reorganization of state authority began. The process of transformation of the security sector and police reform has started, so the modern concept of community policing as a model of organization and operation of the police has been accepted by us.[16]"Community policing is based on the idea that police officers and citizens work together and in a variety of creative ways to solve current problems of the local community that are related to crime, fear of crime, various forms of social disorder. Achieving these goals requires the police to develop quality relationships with citizens who respect the law and within which these citizens will get a chance to define priorities and to engage in various activities in order to improve the quality of life in the area where they live."[17]The concept of community policing can be implemented as a proactive model in recognizing and responding to discrimination. Why? Just because the police and the officials who are in daily and direct contact with citizens may be able to identify the security needs of the community. One of the necessary conditions for a successful application of the concept of community policing is adequate training of police officers, in order to avoid transforming from the ones who should recognize and react to discrimination in the community into the ones who are discriminators. Especially an important item in the training should be given to the elimination of the police prejudice towards any ethnic or other groups. Prejudice is wrong opinions or beliefs, in a positive or negative direction, which are contrary to logical reasoning and based on arbitrary generalization, but which an individual takes from the environment as their own pattern of thinking.[18]A special attention should be paid to the prevention on prejudice creation towards vulnerable groups in the society. The definition of vulnerable groups is given in the collection of policy papers for the reform of the police and is itself quite wide. It is conditioned by time and space in which they are explained. The authors of the policy papers collection state that

13 M. Simovic, On some issues of basic legal right limitations in criminal proceedings, Collection of works, The application of modern methods in fighting crime, Banja Luka 2008, p. 12.
14 *Article 33. Law on the Police* (RS Official Gazette, no. 6/2016).
15 *Article 45. Law on the Police*(RS Official Gazette, no. 6/2016).
16 Z. Nikac, Police in the community, Criminal Police Academy, Belgrade 2010, p. 35.
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the concept of vulnerable groups in the context of human rights are such that involve groups who often experience discriminatory treatment, or who require special attention in order to prevent potential breaches of their human rights, special and different circumstances which these people are in lead to the fact that equal treatment of them, in fact, contributes to their poor position and it is unfair. They state that the vulnerable groups consist of: Roma, women, juveniles and LGBT persons.[19]

ROMA SAFETY AND DISCRIMINATION RISK

In the publication "Roma women and men and security sector reform in Serbia", the key threats to the security of the Roma population are identified, which are the environment where a significant number of internally displaced Roma from Kosovo and Metohija moved, who are faced with existential threats not owning personal documents and basic livelihood, and substandard accommodation.[20]The research that has been conducted in Belgrade by OXFAM has shown that a large percentage of Roma has no valid documents and that 39.5% of Roma do not have the correct ID card. In addition, 56% of displaced Roma has no legitimacy for internally-displaced persons.[21]The lack of personal documents puts them in a situation of arbitrary treatment by the police when they are stopped on the street and are required to show their documents. In such circumstances, the consequences for the safety of a particular person depend on the assessment and treatment of police officers, whose reaction can range from tolerable to very rough.[22]In its report on Serbia adopted in March 2011, the European Commission against Racism and Intolerance (ECRI) stated that among the particularly discriminated group in Serbia are internally displaced Roma, Ashkali and Egyptians, who make up about 10% of the total displaced population. ECRI stressed that many of them do not have the ability to obtain identity documents, as well as they have limited access to housing, education and employment. The living conditions of these persons are poor, and local municipalities are generally reluctant to accept them, because of which they often reside in unrecognized collective centers and improvised huts in unauthorized settlements near major cities. These Roma are constantly faced with the threat of forced eviction, even during winter, and lacking any adequate alternative solution by the state. However, and those Roma who live in legal settlements live in poor material conditions, without water, electricity and sewage and without an address, which is why they cannot exercise their set of rights. They, in large numbers, have limited access to employment –they are often employed in the so-called "grey economy" and do the hardest tasks without basic rights of access to the labor market and social rights of workers. Also, they are faced with a limited access to education, partly because of the obstacles to enroll school, partly because of discrimination, prejudice and verbal abuse and violence which is why they leave school.[23]

19 Collection of policy papers on police reform in the community, number 8, July 2013, Belgrade Center for Security Policy, Belgrade Centre for Human Rights, Belgrade, p. 33
20 Roma women and men and security sector reform in the Republic of Serbia, Center for Public Policy Research, OSCE, Belgrade, 2014, p. 27.
21 The strategy for improving the situation of Roma in the Republic of Serbia, the Office for Roma National Strategy, Ministry of Human and Minority Rights, Belgrade, 2010, p. 35
22 Roma women and men and security sector reform in the Republic of Serbia, Center for Public Policy Research, OSCE, Belgrade, 2014, p. 27
23 I. Krstic,The protection of migrant rights in the Republic of Serbia: a guide for civil servants and officials in local governments, The International Organization for Migration, Record studio, Belgrade 2012, p. 98

POLICE ATTITUDES TOWARDS DISCRIMINATION

Research on the attitudes of police officers on discrimination conducted in 2014 showed that 92% of respondents believe that all citizens deserve equal treatment in applying the law, regardless of their affiliation or preference, and that 79% think that discrimination is present in the society. Respondents believe that the Roma and the LGBT population are the most discriminated. When it comes to the perception of discrimination, 47% of respondents said they had no opinion about what the essence of discrimination was.[24] In this study, the unawareness of the essence of discrimination was noted to lead to the fact that discrimination cannot be recognized even in its own procedures, which, in the case of police work, can be of multiple damage.[25]The other important research for the concept of such publications was a repeated and expanded research "Attitude of the police towards discrimination" in 2015, conducted by prof. Dr Radomir Zekavica from the Police Academy in Belgrade on a sample of over 700 police officers. The paper analyzes the results of research on the attitudes of members of the criminal police from several police departments in Serbia - Belgrade, Novi Sad, Subotica, Zajecar, Novi Pazar and Vranje. The paper provides a comparative overview of the attitudes of the general affairs and traffic police members towards discrimination with the views of members of the criminal police (CP) from last year's research, compared to the same concepts and value judgments. The research shows that even 49% of the traffic police (TP) and general affairs police (GAP) do not know what the essence of discrimination is. The members of TP and GAP recognize Rome (16%) and members of the LGBT population (13%) as the most discriminated groups, in both researches, nearly half of respondents have no opinion on the issue.[26]The latest research on identifying and responding to discrimination was conducted in April, May and June, 2016 under the professional seminar "Identifying and responding to discrimination", organized by the OSCE Mission in Serbia, the Ministry of Internal Affairs and the Office of the Commissioner for Protection of Equality and it included a semi-structured questionnaire for police officers. The sample included 128 members of RS Ministry of Internal Affairs, the traffic police and the criminal police from various police departments. The questionnaire aimed at identifying existing knowledge of police officers on discrimination, by qualitative content analysis of defined and asked questions and answers on seven seminars held, it was noted that more than 70% of the respondents identifies LGBT people and Roma as a category of socially vulnerable and as the most discriminated group.

POLICE TREATMENT OF ROMA

Reports from international organizations, foreign governments and associations for human rights indicate that Roma are sometimes victims of physical and verbal abuse by some members of the security forces. Cases of coerced confessions and excessive use of force during identity checks, arrests and evictions were also reported. On the other hand, Roma do not, in most cases, file criminal charges against the police because of the lack of information about their rights and fear of reprisals. In some cases, when such applications were submitted, the delay in the examination of the cases was unduly recorded.[27]

24 RadoslavZekavica, Combating discrimination in the Republic of Serbia – with a special emphasis on the role and contribution of RS Ministry of Interior, Office for Human and Minority Rights, Belgrade, 2014, p. 88

25 Annual report of the Commissioner for Equality Protection for the year 2014, Belgrade, March, 2015, p. 32

26Research done by prof. Dr.RadomirZekavica, Criminal Police Academy, Belgrade, contact: radomir.zekavica@kpa.edu.rs.

27 The strategy for improving the situation of Roma in the Republic of Serbia, the Office for Roma Na-

When it comes to the perception of Roma and the police work, there are two groups of observations about the police work and the expectations of the police - neutral and negative. Expressed observations which follow fall into that group that "the police are only human" who, like the rest of the population, care for their job and family, and that the police formally perform their duties (for example, go on site, note an offense or a criminal act, make a record, etc.) – but that, here, the abilities and capabilities of the police stop, which later do not subsequently lead to a closure in the form of solving a particular problem. Negative perceptions of police work ranges from the fact that the police are a repressive tool of the majority of the nation, beyond that they themselves are a source of criminal activities and acts as "brutal", to the fact that they are a corrupt and inefficient service that behaves extremely discriminatory against members of the Roma minority. "Do not beat anymore, but they say it's Gypsy business.", "We are always treated as if all Roma are guilty."[28]

YUROM Center in 2014 initiated a project "Say you do not feel safe". A research on the attitudes of citizens from the Roma mahala was one of the activities of this project, which was completed in March 2014.The survey covered a total of 120 Roma in 12 cities in Serbia. The examined citizens believe that the police are responsible to the fullest extent (63.3%) for their safety. This is a state authority from whom they expect protection. In addition to the police as an "external" factor that can protect them, there is also the family as an "internal" factor. From their family, Roma expect protection for themselves and for their children. However, there is an interesting answer by 14.2% of respondents who believe that they are personally responsible for their safety.[29] Roma are victims of discrimination in many areas of social life, unfortunately they are often the targets of hate crimes: arson, physical violence, derogatory statements, even murders. This kind of violence against Roma is called romaphobia. Violence against Roma remains a serious problem not only in Serbia but also in the whole of Europe, the cause of violence against Roma is lack of effective response to violence by state authorities. Roma are often described as a vulnerable group in various strategic documents and practical policies, but there is often little understanding in police practice for resolving the security problems of the Roma, and this is the case in many European police departments.[30]Roma are often at greater risk of police violence in public places, such as in Roma settlements during the raids, where people who live in them may be subject to special attention by the police, often in the form of coercive raids. In these cases, the criminal investigation of racially motivated abuse of power by the police is often biased or openly discriminatory.[31]A direct racial discrimination exists in a case of any difference in treatment based on the personal characteristics of the person who has been treated such as race, skin color, language, religion, nationality or national or ethnic origin, which has no objective or rational justification or if there is no reasonable degree of proportionality between the applied police powers and application objective. Roma people, especially in cars or other vehicles, could be the target of racial and ethnically profiled stopping and investigating, disproportionately subjected to arbitrary detention, arbitrary seizure or destruction of property by the police.[32]Ethnic profiling is a practice

tional Strategy, Ministry of Human and Minority Rights, Belgrade, 2010, p. 35.

28 Roma women and men and security sector reform in the Republic of Serbia, Center for Public Policy Research, OSCE, Belgrade, 2014, p. 31.

29 O. Balic, Roma safety: guidelines and practices for monitoring and reporting on the occurrence of discriminatory practices and security risks, YUROM center, Nis 2014, p. 36.

30 Practical Guide for Police services to prevent discrimination against the Roma communities, taken from: http://ec.europa.eu/justice/discrimination/files/roma_police_guide_en.pdf, 06.02.2017. 11.13h p. 13.

31 Practical Guide for Police services to prevent discrimination against the Roma communities, taken from: http://ec.europa.eu/justice/discrimination/files/roma_police_guide_en.pdf, 08.02.2017. 17.15h p. 13.

32 Practical Guide for Police services to prevent discrimination against the Roma communities, taken from: http://ec.europa.eu/justice/discrimination/files/roma_police_guide_en.pdf, 10.02.2017. 08.10h p. 13.

in which, using ethnicity, race, national origin or religion, the police direct their operational work to particular groups without a legitimate basis and purpose. Ethnic profiling exists in cases where police officers without any specific purpose and reasonable justification make the decision about who is or may be involved in criminal activities on the basis of ethnicity.[33]This is often the result of discriminatory beliefs deeply rooted in certain law enforcement agencies, and even in entire institutions. Ethnic and racial police profiling in Europe and the United States is a widespread form of discrimination. Focusing of operational police actions on the appearance of the perpetrators, rather than criminal behavior, leads to violations of fundamental human rights, in addition, ethnic profiling is inefficient because it directs police to focus on racial and ethnic characteristics, instead of the real indicators of crime. Roma are the most frequent victims of ethnic profiling in many countries of Europe. A practical guide for police services, in order to prevent discrimination against the Roma community, shows a consistent pattern between the volume of stopping and the degree of ethnic profiling. In this respect, Greece stands out among the seven member states of the European Union, since the Roma community considers their police to be very discriminatory.[34]Relations between the police and the Roma community have traditionally not been very good and it is therefore necessary to build new forms of communication and trust. There are some important obstacles that prevent the efficient service of the police from the fight against discrimination and hatred crimes suffered by Roma, and that is the lack of complaints. The lack of complaints due to discrimination is one of the main problems that affect the situation of the Roma community, and this is also a problem for law enforcement because it indicates that the Roma do not trust the police or the majority of the Roma community are unaware of their rights, that they are not familiar with the concept of discrimination and ways of reporting incidents to the police. The representatives of the police often have stereotypes and prejudice against the Roma community that is constantly affected by negative stereotypes and generalization. Practically, this makes the communication and gathering evidences in investigations more difficult, because Roma are not seen as potential victims of crime or any form of discrimination, but rather as a potential suspect. Police records often contain discriminatory elements or bias based on ethnicity, hatred speech in the official reports. There are often communication barriers between police and Roma. In some cases, these barriers are based on linguistic issues, in other cases, relevant information on laws, regulations, criminal charges, and notes are written in the police slang and jargon which are not understandable for people with low levels of education. In the end, the police often stay unaware of the Roma practices and traditions which particularly prevents fluent communication between these two groups.

CONCLUSION

The police service should react decisively and effectively in cases of threats and/or attacks on the Roma population, and that this commitment publicly demonstrates, within its legal powers, which will, in addition to the protection of the minority, achieve and strengthen Roma's confidence in the work of the police as a public service. The police must unambiguously support the implementation of anti-discrimination legislation and subordinate regulations that are taking effect in the Republic of Serbia, including those that sanction hatred speech

33 Practical Guide for Police services to prevent discrimination against the Roma communities, taken from: http://ec.europa.eu/justice/discrimination/files/roma_police_guide_en.pdf, 10.02.2017. 09.23h p. 14.

34 Practical Guide for Police services to prevent discrimination against the Roma communities, taken from: http://ec.europa.eu/justice/discrimination/files/roma_police_guide_en.pdf, 10.02.2017. 09.23h p. 15-16.

and introduce hate crime as a particularly aggravating factor in qualifying a crime in the way of responding firmly to cases of speech hatred and other discriminatory acts.

The police departments should continue the activities which will bring closer and establish partnerships with local Roma communities. Police officers responsible for areas where Roma population reside should constantly consult this population on key security issues within the community, and then, resolve them impartially, without reference to the cultural and sociological specificities of the Roma population. The Ministry of the Interior should strengthen internal control mechanisms and prevent illegal impunity of police officers, as well as enhance informing on how to report such behavior. Police officers engaged in the community policing should adapt planning and implementing their activities and work with specific communities to the type of a threat that these communities are exposed to. This means that in addition to the identified threats such as child safety, combating the use of illegal substances, lack of personal documents and the like, threats to the security of the Roma population such as hooligan and racist group attacks where these threats are occurring. The Ministry of Interior should issue single instructions to police officers of all police departments on the treatment of internally displaced persons who do not yet possess all personal documents. This treatment should be standardized and exempt from the appreciation and will of specific police officer conduct. In this way, the actions will become predictable and clearly members of the Roma population who do not have identity documents valid in the Republic of Serbia, the scope for arbitrary functioning of the police officers will be reduced and internally displaced Roma women and men will not be put in a situation of fear and uncertainty. Training on non-discrimination and the treatment of vulnerable groups should be received not only by the police officers involved in community policing, but also members of other police units, including members of the riot police and gendarmerie. If there are none, lessons on the implementation of the policy and legislative framework on preventing and combating discrimination should be added. It is desirable that the Directorate for Analytics of RS Ministry of Interior establishes a benchmark according to which the security situation of a certain part of the population (for example, specific national minority) can be monitored and security trends of the group can be followed, since the number of offenses where the perpetrators or the victims are members of a national minority are limited and conditional indication because the declaration of nationality is optional. Roma people who testify that they have been victims of police torture and/or arbitrary actions of the police officers should be informed about the mechanisms that are available to them for making complaints (internal control of the Ministry of Internal, Ombudsman, Commissioner for Equality), and encourage them in using the mentioned. Framework of competence and work of local safety councils where they have been formed should be specified and formed in those local governments where such bodies do not exist. In their work, Roma non-government organizations should be included, as well as coordinators for Roma issues, in particular the Roma and non-governmental organizations dealing with the protection of Roma women and promotion of their rights and needs. It is necessary to strengthen information and coordination of the Ministry of Interior, local authorities, schools, social welfare centers, Roma and other non-governmental organizations in cases of immigration of Roma families in a new environment, in order to achieve a permanent non-discriminatory behavior of employees in the security structures, public and municipal services to all citizens in a particular location, consistently react to the violation of a law, and prevent clashes with the local population and other forms of threats to security, so it is needed to put an extra effort to change this condition through different education programs and seminars. Education programs should more actively involve members of the criminal police, in a similar way that has so far been done through the programs with uniformed composition of RS Ministry of Interior.

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POLICE OF THE DEFENDERS OF THE CONSTITUTION ERA IN MEMOIR LITERATURE

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Abstract: Many contemporaries of the Defenders of the Constitution regime (such as Nikola Hristić, Jevrem Grujić, Mileva Alimpić, Mladen Žujović etc.) wrote their memoirs, which serve as significant source for political and social history of the above-mentioned period. Among other data, memoirs provide a lot of information concerning structure and functioning of police service. Nikola Hristić, for instance, witnesses on the structure of Belgrade police, qualities of police officers, manners in which police arrests were made, the evidence that police used when investigating crimes and so forth. Other memoirists mainly set forth the abuses carried out by the police of Defenders of the Constitution. Whereas Alimpić primarily puts forward the police abuses of power in executing their official duties, other memoirists point out unlawful acts of police chiefs out of their police duties (the position of police chiefs were held by district and county prefects, as well as village headmen, who all performed many duties besides police service) and their overwhelming illegal accumulation of wealth. The author will expose relevant data of memoirists and try to determine in what extent political views of the memoirists reflected on their depiction of police service during the era of defenders of the constitution.

Keywords: police, regime of defenders of the constitution, history of police in Serbia, Belgrade Town Prefecture, Serbian-Turkish conflicts, Tenka's plot.

INTRODUCTION

The Defenders of the Constitution (henceforth the Defenders) were the group of politicians who acted as the opposition to Prince Miloš Obrenović (1815–1839, 1858–1860) and his son and heir Prince Mihailo Obrenović (1839–1842, 1860–1868) during their first rules. The group got its name at the time of Prince Mihailo's first reign, since they argued they were not revolting against the ruler but only defending the Constitution from him. The Defenders made Prince Miloš abdicate in 1839 and then dethroned Prince Mihailo in 1842, after which they brought Karađorđe's son Prince Aleksandar Karađorđević (1842–1858) to the throne. Prince Aleksandar was a weak ruler, shadowed by his mighty "'benefactors'", and the period of his reign bears the name "'the reign of the Defenders'" in Serbian historiography.

Organization and duties of the police in the Defenders' era were regulated by Organization of District Prefectures and Main Duties of County Prefects (*Ustrojenije Okružni načalničestva i glavne dužnosti srezski načalnika*, 1839) (henceforth ODP), Directions Serving as a Supplement to Already Issued Police Regulations (*Nastavlenija kao dodatak k do sada izdanim policajnim uredbama*, 1839), Regulation on the Duties of Belgrade Town Prefecture (*Uredba o dužnostima Uprave varoši Beograda*, 1840) (henceforth RDBTP), Prince Mihailo Obrenović's

decree establishing Belgrade Town Prefecture as a police body exclusively (1841), Organization of the Local Police Authority in the Mine Town of Majdanpek (*Ustrojenije mestne policajne vlasti u rudarskoj varoši Majdanpeku*, 1853). Besides, many works treating the police of the Defenders' era have been published recently.[1] This paper has the modest aim to show how the police of the Defenders' period were described by their contemporaries who wrote memoirs.

THE POLICE OF THE DEFENDERS' PERIOD SEEN THROUGH THE EYES OF THE MEMOIRISTS

Memoirists who left significant data on police of the Defenders' era are: Nikola Hristić, at that time Belgrade town prefect (police chief), Jevrem Grujić and Kosta Magazinović, both members of the liberal youth, Mileva Alimpić, princess Ljubica's niece, Ignjat Vasić, a parish priest in Loznica and Stojan Obradović, a long-time judge in various district courts in Serbia. Hristić was a non-party conservative civil servant, whereas others were partisans of Obrenović dynasty. These authors provide information on the quality of police work during the Defenders' era, the manners in which the police collected evidence, and the difficulties that police encountered in executing their duties and police misconduct. As to lattermost topic, solely the abuses of police powers will be set forth in this article, seeing that other lately published work treats the police of the Defenders' era ill-appropriate behavior off duty.[2]

The aforementioned memoirists cite numerous examples of the police not performing their professional tasks in appropriate manner. According to memoir literature, there were two sorts of the police inadequate work: unskillful behavior in making arrests and Belgrade police reckless night patrolling.

Nikola Hristić reveals that he had ordered the arrest of two Jews who had been instigating their fellow-ethnics not to obey orders of Serbian authorities and not to pay taxes. Nevertheless, the two policemen who were ordered to perform surveillance over the suspects compromised the action by asking around about the two Jews, which alarmed the suspects to flee under Belgrade Pasha's protection.[3] Certain Petar the Latin (Catholic) was, according to Hristić's words, the avidest follower of Avram the Bricklayers' Chief (*dunđerbaša*), who deterred Christians from Turkey settled in Belgrade from obedience to Serbian authorities. When the occasion arose, Hristić sent policemen to arrest the rebel. However, Petar not only managed to escape from his hiding place surrounded by the police, but he killed one of the policemen and wounded one of them. The police chase after the escaping felon was unsuccessful; furthermore they fired shots at Petar, none of which hit the target. A police sergeant Jovica, directing the action of arrest, told Hristić that the action failed due to the policemen's disobedience to his (Jovica's) commands. Jevrem Grujić recalls that his brother Lazar once wrestled with a young man from the village of Rudovci (near Aranđelovac). The County Prefect Živan spotted the two lads who were beating up a young man from Rudovci, while Lazar Grujić fled from the scene. Živan then sent a policeman to arrest Lazar Grujić. The policeman

1 See, for instance, B. Milosavljević, *Uvod u policijske studije*, Beograd 1994, 56–59; B. Bogdanović, *Dva veka policije u Srbiji*, Beograd 2002, 36–37; R. Zekavica, ''Istorijski razvitak policije u Srbiji XIX veka s posebnim osvrtom na pojavu i razvoj kontrole njenog rada'', *Bezbednost* vol. 1/2006, 162–170; I. Krstić-Mistridželović, ''Razvoj policijskih vlasti u Srbiji u prvoj polovini XIX veka'', *Struktura i funkcionisanje policijske organizacije tradicija stanje i perspektive* I, Beograd 2013, 67–72; Ž. Braković, I. Krstić Mistridželović, ''Razvoj policijskih vlasti u Srbiji u drugoj polovini XIX i početkom XX veka'', *Struktura i funkcionisanje policijske organizacije tradicija stanje i perspektive* II, Beograd 2013, 44–45.

2 See M. D. Milenković, ''Zloupotreba ovlašćenja nosilaca policijske vlasti za vreme ustavobraniteljskog režima'', *Baština* 41 (2016), 267–283.

3 N. Hristić, *Memoari 1840–1862*, Beograd 2006, 191.

found the suspect in the vicinity of some water source and tried to apprehend him, but Grujić was defeneding himself fiercely, and for that reason the policeman was unable to fulfill his task. Infuriated, Prefect Živan ordered two policemen to bring the suspect. Grujić resisted ardently again, and as the rumor of police action was spread around his village of Darosava, the suspect's young fellow-villagers assembled to help Grujić and fought off the two policemen.[4]

The task of patrol officers (*pozornici*) and patrolmen (*patroldžije*)[5] was to carry out night patrols. Hristić says there were no benefits from those two sorts of units. According to the words of former Belgrade town prefect, patrol officers tasked with patrolling over certain area would usually sit in a nearby bar and spent their time in it. Patrolmen were not any better; when night fell, they would go beside houses and shops and sleep there. Hristić dismissed patrol officers' senior officer (*buljukbaša*) because he was not able to train patrol officers and discipline them. A new senior officer, Jovica Nešković, was recruited from the military. He took some measures to enhance the quality of patrol officers' work, but his efforts resulted only in slight improvement. It was impossible, however, to make patrolmen to continuously patrol over the designated area. Robberies and thefts were often committed in zones of their responsibility and they knew nothing about them. Hristić even had the impression that patrolmen themselves took part in those crimes. All of the measures taken to better patrolmen's work were ineffective: they were being punished and discharged, but their later replacements were of the same quality.[6]

Memoirists bring to light that police in the Defenders period collected evidence through interviews of suspects, confrontations between suspects, handwriting identifications and searches.

Interviews of suspects were mentioned in Hristić's, Alimpić's and Vasić's memoirs. Hristić claims that the interviews were conducted in a polite manner, as Alimpić alleges quite the opposite (see below). Hristić recalls his interviews with suspects for Tenka's plot[7]. At that time Belgrade town prefect conducted interviews with suspects Miloš Mrcailović, Raja Damjanović, Paun Janković Baća, Stefan Stefanović Tenka, Cvetko Rajović and Pavle Stanišić. As reported by Hristić, he was very lenient when questioning Mrcailović, although the suspect was pertinent and temerarious. When some of the interrogated suspects (Raja Damjanović and Stefan Stefanović Tenka) requested him to postpone further examination as they were not in the condition to speak, Hristić pleased them.[8]

On the basis of Hristić's descriptions of his interviews with suspects, one can draw the conclusion that former Belgrade town prefect was taking care to avoid any irregularities regarding examinations whatsoever. In his statement given to Hristić, the suspect Miloš Mrcailović accused Ilija Garašanin of being involved in Tenka's plot and even of providing the rifle with which Prince Aleksandar's murder was to be executed. After the record of Mrcailović's statement had been made, the suspect altered his allegations, claiming that his accusations at the expense of Garašanin were false and requested Hristić to tear the record of his statement and make a new one. Hristić did not grant the suspect's request, but added Mrcailović's re-

4 N. F. Pavković, *Etnografski zapisi Jevrema Grujića*, Beograd 1992, 115; Hristić, op. cit., 197–199.
5 According to RDBTP patrolmen were people not belonging to regular police force, but civilians serving as aid in night patrolling. Nikola Hristić claims that at the time when he became Belgrade town prefect (in 1856) there were 20–30 patrolmen. Hristić, op. cit., 189; I. Krstić Mistridželović, M. Radojičić, ''Beogradska varoška policija u doba uspostavljanja vlasti ustavobranitelja", *Nauka, bezbednost, policija*vol. 3/2014, 100.
6 Hristić, op. cit., 188–189.Jakov Ignjatović sheds a different light on night patrols in Belgrade. See J. Ignjatović, *Memoari* II, Novi Sad – Priština1989, 69.
7 A plan forged in 1857 by several distinguished political figures and some other people to assassinate Prince Aleksandar Karađorđević.
8 *Dnevnik Ignjata Vasića prote lozničko g*(henceforth *Dnevnik*), Šabac 1889, XXXX; Hristić, op. cit, 231, 236–238.

mark after the end of his original statement. The former Belgrade town prefect also provided the datum that the Government, unsatisfied with modest results of the investigation against suspects for Tenka's plot, came to the idea that the suspected plotters were subjected to torture in order to obtain their confessions. Hristić did not accept to implement the proposed measure.[9]

Confrontations between suspects as an investigative tactics were mentioned in Hristić's memoirs. Based on Hristić's information, the suspects were confronted if one of them denounced the other one as an accomplice in the crime in question. As Mrcailović in his statement discovered that Raja Damjanović had been one of the conspirators in Tenka's plot, Hristić decided to confront the two suspects. Paun Janković Baća denied his involvment in Tenka's plot, which made Hristić try to get the suspects's confession by confronting him with Mrcailović and Damjanović, who had claimed that Janković was their fellow conspirator. Some of the suspected co-conspirators, whose names Hristić does not mention, were confronted with Pavle Stanišić. Judging by the outcomes of these confrontations, this investigative tactics showed to be fruitful. Having been confronted with their accomplices, Damjanović and Janković confessed to their involvement in Tenka's plot, and only Stanišić maintained his innocence.[10]

In his diary, Vasić puts forward the interview of him as the suspect for writing certain politically problematic pasquinade. The interview was conducted on September 21st, 1842[11]. The interrogators Simo Vesović and Jovan Mostić told Vasić to write ''grand vizier, prince Miloš". After the suspect had done so, the investigators were comparing his writings with the handwriting on some other text.[12]

Memoir literature gives many examples of searches done by the police of Defenders' period. This method of collecting evidence was mentioned by Hristić, Vasić and Alimpić. Hristić's memoirs contain notes on his searches in the homes of Raja Damjanović, Paun Janković and Miloš Mrcailović. If one relies on Hristić's data only, a conclusion can be drawn that police searches were not very thorough. When referring to the search of Raja Damjanović's residence, former Belgrade town prefect explicitly mentions only searching through the suspect's wardrobes.[13]

On the contrary, Vasić and Alimpić describe searches as most detailed. The first of these two depicts the search of his home in following words: "They searched through all of my books and papers and through all of sheets and caskets…" In Alimpić's descriptions of police measures taken against the Vukomanović family[14]after every significant Obrenović dynasty follower's escape from Belgrade one learns that her family's house was searched "'from the foundation to the rooftop"'. Alimpić also brought to light that on Saint Sava's Day in 1843 the police conducted the search in Vukomanović's residence, during which all wood material from former Obrenović's court was turned all over and spread across the snow. "Everything in the basement was moved", adds Alimpić, and the police, according to her words, looked even into the places "'where barely a mouse could hide"'.[15]

Based on Hristić's telling, the police had three difficulties in maintaining peace and order in Belgrade. One of those difficulties arose from the status of Serbia as a vassal state: Hristić says that Belgrade police could not interrogate foreign citizens unless the consulate of their

9 Hristić, op. cit., 232, 235.
10 Hristić, op. cit., 235, 237, 239
11 The dates in this article were put in Julian calendar, which was in use in Serbia at that time.
12 *Dnevnik*, XXVIII.
13 Hristić, op. cit., 230.
14 The surname of Mileva Alimpić's family of origin.
15*Dnevnik*, XXVIII; Mileva Alimpić, *Život i rad generala Ranka Alimpića u svezi sa događajima iz najnovije srpske istorije* Beograd 1892, 53–54.

state approved that measure. Moreover, the clerk of the consulate of the state whose citizen was suspected had to be present during interrogation of the suspect. Hristić recounts that Serbian authorities had major problems when dealing with Austrian subjects; there were even serious conflicts between Serbian government and Austrian consulate over that topic. At the time of Milivoj Petrović's prefecture in Belgrade (November 15th, 1855 – October 18th, 1856) an agreement was made that Belgrade town prefect would deliver citations to Austrian subjects through their consulate and send judgments directly to the consulate[16] and that a clerk of the consulate would attend police interviews of Austrian citizens.[17]

Much more lasting and intense difficulty was the conflicts of jurisdiction with Turkish police in Belgrade. The conflicts of jurisdiction occurred in several fields: the right to hold teskeras[18] of comers to Belgrade during their stay in Serbian capital, the authority to apprehend the Christians from Turkey dwelling in Serbian part of Belgrade[19] and the alleged right of Turkish police to carry out patrols in Serbian part of Belgrade.

Hristić exposes that many Christians came to Belgrade as day laborers, craftsmen and merchants. Since they were staying at homes of the Serbs and the inns whose owners were Serbs, Serbian police was trying to withhold their teskeras. As Belgrade Pasha protested about such practice, Serbian government ordered the police to take the passports to the Pasha hence. Serbian police complied with the order for a certain period of time; the procedure of teskeras-taking looked as follows: the passengers from Turkey coming to Belgrade by boat would leave their passports in Serbian police, situated by the Sava River. Then a Turkish scribe would come, take teskeras from Serbian police and bring them to the Pasha. As Hristić considered such procedure to indicate his subordination to the Pasha, he decided to cease bringing passports to the Turkish official. The prefect issued the order to Belgrade police not to send teskeras to the Pasha any more.[20]

The pasha complained about Hristić's command. As sending a musellim to Hristić proved ineffective, the pasha addressed his complaint to Serbian Minister Marković[21]. He tried to persuade Hristić to continue sending teskeras to the Pasha, but the prefect was willing to do so only on the condition that he received Marković's order in written form, which did not occur. The Pasha then ordered a teskera-controller to lodge in one of the Turkish taverns on the coast of the Sava and to receive passport from passengers on that place. Nonetheless, Prefect Hristić noticed that there were not any newly brought teskeras in Serbian police and learned that the Pasha's official, aided by the owners of the Turkish taverns, had been collecting passports. At Hristić's command, the teskera-controller was driven away from the coast of the Sava. The tavern keepers, however, came to his aid: they were taking new passengers' passports delivering them to the teskera-controller. Having found out this piece of information, Hristić requested the tavern-keepers to come to Serbian police station and when they did so, warned them to give teskeras to the Serbian police. As the tavern keepers ignored the prefect's warning, Hristić decided to dispatch policeman Đorđe Nišlija to the coast of the Sava and ordered him not to let any of the passengers from Turkish boats to step on the shore until they hand him their teskeras. Two to three days subsequent to Hristić's order, Nišlija stopped

16 By direct delivery Hristić may have meant avoiding delivery of papers of investigation and judgements via Serbian Ministry of Foreign Affairs, which was ordinary proceeding at that time. Out of Hristić's formulation, however, it is impossible to determine whether the author refers to the police or court judgments (according to Police Directive Act from 1850, the police acted as judicial authority for misdemeanor charges).

17 Hristić, op. cit., 180, 184.

18 Turkish word with multiple meanings; in the context above it means passport.

19 Serbian capital was divided in Serbian and Turkish part at that time.

20 Hristić, op. cit., 182, 194.

21 Stefan Marković, Serbian foreign minister from May, 29th to September, 16th 1856 and from June 1857 to March 1858.

the passengers of a Turkish vessel coming from Bosnia and requested them to show teskeras. The passengers not only refused to fulfill his request, but took sticks and ran out of the vessel, swearing at both Nišlija and Serbian government. The policeman took out his weapons (a pistol and a yatagan) and ran after the passengers. After they had fled onto the vessel, Nišlija and several Serbian lads who came to his help cut off ropes with which the Turkish vessel was tied to the shore, which made the owner of the boat subdue and promise to give passports to the Serbian police. From then on, Turkish authorities did not take teskeras; only a Serbian policeman collected them, says Hristić.[22]

It seems, at least according to what Hristić put forward, that conflicts about the right to arrest Christians from Turkey happened on a regular basis. A Serbian policeman caught a suspect, a Serb from Turkey, with the goal to take him to the police. However, when the two of them approached the Stambol Gate[23], the suspect started resisting, claiming he was a Turkish subject. Nizams would take the suspect from the Serbian policeman by force and send him to the Pasha afterwards. Hristić sent his delegate to the musellim with the request that the suspect be handed to the Serbian police. However, the musellim's chaush (messenger) notified the prefect that the Pasha had told he would punish the suspect and that Hristić should only inform the Turkish official what offence the wanted person had committed.[24]

Avram the Bricklayer's Chief was restless in inciting his fellow-Christians from Turkey to disobedience to Serbian authorities. As Hristić found out that Avram had been exiting from Turkish part of Belgrade and that he had been visiting a Turkish tavern in Serbian part of the town, the prefect ordered the watchman of the quarter (*kvartalnik*)[25]Spira to put the bricklayer's chief under surveillance and to make the arrest when he spoted Avram in a tavern alone. The kvartalnik did as ordered, but on the way to the building of Serbian police, after a brief fight, nizams (Turkish soldiers) took the suspect away from Serbian policemen. Enraged, Hristić commanded 5-6 police-attendants[26] to intercept nizams and retrieve Avram. The action of police-attendants was prompt and effective. Faced with bayonets directed at them, nizams let off the suspect, the police-attendants took him over and brought him to the Serbian police.[27]

The Turkish police patrols were often frequenting the taverns owned by the Serbs and located in the Serbian part of the town in order to arrest the Turks who drank excessively in those taverns. Hristić tried to dissuade Turkish authorities from sending patrols in the Serbian part of the town, but he had no success. For that reason, the prefect issued the order to police-attendants to drive Turkish patrollers off the Serbian streets and taverns. Turkish authorities, nonetheless, carried on dispatching patrols, but now they were sent by the Pasha instead by the musellim. After he had received the information that the Pasha's chief bodyguard and 3-4 other bodyguards were patrolling over day and searching for the Turks in the taverns at Terazije and Vračar, Hristić ordered one kvartalnik and four police-attendants to

22 Hristić, op. cit., 194–196.
23 The gate was located between nowadays building of the National Theater and the monument to Prince Mihailo Obrenović and it signified the border between Serbian and Turkish parts of Belgrade.
24 Hristić, op. cit., 196.
25 Kvartalnik was the police officer tasked to patrol in Belgrade quarters (the area of jurisdiction of a police officer). In the aforementioned Prince Mihailo's decree from 1841, the number of watchmen was set to four. Hristić, nevertheless, says that at the time when he came to prefectural duty there were six kvartalniks, as Serbian capital had been divided in the same number of quarters as the units in police matters. See *Sbornik zakona i uredbi i uredbeni ukaza izdani u Knjažestvu Srbskom* II (1845), 158; Hristić, op. cit., 188.
26 The police-attendants (*služitelji policije*) were soldiers engaged at Hristić's initiative to perform police duties while on leave in army. They were colloquially called *džandari* (the gendarmes) by both Serbs and Turks. See Hristić, op. cit., 201–202.
27 Hristić, op. cit., 204–205.

take the chief bodyguard to the Serbian police station, but secretly, so that the Turkish police interference be avoided. When the chief bodyguard was brought to the police, he used the Pasha's order to patrol as the excuse. Hristić replied he was the one whose orders were to be followed in the Serbian part of the town and let the chief bodyguard go warning him that he would be detained and punished if seen patrolling again.[28]

Among the abuses of police powers, the memoirists put forward the use of coercion with the goal to extract confession, the abuses related to holding suspects in detention, arbitrary beatings and threats made to suspects and other people.

Alimpić states that in 1843 old Todor from Brusnica, a servant in her home, was taken to the police. During interrogation he made some statements against Alimpić's mother. When brought in for questioning, Alimpić's mother requested confrontation with her servant. Having been taken out of detention, at the sight of Alimpić's mother, old Todor allegedly showed his swollen and livid chest and mourned that he had been tortured in the course of examination, and therefore he had confessed everything that the investigators had wanted him to confess. Alimpić also says that after the secretary and interpreter of the French consulate in Belgrade had made a visit to her home (on December 29th, 1842), the Belgrade police chief Raja Damjanović conducted the interrogation of Alimpić and her two siblings during which he promised that their mother would be brought home if the children told everything he asked them to, and otherwise she would be bonded and tortured. According to Alimpić's allegations, during their visit on Saint Sava's Day in 1843, the police were forcing confession stating that in the course of patrolling on the previous day the policeman Kosta Cenić had seen two fugitive soldiers from Belgrade casern entering in the Vukomanović's yard.[29]

According to the memoirists, the police committed two abuses in respect of detention: they illegally held suspects in custody overlong and detained the suspected felons by reason of "'mere doubt'".

In the act of accusation against Prince Aleksandar Karađorđević from 1857, exposed in the first part of *The Records of Jevrem Grujić*, Serbian State Council stated that Article 65 of the Constitution of 1838, determining that the suspect may be held in police custody for 24 hours only, had been violated on some occasions. Namely, the suspects for Tenka's plot – Stefan Stefanović Tenka, Pavle Stanišić, Raja Damjanović and Paun Janković were detained not for 24 hours, but "for almost 24 days. However, the Council was of the opinion that Prince Aleksandar was to be blamed for excessive duration of police custody in this case and not the police. The Council's act of accusation also inculpates Zaječar District Prefect Aleksandar Tripković for holding Pera Stevanović, Nikolča Milošević, Simon Milošević, Milija Milojević and Milenko Bogdanović from the village of Rgotina in custody for 20 days before interviewing them. During his service as the head of police department of the Ministry of Internal Affairs, Hristić was commissioned to investigate complaints on Ćuprija District Prefect Bogdan Đorđević (Bogdan the Tatar), and he discovered that the prefect had been keeping some people in custody only for suspicion they had been offenders.[30]

In the ethnographic records of Jevrem Grujić, a reader can find the datum that one kmet (village headman) was discharged because he had hit one of his fellow-villagers in breech two times with a stick for having plowed one or two of the kmet's furrows. Kosta Magazinović, a member of the first generation of Serbian students sent in Western countries for academic

28 Hristić, op. cit., 202–203.
29 Alimpić, op. cit., 51, 52, 54.
30 *Zapisi Jevrema Grujića* (henceforth *Zapisi*) I, Beograd 1922,222, 225–226; Hristić, op. cit., 160.

studies in 1839, was a witness of a Roma taking hits by Atanasije Ivanović, a Roma tax-collector[31] for having beaten his spouse.[32]

Obradović puts forth the datum that subsequent to his return in Serbia after nearly one-year emigration in Austria (in June 1843) he was constantly being monitored and under suspicion as a pro-Obrenović. The Šabac District Prefect Đuka Stojičević called him in the prefect's office several times, and threatened Obradović he would "cut him into four pieces and hang him in four parts of the town (Šabac, underlined by the author) thereafter". Nikolča Kostić, the notorious Belgrade policeman in the Defenders' period, remained carved in Alimpić's memory for he had been disturbing the Vukomanović family with frequent night lookouts of their home. At one point Kostić went beyond the limits of Alimpić's mother's tolerance and she threatened she would kill him, at which the policeman dared the woman to shoot threatening he would burn her house. The night prior to Saint Sava's Day in 1843, a policeman Kosta Cenić slammed at the door of the Vukomanovićs' home and yelled that two soldiers escapees from Belgrade casern had gone into the courtyard of the Vukomanović family demanding that the fugitives be handed to him. The policeman urged Alimpić's mother to open the door, admonishing her she would otherwise "get to know Kosta Cenić".[33]

CONCLUSION

If Hristić is the one to believe to, the police encountered serious problems in their work and they were very successful in overcoming those difficulties. The evidence was collected by the rules and the ideas to obtain them in an irregular fashion came from political authority. The only police defects were lack of competence and negligence. However, according to the other memoirists, the police had much more shortcomings. They were excessively ardent and too conscious in their investigations when a suspect was an opponent of the governing political regime. None of the authors of the above-mentioned memoirs is to be absolutely trusted. Albeit politically neutral, Hristić was the member of the police force and therefore likely to remain silent about thier flaws. Bearing in mind political attitude of other authors, it is highly probable they would picture the Defenders' era police in the darkest colors. Thus, the image of the Defenders' period police shown in memoir works is inconclusive and it ought to be supplemented from the information from other historical sources in order to be depicted correctly.

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32 Pavković, op. cit., 101; Archive of the Serbian Academy of Sciences and Arts, No 9288, *Memoirs of Kosta Magazinović*, p. 18. The memoirists noted some cases of police beatings for which one cannot establish whether they were committed on or off duty. See *Zapisi* I, 91, 237.

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REVIEW OF THE IMPLEMENTATION OF COMMUNITY POLICING TRAINING FOR POLICE OFFICERS IN SERBIA

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Abstract: Implementation of the Action Plan for the Community Policing Strategy (hereinafter the Strategy) started at the end of June 2016, with the first training of the police officers to work in the community policing, held in Vrnjačka Banja. This paper is the review of the implementation of this training, from the author's standpoint as the Basic Police Training Centre trainer of the professional module Community policing. The paper also points to the fact that only a consistent and full implementation of the Development Strategy of Community Policing and Action Plan for the implementation of the Strategy can create conditions for the new police culture as a new concept of policing to ensure the safety of the community with respect and acceptance of the views of citizens. In this process, the police managers have the crucial role, they must be able to motivate, lead police officers to achieve the objectives of the Strategy. The prosperity of any organisation depends on its ability to properly manage its human resources i.e. staff. That includes the internal, qualitative change in the personality of the associate, individual, focused on advancement, which is manifested not only in mechanical change in knowledge and skills, but also in certain attitudes, values, motivation, interests, thinking and behaviour. However, since the needs analysis was not adequately and fully done, the problems with implementing the Action Plan were inevitable. That could cause that future trainings do not contribute sufficiently to advancing professional competencies of police officers. In addition to the introduction, discussion and conclusion, this paper presents: review of the implementation of the training of police officers, a review of the started implementation of the Action Plan for the implementation of the Strategy, the importance of training needs analysis but it also points to the importance of police management in the implementation of the Strategy.

Keywords: Community policing, strategy, action plan, police management, education needs analysis, training

INTRODUCTION

Following the adoption of the Community Policing Strategy and the adoption of the Action Plan for the Implementation of the Strategy (hereinafter: Action Plan) in 2013, concrete preparations for its implementation started at the end of June 2016. First training of police

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officers for community policing was done in Vrnjačka Banja from 27 to 29 June 2016, and thus began the implementation of the first strategic objective of the Action Plan (*Establishing modern policing standards*) activity 1.2. (*Developing police training*) task 1.2.6. (*Conduct training*). Participants of this training were police officers, 25 of them, who will be assigned to work in police stations primarily on community policing tasks. The training included police stations Zemun, Vrbas and Prijepolje. Among the attendees were two assistant commanders of police outposts, so the training was also attended by direct superiors of those officers from the said police stations.

The organiser of the seminar was the Serbian Ministry of Interior, Police Directorate, i.e. Uniformed Police Directorate, Department for Prevention, Organisation and Community Policing. Strategic partner for the implementation of this training is the Organisation for Security and Cooperation in Europe (hereinafter referred to as OSCE). The objective of the training was to lead into the preparations for the implementation of the Action Plan through the following tasks: task 1.1.2. *Develop training needs analysis, to train the managers in the development of community policing,* task 1.2.1.*Develop training needs analysis, to train police officers and BPTC trainees in the development of community policing* and task 1.2.6. *Implementation of specialised training in community policing.*

Programme of the seminar envisaged to cover 11 topics, including: Basic principles and functioning model of safe communities; Prevention; Cooperation with other state bodies, institutions and the private security sector in prevention; Specifics of the local community; Problem-oriented work; Development of local action plans; Partnership; Security Council; Communication and gender equality and discrimination. At the end of each working day, time for discussion was provided.

REVIEW OF THE IMPLEMENTATION OF THE TRAINING OF POLICE OFFICERS FOR COMMUNITY POLICING

The most difficult aspect of the new concept of community policing is its transformation into practise, i.e. translating the concept, idea into action. There are scientific views that warn that the expectation of success without change, without fighting and interference, is too ambitious and can often jeopardise the achievement of positive effects.[3] Consistently with what was already mentioned, the authors want to give a personal contribution, through professional understanding of the training and at the same time, to point out to certain observations:

1. As was noted in the welcome speech by Mr. Jan Stefan Wredenmark, program manager for community policing and representative of the OSCE, a partner organisation in the implementation of this training, the Vrnjačka Banja training of police officers for work in the community began before the planned implementation of the Action Plan activity 1.1.1. (*Prepare the manual on community policing for managers and police officers*), so it was implemented without proper training manual.

Due to not completing of the Action plan task 1.1.1. (*Prepare the manual on community policing for managers and police officers*), the trainers who participated in Vrnjačka Banja seminar were given the seminar topics, and were to determine the teaching materials themselves. As a result of the lack of coordination and clear instructions in the process of preparation of trainers, the materials presented at the seminar were too broad and thus more suitable for advanced level training, perhaps for police managers (e.g. development of local action plans). Moreover, some materials (e.g. prevention) were taught several times, by several trainers. This

3 Ž. Nikač, *Policija u zajednici*, KPA, Beograd, 2010, pp. 138.

approach to Action Plan implementation which consisted from not following the order and dynamics of activity implementation resulted in inconsistencies in covering the seminar topics. Having this in mind, for the future trainings, it is necessary to define more specific topics unified for all - after all, this was one of the expectations from this seminar, and thus its goal.

Looking from the viewpoint of time planning, analysing the topics and seminar agenda which were sent to trainers, it is obvious that the time planned was not sufficient for covering the topics. Thus, it is necessary to re-evaluate the topics and teaching materials and/or prolong the training to more than three days, in line with what was communicated to the author by a few attendees during the seminar, that the training was too short.

Having in mind the previous observations, since the general topic is quite broad, the time for covering it is limited, and it is essential to provide time for possible discussions, the trainers are required to have experience in teaching these topics.

2. Action Plan activity 1.2. (*Develop police training*), task 1.2.1. (*Develop training needs analysis for police officers and BPTC trainees, in the development of community policing*) envisages training needs analysis, which has not been done adequately. The fact that all the BPTC trainees, all 13 generations, have had the training in community policing through the module Community policing, since that is encompassed in BPTC Curriculum, cannot be dismissed in this context. That is not the case either with the police officers who graduated from the Police Secondary School (this training was not incorporated in the secondary school curriculum), or with those who finished basic police courses other than in BPTC. These police officers, however, are active in service and lack the systematic knowledge in this area. Returning to Vrnjačka Banja seminar, 16 out of 25 seminar attendees have finished BPTC, that is to say, they already had the training. Therefore, it can be concluded that resources for the implementation of the Strategy have partly been wasted and, more importantly, that there should be more careful selection of seminar attendees for future seminars.

3. Since the task 1.2.1. has not been accomplished (*Develop training needs analysis for police officers and BPTC trainees, in the development of community policing*), the implementation of the Action plan task 1.2.3. (*Implement the trainings for police officers in line with the annual Professional Development Programme*) can also be questioned, because it is not possible to do the training within the Professional Development Programme when the guidelines which were to be the result of the training needs analysis (Action Plan task 1.2.1.) have not been defined.

4. Due to not completing of the task 1.2.1. *Develop training needs analysis for police officers and BPTC trainees, in the development of community policing*), the quality of implementation of the Action Plan task 1.2.6. (*Implement specialised training in community policing (for up to 1000 contact police officers) in line with the curriculum*) is also questionable. It remains unclear whether the Vrnjačka Banja seminar was basic or specialised training, since the attendees who finished BPTC have had the basic training in community policing, and the others have not.

5. Training for managers is envisaged in the activity 1.1.3. of the Action Plan (*Adopt curriculum for training for managers*), and among the attendees of the Vrnjačka Banja seminar were three managers, direct superiors to some of the other police officers who also attended the seminar. However, the training for managers should not be identical to the one for police officers who are to work in the field. Namely, the existing training should be adjusted to their positions as managers, i.e. to the competencies and tasks that position incorporates, so that by adopting the viewpoint on these issues during such training, they would be able to give their best contribution to achieving the objectives of the Strategy, from the managerial position. After all, one of the goals of the seminar was to help the preparations for Activity Plan task 1.1.2. (*Develop training needs analysis, to train the managers in the development of community policing*), and this conclusion is a part of the preparations.

6. Having in mind the need for constant improvement of trainings and bringing them up to date, it is evident that evaluation of the seminar should be taken very seriously, since it is the basis for further improvement of the training. So, one of the purposes of the evaluation is to assess to what extent the training goals were fulfilled, and to provide recommendations for its improvement, if needed, to identify the need for other/further trainings. The purpose of evaluation is also to give the attendees the chance to compare their previous knowledge and conduct (if they were previously assigned to the tasks related to community policing) to the standards the training is setting, and to improve both the knowledge and conduct. So, it should let the attendees know how successful they are in relation to what is expected of them.[4]

Evaluation of the first training of police officers for community policing was done in September 2016, and it had a number of shortcomings. Firstly, the evaluators were not present at the training. Secondly, the evaluation did not cover all who participated in the training, namely, some trainers were omitted. Thirdly, the evaluation questionnaires were not filled out immediately after the training. However, the Action Plan task 1.1.5. dealing with the evaluation may or may not be done properly and successfully, mostly depending on the conclusions to be drawn from the evaluation of the Vrnjačka Banja training and actions to be taken on improvement of future activities.

The authors suggest that feedback from the attendees who finished BPTC should be analysed separately from the rest of the attendees, and their suggestions implemented in a refresh course which could be constantly available on Ministry of Interior e-learning "Moodle" platform, as a part of Professional Development Programme. Feedback the managers provided should be used for creating a separate training suitable for their position. And finally, the feedback from the rest of the police officers should be used to improve the existing training.

REVIEW OF THE STARTED IMPLEMENTATION OF THE ACTION PLAN FOR THE IMPLEMENTATION OF THE STRATEGY FOR COMMUNITY POLICING

Action Plan for the implementation of the Strategy for Community Policing defines in more details activities and tasks of the Ministry, i.e. state bodies, in the implementation of the Strategy. For that purpose, there are defined responsible parties, timeframes, resources as well as success indicators for strategic goals.

This is where the authors will make several observations, mostly related to training:

7. The training in implementing this new concept in police work for advanced, middle, and even operative level police management was not held, with the exception of the three managers who attended the Vrnjačka Banja seminar. This kind of training is planned by the first strategic goal *Establish the modern standards in police work*, as well as in the Action Plan activity 1.1. *Develop police management.* This activity, with all the tasks it encompasses, should take place before the training of police officers who implement the concept in the field. That will ensure that the managers are aware of the "bigger picture", and they are able to support the implementation of the activities that follow with full understanding of the effects that applying this concept has on the security situation at the local level. Consequently, they will have a more comprehensive perception of the priorities in everyday police work.

8. It is common knowledge that Serbia as an entity is in fact a multiethnic community, while this multiethnicity is more prominent in some regions (Southern Serbia, Vojvodina)

4 See: M. Talijan, M. M. Talijan, *Opšti i bezbednosni menadžment*, VŠUP, Banja Luka, 2011, pp. 69.

than in others. Having this in mind, in addition to having comprehensive grasp of the Action Plan for the implementation of the national Community Policing Strategy, one comes to the conclusion that defining Action Plan task 6.1.1. and task 1.2.6. as separate units might not have been the best solution. In other words, the training planned in the task 6.1.1. (*Train police officers about ethnical attitudes and communication skills important for showing appreciation and respect of diversity of both male and female citizens and of national minorities and vulnerable groups*) could be incorporated in the training planned in the task 1.2.6. (*Implement specialised training in community policing (for up to 1000 contact police officers) in line with the curriculum*).

9. In addition to the above mentioned, we highlight several other Action Plan tasks: task 2.1.1. *Gathering information using "door to door" method*; 3.1.6. *Assessing preventive activities plans, programmes and projects* (within the strategic goal 3: Establish effective safety prevention); 5.1.4. *Publish the results of analyses related to the monitoring and mapping of the security situation at the local level*; and 6.2.1. *Research of public attitudes on security issues and policing*.

The importance of the implementation of these tasks is reflected in the necessity of monitoring the way in which the planned strategic goals are implemented, in order to detect possible deviations from the set goals, activities and tasks. For, the sooner discrepancies are noticed, more easily will they be corrected, while the negative effects would be minimal.

IMPORTANCE OF TRAINING NEEDS ANALYSIS

For efficient Organisation and implementation of training that will meet Organisational needs and the needs of employees, it is necessary to first recognise the need for improvement, i.e., to do training needs analysis. Usually due to the limited resources all Organisational needs for training cannot simultaneously be satisfied, which is why their systematic identification and planned implementation is necessary.[5]

The training need is determined by analysis of the current security and other issues, analyses of the police officers' knowledge and skills test results in the past year, monthly performance analyses and periodical knowledge and skills assessments.[6] Training needs analysis of police officers for community policing has several dimensions. Firstly, it shows what knowledge, attitudes and skills are necessary for efficient policing, secondly, what knowledge, attitudes and skills police officers already have, and thirdly, how many police officers are need for community policing. Strategic objectives, programmes and plans for development are set on the basis of this analysis.

The purpose of the training is to help the Organisation achieve its goals, adding value to its key resource - the people it employs. Training means investing in people, in order to enable them to work better and to be able to make the best use of their natural abilities.[7]

However, since in the case of implementation of the Community Policing Strategy, the training needs analysis for training police officers and BPTC trainees in the development of community policing was not adequately and fully done, the problems with implementing the Action Plan were inevitable. This could cause that future trainings do not contribute sufficiently to advancing professional competencies of police officers.

5 See: R., Harrison, *Training and Development*, London: Institute of Personnel Management, 1991, pp. 96-97.
6 D., Subošić, *Organizacija i poslovi policije*, KPA, Beograd, 2010, pp. 6.
7G., Miglič, *Postupak analizitanja potreba za stručnim usavršavanjem* (manual), DIAL, Beograd, 2007, pp.8.

Adequately done training needs analysis primarily must result in the following:

- Proposal of topics for community policing training programme, for police officers;
- Proposal of topics for community policing training programme, for police managers;
- Proposal for amendments of BPTC curriculum referring to modular units dealing with community policing.

IMPORTANCE OF POLICE MANAGEMENT IN THE IMPLEMENTATION OF THE STRATEGY

The term security (police) management includes the controlling role of the managers and managerial bodies in security (police) Organisations, through which these Organisations are established, protected, integrated, put in operating state and directed (steered) towards achieving effective security objectives, with efficient use of limited resources in terms of the real environment .[8]

Through their leadership, managers are trying to get employees to join them in achieving the future that comes from planning and organizing. Through their management, they provide employees with impulses to increase the effectiveness and efficiency of their work, by eliminating the causes of their discontent and influencing the increase of their satisfaction with work, their work morale and sense of belonging to the Organisation. Managing also directs staff to use of Organisational resources more efficiently: people, equipment, materials, energy, information, money.[9]

When Police Law (hereinafter: PL) was being passed in 2016[10], the importance of management positions was recognised, so they were classified into four categories, in PL article 148. The criteria were complexity of work, education, rank/title, level of responsibility and decision-making powers and autonomy in their work, and they were classified into the management positions of four levels: 1) strategic; 2) high; 3) middle; and 4) operative. The government is yet to prescribe the criteria for the distribution of these jobs. The jobs involve tasks of command and control, which include planning, organising, coordinating, monitoring, assessing, analysis, evaluation of work and giving information, as well as other tasks relevant to the command and control at the required level of competence. Furthermore, these positions as well as non-management positions include direct policing tasks and other internal affairs.

After analysing the jurisdiction of security management, it can be concluded that this management has several basic roles through which it is manifested and which constitute the framework of its extent.[11] The roles are:

1. *Representation and advocacy for police Organisation.* This manager role is manifested through establishing relations and communications between police Organisation and other authorities, Organisations, enterprises, institutions, and citizens.

2. *Establishing and improvement of partnership relations with the citizens and other entities in the local community.* The importance of this aspect was recognised when the PL was being passed, so the article 27 stipulates that "police develops cooperation and partnership with citizens and other entities in the community, aiming to do police duties and resolve the local

8 See: O., Stevanović, *Bezbednosni menadžment*, KPA, Beograd, 2012, pp. 2; Talijan - Talijan, 2011: *op.cit*, pp.158; R., Kreitner, *Managment*, Haughton Mifflin Company, Boston, 1993, pp. 8.

9 O., Stevanović, 2012: *op.cit*, pp.200.

10 Zakon o policiji ("Službeniglasnik RS", br. 6/2016).

11 See: S., Ristović, Policijski menadžment, KPA, Beograd, 2015, pp. 123-151; Talijan - Talijan, 2011: *op.cit*, pp.191-203.

security priorities and coordinate common interests and the necessity to create favourable security environment in the community, i.e. to build a safe democratic society". Furthermore, this role includes the necessity for police managers to care for and improve cooperation between police and citizens, to organise and implement their education, to reassure and motivate them, encourage them to protect their personal safety and safety of their property from crime and other socio-pathological phenomena.[12] Police superiors must take constant care to maintain good relations with citizens, as well as to have the ability for close cooperation with other public services dealing with order and crime, and with the local communities, nongovernmental Organisations and minority groups.[13]

3. 3) Making decisions on the rights, duties and responsibilities of security members i.e. managing human resources in the field of security. Indisputable is the fact that people are the most important resource of any Organisation and that people make and solve virtually all problems, that is to say, that they are the key to success and failure, including police management.[14] PL gives great importance to cooperation between police and citizens, as well as to personnel policy. So, for example, PL article 11. stipulates that the MoI*provides the development, Organisation, personnel and other conditions for the operation of the Ministry, and has human resources managing function, in accordance with the strategic documents*, and also*organises and carries out basic education and training for students and employees.* In addition to this, article 24. stipulates that Police Directorate *participates in developing personnel plan, and in defining professional development programmes, in cooperation with the organisational unit for human resources management*.

Training of the Ministry employees, as PL article 131. paragraph 1 stipulates, for the purpose of career development *encompasses gaining and advancing knowledge, skills, attitudes and conduct, in order to increase efficiency and effectiveness in police work and other internal affairs*.

When management of human resources is concerned, PL article 129. paragraph 2. envisages training of the employees, whereas human resources management is regulated through *professional planning, recruitment, selection and training during selection process and employment in the Ministry* and *continuous learning and strengthening professional ethics, integrity and credibility of the Ministry employees* (PL article 130.).

Human resource management in security, implies management measures and activities, which in the process of work analysis, planning, recruitment, selection, socialisation, training and development, evaluation of work performance, rewarding, motivating, protection of employees and implementing labour laws, the management of the Organisation undertakesin order to provide quality personnel and their training and motivation, so as to accomplish the expected results and achieve both Organisational and individual goals.[15]

The Law on government officials[16] also regulates education and professional development, and in the article 96. paragraph 1. it stipulates: *professional development is a right and duty of civil servants to acquire knowledge and skills, i.e. abilities to perform job tasks, in accordance with the needs of the state authority.* Training and professional development are aimed at increasing the ability of police officers so that they can better contribute and be more efficient and effective in performing their job tasks.[17]

12 P. S., Robbins, *Organiyational Behavior*, Prentice-Hall International Inc, 1996, pp. 223.
13 B., Milosavljević, *Ljudska prava i policija, Standardi ljudskih prava za policiju*, Centar za antiratnu akciju, Beograd, 2004, pp. 42.
14 S., Ristović, 2015: *op. cit*, pp. 138.
15 Ž., Kulić, M. M., Talijan, *Upravljanje ljudskim resursima*, Fakultet za bezbednost I zaštitu, Banja Luka, 2010, pp. 18.
16 Zakon o državnimslužbenicima ("Službeniglasnik RS", br. 79/2005, 81/2005 - ispr., 83/2005 - ispr., 64/2007, 67/2007 - ispr., 116/2008, 104/2009 and 99/2014).
17 S., Ristović, 2015: *op. cit*, pp. 147.

The extent to which training is successful is influenced by many factors, among which motivation should be highlighted. Namely, when police officers (trainees) see that they have the management support, especially the support of their immediate supervisors, and when they conclude that the training topics are relevant for the problems they encounter at work and that the training offers knowledge and skills they can apply, they will certainly have much more motivation for the training.

4. organising and ensuring the lawful, efficient and effective policing. This is the central role of police management, so PL article 32. paragraph 1 stipulates: *policing is based on the principles of professionalism and depoliticisation, cooperation, cost effectiveness and efficiency, legality in work and proportionality in the exercise of police powers, as well as other principles governing the functioning of the state administration, work and conduct of civil servants in administrative matters*. Furthermore PL article 33. stipulates that: *while performing police duties, Police adheres to established and achieved standards of police conduct, taking into account generally accepted international standards*. In order to achieve this role, in addition to giving a personal example, police management must transfer their knowledge and experience to the subordinate officers, thus establishing with them a new set of values and a new philosophy of working in the police service, which is proclaimed by human rights standards.[18]

5. Creating and improving conditions for respecting and implementing human rights and freedoms. Police Law addresses the issue of protection and respect for human rights, so the Article 27. paragraph 3. stipulates: *police develops professional capacity, competence and ethics of police officers for socially responsible functioning of the police service, with full respect for human and minority rights and freedoms and the protection of all vulnerable groups.*

The attitudes of high ranking officers responsible for the implementation and those in lead positions of the programme may affect the success of its implementation.[19] Therefore, it is essential that there is high quality and timely training of police management to implement the new concept of police work, i.e. to implement the Strategy.

The importance of direct managers in building an enabling environment for the involvement of employees is great, simply because they are in direct contact with employees, for whom the immediate superiors represent the company, the employer, the source of satisfaction and dissatisfaction, but also a source of reward and responsibility. Since police officers rarely have the opportunity to interact with higher level managers, it is understandable that their opinions, attitudes, and behaviouris largely dependent on their immediate supervisor. Organisations that ignore the importance of the role of direct supervisors, from the start lose the chance to successfully collaborate with employees, and thus also the opportunity to activate and fully engage their potential.[20]

DISCUSSION

On the course of implementation of the Strategy various aggravating circumstances can be expected, such as distrust of citizens towards police; police officers resistance to changes, rapid changes in police managers on different levels; poor planning of activity schedules; poor media representation of the Strategy; lack of communication and connection between different levels of police management, and others. The authors were guided by these expectations in the creation of this review.

18 *Ibid*., pp. 136.
19 Ž. Nikač, 2010: *op. cit*, pp. 140.
20 D., Vujić, *Upravljanje ljudskim resursima*, Drugo dopunjeno i izmenjeno izdanje, *USEE*, Novi Sad, 2011, pp. 237-238.

The officer in the field is at the bottom of the hierarchy, neglected, underestimated, paid least of all and poorly motivated. In contrast, only he is constantly in touch with the citizens, he is the representative of the police Organisation as he is exposed to the public and is closest to the source of the problems faced by citizens.[21] All these are the reasons for police managers to achieve closer and more constructive cooperation with police officers in the field.

Police managers themselves must have the community policing knowledge and must be able to recognise and understand human behaviour. This way they will be able to motivate, lead police officers to achieve the objectives of the Strategy.[22] Training can be done at the workplace or outside it. The most frequently applied training methods are in the workplace. In most cases, that is learning from one's colleagues and immediate managers.[23]

From police officers, trainees, it is expected that after the training, they immediately begin to apply the newly acquired knowledge, skills, attitudes and information in the community. If the training programme and/or training implementation were to be inadequate, there is a possibility that the trainees bring to their workplace the new views, conduct, attitudes, etc., which are not in line with the planned ones.

In order to do a more effective community policing training, it is desirable that the training provides more practical units (e.g. problem solving in the context of problem-oriented work, establishing good communication with the community or measures and activities for crime prevention). This would make the training more interactive, and thus more interesting for the trainees, because they are more engaged in the learning process and acquire practically applicable knowledge and experience, which is what they always value more than purely theoretical lectures.

Taking into account all that was said so far, the Vrnjačka Banja training should contribute to developing the curriculum for future trainings, to selection of relevant topics, and to drafting recommendations to improve BPTC curriculum and professional development programmes.

CONCLUSION

Action Plan for implementation of the Community Policing Strategy consists of six strategic goals, numerous activities and tasks, and the Implementation Plan which precisely defines the stages of activity/task implementation, as well as the persons/departments responsible, and concrete steps to be taken. However, on the one hand, it becomes clear that the order and dynamics of the planned activities and tasks implementation has not always been properly defined, and on the other, neither the order nor the timeframe for the implementation have always been followed. This led to violation of the initially planned timeframe.

Having in mind all of the above mentioned, the recommendation is not to be too hasty with the implementation of the new concept of police work, but to allow the police officers and their direct supervisors enough time to develop new relations and exchange information in order to be able to understand the new concept of work properly and fully. When police officers gain sufficient knowledge about community policing, they will be able to comprehend all the advantages of this model, both for the community and for themselves, and only then will they begin to act and perform police duties in accordance with the adopted Strategy.

21 Ž. Nikač, 2010: *op. cit*, pp. 155.
22 See: Talijan - Talijan, 2011: *op.cit*, pp. 75.
23 *Ibid*., pp. 267.

Only the consistent and full implementation of the Community Policing Strategy and the Action Plan for its implementation will create conditions for the new police culture, as a new concept of policing, provide the community with security, while respecting and accepting the citizen's views. Managers of transformational changes had a clear vision of the final goal and in that respect they elaborated objectives and activities. However, what everyone must accept is the fact that the whole process of implementation of the Strategy takes years.

In addition to direct supervisors in the police stations/outposts which are defined for community policing, high rank officers of the Police department (Department for the Organisation, prevention and the local community), regional police directorates and persons responsible for community policing should also in full be included in all the action plans.

As already noted, one of the main tasks of police management is to educate police officers and help them acquire the necessary knowledge, skills, attitudes, and to develop their creative skills. This is therefore a very responsible task, and it is preferable that the manager has skills for facilitation and for enticing adult learning. Attitudes, knowledge and skills of police managers responsible for the implementation of the Strategy, i.e. of the Action Plan, can affect the success of the implementation. Thus, timely training of police management to implement the new concept of policing is required.

For that reason, for the purposes of professional training and development, as well as for improving the work, it would be desirable that the Ministry establish and advance constructive cooperation with scientific research entities, such as the the Academy of Criminalistic and Police Studies, and others, as well as with international entities, such as OSCE and DCAF.

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GENERALTRENDS AND PRECONDITIONS IN DEVELOPMENT OF PUBLIC-PRIVATE PARTNERSHIP IN THE AREA OF SECURITY

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Abstract: Modern security problems such as terrorism, organized crime, the increase of violent crime, cybercrime, migrant crisis, etc., led to a situation that the country had to think about new concepts of security of opposing the same. It was one of the reasons for the structural and functional reform of the national security system, especially the police. State is no longer the sole (exclusive) security provider, and certain security affairs have been delegated to the private security sector. Basic trends and development ideas in the internal security area for the past several decades have been to establish as close as possible public and private security sector cooperation. However, this cooperation has not been established or developed on the same basis in all countries.

Given the above, the paper will specifically discuss the trends that influence the development of public-private partnership in the field of internal security. These trends, in addition to developed Western countries, have included the so-called countries in transition. In order for the concept of public-private partnerhip to be fully implemented, it is necessary to fulfill certain preconditions, primarily systemic and legal nature. Therefore, we will try to point out the necessity of fulfillment of certain preconditions, which should be the guarantor of the full implementation of the concept of the public-private partnership.

The paper analyzes the impact of trends and conditions that need to be fulfilled for the development of public-private partnership in the Republic of Serbia.We must say that, despite the adoption of systemic laws in the area of public police and private security, all positive aspects of such partnership have not been fully exploited in practice.

Keywords: security, public-private partnership, public and private security sectors, development trends.

INTRODUCTION

Structural changes in the world's security architecture in the aftermath of the Cold War have given an additional impulse towards finding new concepts of security aimed at confronting contemporary security problems. One of these concepts or models is the model of public-private partnerships. Namely, the contemporary security problems have imposed the need for the integration of existing capacities of the public and private security sectors. Certain trends that have influenced the development of partnership between the two sectors have been attributed to these problems.

While analyzing the progress of public-private partnership, we can mention two different types of countries in which it is being developed, in developed Western countries and, in the so-called, countries in transition. In developed Western countries, the model of pub-

lic-private partnership in the area of security has been created in an evolutionary way, over many years. The evolutionary path went from complete separation and independence, open competition, to achieving cooperation, and finally, partnership between the public and the private security sectors. The initial factors for development of the private security sector were demands of citizens and corporation for additional security. The market model of economy made this possible, unlike in Eastern countries, where the state had a monopoly on all security functions. As a result, all the accompanying problems (primarily in the form of legal regulation and formalisation of the partnership) have been reduced to a minimum, resulting in the achievement of optimal state of security in given countries.

On the other hand, in the so-called transitional countries, the model of public-private partnership is a relatively recent phenomenon. Namely, only towards the end of the 20th and the beginning of the 21st centuries, we could find some signs of convergence of public and private security sectors in these countries. This is due to the long process of transition of society, from social and state ownership to private ownership. The existing security problems in the countries such as the Republic of Serbia, as well as negative political, economic and social relationships, were not a good basis for the development of the partnership. The lack of systemic assumption as well as an adequate legal framework, primarily related to the functioning of the private security sector, was an additional problem.

GENERAL TRENDS AFFECTING THE DEVELOPMENT OF THE PUBLIC-PRIVATE PARTNERSHIP DEVELOPMENT IN THE AREA OF SECURITY

One of the basic trends of development of internal security in developed countries after the Second World War, and especially in the last couple of decades has been establishing firm cooperation between the police and the private security sector. This has been influenced by mutual benefits that come from this cooperation.[1] The destructiveness of modern security threats such as International terrorism, numerous forms of property crime, endangerment of critical infrastructure (telecommunication, hydroenergetic and nuclear infrastructure, airports, ports etc), cyber threats, emergency situations caused by floods, earthquakes, fire, increased migratory movement (especially in Europe today), additionally increase the necessity of cooperation between the two sectors. On the other hand, in transitional countries we recognize certain trends in the domain of security. These trends affect further development of public private partnership regarding internal security. More specifically, we should mention the processes of globalization, reorganization, rationalization, professionalization and standardization and, specialization.

The current process of *globalization* is a stimulus to the development of public-private partnership. Globalization of the market of merchandise and services encompasses processes in domain of providing security services. Securuty, including security of people and their property, as well as the property of corporation, has to be looked at wider perspective than before. Increased migration of people, goods and services demands a new approach, especially security management, in which public-private partnership plays its role. Managing changes in security is a complex system in which public and private representatives have different levels of responsibility. An expanding role of private security in Europe and the United States is a result of the evolution of private security industry within Trans-Atlantic Integrations. The new

1 Radivojević, N., *Police and Private Security Sector in Serbia – From Competition to Cooperation*, 1. International scientific conference "Researching security - approaches, concepts and policies", Ohrid: Faculty of Security, 2-3 June, 2015, p. 293.

role of private security sector is largely intertwined with other public sectors (police, transportation, health system, etc.), unlike with countries in transition.[2] Because of that, the need for safety for everyone, in every moment and in every position demands close, coordinated and legally-basedcooperation between the two sectors. It is the only way in which both sectors can accomplish their functions and goals rulled by law and other regulations.[3]

The *reorganization* of both public and private security sectors in the 21st century is a necessity for several reasons. The previously mentioned socio-political and economic conditions in which they are incurred and the aforementioned security risks and threats demanded a comprehensive reform of the organization, responsibilities and powers, as well as an expanding circle of subjects who take their share of responsibility for security. This was particularly evident in transitional countries, whose public security sector was not prepared to adequately respond by protecting citizens, corporations and their property. This is where the private security sector has found its place, which also had to adapt to new circumstances.

As a side effect of the reorganisation of the public sector, there was a trend of *rationalisation*, i.e. reductions in the number of staff. The main goal of rationalization is to enhance public sector and its progress. Namely, smaller budgets, i.e. cuts in public spending have led to outsourcing in terms of providing security services by the state.[4]This trend is particularly evident nowdays in transitional countries. It is notable that a large number, i.e. redundant police, military and intelligence personnel has found a job in the private security sector as seen in our areas during the nineties. Civil War on a territory of the former Federal Republic of Yugoslavia has created a huge number of paramilitary and para police forces. Due to weakened economy and lack of employment, a large number of people have found jobs in private security sectors.[5] However, rationalization does not only reduce the number of employees, but it also helps them allocate into different positions. By doing so, goals are more effectively and efficiently accomplished.

Clear and precise legally regulated sectors of the public and private security are the starting point for the establishment of partnerships. Therefore, the processes of *professionalisation and standardisation* of both sectors must be an imperative in all countries, especially in transitional ones. In order to effectively confront all modern challenges, risks and threats, all subjects of the security system must obtain a certain quantum of knowledge (theoretical and practical), skills, abilities and adopted attitudes.[6] Police profession is uniquelyrecognizable profession in society, and belongs to a group of traditional security professions. On the other hand, the public does not look very favorably at the private security sector. "Globally, standards vary considerably and are associated with vastly different degrees of regulation. At its worst, private security is blighted by criminal infiltration, little or no training for security personnel, abuses of authority including the excessive use of force, and generally low standards of professionalism."[7]

2 Stajić, Lj., Daničić, M.,*Upravljanje bezbednošću u korporativnom okruženju*, U: Bezbednost u postmodernom ambijentu, Centar za strateška istraživanja nacionalne bezbednosti CESNA I Hans ZajdelStiftung, Beograd, 2008, p. 47.

3 Stajić, Lj., *Kontrola privatnog sektora bezbednosti u Republici Srbiji*. U. Harmonizacija srpskog i mađarskog prava sa pravom Evropske unije, Pravni fakultet u Novom Sadu, Novi Sad, 2013, p. 194

4 See: Wakefield, A., Button, M., *Private Policing in Private Space*, In: Reisig, D. M.; Kane, J. R., *The Oxford Handbook of Police and Policing*¸ Oxford University Press, New York, 2014, p. 576-577.

5 Radivojević, N., *Police and Private Security Sector in Serbia – From Competition to Cooperation*, 1. International scientific conference "Researching security - approaches, concepts and policies", Ohrid: Faculty of Security, 2-3 June, 2015, p. 294.

6 See: Radivojević, N., *Safety Culture in the Private Security Sector*; In: Twenty Years of Human Security: theoretical Foundations and Practical Applications/Editorial Ivica Đorđević, Marina Glamotchak, Svetlana Stanarević, JasminaGačić, Beograd, Faculty of Security Studies, April 2015, p. 129-138.

7 Wakefield, A., Button, M., *Private Policing in Private Space*, In: Reisig, D. M.; Kane, J. R., *The Oxford Handbook of Police and Policing*¸ Oxford University Press, New York, 2014, p. 585.

Professionalization of the private security sector begins with a standard process of education of all persons that work with or will work within them. Establishing a goal requires creation and implementation of educational programs in universities beforehand, centers for research and promotion of private security, manufacturing of important documents, including progress strategies, development of databases and national inventories (resources), implementation of principles and fundaments of private security into security practice, and the development and enhancement of technical and human (leading and manufacturing) capacities.[8] Because of that, majority of new professions or professions that are developed are eager to enhance standards of its business. The State plays a significant role in this. The moment when private security begins to influence the national and public security, the state is required to guarantee the quality of its services. One of the ways of doing so is by establishing efficient supervision over legitimacy of agencies which provide those services.[9] Furthermore, legalization and implementation of national standards within private security domain is also necessary. This will contribute to acquiring citizens' trust and police in its workers, as well as their readiness for cooperations and assistance while performing security operations.[10] In countries in transition, social practice emerged before social regulations. Big multinational companies have, in the absence of state legal regulations, been bringing and implementing standards of good practice.

Specialization in both sectors is also a noticeable trend in transitional countries. Namely, due to new security risks and threats, new organisational units are formed within the police (e.g. the department for fighting cybercrime, the department for fighting human trafficking and combating illegal migration, suppression of hooliganism, etc.). This trend is accompanied by the private security sector. It sub-specialised in certain areas (security of public gatherings and sports events, security of critical infrastructure, information security, technical protection, risk assessment, etc.).[11] The problem of organizational structure, within police as well as within security agencies, results in further labor division and specialization.This creates new functions and frequent structural changes.[12] The existing 'overlaps' in the responsibility of the two sectors is the starting point for cooperation, and then the formalisation of this cooperation in the form of partnership. Securing public gatherings, as well as sports events, represent one of the complementary roles of public and private security sectors.[13] By exchanging infor-

8 See: Stanarević, S., Bodin, M., *Bezbednosna kultura ka odruštveni resurs nacionaln bezbednosti*, Vojno delo, Proleće/2014, p. 218.

9 Keković, Z., Savić, S., Komazec, N., Milošević, M., Jovanović, D., *Procena rizika u zaštiti lica, imovine i poslovanja*, Centar za analizu rizika i upravljanje krizama, Beograd, 2011, p. 85.

10 Radivojević, N., *Neki problemi u odnosima policije i sektora privatnog obezbeđenja*, 6. Naučno-stručni skup sa međunarodnim učešćem "Suprotstavljanje savremenim oblicima kriminaliteta – analiza stanja, evropski standardi i mere za unapređenje", Tara: Kriminalističko-policijska akademija, 26-29 May, 2015, p. 217.

11 In foreign literature, we can find following duties which private security performs:Community protection and services, Public housing protection, Parking authority control and security, Enforcement of motor vehicle laws, Natural resource activities, Waterways and port services, Air and rail protection, Animal control, Court security, Governmental office security, Private prisons, Code violation inspectors, Special event security, Governmental investigations. Charles P. Nemeth, *Private Security and the Law*, Elsevier, Inc., Oxford, 2012, p. 312.

12Additionally, in 2016, according to the Law on Private Security from 2013, as well as the new Law on Police from 2016, there have been necessary organizational changes within the Ministry of Internal Affairs of the Republic of Serbia. Within Police administration, which is a part of the Main office of Police, Department of Surveillance and Supervision of private security sector and police activities has been formed. Informer on Labor of Ministry of Internal Affairs of Republic of Serbia, Belgrade, April 2016, pp. 18-20. Available at: http://arhiva.mup.gov.rs/cms_lat/sadrzaj.nsf/informator.h (24. March2017.)

13 See: Radivojević N.: *Cooperation of Public and Private Security Sectors in Securing Public Gatherings and Sports Events*; In: Dani Arčibalda Rajsa :tematski zbornik radova međunarodnog značaja. T. 2, [glavni i odgovorni urednik DraganaKolarić], Beograd, Kriminalističko-policijska akademija, 2016, p.258-266.

mation, organizing mutual training, conceptualizing plans of cooperation while providing security, and executing these plans, both sectors contribute towards accomplishing and maintaining public peace and order. Transfer of knowledge and best practice from one sector to another plays a significant role in this process. In spite of existing differences, both sectors, if they want to be efficient and effective in performing duties, need to learn from each other and respect mutual characteristics.[14]

PRECONDITIONS OF THE PUBLIC-PRIVATE PARTNERSHIP DEVELOPMENT IN THE AREA OF SECURITY

Security paradigm from the end of 20th and beginning of 21st century demanded reorganization and adjustment of the public security system. There has never been more investment in human and material security resources and ironically, the threat has never been greater. Reorganization implies that the system of public security opposes the most dangerous forms of endangerment, unlike private security which is allowed to be confronted with less dangerous forms of endangerment. This does not mean they work independently from each other. On the contrary, mutual and coordinated action forms a partnership which will realize common objectives of its service users. It will create safe environment in a society and country. In order to realize this partnership, certain criteria must be met. We can conditionally divide these criteria into terms of systematic and legal nature.

Systematic terms are primarily focused on redefining national security system as a whole with a complete integration of private security sector. This implies specific place and role of a private security sector within a society. The private sector is not only an important industrial branch[15], but a significant part of national security, as well. The goal of both the private and public security is the protection of people, corporations, and protection of their property. Different interests are the one thing that distinguishes them. Success and realizations of ideas in both sectors will depend on respecting mutual interests. Antagonistic interests (exercising safety and creating profit) could be achieved through public-private partnerhip. Preventing of duplication of work, exchange of information[16], rational use of existing human and material resources leads to economical justification of partnership. In order to have private security sector fully implemented into the national security sector, it needs to be professionalized beforehand. Security workers should go through specific training and they would get licenses for certain jobs.[17]

Achieving public-private partnership requires the existence of clear and precise legal framework. It relates to the scopes of both public and private security sectors. Legal framework in transitional countries should allow integration of private security into a system of national security, and it should be controlled by the state. Legal framework, which enables implementation of corporation and partnership, has a task to:

14 Stevanović, O., *Bezbednosni menadžment*, Kriminalističko-policijska akademija, Beograd, 2016, p. 420. And Wakefield, A., Button, M., *Private Policing in Public Space*, In: Reisig, D. M.; Kane, J. R., *The Oxford Handbook of Police and Policing*, Oxford University Press, New York, 2014, p. 577-578.

15Private sector controls 85% of critical infrastructure in the USA. See: Bures, O., *Public-private partnerships in the fight against terrorism?*, Crime, Law and Social Change, Vol. 60, no. 4, 2013, p. 430.

16 About exchange of information on fight against terrorism, and current problems see: Givens, A., Busch, N., *Information Sharing and Public-Private Partnership: The Impact on Homeland Security*, The Homeland Security Review, Vol. 7, No. 2 , Summer 2013, p. 1-28.

17 About current questions pertaining to training and licensing of workers of private security in the Republic of Serbia, see:Stajić, Lj., Radivojević, N., *Zakon o privatnom obezbeđenju – stanje i problemi*, U: Harmonizacija srpskog i mađarskog prava sa pravom Evropske unije: tematski zbornik, [glavni i odgovorni urednik RankoKeča], Pravni fakultet u NovomSadu, Novi Sad, 2015, p. 153-171.

- allow efficient and effective control of private sector by the state;[18]

- formalize partnership between public and private security sectors for mutual benefit;

- distinguish functions within public and private sectors by creating work model. By doing so, boundaries of jurisdiction are established and any unfair competition is avoided;

- facilitate mutual communication and exchange of information;

- empower cooperation by protecting critical infrastructure, as well as assistance in crisis management and emergency situations (natural disasters, disturbing public peace and order on a bigger scale, terrorists and cyber attacks, etc);

- organize specialist training in which both sectors will take part;

- allow formation of a national body which includes representatives of both sectors. Its assignment is to supervise the implementation of the existing regulations and agreements necessary for the partnership development;

- promote the development of local partnership.[19]

Adopting Strategy of National Security[20] in 2009, in the Republic of Serbia, assumes the existence of both private and public security systems as two parts of a unique system. The Strategy represents a baseline for a later enactment of the Law on Private Security[21]and the Law on Detective Activities[22] from 2013 with which the integration process of private security into national security system has commenced. Unfortunately, existing legal solutions did not fullfil certain expectations. They did not create atmosphere which would allow implementation of public-private partnerhip. The Law on Private Security abounds with many lingual and terminological controversies. Numerous complaints made by scientific and expert public representatives can attest to these disputes.[23] Besides current problems of training and licencing security officers, we can affirm that a baseline for partnership or professionalization of the private sector is not fully implemented. Indications towards the need for partnerhip can be found in Article 75 of the Law on Private Security, which helped constitute the Expert Council. It served to improve private security and public-private partnerhip within security sector. The purpose of this Council is collaboration with associations of legal entities and entrepreneurs for private security functions, as well as security officers. Furthermore, it encompasses security and proposes initiatives for work efficiency in accordance with new regulations. However, we can raise a question of range and success of this Council, which is formed by the Minister of Internal Affairs. The Minister can form and cancel this body. Practically, it means that the existence and further development of cooperation and partnership depends entirely

18 About certain control modalities of private security sector, see: Stajić, Lj., *Kontrola privatnog sektora bezbednosti u inostranstvu*, Zbornik radova Pravnog fakulteta u Novom Sadu, broj 1/2012, p. 187-202.

19 See: Kesić, Z., *Privatni sektor u kontroli kriminaliteta*, Dosije studio, Beograd, 2009, p. 75 and Kären M. Hess, *Introduction to Private Security,* Fifth Edition, Wadsworth, Cengage Learning, 2009, p. 86.and Stajić, Lj., Mandić, J. G., *Neke kontroverze Zakona o privatnom obezbeđenju*, Zbornik radova Pravnog fakulteta u Novom Sadu, no. 2/2014, p. 148.

20 National Security Strategy of the Republic of Serbia, *Official Gazette of the RS*, no. 88/2009.

21 Law on Private Security, *Official Gazette of the RS*, no.104/2013 i 42/2015.

22 Law of Detective Activities, *Official Gazette of the RS*, no.104/2013.

23 See:Stajić, Lj., Mandić, J. G., *Neke kontroverzeZakona o privatnom obezbeđenju*, Zbornik radova Pravnog fakulteta u Novom Sadu, no. 2/2014, p. 131-150; Stajić, Lj., Radivojević, N., *Zakon o privatnom obezbeđenju – stanje i problemi*, U: Harmonizacija srpskog i mađarskog prava sa pravom Evropske unije: tematski zbornik, [glavni i odgovorni urednik RankoKeča], Pravni fakultet u Novom Sadu, Novi Sad, 2015, p. 171-188; Radivojević, N., *Neki problemi u odnosima policije i sektora privatnog obezbeđenja*, 6. Naučno-stručni skup sa međunarodnim učešćem "Suprotstavljanjesavremenim oblicima kriminaliteta – analiza stanja, evropski standardi i mere za unapređenje", Tara: Kriminalističko-policijska akademija, 26-29 May, 2015, p. 209-219; Stajić, Lj., Radivojević, N., *Neki problemi implementacije Zakona o privatnom obezbeđenju*, U: Harmonizacija srpskog i mađarskog prava sa pravom Evropske unije: tematski zbornik, [glavni i odgovorni urednik LjubomirStajić], Pravni fakultet u NovomSadu, Novi Sad, 2016, p. 153-171.

on political will.

More importantly, the Law on Police[24] from 2016, or any of its articles, did not establish the firm cooperation with the private security sector. Indirectly, this cooperation can be sensed from the new conceptualized "community policing", where Article 27 cites that police is developing the cooperation and ties with citizens and *other community subjects* in order to perform police duties. In addition, this article helps to identify local security priorities, coordinates mutual interests and creates safe democratic society.

CONCLUSION

The contemporary security challenges, risks and threats to security, are the result of socio-political, economic, geostrategic and geopolitical changes in the last few decades. Complex structural changes in the security architecture have imposed the need for the concept of security through which the resulting consequences of those changes could be overcome. As a result of these needs the concept of public-private partnership in the field of internal security has been created. The basic idea of public-private partnership is that the potentials of both sectors used in the best way possible, with the ultimate aim of achieving an optimal state of security in the country.

Unlike in developed Western countries, the relations between the public and the private security sectors in transitional countries have been burdened with problems one of which is to be accredited to certain security trends. By following these trends, analysing the positive and negative experiences in the developed Western countries, acknowledging current opportunities in their own contry, nations in transition ought to establish their own model of partnership and cooperation. The relations of cooperation and partnership are necessarily conditioned by their status, role and functions.They are specified by the highest strategic and legal acts. In case of the Republic of Serbia, these acts, altough creating basic ground, have not fulfilled certain directives needed to allow the cooperation and partnership. It is to be expected that in future certain changes will be necessary. An additional problem is that the legal framework, which regulates functions of both public and private security sectors, has not yet been completed.

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24 Law on Police, *Official Gazette of the RS*, no. 6/2016.

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MAKING THE PLANS FOR SECURITY PROTECTION OF CERTAIN PERSONS AND FACILITIES

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Abstract: All the security services that undertake measures for security protection of certain persons and facilities make plans for security protection. This paper questions the development of written plans of security protection. In order to determine the manner of their making, an analysis of the type and content of plans for security protection of certain persons and objects, as well as the actions and procedures that managers of security protection undertake when making plans, has been conducted. In this regard, in the first part of the paper the types of plans of security protection have been analyzed. A special emphasis is given to text and graphic plans and their classification by time, content, organizational level, the purpose and form. The second part relates to the content of the plans of security protection. This section analyzes the content of the plans made by the Military Police of the Army of Serbia and the Ministry of Interior of the Republic of Serbia. Based on the comparative analysis of the above mentioned plans of security protection, the key elements of these plans have been identified, and based on the method of synthesis, a new model of content of plan of security protection is made that is more complete than the two individual. The third part comprises the analysis of the actions and procedures that managers undertake during making the plans for security protection of certain persons and facilities. The last, fourth part of the work deals with the necessary knowledge that managers need to have for making plans for security protection of certain persons and facilities.

Keywords: planning, plans, security protection, certain persons, certain facilities.

INTRODUCTION

Most often the term *plan* involves "a document or set of documents in which the flow of upcoming activity is broken down on activities, units and resources to carry out these activities, with the refinement of tasks for such units, according to the time and place".[1] The plan could also mean speculative (creative, conceptual) model expression of an upcoming action. This means that the plan does not have to take the form of a document, but plan as a conceptual model of an upcoming action is necessary for successful leadership.[2] A plan that is definitely made as a document designed for directly subordinated units and executives in the Army of Serbia is considered a commandment or order, and within the Ministry of Interior, an order for a clearly defined action.

1 Stevanovic, O., *Rukovodjenje u policiji*, Policijska akademija, Beograd, 2003, page 104.
2 In Croatia, the Regulation on Security Protection stipulates that in case of emergency security measures are to be taken without the written plan of security protection. See more in: *Uredba o odredjivanju sticenih osoba, objekata i prostora te provodjenju njihove zastite i osiguranja,* Narodne novine Republike Hrvatske, No. 46/2013 and 151/2014, Article 2, paragraph 3.

In order for the plan to be in line with its purpose, it has to be realistic, rational, unambiguous, clear, descriptive and convenient (easy) to use. Highlighting the importance of the plan as a speculative-conceptual model of the upcoming action, does not diminish the importance of making plans in the form of a document. Security services that undertake security measures to protect the security of certain persons and facilities make plans for security protection. In order to determine the way they are made, an analysis of the type and content of plans and actions, procedures, and knowledge of managers that make plans of protection of certain persons and facilities, has been conducted.

TYPES OF PLANS FOR SECURITY PROTECTION OF CERTAIN PERSONS AND FACILITIES

Making plans is an activity that is an integral part of the planning process, and comes shortly after making a decision, and it elaborates elements of decisions more closely, most often by certain planning documents. Plans show, operationalize and concretize the decision verbally, textually, graphicly or in combined mode. The plans for security protection of certain persons and facilities can be different according to: a) the time schedule; b) the content; v) the organizational level, g) the purpose and d) form.

Starting from the time schedule criteria, heads of security protection make a) daily, b) periodic and v) ad hoc plans when needed. *Daily plans* are made on the stipulated official forms, which determine time, place and type of activity for all employees of one organizational unit that implements security measures, one day ahead. The employees of security protection who are scheduled to perform activities of direct physical protection, drivers of special vehicles, members of the security vanguard, employees providing for the protection of facilities for accommodation of certain persons, the officials who carry out external and internal security protection and the similar, are recorded in a special way in the plan. *Periodic plans* can be weekly, monthly, quarterly or yearly. These plans determine the main tasks of the unit that conducts security protection of certain persons and facilities, the main subjects, deadlines and the necessary material and technical resources. *Ad hoc plans* (plans when needed) are made for special and urgent activities of security protection (e.g. plans for security protection of certain persons when hunting or plans for security protection of certain facilities during public gatherings of citizens in front of these facilities).

According to their *content*, plans are divided into: work plans (weekly, monthly and annual), plans of the employment of the units for security protection, preparation plans for the execution of the task, reconnaissance and security vanguard plans, plans of performing the tasks, coordination plans, plans for equipping, plans of control activities and other plans. According to the *organizational level* the plans are adopted for, security protection plans can be *strategic*, *coordinating* and *operational*. Strategic plans are more related to the management of security protection, and less to management. They include the analysis and long-term evaluation of the security threats and the capabilities of units for security protection of certain persons and facilities. These plans for security protection of certain persons and facilities are created by Security Committees (or subcommittees) formed by the Government of the Republic of Serbia on the occasion of the special security tasks, which were held in Belgrade in 2015 and 2016, with the participation of a larger number of certain persons (UN summit Nations, the Conference of Heads of State of South East Europe summit China and the countries of Central and Eastern Europe, the meeting of the Ministerial Council of the OSCE, etc.). Coordinating plans are related to the establishment of synergies and cooperation among the

units that implement protection measures and operational plans are related to the work of tactical (operational) units.

According to their *purpose*, plans of security protection are divided into: basic, ancillary and supplementary. *Basic* plans are made in order to perform the complete task of security protection. *Supplementary* plans are made when there is a need to change (re-planning) the basic plan. *Ancillary* plans are part of the basic plan and are usually attached to it. They are made by areas (functions) in order to facilitate the implementation of all the measures envisaged by the general plan of security protection. These plans also include traffic security plans, plans of engagement of the Gendarmerie, fire security plan and other plans. Given the fact that the plans as the expression of the speculative-conceptual model of upcoming task can be manufactured in the form of a document, their *form* may be: a) a textual, b) the tabelar, c) graphical and g) combined. The most common form of plans is *textual plans* because they achieve the highest precision and clarity of decisions. The textual part of the plan gives each unit participating in the security protection of certain persons and objects specific information about the task (who/what, how, when, and where to take certain security measures). Its fault is a lack of transparency and requiring more time for study. For easy review of actions by time, place, units, means and manner of execution of security measures *tabelar plans* are used. For the purpose of creating visual representations of decision *graphical plans* are used: sketches, schemes, graphs, maps, etc. They represent a model of execution of the task, but they are not sufficient as the only means for displaying solution to a particular security problem.

The heads of security protection make all the above mentioned plans in accordance with the actual needs during the process of managing security protection of certain persons and facilities, or in preparation for taking measures. They usually make general and specific operational plans, which define the work of subordinate units in the preparation and implementation of security measures. An analysis of the content of the plans is conducted due to the very great importance of the plans of security protection.

CONTENT OF PLANS FOR SECURITY PROTECTION OF CERTAIN PERSONS AND FACILITIES

All operational plans made by the security services have the same general content: objective, activities, subjects, place and time. Such a division clearly states why and what to do when participating in the implementation of activities, where they will be implemented and when. The same applies to plans made by the heads of the security protection of certain persons and facilities, but they have their own specifics.

Momčilo and Miroslav Talijan state that "for a more complete understanding of operational planning, it is important to consider: 1) the nature and importance of permanent plans (policies, procedures and rules) and 2) the nature and importance of individual plans for achieving the objectives of the organization".[3] For the implementation of measures of physical protection the heads of security protection of a certain person in the Military Police of the Army of Serbia make "the plan of measures of physical protection, which generally comprises: a) an overview of the engaged people; b) review the engaged means (weapons, equipment, vehicles, protective equipment, communications equipment, etc.); c) a review of security units (by place of work, place of residence and in motion); d) the time, place and manner of execution of the task; e) procedures in various situations; f) mode of cooperation and g) other issues

3 Talijan, M. and Talijan, M.M., *Opsti i bezbednosni menadzment,* Visoka skola unutrasnjih poslova, Banja Luka, 2011, p. 39.

of importance for full physical protection of a certain person".[4] This plan has an attachment, Operating Instructions for security units, which generally regulates: a) the work of security unit (by the place of work, place of residence, place of temporary or occasional residence and in motion) and variants of regular and enhanced security; b) procedure for the security unit in case of an attack on a certain person or facility; c) procedure in the case of a provocative behavior of an individual or a group to a certain person or facility; d) the terms for the use of lethal force; e) reporting mode and maintaining the link, and f) other issues relevant to the operation and actions of security unit. The plans for security protection of certain facilities have almost identical elements.

The head of the unit for security protection of a certain person at the Military Police is obliged to establish the Study of security protection of certain person, that comprises: a) an order for the formation of a commission for conducting the procedure of threat assesment; b) the conclusions from the threat assessment; c) an order for the security protection of a certain person; g) an order determining the head of the security protection of a certain person, his responsibilities, and tasks; d) an order of the head of security protection for the engagement of employees; f) the plan for measures of physical protection; e) the plan for measures of preventive and technical protection; f) the plan for measures of preventive and medical care; z) the plan of the cooperation with the security services and the Ministry of the Interior and i) the plan of telecommunication security. From all the above stated, it is clear that the study defines and elaborates security protection measures that are not covered by the plan of security protection, and that a study has a higher level of generality than the plan of security protection.

The heads for security protection of certain persons and facilities in the Ministry of Interior of the Republic of Serbia usually make *general* and *specific* plans for security protection. Their content is not the same. *General plans* for security protection of certain persons and facilities comprise: a) an order for the application of the measures toward the certain person or facility,[5] b) the measures of security protection; c) distribution of forces in the wider security zone; d) drawing of objects, areas and the routes of movement; e) a diagram of pedestrian units with the areas of responsibility; f) drawings of the formation of vehicles with zones of responsibilty, g) material and technical resources; h) information about the head of security protection (name, his position in the line of chain command, his position in the object of protection or in the pedestrian formation); i) call sign for radio communication and mobile phone number, j) readiness to implement protection measures and k) a recapitulation of engaged people. *Specific plans* include: a) an order for implementation of security measures against certain person or facility,[6] b) a threat assessment; c) the list of activities of a certain person (or activities in a certain facility); d) the degree of security protection measures; e) measures of security protection; f) distribution of forces in the secured zone along the route of movement and in the facility according to schedule (for certain persons); g) drawings of buildings, areas and routes of movement; h) drawings of pedestrian formations with the areas of responsibility; i) drawings of vehicles formation with the areas of responsibility; j) material and technical resources, k) information about the head of security protection (name, his position in the line of chain command, his position in the headquarters, at the protected facility or in the pedestrian formation, call sign for radio communication and mobile phone number; l) readiness to implement protection measures, and m) a recapitulation of the engaged people.

4 *Uputstvo o bezbednosnoj zastiti odredjenih lica i objekata iz nadleznosti Vojne policije Vojske Srbije,* Ministarstvo odbrane, Generalstab Vojske Srbije, Uprava Vojne policije, Beograd, 2012, Article 13.
5 There is no special order for the application of the security measures for persons and facilities which have the right to security protection based on the Regulation on assignment of security protection to certain persons and facilities (Official Gazette of the Republic of Serbia, No. 72/2010), only the rule that legal ground has to be stated in the security plan.
6 Same applies for the general plans.

Rajko Radjenovic states the following content of the plan of security of certain persons and facilities: a) threat assessment; b) physical security measures: c) measures for preventive and technical protection; d) the health-technical, biological and chemical measures; e) drawings of the protecteded facility, or area under the security protection, indicating the so-called critical points and f) the defense plan in crisis situations (attack on the person/facility, fire, flood, earthquake).[7] By analyzing the content of US military combat rules called *Military Police Leader's Handbook*, in part related to the *Crisis management plan* it was established that the plan for security of certain persons and facilities include: a) threat assessment; b) tasks for units; c) the manner of execution of the task; d) maps and diagrams, e) logistic measures, and f) the way of management and communication.[8] By analyzing the content of the document *Police Briefing and Security Information* of the Diplomatic Security Service of the United States, it was noted that the plan of security of certain persons and facilities, in which they are located, include: a) work plan and the results of security vanguard; b) plan of command; c) a program of visits (or other activities on the premises); d) threat assesment; e) emergency situation plan; f) medical security; e) an evacuation plan and a safe place; g) manpower and resources in the array of vehicles under escort and h) the plan for use of permeable documents.[9] A particularly important element of the plan is an evacuation plan.

The Sector for Emergency Management of the Ministry of Interior of the Republic of Serbia, based on the request of the head of security protection, makes the Plan of evacuation from the protected facility. It is made in case certain persons must immediately leave the protected facility because of some danger. Basic measures to be implemented in case of evacuation are: a) the determination of evacuation routes; b) marking the evacuation routes; c) determining the width and the number of exits from certain facilities; g) calculating the time of evacuation (form 1); d) the way of disclosure of evacuation; f) introduction of the security guards to escape routes, and e) tactical assumptions for evacuation (threat detection time, alarm time, preparation time for the evacuation and time to evacuate persons from the facility).

$$Tev = \frac{P}{B * K} + \frac{L}{V}$$

Tev = time required for evacuation (in seconds)

P = the number of people to evacuate
B = width of exit
K = coefficient of passibility of persons (1.3 persons per *m/sec*)
L = total length of the path
V = velocity (0.6 *m/sec* for each person)

Form 1: Calculation of the evacuation time

After examining the contents of all these plans, it was noted that each of the operating plan of security protection of certain persons and facilities contains the Plan of communication. Depending on who drafts them, plans of communication have different content. Common to them is that they contain: a) the responsible persons in the system of management of security protection measures (the head of security protection, the Chief of Staff, heads of other units (Military Police, Regional Police Directorate, Gendarmerie, Special Anti-Terrorism unit, the

7 Radjenovic R., *Bezbednost licnosti I objekata,* MDD Sistem, Beograd, 2003, p. 92.
8 *Military Police Leader's Handbook*, Department of the Army, Washington, 2002, Appendix D.
9 *Police Briefing and Security Information,* United States Department of State, Diplomatic Security Service, 2015.

head of the group for protection of a certain facility, a team leader for close physical protection of certain persons, the head of anti-diversion unit, the head of the medical care, the head of the fire security etc.)); b) call signs for radio communications; c) identification numbers of all radio equipment of managers; d) a mobile phone numbers of managers, e) command working channel (for managers), spare working channel and working channel for other participants of the radio traffic, and f) codebook (secret names for the individual facilities and stop points on the routes of movement).

A comparative analysis of the above mentioned plans of security protection identify their key elements. A *new model of plan of security protection* that is more complete than any other plan individually analyzed is drafted based on the method of synthesis. Therefore, a comprehensive plan for the protection of security of certain persons and facilities should include the following:

- the order of the responsible person (or legal basis) for the establishment of security measures for security protection of certain persons or facilities;
- the order for the appointment of the head of security protection for a certain person, his responsibilities and tasks (if not already defined by his formation workplace);[10]
- threat assessment;
- the program of activities of a certain person (or activities in a certain facility);
- the degree by which to apply security protection measures;
- the time, place and manner of execution of the task of each unit (by workplace of a certain person, place of residence, place of temporary or occasional residence and in motion);
- the security protection measures (counter-intelligence measures, safety measures, technical measures, physical measures, Medical Care measures);
- variations of regular and enhanced security;
- procedures for handling in different situations (the attack on person/object, fire, flood, earthquake, etc.);
- evacuation plan and a safe place for certain persons;
- the manner of use of permeable documents;
- method of coordination of participants in security protection;
- use of material and technical resources (weapons, equipment, vehicles, protective equipment, communications equipment, etc.);
- the readiness for the application of protective measures;
- manner of reporting;
- plan of communication and a way of maintaining communication;
- recapitulation of engaged manpower and resources;
- drawings of pedestrian formations with the zones of responsibility;
- drawings of vehicles formations with the zones of responsibility;
- drawings of facilities and security perimeters and
- drawings of the routes of movement with critical points.

10 In the Ministry of Interior of the Republic of Serbia, by the act on internal arrangement and systematization of workplaces, management positions are defined as, for example, Head of Department for security protection of the President of the Republic, Head of Department for security protection of certain foreign persons and delegations, etc. Therefore, it is not necessary to issue a special order on their appointment.

MANAGER'S OPERATIONS AND PROCEDURES FOR MAKING PLANS OF SECURITY PROTECTION OF CERTAIN PERSONS AND FACILITIES

The creators of the plans of security protection are the heads of security protection of certain persons and facilities and their commanders or headquarters established for the management of certain actions of security protection. The creation of a security protection plan starts with getting the task. Concrete development of the plan (especially text plans) begins after making the decision. The plan contains necessary information, but it is not necessary that the sequence of the introduction of certain elements of the plan is chronological according to the content which will give the final appearance to the security protection plan. Therefore, it is already an established practice that the plans are drawn up by computer, which enables fast and more visual creation of plans.

All elements of the plan by the end of its development should be arranged in a specific order, to ensure rational usage of the plan and shorten the time for presentation of tasks to the subordinate units. The plan is constantly being worked on, aligning with the decisions and adapting to new changes. After creating a text plan, the head of security protection also makes necessary drawings, diagrams and other graphic contents of the plan. Upon completion of the plan, the head of security protection gives the required number of copies of the plan for signature and approval of the superior manager, and then delivers it to the subordinates.

MANAGER'S REQUIRED KNOWLEDGE FOR MAKING OF PLANS OF SECURITY PROTECTION OF CERTAIN PERSONS AND FACILITIES

According to Momcilo Sakan "officers are required to, on the basis of experience, expertise and wisdom, develope plans and decisions on longer and shorter deadlines".[11] Napoleon stated that "a plan as well as the tree must have many branches if we are to bear fruit".[12] For proper planning, heads of security protection must possess the necessary knowledge, skills and abilities of the plan drafting process. Primarily, they must have general theoretical knowledge, but also special knowledge about the types of plans and methods of their manufacture. In order to plan measures to protect the security of certain persons and facilities and the way of the deployment of manpower and resources, they must possess knowledge of the form and content of daily and periodic plans. The same goes for knowledge they should have about the weekly, monthly and annual plans of security protection, plans for the involvement of the security protection units, plans of preparation for the execution of the task, plans of reconnaissance activities and security vanguard, plans of coordination, plans of equipping and plans of control activities.

In order to properly present their decision and transfer it to the subordinates, the heads of security protection must know how to make a plan and what the content of text and graphic plans of security protection is. They must also be familiar with the method of preparation and content of the drawings, charts, graphicons and work maps. It is necessary for the heads of security protection to possess the theoretical knowledge of the contents of the plans of securi-

11 Sakan, M., *Pozitivne i negativne osobine oficira,* Zbornik radova „Potrebna znanja oficira Vojske Srbije 2010-2020“, Vojna akademija, Beograd, 2009, p. 254.
12 Simpkin, E. R., *Nadmetanje u brzini manevra,* VINC, Beograd, 1991.

ty protection. It is necessary for them to know the content of certain elements of the security protection plans so they could determine the place and role in the plan for each of them.

CONCLUSION

After the theoretical study of types of plans of security protection, these plans were classified by the time, content, organizational level, the purpose and form. It was found that certain types of plans and the actual needs for security protection depend on whether they consist of the heads of security protection at the stage of preparation or implementation of security protection measures. The heads of security protection mostly make general and specific operational plans, on the basis of which they define the work of subordinate organizational units. The types of plans and the time in which they are made directly influence the knowledge that managers need to possess in order to craft plans for security protection.

A comparative analysis of plans that make up the security protection of domestic and foreign security services identify their key elements. The method of synthesis draws up a new plan for security protection model that is more complete than any individually analyzed. The analysis of the individual elements of the plan shows clearly that all of them affect learning and working heads of the profile of security protection. The research activities and procedures of managers in developing plans to protect the security of persons and facilities conclude that the development plan for security protection starts immediately after receiving the task, and its final appearance after the plan receives the decision. The heads of security protection plan prepare the text, and then the production and necessary sketches, diagrams and other graphic content of the plan. Upon completion of the plan, the heads of security protection delivere it for the signature and approval of the superior manager, and then give it to hteir subordinates. An executives plan is constantly updated in coordination with the decisions and it is regularly adapted to new changes. The formalities that you may take directly affect what executives need to know in order to perform these tasks.

In order to develop plans to protect security, the heads of security protection of persons and facilities have to know the type, content and form of daily and periodic plans. The same goes for knowledge of the weekly, monthly and annual plans, security protection, plans for the involvement of the security, plans preparation for the execution of the task, plans reconnaissance activities, security predecessor, plans, execution of the task, planning coordination, planning equipping and planning control activities. In order to properly present his decision and transfer it to the subordinates, the head of security protection must know how to prepare the plan and what the content of the text and graphic plans for security protection is like. They must also be familiar with the method of preparation and content of the sketch, chart, graph and map work. Based on the foregoing, it is clearly deduced that the specificity of knowledge that managers of security protection should have directly affect their employment and educational profile.

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2. Sakan, M., *Pozitivne i negativne osobine oficira,* Zbornik radova „Potrebna znanja oficira Vojske Srbije 2010-2020", Vojna akademija, Beograd, 2009.
3. Simpkin, E. R., *Nadmetanje u brzini manevra,* VINC, Beograd, 1991.6. Stevanovic, O., *Rukovodjenje u policiji*, Policijska akademija, Beograd, 2003, p. 104.7. Talijan, M. and Talijan, M.M., *Opsti i bezbednosni menadzment,* Visoka skola unutrasnjih poslova, Banja Luka, 2011. 8. *Uputstvo o bezbednosnoj zastiti odredjenih lica i objekata iz nadleznosti Vojne policije Vojske Srbije,* Ministarstvo odbrane, Generalstab Vojske Srbije, Uprava Vojne policije, Beograd, 2012.9. Regulation on Assignment of Security Protection of Certain Persons and Facilities, *Official Gazette of the Republic of Serbia*, no. 72/2010.
4. Regulation on Assignment of Security Protection of Certain Persons and Facilities, *Official Gazette of the Republic of Serbia*, no. 72/2010.11. *Uredba o odredjivanju sticenih osoba, objekata i prostora te provodjenju njihove zastite i osiguranja,* Narodne novine Republike Hrvatske, no. 46/2013 and 151/2014.

ORGANIZATIONAL BEHAVIOR IN POLICE

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Abstract: Efficient and powerful organization is a great base for the successful functioning of the police profession. Organizational behavior is a significant element of any profession that applies to all employees without exception. It is largely determined by the work field and professional subculture. In addition to that, police behavior is influenced by police subculture, law, rules and other regulations of national legislation, international environment, organizational climate and employees in police organizations. Development of modern society and environment affect almost every segment of the police profession and challenge police to adjust to the new business conditions and environmental requirements. The purpose of this paper is to highlight the importance of understanding police behavior, because organizational behavior affects entire working atmosphere, and together with professional subculture determines the framework within which employees work and make decisions to achieve professional goals. Considering organizational behavior can be one of the strategic activities for the development of the police profession.

Keywords: police, organizational behavior, subculture of the police, organizational climate

INTRODUCTION

The manner of police organization, its clime and culture may significantly affect police work, its achievement and finally public security. Having information about organizational behavior of police officers is highly important, because organizational behavior may affect police work either adversely or usefully. According to the past acquired knowledge of police profession, police behavior was unduly insufficiently considered topic. Certainly, there may be valid explanations for the general lack of existing empirical support. For example, according to the National Research Council "the general state of knowledge concerning the relationship between officer behavior, organizational factors, and the wider community context has been characterized by some as "not well developed".[1]Also, studies mainly used official statistics as the indicator of police work. But "official statistics fail to capture a range of officer behaviors that are indicative of different styles of policing".[2]

Recent studies[3] highlight the need for studying the behavior of police officers. Researchers have studied behavior for many years in a wide variety of professions. However, the conceptu-

1 National Research Council. (2004). *Fairness and effectiveness in policing: The evidence*. Washington, DC: National Academies Press, p. 156.
2 Wilson, J. Q. (1968). *Varieties of police behavior: The management of law and order in eight communities*. Cambridge, MA: Harvard University Press, p. 272, 277.
3 Bayley, D. H. (2002). Law enforcement and the rule of law: Is there a tradeoff? *Criminology and Public Policy, 2*, p. 133-154.

alization related to a single profession's behavior cannot be generalized to all other professions due to different work roles and tasks. The advantage of a developed knowledge base regarding police behavior is immeasurable. The police are expected and encouraged to take responsibility, not only for fight against local criminal behavior, but in facilitating information sharing protocols between themselves, local citizens and key stakeholders in order to gauge local issues and their effects on the local area. The process of understanding police behavior and arrest decision making opens the door to development of police profession, gives solutions to various problems, such as decrease of bad behaviors and makes professional expectations and obligations more clearly understandable. That is especially important in the field of non-arrest decision making, because it is difficult to capture in an official record. A second and perhaps more important goal of this research has been to encourage a debate on this topic.

The complexity of police tasks requires the use of a variety of information sources. Taking into account the complexity of human behavior, many scholars argue that multiple methods are essential to fully grasp police officers' behavior, especially because it is related to work in police stations as professionals and to profession in general. It is necessary to use multiple approaches and consider the impact of:

1) organizational factors – police organization, subculture and social relations between police officers under work framework;

2) individual factors - psychological variables such as personality traits, behavior patterns and psychopathologies as well as demographic variables such as age, race or geographic location; and

3) situational factors on police behavior.

FACTORS INFLUENCING POLICE BEHAVIOR

Concerning the organizational influences on police behavior is incomplete without mentioning Wilson's[4] contribution. Many authors[5] have routinely described his "operational styles" of policing as "classic"[6] or "perhaps the most important"[7]. Wilson studied how police officers in different departments interacted with citizens. He noted that these interactions varied in terms of frequency and formality and described them as three distinct "operational styles" of policing: legalistic style, service style and watchman style. First, legalistic style is observed in communities where police interact with citizens frequently and in a formal manner. Professionalism and impartiality are viewed as the most essential elements of legalistic-style police departments. The organizational structure is typically hierarchical and decidedly specialized. Officers in police departments with a legalistic style share the organizational values of a bureaucratic model of policing. They are highly productive in law enforcement activities. Meanwhile, service style characterized communities where police dealt with citizens frequently, but more informally and did not invoke the law. Wilson also identified watchman style of policing as similar to the "communal" model of policing when police officers were deeply involved with the community as community members. "The police are watchman-like not simply in emphasizing order over law enforcement but also in judging the seriousness of infractions less by what the law says about them than by their immediate and personal consequences".[8]

4 Wilson, J. Q. (1968). *Varieties of police behavior: The management of law and order in eight communities.*Cambridge, MA: Harvard University Press.
5 Walker, S., & Katz, C. M. (2008). *The police in America*. Boston: McGraw-Hill, p. 369.
6 Carter, D. L. (2002). *The police and the community* (7th ed.). Upper Saddle River, NJ: Prentice Hall, p. 129.
7 Roberg, R., Novak, K., & Cordner, G. (2005). *Police and society* (3rd ed.). Los Angeles: Roxbury, p. 277.
8 Wilson, J. Q. (1968). *Varieties of police behavior: The management of law and order in eight communities.* Cambridge, MA: Harvard University Press, p.141.

Relations between local political culture, police behavior and organizational arrangements of police organizations may be interesting for analysis. Some authors think that police behavior is related to the characteristics of the community within which the department operates, including the form of local government. Wilson considered this relation and argued that police departments were constrained by local political culture. According to him, "police activity was rarely directed by conscious choices and direct political intervention. Rather, "the prevailing political culture creates a 'zone of indifference' within which the police are free to act as they see fit".[9]

Over the past years, much has changed in the manner in which police do their jobs. "In the area of policing, the progressive movement attempted to reject local politics as the major source of authorization. Although the police will never be entirely shielded from the influence of local politics, the political influence was significantly reduced, particularly in daily operations."[10] This is why some authors as Langworthy[11] did not support Wilson's theory. Also, Hassell et al.[12]did research on a sample of 401 large police agencies and found that local political culture had no significant impact on the organizational structures.

After the end of the Cold War, the European security organizations have changed strategic landscape. Also, pan-European institutions have been adjusting to the new context, expanding their membership and their mandates to new policy areas. As a result of the changes in the international community, security organizations should have adapted themselves and their security concepts to the changing environment. The police were traditionally more interested in practical action and results than in innovations and exploration of new techniques and methods. However, along with the social and technological progress, the possibilities of the police profession are expanding and it is necessary to adapt the police to new conditions and needs of modern society. The contemporary models of community policing[13] represent new forms of action of the police in carrying out their duties. It also means different organizational innovations of police work.

So, replacing the traditional model with a modern one, means the construction of a new police organization, modern methodology of work, respect for the law, protection of citizens' rights and freedoms, police oversight and democratic development potential. All this changes are challenge for police profession and requires planning and management, as well as profound changes at every level and in every area. That is a complex and multifaceted process that essentially requires planning and control in order to achieve a change.

The most common explanation for police behavior is found in theories of police subculture, police organization and social relations between police officers. Whether we observe a person as an individual (social unit) or as a professional (social role), police subculture and belonging to it is of great importance. Subculture is "One particular, relatively closed segment of general culture, whose members share common beliefs, traditions and values, and often the manner of dress, diet, behavior and moral norms"[14]. As in any sort of the culture basic

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9 Wilson, J. Q. (1968). *Varieties of police behavior: The management of law and order in eight communities.* Cambridge, MA: Harvard University Press, p. 233.

10 Zhao, J., "Solomon", Hassell, Kimberly D. (2005). Policing styles and organizational priorities: retesting Wilson's theory of local political culture, *Police Quarterly,* Vol. 8 No. 4, p.424.

11 Langworthy, R. H. (1986). *The structure of police organizations*. New York: Praeger.

12 Hassell, K. D., Zhao, J., & Maguire, E. R. (2003). Structural arrangements in large municipal police organizations: Revisiting Wilson's theory of local political culture. *Policing: An International Journal of Police Strategies &Management, 26*, p. 231-250.

13 The concept of community policing is increasingly recognized as a conceptual foundation that suits a democratic police service. It is based on respect for human rights, reduce police repression and direct the spotlight to prevention.

14 Vidanović, I. (2015). *Rečnik socijalnog rada*, Beograd:Udruženje stručnih radnika socijalne zaštite Srbije.

elements of police subculture are: 1) values, 2) standards, 3) beliefs and attitudes, 4) customs and rituals, 5) terminology and 6) symbols. But, professional subculture is a special kind of subculture and all these elements are related to profession. During work time, police officers socialize through practice of social relations with their colleagues. This means upgrading their personality with characteristics of the police profession, its culture, while keeping their individual differences. So, professional subculture contains guidelines for employees in police about desirable or undesirable behavior, characteristic, expectations and professional goals. It completes and makes recognizable one profession in comparison to other and strengthens and develops as profession develops. Further, professional subculture primarily refers to: "A certain system of values, attitudes and beliefs in relation to the profession itself, clients, relations within the profession, as well as to other community groups and social phenomena that have an impact on the profession"[15]

Professional subculture implies certain norms of behavior. Subošić defined norms as: "The standards of work behavior, or behavior in the work process. They can be written (codified moral norms, legal and technical rules) and unwritten (undocumented moral norms). They convert the values into forms of behavior"[16]. For successful implementation of the professional goals and development of the profession, it is important that standards are firmly accepted. "If the group standards are firmly adopted by the members of the group, it will be harder to change their attitudes. The firmness of group standards usually goes hand in hand with the assessment of their justification. Those group standards and attitudes whose justification is more confident will be insistently maintained and harder to change."[17] Solid professional culture involves successfully accepted professional standards. So, it is very important for an individual to adopt its professional subculture, because that is the way to practice his/her profession. Strong and developed police subculture motivate employees to behave productive.

E. Rus-Ajani[18]mentioned two models of behavior in police: the preferred model of "good" and undesirable model of "bad" police officer. Behavior is stimulated or discouraged (sanctioned), depending on whether is mainly acceptable or unacceptable. Punishment mechanism for unacceptable behavior is more delicate then using a force. As Becker noted: "There are more subtle mechanisms that can fulfill the same function. One of them works by influencing the way in which individuals perceive certain procedures and the possibility of their undertaking. These attitudes are transmitted by persons worthy of respect and are confirmed by experience."[19] Strong police subculture and solid social relations between police officers are good base for productive behavior in police.

To understand behavior in the policing field we also need to shift attention toward arrest and nonarrest decision making. Authors[20] have long been focus on discretionary decisions that police make because its research may impressive identify those factors affecting the decision to bring a suspect into the criminal justice system. Riksheim and Chermak[21], mentioned four main categories:

1. individual (i.e., officer-level attributes);

15 Kešetović, Ž. (2001). Profesionalna supkultura policije. *Sociološki pregled*, 35(1-2), p. 115.
16 Subošić, Dane (2013). *Organizacija i poslovi policije*, Beograd: Kriminalistiţko-policijska akademija, p.191.
17 Rot, N. (2003). *Osnovi socijalne psihologije*, Beograd: Zavod za udžbenike i nastavnasredstva,p.378.
18 Reuss-Ianni, E. (1993). *Two cultures of policing*. New Brunswick: Transaction Publishers, p. 13.
19 Becker, H. S.(1963). *Outsiders : studies in the sociology deviance*.New York:The Free Press, p. 84.
20 Walker, S. (1992). Origins of the contemporary criminal justice paradigm: The American Bar Foundation survey, 1953-1969. *Justice Quarterly*, 9, p. 47-76.; Ohlin, L. E. (1993). Surveying discretion by criminal justice decision makers. In L. E. Ohlin & F. J. Remington (Eds.), *Discretion in criminal justice: The tension between individualization and uniformity* (p. 1-22). New York: State University of New York Press.
21 Riksheim, E. C., & Chermak, S. M. (1993). Causes of police behavior revisited. *Journal of Criminal Justice*, 21, p. 353-382.

2. organizational (i.e., department- or agency level attributes);

3. community (i.e., neighborhood- or beat-level attributes);

4. situational correlates (i.e., incident-level attributes) to outline those factors used to explain police discretionary behavior. Examinations of these classifications have a significant and enduring impact on police literature, and they are utilized by many current researchers[22] of the police.

Sykes, Fox, and Clark[23] has quantitatively examined decisions not to arrest where an arrest was a viable option. They concluded that the decision to arrest is guided more from the legal statutes and/or organizational policy and so less by individual officer discretion. Although their quantitative analysis was based on 374 cases and largely involved bivariate examinations, as Kelling & Moore[24] mentioned "the authors addressed an important empirical void at the time when the dominant philosophy of policing was centered on the crime fighter image."

LaFave[25] noted three primary reasons for why officers choose not to arrest: (1) legislative intent, (2) resource allocation, and (3) a broad and diverse category labeled "other" (i.e., enforcement tied to individual and

organizational philosophical issues regarding appropriateness of taking formal action). Good deal of decision making is based on the latter, because "officers make judgments about what is best in their minds; decisions based on such divergent factors as whether they believe making an arrest is a just punishment or if it will make a difference in the long run. They also make decisions based on practical reasons such as whether they are in their assigned beat or want to drive to the processing center and filling out paperwork. Moreover, decisions are based on the extent to which the officer attaches blame to the disputing parties, whether they empathize with the suspect, or whether they deem him or her a nice person in general, all irrespective of the evidence of wrongdoing presented. In short, there are various reasons why officers choose not to make an arrest, and individual officers appear to be apt to apply their own framework to this decision-making process."[26]

The predisposing factors begin with the biological status of the individual. The officer's ability to solve problems and address job is under influence of psychological traits, states, and self expectations. The contemporary need for efficient and effective police structure is best seen in the basic training of cadets of the Police Academy. Police education and training receive maximum attention in order to ensure the professionalization of the police personnel. The basic training is a special form of learning, where the participants under a specific regime of life and work adopt theoretical and practical knowledge and skills necessary for effective policing. The police organization should be aware of all obstacles during dealing with requirements from international or national environment. Like in every transition process, it is a normal occurrence of minor or major deviations from the estimated needs of the plan.

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22 Worden, R. E. (1989). Situational and attitudinal explanations of police behavior: A theoretical reappraisal and empirical assessment. *Law and Society Review*, 23, p. 667-711.

23 Sykes, R. E., Fox, J. C., & Clark, J. P. (1976).A socio-legal theory of police discretion. In A. Niederhoffer& A. S. Blumberg (Eds.), *The ambivalent force: Perspective on the police* (pp. 171-183). Hinsdale, IL: The Dryden Press.

24 Kelling, G. L., & Moore, M. H. (1996).The evolving strategy of policing. In S. G. Brandl& D. E. Barlow (Eds.), *Classics in policing* (pp. 71-95). Cincinnati, OH: Anderson.

25 LaFave, W. R. (1965). *Arrest: The decision to take a suspect into custody*. Boston: Little, Brown and Company.

26 Terrill, William & Paoline III Eugene A. (2007). Nonarrest Decision Making inPolice–Citizen Encounters, *Police Quarterly*, Vol. 10, No. 3, p. 326.

PROBLEM BEHAVIORS IN POLICE

Police rely on citizens' confidence and their legitimacy with the public to perform their duties. That is why citizen complaints of police behavior should take seriously. It is important mechanism that represents a weakening of the police's legitimacy with the public. The growing ease with which citizens can file complaints and rise of civilian oversight of complaint systems have focused attention on problem officer behaviors, who represent small percentage of officers who are responsible for a disproportionate amount of citizen complaints. Citizens tend to complain about police behaviors, such as being impolite, using unnecessary force and unsatisfactory performance of duties. Such acts are important because they damage the perceived legitimacy of police as a public institution. As, Bayley[27]mentioned it may in fact impair the ability of the police to effectively accomplish their tasks in the long run.

It is expect to find officers showing the greatest amount of problem behavior early in their career. Some of the observations of police behavior over citizens noted that younger officers often to prove themselves to the more veteran officers during their duties demonstrate no hesitation in applying coercive authority, because the acceptance by their peers and more veteran officers relies on a willingness to get involved in real police work. According to this, Hunt wrote that new officers "learn that they will earn the respect of veteran coworkers not by observing legal niceties in using force, but by being 'aggressive' and using whatever force is necessary in a given situation"[28] Such police behaviors may also generate friction between these officers and the citizens. Less experienced officers, as Friedrich[29] mentioned will do more to detect crime and criminals, such as: they do more active patrolling, initiate more citizen contacts, and record more crime. Perhaps in their zeal to be crime fighters, „officers on start of career overreact to many citizen encounters and perceive citizen behavior as threatening to their safety, resorting to force more quickly than seasoned officers".[30]Crank's[31]study of eight municipal police departments in Illinois, also found that police officers with more time in service are less likely to engage in order-maintenance or legalistic behaviors.

Over time those youth and inexperience officers who have been seen as contributors to problematic police behaviors, adopt their duties, position, work rules and became more like veteran colleagues, while improving in the core aspects of police work. Part of this may be that officers are gradually socialized and away from engaging in acts that may bring scrutiny and/or disciplinary acts against them. Over time they also become more part of the police community and stronger accept police subculture.

Police work is often described by scholars as a craft where officers learn in the field across years of experience, not in their training academies or in subsequent training seminars. Bayley and Bittner argued that the valuable lessons officers learn through the haphazard mechanism of individual experience concern "the goals of policing—which are reasonable; tactics—which ensure achievement of different goals in varying circumstances; and presence—how to cultivate a career-sustaining personality"[32]. So problem behaviors decline over time as officers begin to master their craft.

27 Bayley, D. H. (2002). Law enforcement and the rule of law: Is there a tradeoff? *Criminology and Public Policy,* 2, p. 133-154.
28 Hunt, J. (1985). Police accounts of normal force. *Urban Life,* 13, p. 321.
29 Friedrich reanalysis of the Black-Reiss. In: Harris, Christopher J. (2009). Exploring the relationship between experience and problem behaviors. A longitudinal analysis of officers from a large cohort, *Police Quarterly*, Vol. 12, No. 2, p. 192-213.
30 McElvain, J. P., & Kposowa, A. J. (2004). Police officer characteristics and internal affairs investigations for use of force allegations. *Journal of Criminal Justice,* 32, p. 265-279.
31 Crank, J. P. (1993). Legalistic and order-maintenance behaviors among police patrol officers: A survey of eight municipal police agencies. *American Journal of Police,* 12, p. 103-126.
32 Bayley, D. H., & Bittner, E. (1984). Learning the skills of policing. *Law and Contemporary Problems,*

It is certain that police officers, as an occupational category, are exposed to more acute and chronic life stressors than most other occupations. In order to ensure productive police behavior, it is important to understand the predisposing factors, the nature of the stressful life events experienced by officers. Pressures experienced by officers are mainly a combination of psychological and environmental variables related to occupational issues and to a smaller extent a product of environmental factors alone. Mental exhaustion as result of high amount of stress at police work, may harm the operatives' mental health and behavior, and lead them to break the law. Matti and Matti noted that there were "two kinds of police stressors:1) stressors characteristic of police work (threat of violence, shift work, etc.); and 2) stressors characteristic of police organization (defective leadership, role conflicts, etc.)."[33]They also mentioned stressors that are caused by resource shortages (budget pressure, time pressure, productivity pressure) characteristic of several distinct public services, including police.

The major sources of stressors, typical for the undercover work, as Dimitrovska noted, are usually neutralized by: "*1) agent-supervisor relationship*, mostly coming from the agent's misperception for lack of management commitment – bringing in the officer when making a decision will affect the operation course, providing protective information that will support the undercover role before the operation, emphasizing that the psychological and emotional well-being are more important than any money or investigation, *2) maintaining the role requirement, especially when it is unsuitable* – avoiding individuals with substantial differences in cultural, ethnic or geographic backgrounds, as well as selection and training improvement, *3) personal relationships with targets* – monitoring the thoughts and feelings at regular intervals, *4) resisting over-identification with the targets or losing identity* – maintaining contact with the team, *5) lack of recovery time* – the operation needs to be properly planned, *6) personal problems in daily life* – enhancing the scenario by giving reasons to the target not to expect the operative's constant presence *7) lack of context and strain in private relationships* – regular contacts with the agency or hiring somebody who is comfortable in those operational settings, or *8) technical difficulties* – training for work with recording equipment and the operative needs to have the right to veto if the situation dictates it. "[34]

Information is important for the success of policing. Contemporary studies[35] highlight some difficulties that police officers have in their efforts to obtain information sources and also in circulating information regarding their job. Inadequate level of current information in the information process of policing field may adversely affect public security. Also, the ability of police officers to serve the public is directly related to meeting their information needs. So, it is highly important to police officers have a sense on the information seeking behavior.

CONCLUSION

Researchers are still committed to examining police behavior and a wide variety of discretionary choices explaining why certain actions are or are not taken by police officers. But, in addition to this, we must continue to look at a broader range of discretionary choices and in greater depth in order to understand the true complexity of police behavior and police deci-

47, p. 35-60.
33 Matti Vuorensyrjä, Matti Mälkiä, (2011). Nonlinearity of the effects of police stressors on police officer Burnout. *Policing: An International Journal of Police Strategies & Management*, Vol. 34 Iss 3, p. 386.
34 Dimitrovska A.(2017). Undercover policing a psyhological review, S*ecurity concepts and policies - new generation of risks and threats*. Vol. 2 / International scientific conference, 04 -05 June 2017, Ohrid ; [Editor in chief Marjan Gjurovski]. - Skopje : Faculty of security, p.176.
35 Terrill, William & Paoline III Eugene A. (2007). Nonarrest Decision Making inPolice–Citizen Encounters, *Police Quarterly*, Vol. 10 (3),p.351.

sion making choices. The aim of this work is to note factors which have impact on police officers' behavior. This greatly helps in the explanation of police behavior for which we have not yet developed sufficiently precise measures, and further helps to create productive working atmosphere, and better functioning, performance and development of the police profession in general. To understand variations in police behavior, we may need to devote more time to the refinement of the theory before we can accomplish empirical testing.

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Topic IV

STRENGTHENING THE STATE'S INSTITUTIONS AND FIGHT AGAINST CRIME

APPLICABILITY OF GUARANTEES SET OUT IN ARTICLE 5 OF THE EUROPEAN CONVENCTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS TO DETERMINE DETENTION: CHALLENGES OF JUDICIAL TRANSFORMATIONS IN BOSNIA AND HERZEGOVINA

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Abstract: The right to security of a person is one of the most important human rights and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms protects all the persons from arbitrary deprivation of their liberty. Exceptions from prohibition of deprivation of liberty are set forth in Article 5 paragraph 1 of this Convention which contains a list of cases when deprivation of liberty is allowed. That is a detailed list which has a narrow interpretation. Only such an approach is consistent with the aim of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e. to ensure that no one shall be deprived of his or her liberty arbitrarily. Arbitrariness of deprivation of liberty is rated in the first place in relation to respect of procedural requirements of the Criminal Procedure Law applied in the case in question which also has to be harmonized with the standards of the European Convention.

Article 5 of the European Convention gives guarantees to an individual not to be arbitrarily arrested or deprived of his or her liberty, but not from restrictions of the right to liberty of movement. Article 2 of Protocol No. 4 to the European Convention prohibits restrictions of liberty of movement but, at the same time, regulates the possibility of placing restriction on liberty of movement in particular areas. Delineation of arrest and deprivation of liberty on the one hand, and restrictions of liberty of movement

on the other hand, do not have to be as clear as it seems at first glance. In the principle, this delineation may depend on particular legal situation in which an individual finds himself, but most often deprivation and restriction of the liberty differs only by manner, duration and consequences of measures taken by public authorities against an individual.

Keywords: the Constitution of Bosnia and Herzegovina, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Constitutional Court of Bosnia and Herzegovina, the European Court of Human Rights, the detention.

INTRODUCTORY REMARKS

According to the case-law of the European Court of Human Rights[1], reasonable doubt on which arrest has to be based on is an important element of protection from arbitrary arrest and deprivation of liberty prescribed under Article 5 paragraph 1 item c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms[2]. Reasonable suspicion of the suspicion that a crime was committed presupposes existence of certain facts or information which would satisfy an objective observer that the person concerned may have committed the offence[3]. In doing so, the Constitutional Court of Bosnia and Herzegovina[4] indicates that at the moment detention is determined, it should not be established with certainty that a crime was really committed, and that its nature should not be established. Finally, under Article 5 paragraph 1 of the European Convention, legality of arrest is assessed on the basis of domestic law, i.e. it has to have legal basis in domestic law, considering the deprivation of liberty has to be in accordance with purpose of Article 5 of the European Convention, which means a person in question has to be protected from arbitrariness[5].

Necessary level of suspicion does not absolutely mean that at that stage, i.e. moment of determination or extension of detention, the Prosecution has to have such level of evidence which is enough "for filing of the lawsuit at the moment of arrest". The reason for this is that, within the meaning of case-law of the European Court, the object of questioning during detention which follows arrest – is "to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest"[6].

When deciding on justification for determining of detention to the suspect or accused, the severity of the sentence faced is of course a relevant element for making the decision but it cannot serve to justify extension of detention[7]. Arguments "for and against" must not be general and abstract, but should contain references to the specific facts and personal circumstances of the suspect justifying his detention[8].

1 Hereinafter: the European Court.
2 Hereinafter: the European Convention.
3 See, European Court, *Fox, Campbell and Hartley v. United Kingdom*, judgment of August 30, 1990, Series A number 182, item 32 and *O'Harav. United Kingdom*, judgment of October 16, 2001, Reports on judgments and decision 2001-X, paragraph 34.
4 Hereinafter: the Constitutional Court
5 See, Constitutional Court, Decision on admissibility and meritss number AP 5842/10of April 20, 2011, accessible at web-site of the Constitutional Court *www.ustavnisud.ba*.
6 See, European Court,*Margaret Murray v. United Kingdom*, judgment of October 28, 1994, paragraph 55.
7 See, European Court, *Ilijkovv. Bulgaria*, judgment of July 26, 2001, application number 33977/96, paras. 80 and 81.
8 See, European Court, *Aleksanyanv. Russia*, judgment of December 22, 2008, application number 46468/06, item 179.

According to the case-law of the European Court, danger that the appellant shall "hide to avoid criminal prosecution" – cannot be gauged solely on the basis of the severity of sentence faced. Such danger has to be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it apper so slight that it cannot justify detention pending trial. In addition, this danger must be assessed in the light of the factors relating to the character of the suspect, his morals, his home, occupation, assets, family ties and all other concrete links with the country in which he is prosecuted[9].

As to the right to a fair trial, guarantees of that right set out in Article 6 of the European Convention refer to criminal proceedings as a whole, and the reply to the question whether one of these guarantees has been violated cannot be given while the proceedings are pending because possible procedural ommissions and lacks appearing in one stage of the proceedings may be corrected in some of the following stages of the same proceedings. Therefore, in principle, it is not possible to establish whether criminal proceedings were fair until the proceedings are validly concluded[10].

ARTICLE 5 PARAGRAPH 1 OF THE EUROPEAN CONVENTION

In the Decision on admissibility and merits of the Constitutional Court of BH[11], number AP 819/16 of March 16, 2016[12], the appellant's objection referred to legality of contested rulings in the light of application of relevant provisions of the Criminal Procedure Code of the Federation of BH[13] (CPCFBH) which the relevant court had in mind when making a decision.

The Constitutional Court recalls that for the extension of detention for one to three months, the law does not specify the conditions under which the extension must be allowed, except for the conditions relating to the foreseen punishment and especially important reasons. The law does not explicitly state those "especially important reasons", and the court evaluates what are these reasons in each individual case. In this context, the Constitutional Court considers that in the circumstances of the present case the reasons that the regular courts had in mind while making a decision does not seem arbitrary because stated reasons, including assessment of the Constitutional Court, are justifying the fact that the investigation is not yet completed, so the appellant's objections in the context of violation of Article 149 paragraph 3 of the CPCFBH seem ill-founded.

The Supreme Court stated that in such circumstances, when there are still legal reasons for the extension of detention for all the suspects on legal grounds set out in items c) and d) of paragraph 1 of Article 146 of CPCFBH, there was no need to abolish the first instance decision when the grounds for detention still remain. Having in mind the above stated, in particular the fact that it clearly follows from the reasonings of the disputed decisions what legal grounds are on which the appellant and the other suspects were extended their detention, the Constitutional Court found this complaint as ill-founded as well.

Therefore, since it does not follows from disputed decision that there were procedural omissions in their decision-making process, because regular courts have not arbitrarily ap-

9 See, European Court, *Panchenkov. Russia*, judgment of February 8, 2005, application number 45100/98, item 106and *Beccievv. Moldova*, judgement of October 4, 2005, application number 9190/03, item 58.
10 See, European Court, *Barbera, Massequeand Jabardov. Spain*, judgment of December 6, 1988, series A, number 146, paragraph 68 and the Constitutional Court, Decision number U 63/01of June 27, 2003, item 18, published in "Official Gazette of BH" number 38/03.
11 Hereinafter: the Constitutional Court.
12 Criminal offence of organized crime in relation to criminal act of aggravated theft.
13 "Official Gazzette of the Federation of BH" , no. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 59/14.

plied Articles 148 and 149 of the CPCFBH, which the appellant ill-foundedly stated, the Constitutional Court notes that the contested decisions were made in accordance with legally prescribed procedure within the meaning of Article 5 paragraph 1 of the European Convention.

ARTICLE 5 PARAGRAPH 1 ITEM C) OF THE EUROPEAN CONVENTION

In the Decision on admissibility and merits, number AP 2441/15 of May 26, 2016[14], the Constitutional Court points out to the obligation of regular courts when deciding on detention to previously consider in a more detailed way and conscientiously the possibility and effects of imposing milder measures that may achieve the same purpose. In the decision on admissibility and merits no. AP 668/16 of March 16, 2016[15], the Constitutional Court considers that the reasoning of disputed decisions in this part, contrary to the appellant's allegations, do not give the impression of arbitrariness, or that the Court of BH considered the issue of existence of reasonable doubt in the disputed decisions in the present case and that it gave sufficient reasons for its conclusions based on relevant evidence which pointed out to existence of reasonable doubt that the appellant committed criminal offences he is charged with to the extent sufficient for this stage of the procedure. According to the opinion of the Constitutional Court, the circumstances on the basis of which the Court of BH based its decisions concerning the existence of a reasonable doubt are of such a character that they may, within the meaning of stated positions of the European Court, satisfy an objective observer that it is possible that the appellant may have committed the offenses for which the proceeding in question is pending, in terms of standards of Article 5 paragraph 1 item c) of the European Convention. Due to this, the Constitutional Court holds that the appellant's allegations are ill-founded in this part.

In the case of decisions on admissibility and merits, number AP 5671/15 of June 7, 2016[16], the risk of disturbing the public peace and order set out in Article 146 paragraph 1 item d) of CPCFBH, the regular courts justified by referring to the manner of execution of the criminal offense in question considering that the mere fact that someone is charged with tax-fraud during the period of several years and thus caused damage to the Budget of the Federation of BH would lead to disturbance of citizens without specifying a single specific reason and evidence that public peace and order could really be disturbed by the appellant's stay on loose. From the above stated, it follows that the regular courts in essence tied application of these legal grounds when extending detention of the appellants to the gravity of the offense and the manner of its commission without stating any concrete evidence and substantial reason in term of existence of extraordinary circumstances based on actual and reasonable danger of disturbance of public order which would arise by the appellants' release from detention.

The Constitutional Court recalls that no matter how severe a crime is, it *per se* cannot justify the detention on the basis provided for under item d) of Article 146, paragraph 1 of CPCFBH. In this respect, the Constitutional Court again points to the position of the European Court that the severity of sentence is not an evidence and cannot justify the claim that the safety and property of citizens are endangered[17]without other concrete or circumstantial

14 Criminal offence of war crime against civilians.

15 Criminal acts of conspiracy to commit criminal offences, obstruction of justice and giving awards or other forms of benefit for the trade with influence.

16 Criminal offence of organized crime in relation to criminal offence of tax evasion.

17 See, European Court, *Tomasi v. France,* judgment of August 27, 1992, series A, number 241-A, paragraphs 90 and 91.

evidence which would justify the conclusion that there will be some riots, protests, retaliation or threat to public order[18].

ARTICLE 5 PARAGRAPH 1 ITEM C) AND PARAGRAPH 3 OF THE EUROPEAN CONVENTION

In the decision on admissibility and merits, number AP 527/16 of March 16, 2016[19], the Constitutional Court notes that the District Court, contrary to the appeal allegations, found that in the present case there were special circumstances justifying the fear that the appellant and other co-accused could repeat the offense if at liberty. The Constitutional Court considers that the District Court substantiated the reasons from which it follows that there was a danger of reiteration in the present case. In such conclusions of the District Court, which were then confirmed by the Supreme Court of the Republika Srpska, given the facts of the present case, the Constitutional Court finds no arbitrariness and considers that the circumstances of the case in question indicate the existence of an important and significant general interest that outweighs the principle of respect for the right to freedom of an individual.

In view of the above stated, and in circumstances of a specific case, the Constitutional Court considers that reasons given in the disputed decisions in relation to the existence of reiteration danger were enough to conclude after the confirmation of the indictment against the appellant and the other co-accused that detention measure is necessary and justified and, thereby, considers that the reasonings of the disputed decisions, not even in this part and contrary to the appellant's allegations, do not give the impression of arbitrariness and are based on sufficiently clear, substantiated and individualized reasons. Contrary to the appeal allegations, it follows that the regular courts gave detailed and concrete reasons for the conclusion that special detention reasons under Article 197 paragraph 1 item c) of the Criminal Procedure Code of the Republika Srpska (CPCRS) have been met in the appellant's case[20].

The Constitutional Court held the same position, among others, in the following decisions:

1. In the Decision on admissibility and merits, number AP 770/16 of March 16, 2016.
2. Decision on admissibility and merits, number AP 5765/15 of March 16, 2016; criminal offences of unlawful intervention and violation of equality in the conduct of business activities.
3. Decision on admissibility and merits, number AP 1125/16 of April 28, 2016; crime of murder.
4. Decision on admissibility and merits, number AP 1467/16 of May 12, 2016; criminal offence of war crime against humanity.
5. Decision on admissibility and merits, number AP 1163/16 of May 12, 2016; crime of tax evasion, money laundering, abuse of office or official authority and forgery of official documents.
6. (6) Decision on admissibility and merits, number AP 383/16 of April 20, 2016; criminal offence of organized crime, tax evasion, money laundering, prevention of proving, removing or damaging official seal or mark and severe theft.

18 See, European Court, *Kemmache v. France,* judgment of November 27, 1991, series A, number 218, paragraph 51.
19 Criminal offence of unauthorized production and traffic of narcotics.
20 "Official Gazzette of the Republika Srpska" number 53/12.

7. (7) Decision on admissibility and merits, number AP 849/16 of April 20, 2016; criminal offence of conspiracy to commit criminal offences in concurrence with the continued criminal offence of abuse of office or authority.

On the other hand, the appellant's right to liberty and security of a person under Article 5 paragraph 1 item c) and paragraph 3 of the European Convention has been violated when the regular courts extended the appellant's detention on the basis of reasons provided for under Article 146 paragraph 1 item d) of the CPCFBH without stating concrete reasons that would lead to extraordinary circumstances or disturbance of public order and peace. However, there has been no violation of the right under Article 5 paragraph 1 item c) and paragraph 3 of the European Convention as to the conclusion of the regular courts, based on detailed and substantiated reasoning on the existence of reasonable suspicion and special reasons for determining detention under Article 146 paragraph 1 item a) of the CPCFBH, that reasons for which extension of the appellant's detention is necessary for the purpose of ensuring the appellant's presence and conducting of criminal proceedings still exist[21].

ARTICLE 5 PARAGRAPH 1 ITEM F) OF THE EUROPEAN CONVENTION

The appellant's right to security of a person and security under Article II/3d) of the Constitution and Article 5 paragraph 1 item f) and paragraph 4 of the European Convention has not been violated because the Constitutional Court found no elements on arbitrariness in determining an extradition detention of the appellant during extradition procedure, or when this detention was lawfully determined to the appellant in accordance with the Law on International Legal Aid in Criminal Matter, and when decisions determining extradition detention were subject matter of the "court review" and did not deny the appellant's procedural guarantees within the meaning of Article 5 paragraph 4 of the European Convention[22].

ARTICLE 5 PARAGRAPH 2 OF THE EUROPEAN CONVENTION

The Constitutional Court recalls of the conclusion of the European Court on close connection of Article 5 paragraph 2 of the European Convention with Article 5 paragraph 4 of the European Convention, or on the obligation of a suspect being deprived of his liberty to get information about the reasons for his deprivation of liberty and "on any indictment against her (him)". However, the European Court adopted a position that the information required under Article 5 paragraph 2 of the European Convention does not have to be presented in a certain form, not even in written form. The essence of this right is that a person deprived of his liberty can be informed clearly and unambiguously, with a purpose of further realization and protection of the right set out in Article 5 paragraph 4 of the European Convention or providing elementary protection to a person deprived of his liberty, that he/she may take steps referring to lawfulness of his detention as soon as possible.

Furthermore, the Constitutional Court points out that the obligation under Article 5 paragraph 2 of the European Convention does not match in certain way with the obligation under Article 6 paragraph 3 item a) of the European Convention. However, these two obligations differ in the goal sought to be realized. While purpose of Article 5 paragraph 2 is to enable

21 Decision on admissibility and merits, number AP 983/16 of April 28, 2016; criminal offence of serious bodily injury and causing general danger.
22 Decision on admissibility and merits, number AP 2210/16 of June 20, 2016; extradition detention.

the suspect to contest the issue of legality of his detention, the purpose of Article 6 paragraph 3 item a) of the European Convention is to enable the accused to get a piece of information necessary to prepare his defence. Therefore, according to the Constitutional Court, obligation to inform the person arrested on the reasons of his arrest and any charges against him under Article 5 paragraph 2 of the European Convention according to its scope, is more limited (narrower than the one under Article 6 paragraph 3 item a) of the European Convention), and thereby it is necessary and sufficient for its application that a suspect is familiar with the reasons and evidence referring to detention.

By bringing these opinions in the context of the present case, the Constitutional Court holds that the appellant's allegations are ill-founded, i.e. that the competent prosecutor who questioned him after officials at the State Investigation and Protection Agency (SIPA) did not present an order to expand the investigation to "a completely new criminal offence", and that these allegations do not in any way indicate the violation of the rights guaranteed under Article 5 paragraph 2 of the European Convention[23].

ARTICLE 5 PARAGRAPH 3 OF THE EUROPEAN CONVENTION

Provision of Article 5 paragraph 3 of the European Convention requires that a person is deprived of liberty in accordance with Article 5 paragraph 1 item c) of the European Convention, or that a deprivation is lawful within the meaning of the mentioned Article, and it equally includes both the procedural and substantive protection of such persons.

Reasonable suspicion that the person deprived of his liberty committed the criminal offence he is charged with – is *a conditio sine qua non* for the determination or extension of detention. However, after a certain time it is not enough, but must be assessed whether there are relevant and sufficient reasons for detention. According to the further position of the European Court, the justification of detention depends on the circumstances of the case in question, which must be such as to indicate the existence of a general (public) interest which is so important and significant that, despite the presumption of innocence, outweighs the principle of respect for individual liberty.

In the Decision on admissibility and merits, number AP 1445/16 of April 28, 2016, the Constitutional Court considers that it follows from disputed decision that the Court of BH, stating reasons for existence of detention under Article 132 paragraph 1 item b) of the CP-CBH in connection with the facts of the case in question, contrary to the appellant's claims, listed circumstances which indicate the existence of a serious risk that the appellant and other suspects could affect witnesses and thereby disturb pending investigation if they are released. In that context, the Constitutional Court notes that it follows from disputed decisions that the Court of BH assessed a circumstance the appellant and suspect are charged with severe crimes against humanity and international law in which a huge number of perpetrators participated and due to which many persons suffered severe consequences from which victims and damaged persons still suffer and which, contrary to the appellant's opinion, was based on evidence on which reasonable suspicion is based. The Constitutional Court notes that it also follows from disputed decisions that the Court of BH assessed a circumstance that the case was in the final stage of investigation in which not all the evidence was provided, or in which a hearing of the remaining witnesses was expected in the following period and that two or three witnesses lived outside BH. Having in mind all above stated, the Constitutional Court

23 Decision on admissibility and merits, number AP 668/16 of March 16, 2016; criminal offence of conspiracy to committ criminal offence, disturbe the work of judiciary and giving award or other form of benefit for the trade of influence.

holds that the circumstances listed by the Court of BH in disputed decisions, in the context of the facts of the case in question (taking into account a kind of crime the appellant was charged with, consequences that offence had on witnesses and damaged persons and the phase of the proceedings in question), were enough to concretize a serious risk from the appellant's influence on witnesses in that case which the investigation for the offence he was charged with was in the final stage.

Having in mind the above stated and the reasonings of disputed decisions, the Constitutional Court, contrary to the appellant's allegations, considers that the Court of BH, in the circumstances of the appellant's case, gave sufficiently clear and logical explanation in relation to existence of conclusion danger, i.e. that in disputed decisions the court sufficiently clear and substantiated the reasons for which it considers there are specific circumstances which indicate that the appellant could disturb criminal proceedings by affecting the witnesses. The Constitutional Court considers that the Court of BH in the present case was sufficiently clear and precise in stating in which way "gravity of charges" against the appellant may affect the conduct of the criminal proceedings in question or why the court considers the appellant's stay on the loose would affect the witnesses and disturb the criminal proceedings having in mind gravity of charges against him.

The Constitutional Court finds no arbitrariness in the position of the Supreme Court of the Federation of BH that it cannot be expected from the courts when assessing the existence of danger from disturbance of public order to foresee future actions or to establish with certainty an event that would happen in the future. In that sense, the Constitutional Court does not consider the conclusion on permanent trauma and fear of the damaged person, based on his two statements in his file, which neither the appellant contests, may be basis for conclusion that it is not possible to foresee a reaction of the damaged if he would meet the appellant and the accused. Especially having in mind that this circumstance is assessed in relation to the previous allegation, or that the appellant, the accused and damaged person live in the same place and that it could cause conflicts between them, in which conflicts their families and relatives and other citizens of the place where they live might be involved, the Court placed them on two confronting sides. Accordingly, having in mind that the reasoning of the disputed decision of the Supreme Court stated detailed reasons for which it considered the appellant's claim that he was unable to inspect the file, and from which it follows that they may be contributed to the omission of the appellant or his defence attorney, and not the conducts of the Court and Prosecution ill-founded, the Constitutional Court could not accept as well-founded the appellant's claim that he could not comment on that circumstance, and that the conclusion on its existence was not based on the evidence. The Constitutional Court concludes that the appellant's claims that the regular courts failed to concretize existence of a real danger and that his release would result in real threat to violation of public order, which is one of cumulative reasons for determining detention under Article 146 paragraph 1 item d) of the CPCFBH, are ill founded[24].

Contrary to that, the Constitutional Court notes that the appellant's rights under Article II/3d) of the Constitution and Article 5 paragraph 3 of the European Convention were violated when the regular courts failed to state concrete circumstances justifying the conclusion that the appellant's release would result in extraordinary circumstances due to real (not abstract) threat to public order, within the meaning of provisions of Article 146 paragraph 1 item d) of CPCBH, or when the Court of BH failed to give concrete and sufficient reasons for the conclusion that it was justified to determine the appellant's detention for detention reasons provided for under Article 132 paragraph 1 item a) of the CPCBH (danger of escape)[25].

24 Decision on admissibility and merits, number AP 1117/16 of April 28, 2016; crime of murder.

25 Decision on admissibility and merits, number AP 921/16 of June 20, 2016; criminal offence of or-

ARTICLE 5 PARAGRAPH 4 OF THE EUROPEAN CONVENTION

Article 5 paragraph 4 of the European Convention guarantees that everyone who is deprived of his liberty by arrest or detention shall be entitled to access a "court" which shall decide on the lawfulness of both original deprivation of liberty and extension of duration of that measure. According to the case-law of the European Court, a key element of this obligation is that the court shall supervise lawfulness of deprivation of liberty but it does not have to be a "classic court integrated into standard state court machinery"[26]. However, it has to be an organ possessing a "judicial character". To possess a "judicial character" that organ has to be "idependent from executive power and parties to the proceedings"[27], and shall have the jurisdiction to make a binding decision which may lead to the release of a person. This organ also has to provide "procedural guarantees adequate for a concrete kind of deprivation of liberty" which are not "significantly lesser" from the guarantees in the criminal proceedings when a result of deprivation of liberty is long-term imprisonment of a person. These guarantees especially include an oral hearing with legal aid in the proceedings with participation of both sides, consideration of lawfulness of the detention in its widest sense and decision which has to be made promptly.

In the Decision on admissibility and merits, number AP 819/16 of March 16, 2016[28], in the context of objection by which the appellant raised an issue of violation of Article 5 paragraph 4 of the European Convention, which he connected with decision of the Supreme Court which according to the appellant did not reply in appeal proceedings about all his complaints, the Constitutional Court considers this claim arbitrary since the appellant did not give concrete objections to consider them at all. Moreover, the appellant did not submit his complaint with his appeal, i.e. the complaint the appellant's defence attorney at that time filed against the first-instance decision. So, in such circumstances, it remains unclear which relevant objections the Supreme Court did not consider. Therefore, the Constitutional Court considers these objections as ill-founded and concludes there has been no violation of the rights under Article II/3d) of the Constitution and Article 5 paragraph 4 of the European Convention. The Constitutional Court made the same decision in the case number AP 1011/16 of April 20, 2016.

DEPRIVATION OF LIBERTY AND PROHIBITION MEASURES

According to the case-law of the European Court, deprivation of liberty implies a measure of public authority by which an individual is kept at a limited space for a certain period of time contrary to his free will or without it[29]. When drawing the line between arrest and deprivation of limitation of liberty, the main criterion is a way of limitation of movement, length of that limitation and special legal status of a person in question. As to territorial criteria, it is indisputable that deprivation of liberty within the meaning of Article 5 of the European Convention implies imprisonment, which means stay in a closed institution within which even a complete freedom of movement is allowed. Moreover, keeping of a person in prison,

ganized crime in connection with acts of tax evasion or fraud, abuse of office, abuse of authority in economy and deceiving of customers.

26 See, European Court, *Weeksv. United Kingdom*, judgement of March 2, 1987, SeriesAnumber 114, paragraph 61.

27 See, European Court, *De Wilde, Oomsand Versypv. Belgium*, judgement of November 18, 1971, SeriesAnumber 12, pgs. 76 and 77.

28 Criminal offence of organized crime in connection with criminal offence of severe theft.

29 See, European Court, *Guzzardi v. Italy,* judgement of November 6, 1980, Series A, number 92.

detention or similar institution at any other place when a person's movement is physically limited upon an order of a police or other public authorities implies deprivation of liberty under Article 5 of the European Convention. On the other hand, any forcible detention in a limited place which is not closed institution does not constitute deprivation but, on the contrary, only limitation of the right to liberty[30]. Furthermore, home detention is considered as deprivation and not limitation of the right to liberty, especially if it is connected to prohibition of communication with persons living out of the detained person's confinement. In addition, measures used as means to provide presence of the accused in the proceedings, as prohibition to leave the place of residence, obligation to report to competent authorities at a certain time and at a certain place are measures of limitation and not deprivation of liberty[31].

In its recent case-law, in cases no. AP 4850/14 and AP 5432/14, the Constitutional Court examined the appeals raising the same issue, the issue whether the measure of prohibition imposing guarantees under Article II/3d) of the Constitution and Article 5 of the European Convention may be applied. Namely, in these decisions, items 38 and 35, the Constitutional Court pointed out, having in mind the case-law of the European Court as to distinction between deprivation of liberty under Article 5 of the European Convention and limitation of liberty under Article 2 of Protocol no. 4 to the European Convention (which includes examination of degree, intensity and consequences of public authority's measure), that it considers the standards established by the European Court constitute minimum of standards for the protection of a certain right guaranteed under the European Convention. Besides, the Constitutional Court pointed out that everything stated did not prevent the Constitutional Court in any way to provide wider scope of protection than the one provided by the standards set out by the case-law of the European Court and therefore it examined disputed decisions, determining prohibition measures to the appellants within the guarantees of protection of the rights under Article 5 of the European Convention.

In this connection, the Constitutional Court should examine whether when imposing prohibition measures to the appellants their rights to personal liberty and security were violated, as well as the right to freedom of movement. In that context, the Constitutional Court will first examine whether the standards prescribed by Article 5 of the European Convention have been complied with in particular taking into account the appellants' allegations whether the appellants were "immediately" brought before a judge or "other person legally authorized under the law to exercise judicial authority" as required by Article 5 paragraph 3 of the European Convention. Namely, in its series of judgments, the European Court has pointed out the importance of Article 5 paragraph 3 of the European Convention. It particularly stated that "the main purpose of this paragraph in relation to Article 5 paragraph 1 item c is to provide individuals deprived of their liberty special guarantees: judicial proceedings whose purpose are to ensure that no one will be arbitrarily deprived of his liberty[32]. Apart from emphasizing the extraordinary importance of Article 5 paragraph 3 of the European Convention, the European Court found that the violation of the said Article when the detained person is not immediately or within the shortest time possible brought before the judge occurred in several of its judgments[33].

Bringing into connection the standards of the European Court and the Constitutional Court, which may *mutatis mutandis* apply to the case in question (Decision on admissibility and merits, AP 3184/16, of October 10, 2016), the Constitutional Court concluded that the

30 See, European Court, *Bozano v. France,* judgment of December 18, 1986, Series A, number 54.
31 See, European Court, *Vito Ciancimino v. Italy,* decision on admissibility of May 27, 1991.
32 See, Constitutional Court, Decisions on admissibility and merits, no.AP 4850/14 and AP 5432/14 of April 15, 2015, accessible at the web site of the Constitutional Court *www.ustavnisud.ba*.
33 See, for example, European Court, *McGoff v. Sweeden*, judgment of October 26, 1984, Series A number 83 and *Assenov et al. v. Bulgaria*, judgment of October 28, 1998, Reports 1998-VIII.

Municipal Court violated their right to freedom and security of a person, as well as the right to freedom of movement under Article II/3d) of the Constitution and Article 5 paragraph 3 of the European Convention and Article 2 of Protocol no. 4 to the European Convention by not bringing the appellant before the competent judge in the process of adopting a decision on the prohibition measures, even though the decision was made by the court.

THE RIGHT TO LIBERTY OF MOVEMENT AND RESIDENCE

Article II/3m) of the Constitution and Article 2 of Protocol no. 4 to the European Convention stipulates that everyone living in the territory of a State shall, within that territory, have the right to liberty of movement and freedom and to choose his residence, at the same time giving everyone the right to leave any country including his own. However, paragraph 3 of Article 2 of Protocol no. 4 to the European Convention provides that no restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, prevention of crime, protection of health or morals, or for the protection of the rights and freedoms of others. As to that, the Constitutional Court recalls that according to the case-law of the European Court limitations with regards to the measures of securing the presence of an accused in the proceedings, as prohibition to leave place of residence, obligation to report to competent authorities at a certain time and at a certain place, and surrender or dispossession of travel document, will be considered within the meaning of Article 2 of Protocol no. 4 to the European Convention and that these measures limitating liberty of movement may be necessary in a democratic society for the purpose of "maintaining public order" or prevention of a "crime" (within the meaning of paragraph 3 of Article 2 of Protocol no. 4 to the European Convention[34]). The Constitutional Court, in its Decision number AP 206/08[35] in which the appellant pointed out to the violation of Article 2 of Protocol no. 4 to the European Convention, took the same position in connection with the prohibition measure by which the appellant was dispossessed of his personal and travel documents.

Having in mind that in the case of the Constitutional Court number AP 3120/16 of October 10, 2016 the appellant referred to the violation of Article 2 of Protocol no. 4 to the European Convention, the Constitutional Court examined whether in the case in question there was interference with the appellant's right to liberty of movement. In case it concluded there was interference, the Constitutional Court should further establish whether that interference was justified or whether it was (a) prescribed under the law, (b) in public interest and (c) in accordance with the principle of proportionality.

In the present case, following the appellant's proposal to replace imposed prohibition measure in relation to the appellant (prohibition to leave place of residence and prohibition to travel, and prohibition to meet with certain persons) with guarantee measure, the Court of BH rejected the proposal for guarantee measure as ill-founded by disputed decision. Therefore, it indisputably follows that these decisions limited the appellant's liberty of movement and interfered with the appellant's right under Article II/3m) of the Constitution and Article 2 of Protocol no. 4 to the European Convention.

Furthermore, the Constitutional Court notes that prohibition measures prescribed by the CPCBH in Chapter "Measures to provide the presence of a suspect or accused and successful

34 See, European Court, *Manfred Shmid v. Austria*, Decision on admissibility of July 9, 1985 and *Vito Ciancimino v. Italy,* Decision on admissibility of May 27, 1991.

35 See, Constitutional Court, Decision on admissibility and merits, number AP 206/08 of September 14, 2010, accessible at the web page of the Constitutional Court *www.ustavnisud.ba.*

conduct of the criminal proceedings". Having in mind that the Court of BH concluded that prohibition measure imposed to the appellant, prescribed under provisions of the CPCBH, was still justified from the aspect of successful conduct of the criminal proceedings, the Constitutional Court considers that interference with the appellant's right to liberty of movement in the case in question was done on the basis of the law which met the standards of the European Convention in relation to clarity and transparency, or lawfulness reaching "legitimate aim".

In the context of necessity of measures imposed, the Constitutional Court notes that the Court of BH based its position on circumstances of the concrete case having in mind allegations from the appellant's proposal by which the change of imposed prohibition measure with guarantee measure for the purpose of the appellant's departure to the USA was exclusively based on the need for medical treatment in the USA due to the fact the appellant, as a citizen of the USA, exercised his right to free medical protection in that country. The Court of BH clearly pointed out that the guarantee measure in the circumstance of the case in question was not adequate or that existing circumstances did not justify its determination, as well as that the purpose of successful conduct of criminal proceedings in that stage of the procedure might be provided by imposed prohibition measure only. When making such a conclusion, the Court of BH also had in mind other circumstances referring to the appellant. Therefore, the Constitutional Court considered that disputed decision reached a balance, i.e. that there was proportionality between limitation of the appellant's right to liberty of movement and legitimate interest which implied consistent application of the CPCBH or application of measures ensuring presence of accused persons at the main hearing.

Having in mind the above stated, the Constitutional Court concluded that the appellant's allegations on violation of his right to liberty of movement and residence under Article II/3m) of the Constitution and Article 2 of Protocol no. 4 to the European Convention in the circumstances of the case in question were ill-founded.

CONCLUSION

The right to liberty and security falls within "center" (existential rights), or the rights connected with physical integrity and human dignity. Generally speaking, the aim of Article 5 of the European Convention is the prohibition of arbitrary deprivation of liberty by giving minimum rights against abuse of power over persons being deprived of their liberty. Loss of liberty always has to be an exception which is objectively justified if legitimate aim cannot be reached otherwise, and it has to last as short as possible. In addition, any deprivation of liberty has to be substantiated and decided by a court established by a law or organ which is equal to the court.

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REFORM OF CRIMINAL SANCTIONS SYSTEMS INJUVENILE CRIMINAL MATTERS IN SERBIA

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Abstract: Draft Law on Juvenile Criminal Offenders and Protection of Juveniles in Criminal Proceedings (Draft Law/15) in the material juvenile criminal law brings significant innovations relating to the system of criminal sanctions. Corrective measures are still maintained in the basic status of criminal sanctions, but their registry narrowed, as in the Draft Law/15 omitted two institutional measures – referral to a correctional institution and committal to special institution for treatment and training. An important innovation is based on a measure of committal to a correctional institution. Because of the many downsides of current legal system and the range of relative certainty the duration of the educational measure, the Draft Law/15 stipulates that its duration is determined in the range of one to five years, instead of as now between six months and four years. It also stipulates that the decision imposed referral to a correctional facility, the court determines the duration of the measure, provided that its maximum duration is determined in full years.

The general minimum juvenile prison pursuant to the Draft Law/15 shall be one year (now six months), a general maximum ten years (which means that the present regular, and also the most common maximum sentence, which is five years, leaves). The Draft Law/15 has been reduced and the number of security measures that may be imposed on juveniles committed crimes. Specifically, in addition to banning of professional activities or duties, excluded the possibility of applying security measures publication of the judgment. Significantly, the Draft Law/15 defines in detail the record keeping and processing of statistical data on issued and executed criminal sanctions, which is now regulated by bylaws.

The author points out that the analysis solution that provides for the Draft Law/15 clearly indicates that the area of criminal sanctions for juveniles dynamic area is subject to change to a greater extent than other criminal institute.

Keywords: juvenile criminal law, criminal sanctions, juveniles, the Draft Law/15, reform, Serbia.

THE MAIN FEATURES OF THE CURRENT CRIMINAL SANCTION SYSTEM FOR JUVENILES AND REASONS FOR THE REFORM

The National Assembly adopted the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (hereinafter referred to as: Law/05, current law),[2] on 29 September

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2 "Službeni glasnik RS", no. 85/05.

2005, which entered into forces as of 1 January 2006, and without any amendments has remained in place until the present day. The provisions of Law/05 shall apply to juvenile perpetrators of criminal offences (under certain circumstances to persons of legal age when tried for criminal offences committed as juveniles, as well to persons who have committed a criminal offence as young adults), and they pertain to substantive criminal law, relevant implementing bodies, criminal proceeding and enforcement of criminal sanctions against these offenders, thus transferring the idea about autonomous juvenile criminal law in our country, i.e. special legislation completely regulating criminal law position of juvenile criminal offenders finally from theoretical to normative level.

Pursuant to the provisions of the substantive criminal law defined in Law/05, juveniles can be pronounced the following criminal sanctions for the committed crime: a) educational measures, b) juvenile detention and c) security measures may be pronounced to juvenile offenders, pursuant to Article 79 of the Criminal Code (CC),[3] with the exception of restraint to be engaged in his occupation, business activities or duties. It can be observed from the first sight that criminal sanctions for juveniles[4] are very different from sanctions defined in Article 4 of the CC, pertaining to person of legal age.

Within the framework of the general purpose of penal sanctions (Article 4, paragraph 2 of the CC), the purpose of criminal sanctions for juveniles is to influence the development and enhancement of personal responsibility of the juvenile, education and their proper personality growth through supervision, protection and assistance as well as by providing general and professional qualifications in order to ensure the juvenile's reintegration into the community (Article 10, paragraph 1 of the Law/05). Such defined purpose and the way of the implementation indicate that educational measures primarily focus on special prevention.

The purpose of juvenile detention is mainly compatible to the purposes of educational measures, yet there are some specificities. In addition to the purpose wanted to be achieved through the application of educational measures, the enforcement of juvenile detention is intended to achieve increased influence on a juvenile perpetrator to refrain in the future from criminal offences, as well as to act as a deterrent to other juveniles, potential perpetrators, not to commit crime (Article 10, paragraph 2). In other words, special prevention is underlined and general prevention emphasised, which did not use to be the case with educational measures.[5]

Pursuant to Article 78 of the CC, the purpose of security measures is to eliminate circumstances or conditions that may have influence on an offender to commit criminal offences in the future, so it is quite reasonable to conclude that this is also the purpose of security measures which can be pronounced to juvenile criminal offenders. Therefore, special-preventive effect is emphasised here as well.

Domination of special prevention indicates that the outcome of listed criminal sanctions is in a juvenile's personality and need for their education, supervision and provision of protection and assistance. The basis and criterion for the sanction is personality, which shades the committed crime and the motive for the pronunciation of such sanction. The priority im-

3 "Službeni glasnik RS", no. 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14. and 94/16.

4 Starting from a general notion of criminal sanctions, criminal sanctions for juveniles can be defined as legally stipulated measures aimed at suppression of juvenile crime and based on final Court decision made in a proceeding involving a juvenile, or exceptionally in a criminal proceeding where the proceeding involving a juvenile perpetrator is related to a proceeding against a person of legal age, are executed on juveniles having committed illegal acts defined by law as criminal offences. Škulić, M., *Maloletničko krivično* pravo, Beograd, 2011, p. 285.

5 Perić, O., *Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica*, Beograd, 2007, p. 32.

portance, accordingly, is the diagnosis of a person's needs and problems in the development, as well as forecast of the sanction effects aimed at education and appropriate development of juveniles.[6] Knowing the personality of a juvenile criminal offender is, bearing in mind significant differences between them, essential assumption for the adaptation of the sanction (legal, judicial and executive individualisation) to their characteristics, therefore for the realisation of special prevention.[7]

Educational measures are the basic criminal sanctions intended for juvenile criminal offenders; in addition, these are the only criminal sanctions which may be pronounced to junior juveniles. The Law/05 (Article 11, paragraph 1, items 1)-3) stipulates three types of educational measures, which include certain educational sub-measures (nine in total). These are:measures of warning and guidance (court admonition and alternative sanctioning), pronounced when necessary and when such measures should influence a juvenile's personality and behaviour;measures of increased supervision (increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision by guardianship authority, increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles), pronounced when education and development of a juvenile require more durable measures with appropriate professional supervision and assistance, and when no full separation from the prior environment is required; institutional measures (remand to educational institution, remand to correctional institution, committal to special institution for treatment and acquiring of social skills), pronounced when more durable educational measures are to be applied, together with treatment and acquiring social skills, with complete separation from the prior environment, so as to apply more intensive influence on them. These measures are pronounced as last resort and may last for, within legal frame, only for such period of time required to achieve the purpose of such educational measures. In selecting the educational measure the Court shall particularly take under deliberation the age and maturity of the juvenile, other aspects of their character and degree of deviation in social behaviour, gravity of the offence, motives for committing the offence, living circumstances and environment of the juvenile, their behaviour following the commission of the offence (particularly whether they prevented or attempted to prevent occurrence of damaging results, compensated or attempted to compensate for the damage caused), whether the juvenile has any prior criminal or misdemeanour conviction, as well as all other circumstances of relevance for pronouncement of such measure that would best serve to achieve the purpose of educational measures (Article 12). Our Law/05 recognizes only one penalty, which can be pronounced to juvenile criminal offender, and this is juvenile prison. Exclusivity of sanctioning is specifically stressed in Article 9, paragraph 3, but it can also be observed from the conditions for pronouncing this sanction. Namely, juvenile prison can be pronounced only to a senior juvenile who committed a criminal offence punishable by imprisonment of over five years, if due to high degree of guilt, nature and gravity of the offence an educational measure would not be appropriate (Article 28). According to the provisions of Article 29, the general minimum penalty of juvenile detention of six months, while in terms of the overall maximum set two limits. The rule is that juvenile detention may not be longer than five years. However, for a criminal offense which carries a prison sentence of twenty years or more, or in the case of concurrence of at least two criminal offenses for which a punishment of imprisonment of ten years, juvenile detention may be imposed for up to ten years. The sanction is pronounced on full years and months.Security measures, except for prohibition to practise a profession, activity and duty (Article 85 of the CC), may be pronounced to juveniles if they are sentenced to educational measure or juvenile detention. There are, however, exceptions to this rule. First of all, the security measure of mandatory treatment of drug addicts (Article 83) and the mea-

6 Kambovski, V., *Kazneno pravo – Opšt del,* Skopje, 2006, p. 811.
7 Veković, V. V., *Sistem izvršenja krivičnih sankcija*, Beograd, 2013, p. 161.

sure of mandatory treatment of alcoholics (Article 84) may not be ordered together with the measures of warning and guidance (admonition and special obligations). On the other hand, there is a possibility to pronounce the security measure of mandatory psychiatric treatment and confinement in a medical institution (Article 81) as a separate measures (Article 39 of the Law/05). The exposed summary, suitable for the scope and nature of this paper, doubtlessly indicate the conclusion that Law/05 stipulates diverse system of criminal sanctions, many of which functionally related, exchangeable and complementary. Nonetheless, necessary assumption for the selection of adequate criminal sanction is to know the personality of a juvenile criminal offender, since, let us repeat this, the basis and the criterion for sanctioning is the personality, which shades the committed crime and motive for the pronunciation of the sanction. Serbian legislator has conceptualized the system of criminal sanctions for juveniles, as well as the entire Law/05, in accordance with the juvenile criminal legislation, highest standards in this area, established in relevant international conventions and documents adopted under the auspices of the United Nations (UN),[8] and Council of Europe (CoE),[9] observing also good solution found in our criminal legislation before the adoption of Law/05. However, ten-year application and problems observed in practice, indicated that certain provisions of Law/05, including those regulating the system of criminal sanctions for juveniles, should be additionally defined, with introduction of certain novelties, as well. The necessity for legislative compliance in the area of juvenile justice with the European Union (EU) standards and its full implementation, was indicated by, *inter alia*, the European Commission (EC) in its Screening Report for Chapter 23 – Judiciary and Fundamental Rights.[10] Recommendations contained therein clearly indicate that accession negotiations and rightful membership in the

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8 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules* (Adopted by General Assembly Resolution 40/33 of 29 November 1985); *United Nations Convention on the Right of the Child* (Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989); *United Nations Guidelines for the Prevention of Juvenile Delinquency – The Riyadh Guidelines* (Adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990); *United Nations Rules for the Protection of Juveniles Deprived their Liberty – The Havana Rules* (Adopted by General Assembly Resolution 45/113 of 14 December 1990); *United Nations Standard Minimum Rules for Non-custodial Measures – The Tokyo Rules* (Adopted by General Assembly Resolution 45/113 of 14 December 1990).

9 *Recommendation No. R (87) 20 of the Council of Europe Committee of Ministers to Member States on Social Reactions to Juveniles Delinquency* (Adopted by the Committee of Ministers on 17 September 1987 at the 410th Meeting of the Ministers' Deputies); *Recommendation No. R (88) 6 of the Council of Europe Committee of Ministers to Member States on Social Reactions to Juvenile Delinquency among Young People Coming from Migrant Families* (Adopted by the Committee of Ministers on 18 April 1988 at the 416th Meeting of the Ministers' Deputies); *Recommendation No. R (92) 16 of the Council of Europe Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures* (Adopted by the Committee of Ministers on 19 October 1992 at the 482nd Meeting of the Ministers' Deputies); *Recommendation No. R (2000) 22 of the Council of Europe Committee of Ministers to Member States on Improving the Implementation of the European Rules on Community Sanctions and Measures Justice* (Adopted by the Committee of Ministers on 29 November 2000 at the 731st Meeting of the Ministers' Deputies); *Recommendation No. R (2003) 20 of the Council of Europe Committee of Ministers to Member States Concerning New Ways of Dealing with Juveniles Delinquency and the Role of Juvenile Justice* (Adopted by the Committee of Ministers on 24 September 2003 at the 853rd Meeting of the Ministers' Deputies).

10 Submission of the Screening Report to our country in July 2014, the screening process for Chapter 23 – Judicial and Fundamental Rights, was finalised. In the first phase of the negotiation process, the status in the Republic of Serbia with regard to the EU standards in the area of judicial reform, protection of human rights and anti-corruption, was analysed. The EC Screening Report was prepared based on two screening meetings (explanatory and bilateral) with representatives of Serbia responsible for this chapter, as well as other available sources (reports from international organisations and non-governmental sector, findings of the EU member states about the situation in Serbia, etc.). This report is an overview of the realised status in legal and institutional framework of Serbia and its administrative capacities for the implementation of the EU *Acquis* for Chapter 23. Izveštaj o skriningu – Srbija, Poglavlje 23 – Pravosuđe i osnovna prava, http://www.mpravde.gov.rs/files/Izvestaj%20o%20skriningu%20-%20tekst%20na%20srpskom%20jeziku.pdf. (visited 24 February 2017).

EU as the final goal, require core modifications in this area both in normative sense, and in terms of implementation. With regard to that, the Government of the Republic of Serbia adopted at its session held on 27 April 2016 the Action Plan for negotiating Chapter 23.[11] This umbrella strategic document, based on which recommendations of the EC will be implemented, stipulates, *inter alia*, the amendments of the current law, with the aim to reconsider the types and systems of criminal sanctions for juveniles, and introduce wider scope of specific obligations.[12] Taking into account that the scope of planned amendments is excessively wide, starting from the Unified Methodological Rules for regulations development,[13] it was concluded that it was necessary to adopt a new law to define this area. Based on that, the Draft Law on Juvenile Criminal Offenders and Protection of Juveniles in Criminal Proceedings (Draft Law/15)[14] was developed and presented to public in 2015. The adoption of the new law, upon the completion of public hearing and appropriate parliamentarian procedure, is expected by June 2017.[15]With regard to the above, the subject of further discussion will be the main features of the new legislation on the system of criminal sanctions for juveniles. We will therefore focus on the provisions defined in Articles 12-42 of the Draft Law/15, which regulate criminal sanctions for juveniles, as well as rationale of Draft Law/15.

NEW LEGAL SOLUTIONS IN THE AREA OF CRIMINAL SANCTIONS FOR JUVENILES

Compared to the Law/05, Draft Law/15 brings in a range of novelties in the area of criminal sanctions for juveniles. Hereinafter, we will indicate new solutions highlighted according to their importance, which can be expected to yield the strongest effects in preventing and suppressing juvenile crime.

TYPES OF CRIMINAL SANCTIONS

According to the provision of Article 12, paragraph 1 of the Draft Law/05, educational measures, juvenile detention and security measures stipulated by the CC, may be pronounced to juvenile offenders, with the exception of restraint to be engaged in his occupation, business activities or duties and security measures without public announcement of the conviction. Hence, beside the measure of restraint to be engaged in his occupation, business activities or duties, new legal solution has also excluded the option of public announcement of the conviction. Taking into account specific bio-psychological and social characteristics of juvenile criminal offenders, there is no doubt that negative implications of stigmatisation pertinent to this security measure would be additionally multiplied. The situation of a stigmatised juvenile thence would become more complicated, and relapse into new crimes as a response to the position the juvenile faces would become far more probable. In other words, future criminal behaviour can be a direct consequence of their stigmatised difference and exposure to intensive discrediting effect.[16] Obviously, it was this very reason that would have predominantly

11 http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf. (visited 26 February 2017).

12 See: section 3.6.2.10 of the Action Plan for negotiating Chapter 23.

13 "Službeni glasnik RS", no. 21/10.

14 http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php. (visited 2 March 2017).

15 http://www.gs.gov.rs/doc/PLAN_RADA_VLADE_2017.pdf. (visited 20. March 2017).

16 See: Gofman, E., *Stigma: zabeleške o ophođenju sa narušenim identitetom*, Novi Sad, 2009; Parker, T., Allerton, R., *The Courage of His Convictions*, London, 1962; Wheeler, S., Cottrell, S. L., with the assistance of Romasco, A., *Juvenile Delinquency: Its Prevention and Control*, New York, 1966; Lemert, E., *Social Pathology: A Systematic Approach to the Theory of Sociopathic Behaviour*, New York, 1951.

determined the decision of the legislator to exclude the measure of publication of the conviction, which can be assessed as a significant step forward towards more adequate treatment of this age category of perpetrators.

THE PURPOSE OF EDUCATIONAL MEASURES AND JUVENILE PRISON

The same provision (Article 13 of the Draft Law/15) defines special prevention as a core purpose of educational measures and juvenile prison. However, regardless of legal formulation which does not explicitly state that achieving goals of general prevention is one of the purpose for juvenile sanctioning, juvenile prison can realise certain general-preventive effects on both the juveniles and general population. The sanction of juvenile detention cannot be denied of certain degree of retribution; yet, since the contents thereof is closer to educational measures of institutional character than to the imprisonment for perpetrators of legal age, the elements of such nature have been minimised.[17]

INSTITUTIONAL MEASURES

Provisions defined in Article 14, paragraph 1, item 3) prescribe that juvenile crime offender can be pronounced only one institutional measure – remand to a correctional institution. Remand to rehabilitation institution and committal to special institution for treatment and acquiring of social skills stipulated by the Law/05 do not exist anymore in the registry of criminal sanctions intended for this age category of perpetrators. The reasons which guided the legislator in reducing relatively wide array of institutional measures to only one are numerous: a) loss of confidence in courts and purposefulness of measures application, therefore ever more expressed orientation to educational measures of non-institutional character; b) reduction of capacities and closing down of institutions for execution of remand to a rehabilitation institution (this measure is being executed in institutions for rehabilitation of children and youth in Belgrade and Niš, but not in the institution in Knjaževac, which does not develop appropriate professional working programmes for work with these juveniles);[18] c) lack of an institution for execution of the committal to special institution for treatment and acquiring of social skills despite ever growing need for the application of this measure;[19] d) chronicle

17 Škulić, M., *op.cit.,* p. 287; Soković, S., Bejatović, S., *Maloletničko krivično pravo*, Kragujevac, 2009, p. 68; Radulović, Lj., *Maloletničko krivično pravo*, Beograd, 2010, p. 91.

18 The fact which must not be forgotten is that this measure is more rarely pronounced due to difficulties appearing in the realisation thereof (e.g. the problem of defining a specific institution for a juvenile to be remanded to; specific "selection" of juveniles by rehabilitation institutions, based on their internal documents; omissions related to search in case that the juvenile escapes the institution; unorganised stay during the vacation and absence of juveniles in their primary surroundings, quite commonly still overburdened with problems which, *inter alia*, influenced the juvenile to commit crime; insufficient cooperation between authorised entities, etc.). Specifically worrying is the fact that a considerable number of pronounced measures of remand to rehabilitation institution are not executed at all. See: Ilić, Z., Kriminalitet mladih i reforma pravno-institucionalne zaštite u Srbiji, *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja – I deo,* Beograd, 2007, pp. 305-306; Škulić, M., Stevanović, I., *Maloletni delinkventi u Srbiji: neka pitanja materijalnog, procesnog i izvršnog prava*, Beograd, 1999, p. 312; Perić, O., Milošević, N., Stevanović, I., *Politika izricanja krivičnih sankcija prema maloletnicima u Srbiji,* Beograd, 2008, pp. 134-135 and 137-140; Veković, V. V., *op.cit.,* p. 183.

19 Committal to special institution for treatment and acquiring of social skills belongs to a group of non-affirmed educational measures, i.e. educational measures for which courts opt sporadically. Establishing such an institution would enable that this institutional measure finally comes into life, which

financial issues; e) deficit, insufficient education and lack of interest of staff in execution of these educational measures.

Draft Law/15 has introduced special spans in pronunciation of educational measure of remand to a correctional facility, thus making this measure, for the reasons of fairness, "more similar" to other criminal sanctions. The so far legal span (ranging from six months to four years – Article 21, paragraph 3 of the Law/05) and the system of relative determination of this measure duration, have revealed a number of lacks. Therefore, Article 23, paragraph 3 of the Draft Law/15 prescribes that measure of remand to a correctional facility can take at least one year, and not more than five years, with a revision conducted every six months by the Court to determine if there are grounds for the suspension of the implemented measure or for the replacement of the current measure with another one. In the decision made by the Court on the remand to a correctional facility, the Court has to define the duration of the measure, with the longest duration of this measure expressed in full years (Article 23, paragraph 4).

Article 24, paragraph 1 also stipulates that the Court can release from the institution a juvenile who had spent in the correctional facility at least a year, provided the person has served at least one year, which is a legal minimum of this measure according to the Law/15 (now it is at least six months – Articles 21, paragraph 3, and Article 22, paragraph 1 of the Law/05). If there was success in the education, it can be reasonably expected that such person will not perpetrate and will manage very well the environment they will leave in.

JUVENILE PRISON

Article 30 of the Draft Law/15 defines that juvenile detention may not last less than one year or more than ten years and shall be pronounced in full years and months. Such generally defined minimum of juvenile prison sentence indicates that while developing the new Draft Law/15, there was a prevailing opinion that one year, instead of six months, as stipulated in the Law/05, is the shortest stay needed to achieve positive effects on a juvenile during the execution of the sanction ("tight" treatment). On the other hand, general maximum of ten years leave the Court with enough room for individualisation as an essential assumption for successful prevention and suppression of juvenile crime.

Pursuant to Article 33, paragraph 1 of the Draft Law/15, the Court can release on probation a person who had been pronounced a sentence of juvenile prison if the person has served half of the pronounced sentence, but not before the elapse of one year (now the person can be released on probation if they have served one-third of the sentence, but not before the elapse of six months, which is a general minimum of juvenile detention – Article 32, paragraph 1, and Article 29 of the Law/05), if it may be reasonably expected that they will be of good behaviour upon release and will refrain from committing criminal offences.

Draft Law/15 stipulates special deadlines for limitation of enforcement of the juvenile prison sentence, which are different from the deadlines prescribed in the Law/05. Pursuant to Article 34 of the Draft Law/15, a juvenile detention sentence cannot be enforced if:

1. ten years have passed from the conviction to a term of juvenile detention exceeding five years;

2. five years have passed from the conviction to a term of juvenile detention exceeding three years;

3. three years have passed from the conviction to a term of juvenile detention exceeding one year;

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would doubtlessly be better solution than cancelling it from the registry of criminal sanctions for juveniles.

4. two years have passed from the conviction to a term of juvenile detention up to one year.

Taking into account that only deadlines for relative limitation have been prescribed, in terms of absolute limitation, flow and termination of limitation of enforcement, general rules defined in respective provisions of the CC shall apply.

RECORDS AND STATISTICAL DATA ON THE PRONOUNCED AND EXECUTED CRIMINAL SANCTIONS

Draft Law/15 (Article 40) thoroughly regulates maintenance of records and processing of statistical data about the pronounced and executed educational measures and juvenile detention sentences, which is, doubtlessly, a qualitative step forward compared to the provisions contained in current bylaws on the subject. These records and statistical data are of great importance, both in general sense for monitoring the area of juvenile crime, which is nowadays crucial in determining general ways for criminal-political actions, and in specific sense, aimed at identifying potential juvenile relapser.[20]

ORDERING EDUCATIONAL MEASURES TO YOUNG ADULTS

Ordering educational measures to young adults is by the Draft Law/15 completely differently regulated than by Article 41 of the Law/05. Actually, Draft Law/15 prescribes conjunction of an educational measure which can be pronounced to a perpetrator and the duration of sentence prescribed for a committed crime. More specifically, the perpetrator who has committed crime as an adult which is punishable by imprisonment of up to five years, and at the moment of trial proceedings has not reached the age of twenty-one, can be pronounced with any alternative sanction or increased supervision by guardianship authority by the Court; if however, the perpetrator has committed crime for which more than five and less than ten years imprisonment had been stipulated, the Court can pronounce a measure of remand to a correctional facility (Article 42, paragraphs 1, and 2). Application of the aforementioned educational measures is of optional character.

CONCLUDING CONSIDERATIONS

The problems noticed in a ten-year application of the Law/05 and recommendations from the EC Screening Report for Chapter 23 – Judicial and Fundamental Rights, have primarily determined a need for the adoption of a new law which will fully regulate criminal-justice position of juveniles in the Republic of Serbia.

Draft Law/15, presented to the public in 2015, has brought a number of important novelties into our juvenile criminal law. When it comes to criminal sanctions, the following should be stressed:

1. the system of criminal sanctions stipulated by the Draft Law/15 is partially suited to specific bio-

2. psychological and social characteristics of juvenile criminal offenders and is essentially different from criminal sanctions prescribed for adult perpetrators;

20 Škulić, M., *op.cit.*, p. 312.

3. educational measures have retained the status of general criminal sanctions, so the application thereof is

4. a rule, while pronunciation of juvenile detention sentence is exception to the rule;

5. exclusion of two institutional measures – remand to educational institution and committal to special

6. institution for treatment and acquiring of social skills, the number of educational measures has been reduced from nine to seven. Taking into account that needs for the application of measure of committal to special institution for treatment and acquiring of social skills are ever more expressed, we are of the opinion that instead of cancelling it from the register of criminal sanctions, it would be far better to establish such an institutions, which would enable that such institutional measure comes into life. Apparently, this resolution was made without empirical grounds to corroborate it, similarly to the case of retention of increased supervision in another family in the educational measures system;

7. duration of the educational measure of remand to a correctional facility in the range of one to five years,

8. is a return to the solution which had been in force before the entrance of the current law in force as of 1 January 2006. When pronouncing the measure, the Court defines the duration thereof, which approximates this criminal sanction to its core function, that is, deprivation of freedom. Such solution is justified by reasons of elementary fairness, since it is not logical that a juvenile who has been pronounced this educational measure is *de facto* in less favourable position than a juvenile who has been pronounced a sentence of juvenile detention, and is also, in principle, a way to strengthen the role of the Court in pronouncing the criminal sanction;[21]

9. juvenile detention cannot be shorter than one and longer that ten years. Such defined general minimum

10. and maximum for juvenile detention means, similarly to the case of educational measures of remand to a correctional facility, re-actualisation of a solution which had existed in our legislation before the entrance of the Law/05 into force.

The presented solutions from the Draft Law/15 unequivocally indicate that the area of criminal sanctions for juvenile offenders is a dynamic field, subject to alterations to greater extent than in the case of other criminal law institutes. Adopting the new law by June 2017 will merely mean the first step in realising reforms in this area. Logical continuation of activities in normative area is the adoption of a range of bylaws which will thoroughly elaborate certain legal provisions, thus enabling the spirit of law to live in practice. At the same time, it is necessary to: a) intensify the development of appropriate institutional framework; b) strengthen administrative capacities of competent authorities; c) ensure an effective practical application of the improved normative solutions. Hence, only a well-coordinated and efficient acting in these closely related and mutually dependant levels can contribute to the achievement of satisfactory level of real outreach of new criminal sanctions system in the area of prevention and suppression of juvenile crime.

21 Škulić, M., Reforma maloletničkog krivičnog prava u Srbiji, *Maloletnici kao učinioci i žrtve krivičnih dela i prekršaja*, Beograd, 2015, p. 66.

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THE CONCEPT OF ADMINISTRATIVE MATTER (Views of jurisprudence, case law and current legislation)[1]

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Abstract: One of the basic characteristics of an administrative decision is that is regulates an administrative matter. This actually means that administrative decisions are issued in relation to administrative matters. It is therefore impossible to define the concept of the administrative decision without previously defining the concept of the administrative matter. This is the only way in which a distinction can be drawn between an administrative decision and a judicial one, which is also an individual, specific, authoritative legal decision, based on law and having immediate legal effect. However, in terms of contents, administrative decisions pertain to administrative matters, whereas judicial ones are related to judicial matters.

There is no universal agreement regarding the definition of the concept of administrative matter in the national theory of administrative law. Case law also remains vague and imprecise regarding this issue. The only advance has been made in the existing legislation, which included a definition of an administrative matter in the Administrative Disputes Act and the Law on General Administrative Procedure, and which will be helpful for both jurisprudence and judicial practice in future and serve as a basis for shaping the concept of an administrative matter.

Keywords: administrative decision, judicial decision, administrative matter, judicial matter, administrative procedure, administrative dispute.

INTRODUCTION

There is a widespread agreement among authors of literature on administrative law focusing on the issue of decisions of administration that one of the characteristic features of an administrative decisions is that it regulates an administrative matter. This means that the administrative decision is made on an administrative matter. Therefore the concept of an administrative matter is the most important criterion for defining the concept of administrative decision. It this way, an administrative decision differs from a judicial one, which is also a singular legal ruling, specific, authoritative, based on the law and having immediate legal effect. However, administrative decisions are made in respect of administrative matters, and the judicial ones in respect of judicial matters.

There is no unified position in the national jurisprudence regarding the definition of the concept of an administrative matter. When it comes to the case law on this issue, we can also say that it is very vague. As far as the existing legislation is concerned, it seems to have taken

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a step forward. The Law on Administrative Disputes[3] and the new Law on General Administrative Procedure[4] define the concept of an administrative matter. This paper focuses on the definition of the administrative matter from the standpoint of legal doctrine, judicial practice and existing legislation.

VIEWS OF AUTHORS ON THE CONCEPT OF ADMINISTRATIVE MATTER

As regards the definition of the concept of administrative matter, there seems to be no universal agreement of attitudes in the national jurisprudence. There are authors who take the view that defining administrative matters is not crucial to defining administrative decisions, and who believe that the concept of administrative matter is encompassed by other features of an administrative decision.

Thus Ivo Krbek finds that an administrative decision is "an authoritative decision made for the purpose of causing immediate legal effect on the rights and obligations of natural or collective persons for a specific case in the area of administrative activity".[5] The author obviously replaces the category of administrative matter with administrative activity, without precisely specifying the meaning of this term.

Velimir Ivancevic believes that the administrative matter is "a decision which regulates a specific case in a certain administrative area, branch, matter, etc."[6] An objection may be raised here that the administrative matter is not a decision which governs a specific case, but the specific case itself. An administrative decision is made in respect of an administrative matter; hence it would be wrong to suggest that the administrative matter is a decision. An administrative matter is an essential characteristic of an administrative decision, not the decision itself. In fact, the author here does not give a definition of an administrative matter but rather exchanges the concepts and offers an inaccurate definition of an administrative decision.

Ivo Borkovic also fails to explain the essence of administrative matters even though he includes the term in the definition of an administrative decision. According to him, an administrative decision is "a legal ruling which, in the cases provided for in the legal norms by state organs or self-governing organizations or communities that hold public powers, authoritatively and unilaterally decides on the rights and duties of certain subjects in a specific administrative matter".[7]

Another group of authors has made efforts to establish essential features of administrative matters. The results which have been obtained deserve attention and appear to be more or less varied. Some explanations of administrative matters are based on concepts which are not sufficiently precise in themselves, such as, for instance, "administrative subject matter", "field", "administrative regulations", "administrative action", etc. There is some limited benefit from the explanations which bind the concept of administrative matters to decision-making in administrative proceedings or the jurisdiction of the decision makers issuing administrative rulings, etc. Some definitions are too broad and therefore hardly applicable in practice, and some are

3 See: Zakon o upravnim sporovima, Službeni glasnik RS (Official Gazette of the Republic of Serbia), no. 111/2009.
4 See: Zakon o opštem upravnom postupku, Službeni glasnik RS (Official Gazette of the Republic of Serbia), no. 18/2016.
5 I. Krbek, Pravo jugoslovenske javne uprave III, Zagreb, 1962, p. 6
6 V. Ivančević, M. Ivčić, A. Lalić, Zakon o upravnim sporovima sa komentarom i sudskom praksom, Zagreb, 1958, p. 30.
7 I. Borković, Upravno pravo, Zagreb, 1981, p. 292.

too narrow and do not entirely encompass the essence of administrative matters. Nevertheless, we shall here try to present some interesting concepts of an administrative matter.

We shall first present the interpretation of Nikola Stjepanovic, who regards an administrative matter as an action or activity. This author refers to "such activities of the state authorities, most frequently administrative bodies and self-governing organizations or communities holding public powers, which create or establish, modify or terminate administrative relations in respect of a specific individual or legal person".[8] The administrative matter cannot be the action of creating, modifying or terminating an administrative relation. The administrative matter is the very thing that needs to be governed by such activity as is undertaken to establish an administrative relation. On the other hand, the presented concept does not allow for differentiating between administrative and judicial matters because the elements of a mandatory participant and authoritativeness are insufficient for clear and precise delineation.

Slavoljub Popovic points out some of the characteristics of administrative matters. These characteristics include the following: a) administrative matters include the subject-matters which are regulated by administrative regulations executed and implemented primarily by public authorities; b) the concept of administrative matter indicates that a single, specific matter is involved – the one which is subject to regulation by issuing a ruling in administrative proceedings. Accordingly, the matters regulated by legal regulations are not administrative matters; c) an administrative matter is related to administrative action.[9]

This can be regarded as a description of an administrative matter, the definition whereof is based on the concepts that have not been previously explained, such as the administrative legal regulations and administrative action, although the author in question points out that "actions carried out by the state administration can be divided into authoritative tasks (i.e. the tasks which are performed on the basis of public authority, by using political power) and non-authoritative tasks. Resolving administrative matters by adopting administrative decisions would be classified under the authoritative tasks".[10] Yet the concept of administrative action remains vague and not sufficiently distinct in relation to the other activities of the government.

Bogdan Majstorovic defines an administrative matter as a legal matter in which, through immediate implementation of legal provisions, a decision is made on some right, obligation or legal interest of a specific party if the resolution of this matter is not within the jurisdiction of a court.[11] What is missing here is an explanation of the administrative matter as well as the reason why it is to be regarded as being different from another one (e.g. judicial matter). The author has here resorted to formal criteria: competence of the administrative authorities and negative exemption. Only the matters from administrative field for which administrative authorities are competent constitute administrative matters, and the matters from the area of administration for which the courts are competent constitute judicial matters. Why should one subject-matter be within the jurisdiction of the court and another one within the jurisdiction of the administration? Probably because the former is judicial and the latter an administrative one. Thus the problem returns to the beginning.

For Mirko Perovic, an administrative matter is "a category so controversial that it is the most appropriate to determine its general and approximative elements, leaving the room for them to be sought after and determined for each specific case. They are certainly related to "the administration" or more precisely put to "administrative activity" of ruling in certain areas – matters.[12] The author concludes: "Therefore when a state body, labor or other organization in

8 N. Stjepanović, Upravno pravo u SFRJ, Beograd, 1978, p. 791.
9 S. Popović, Upravno pravo, Beograd, 1989, p. 490-491.
10 S. Popović, op.cit., p. 39.
11 B. Majstorović, Komentar Zakona o opštem upravnom postupku, Beograd, 1977, p. 6.
12 M. Perović, Komentar Zakona o upravnim sporovima, Beograd, 1979, p. 86-87.

the execution of public authority decides - in a specific and individual manner - on a right, legal interest or obligation of an individual or an organization, it is an administrative matter."[13]

This author does not say what he means by 'administration', 'administrative activity' or 'ruling in certain areas – matters', so that it cannot be determined with any amount of certainty what the administrative decision is related to. It is certainly related to the administration or administrative activity, but it is known that the administration can be defined differently. An administrative matter does not exist when an administrative decision is issued; it is rather the case of the administrative decision being made in the administrative matter. This author also does not specify the criteria for administrative demarcation between administrative and judicial decisions. The court also rules in a concrete and individual manner on a certain right, obligation or legal interest. The only criterion that ultimately remains is the body which issues the ruling but this is certainly not sufficient for delineation.

It is interesting to present the view of Pavle Dimitrijevic, who points out that the characteristic of the administrative matter is the very fact that the decisions are made in the performance of an activity which does not appear as a termination of contentious situations but rather as an activity that involves specifying dispositions for the behavior of the individuals.[14] This aims to essentially distinguish between administrative decisions from judicial ones, which also represent acts of exercising state authority in individual cases, i.e. the court decisions determine sanctions for illegality or establish that there has been no unlawfulness.[15]

Ratko Markovic also points out that the administrative decision is made in an administrative matter. "An administrative matter is distinguished from a civil matter on the one hand and from the judicial matter, on the other hand. The administrative matter is primarily legal matter and then it is a public legal matter. The administrative matter is different from the civil matter inasmuch as it is decided upon by a competent organ, authoritatively and immediately, and from the judicial one inasmuch as it represents a concrete, individual, uncontested legal situation which is regulated by precisely setting the disposition (primary rule of behavior) of the general legal norm. An administrative matter is a specific, individual and uncontested situation regulated by the competent subjects in an authoritative and direct manner through direct implementation of the law (legal regulation)".[16]

Nevenka Bacanin explains the concept of administrative matter by pointing out to its most prominent characteristics: a) an administrative matter is a concrete, individual legal situation; 2) the administrative matter is an uncontended situation; 3) the administrative matter is a legal matter which is directly and authoritatively regulated by competent bodies; 4) the administrative matter is a legal situation regulated directly and authoritatively by competent organs through specifying the dispositions of the general legal norm.[17]

The view of Dragan Milkov is also worth attention. According to him, an administrative matter is "such a single matter in which the legal regulations impose the need to specify the rule of conduct by a primary disposition in an authoritative manner."[18] This author also emphasizes characteristics of the administrative matter, which include: 1) an administrative matter is a single matter; 2) an administrative matter is the single matter in which there is a need to specify the rule of conduct by a primary disposition; 3) an administrative matter is the single matter in which there is a need for the rule of conduct to be specified authoritatively in a primary disposition.

13 M. Perović, op.cit., p. 87.
14 P. Dimitrijević, Pravosnažnost upravnih akata, Beograd, 1963, p. 23.
15 P. Dimitrijević, Pravosnažnost upravnih akata, Beograd, 1963, p. 23.
16 R. Marković, Upravno pravo, Beograd, 1995, p. 196.
17 N. Bačanin, Teorija upravnog prava, Beograd, 1994, p. 239.
18 D. Milkov, Pojam upravnog akta (unpublished doctoral thesis), Novi Sad, 1983, p. 194-195.

The author emphasizes these characteristics because he wishes to make distinction between the administrative matter and legislative, judicial or contractual matters.

Two questions arise from this definition of the administrative matter. First, there is the question of the nature of second-instance administrative decisions, i.e. do these concern specifying the primary disposition or ruling on a sanction? According to this author, such cases involve either specification of the primary disposition or its completion. The primary disposition is not definitively established until the second-instance administrative body expresses its view. The situation is the same if the second-instance body cancels or revokes the first-instance act based on its supervisory right. In this case it, strictly speaking, does not participate directly in the completion of the primary disposition, but allows for its completion by expressing the view that it is to be specified in another way and thus contributes to its completion. The second question is the question of the legal nature of the rulings made in administrative proceedings. Does the court ruling specify the primary disposition or the sanction? According to Milkov, this situation is to be regarded in the following way: "the administration has finally established the primary disposition but there is the issue of whether it has been done in accordance with law. This dispute between the administration and the individual needs to be resolved by a court, and the court will pronounce the sanction. The sanction usually involves the annulment of the administrative decision. However, the situation is additionally complicated if the court rules in a dispute of full jurisdiction and completely replaces an administrative decision, as in the case when the court ruling replaces the administrative decision where the administrative body does not carry out a previously made court decision. In such cases, apparently, the court firstly determines the sanction and annuls the administrative decision and then specifies the primary disposition in its own right."[19]

This view is comprehensive, clear and convincing, but we find that it has certain shortcomings. There is no doubt that resolving administrative matters involves authoritative ruling of someone's rights, obligations or legal interest in a specific case. But we can say for both administrative and judicial ruling that there are situations when the primary disposition is customized and the situations in which secondary disposition – or sanction – is imposed. Accordingly, the criterion for distinguishing between administrative matters and judicial matters should not be the nature of the disposition of the norm contained in the relevant legal act (primary or secondary) but the nature of the situation (contested or uncontested) in which the specific ruling is made and which will determine the nature of the legal matter (as administrative or judicial).

Considering the opinions expressed so far concerning the concept of administrative matters, it seems that essentially the most comprehensive and scientifically most appropriate is the view of Zoran Tomic. This author points out that the administrative matter is "a single life situation of indisputable character with a direct (emphasized) public interest, which needs authoritative and specific legal regulation in keeping with the law, that is, whose legal regulation needs to be correctively directed (either *ex officio* or at a party's request). The public interest is such a social value that the state considers particularly important, and strives to achieve and protect it in every way (including the legally standardized threat of force and even use of coercion). Hence the exercise of individual (or group) interests must not be contrary to the public interest. The legal order which arranges administrative matters – from the determination of jurisdiction for the resolution in administrative proceedings and initiating proceedings, including, at the end, adequate judicial protection – is adjusted primarily for this purpose. Naturally, the public interest takes its objectified, legal form. Thus, the engaged public interest, according to the nature of the given subject matter, can be entirely (fully) transformed and legally operationalized or just basically (in essential points) normatively expressed."[20]

19 D. Milkov, op.cit., p. 196.
20 Z. Tomić, Upravno pravo, Beograd, 1991, p. 271.

In view of the foregoing, according to this author, addressing administrative matters "would present legally arranged operative-corrective activity of decision-making from the position of a state authority about a certain right, obligation or legal interest of a specific subject – party, through direct implementation of legal regulations and, as a rule, in undisputed (without dispute) individual situations".[21] Regulating administrative matters takes two basic forms:1) the authority is completely legally bound in decision-making; 2) the authority is only partly bound and has the power to make free (discretionary) assessments in the anticipated situations.[22]

CONCEPT OF ADMINISTRATIVE MATTER IN CASE LAW

As for the attitude of our case law regarding the concept of administrative matters, we can say that it is very vague. We have, in fact, no clear and precise criteria that would serve to determine whether a decision addresses an administrative matter or not and whether, in this respect, it may be subject to administrative proceedings. Courts are frequently content with the simple statement that a decision is administrative because it has been adopted in an administrative matter and that another is not because it does not address an administrative matter. This explanation is based more on the feeling that some matter is or is not administrative than on some clear arguments. Therefore the analysis of case law may be difficult because sometimes one and the same thing is treated as being administrative and in another case this status is denied to it.

Until the adoption of the new Administrative Disputes Act 2009, an administrative dispute was possible only against final administrative decision provided that no separate law excluded the right to conduct administrative disputes against such decisions. In this sense, judicial practice has met substantial difficulties upon determining whether an act addresses an administrative matter and, in this respect, whether it can be subject to an administrative dispute. Thus the national courts, in their decisions, usually give only sketchy answers to the question whether the decision attacked by a lawsuit is an administrative one. In addition to this, it is frequently unclear why some matter is regarded as administrative and another is not.

Thus, for example, a decision by which the administrative organ authoritatively decides on its own jurisdiction has a character of an administrative act (SVS, Už. no. 2364/56); the issue of compensation of costs of hospital care is a matter discussed in the proceedings before the regular court, so that a decision by which the Institute of Social Insurance refuses to pay compensation of costs does not have a character of an administrative decision (VSJ, Už. 127/63 of 19.4.1963); adopting an act by which a commission assessing a doctoral dissertation, submitted with the aim of acquiring a doctorate in science, does not constitute acting in accordance with the provisions of the General Administrative Procedure Act, so that any such assessment, as well as other decisions related to it is not deciding on an administrative matter (VSS, U. br. 5069/69 of 14.1.1970); a decision of the Ministry of Education on the basis of Article 115, Paragraph 2 of the Law on Primary Education (*Official Gazette* of RS, nos. 50/97 and 22/02) which does not give consent to the decision of the school board on the selection of a director, does not have a character of an administrative decision (VSS, U. 3801/02 of 11.12.2002); the decision of the Ministry of Education based on Article 66, Paragraph 2 of the Law on Secondary School (*Official Gazette* of RS, nos. 50/92...25/02) which, upon the request for the protection of the rights of a student or a parent, demands a school to eliminate violations of the law within a given period of time, does not have a character of an administrative decision which could be subject to administrative proceedings (VSS, U. 35317/02 of 6.2.2003);

21 Z. Tomić, op.cit.
22 Z. Tomić, op.cit.

a consent or a refusal of consent of the Republic Board for the development of university activities regarding an elaborate on founding a faculty according to the Law on University does not have a character of an administrative decision (VSS, U. 2827/05); individual acts of the Government of the Republic of Serbia on the selection, appointment and dismissal from office of the selected and appointed persons may be challenged before the Supreme Court of Serbia (VSS, U. 3156/03 of 2.2.2005); a bid of the Privatization Agency for participation in a public tender and notifying the participants about extended deadline for application does not have a character of an administrative decision (Decision VSS, U. 6673/2005 of 2.2.2007); the reply of the state authority to the complaint of a party does not represent an administrative decision or an individual decision under Article 198, paragraph 1 of the Constitution of the Republic of Serbia, against which protection is provided in administrative proceedings (VSS, U. 7173/2008 of 27.11.2008); the decision of the Republic of Serbia Government on the dismissal of the director of the archive has a character of an administrative decision so it must include the reasons for his dismissal (SS U. 3102/2005 of 1. 12. 2005); the conclusion on rejecting the request for exemption of officials does not have the character of an administrative decision but rather a procedural decision in administrative proceedings (VSS, U. no. 2268/03 of 3. 3. 2004); the decision of the commission of the Republic of Serbia Government on the allocation of an apartment does not have the character of an administrative decision (VSS, U. 3501/2000 of 13. 6. 2001); agreement concluded in an administrative procedure can be annulled by corresponding legal means before relevant courts (VSS, U. no. 129/82 of 12. 10. 1982), etc.[23]

Without going deeper into analyses and reviews of specific court decisions, because it would exceed the scope and purpose of this paper, we can take a synthetic view and say that until the adoption of the new Civil Procedure Law 2009 our courts declined jurisdiction to conduct administrative dispute i.e. they did not regard rulings as decisions made in administrative matters in the following situations: 1) is a decision involved the general legal norm; 2) if a ruling resolved a controversial property rights relation; 3) if the decision did not have the resolving character; 4) if the decision was of contractual nature or any other decision which was not adopted in the execution of state authority or public (administrative) powers.[24]

DEFINITION OF THE CONCEPT OF ADMINISTRATIVE MATTERS IN THE EXISTING LEGISLATION

In addition to the views of case law, it should be borne in mind that certain conclusions on the administrative matter can also be drawn from the current legal regulations.

The former Law on General Administrative Procedure[25] which for the most part remains effective until 1 June 2017, gives no explicit definition of the administrative matter. In the section entitled “The validity of the law” it defines only the subject of its application in the provisions according to which government authorities (and other defined entities) are obliged to act in compliance with this law in administrative matters where they, directly applying the legal regulations, they decide on rights, obligations or legal interests of natural persons, legal persons or other parties (which represents the adoption of administrative decisions), as well as where they perform other duties stipulated by this law (including the issuance of certificates by the competent authorities as a kind of administrative action). On the other hand, the

23 Practical examples have been presented according to: Zoran R. Tomić, Komentar Zakona o upravnim sporovima sa sudskom praksom, drugo dopunjeno izdanje, Službeni Glasnik RS, Beograd, 2012, p. 316-333.

24 D. Vasiljević, Upravno pravo, trece, izmenjeno i dopunjeno izdanje, KPA, Beograd, 2015, p. 195-200.

25 See: Zakon o opštem upravnom postupku, Službeni list SRJ, nos. 33/1997, 31/2001; Službeni glasnik RS, br. 30/2010.

Administrative Disputes Act expressly defines an administrative matter. An administrative matter, according to the Act (Article 5) is an individual uncontested situation of public interest in which there the need arises from legal regulations to establish the authoritative rule of future conduct of a party, which is in accordance with the view that an administrative dispute concerns the legality of the final administrative decision. This excludes the execution of all administrative actions from the definition of the administrative matter. On the other hand, the subject of an administrative dispute includes an assessment of lawfulness of other final individual decisions which regulate a right, obligation or legally-based interest in respect of which the law does not provide other judicial protection, as well as final individual decisions in cases provided for by the law.

The new Law of General Administrative Procedure (Article 2) defines an administrative matter as any individual situation in which an organ directly implements laws and other regulations and general acts, legally or factually influencing the position of the party by adopting administrative decisions, issuing guarantee acts, concluding administrative agreements, taking administrative actions and providing public services, but also as any other situation which is legally defined as administrative matter. Obviously, according to the new Law on General Administrative Procedure, an administrative matter has been defined more broadly, in keeping with the classification of administrative activities, i.e. "administrative procedures" (Part Two: Art. 16-32), thereby making the field of application of this law more comprehensive and more nuanced.[26]

The new Law has explicitly defined and significantly expanded the concept of administrative matters to which the provisions of this statute apply. Accordingly, in addition to adopting administrative decisions and the issuance of certificates by competent authorities, administrative matters include rendering guarantee documents, concluding administrative agreements, undertaking all other administrative actions and any other situation that is legally defined as an administrative matter. Thus within the new Law on General Administrative Procedure the concept of administrative matter becomes equal in scope with the subject of administrative proceedings. However, this broadened concept of administrative matter does not generate problems in terms of the definition offered in the Administrative Disputes Act, given that complaints will continue to be submitted to the Administrative Court only concerning administrative decisions, based on administrative matters from administrative proceedings. Namely, with the complaint as a new remonstrative legal remedy for a failure on the part of an authority to fulfill obligations arising from an administrative contract, (not) taking administrative actions or providing poor quality of public service, administrative decisions in the form of resolutions will be made. Such administrative decisions can only subsequently be the subject to dispute before the Administrative Court.

This definition of the concept of administrative matter is wider than the one included in the Administrative Disputes Act. In order to avoid problems in practice or inconsistencies in interpretations, this broader concept of administrative matter refers to the administrative procedure. The Administrative Disputes Act contains a narrower concept of administrative matter which relates to the issuance of administrative decisions. As we have already pointed out, the reason for this is the fact that the administrative procedure can involve various types of administrative actions, but only those administrative decisions which are final in the administrative procedure can be challenged in an administrative dispute. Other types of administrative actions cannot be directly challenged before the Administrative Court, but it has been envisaged that complaints against them may be lodged and decided upon in an ad-

26 D. Vasiljević, *Legal nature and significance of guarantee act as provided for in General Administrative Procedure Bill*, Međunarodni naučni skup "Dani Arčibalda Rajsa", Tematski zbornik radova međunarodnog značaja, Kriminalističko-policijska akademija, Beograd, 2016, p. 44-54.

ministrative decision, which can then be attacked by an appeal and (or) a lawsuit. In this way, these concepts of administrative matter, both the broader and the narrower one, can freely exist in the legal system.[27]

Thus the concept of an administrative matter is defined in two ways in the new Law of General Administrative Procedure. First, the Law determines the contents of an administrative matter as any individual situation where the authority directly applies law, other regulations and general acts, legally or factually affecting the position of a party by issuing administrative decisions, rendering guarantee documents, concluding administrative agreements, undertaking administrative actions and providing public services. Then there is a possibility for designating certain legal matters which will be decided in administrative proceedings, for the law provides that an administrative matter is also any other situation which is legally defined as being an administrative matter.

CONCLUSION

Generally speaking, there are two ways in which a legal term can be defined. The first and most common is left to jurisprudence, while the other, although less frequent, relies on the existing legislation. This is also the case with defining the concept of administrative matter.

There is no doubt that the definition of the concept of administrative decision in terms of contents is not possible without answering the question of what is an administrative matter. As we have seen in this paper, the theory of administrative law encompasses more or less successful efforts by many authors who sought to define administrative matters in order to draw a substantive difference between the administrative decision and the judicial decision as individual, specific, authoritative legal decisions.

The definition of the concept of administrative matter used to have not only doctrinal but also practical significance, primarily until the adoption of the Constitution of the Republic of Serbia in 2006 and Administrative Disputes Act in 2009. The reason for this is that according to the former Administrative Disputes Act the subject of administrative dispute could be solely a final administrative decision provided that this possibility was not ruled out by a special law. In such a situation, it was of great importance to determine the concept of administrative matter because the answer to the question whether an individual decision was administrative or not depended on it, since only the final administrative decision could be subject to administrative dispute.

The new Administrative Disputes Act expanded the subject-matter of an administrative dispute. Firstly, the Constitution of the Republic of Serbia, Article 198 paragraph 2, provides that the legality of final individual acts deciding on a right, duty or legally grounded interests shall be subject to reassessing before the court in administrative proceedings unless the law stipulates another form of court protection in a given case. Starting from the mentioned constitutional provision, the Administrative Disputes Act specifies the subject of administrative dispute in Article 3. Pursuant to this article, the court decides on the legality of final administrative decision in an administrative dispute, except in cases where different judicial protection is envisaged. Also, the court shall decide in the administrative dispute on the legality of final individual acts deciding on rights, obligations or legally grounded interests in respect of which - in the particular case - the law does not provide for different judicial protection. The court in the administrative dispute decided on the legality of other final individual acts/decisions such as provided for by the law. Within these legal solutions, the definition of

27 D. Milovanović – V. Cucić, Nova rešenja nacrta Zakona o opštem upravnom postupku u kontekstu reforme javne uprave u Srbiji, Pravni život, Beograd, no. 10/2015, vol. II, p. 95-110.

the concept of administrative matter loses its practical significance and has a more doctrinal character, given that the subject of the administrative dispute is no longer restricted only to final administrative decisions.

As far as the views of case law are concerned, we have seen that they are very vague. However, the latest 'fresh' legal definitions of administrative matters first in the Administrative Disputes Act and then in the Law on General Administrative Procedure will certainly help both the judicial practice and the national legal doctrine in future to finally formulate the concept of administrative matter based on new foundations.

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OBSTRUCTION OF THE WORK OF SPECIAL PUBLIC PROSECUTION THROUGH THE PRISM OF THE CONSTITUTION AND LAWS OF THE REPUBLIC OF MACEDONIA

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Abstract: In the period from 2008 to 2015, the Security and Counter Intelligence Administration (SCIA) of the Ministry of Internal Affairs of the Republic of Macedonia conducted interception on telephone communications of 20 thousand people without decision of a competent court. Helped by honest people employed in SCIA, Social Democratic Union of Macedonia (SDUM) came into the possession of the recordings of eavesdropping.

Having obtained the incriminated materials, the party leadership became aware that there were grounds for suspicion of a number of crimes of power abuse, committed by senior government officials - Prime Minister, ministers, heads of state agencies and departments and heads of other state bodies. Materials were made public by SDUM. The relevant bodies of the European Union became interested in the case.

The Public Prosecution for Criminal Offenses Related which Arise from the Content of the Illegal Eavesdropping of Communications (Special Public Prosecution) was established by the initiative of the Union.

In their work relating to criminal cases, the Prosecution faces a series of obstacles by state authorities of the Republic of Macedonia, especially by the SCIA and the courts. The most characteristic among them are: refusal by the SCIA to surrender to Prosecution recorded and written materials under the pretext they are classified, the refusal of the request to inspect the equipment for interception of communications under the pretext that it would jeopardize national security, refusal of viable proposals for the detention, deprivation of passports, rejecting proposals to be heard as witnesses prominent public figures (prime minister, some ministers), request to the Prosecution to provide approval from SCIA, to use in the evidentiary proceeding documents classified as secret, etc.

The paper analyzes these and other obstructions of the work of Special Prosecution, in light of the Constitution and relevant laws of the country.

Keywords: crime, criminal offence, official, prosecution, obstruction.

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INTRODUCTION

Opposition is a powerful controller of the government in a democratic society. It closely monitors the government and point to errors and omissions in its governance. An effective method of correcting the work of the government is critics. Fair and open criticism is always welcome for the government which is the true service to the citizens. The government should and must be such. The constitutional principle of the sovereignty of citizens obliges it to be such.

A few years ago the Government of the Republic of Macedonia completely detached from the citizens. As executive authority, it has established full control over the legislative and judicial authority (courts, prosecutions). The Constitutional Court of the Republic, President of the Republic and "to some extent" People's Attorney - Ombudsman were placed under its control.

The work of the government for its interest is contrary to the Constitution and laws. The work contrary the Constitution is crime. Thus, the government was criminalized. Criminalization means a new quality of the government understood in a negative sense. The government which is criminalized has a need to work secretly. Macedonian society was faces with the most serious problem: how to defend itself from the criminality of the state power or how to defend the legal state from the "state."[2]

Thus was created a situation in which the Government could do whatever wanted and how it wanted, without taking into account the wishes, needs and motivations of citizens.

The Constitution guarantees the citizens of the Republic of Macedonia freedom of association to exercise and protect their political, economic, social, cultural and other rights.

In accordance with the constitutional commitment to its membership and to the majority of citizens of the Republic of Macedonia, Social Democratic Union of Macedonia (SDUM) has created a project "Truth for Macedonia". Through it, SDUM made public much of the obtained materials.[3]

SDUM with the help of honest people employed in the Security and Intelligence Administration (SCIA) obtained the recordings of eavesdropping via telephone communications of 20 thousand citizens, which the SCIA has performed without an order of a competent court.

Having obtained the confidential materials, the party leadership became aware that there were grounds for suspicion of a number of crimes of power abuse, (offenses against freedoms and rights of citizens, against property, against elections and voting, against official duty, etc.) committed by senior government officials - Prime Minister, ministers, heads of state agencies and departments and heads of other state bodies.

2 Kambovski V., Organized crime, Skopje, 2005, p. 58-59.

3 From 9 February to the end of May 2015 the opposition party SDUM released a total of 36 packages of audio tapes of recorded telephone conversations, among others of the Prime Minister, government Ministers, senior public officials, mayors, members of Parliament, the Speaker of the Parliament, opposition leaders, judges, the State Prosecutor, civil servants, journalists, editors and media owners into the public domain. The amount of material contained in these releases so far has reached around 500 pages of transcripted conversation. SDUM claims that it has access to over 20 000 such recorded conversations in total, and that these recordings were made by the national intelligence services. The making of these recordings is generally acknowledged to have been illegal, to have taken place over a number of years and not to have been part of any legitimate court-sanctioned operations. The recordings are also of a quality, scale and number to be generally acknowledged to have been made inside the national intelligence service facilities. The content of many of the recordings provide indications of unlawful activities and abuse of power by senior government officials. The head of the intelligence service and two senior government Ministers resigned after the start of the interception scandal.

Relevant bodies of the European Union became interested in the case. The European Commission sent an expert team to Macedonia, headed by a German Reinhard Priebe to examine the situation and compile a report.

The report states that the contents of the intercepted conversations arise suspicions of numerous violations of legality, such as:

-Violation of the fundamental rights of the individuals concerned; serious infringements of the personal data protection legislation;

- Violation of the 1961 Convention on Diplomatic Relations (Vienna Convention), given that diplomats have also been illegally intercepted;

- Apparent direct involvement of senior government and party officials in illegal activities including electoral fraud, corruption, abuse of power and authority, conflict of interest, blackmail, extortion (pressure on public employees to vote for a certain party with the threat to be fired), criminal damage, severe procurement procedure infringements aimed at gaining an illicit profit, nepotism and cronyism;

-Indications of unacceptable political interference in the nomination/appointment of judges, as well as interference with other supposedly independent institutions for either personal or political party advantages.[4]

The publication of intercepted conversations strongly disturbed the Macedonian public and political arena. Macedonia fell into a severe political crisis.

One of the imperatives for the crisis solving was an investigation and prosecution of crimes related to and arisen from the contents of unauthorized interception of communications. Due to the high degree of partisanship and failure of professional capacities, it was assessed that the Macedonian judicial organs, primarily the public prosecution, are not able to process these crimes. There was a need for establishing a special public prosecutor for that purpose. To create a legal framework for its establishment, the Parliament of the Republic adopted the Law on Public Prosecution for Crimes Related and which Arise from the Content of the Illegal Eavesdropping of Communications (Special Public Prosecution). Immediately afterwards, by the proposal of the Parliament of the Republic, the Council of Public Prosecutors, elected Special Public Prosecutor, and by his suggestion, with some ado, prosecutors within the Prosecution.

Special Public Prosecutor is empowered to investigate and prosecute crimes related to and arisen from the contents of unauthorized interception of communications in the period from 2008 to 2015. Within this, the Special Public Prosecutor is empowered to take actions and to advocate courses in basic courts, appellate court and the Supreme Court of the Republic of Macedonia, and independently perform all investigative and prosecutorial functions.

After numerous obstructions by the government, during the organizational preparations for the work, the Special Public Prosecutor started work in the middle of September 2015. 150 objects of pre-investigation and investigation procedures for a number of crimes of abuse of power were formed.[5] Most of them are the offenses of misuse of official position.

4 See more: Risteski T., Sijic V. Posibilities and Perspectives of the Special Public Prosecution of the Republic of Macedonia, International Scientific Conference "Archibald Reiss Days", 2016, Volume 1, Proceedings, page 91-92.

5 From the establishment of the Prosecution (15. 09 2015) until 03.15.2016 in the registry NSK-KO a total of 30 cases against 80 persons were entered. The structure in crimes against 80 persons is as follows: 10 people for the crime of "Violation of the right to vote" under Article 159 of the Criminal Code (CC), 37 persons for the crime of "Misuse of official position and authority" under Article 353 of the CC, 12 persons for the crime "Violation of the freedom of voters" under Article 160 of the CC, 1 person for the crime of "Violation of the secrecy of voting" under Article 163 of the CC, 3 persons for the crime of "Abuse of funds for financing the election campaign" under Article 165-a of the CC, 1 person for the

The Prosecution conducted investigations and brought accusations because of the existence of grounds for suspicion of committed crimes, against the Prime Minister, ministers and other senior government officials and employees.

The prosecution work was supported by the majority of Macedonian citizens, directly or organized in Non-governmental organizations and political parties of the opposition.

In its work on criminal cases the Prosecution faces a series of obstacles by state authorities of the Republic of Macedonia, by the Ministry of interior, its SCIA and the courts. Among them, certainly, the most characteristic are: refusal by the SCIA to surrender to Prosecution recorded and written materials under the pretext they are classified, the refusal of the request to inspect the equipment for interception of communications under the pretext that it would jeopardize national security, refusal of viable proposals for the detention, deprivation of passports, rejecting of the prominent public figures (prime minister, some ministers) to be heard as witnesses, request of the Prosecution to provide approval from SCIA, to use in the evidentiary proceeding documents classified as secret, etc.

Obstruction of the work of the Special Prosecution by the courts are performed by rejecting the requests for insight into court cases, rejecting the requests for provision of proofs; rejecting proposals for determining the measure precautionary, rejecting proposals for determining the detention, etc.

There were obstructions by the public prosecutions, by the Assembly, by the administrative bodies and other state's organs and institutions.

Despite the obstructions, investigations and prosecutions in two cases were completed and submitted by Special Prosecution.[6]

OBSTRUCTIONS OF THE WORK OF SPECIAL PUBLIC PROSECUTION BY THE STATE'S ORGANS AND INSTITUTIONS OF THE REPUBLIC OF MACEDONIA

Given the fact that the interception of conversations of citizens was carried out by the Security and Intelligence Agency of the Ministry of Interior, the Special Public Prosecution asked the very organizational unit for the cooperation. But the cooperation did not go smoothly. It involved handing over the computer materials needed for pre-trial and investigation procedure regarding the unauthorized interception of citizens by the SCIA to the Special Prosecution. Director of the SCIA did not allow the investigators from the Special Prosecution to enter the premises of the institution, to stay there until the arrival of an outside expert who would assist in the implementation of the court order for teaching materials. The director did it "because of the principles of confidentiality of the functioning of the Agency including con-

crime of "Abuse of personal data" under Article 149 of the CC, 2 people for the crime of "Coercion" under Article 139 of the CC, 6 persons for the crime of "Unauthorized wiretapping and audio recording" under Article 151 of CC, 1 person for the crime of "Espionage" under Article 316 of the CC, 1 person for the crime of "Violence against representatives of the highest state authorities" under Article 311 of the CC, 2 people for the crime of "Violation of equality of citizens" under Article 137 of the CC, 3 persons for the crime of "Electoral fraud" under Article 165 of the CC and one person for the crime of "Destruction of election material" under Article 164 of the CC. Besides these crimes, 10 people for the crime of "Criminal association" under Article 394 of the CC. A total of 120 cases were registered In the registry NSK-RO for the reporting period. See:www.jonsk.sk

6 According to the report for the second reporting period (March 15th, Sept. 15, 2016), the Special Public Prosecutor submitted prosecution proposals to the court against 21 people and instituted investigations against 40 personsSee:www.jonsk.sk.

spiracy (confidentiality) the identity of the members of the Agency". If the investigators from the Public Prosecution authorized to keep classified information cannot enter the Agency, it turns out that the Agency is elusive for defenders of legality. The prosecution is always on the front line of the protection of legality. When it comes to protecting the legality from serious violations such as criminal offenses, no obstacles should be placed before the Prosecution. It is the most responsible for the protection of legality in such cases and it should be allowed to carry out its legal obligations aimed at protecting the interests of citizens from crime effectively and efficiently. Nobody is above the interests of citizens in a democratic society.

Following the logic of the Director and the logic of the power that he represents, it turns out that the members of the SCIA are above the Constitution and the law whom nobody can control and that they cannot be subjected to any liability.

Despite this case, a typical case is the destruction of discarded equipment and concealment of the data for it, which was performed for unauthorized interception of citizens. The Ministry of Interior does not allow inspection in the cases of protected witnesses in the archive of the Public Security Bureau and of the SCIA.[7]Thereafter it drags on a processing the request for declassification of evidence required in criminal proceedings.[8]Instead of cooperating with the Special Public Prosecution in clarification of the truth about the grounds for suspicion for committed serious crimes arising from the content of the recorded material, The Ministry of Interior refers to the Prosecutor as the authority on the other side of the barricade. The reason for this is the involvement in the execution of the offences by the people from the top management of the Ministry, including the former Minister of Interior.[9]Relations between the Special Public Prosecution and the Public Prosecution of the Republic of Macedonia were accompanied by a number of "close encounters" and "short circuit". Obstructions related to the submission of cases by the public prosecutions in jurisdiction of the Special Prosecution. The Public Prosecution[10] postponed the deliveries of the cases required by the Special Prosecution. Thus, they hindered his work and prevented him to take the necessary investigations in time.[11]

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7 An insight in MOI (the witness protection Unit, the Unit responsible for tracing and recording of telephone communications and Units for secret tracing and recording of people and cases with technical assets outside of the home or business space located in the Public Security Bureau and the Security and Counter-Intelligence Directorate) was required on 16 of February 2016, but such insight was not allowed until 15 March 2017. See: The report on the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications for a period of six months (for the period from 15.09.2016 to15.03.2017)www.jonsk.sk.

8 Acting in accordance with the obligation of the Basic court Skopje 1 in Skopje, given on the trial held on 28.11.2016, a request was submitted for declassification of evidence to the SCID on 13.12.2016 followed by 2 (two) Urgent requests and Inquiries for evidence declassification to the MOI. At the same time regarding the fact that an act of declassification was not provided, after the tiral held on 17.01.2017, the inquiries were submitted again to the MOI and the SCID, followed by urgent requests, after which a notice from MOI was received that it had been conducted according to our request. On 9.03.2017 the required acts were delivered by the Ministry of Interior for application of the evidence in the court proceeding. Ibid.

9 Meanwhile, after the execution of the criminal offences until the opening of the investigation, the Minister was relieved of the post, but after the dismissal from the office she remained in the party leadership of the ruling VMRO-DPMNE.

10 The Public Prosecution system of the Republic of Macedonia is comprised of basic public prosecutors acting before the trial courts, higher public prosecutors acting before the appellate courts and the Public Prosescution of the Republic of Macedonia acting before the Supreme Court of the Republic. At the level of basic public prosecution, there is a specialized Public Procution for Organized Crime and Corruption which covers the whole territory of the Republic of Macedonia, and its headquarters is in Skopje. See: Article 12 of the Law on the Public Prosecution ("Official Gazete of the RM." N. 150/2007).

11 In this regard the Report of the Special Public Prosecution for a period of six months (for the period from 15.09.2016 to15.03.2017) states:"Especially since the prolonged response to the requests undoubtedly affects and delays the actions of this Public Prosecutor's Office, thereby adversly affecting the pro-

In accordance with Article 11, paragraph 2 of the Law on the Special Public Prosecution, only this prosecution has the legal authorization to issue statements on the actual jurisdiction of the cases, while the public prosecutions have the obligation to submit the requested cases. But the public prosecutions in Macedonia refused to hand over the cases which Prosecution demanded.

Regardless of the precisely appointed legitimate obligation defined in Article 9, paragraph 9 of the Law on Special Public Prosecution which prescribes an obligation to all of the institutions for implementation of the laws and the Public Prosecutor's Office of the Republic of Macedonia to provide assistance in relation to a request of the Public prosecution, in accordance to the Criminal Procedure Law, and regarding the fact that in the realization of its competences the Special Public Prosecution is objectively directed towards the collaboration with a wide number of judicial institutions, as well as with other institutions and establishments. But the Special Public Prosecution was dealing with difficulties from the aspect of the collaboration between the institutions. The non-compliance with the requirements of the Special Public prosecution by public prosecutions and other state's institutions continues. They do not conduct according to the requirements and the time-limits specified by the part of Special Public Prosecution, and based on the established legal competences.

The Special Public Prosecutor, by the nature of things under its jurisdiction, was mostly addressed with regards to the cooperation with the courts. Therefore, its work was mostly obstructed by the courts.

Obstruction of the work of the Special Public Prosecutor by the courts is performed by rejecting the requests for insight into court cases, rejecting the requests for provision of proofs, rejecting the request for recusal of a judge, rejecting the proposals to punish the responsible person, rejecting the proposals for ordering the temporary seizure of objects that can be used as proofs in criminal proceedings (HP computers), rejecting proposals for determining the measure precautionary, rejecting the proposals for determining the detention, appreciation disagreement of judge of the preliminary procedure for proposals for issuing search warrants, appreciation disagreement of judge of the preliminary procedure for handling requests for issuing the order to search a computer system and computer data and so on.

The analysis of the data in 19 investigation cases covered in the report on the work of the Special Public Prosecution in the period from 15 September 2016 to 15 March 2017[12] shows that in a total of 26 requests, proposals etc. submitted to the courts in this reporting period, 22 cases were negatively decided as regards the requests or proposals of the Special Public Prosecution. Only in four cases it was positively decided and requests or proposals of the Prosecution were accepted. Expressed in percentage, the ratio is 84.6% of rejected proposals versus 15.4% of the accepted ones. Obstructions are obvious.

The date for the main hearing in late November 2016 given by the Criminal Court did not leave the Special Public Prosecution enough time to provide declassification of evidence from the Ministry of Interior so that it could be presented during the hearing. The Code of Criminal Procedure, Article 354 provides the ability to exclude the public from the entire hearing or part thereof in a situation where in the evidence to be presented during the hearing is contained information classified with a degree of secrecy as a state, military, official or important business secret. Because of the delay by the Ministry of Interior with the declassification of evidence, the main hearing was delayed twice. After the second delay, it was rescheduled for early May 2017. Obstruction aimed at further ado the procedure is obvious here especially if we take into consideration that the presiding judge is a person mentioned in the "Truth for Macedonia" as regards the corruption of power in the selection of judges. Therefore, after

gress especially of the open investigations." See: www.jonsk.sk

12 www.jonsk.sk

recognizing that she is assigned for trial, her exclusion was claimed by the Special Public Prosecutor. The request for exclusion was refused as unfounded by a final decision.

Noticeable is the emergence of cases distribution to judges elected to that duty during the reign of the rule of the current ruling parties. They were chosen from among the members and supporters of the ruling parties provided that the members had to leave, at least formally, the party membership immediately after the election. Nothing but obstruction could be expected from those judges.[13] A small number of judges who put professionalism before servility were transferred to work in misdemeanors or civil departments in the annual schedule of works in January this year. It caused dissatisfaction among the judges which resulted by filing complaints against the deployment. At the beginning of March 2017 the Supreme Court accepted seven of the eight complaints of judges. The new president of the Supreme Court is obvious pragmatic. As such, he subjugates to the new situation in terms of the ratio of political forces after the elections in December 2016. According to the results of these elections the ruling government must make the way for new ruling garnishment that stands behind the majority of the citizens of Macedonia.

But in the repeated procedure for annual allocation of judges regarding the works directly related to the Special Public Prosecution, the judges who are close to the government were found. The other judges were deployed to other court's departments harmless to the government. The President of the Criminal Court obviously is not pragmatic as his supervisor. He remains faithful to serve the ruling government. The dissatisfied judges filed objections again. The outcome is expected.

The Parliament of the Republic of Macedonia in which until the December elections two thirds of representatives belonged to the parties of the ruling coalition were also obstructive to the work of the Special Prosecution.

Obstructing behavior of the Assembly may be result of the fact that the Parliament did not agree to extend the deadline for submission of prosecutions which was 18 months after receiving the cases, though there was legal possibility, given that the two-thirds majority of representatives from the ruling parties are required for adoption of the Law on changes and amendments to the Law on Special Public Prosecution.

Besides that, it was not conducted by the Assembly of the Republic of Macedonia according to the delivered Initiative for modification and amendment of the Law on witness protection along with the noted requirement for disposal of the possibility for interposing obstacles in the functioning of the Special Prosecution and providing a complete implementation of the principle of autonomy of this Public prosecution, through organization of the competences of this prosecution in the witness protection procedure.[14]

13 The Priebe report as regards this states: "The system of performance management for judges and court staff is weak, lacks credibility and is open to abuse. .... The perception is that, particularly in relation to promotions to higher posts, political considerations prevail, and there is evidence in the leaked telephone interceptions which supports the view that this perception is justified."See: Report of the Expert Group of the European Commission (Report Priebe) www.vesti.mk)

14 The Special Prosecutor's Office on the 1st of April, 2016 submitted to the Assembly an initiative for adoption of the Law on Amendments to the Law on Witness Protection that is a result of the need for regulation of the competence of the Prosecution for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications in the witness protection procedure and is aimed at eliminating the possibility of placing numerous obstacles on the operation of this Public Prosecution. In that direction, the Public Prosecutor's Office stressed that the adoption of this law would ensure full implementation of the principle of autonomy of the Public Prosecution in the investigation and prosecution of the abovementioned offenses. Until the time of the submission of the Second Report, the Special Prosecution had received no information on whether the initiative had been reviewed or placed under parliamentary procedure. See: Report on the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications for a period of six months (for the period from 15.09.2015. to15.09.2016),

The Parliament as the authority of the legislature did not act to the requirement for implementation of the references directed by the Venice Commission in the function of the realization of the adequate balance between the private interests and the interest of public information, as well as the indication that it is necessary to allow the publication of materials which are of public importance, with some narrowly defined exceptions connected to the public publication of the information of intimate aspects from the private and family life, the directed references were not implemented. It is necessary that the indication noted in the Report of the European Commission for the progress of the Republic of Macedonia for 2016 should be taken into consideration where it is emphasized that The Venice Commission recommendations and earlier European Commission recommendations still need to be followed up in warrant to complete the legislative framework.

Other organs and institutions obstructed the work of the Special Public Prosecution by failure or delay in providing the necessary evidence, by failure to summon defendants and witnesses for questioning, failure to act on the orders of forensic expertise, etc.

As regards the latter, the obstructive behavior of the National Group for Expertise is obvious. On 14.10.2016, an Order for performance of a graph logical analysis was submitted to this institution by the Special Public Prosecution, but on the same day the Order and the evidence were sent back accompanied by a document saying that they would not perform the analysis.

THE REASONS FOR THE OBSTRUCIONS AND THEIR GOALS

As per Article 9, paragraph 9 of the Law on Special Public Prosecution all bodies for law enforcement and Public Prosecution of the Republic of Macedonia are obliged to provide assistance at the requests of the Special Public Prosecution in accordance with the Criminal Procedure Code. But the authorities did not comply with this obligation.

Immediately after the establishment, the Special Public Prosecution was involved in a turbulent environment that reacted obstructively. The prosecution had the support of most citizens of Macedonia, but not by the current government. The government is the state's body which creates social relations. It possesses the power of decision, as well as the regulatory power. And finally, it has the financial power. Who has the money, has the power. Money buys everything. It buys (bribes) citizens, too.

The government supported the establishment of the Special Prosecution. All representatives present at the session of the unicameral Macedonian Parliament voted for its establishment. The Government made them to do so, to manifest its European orientation, democracy and acceptance of European values. Publicly expressed manifestation does not always match the real desires and intentions especially when the government is in question.

Most indications for numerous committed crimes related to people from the ranks of government. In terms of people from the opposition, such indications existed only for its leader and four of his associates, one of which was employed in the SCIA, its former chief and his wife and an officer in Municipality of Strumica.[15]

www.jonsk.sk

15 Against them by the Public Prosecutionwas filed a prosecutionfor following crimes: Unauthorized Wiretapping and Audio Recording under Article 151, paragraph 4 in connection with paragraph 1 of the Criminal Code, Espionage under Article 316, paragraph 4 of the Criminal Code and Violence Against Representatives of Highest State Authorities under Article 311 in connection with Article 19 of the Criminal Code. After the establishment of the Special Public prosecution case was ceded him. After several attempts to start the trial on a prosecution on that would not appear Prime Minister as a key

The government obviously thought that the parliamentary elections on which the opposition insisted would come soon and that it would surely win by absolute majority and that by the mechanisms of the state, the Parliament and the Constitutional Court would suspend the Special Prosecution. But elections were not held within the time period as it was planned by the ruling government. Opposite stood the majority of the citizens of the Republic, led by opposition. They made it clear to the ruling garnishment that they would not participate in the elections if they were not held in the proper and democratic and fair atmosphere. The government was ready to go to elections. The citizens openly said: "Go and vote for yourselves, but it will not be elections". Elections require at least two options. The international community stood by the citizens. The ruling government had to back down and wait until the proper conditions for free and fair elections. Such conditions were not created until late autumn 2016. The elections were held on December 11 that year. The ruling party VMRO-DPMNE won majority votes,[16] but not sufficient to be able to form the Government alone. It thought that with the votes of Albanian party Democratic Union for Integration (DUI) it would have the necessary majority. DUI, pressed by part of its membership and partly by the international community, turned down the VMRO-DPMNE proposal for cooperation. The choice of government dragged on.

While politicians calculated, the Special Public Prosecution did its work, but unfortunately prevented by numerous obstructions. If the ruling government had not managed to eliminate this prosecution with snap victorious parliamentary elections, it resolved to use all forces and means to obstruct its work and prevent it in conducting investigations and submitting prosecutions against ministers and their counterparts from the lower echelons of power and to the deadline of their submission. The deadline until the expiry of which the Special Public Prosecutor could, under the law of its foundation, to file prosecutions for the cases it was responsible for expired on 30 June 2017.[17] Obstructions considerably reduced the efficiency of the prosecution, but did not its work.

In this connection, notable is the statement of the Special Public Prosecutor given at the beginning of March 2017, according to which the prosecutors from this prosecution did not say a word at the main hearings for a year and a half after having started to prosecute the first cases.[18]

The government performed obstruction by bodies of internal affairs and other administrative bodies, by public prosecutions, by courts and other state authorities. During the ten-year duration of its reign, it managed to establish full control over these bodies by installing loyal people recruited among the members and supporters of the ruling party.[19]

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witness, Special Public Prosecutor abandoned the prosecution due to lack of evidence of reasonable suspicion for these crimes.(Report on the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications for a period of six months (for the period from 15.09.2016 to15.03.2017)www.jonsk.sk.)

16 VMRO-DPMNE – Internal Macedonian Revolutionary Organisation- Democratic Party for Macedonian National Unity.

17 As per Article 22 of the Law on Special Public Prosecution("Official Gazette of RM", number 159/15) the Public Prosecutor, may prosecute or order stopping the investigation procedure within a period not exceeding 18 months from the date of taking over the cases and materials within its jurisdiction. The latest cases and materials were taken by Specil Prosecution on December 30, 2015.

18 In both cases in which prosecution has submitted an indictment to the court, several times the scheduled main hearings were delayed.(Report on the activities of the Public Prosecutor's Office for Prosecuting Criminal Offences Related to and Arising from the Content of the Illegally Intercepted Communications for a period of six months (for the period from 15.09.2016 to15.03.2017)www.jonsk.sk.)

19 According to our information obtained from the discussions with people who applied for positions in the state government, candidates, among others, are seeking recommendations received from the party committees of VMRO-DPMNE. The persons who had such a recommendation could be employed in state bodies and public enterprises, even the jobs provided for technical perosonal: cleaning

Relaxation as regards the work of the Prosecution can be expected after the formation of the government by the opposition. First of all, the cooperation between the Prosecution and the Ministry of Interior will be improved considerably. The cooperation with the SCIA which was very low comes in the first place. No doubt that will enhance the cooperation between the Special Prosecution and courts and public prosecutions, because the fear of judges and prosecutors from possible retaliation by the executive branch will disappear.

As for judges and prosecutors loyal to the current ruling parties, they will lose its protection. From that position they will try to find the work of their competence to carry out professionally and timely.

CONCLUSION

For the exercise of its jurisdiction, the Special Public Prosecution is objectively referred to cooperate with numerous judicial authorities, as well as other state organs and institutions. The importance and necessity for establishing cooperation is stipulated in the provision of Article 9, paragraph 9 of the Law on the Special Public Prosecution. In accordance with this Article, all state organs, agencies and institutions must provide assistance at the request of this Public Prosecution in accordance with the Code of Criminal Procedure.

However, despite the legal obligation, the Special Public Prosecution, from the day of its inception to the present day, encountered certain difficulties from the aspect of inter-institutional cooperation, and many institutions showed disrespect for the requests of this Prosecution addressed on the basis of authorizations and rights granted by law.

Namely, the actions of the public prosecutions in Macedonia continued in terms of refusing to hand over the cases which the Special Prosecution demanded so that it could make a statement on the actual jurisdiction of this Prosecution. In accordance with Article 11, paragraph 2 of the Law on Special Public Prosecution, only the Special Public Prosecutor has the legal authorization to issue statements on the actual jurisdiction of the cases, while the public prosecutions have the obligation to submit the requested cases.

Other state's institutions and agencies also have inadequate manner of proceeding as they do not act upon the requests and within the deadlines outlined by the Special Public Prosecutor on the basis of the established legal authorizations.

A number of procedural obstacles slowed the proceedings which were initiated or were in a process of initiation.

In truth, Macedonia is not the only country in which the government is involved in the crime. But Macedonia is the only country in which the government sided with the crime against robbed and oppressed citizens. In other countries criminalized government hypocritically fight against crime on the part of citizens. Macedonian government: legislative, executive and judiciary protect crime from the citizens. In other criminalized countries the government assists institutions that fight crime. Macedonian government fights the Special Public Prosecution in order to protect crime.

However, despite this situation it should be pointed out that some institutions have shown continuous cooperation and support in the work of the Special Prosecution acting in accordance with legal obligations. Given the fact that the ruling government loses its positions in society, this practice will be adopted by all other institutions in future.

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staff, maintainers of greenery, street cleaners, electricians, plumbers and so on.

Obstruction will stop and the cooperation between the Special Public Prosecution and state organs and institutions of the Republic of Macedonia will be fully normalized after the formation of the government by the opposition.

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NE BIS IN IDEM PRINCIPLE IN THE PRACTICE OF THE CONSTITUTIONAL COURT OF SERBIA[1]

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Abstract: The European Court of Human Rights disregards the authenticity of those legal systems which protect various values with various categories of criminal offences. This sets new tasks to our legislator regarding the amendments to legal solutions. It should be careful though, since as regards interpretation whether there is "the same offence", the European Court of Human Rights can also be given numerous remarks. Namely, it has also been changing its practice.

On the other hand, an authentic concept has existed in criminal legislation of the Republic of Serbia for many years of multidegree, multiple culpability expressed in Article 63, paragraph 3 of the Criminal Code. In this paper the authors analyse the practice of the Constitutional Court of Serbia and the European Court of Human Rights.

In concluding remarks the authors set out two guidelines of the Constitutional Court. Namely, the Constitutional Court points out, with good reason, first that inexistence of clear demarcation between criminal offences and misdemeanours in Serbian legislation must not lead to a situation in court practice that *res iudicata* in misdemeanour proceedings represents an obstacle for prosecution of criminal offenders. Second, the Constitutional Court is of the opinion that misdemeanour courts must be limited to determining those facts which make the specific element of a misdemeanour and to leave to criminal courts to determine the facts relevant for the existence of a criminal offence. Actually, in the opinion of the authors, these guidelines of the Constitutional Court are directed at those authorized to file motions for initiation of misdemeanour proceedings.

Keywords: *ne bis in idem,* the Constitutional Court of Serbia, the European Court of Human Rights, misdemeanours, criminal offences

INTRODUCTORY REMARKS

In many countries of continental, but also of Anglo-Saxon legal culture there is classification of criminal behavior into either two or three categories. In Anglo-Saxon law there is a differentiation between serious criminal offences covered by the term felonies and other offences covered by the term misdemeanours. Three classes of criminal offences, felonies, misdemeanours and petty offences, exist in France, but such a classification was adopted by some other codes also. Whether a criminal offence would be classified as a felony, misdemeanour or

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

a petty offence depends on the type of punishment prescribed by the law. Classifying all criminal offences into three groups depending on the punishment, and based on it the French law primarily determines the jurisdiction of courts. In order not to list criminal offences which are to be handed for trial to certain courts one criterion was adopted to enable easier orientation.[2] In Italy all criminal offences are classified into two categories. The first one includes serious crimes (*delitti)*, and the second one includes less serious crimes (*contravvenzioni).* The difference between these two groups of unlawful behaviours reflects in the seriousness of crime committed and the punishment prescribed by law. [3] The Norwegians differentiate between serious criminal offences or felonies (*forbrytelser)* and violations *(forseelser*).[4]

In our legal system there is a clear gradation among criminal offences, misdemeanours and commercial offences. The main reasons for multiple degrees of culpability are more efficient protection under criminal law. However, we wonder if this is really true. Let us take an example of certain criminal offences and corresponding misdemeanours from the Law on Public Peace and Order. The application of similar legal norms is exactly what leads to the problem of demarcation, wrong qualification and ultimately legal consequences which result in activation of procedural prohibition *ne bis in idem*. Due to these reasons it is important for a legislator to avoid mutual similarity of the mentioned offences both when prescribing certain behaviours as criminal offences and when prescribing misdemeanours. For instance, it is much easier for law enforcement officers to motion for initiation of misdemeanour proceedings than to instigate criminal proceedings and such a discretionary assessment of theirs can result in many problems in practice.

At the very beginning it is important to point out that the Criminal Code of Serbia[5] contains a traditional provision according to which a prison sentence or a fine which the offender has served or paid for a misdemeanour or commercial offence, as well as sentence or disciplinary measure of depriving of liberty which the offender has served for violation of military discipline shall be credited to the sentence pronounced for a criminal offence whose elements comprise also the elements of a misdemeanour, commercial offence or violation of military discipline. This provision regulates the situation in which a person has been found gulity and sentenced in the misdemeanour proceedings, and after that it has been found guilty and convicted in the criminal proceedings. In addition to this the description of a misdemeanour corresponds to the description of a criminal offence. In such a situation, according to the expressive legal provision, the *ne bis in idem* principle is not applied. Crediting sentence given in misdemeanour proceedings into the sentence given in the criminal proceedings does not mean application of the *ne bis in idem* principle.

PRACTICE OF THE CONSTITUTIONAL COURT OF SERBIA

When legal certainty in criminal law is concerned, the Constitution of the Republic of Serbia[6] in Article 34 emphasizes:

"No person may be held guilty for any act which did not constitute a criminal offence under law or any other regulation based on the law at the time when it was committed, nor shall a penalty be imposed which was not prescribed for this act.

2 Срзентић, С; Стајић, С; Лазаревић, Љ; *Кривично право Југославије- општи део*, Београд, 1997, стр. 221.
3 Коларић, Д*; Кривично дело убиства*, 2008, Београд, стр. 140.
4 *Ibidem*, стр. 143.
5 Criminal Code of Serbia, *Official Gazette of the RS,* no. 85/2005, 88/2005 – corr. 107/2005 – corr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/16.
6 The Constitution of the Republic of Serbia, *Official Gazette of the RS*, no. 98/2006.

The penalties shall be determined pursuant to a regulation in force at the time when the act was committed, save when subsequent regulation is more lenient for the perpetrator. Criminal offences and penalties shall be laid down by the law.

Everyone shall be presumed innocent for a criminal offence until convicted by a final judgment of the court.

No person may be prosecuted or sentenced for a criminal offence for which he has been acquitted or convicted by a final judgment, for which the charges have been rejected or criminal proceedings dismissed by final judgment, nor may court ruling be altered to the detriment of a person charged with criminal offence by extraordinary legal remedy. The same prohibitions shall be applicable to all other proceedings conducted for any other act punishable by law.

In special cases, reopening of proceedings shall be allowed in accordance with criminal legislation if evidence is presented about new facts which could have influenced significantly the outcome of proceedings had they been disclosed at the time of the trial, or if serious miscarriage of justice occurred in the previous proceedings which might have influenced its outcome.

Criminal prosecution of execution of punishment for a war crime, genocide, or crime against humanity shall not be subject to statute of limitation."

This is why and with good reason the question is asked in our legal system as to whether two parallel or subsequent proceedings can be conducted regarding the same individual for similar public law offences committed on the same occasion? The Constitutional Court of Serbia endeavours, on the one hand, to preserve the authenticity of our legal system by its decisions and on the other hand, to protect the right to legal certainty in criminal law. Starting from this not at all easy a task, the Constitutional Court sets certain guidelines.

Namely, recognizing the real danger that in practice criminal law protection of important interests might be unjustifiably exhausted by punishing a perpetrator for a misdemeanour and not for a criminal offence, the Constitutional Court of the Republic of Serbia in its explanation to the decision Уж 1285/2012, and with good reason, has pointed out that the inexistence of clear demarcation between criminal offences and misdemeanours in Serbian legislation must not result in a situation in judicial practice that conviction for a misdemeanour would represent an obstacle for prosecution of a criminal offender. Also, the essence of criminal law protection of fundamental social values, primarily life and bodily integrity of each individual, would be brought into question when a misdemeanour court would in its explanation expand the factual description of a misdemeanour and thus include the factual substrate of a criminal offence, thus activating the prohibition of *ne bis in idem* in a criminal proceedings, in case when the elements of the explanation of the misdemeanour decision do not represent the essential elements prescribed by law for that concrete misdemeanour, but exclusively make the essential part of some criminal offence. The Constitutional Court is of the opinion that misdemeanour courts must limit themselves to determining those facts that make the essence of misdemeanour and that they should leave to criminal courts to determine the facts relevant for the existence of a criminal offence. Specifically, one basically unique event, which starts as disturbance of public peace and order and ends as injury of bodily integrity can timely and substantially considered as two separate entities, in other words as two different actualities, one in misdemeanour and the other in criminal proceedings. In that case the offender would not be charged with the same facts and the *ne bis in idem* principle would not be violated.

Starting from the above said, and acknowledging the practice of the European Court of Human Rights, the Constitutional Court is of the opinion that specificity and shortcomings of Serbian criminal legislation, as well as "wandering" of judicial practice must not result in that the narrow interpretation of criteria of inherent identity of offence from the judgment

of ***Sergey Yolotukhin v. Russia***,[7] dated February 10, 2009, and protection of the convention *ne bis in idem* principle, jeopardize more prevalent convention obligations of each member state, which is above all the protection of the victim's right to life from Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which represents the most valuable human right, or the right to bodily and psychological integrity from Article 3 of the Convention. Therefore, the Constitutional Court thinks that in order to protect the more prevailing interest, in addition to the determined criteria of factual identity of the offence, it is necessary in each concrete case to consider the additional, the so called corrective criteria: a) the identity of the protected good and the severity of consequences of that offence, b) the identity of punishment in order to answer the question if the offences for which the applicant of the constitutional complaint is prosecuted or has been convicted in various proceedings are the same (*idem*).[8]

The Constitutional Court has considered in detail the complaints related to the *ne bis in idem* principle in many cases. Thus in one of them it has been established before the Constitutional Court that on the occasion of the same event originally the misdemeanor proceedings were conducted against the applicant in the constitutional complaint and then the criminal proceedings, and that in both court proceedings the applicant was found guilty by a final judgment and convicted to pay fines in various amounts. In the misdemeanor proceedings, conducted upon the report of the Ministry of Interior of the Republic of Serbia – Police station Medijana, the applicant was fined by a final judgment for misdemeanor from Article 6 paragraph 3 of the Law on Public Order and Peace, while the contested judgments were reached in criminal proceedings upon the personal action at law of M. B. for criminal offence of light bodily injury from Article 122, paragraph 1 of the Criminal Code and criminal offence of insult from Article 170 of the Criminal Code. Starting from the fact that the purpose of Article 34, paragraph 4 of the Constitution is to prohibit to repeat the proceedings ended with a decision which acquired the status *res iudicata*, and that the Constitutional Court determined that the applicant in the constitutional complaint was originally convicted in misdemeanor proceedings which in terms of provisions of Article 34, paragraph 4 and Article 33, paragraph 8 of the Constitution are equal to criminal proceedings, and that upon the final misdemeanor judgment he was found guilty for criminal offence related to the same behavior for which he was punished in the misdemeanor proceedings and which included in essence the same facts, for which applying even corrective criteria it was determined to be the same offence (*idem*), the Constitutional Court concluded that the contested verdicts violated the *ne bis in idem* principle. Considering all the above said, the Constitutional Court determined that the applicant's right to legal security in criminal law has been violated, which is guaranteed by the provision of Article 34, paragraph 4 of the Constitution, and upheld the constitutional appeal.[9]

In another case, the Constitutional Court also established that the applicant's right to legal security in criminal law has been violated, which is guaranteed by the provision of Article 34, paragraph 4 of the Constitution, and upheld the constitutional appeal. In the proceedings conducted before the Constitutional Court, it is established that on the occasion of the same event against the applicant of the constitutional complaint there were original misdemeanour proceedings conducted for the misdemeanour from Article 6 paragraph 3 of the Law on Public Peace and Order, which were dismissed since it was not proven that the accused committed the misdemeanour for which he had been charged according to the motion, in other words it was not proven that he "violated public peace and order during the control of fishing licence

7 *Sergey Zolotukhin v. Russia*, 14939/03, dated February 10, 2009.

8 From the explanation of the judgment of the Constitutional Court of Serbia Уж 1285/2012 dated March 26, 2014, available at: http:// www.slglasnik.info/sr/45-27-04-2014/23268-odluka-ustavnog-suda-broj-uz-1285-2012.

9 Уж-1285/2012.

by grabbing S. T. for the neck". By contested judgments, reached in criminal proceedings, which were conducted by bill of indictment of the injured party S. T. as the plaintiff for attack on an official in performance of duty from Article 323 paragraph 1 of the Criminal Code, the applicant was found guilty for committing the criminal offence for which he was charged, which he had committed in such a manner that when controlled by S. T., the game-keeper, and after the game-keeper found out that the accused did not have a fishing licence and after he attempted to seize his fishing gear, the applicant physically attacked the game-keeper by grabbing him for the neck and he was pronounced a suspended sentence. The Constitutional Court concludes that the facts comprised by the explanation of the misdemeanour judgment by which the misdemeanour proceedings against the applicant had been finally dismissed are identical to those facts which represent the elements of criminal offence of attack on an official in performance of duty, for which the applicant of the constitutional complaint has been found guilty in criminal proceedings, after the final misdemeanour judgment on dismissal of misdemeanour proceedings (*res iudicata*). The Constitutional Court estimated that in a concrete case the criminal offence of attack on an official in performance of duty had been consumed by the stated misdemeanour against public peace and order, and that the acts for which the misdemeanour proceedings against the applicant of the constitutional complaint were dismissed and for which he was pronounced a suspended sentence in criminal proceedings are the same (*idem*). The Constitutional Court is at the standpoint that in cases of a final judgment for misdemeanours which in their severity are on the very verge of criminal offences, for which misdemeanour legislation prescribes prison sentence or high monetary fines, excludes the possibility of subsequent criminal proceedings for so called "less serious" criminal offences for which the criminal legislation prescribes fine as the main penalty or suspended sentence is pronounced as a rule in criminal proceedings.[10]

Let us mention one more case. In the misdemeanour proceedings conducted at the request of the Ministry of Interior of the Republic of Serbia – Police administration of Leskovac, before the Misdemeanour Court in Leskovac, it is established that the applicant of the constitutional complaint "at 14:10, on November 20, 2009, in a yard in the village of Brza disturbed public peace and order doing violence in such a way that Miroslav Jovic attacked V. M. and on that occasion hit him in his face with his fist and hurt him". By the Judgment of the Misdemeanour Court in Leskovac the applicant of the constitutional complaint was pronounced guilty for misdemeanour from Article 6 paragraph 3 of the Law on Public Peace and Order and he was sentenced to a fine to the amount of 5.000,00 dinars. In the criminal proceedings conducted according to private criminal prosecution of private prosecutor V. M. before the Basic Court in Leskovac in case K. 1881/12 it is established that the applicant of the constitutional complaint caused light bodily injuries to the private prosecutor V. M. from B., whereas he could understand the significance of his act and could control his behaviour. By the Judgment of the Basic Court in Leskovac K. 1881/12 dated July 2, 2013, which became final and legally binding on November 4, 2013, by reaching the contested judgment of the Appellate Court in Niš Кж1. 3318/13, the applicant of the constitutional complaint was pronounced guilty for criminal offence of causing light bodily injuries from Article 122 paragraph 1 of the Criminal Code and he was pronounced a suspended sentence. The Constitutional Court concluded that the contested judgments violated the *ne bis in idem* principle. The Constitutional Court additionally points to the part of the explanation of the contested judgment by the Appellate Court in Niš in which it was stated that after the representations made the court was submitted a brief related to violation of the *ne bis in idem* principle, but that "accordingly the judgment was not contested by timely representations made" and that "on that ground the Appellate Court could not consider the statements from the mentioned brief". The Constitutional Court emphasizes that the violation of the said principle pursuant to the provision of

10 Уж-11106/2013.

Article 438, paragraph 1, item 1) of the Criminal Proceedings Code (Official Gazette of the RS, No. 72/11, 101/11, 121/2012, 32/13, 45/13 and 55/14) represents absolutely fundamental violation of criminal proceedings provisions, and that the Appellate Court in Niš must have taken this circumstance into account.[11]

As we can see, the Constitutional Court, acknowledging the practice of the European Court of Human Rights which we shall summarize later on, has set criteria based on which it evaluates if the *ne bis in idem* principle has been violated. It is important to determine the following: first, if the concrete misdemeanour proceedings referred to the criminal matter, in other words if the possible conviction in a concrete misdemeanour proceedings would be criminal in its nature; second, if the acts for which the applicant is criminally prosecuted were the same (*idem*); third, if there was a duplication of proceedings (*bis*).

However, in the case ***Milenkovic v. Serbia***,[12] the ECHR upheld the appeal of a Serbian citizen who was previously convicted for misdemeanour from Article 6, paragraph 3 (insult and violence) of the Law on Public Peace and Order for 4000 dinars, and then convicted pursuant to Article 121, paragraph 2 of the Criminal Code (Serious Bodily Harm) to imprisonment of three months (amnestied later) and who also exercised his right to constitutional complaint based on the *ne bis in idem* principle, but it was dismissed.

It is obvious that all court cases refer to problematic cumulative application of norms on misdemeanours against public peace and order and corresponding legal qualifications of criminal offences, such as insulting, endangering safety, light and serious bodily harm, coercion, domestic violence, violent behaviour, violent behaviour at sporting events, preventing an official during security tasks or keeping public peace and order and similar.[13]

The Constitutional Court dismissed the appeal of Milenkovic with the explanation that the description of acts he was charged with differs, since in misdemeanour proceedings he was convicted for disrupting public peace and order, while in criminal proceedings the sentence was pronounced for bodily harm.[14] The applicant was amnestied in November 2012. In May 2013, the Constitutional Court dismissed applicant's appeal lodged for violation of the right to legal safety in criminal law as ill-founded. When examining this case, the ECHR applied the so called Engel criteria,[15] assessing before all if the first misdemeanour proceedings were by their nature the proceedings referring to "criminal" matter within the meaning of Article 4 of Protocol No. 7 and what was the nature of the first conviction. The ECHR concluded that both sets of proceedings were to be regarded as criminal for the purposes of Article 4 of Protocol No. 7 to the Convention. After that, the ECHR, using criteria from the *Zolotukhin* judgment, examined if the offences for which an applicant was prosecuted were the same, and concluded that the facts constituting the two offences must be regarded as substantially the same for the purposes of Article 4 of Protocol No. 7 to the Convention. The next question which the ECHR dealt with was if in this concrete case whether there was a duplication of proceedings (*bis*) and assessed that the domestic authorities permitted the duplication of criminal proceedings to be conducted in the full knowledge of the applicant's previous conviction for the same offence.

11 Уж-9529/2013.

12 *Milenković v. Serbia,* Application no. 50124/13 dated March 01, 2016.

13 Наташа Мрвић-Петровић, „Поштовање начела *ne bis in idem* при суђењу за сличне прекршаје и кривична дела", *Наука, безбедност и полиција – Журнал за криминалистику и право*, Криминалистичко-полицијска академија, Београд, бр. 2/2014, стр. 34.

14 On May 20, 2013, the Constitutional Court, referring to the explanation of the Appellate Court in Nis as "completely admissible according to constitutional law", dismissed the appeal of the applicant as ungrounded. As for the ne bis in idem principle, the Appellate Court found that it was determined that the applicant was guilty of misdemeanor against public peace and order in misdemeanor proceedings, whereas he was convicted for criminal offence of serious bodily harm in a criminal proceedings. According to the court's standing, the descriptions of the punished acts were accordingly clearly different.

15 *Engel and other v. The Netherlands*, 5100/71, dated June 8, 1976.

Finally, the ECHR concluded that the applicant was "convicted" in misdemeanour proceedings, which can be likened to "criminal proceedings" within the autonomous Convention meaning of this term. The ECHR further established that after this "conviction" became final and despite his appeal based on the *ne bis in idem* principle, the applicant was found guilty of a criminal offence which related to the same conduct as that punished in the misdemeanour proceedings. The ECHR stated that the Constitutional Court failed to apply the principles established in the Zolotukhin case and thus to correct the applicant's situation. Due to the afore stated reasons, the ECHR established that there has been a violation of Article 4 of Protocol No. 7 to the Convention. In the said judgement the Court compares a misdemeanour and a criminal offence and takes a stance that any reference to the "minor" nature of the acts does not, in itself, exclude its classification as "criminal" in the autonomous sense of the Convention, as there is nothing in the Convention to suggest that the criminal nature of an offence, within the meaning of the Engel criteria, necessarily requires a certain degree of seriousness. The ECHR considers that the fine is not intended as pecuniary compensation for damage, but that the primary aims in establishing the offence in question were punishment and deterrence of reoffending, which are recognised as further characteristic features of criminal penalties. *"As the Court has confirmed on many occasions, in a society subscribing to the rule of law, where the penalty liable to be and actually imposed on an applicant involves the loss of liberty, there is a presumption that the charges against the applicant are "criminal", a presumption which can be rebutted entirely exceptionally, and only if the deprivation of liberty cannot be considered "appreciably detrimental" given their nature, duration or manner of execution."*

It is clear from all the above said that the ECHR disregards the authenticity of those legal systems which protect various values with various categories of criminal offences. This sets new tasks to our legislator regarding the amendments of legal solutions. Still, it should also be very careful here since the ECHR can give numerous remarks related to interpretation whether the "offences were the same". Namely, the court was also changing its practice and thus unlike in the case of ***Maresti v. Croatia***,[16] in the case of ***Oliveira v. Switzerland,***[17] it delivered a different judgment. Here the applicant was first convicted of misdemeanour of not adjusting speed to the road conditions, and then criminally of negligently causing physical injury. It is interesting that here calculating misdemeanour conviction into the conviction for criminal offence excluded the existence of duplication of convictions for the same offence. In the Court's opinion, what exists here is a seemingly ideal concurrence based on the principle of absorbing a lesser included offence, and in that case there is no violation of the *ne bis in idem* principle, since it can be considered that this is a single criminal act split up into two separate offences in which case the greater penalty will usually absorb the lesser one, and not the same behaviour.

We think that this judgment is important for both the legal system of Serbia and the approach our legislator has had for many years in Article 63, paragraph 3 of the Criminal Code. However, taking into account that the ECHR's judgments can cost Serbia a lot, since the expenses of their enforcement are borne by the budget,[18] it is necessary to correct the existing practice and legal basis *de lege ferenda* by making the specific elements of crimes more precise.

16 *Maresti v. Croatia*, 55759/07, dated June 25, 2009.

17 *Oliveira v. Switzerland*, 84/1997/868/1080 dated July 30, 1998.

18 Similar in: Драгана Коларић, Саша Марковић, "Основна људска права полицијских службеника у светлу новог Закона о полицији", *Српска политичка мисао,* Институт за политичке студије, бр.3/ 2016, стр. 249; Вања Бајовић, „Случај Миленковић-ne bis in idem у кривичном и прекршајном поступку", у зборнику: Казнена реакција у Србији VI део (приредио Ђорђе Игњатовић), Правни факултет-Универзитет у Београду, 2016, стр. 243.

INFLUENCE OF JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

In Article 4 of Protocol 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms[19] it is pointed out that no one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in previous proceedings, which could affect the outcome of the case. No derogation from this Article shall be made under Article 15 of the Convention.[20] Therefore, this right belongs to the category of absolutely protected rights which must not be derogated.

The term "criminal proceedings" from provisions of Article 4 of Protocol 7 is wider than the definition of criminal proceedings in domestic law. In addition to proceedings which have been defined as "criminal" in national legislation, it can also refer to other kinds of proceedings the characteristics of which suggest their "criminal" nature. Whether the certain domestic proceedings are considered "criminal proceedings (charge for a criminal offence)" for the purpose of Article 4 of Protocol 7 is estimated based on three so-called *Engel criteria*:[21] the legal classification under national law, the nature of the offence, and the severity of the potential penalty which the defendant risks incurring. The second and third criteria are alternative and not necessarily cumulative. This, however, does not exclude a cumulative approach when separate analysis of each criterion does not enable to achieve clear conclusion on the existence of a criminal charge.

As regards criterion "**legal classification under national law**" the judgment in the case of ***Maresti v. Croatia***[22] is significant. In this judgment the court notices that the applicant is found guilty in the proceedings conducted pursuant to Law on Misdemeanours and convicted to 40-day imprisonment. In order to establish whether the applicant "was finally acquitted or convicted in accordance with the law and penal procedure of that State" the first question on which to decide is if the proceedings refer to criminal matter within the meaning of Article 4 of Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. But the Court emphasizes that legal determination of the proceedings in national law cannot be the only relevant criterion for application of the *ne bis in idem* principle, otherwise the application of Article 4 of Protocol 7 would be left to assessment to signatory states and could lead to results unconnectable with the goals and purpose of the

19 Закон о ратификацији Европске конвенције за заштиту људских права и основних слобода, Сл. листу СЦГ - Међународни уговори, бр. 9/2003, 5/2005, 7/2005-исправка и Службени гласник РС- Међународни уговори бр. 12/2010.

20 *Article 15 - Derogation in time of emergency*

1) In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2) No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3) Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

21 *Engel and Others v. The Netherlands*, 5100/71, dated June 8, 1976.

22 *Maresti v. Croatia*, 55759/07, dated June 25, 2009.

Convention. The notion of "penal procedure" must be interpreted in the light of the general principles concerning the corresponding words "criminal charge" and "penalty" in Articles 6 and 7 of the Convention respectively. Also, althought in the domestic legal classification the offence at issue may amount to a minor offence under section 6 of the Minor Offences against Public Order and Peace Act, the ECHR nevertheless reiterates that it has previously found that certain offences still have a criminal connotation although they are regarded under relevant domestic law as too trivial to be governed by criminal law and procedure.

Similarly, in the judgment in the case of ***Tomasović v. Croatia***[23] we have a situation where the applicant was first found guilty for possession of 0.21 g of heroin, pursuant to Article 3, paragraph 1 of the Prevention of Narcotics Abuse Act and fined HRK 1,700. In 2007, the Municipal Court, in criminal proceedings against the applicant, also found the applicant guilty of possessing 0,14 grams of heroin and fined her HRK 1,526. The previous fine was to be included in this one. The applicant was also ordered to bear the costs of the proceedings in the amount of HRK 400. The court of second instance unheld the applicant's conviction, but a suspended sentence of four month's imprisonment was applied with a one-year probation period. In 2009, the applicant's subsequent constitutional complaint, alleging a violation of the *ne bis in idem* principle, was dismissed by the Constitutional Court on the ground that the Croatian legal system did not exclude the possibility of punishing the same person twice for the same offence when the same act is prescribed both as a minor offence and a criminal offence. The Government of Croatia argued that the first penalty was not criminal in nature since it was adopted in the context of minor-offences proceedings and was prescribed as a minor offence under the domestic law. This minor offence was prescribed by the Prevention of Narcotics Abuse Act which had been adopted together with other laws on the basis of the national strategy on supervision of narcotics. The Act in question prescribed conditions for the growing of plants from which narcotics could be produced, measures for the prevention of narcotics abuse, and the system for preventing and treating drug abuse. This showed that the aim of that Act could not be associated with criminal law. The aim of this Act and its provisions was not to punish those in possession of small amounts of narcotics but the protection of their health by discouraging the possession and use of illegal substances. As regards the severity of the penalty, the Government argued that the applicant had been fined HRK 1,700, which was not a significant fine and that the minor offence was not liable to imprisonment. The Court reiterates here as well that the legal characterisation of the procedure under national law cannot be the sole criterion of relevance for the applicability of the principle of non bis in idem under Article 4, paragraph 1 of Protocol No. 7.[24]

As regards the criterion of "**the nature of the offence**" paragraph 22 of the judgment in the case of ***Tomasović v. Croatia*** should be seen. By its nature, the inclusion of the offence at issue in the Prevention of Narcotics Abuse Act served to guarantee the control of the abuse of illegal substances, which may also fall within the sphere of protection of criminal law. The corresponding provision of the Act was directed towards all citizens rather than towards a group possessing a special status. There is no reference to the "minor" nature of the acts and the fact that the first proceedings took place before a minor-offences court does not, in itself, exclude their classification as "criminal" in the sense of the Convention, as there is nothing in the Convention to suggest that the criminal nature of an offence, within the meaning of the Engel criteria, necessarily requires a certain degree of seriousness.

On the other hand, as regards disciplinary and criminal proceedings the Court in its judgment in ***Toth v. Croatia***,[25] declared the application inadmissible. Namely, the charges brought

23 *Tomasović v. Croatia*, 53785/09, dated October 18, 2011.
24 In this judgment the Court found that there were violations of Article 4 of Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.
25 *Toth v. Croatia,* 49635/10, dated November 6, 2012.

against the applicant in the disciplinary proceedings might not be considered as entirely the same as those brought against him in the criminal proceedings. While in the disciplinary proceedings he was punished for verbal insults, making threats, impolite behaviour and preventing an official from carrying out his or her duties, in the criminal proceedings he was found guilty of making death threats. However, as already indicated above, some of the charges brought against the applicant in the disciplinary proceedings clearly corresponded to certain offences in the ordinary criminal law. Thus, the charges of verbal insults, making threats and preventing an official from carrying out his or her duties are also prescribed by the Criminal Code. However, the Court considers that these facts were not sufficient to lead to the conclusion that the offences with which the applicant was charged in the disciplinary proceedings are to be regarded as "criminal", but give them a certain colouring which does not entirely coincide with that of a purely disciplinary matter.

As for the criterion of "**the nature and severity of the penalty**" in the judgment in ***Maresti v. Croatia***, it is pointed out that it is determined by reference to the maximum potential penalty for which the relevant law provides. The Court observes that section 6 of the Minor Offences against Public Order and Peace Act provided for sixty days' imprisonment as the maximum penalty and that the applicant was eventually sentenced to serve forty days' deprivation of liberty. As the Court has confirmed on many occasions, in a society subscribing to the rule of law, where the penalty liable to be imposed and actually imposed on an applicant involves the loss of liberty, there is a presumption that the charges against the applicant are "criminal", a presumption which can be rebutted entirely exceptionally, and only if the deprivation of liberty cannot be considered "appreciably detrimental" given its nature, duration or manner of execution. In the light of the above considerations the Court concludes that the nature of the offence in question, together with the severity of the penalty, were such as to suggest that this is penal procedure for the purposes of Article 4 of Protocol No. 7. In the case of Tomasović v. Croatia, the degree of severity of the measure is also determined by reference to the maximum potential penalty for which the relevant law provides. The actual penalty imposed is relevant to the determination, but it cannot diminish the importance of what was initially at stake. The Court observes that section 54 of the Prevention of Narcotics Abuse Act provided for a fine of between HRK 5,000 and 20,000 and that the applicant was eventually fined HRK 1,700. The Court considers that the fine thus prescribed cannot be seen as minor.[26]

26 It is interesting to mention the solution of solitary confinement, i.e. in which cases the prison term is extended for the time spent in solitary confinement or when the duration remains the same although the solitary confinement was ordered, in other words whether adding additional days to an already convicted prisoner's sentence amounted to a criminal penalty. Thus, in the case of *Toth v. Croatia* examining the criterion "the nature and severity of the penalty" and the question of solitary confinement, it was pointed out that adding additional days to an already convicted prisoner's sentence amounted to a criminal penalty. The ECHR has also examined the question whether a punishment which does not extend the prisoner's prison term in military or prison context could be regarded as a "criminal charge" (see *Eggs v. Switzerland*, no. 7341/76, Commission decision of 4 March 1978, where the applicant was punished with five days of solitary confinement; X *v. Switzerland*, no. 8778/79, Commission decision of 8 July 1980, where the applicant was punished with three days of solitary confinement; *P. v. France*, no. 11691/85, Commission decision of 10 October 1986, where the applicant was punished with twelve days of solitary confinement; etc.). In each of these cases the former Commission and the Court assessed that a mere aggravation of the conditions of one's prison term with a measure such as solitary confinement did not suffice to bring the disciplinary proceedings in question within the sphere of "criminal" within the Convention meaning. In the present case the applicant was punished with twenty-one days of solitary confinement, which is the maximum prescribed under the Enforcement of Sentences Act. This punishment did not extend the applicant's prison term and thus did not amount to an additional deprivation of liberty, but only to aggravation of the conditions of his detention. With regard to this, the Court finds, in compliance with the above case-law, that the first set of proceedings conducted before the Prison authorities and the sentence-execution judge was not criminal in nature and that therefore the applicant's subsequent conviction in the criminal proceedings did not contravene the *ne bis in idem* principle of Article 4 of Protocol No. 7.

As for the criterion of "**legal classification under national law**", due to difficulties in its application, it becomes precise by the approach based on "identity of the material acts", so that as of the case of ***Sergey Zolotukhin v. Russia***,[27] the ECHR has considerably consolidated its practice and started to apply an approach based more on evidence, i.e. "identity of the material acts". Until the case of ***Sergey Zoloktukhin v. Russia***, the practice of the Court regarding the question whether the acts of prosecution were the same (*idem*) was not harmonized. This judgment marks abandoning some earlier criteria, and the essence of new criteria is contained in paragraph 82: "*…the Court takes the view that Article 4 of Protocol No. 7 must be understood as prohibiting the prosecution or trial of a second "offence" in so far as it arises from identical facts or facts which are substantially the same.*" Therefore, the established facts on which the objective identity of public law offenced, mutually similar according to objective features, can be a basis to deliver a sentence in only one procedure against the defendant and in one which was initiated first, which exludes the possibility of subsequent conduct of other proceedings and trial of that person before some other court for another offence with similar features which resulted from that event.[28]

In the case of ***Sergey Zolotukhin v. Russia***, seeking to put an end to the legal uncertainty related to the question of whether the offences for which an applicant was prosecuted were the same, the Court decided to provide a harmonised interpretation of the notion of the "same offences" – the *idem* element of the *ne bis in idem* principle. Accordingly, the Court notes that in both the minor-offences proceedings and the criminal proceedings the applicant was found guilty of the same conduct towards the same victim and within the same time frame. The Constitutional Court dismissed his appeal applying the pre-Zolotukhin case-law. However, for the Court in Strasbourg it is obvious that both decisions concerned exactly the same event and the same acts.

The same standpoint is confirmed by the Court in the case of ***Muslija v. Bosnia and Herzegovina***.[29] The applicant was "convicted" in misdemeanour proceedings, which is in the autonomous meaning of the term in the Convention equal to "criminal proceedings". After this "conviction" has become final, he was found guilty for a criminal offence which referred to the same conduct for which he had already been punished in misdemeanour proceedings and which included basically the same facts. The Constitutional Court failed to apply the principles established in the Zolotukhin case and thus to correct the applicant's situation. As for the answer to the question if there was a duplication of proceedings, it is pointed out that the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of proceedings which have been concluded by a "final" decision. Accroding to Explanatory Report to the Protocol 7, a decision is final „…"*if, according to the traditional expression, it has acquired the force of* ***res judicata****. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them*." It is prohibited to initiate new prosecution for the same act, even in case when prosecution has not resulted in a conviction (for instance, when the verdict of acquittal was reached.[30]

Therefore, when deliberating whether the right to legal security was violated, as regards the question if there is violation of the *ne bis in idem* principle, the Constitutional Court should determine: whether both proceedings were criminal in nature, in other words, if the

27 *Sergey Zolotukhin v. Russia*, 14939/03, dated February 10, 2009.

28 Наташа Мрвић-Петровић, „Поштовање начела *ne bis in idem* при суђењу за сличне прекршаје и кривична дела", *Наука, безбедност и полиција – Журнал за криминалистику и право*, Криминалистичко-полицијска академија, Београд, бр. 2/2014, стр. 34.

29 *Muslija v. Bosnia and Herzegovina*, 32042/11 dated January 14, 2014.

30 See paragraph 110 of the Judgment in the case of *Sergey Zolotukhin* and paragraph 29 of the Judgment in the case of *Franz Fischer v. Austria*, 37950/97 dated May 29, 2001.

first proceedings could also be considered criminal, if the events and offences were the same and if there was duplication of proceedings.

CONCLUSION

Clearer legal demarcation between misdemeanours and criminal offences, as well as better cooperation of competent state authorities will result in reduction of violations of prohibition of duplication of trials in the same matter. The question of identity of offences is one of the most difficult questions of application of the *ne bis in idem* principle, particularly where major misdemeanours and criminal offences overlap, when the offences in both cases are liable to imprisonment.

It is also vital to consider the solution according to which only the public prosecutor may have jurisdiction to decide on reporting the event with either the elements of criminal offence or misdemeanour which is liable to imprisonment, and to reach the decision on possible criminal or misdemeanour prosecution of the suspect. Other state authorities in charge of prosecution of offenders (police, tax police, customs, and similar) should not have the legal possibility to prosecute offenders of such offences without written consent of the public prosecutor. When reaching a decision on prosecution of offenders, the public prosecution office could independently file motion for initiation of misdemeanour proceedings before the competent misdemeanour court and participate as a party in misdemeanour proceedings, or possibly order the police, or other authority in charge of prosecution in that legal field, to undertake prosecution of the offender for the stated event.[31]

The guidelines of the Constitutional Court given in Judgment Уж 1285/2012 rely on the ECHR Judgment in the case of *Oliveira v. Switzerland* in which better approach was expressed than in the Judgment in the case of *Maresti v. Croatia*. We repeat once again that the Constitutional Court with good reason points out first that the inexistence of clear demarcation between criminal offences and misdemeanours in Serbian legislation must not result in a situation in court practice that *res iudicata* in misdemeanour proceedings represents an obstacle for prosecution of criminal offenders. And second, the Constitutional Court takes the stance that misdemeanour courts must be limited to determining those facts that make the specific element of a misdemeanour and let criminal courts determine the facts relevant for the existence of a criminal offence. Actually, these guidelines of the Constitutional Court are directed at those who have the authority to file motion for initiation of misdemeanour proceedings.

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CRIMINAL LAW PROTECTION OF INTERESTS OF JUSTICE

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Abstract: The legislative and law enforcement directions of realization of criminal-law policy in the sphere of ensuring protection of interests of justice taking into account value which judicial authority has in modern society will be considered. Efficiency of use of means of criminal law influence for protection of the related activity of courts and law enforcement agencies is estimated. The characteristics of objective and subjective signs of separate crimes against justice structures under the Criminal Code of the Russian Federation is provided (illegal initiation of criminal proceedings; illegal release from a criminal responsibility; illegal detention, imprisonment or detention on remand; compulsion to testimony; falsification of evidence and results of operational-search activities, etc.). The features of qualification of these crimes caused by a specific legal regulation of criminal justice, the status of the persons participating in it, the nature of the harm done at commission of crimes against justice to interests of the personality, society and state will also be considered. The consequences of improper use of authority by judges and law enforcement officials, which causes the loss of trust to the government, violates the rights and freedoms of law-abiding citizens, discredits the justice system, violates its basic principles, will be assessed. Special attention will be paid to criminal law protection of the rights and freedoms of the natural persons and legal entities, which are guaranteed by the conventional principles and rules of international law, the Constitution of the Russian Federation (in particular, the rights for judicial protection and access to justice, including the rights for an effective remedy of law protection in public authority and compensation of the damage caused by a crime, etc.).

Keywords: justice; criminal-law protection; court; law enforcement agencies.

INTRODUCTION

Criminal-legal protection of justice is one of the most important sections of the Special Part of Criminal Law and one of the most significant areas of activity of law enforcement agencies of the state. This situation is explained by the fact that justice, being a priority direction and function of state power in the country, needs appropriate guarantees in which the judicial and law enforcement systems can fulfill the duties assigned to them by society and the state to protect the rights and interests of the individual, as well as the interests of the state itself and society. In Russian Federation there is an extensive system of guarantees that allows the court and other law enforcement agencies to exercise the powers assigned to them. The norms of criminal law provided for by Chapter 31 of the Criminal Code of the Russian Federation are a special type of guarantee against a gross, unreasonable impact on justice in general, on its officials and participants in the process of administration of justice.

THE CONCEPT AND GENERAL DESCRIPTION OF CRIMES AGAINST JUSTICE

Acting as an object of criminal-legal protection, justice has all the necessary attributes of that element of crime. First, there is an increased value and significance of the relations arising in this sphere, because justice implements the ideas of justice and legality. It is the most important direction of the political power of the state and has the status of its independent branch. Secondly, in the process of administering justice, a significant number of people are involved, who can undergo the negative consequences of criminal assault on the court, other parts of the law-enforcement system of the state and act as victims. And, finally, in the third place, relations in the sphere of justice are complex, integrated, and therefore the norms of the studied Chapter ensure the protection of not one but several groups of relations[1].

The key issue of crimes against justice as part of a general characteristic is the problem of determining the scope and content of the term "justice". In the theory of criminal law, it is customary to consider justice in the narrow and broad sense of the word. In the narrow sense of the word, justice is understood as the activity of courts of all levels and types to review and resolve civil, arbitration of disputes, administrative and criminal cases. This type of activity has a number of features. Firstly, justice is exercised by the proper subject-judge alone, or by several judges (collegium). Secondly, justice is public in nature and is carried out on behalf of the state. Thirdly, it is implemented in a special procedural form and is completed in each case by a decision on the merits – a court decision or a verdict. Fourthly, the justice is based on the law and in its content is of the nature of legal activity, and decisions taken by the court are ensured by the authority and compulsory force of the state[2]. However, the courts themselves, without the help of the structures of the law enforcement system of the state, cannot effectively realize their powers and functions – it is connected with the scale, complexity and significance of social tasks solved by the court, as well as the special procedure of administration of justice adopted in modern society. So for example, consideration of the majority of criminal cases in court requires a preliminary investigation, which investigative bodies and inquiry bodies are engaged in. The bodies of the Ministry of Justice (the bailiffs' office, the service of the execution of sentences) implement the execution of court decisions and sentences. In the process of considering cases, the court often seeks assistance from various kinds of expert institutions, etc. The interaction of the court with law enforcement agencies of the state is a necessary condition for the functions and the relations in this sphere for the notion of justice in the broad sense of the word. It is this amount and content of the notion of justice that the legislator invests in the title of Chapter 31 of the Criminal Code of the Russian Federation[3]. This conclusion follows from the systematic interpretation of a number of articles in the studied chapter. Consequently, justice is strictly regulated by the rules of substantive and procedural law activities of judicial and other law enforcement agencies to resolve and consider civil, arbitration, administrative and criminal cases[4]. Accordingly, the family object of crimes against justice is a group of structured and systematized relations, regulated by the rules of substantive and procedural law and arising in the sphere of consideration and reso-

1 Vinokurov V.N. Object of the crime: history of development and problems of understanding: monograph. Krasnoyarsk: Siberian Law Institute of the MIA of Russia, 2009. p. 79.
2 Teplyashin P.V. Crime against justice: a training manual. Krasnoyarsk. 204,p. 8.
3 Criminal Code of the Russian Federation. http://www.consultant.ru/document/cons_doc_LAW_10699/ (reference date: 24/02/2017).
4 Gorelik A.S., Lobanova L.V. Crimes against justice. Saint-Petersburg: Publishing house of R. Aslanov "Legal Center Press", 2005. p. 29; Lobanova L.V. Crimes against justice: theoretical problems of classification and legislative regulation. Volgograd: Publishing house of the Volgograd State University, 1999. p. 27.

lution of civil, arbitration, administrative and criminal cases and corresponding to the goals and objectives of this type of activity. The specific object of crimes against justice is a heterogeneous group of state-legal, civil-law and criminal-legal, procedural and executive relations, provided by the proper actors performing justice. The immediate object of the crime against justice is a specific attitude that arises in various areas of administration of justice or stages of the realization of responsibility. The immediate object of most of the crimes under investigation is complex and involves several heterogeneous specific relationships, and also the victim and the subject of crimes.

Victims of crimes against justice are various persons, judges and law enforcement officials who are participants in the process and other citizens. The subject of crimes under Chapter 31 of the Criminal Code of the Russian Federation may be various things of the material world, for example, money – when soliciting a bribe (Article 304 of the Criminal Code of the Russian Federation) or falsification of evidence in a civil or criminal case (Article 303 of the Criminal Code) etc.

THE OBJECTIVE SIDE

On the objective side, most of the crimes against justice are committed in the form of active actions. This is facilitated by the very sphere of activity in the administration of justice, the psycho-physiological content of which the active, strong-willed and purposeful activity of judges and other officials aims at achieving the goals and objectives of justice. Right, "The lot of the awake, not sleeping", so spoke lawyers of Ancient Rome. Certain types of crimes from the objective side are expressed in a passive form, by inaction. These include the refusal of a witness or victim to testify (Article 308 of the Criminal Code of the Russian Federation), evasion of serving a sentence of imprisonment (Article 314 of the Criminal Code of the Russian Federation) and/or failure to execute a court verdict or other judicial act (Article 315 of the Criminal Code of the Russian Federation). In some cases, the act is expressed in the form of a mixed inaction – for example, a particularly qualified type of interference in the activities of the court using its official position (Part 3, Article 294 of the Criminal Code of the Russian Federation).

The overwhelming majority of crimes against justice are formal, which indicates their increased social danger. Some of the most dangerous types of crimes are modeled by a legislator with a truncated construction. Thus, an encroachment on the life of a person exercising justice or a preliminary investigation (Article 295 of the Criminal Code of the Russian Federation) refers specifically to that category of formulations. Such approaches of the legislator entail the obligatory establishment of a causal connection between the consequences and the socially dangerous consequences that have occurred.

The peculiarity of objective evidence of crimes against justice is that enforcers need to turn to other normative legal acts, if they are blanket character[5]. The number of such acts varies much and is coupled with the criminal law provisions of a solid jurisprudential basis. In the science of criminal law system such acts are more commonly called "ancillary criminal law". Among them, it is necessary to highlight the branch procedural legislation – the norms of the UCP, the Civil Procedure and Arbitration Procedural Codes of the Russian Federation, the legislation of certain branches of substantive law – the Criminal Executive Code of the

5 Belyaeva N.V. Blanket dispositions in Soviet criminal law and their application: author's abstract. dis. ... cand. jurid. sciences 12.00.08. M., 1984. pp. 7–8; Mikhailova I.A. Blanket norms in the criminal law and their application by the bodies of internal affairs: the author's abstract. dis. ... cand. jurid. sciences: 12.00.08. M., 2009. pp. 4–5.

Russian Federation[6] (RF) and the Administrative Code of the Russian Federation[7], as well as a number of federal laws, for example, 26.06.1992 No. 3132-1 "On the Status of Judges in the Russian Federation, "On Detention", "On Police"[8], etc. Changes in the current legislation, reorganization of certain structures of law enforcement agencies, redistribution of powers between them also influence the scope and content of the individual signs of the objective side of crimes against justice.

THE SUBJECTIVE SIDE

The subjective side of the group under consideration is characterized mainly by an intentional form of guilt and, moreover, most of the crimes are committed with direct intent. That situation is directly related to the peculiarity of the design of the signs of the objective side, which was mentioned above. In addition, the legislator himself, in separate sets of crimes, points to an intentional form of guilt, applying the special criminal legal term "knowledge", which means a reliable, clear presentation of the nature of the actions and their consequences (articles 299, 301, 305 and 306 CC RF[9]). In certain qualified types of crimes, there may be an indirect intent in relation to the consequences that have occurred, or a double form of guilt. Optional signs of the subjective side of the qualifying value do not exist, however, in separate formulations the legislator directly points to some of them (Article 204 of the Criminal Code of the Russian Federation). In this form, the objective of obstructing the administration of justice is an obligatory, constructive feature which must be established along with guilt.

THE SUBJECT OF THE CRIME AGAINST JUSTICE

The subject of crimes against justice is one of the large-scale aspects of the tribal characteristics, since the mechanism for the commission of the majority of crimes against justice involves the powers, status and professional capacities of individuals[10]. These circumstances bring the investigated compositions closer together with the crimes provided for in Chapter 30 of the Criminal Code of the Russian Federation "Crimes against state power, interests of public service and service in local self-government bodies". Based on similar features and properties that characterize certain categories of subjects, they can be divided into the following groups:

First, they are the officials of the court, the prosecutor's office, the preliminary investigation, the bodies of inquiry. The peculiarity of this group is that they have the powers of officials within the criminal, civil, arbitration and administrative proceedings and exercise the

6 Criminal Executive Code of the Russian Federation. http://www.consultant.ru/document/cons_doc_LAW_34481/ (reference date: 20/04/2017).
7 Administrative Code of the Russian Federation. http://www.consultant.ru/document/cons_doc_LAW_34661/ (reference date: 20/04/2017).
8 Federal Law No. 3-FZ of February 7, 2011 "On Police" (edited on July 3, 2016), http://www.consultant.ru/document/cons_doc_LAW_110165 (reference date: 24/02/2017).
9 Commentary on the Criminal Code of the Russian Federation. Vol. 3. Special Part CC RF/ edited by L. V. Gotchina, A. V. Nikulenko; Saint-Petersburg University of the MIA of Russia; Institute of Law and Economics. Tambov-Saint-Petersburg-Lipetsk: R.V. Pershin's publishing house, 2014. Art. 301 of the Criminal Code.
10Ustimenko V. V. Special subject of crime (concept, types, some questions of qualification): the author's abstract. dis. ... cand. jurid. sciences 12.00.08. Kharkov, 1984. P. 10-12; Pavlov V.G. The subject of the crime: History; Theory and practice: author's abstract. dis. ... doct. jurid. sciences: 12.00.08. Saint-Petersburg, 2000. pp. 33–34.

functions of government officials (articles 299, 300, 301, 302, 303, 305 of the Criminal Code of the Russian Federation);

Secondly, they are persons who have the status of a participant in the criminal, civil and arbitral proceedings – a witness, a victim, an expert, a specialist, an interpreter, a civil plaintiff and his representative, etc. A feature of that group of entities is that they can commit individual crimes against justice in the course of criminal or civil proceedings, during the arbitration process (articles 307, 308, 310 of the Criminal Code of the Russian Federation, etc.)

Thirdly, they are persons in respect of whom there is a decision or sentence of the court to serve their measure of restraint or punishment in the form of deprivation of liberty (articles 313, 314 of the Criminal Code of the Russian Federation);

Fourthly, they are persons within the increased age of criminal responsibility for crimes against justice, persons who do not have the characteristics of a special subject (Articles 294, 295, 296, 297, 298, 304, 306, 309, 316 of the Criminal Code of the Russian Federation).

The internal systematization of the criminal law provisions providing for responsibility for crimes against justice is built on the basis of several criteria:

1. The attack against justice with signs of violence against persons who participated in the administration of justice, as well as their relatives (Article 294-296 of the Criminal Code of the Russian Federation);

2. Crimes against justice with signs of insult or slander (Articles 297–298 of the Criminal Code of the Russian Federation);

3. Dignity in the sphere of administration of justice (articles 299-303, 305 of the Criminal Code of the Russian Federation);

4. Transformations using justice to compromise or prosecute (Article 304, 306 of the Criminal Code of the Russian Federation);

5. Transgressions with signs of refusal to fulfill constitutional, procedural duties or court verdict (Articles 307, 308, 313, 314, 316 of the Criminal Code of the Russian Federation);

6. Transactions with signs of impact on participants in the process (Article 309 of the Criminal Code of the Russian Federation).

CONCLUSION

It is necessary to establish a detailed definition of crimes against justice, which are socially dangerous, described in the norms of chapter 31 of the Criminal Code of the Russian Federation, which infringe on public relations, in order to ensure the normal activities of the court and law enforcement agencies that promote the judicial system.

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THE ROLE OF THE POLICE IN PREVENTION OF DOMESTIC VIOLENCE

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Abstract: A harmonious relationship, equality of partners and absence of violence represent a precondition for functioning of a family as a basic cell of society and realization of its significant functions. However, if the relationship among the family members is characterized by violence, the safety of a family is destroyed and the very institution of a family is jeopardized. Domestic violence, as a model of behavior, has also affected family relations in our country.

The Law on Prevention of Domestic Violence has been introduced in the Republic of Serbia in 2016. It regulates prevention of domestic violence and acting of the state authorities and institutions in preventing domestic violence. This law should give answers to an often manifested attitude in the scientific and professional public that in the domain of prevention and protection against domestic violence there are certain system omissions and that the competent authorities and institutions act in an uncoordinated way, often illegally and inefficiently. The regulations of the law emphasize the role of the police as an authority in charge of prevention of domestic violence. Therefore, the author will analyze in detail the legal decisions related to acting of a competent police officer for prevention of domestic violence and offering protection to victims of domestic violence, as an institutional ground on the activity of which depend the further activities protecting the victim and offering them support. The author will point at risk evaluation of direct danger from domestic violence, as a significant element of the procedure for prevention of domestic violence, and also point at the urgent measures that a competent police officer can impose on a potential perpetrator of domestic violence.

Keywords: domestic violence, the police, a competent police officer, risk evaluation, urgent measures.

INTRODUCTION

Domestic violence represents a general and global phenomenon, a model of behavior that is present in family relations in the Republic of Serbia as well as elsewhere. The available data point to the increase of different ways of domestic violence (physical, sexual, psychological, and economic) as well as to the increasing number of victims of domestic violence. A really upsetting piece of information is that during the last decade 327 women have been killed in domestic violence, while 33 women were the victims of domestic violence only in 2016.[2] Ac-

1 vladimir.boranijasevic@pr.ac.rs
2 Hitne mere u novom Zakonu o sprečavanju nasilja u porodici, http://www.blic.rs/vesti/drustvo/hitne-mere-u-novom-zakonu-o-sprecavanju-nasilja-u-porodici/nghetcm, 16th January 2017.

cording to the official data of the Ministry of Justice of the Republic of Serbia, which has initiated the campaign "Eliminate Violence", 4993 criminal charges for domestic violence have been submitted in 2016, 2014 performers of violence have been charged in 2016, and during the year of 2015, 135 victims of violence were under the age of 18.[3]

It can often be heard that the increase of domestic violence is affected by various factors, as well as insufficient coordination among state authorities and system failures not only in prevention but also in reaction to and punishment of the performers of violent acts. On the other hand, the public awareness still considers this issue to be "family matters" which should be dealt with inside the family, while victims, due to the fear of further violence, do not dare to report the violence. In the Regular Annual Report of the Ombudsman it is reported that the problem of domestic violence is not given sufficient significance to, and that it is very often not investigated, that assessment of risk of domestic violence is not done, and that measures in cases of domestic violence are either not taken at all or they are taken inappropriately and untimely.[4]

There seem to be quite a few problems concerning prevention of domestic violence, as well as the procedure for providing protection to the victims of domestic violence. The new legislative decisions in the domain of prevention of domestic violence have the aim to regulate the procedure for prevention of domestic violence and the procedure for coordination of the competent state authorities, institutions and bodies, this way contributing to reduction of violence in family relations.

THE LAW ON PREVENTION OF DOMESTIC VIOLENCE AND THE ROLE OF THE POLICE

The Law on Prevention of Domestic Violence[5] was introduced in the Republic of Serbia at the end of 2016, while its regulations are coming into force on 1, June 2017. From the regulation of the article 1 of this law follows the basic purpose of legal regulations – this law regulates prevention of domestic violence and acting of state authorities and institutions in prevention of domestic violence and offering protection and support to the victims of domestic violence. This practically means that prevention of domestic violence is legally regulated by defining a set of measures which help to discover whether there is any direct danger from domestic violence and a set of measures which are implemented in case some direct danger from domestic violence has been discovered to exist. Coordination of competent authorities and institutions in preventing domestic violence is also legally regulated.

The LPDV gives primacy to the role of the police, as one of the state authorities competent for prevention of domestic violence and providing protection and support to the victims of domestic violence. Besides the police, for prevention of domestic violence and providing support and protection to the victims of violence, the following are also competent: prosecutor's

3 "Isključi nasilje", https://iskljucinasilje.rs/statistika/, 16th January 2017. The campaign of the Ministry of Justice of the Republic of Serbia has the aim of raising awareness of domestic violence, educating victims of domestic violence to recognize their rights, as well as appealing to citizens, state authorities and institutions to recognize and report domestic violence.

4 Redovan godišnji izveštaj Zaštitnika građana za 2016. godinu, p. 98, http://www.ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu.pdf, 23rd March 2017.

5 Zakon o sprečavanju nasilja u porodici, "Službeni glasnik Republike Srbije", br. 94/2016. Hereinafter: the LPDV.

offices, courts of general jurisdiction and Magistrate courts as state authorities, and centers for social work as institutions.[6]

The police, who react fast and efficiently as a repressive authority at first after the performed domestic violence, acting with the aim of prevention of new acts of violence and the occurrence of more serious consequences[7], also gain a significant preventive role by the regulations of the law. The attitude taken in the theory that the preventive role of the police in the past legal texts has been developed minimally and in a very general way is justified.[8] According to the LPDV, the police will not react only in cases there is suspicion that a criminal act of domestic violence has been performed, but it will act in the prescribed manner even before the act of domestic violence has been performed.

According to the regulations of the Law on the Police[9] concerning reaction of the police in cases of domestic violence, if either domestic violence or threat of domestic violence have been reported, the police officers, in cooperation with other competent authorities, are obliged to immediately undertake the necessary measures and acts in accordance with the law, the performance of which prevents or stops the violence which can result in infliction of body injuries or even death.[10]

The LPDV gives a police officer a prominent role on whose reaction the whole process of prevention of domestic violence depends. More accurately, the law makes difference between a police officer and a competent police officer for prevention of domestic violence. According to the LP, police officers are persons performing police affairs with the status of authorized officials and using police authorities.[11] A competent police officer is a police officer who has gone through a specialized training in order to prevent domestic violence and offer help and support to the victims of domestic violence. Competent police officers are appointed by the head of a regional police department. A specialized training for competent police officers is undertaken according to the program of the Judicial Academy, while the training is undertaken by the Criminal – Police Academy.[12]

Apart from coordination among all the state authorities and institutions in the domain of prevention of domestic violence, the law especially regulates the cooperation between police officers and a competent police officer. Regardless the fact which way or from whom they have found out about domestic violence or danger from it, police officers are obliged to immediately inform a competent police officer on any domestic violence or direct danger from it. There is a broad list of possible sources of information about violence or danger from it, concerning the fact that the law regulates obligation of reporting domestic violence or danger from it without delay.[13] Domestic violence or danger from it can be reported by any individual

6 Article 9, paragraph 1 of the LPDV. The role of the provider of information about domestic violence and help could be played by other institutions such as institutions in the area of child and social protection, institutions of education and health care, as well as gender equality bodies on the level of local governments.

7 Konstatinović Vilić, S., Petrušić, N. – Reagovanje policije na nasilje u porodici, teorijski okvir i strana iskustva (Reaction of the Police to Domestic Violence, a Theoretical Framework and Foreign Experiences), Temida, br. 1/2005, p. 6.

8 Marković, M. S. – Uloga policije u otkrivanju i dokazivanju nasilja u porodici (The Role of the Police in Discovering and Providing Evidence of Domestic Violence), doktorska disertacija, Pravni fakultet u Beogradu, Beograd, 2015, p. 330.

9 Zakon o policiji, "Službeni glasnik Republike Srbije", br. 6/2016. Hereinafter: the LP.

10 Article 28 of the LP.

11 Article 10, paragraph 2, point 1 of the LP.

12 Article 28, paragraph 1 and 2 of the LPDV. The Criminal – Police Academy issues a certificate of the undertaken training to police officers trainees, in the procedure and on the template provided by a special act.

13 Article 13, paragraph 1 of the LPDV. "Everyone is obliged to report domestic violence or any danger from it to the police or public Attorney without delay".

or state authorities and institutions who are obliged to immediately report to the police any knowledge of domestic violence or danger from it. Besides that, the public Attorney who has been reported to about domestic violence or any direct danger from it is obliged to immediately forward the report to police officers who will, without delay, inform a competent police officer about this matter.

A police officer is granted broader authorizations by the regulations of the law.[14] They can bring a potential performer of domestic violence to an authorized organizational police unit in order to conduct the proceedings. A police officer can also bring a potential performer of domestic violence to the suggestion of a competent police officer.[15] For the sake of conduct of the proceedings, a potential performer of domestic violence can be kept in an authorized organizational unit for eight hours at the most, they have to be informed on their rights and they have to be given opportunity to contact and use the services of a defender and the legal aid.

ACTING OF A COMPETENT POLICE OFFICER AND RISK EVALUATION

The job of a competent police officer is complex. Firstly, after a potential offender has been brought to the authorized organizational police unit, the competent police officer is obliged to enable them plea. The potential performer of domestic violence has to be offered opportunity to declare on all the relevant facts on domestic violence or direct danger from it, so that the competent police officer could take into account their plea, assertion and evidence in the undergoing procedure. The competent police officer can ask for additional necessary information about the act of domestic violence or danger from it from the police officers who have received the report and who have brought the potential offender to the authorized organizational police unit.

After that, there comes the risk evaluation of direct danger from domestic violence. Because of urgency of the very procedure, the legislator regulates that the risk evaluation is based on available information and that it is performed in as short a period as possible.[16]

During the risk evaluation, the competent police officer takes into account all the facts that they have gathered from various sources and all the information that can be relevant for evaluation whether there is any threat from domestic violence or danger from repeated violence. The competent police officer, during the risk evaluation, is obliged to especially take into consideration whether the potential offender had previously performed domestic violence, or has done it just prior to the risk evaluation; whether the performer of the act of domestic violence is ready to repeat it; whether they have threatened with murder or suicide; whether they possess any weapon; whether they are mentally ill; whether they use and misuse psychoactive substances; whether there is any conflict concerning custody over children or the way of maintaining personal relationships of the child and the parent who is a potential offender; whether the potential offender has been imposed an urgent sanction on or has been imposed a protection sanction from domestic violence on, and whether the victim feels fear

14 A Special Protocol on Acting of Police Officers in Case of Domestic Violence or Partnership Violence over Women has been introduced in the Republic of Serbia in 2013. This protocol normatively regulates the conduct of police officers after recognition that domestic violence has been performed, their direction and acting in the domain of control of the performer of violence, acting after gathering information on the performed violence and the issues related to documenting events (http://www.sigurnakuca.net/upload/documents/PlaviTekst.pdf, 19th January 2017).

15 Article 14, paragraph 1 of the LPDV

16 Article 16, paragraph 1 of the LPDV.

and how they evaluate the risk from violence.[17] These facts are stated by the legislator as those which a competent police officer especially pays attention to, not excluding a possibility of assessing other facts and information during the risk evaluation.

The job of a competent police officer in the area of risk evaluation of direct danger from domestic violence is very delicate and hard, and there is a need of urgent acting. Anyway, using their own knowledge and abilities, in the complex social-psychological environment, specially trained police officers will have to evaluate the risk of danger very fast and by implementing further activities prevent domestic violence or prevent repeated violence and potential serious consequences to victims of violence.

After having assessed the risk of direct danger from violence, a competent police officer reacts differently in regard to the fact whether they have determined that there is some danger or not. If they have assessed that there is direct danger from domestic violence, they provide all the available information, and the risk evaluation, to the basic public Attorney in whose area is the permanent residence or residence of the victim, to the center for social work and group for coordination and cooperation. If they assess that there is no direct danger, the competent police officer provides the information and risk evaluation to the basic public Attorney and the center for social work.[18]

URGENT MEASURES

Risk evaluation of direct danger from domestic violence is an important presumption for definition of urgent measures regulated by the LPDV. If a competent police officer assesses that there is direct danger from domestic violence, they can impose some urgent measure upon the potential offender who has been brought to the authorized organizational police unit. The competent police officer makes an order by which the potential offender is imposed the urgent measure on. Urgent measures are: the measure of temporary removal of the offender from the apartment and measure of temporary prohibition to the offender to contact the victim of violence and approach them.[19] By the order of a competent police officer, either one or both the measures at the same time can be imposed on a potential offender.

The contents of the order by which the urgent measure is imposed on a potential offender are specific and regulated by the law. The order contains specification of the name of the authority which brings the order, specification of the information about the person the measure is imposed on, specification of the urgent measure imposed, information about its duration, specification of the day and hour of imposing of the measure, and specification of obligation

17 Article 16, paragraph 2 of the LPDV.
18 Article 16, paragraph 4 of the LPDV.
19 Article 17, paragraph 2 of the LPDV. The measures regulated by the LPDV, as all the other new legal decisions, are planned similarly as in Austrian legislation. Regulations of the Law on Protection from Violence (Gewaltschutzgesetz) in 1996 and its later version in 2009 emphasize the preventive function of the police in prevention of domestic violence. A police officer is authorized to ask the offender to leave the place of residence, regardless the ownership right, and the offender is imposed a restraining order on the house. According to the most recent changes of the law, the duration of the order is prolonged to 14 days. This measure is of preventive nature since it does not depend on the fact whether the act of violence has occurred or not. The imposed measure lasts for additional 14 days if the victim of violence asks for imposing protection measure in civil proceedings, and in this period the court may bring a decision which prolongs this measure to six months (More in detail: Logar, R. – Nasilje nad ženama – primeri dobre prakse u eliminaciji nasilja i borbi protiv nasilja u porodici – austrijski model intervencije u slučajevima nasilja u porodici (Violence over Women – Examples of Good Practice in Elimination of Violence and Fighting against Domestic Violence – the Austrian Model of Intervention in Cases of Domestic Violence), Autonomni ženski centar, Beograd, 2005, p. 14-15; Marković, M. S., navedeno delo, p. 353-360).

of the person whom the measure has been imposed on to report to the competent police officer who has imposed the measure, after the duration of the measure has expired.[20] The order is delivered to the person who is imposed the measure on. In case the person who is imposed the measure on refuses to receive the order, the competent police officer makes a note on refusal of reception, by the act of which the order is considered delivered. After delivery of the order to the potential offender, the competent police officer informs the victim of domestic violence in writing about the kind of imposed urgent measure, and they deliver the order to the competent public Attorney, the center for social work and the group for coordination and cooperation.

The urgent measure which is imposed by a competent police officer can last for 48 hours at the most from the moment of delivery of the order.

The further procedure after the execution of the urgent measure depends on acting of a competent public Attorney and their assessment whether the measure should be prolonged. The prolongation of the imposed measure is possible only by the decision of the court which can prolong the urgent measure up to 30 days.

We should point to the legal nature of urgent measures imposed by a competent police officer. It is very significant to distinguish these measures from the measures imposed in the procedure of judicial civil-legal protection against domestic violence regulated by the Family Law of the Republic of Serbia,[21] but also from the measures regulated by the Law on Criminal Procedure of the Republic of Serbia.[22] The measures regulated by the FL are imposed in the procedure in litigations for protection against domestic violence.[23] In the special civil proceedings initiated by a claim which contains a request of condemnatory nature, the court brings a verdict which imposes one or more measures regulated by the law.[24] On the other hand, the CCP regulates the measures for providing the presence of the offender and for unobstructed conduct of the criminal procedure[25], among which is the measure of restraining order of approaching, meeting or communicating with a certain person or visiting certain places. The court imposes this measure if there are circumstances implying that the offender could interfere in the procedure by affecting the violated person, witnesses, accomplices or concealers, or they could repeat the criminal act, finish the attempted criminal act or perform the criminal act they have been threatening by.[26] The court imposes this measure when charges have been confirmed, on the suggestion of the public Attorney, when there is suspicion that a certain criminal act has been conducted.

Out of all this we can conclude that urgent measures imposed by a competent police officer are in fact of preventive nature and that they are imposed in situations when the act

20 Article 17, paragraph 4 of the LPDV.

21 Porodični zakon, "Službeni glasnik RS", br. 18/2005, 72/2011 – dr. zakon, and 6/2015. Hereinafter: the FL.

22 Zakonik o krivičnom postupku, "Službeni glasnik RS", br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014. Hereinafter: the CCP.

23 More in detail: Petrušić, N. – Porodičnopravna zaštita od nasilja u porodici u pravu Republike Srbije (Family-legal Protection against Domestic Violence in the Legislation of the Republic of Serbia), Zbornik radova "Novo porodično zakonodavstvo", prof. dr Zoran Ponjavić (ur.), Pravni fakultet u Kragujevcu, 2006, p. 30-35; Boranijašević, V. – Postupak u parnicama za zaštitu od nasilja u porodici (The Procedure in Litigations for Protection against Domestic Violence), Pravni život, br. 12/2014, p. 124-125.

24 The FL regulates the measures for protection against domestic violence: issuing an order for eviction from the family apartment or house, regardless the ownership or leasing right; issuing an order for moving into a family apartment or house, regardless the ownership or leasing right; a restraining order to a family member to certain distance, a restraining order to the area of the place of residence or place of work of a family member; a prohibition of further harassment of a family member (article 198, paragraph 2, point 1-5 of the FL).

25 Article 188 of the CCP.

26 *Article 197, paragraph 1 of the CCP.*

of violence has happened but it is of the lowest intensity, and urgent measures should have double effect. First of all, urgent measures are used to react to the act of violence by temporary distancing the offender and prohibiting them to contact the victim of violence, as well as imposing a restraining order of approaching, by which the relationship between the offender and victim of violence in which the violence happened is temporarily physically ended. On the other hand, the temporary removal from the apartment and a restraining order of contacting and approaching the victim of violence eliminate the possibility of a repeated execution of the act of violence, since the victim will be physically out of reach of the offender. A competent police officer imposes these measures in an urgent procedure, there is no hearing such as in the procedure in litigations for protection against domestic violence, and suspicion that a criminal act of domestic violence has been executed is also not necessary. The essence is that a competent police officer, preventively and urgently, on the basis of their own assessment of the risk of direct danger from violence, imposes the urgent measure and this way reacts to the already executed act of violence but also prevents a repetition of violence and further escalation of the conflicts in family relations.

After a competent police officer imposes the urgent measure on a potential offender and delivers all the necessary documents and gathered information to the public Attorney, the destiny of the imposed measure is in the hands of the public Attorney who can act in various ways. After receiving the information, risk evaluation and order, the public Attorney may assess that there is some direct danger from domestic violence. In this case they are obliged to submit a proposal on continuation of urgent measures to the court. The public Attorney is obliged to submit a suggestion, together with all the necessary evidence, to the court in the period of 24 hours from the moment of delivery of the order to the person who has been imposed the urgent measure on.[27] Also, within 24 hours from the moment of receiving the suggestion of the public Attorney for continuation of the urgent measure, the judge of the authorized court, without a hearing, on the basis of evaluation of available documents, notification, risk evaluation and assessment of the statement of the person who has been imposed the measure on, may bring a decision which continues the measure, if the suggestion is grounded and if they assess that there is some direct danger from domestic violence. Otherwise, if they assess that there is no direct danger from domestic violence, the court refuses the suggestion as groundless. The urgent measure imposed by a competent police officer can be prolonged for additional 30 days.[28]

CONCLUSION

It is indisputable that domestic violence represents a phenomenon which has a negative impact on family relations and the feelings of trust among the members of a family, while causing serious consequences on their mental and physical health. Also a widely known fact is that domestic violence is very often considered to be an “internal matter” of a family, as a problem that has nothing to do with others and the reporting of which can cause violence toward other people. Striving at breaking prejudices and stereotypes in the domain of domestic violence, a large number of actions, campaigns and legislative activities in the Republic of Serbia have made some huge steps in the domain of prevention of any kind of domestic violence.

Introducing the Law on Prevention of Domestic Violence is very significant since the rules according to which the state authorities and institutions will act with the aim of prevention of domestic violence are regulated in a comprehensive way. Besides the general duty of

27 Article 18, paragraph 2 and 3 of the LPDV.

28 Article 21, paragraph 2 of the LPDV.

reporting violence whose addressees are all the individuals and legal entities, state authorities, institutions and organizations, the regulations of this law especially emphasize the role of the police, as a state authority, whose activity is extremely important for the prevention of any kind of domestic violence. The role of a competent police officer, appointed for every regional police unit, specifically trained for the area of domestic violence, is essential. A competent police officer gains some wider authority as compared to the earlier legal decisions and their actions are of crucial importance for the whole procedure of prevention of domestic violence and providing support and help to the victims of domestic violence. A competent police officer gets the role of a "pillar" of the procedure, since they are authorized to order bringing of a potential offender to the police station, and, after the evaluation risk, impose urgent measures on the person who represents some direct threat from domestic violence. These measures are of preventive nature, by which a competent police officer actually prevents the act of violence or prevents repeated violence and escalation of conflicts in family relations. By acting in an urgent, conscientious and educated way in especially difficult family situations, a competent police officer paves the way to the actions of the public Attorney and authorized court in the further procedure of prevention of domestic violence.

By giving special authorities to a competent police officer, by regulating the rules of coordinative functioning of state authorities and institutions in the procedure for prevention of domestic violence, and by regulating the disciplinary sanctions in case the urgent actions and coordination do not appear, the legislator has tried to regulate an effective procedure for prevention of domestic violence by using these imperative norms. By emphasizing the duty of reporting violence and the role of the police as a state authority, it is made clear to potential performers of domestic violence that violence is not tolerated, and that an urgent intervention of all the subjects will prevent either the occurrence of violence or its repetition, as well as the occurrence of harmful or tragic consequences to the life and health of victims of domestic violence.

Until the moment of usage of the regulations of this very important law, the authorized ministries and institutions are supposed to introduce sublegal documents and programs of training of police officers, so the state, citizens, state authorities and institutions could readily cope with violence as the most harmful form of social behavior. The adequate usage of legal decisions in practice will most certainly lead to certain visible effects and results in the prevention of and fighting against domestic violence.

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POLICE AND CIVIL SOCIETY INSTITUTIONS:SEARCH FOR A VECTOR OF INTERACTION IN THE FIELD OF COMBATING CRIME

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Abstract: The author of this article is of the opinion that the participation of civil society in law enforcement is a condition and requirement for the development of a modern rule-of-law state, suggesting that the strengthening and development of partnerships between the police and civil society institutions be officially declared an important direction in the police activity in many countries.

This article focuses on the partnership model of interaction between the police and civil society institutions, which allows them to effectively interact in the field of countering crime. The experience of interaction between police and society in the implementation of law enforcement functions of various states is also analyzed. The specifics of the formation of partnerships between police and civil society institutions in the Russian Federation have been determined. The main directions and forms of interaction between the police and civil society institutions of Russia in the sphere of combating crime are listed. As the main form of partnership between the police and civil society institutions in Russia, public control is characterized and public councils under the bodies of the Ministry of Internal Affairs of Russia - as a determinant of the interaction of the police and civil society institutions in the sphere of combating crime.

Keywords: state based on the rule of law, the police, civil society, interaction between the police and civil society institutions, combating crime, partner interaction model.

INTRODUCTION

Attributive feature of public life in modern democracies is the growth of public organizations of law enforcement orientation. The participation of civil society in law enforcement is considered as a condition for the development of a state governed by the rule of law. The police and civil society institutions are becoming important agents of the law enforcement function of the modern state, as partners in the practice of ensuring public security.

THE PARTNERSHIP MODEL OF INTERACTION BETWEEN THE POLICE AND CIVIL SOCIETY INSTITUTIONS IS A REQUIREMENT OF THE PRESENT DAY POLICING.

Strengthening and developing partnerships with civil society institutions has been officially declared an important area of police activity in many countries. Relying on cooperation with civil society institutions, the police carry out law enforcement activities in fulfilling their main mission to serve the community. The characteristics of the partnership model of interaction between the police and civil society institutions in the field of combating crime are people's confidence in state bodies and the involvement of citizens in the matter of ensuring security and public order[1].

The desire to establish a partnership model of the relationship between public authorities and civil society institutions in the area of enforcement of law enforcement functions has been consolidated in international and national regulations. The UN Code of Conduct for Law Enforcement Officials (1979)[2] and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (1989)[3] were taken as a basis for the development of norms for the conduct of law enforcement officials in many countries. The need to protect human rights and freedoms, the desire to exclude arbitrariness on the part of officials in their relations with citizens led to the presentation of high demands on persons supporting the rule of law.

The establishment of a partnership between the police and the public, in which all police, state structures and the population actively cooperate, sees the Organization for Security and Cooperation in Europe as the main objective, uniting 57 countries of North America, Europe and Central Asia. Cooperation between the police and society is seen as a means of addressing the problems of ensuring public peace and order, protecting the fundamental rights and freedoms of the individual, preventing and solving crimes, providing assistance and services to society with the aim of reducing the level of fear of crime, the possibility of bodily harm and social disturbances[4].

An important document that establishes the basic rules of the police for ensuring human rights and fundamental freedoms is the «Declaration on Police» adopted by the Parliamentary Assembly of the Council of Europe (1979)[5]. The Declaration notes that the police play a vital role for the state and members of society. The conditions in which the police are forced

1 Nizhnik N.S., Menshikova N.S. State bodies and civil society institutions: formation of a model of partnerships for the implementation of law enforcement functions of the Russian state // Bulletin of the Kaliningrad branch of the St. Petersburg University of the Ministry of Internal Affairs of Russia. 2014. № 2 (36). P. 62-63.

2 Code of Conduct for Law Enforcement Officials (adopted by UN General Assembly Resolution 34/169 of December 17, 1979) // UN. 2016. - http://www.un.org/en/documents/decl_conv/conventions/code_of_conduct.shtml (reference date: 23.09.2016).

3 Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials (adopted on 24 May 1989 by Resolution 1989/61 at the 15th plenary meeting of the United Nations Economic and Social Council) – http://www.consultant.ru/cons/cgi/ Online.cgi? Req = doc; base = INT; n = 6329 # 0 (reference date: 8.12.2015).

4 Final Act of the 1st CSCE Summit of Heads of State or Government. - http://www.osce.org/node/39501 (date of circulation: 18.11.2015); Second CSCE Summit of Heads of State or Government, Paris, 19-21 November 1990. Supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe. - http://www.osce.org/node/39516 (reference date: 18.11.2015).

5 Resolution No. 690 (1979) of the Parliamentary Assembly of the Council of Europe "Declaration on the Police" (adopted in Strasbourg on May 8, 1979 at the 31st session of the Parliamentary Assembly of the Council of Europe) // Collected documents of the Council of Europe on the protection of human rights and the fight against crime . M., 1998, p. 77-81.

to act are associated with a risk to employees and the absence of certain rules of conduct complicates the performance of employees' duties. The ethical standards that a policeman must follow according to the «Declaration on the Police» should promote close cooperation between the police and society[6].

EXPERIENCE OF INTERACTION OF POLICE AND SOCIETY IN THE STATE AND LEGAL SYSTEMS OF DIFFERENT COUNTRIES

The indicator of the state of partnership between the police and society is the level of involvement of citizens in solving public security problems. The United States, Japan, and Western European countries have a highly effective experience of partnering police and civil society institutions on the basis of specialized programs. In these states, the principle of «active social partnership», which involves the integration of public activity into the law enforcement system, is the fundamental principle of the police activity. Citizens not only realize their high mission of fulfilling public duty to strengthen law and order[7], but also have serious resources for independent action.

The following are examples of some of the collective forms of citizen participation used in the fight against crime and enforcement of law and order;

- establishment of law enforcement and crime prevention centers (Japan);
- the formation of a police reserve (assistants) (USA);
- organization of patrolling public places;
- the creation of voluntary squads and other public formations of law enforcement orientation (Belarus, Great Britain, USA, Estonia);
- cooperation with private security companies (Peru)[8].

In the United States, the formation of a police reserve from among civil society individuals who voluntarily and gratuitously perform duties to ensure law and order are vested with powers to suppress offenses, are provided with a police uniform, and receive special training[9]. Popular in the US is the People's Police Academy. The main purpose of such academies is to acquaint the public with the work of the police. The academies serve, first of all, for forming a positive attitude of the population towards the police and strengthening the links between the police and citizens. Individuals who have graduated from the People's Police Academy understand the role and specifics of the police work better; they help the police better and come closer to them[10].

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6 Nizhnik N.S., Menshikova N.S. Police and civil society in Russia: interaction and cooperation. St. Petersburg: Publishing house of the St. Petersburg University of the Ministry of Internal Affairs of Russia, 2016, p.75.
7 Final Act of the 1st CSCE Summit of Heads of State or Government. - http://www.osce.org/node/39501 (reference day: 18.11.2015); Second CSCE Summit of Heads of State or Government, Paris, 19-21 November 1990. Supplementary document to give effect to certain provisions contained in the Charter of Paris for a New Europe. - http://www.osce.org/node/39516 (reference day: 18.11.2015).
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The essence of the program «Neighborhood Watch», which received recognition in the United States, is that residents use the Internet to help police, reporting crimes through Twitter or other social networks[11]. In the areas of operation of this program, the number of crimes is decreasing[12].

In Japan, the active community of citizens participates in the work of law enforcement centers (one point per district with a residence of at least 50 families), which are in connection with police stations and households[13].

Various forms of cooperation of public groups with police authorities, ranging from joint patrolling and the establishment of strong points of duty for the protection of law and order to the introduction of specialized programs of social interaction and prevention of crime are used in law enforcement in the United Kingdom, Germany and Canada.

Noteworthy is the experience of social partnership of state-public institutions of Great Britain in the framework of the concept of anti-criminal policy «Law and Order»[14]. To enhance communication with the civilian population, most British police units have special units in which trained citizens volunteer at least four hours a week[15].

The Dutch police, in addition to their usual duties, often perform the tasks of rendering the most diverse assistance to the population, and citizens actively participate in many police activities. Volunteers, having received appropriate training, perform simple functions to protect the order. And, according to polls, Dutch residents trust their police and consider the police profession one of the most prestigious[16].

«Safe City» is the so-called crime prevention program, which has been implemented in Poland since 1995. Its main task is to create a style of police work that takes into account and stimulates civic initiatives. Within the framework of this program, collective associations of local residents are created with a clearly defined goal - to enhance their own security and comfort of life[17].

An unusual form of involving the public in law enforcement is used in Denmark. The state initiated the operation «Pathfinder»: for a small remuneration, pensioners regularly bypass the streets assigned to them, carefully look at the cars and the situation on the street, and then inform the police about the state of order in a particular territory and the offenses[18].

In France, the concept of «close police» was developed: partnerships between the state, local governments and various public organizations were legislated by local security contracts that became a symbol of France's modern security policy[19].

In Israel, close cooperation between the police and society was reflected in the creation of the volunteer organization «Druzhina». «Druzhina» consists of two divisions. The first is the guard squad. This unit solves the problems of preventing terrorist activities and offenses with

11 The Metropolitan Police of the United States. 2016. - https://www.uscp.gov/the-department/bureaus-and-offices (reference date: 23.09.2016).
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18 The police of Denmark: the official website. 2016. - https://www.politi.dk/en/service menu / home (reference date: 23.09.2016).
19 Territorial police of France: the official website. 2016. - http://www.police-territoriale.fr/outils/cls.htm (reference date: 24.09.2016).

the help of foot and car patrols through the establishment of checkpoints and the protection of events. The volunteers operate at their place of residence, guard educational institutions and public transport. The second unit is volunteer special units. They help in the professional law enforcement activities of the police and border troops in identifying victims of crashes, tracing, rescue operations, rescuing drowning people[20].

Partnerships between the police and society are facilitated by the practice of interaction with representatives of traditional religious faiths. For example, in the American Roseville (California) for several years there has been an Interdenominational Operational Group of the Police Department[21]. Its main goal is the prevention of criminal activities in churches and other religious organizations of the city. At regular meetings, members of the organization exchange information that can be useful in protecting cult establishments from criminals. Within the framework of the project, representatives of all religious structures of the city were invited to the Roseville police, and the operational group is made up of pastors, priests and local religious leaders.

In Alabama, the police of Montgomery conduct «Operation Good Pastor». Within its framework, about 40 pastors of local churches are trained to help the police in the fight against various offenses and if necessary, provide moral and spiritual assistance to the victims[22].

FORMING PARTNERSHIPS BETWEEN POLICE AND CIVIL SOCIETY INSTITUTIONS IN THE RUSSIAN FEDERATION

The Ministry of Internal Affairs of the Russian Federation believes that, a successful fight against crime and the protection of law and order can be carried out only in conditions of close cooperation with the public. The Ministry of Internal Affairs of Russia is developing a new approach to solving the problem of partnership relations with civil society institutions. The Federal Law «On Police»[23] defined the prospects for the development of interaction between the police and public organizations. For their implementation, not only legal bases are required, but also social prerequisites, including:

- readiness of citizens to cooperate in the field of prevention and suppression of crimes;
- the desire of the police themselves to involve the public in the field of law enforcement;
- development of the practice of cooperation between the police and the public in the implementation of law enforcement and stimulation by the state.

“Strengthening the partnership rather than the dominant model of police-public relations” defined the Federal Law “On Police” as the main task. The partnership model implies strengthening the desire for cooperation on both sides, monitoring civil society for police activities. In the same context, one can consider the rebranding of a Russian law enforcement officer and the formation of a new image of a Russian policeman. “The police should not be seen as punitive. This organization is a social partner and a defender of the population, “stressed the State Secretary and Deputy Minister of Internal Affairs of the Russian Federation I. N. Zubov[24]. The Federal Law “On Police” reflects the essence of the partnership model of police and society relations: openness, publicity, trust, complementarity, parity cooperation.

20 Israeli police: official website. 2016. - https://www.police.gov.il/English_contentPage.aspx (reference date: 24.09.2016).
21 Roseville police: official website. 2016. - http://www.roseville.ca.us/ (reference date: 24.09.2016).
22 Solod A. In the operative group pastors and priests // Police of Russia. 2014, no. 9, p. 24.
23 Federal Law no. 3-FZ of February 7, 2011 «On Police» (edited on July 3, 2016) // http://www.consultant.ru/document/cons_doc_LAW_110165 (reference date: 24.02.2017).
24 The police and the squad. State Secretary of the Ministry of Internal Affairs Igor Zubov: New draft

The mechanism for implementing the principles of partnership, in particular, ensuring public confidence and cooperation with citizens, establishing public control, monitoring the activities of the police, participation of citizens in the implementation of public policy, police participation in the development and review of concepts, programs, initiatives of public associations and citizens, Police in the media was provided for in Article 9 of the Federal Law "On Police". Public opinion is one of the main criteria for the official assessment of police activity, determined by the federal executive body in the field of internal affairs.

Basics of police interaction and cooperation with civil society institutions are defined in Article 10 of the Federal Law "On Police": when performing the tasks assigned to it, the police interact with public associations and citizens' organizations, use the opportunities of public associations and organizations, assist public associations and organizations in providing Protection of the rights and freedoms of citizens, and also support the development of civil initiatives.

Citizens consider the police to be a tool to protect their legitimate interests[25]. Therefore, it is no coincidence that citizens' demands for police officers and expectations of effective activity of law enforcement bodies are increasing. Consequently, the confidence in the need to form a system of civil control over law enforcement agents through human rights organizations, public associations, the media and religious organizations is growing, The idea that the law enforcement system should increasingly rely not on punitive measures, but on the social linking methods, using coercion in exceptional cases and respecting the principle of legality.

The partnership between the police and civil society institutions is manifested in the form of direct joint activities of police officers and various social groups (people's and Cossack squads, volunteer movement, youth / student law enforcement units) that contribute to ensuring security during state and religious holidays, political rallies movements, cultural and entertainment and sports events[26].

In Russia, by January 1, 2016, there were more than 46 000 social groups with a total population of more than 439 700 people, including 14 200 people's guards and more than 199 400 warriors. With their participation, over 26 000 crimes were discovered, almost 471 500 administrative violations were detected, 354 300 offenders were detained, including more than 18 300 offenders for committing crimes[27].

DIRECTIONS AND FORMS OF INTERACTION BETWEEN THE POLICE AND CIVIL SOCIETY INSTITUTIONS IN RUSSIA IN THE FIELD OF COMBATING CRIME

The police carry out the activity only within the limits of the directions fixed in the national legislation, in Russia – fixed by the Federal law «On Police». Civil society is involved

laws on the participation of citizens in the protection of order are being prepared // RossiyskayaGazeta. 2016. - https://rg.ru/2013/03/01/policiya.html (reference date: 24.02.2017).

25 Menshikova N.S. Interaction between the Ministry of Internal Affairs and civil society institutions as a determinant of legal reality in Russia // Actual problems of law and law enforcement at the present stage: Proceedings of the International Scientific and Practical Conference. Krasnodar, 2013, p. 565.

26 Khanin SV Organizational and legal foundations of partnership relations between police and society in conditions of democratic transformations in Russia // Juridical Science and Practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia. 2014, no. 1 (25), p. 69

27 Federal Service of State Statistics. 2016. - http://www.gks.ru/wps/wcm/connect/rosstat_main/rosstat/ru/statistics/state/# (reference date: 10.12.2016).

in the implementation of these areas insofar as this is permissible by law. The areas of activity of the police are areas of partnership between the law enforcement agencies and civil society institutions.

The main forms of partnership between police and civil society institutions in Russia are:

- direct joint activities (holding various actions, holidays, events);
- information exchange (conferences, forums, seminars, lessons);
- public control;
- preventive actions;
- charitable campaigns.

These forms of partnerships can be expressed in the following actions:

- communication between citizens and police agencies as regards information about preparations or committed offenses;
- citizens' statements in the mass media about facts that contain signs of offenses;
- the identification by police officers, with the help of citizens, of witnesses who have suffered both in criminal cases and in cases of administrative offenses;
- involvement of representatives of civil society institutions as specialists for participation in the conduct of investigative actions;
- involvement of representatives of civil society institutions in consultations on legal, religious and other issues that require knowledge of narrow specialists;
- involvement of representatives of civil society institutions to acquaint police officers with narrow issues in order to use the police knowledge gained in practice.

Chapter 2 of the Federal Law «On the Participation of Citizens in the Protection of Public Order»[28] establishes the following as the main forms of citizen participation in the protection of public order:

- assistance to the police and other law enforcement bodies;
- participation of citizens in the search for missing persons;
- freelance cooperation with the police;
- participation of citizens in the activities of public associations of law enforcement.

Within the framework of partnership with the police, citizens and organized communities can:

- nform the police about violations and threats to public order;
- participate in public protection measures at the invitation of the police;
- participate in the protection of public order in the conduct of sports, cultural and entertainment and other mass events at the invitation of their organizers;
- participate in the work of coordination, advisory, expert and advisory bodies on the issues of public order protection created by the police;
- provide other assistance to the police in accordance with the legislation of the Russian Federation;
- participate in the search for missing persons; assist the police in locating missing persons;

28 Federal Law of 2 April 2014 no. 44-FZ "On the participation of citizens in the protection of public order" // SZ RF. 2014. no. 14. Art. 1536.

- provide first aid to citizens in case of an accident, injury, poisoning and other conditions and diseases that threaten their lives and health, with appropriate training and or skills;
- demand from citizens and officials to stop illegal actions;
- take measures in protecting incident scenes, as well as ensure the preservation of material evidence of the commission of the offense, and then transfer them to police officers;
- get acquainted with the documents determining the legal status of the freelance police officer, and also receive in the established order the information necessary for participation in the protection of public order;
- assist the police in the performance of their duties in the field of public order;
- spread legal knowledge, explain the norms of behavior in public places.

Directions and forms of interaction are components of the mechanism for implementing a partnership model of police-public relations.

PUBLIC CONTROL IS THE MAIN FORM OF PARTNERSHIP BETWEEN POLICE AND CIVIL SOCIETY IN RUSSIA

An important sign of the partnership model of the relationship between the state and civil society is the control over the activities of public authorities. The purpose of public control over the police is to ensure the implementation and protection of human and citizen rights and freedoms, the legitimate interests of public associations and the consideration of public opinion, proposals and recommendations of citizens and organizations in decision-making; finding out the evaluation of the police[29]. Public monitoring of police activities also serves as an effective anti-corruption measure. Among the tasks of public control over police activities is involving citizens in the process of assessing the work of the police, having a positive impact on their activities, increasing the level of public confidence in the work of the police, and ensuring close police interaction with civil society institutions; Maintenance of transparency, the formation in society of intolerance to the corrupt behavior of police officers; Strengthening the trust of the police in public initiatives, mechanisms of public control[30].

Public citizens, public associations, parties, mass media, as well as the Public Chamber of the Russian Federation, public monitoring commissions and public councils formed under the Ministry of Internal Affairs of Russia and its territorial bodies may directly be subjects of public control over the activity of the police. Citizens of the Russian Federation have the right to participate in the performance of public control personally and as part of public associations and other non-state non-profit organizations.

29 Nizhnik N.S., Menshikova N.S. Police and Civil Society in Russia: Cooperation and Cooperation. St. Petersburg: Publishing house of the St. Petersburg University of the Ministry of Internal Affairs of Russia, 2016. p. 84.
30 Buchakova M.A., Dizer O.A., Alexandrov A.N. Formation of partner model of police-society relations in Russia // Problems of law enforcement activity. 2015, № 4. p. 31–32.

PUBLIC COUNCILS UNDER THE BODIES OF THE MINISTRY OF INTERNAL AFFAIRS OF RUSSIA AS A DETERMINANT OF INTERACTION BETWEEN THE POLICE AND CIVIL SOCIETY INSTITUTIONS IN THE SPHERE OF COMBATING CRIME

An important form of the interaction between the police and society is the participation of public councils created under the bodies of the Ministry of Internal Affairs of Russia at various levels since 2004. The main function of the public councils is to provide public support to the bodies of internal affairs and to mobilize the public for such support.

The composition of public councils includes deputies of representative bodies of power of various levels, veterans of law enforcement bodies, media employees, members of public organizations and creative unions, workers in the spheres of education and science, public figures, and representatives of the clergy[31].

The need to expand the network of public councils is defined in the Federal Law «On Police». For the first time (with reference to the activity of the police), the law establishes the procedure for the creation and functioning of permanent public councils and their basic functions. The strategic role of the councils is to be the link between the police and society, to improve the mechanisms of their interaction, to increase the level of trust between the department and the public, to build a constructive dialogue between the police and citizens.

Public councils are established in all regions of Russia. The Public Council under the Russian Ministry of the Interior initiated the action «Vacations with the Public Council» in all constituent entities of the Russian Federation (members of the public councils together with the police took part in organizing leisure activities for various categories of children during the summer holidays), the children's drawing competition «My parents work in the police», the creative contest «I would go to the police - let them teach me!», a photo contest «The Police Family», the shares «Charging with the Guardian of Order» and «A Memo to the Driver».

Within the framework of the all-Russian project «Vacations with the Public Council» (since 2014) for teenagers from disadvantaged families, children from orphanages, children of employees of law enforcement bodies who died in the line of duty, various educational, recreational, sports and recreational events[32]. Public Council at the Office of the Russian MIA Administration for the Lipetsk Region organized a summer camp holiday for children with disabilities[33]. A patriotic campaign «Sunshade for the Glory of the Fatherland»[34] was held in the Saratov region in the scout camp. The original decision to organize the employment of children during the summer holidays was the opening of the children's day-care center «Young policeman» on the basis of the Cultural Center of the Russian MIA Administration for the Bryansk Region[35]. The Public Council under the MIA for the Republic of Komi organized the work of the School of the Young Forestry: 43 school teams planted more than 5 thousand trees[36]. The Public Council at the Department of the MIA Administration in the city

31 Public Council under the Ministry of Internal Affairs of Russia: official website // https: //xn-n1ag.xn-b1aew.xn-p1ai/Komissii/Istorija (reference date: 26.09.2016).
32 Public Council at the Ministry of Internal Affairs of Russia. 2016. - https: //78.xn-b1aew.xn-p1ai/os/otchet_2015; Https: //82.xn-b1aew.xn-p1ai/news/item/7759851/ (reference date: 19.09.2016).
33 Russian MIA Administration for the Lipetsk Region. 2016. - https: //48.md.rf/gumvd/sovet (reference date: 12.09.2016).
34 Russian MIA General Administration for the Saratov Region. 2016. – https: //64.md.rf/gumvd/sovet (reference date: 09.11.2016).
35 Russian MIA Administration for the Bryansk Region. 2016. – https: //32.md.rf/umvd/Obshhestvennij_sovet (reference date: 20.09.2016).
36 MIA for the Republic of Komi. 2016. - https: //11.md.rf/mvdrk/o_sovet (reference date: 19.09.2016).

of Zheleznovodsk, in conjunction with the Cossacks of Stavropol, conducted military school camps for schoolchildren[37].

The Public Council at the Main Directorate of the MIA General Administration for the Perm Territory in children's health camps organized profile shifts "Hero's Way" for adolescents who are on preventive registration with internal affairs bodies. The main result: from 633 adolescents who were registered and passed the shift, 63 persons (28.3%) were removed from the preventive account with correction[38].

The Ministry of Internal Affairs of the Central Federal District regularly holds charity events for children from various regions of the Central Federal District[39]. The Ministry of Internal Affairs for the Republic of Tatarstan became the organizer of the charitable action «Help to get ready for school»[40].

Public councils of different regions organize visits to the duty units of the territorial bodies of the Ministry of Internal Affairs of Russia at the district level in order to exercise public control over their activities. A clear confirmation of the positive dynamics in the interaction of civil society and law enforcement agencies of Saint-Petersburg and the Leningrad region was a sharp and significant reduction in complaints against the actions of employees of the internal affairs bodies, which are received by the editorial offices of the leading media, as well as the members of the Public Council[41].

Public councils have become a communication platform for the police and citizens, a link in the partnership between the police and society.

CONCLUSION

The coexistence of the state and civil society institutions is a complex process of mutual control and mutual restrictions. In the rule of law, the self-organization of society acquires normative bases and law is the main regulator of relations between the state and the institutions of civil society. The model of partnership interaction becomes the optimal model of the relationship between the state and civil society institutions. Cooperation of this type contributes to the effective conduct of public policy and the effective implementation of public functions, an important place among which is the law enforcement function. Close interaction, mutual influence and control of the state and civil society in the person of its institutions contribute to the effective implementation of the law-enforcement function of the state, the rapprochement of the population and power, the resolution of contradictions in the social and state-legal spheres.

The interaction of police and citizens in the sphere of combating crime becomes an attribute of modern democratic states, and new forms and new directions of partnership between the state and society to combat crime are realities of political and legal organization and international interaction in the 21st century.

37 Russian MIA General Administration for the Stavropol Territory. 2016. - https: //26.xn-b1aew.xn-p1ai/grajdanam/gosuslugi/terr_gos/grafiki_raboti/Otdel_MVD_Rossii_po_g._ZHeleznovodsku (reference date: 20.09.2016).

38 MIA General Administration for the Perm Territory. 2016. - https: //59.mvd.rf/gumvd/sovet (reference date: 13.02.2017).

39 Ministry of Internal Affairs of Russia of the Central Federal District. 2016. - https: //xn-n1ag.xn-b1aew.xn-p1ai/document/3075699 (reference date: 19.09.2016).

40 MIA for the Republic of Tatarstan. 2016. - https: //16.xn-b1aew.xn-p1ai/mvd/Obshhestvennij_sovet/Obshhestvennij_sovet/item/3319552 (reference date: 29.09.2016).

41 Russian MIA General Administration for St. Petersburg and the Leningrad Region. 2016. - https: //78.xn-b1aew.xn-p1ai/os/otchet_2014. (reference date: 07.05.2017).

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NOVELTIES IN THE SERBIAN LOCAL SELF-GOVERNMENT REGULATION[1]

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Abstract: The aim of the paper is to analyze fundamental novelties of the Serbian Law on employees in autonomous provinces and local self-government units. The essential idea of the Law is to promote professionalism, accountability, efficiency and coherent administrative operation at all levels. It is also in compliance with European administrative standards and Serbian Public Administration Reform strategic objectives. The authors emphasize that the Law recognizes modern human resource management instruments, such as personnel planning, job analysis, open and competitive selection and recruitment of candidates based on open and internal competition, career development, performance appraisal, permanent professional training and other issues which appear as key challenges in local self-government units. It is also pointed out to the real necessity to upgrade local administrative capacities and develop appropriate mechanisms for the efficient implementation of legal solutions. The authors conclude that effective implementation of the Law should strengthen the administrative capacity of the local administration and promote good governance and effective provision of local services to citizens and other clients.

Keywords: Good governance, Local self – government, Professionalism, Human Resource Management, Capacity building, Coherency, Efficiency, Rule of Law.

INTRODUCTORY REMARKS

The motivation for the public administration reform has emerged from a need to strengthen professionalism, accountability, transparency, coherence, efficiency and effectiveness of governance. Adaptation to demographic, economic, political, scientific and technological changes in the environment requires changes in the role and performance of local self-government. However, the constitutional and administrative traditions of Serbia affect the establishment and development of local self-government.

1 This paper is the result of the realization of the Scientific Research Project entitled *"Development of Institutional Capacities, Standards and Procedures for Fighting Organized Crime and Terrorism in Climate of International Integrations."*, and the project entitled "*Protection of Human and Minority Rights in the European Legal Space*". The Projects are financed by the Ministry of Education, Science and Technological development of the Republic of Serbia (No 179045 and 179046), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011-2017) and the Faculty of Law, University of Niš (2010-2017). The paper is also a result of the realization of the Scientific Research Project entitled *"Crime in Serbia and the instruments of the State Reaction"*, Academy of Criminalistic and Police Studies in Belgrade (2015-2019).

The current local self-government organizations in Serbia originate from the changes carried out after World War II (actually changes made during the 60s and 70s of the last century). The main characteristic of these changes concern the significant simplification of the territorial organization of local self-government system. Local self-government organization was transformed from polytypic to the monotypic organization, and the municipality becomes the focal point for exercising all the local activities through the general jurisdiction clause. The abolishment of the districts in 1967 confirmed the status of municipalities as the key and most important type of local self-government unit.[2] However, during these changes, little attention was devoted to the legal position of local officers. The lack of systemic regulation of the position of local civil servants caused some discrepancies and differences depending on the area and in which local self-government unit they worked in.

Over the past years, a lot of effort has been made to support public administration reform in Serbia, at all levels. Capacity building of local self-government will positively contribute to the successful discharge of public functions, especially regarding decentralization and de-concentration. Moreover, trained and professional local officers should be capable of applying sound administrative procedures in line with European principles and thus offer legal certainty to the citizens. There have to be taken into consideration local self-government units diversities regarding size, organizational structure, regulations, development of E-local government, human resource capacities and others. The organization of local (self) government is one of the most complex issues of the state organization, and the system adopted substantially determines the extent to which the local and overall goals of society are achieved. A change in the political and governmental structure necessarily causes changes in all tiers of public administration - local, regional, and central. In proportion to its intensity and type, any change in the environment has an impact on the role and status of local government and its pace of development, the scope of work, goals, organizational structure, operating principles, and other dimensions.[3] At the same time, the prevalence of either centralized or decentralized elements of power strongly influences the functioning of the administrative system and the pursuit of the interests of the state as a whole; however, these types of organizational structures should not be viewed as conflicting or mutually exclusive.[4]

Due to the character of administrative functions and excessively complex organization and management, the legal status of local officers has been regulated in an exclusive manner, intensifying the divergence within the national civil service system. However, new Law on employees in autonomous provinces and local self-government units[5] created the basis to develop an integrated operation of public administration system, encouraging harmonization of human resource management practices and considering the improvement of public servants' status. In addition to this, the Law on employees in autonomous provinces and local self-government units is in line with European standards and with most important principles of the Strategy of Public Administration Reform in the Republic of Serbia.[6] The primary purpose of the Law is to provide efficient, effective, professional, impartial and politically neutral local self-government conduct of duties. The Law contains rules on personnel planning, job analysis, recruitment, selection based on open and internal competition, career development,

2 See: D. Vučetić, "Teritorijalna organizacija Republike Srbije" (Territorial Organization of Republic of Serbia), in M. Lazic (ed.): *Usklađivanje prava Srbije sa pravom EU: tematski zbornik radova* (Balancing the Serbian Law with the Law of EU: the thematic collection of papers). Niš: Faculty of Law, 2014, p. 390-391.

3 See: J. Greenwood, R. Pyper, D. Wilson, *New Public Administration in Britain*, London and New York, 2002, pp.3-15.

4 See: W. Wade, *Administrative Law,* Oxford University Press, ninth edition, New York, 2004.

5 See: *Law on employees in autonomous provinces and local self - government* (Official Gazette No 21/2016)

6 See: *Strategy of Public Administration Reform in the Republic of Serbia* (Official Gazette No 9/14, 42/14).

performance appraisal, permanent professional training, remuneration, disciplinary procedure, legal remedies and other issues which appear as key challenges in local self-government. It is expected to improve the administrative practices and "equalize" the legal employment status of the public officials. It is viewed as a request in the overall process of capacity building of Serbian public administration for the efficient implementation of the European policies. We will analyze in the paper both functional and organizational aspects of the new concept. However, we have to bear in mind that the merit system is still hampered by the long-lasting cultural and traditional habits.

CRUCIAL NOVELTIES OF THE LAW ON EMPLOYEES IN AUTONOMOUS PROVINCES AND LOCAL SELF-GOVERNEMENT

Before the adoption of the new Law, the status of local officials, their rights and duties, principles of work, recruitment, promotion, selection, training, termination of employment, disciplinary liability and other issues were regulated by the Law on labour relations in state organs.[7] However, a lot of issues were not defined precisely and clearly by this Law, which made room for various legal interpretations and had caused problems regarding implementation. For example, although it contained rules for the selection of candidate regarding recruitment, it did not provide the norms of the selection procedure to select the most competent candidates. The problem also existed regarding senior managers appointment. It is also important to point out that there was no promotion based on merits – the only criteria were work experience and professional competencies. The consequence was that the salary based on the grade did not value the complexity of the work and the responsibility, which resulted in the most qualified and competent employees leaving the administration. Although the Law prescribed the evaluation of job performance, it was not implemented in practice. Furthermore, there was no established system of systematic, planned public servants training which would develop knowledge and skills of local officials and improvement of the quality of work. Not applying the rules of the job classification system, equal access to working posts, mandatory open/internal competition, job analysis, legal protection of candidates, promotion based on performance appraisal, fair salary system, ignores the need for recognizing fundamental public service principles. The inherited practice was not in harmony neither with constitutional provisions nor with mainstream European principles.

The new regulation is defining a proper legal frame which provides flexibility and mobility within public administration, promotion based on merits, permanent professional training, planning of human resources and modern human resource management principles. All of these elements should make local self-government dynamic and more responsive to the needs of clients and society. The new Law as well as sub-legal regulations[8] establishes Serbian local civil servants system on the basis of standards adopted in European countries. Since the Law has been put into effect recently,[9] we are still facing initial problems regarding its implementation.

The Law on employees in autonomous provinces and the local self-government is encouraging merit principle, promoting professionalism, transparency, accountability. It introduces new human resource management functions - human resource planning, competitive and objective selection of candidates based on merit and transparent criteria, job classification

7 See: Law on labour relations in state organs (Official Gazzete No 48/91, 66/91, 44/98, 49/99, 34/01, 34/02).

8 See: Decree on job classification and criteria for public officials in autonomous provinces and local self-government Official Gazette No 88/2016); Decree on internal and open competition in autonomous provinces and local self-government Official Gazette No 95/2016).

9 The implementation has started on December 1st in 2016.

system based on functions, promotion based on merit, career development, training needs analysis, coherent professional training system, new performance appraisal system. Ensuring implementation of new institutes is viewed as an integral component of the strategic planning, aiming to harmonize human resource functions with policy objectives.

The Law has divided the employees in Serbian local self-governments into functionaries, public servants, and local self-government employees. A functionary is elected or appointed person in the bodies of a local self-government or the city municipality, as well as in the services and organizations that they established under special regulations. A civil servant is a person employed by the local self-government who professionally carries out activities within the competences of local self-government or other related general legal affairs, ICT tasks, material and financial, accounting and administrative jobs. A civil servant can be employed at the administering workplace, or one can hold the position. A local self-government employee is a person who is employed to perform ancillary, additional and technical tasks in the local self-government. On the local self-government employees' rights and duties the general labour regulations are applied and the provisions of the special collective agreement for local self-government.

Moreover, according to the Article 188 of the Law, for the purpose of efficient execution and coordination of human resource management services, a human resource management unit should be established. The main tasks of the Unit are sharply focused to the formulation of the human resource management strategy, personnel planning, job analysis, open and internal competitions, selection procedure, performance appraisal, permanent professional training, mobility, and legal tasks concerning labour relations. Consequently, building capacities of human resource management units will certainly contribute to the successful discharge of new functions. The education of all managerial posts is of crucial importance since their knowledge and competences shall influence the efficient implementation of the policies.[10]

To constitute merit-based local civil service, the Law is defining the procedure of impartial and objective selection of candidates. The Law introduces human resource plan, and human resource needs planning. The filling of all positions must be consistent with the adopted human resource plan, which points to the development of the practice of planning human resource needs and the prevention from recruiting the greater number of employees than that corresponding to the means intended for this purpose under the budget decision. The basic instrument of human resource planning is the systematization (Systematization Act) defining job positions, appropriate titles and appointed positions. Systematization Act represents a comprehensive analysis of tasks and activities of appropriate local authorities, according to the character and type of work, as well as the scope and frequency of certain types of duties. The official inspectorate supervises compliance of filling vacant positions with the rulebook governing internal organization and systematization of job positions and the human resource plan. The Assembly of local self-government unit (city or a municipality) adopts the human resource plan.

To reinforce a professional and depoliticised conduct of activities the new Law bases the staff selection and recruitment procedure on the principle of merit, which is supported by the principles of equal access to job positions and non-discrimination. These principles make it possible for candidates to obtain job positions under the same conditions and ensure transparency in the selection process, given that the candidates are familiar with the requirements for admission to employment. Regarding recruitment, the Law regulates the transfer of already employed local officials which are within local self-government. If the transfer does not

10 See: J. Hinrik Meyer-Sahling; T.Veen, *Governing the post-communist state: government alternation and senior civil service politicization in Central and Eastern Europe,* Routledge, London, East European Politics, 2012.

occupy a working post, an internal competition will be announced. The right to participate in an internal competition belongs to all public officials working for the same employer. In this way, local self-government becomes a complex system where the internal competition is an instrument for promotion to the higher posts and an instrument which will provide adequate use of human resource capacities before an open competition procedure which is announced to other employees (from the private sector, public services, etc..). If an internal competition fails, a local official may be assigned from other public administration bodies. Finally, an open competition may be announced.

The selection procedure comprises of evaluation of competencies, knowledge, and skills required for individual posts and defined criteria for selection. The recruitment committee shall make a list of candidates with best results and submit it to the manager of the organization who will decide on the selection. Internal and open competition is prescribed for the managing posts as well. By imposing the obligation for conducting internal competitions for all managerial positions and transparent and impartial selection procedure, assumptions are created for the recruitment, allocation, and promotion based on professional skills, experience, and performance. This process can be realized only in the settings of minimized political and personal influences on the work of officers. Therefore, it is of particular importance to establish clear rules of the selection procedure, test the knowledge and skills of candidates and rank them.

The Law is to ensure that the job descriptions are based on the complexity of duties, the necessary degree of independence in the performance of duties, the required skills, the scope of supervision over the operations, the required educational background and relevant professional experience and required competences. The system should actually express the expertise of the employees and their ability to perform the duties of a certain degree of complexity, or whether it links the rank of the employee and his/her duties in the job, as the ultimate effect of this system could be that the salary does not reflect the complexity and responsibilities, which would be a disincentive to employees. The Law recognizes elected/appointed employees, managerial posts and executives. Managing posts are heads of municipal/city administration and their deputies. In the City of Belgrade, a managerial post is the head of the City administration, deputies, secretaries and their deputies and deputy secretaries. Managerial posts are appointed by the city/municipal council. The requirements for the managerial posts are prescribed by the Article 50 of the Law. Executive posts are classified into titles, which are regulated by the Decree and Systematization act. Considering the Decree on Job Classification and Job Description Criteria, the job descriptions in the Systematization Act are based on the complexity of duties, the necessary degree of independence in the performance of duties, the required skills, and scope of supervision over the operations, the required educational background, and the minimum relevant professional experience.

The performance appraisal of local officials becomes an important part of career system and human resource management. The evaluation is based on working results achieved, initiative, skills, communication with other employees and other competencies. The performance appraisal mark is influencing not only by the promotion but also the employment. The system of promotion based on merits is introduced, which is going to stimulate skilled employees and make work more efficient. It will remove the failures in work, encourage better results and provide conditions for fair decision on their promotion and professional development. From the aspect of the legal security of employees and the protection of their rights, the rules of the appraisal procedure are of particular importance.[11]

The previous legislation did not contain the rules of the system of systematic, planned local officials training which would develop knowledge and skills of local staff members and im-

11 See: Decree on performance appraisal in civil service (Official Gazette No 11/06).

prove the quality of work. The new Law regulates and introduces professional training as the right and obligation of employees. Quality training programs - general or specific based on the training needs and evaluation should result with more efficient performance and improved skills of local officials as well as improved quality of local services to citizens and other clients. Trained and professional local officers should be capable of applying sound administrative procedures in line with European principles and offer legal certainty to citizens. It is optimistic to expect the establishment of a National Academy for professional training of public officials.

The Law also provides a list of breaches of duty of employment (severe and minor). In the first instance, disciplinary committee is to decide (consisting of three members, while two members are lawyers). The second-instance authority is the Appeal Commission, a collegial body that works through its panels, which consist of a presiding judge and two members. The decision of the Appeal Committee may be challenged in an administrative dispute. Transferring the decision-making authority to a (higher) second-instance body would ensure greater objectivity in handling complaints, bearing in mind the distance that the higher-level body has about the matter that is being decided. The establishment of the Appeal Commission's competence would improve the realisation and protection of the public officials' rights significantly. That would significantly improve the administrative practices and "equalize" the legal employment status of all local civil service employees.

CONCLUSION

Over the past years, many efforts have been made to reform public administration at all levels. The motivation for the reform has emerged from a need to strengthen professionalism, lessen political interference and improve the efficiency and effectiveness of public administration. Furthermore, one of the key drivers for reform was the objective to meet the European Union accession requirements.

It is well-known that local self-government is responsible for regulating the daily lives of citizens. Legal, efficient and quick resolution of citizens' claims requires well-trained civil servants, ready to execute fully liabilities arising from the duties of their workplaces. Inevitably, new Law on employees in autonomous provinces and local self-government units has created a legal basis which should provide professional, efficient, effective and high-quality operations. New legislation is to accelerate European integration process and support efficient performance of administrative functions at all levels. The effective implementation of the Law should strengthen the administrative capacity of the local administration and promote good governance and efficient provision of local services to citizens and other clients. Modern human resource management instruments should provide development of an institutional framework for supporting training system, education and professional training of local employees.

The regulation, by itself, however, is not the guarantee for successful public service development. In order to develop efficient and professional local administrative practice, regulation has to be effectively and appropriately implemented. Therefore, it will be necessary to upgrade local administrative capacities and develop appropriate and adequate mechanisms for the efficient implementation of management instruments and tools which will exceed the gaps between formal rules and informal practice. To implement modern human resource management practice, we have to build administrative capacities based on the best practices of modern and developed civil service systems. Introducing new human resource management practice is expected to be a challenge for managers and all employees. A new institutional structure to support the implementation has also been put in place. These changes should guarantee a high quality of service to citizens and other clients and contribute to the economic

stability and improvement of life standards. Consequently, new job classification system, personnel planning, system of internal/open competition, competitive and objective selection of candidates based on merit and on transparent criteria, evaluation of performance based on determined criteria, promotion based on merit (performance appraisal), professional training, legal protection of local officials, advanced pay system shall enhance merit principle, depoliticization, accountability and efficiency.

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THE SPECIFICS OF THE IMPLEMENTATION OF THE LAW ENFORCEMENT FUNCTION OF THE MODERN STATE BASED ON THE RULE OF LAW (ON THE EXAMPLE OF THE RUSSIAN FEDERATION)

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Abstract: This article is devoted to the issues of the implementation of law enforcement function in a constitutional state based on the rule of law in this era of globalization. Growth of crime at the turn of XX-XXI centuries, coupled with the emergence of new types of crimes of different dimensions and the calibre of criminals who are mostly equipped with modern facilities and knowledge, brings to the fore the need for the state to reorganize its national law enforcement systems and to improve its various mechanisms for combating crime and maintaining security of the population. Many states of the modern world are positioning themselves as based on the rule of law and underlining such status in the dispositions of the normative legal acts of higher legal force. There is a discrepancy between the national law enforcement mechanism in general and activity of police in particular, in relation to the socio-economic characteristics of society. In such conditions, low efficiency of the implementation of the law enforcement function becomes a significant barrier for the economic growth of the state and a source of social instability. The degree of citizens' trust in the state decreases. By analyzing the problem of implementation of the law enforcement function of modern states, the author characterized the different approaches to the understanding of the state. The approach is "based on the rule of law phenomenon in modern juridical science", which is determined by a range of subjects of realization of law enforcement function in constitutional state and position of police in these affairs. Special attention is paid to the issues of police cooperation and civil society institutions. On the basis of the analyzed sources, the author comes to the conclusion that in the modern state, the existence of a well-developed civil society which is actively involved in the implementation of the law enforcement function of the state and interacts with the police in this field, is one of the key conditions for the formation and functioning of state based on the rule of law.

Keywords: crime, combating crime, state based on the rule of law, law enforcement function of the state, the police, the subjects of the implementation of the law enforcement function in the state based on the rule of law.

INTRODUCTION

The essence and social purpose of the state as a special form of organization of society are manifested in its main activities – state functions. At any historical stage of the development of the state, the question of its functions is one of the most important[1]. In the conditions of building a law-based state, its functioning acquires its own specifics[2]. New priorities are identified, which require the solution of new tasks and the implementation of functions by new methods. The main task of the rule of law is to ensure the interests of society and the individual and to protect the rights and freedoms of man and citizen. The prerequisites for solving these tasks are to ensure national security and policing in the context of globalization. Russia and Serbia proclaimed themselves to be law-governed states and, therefore, consider it a responsibility to resolve a myriad of issues in the sphere ensuring the security of society and the individual, strengthening law and order and searching for optimal models of the relationship between the state, society and the individual.

The idea of the legal state in the history of political and legal thought has a long history[3]. Questions relating to the rule of law are also widely discussed in modern scientific literature, although "at present, none of the fundamental aspects of the topic shows a unity of views, which would allow one to speak about existence in the Russian legal science the generally accepted doctrine of rule of law under the Russian jurisprudence". [4].

PHENOMENON OF "RULE OF LAW"

Understanding the phenomenon of "the rule of law" is possible through the identification of its main features. They include common signs that are characteristic of all states, as well as specific features that are characteristic only of the rule of law. The state differs from other types and forms of organization of society, as evidenced by its signs: the presence of the apparatus of public political power, a separate territory, sovereignty and population living in the territory. The identification of specific features of the rule of law continues to provoke debate. The question of which particular features of the rule of law in its totality reflect its essence, is still open to the present day. The essential features of the rule of law are the following: a democratic political regime, democracy, the rule of law, which combines the principles of the priority of human rights and the rule of law[5], the separation of powers, the mutual responsibility of the state and the individual, and the existence of a developed civil society. The formation and functioning of the rule of law are associated with a high level of civic culture and legal awareness, a high educational level of the population, and a strong social policy of the state[6].

1 See: Nizhnik N.S., Schepkin S.S. Demidov A.V. Semenova O.V. Scientific Forum, dedicated to the 300th anniversary of the Russian police (on the international theoretical and theoretical conference "State and Law: Evolution, Modern State, prospects of development (towards the 300th anniversary of the Russian police)", St. Petersburg University of the Ministry of Internal Affairs of Russia, April 28-29, 2016, Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia. 2016. № 2 (70). p. 220.

2 Nizhnik N.S., Stotsky A.P., Fedorinova E.A., Karchevskaya N.I. Young researchers to the legal science: the participation of listeners, cadets and students in the international theoretical and theoretical conference "State and Law: Evolution, Modern State, development prospects (towards the 300th anniversary of the Russian police)", Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia. 2016. № 2 (70). p. 216.

3 Kozlikhin I.Y. Idea of the rule of law: History and modernity. St. Petersburg, 1993. p. 54.

4 Zorkin V.D. Constitutional and legal development of Russia. Moscow: Norma, 2011. p. 53.

5 Zorkin V.D. Constitutional and legal development of Russia. M .: Norma, 2011. p. 54.

6 Visloguzov Y. A. From civil society to the rule of law, Civil Society and the rule of law. 2013. № 1. pp. 26–27.

The rule of law, therefore, is representative of a state with a democratic political regime. The fundamental principles of the formation and functioning of which are the principles of the separation of power, the rule of law and the mutual responsibility of the state, society and individuals; the source of power and sovereignty of which is the people, and the guarantee of its normal development, which is civil society.

the question of the possibility of building the rule of law in modern conditions is very important. This demands socio-economic, conceptual, regulatory and organizational conditions. The study of the legislation of the Russian Federation and the Republic of Serbia, first of all the norms enshrined in the constitutions of states, allows us to state the existence of normative bases for the formation and functioning of the rule of law. The Constitution contains provisions that strengthen the rule of law, the guarantee of human rights and freedoms, the separation of power, democracy and other conditions necessary for the formation of legal statehood. In relation to these, "the possibilities of realizing these norms in practice", as stated by the Chairman of the Constitutional Court of the Russian Federation VD Zorkin, "largely depend on the citizens themselves, on their willingness to defend their constitutional rights and freedoms, their willingness and ability to use available remedies, including constitutional justice".[7] A special feature of the rule of law is the broad involvement of citizens in the solution of public tasks, in the performance of the functions of the state – civil society.

At each stage of its development, the state performs a number of functions[8], choosing such areas of state activity in which the socio-political and legal essence of the state is most clearly and fully manifested. The state has many functions. Within the framework of the theory of the functions of state, scholars have attempted to classify functions according to various criteria: in the sphere of state activity (highlighting internal and external functions); in terms of duration (allocating permanent and temporary functions); socio-political significance (highlighting basic and derived functions); and the content of state activities (highlighting political, economic, social, cultural, environmental functions).

State activity in the field of protecting human rights and freedoms, ensuring public order and maintaining security in legal literature is called differently, as a function of law enforcement[9], as a function of protecting human and civil rights and freedoms, and ensuring law and order[10]. The provision of state and public security is considered a political function, and the protection of the rights and freedoms of the entire population or its part is to the social function of the state.[11]The legal form of the realization of the functions of the state for the protection of human and civil rights and freedoms and law enforcement is called law enforcement[12].

Whilst many functions are called law enforcement, the law-enforcement function of the state consists, first of all, in the legislation securing the object of law enforcement activity, in the establishment of the system of law enforcement bodies, in determining their competence and methods of activity[13]. The concept of "law enforcement function" presents a complex concept that is reflected in a wide area of the activities of the state which aim to ensure and protect rights, freedoms, law and order, and legality. "Denial of the law enforcement function as a function of the state", emphasized I. N. Zubov, "is a consequence of theoretical ideas

7 Zorkin V.D. Constitutional and legal development of Russia. M.: Norma, 2011. p. 70.

8 Pozharskii D.V. The formation of the theory of state functions in the domestic legal science: a historiographic sketch, Proceedings of the Academy of Management of the Ministry of Internal Affairs of the Russian Federation. 2011. № 4. pp. 7–11.

9 Komarov S.A. General theory of state and law. M., 1996. p. 93.

10 Malko A.V. Theory of State and Law. M., 2006. p. 78.

11 Afanasyev V.S. The state: new approaches to essence, functions, typology, Theory of law and state, Ed. V.V. Lazarev. M., 1996. p. 285.

12 Romashov R.A. State (prerequisites of origin, mechanism of functioning, classification criteria). SPb.: Institute of Law and Entrepreneurship, 1998. p. 47.

13 Sapelnikov A.V., Chestnov I.L. The theory of state and law. SPb., 2006.

about the existence of a rigid separation of state functions into material or basic, directions of state activities and formal, that is, the functions of certain groups of bodies". Specialization of the activities of state bodies in the implementation of certain functions is an objective consequence of the "division of labor in public administration. However, there are functions, the implementation of which cannot be ensured by the efforts of only one of the branches of state power or one body of state administration."[14] Law enforcement is among these functions.

The realization of the law enforcement function in relation to the rule of law implies guaranteed protection of the rights and freedoms of the individual, maintenance of public order, and mutual observance of laws by citizens and the state. In the implementation of law enforcement functions of the rule of law, civil society institutions play an important role.

IMPLEMENTATION OF LAW ENFORCEMENT FUNCTIONS BY THE RULE OF LAW

A feature of the implementation of law enforcement functions by the rule of law is the subjective composition that implements it.

Among the participants in the implementation of law enforcement functions of the rule of law are:

- Subjects that protect law (law enforcement agencies). (In the Russian Federation, such include the internal affairs bodies (police), the federal service of the National Guard troops, the prosecutor's office, the federal security service, customs authorities, the investigative committee and other bodies);

- Subjects that protect the law. (In the Russian Federation, such include the legal profession, human rights organizations of citizens, notary);

- Subjects involved in the implementation of law enforcement functions. (In the Russian Federation, such include the administration of justice and the enforcement of punishment).[15]

Effective implementation of the law-enforcement function of the rule of law is now impossible without the participation of socially active citizens, uniting in the institutions of civil society. The forms of citizens' participation in the implementation of the law enforcement function of the state are diverse:

- Individual participation of a citizen outside the existing civil society institutions (for example, the activities of socially active citizens according to reports on a committed or planned crime in the law enforcement agencies of the state, the order of looking after a neighbor's house during his long absence, some cases of active citizenship, who operate with the aim of protecting human and civil rights and freedoms, ensuring law and order);

- Participation in the implementation of the law-enforcement function of the state of civil society institutions (the activities of non-profit non-governmental associations of citizens are organized and fixed by regulatory legal acts at the state level, it is aimed at

1. direct interaction with law enforcement agencies for the protection of rights and freedoms of citizens, law and order, Prevention and suppression of offenses;

2. performing functions of social control over the activities of law enforcement bodies);

14 Zubov I.N. State-legal and organizational problems of the functioning and development of the system of the Ministry of Internal Affairs of Russia: the author"s abstract. Dis .... Dr. jur. Sciences. St. Petersburg, 1999.

15 Nizhnik N.S., Ahmedov C.N. Law enforcement system of the Russian Empire: structural and functional analysis. St. Petersburg: Asterion, 2008. p. 19.

- Participation in the implementation of the law enforcement function of the state institutions that, for legal reasons, cannot be related to civil society, since their activities are financed from the federal budget, and they are created within the functioning of state bodies, but their activities are closely related to the functioning of civil society – they are certain points of contact of the state (represented by public authorities) and civil society (represented by the citizens' institutions society); Promote the formation, functioning, support of public associations and other non-profit organizations that are elements of civil society (for example, the institution of the Commissioner for Human Rights in the Russian Federation, the Public Chamber of the Russian Federation, the Presidential Council for the Promotion of Civil Society Institutions and Human Rights, Council under the President of the Russian Federation on the issues of improving justice, the Council under the President of the Russian Federation Acting with religious associations, Public Council under the Ministry of Internal Affairs of Russia).

Features of the implementation of law enforcement functions under the rule of law are:

- close interaction of law enforcement agencies, including the police, with the institutions of civil society, which occurs within the existing political system of society[16]. The content of the law enforcement function of the state is determined by the fact that in the rule of law the provision for human existence is regarded as the highest value;

- dependence of the development of the rule of law on the development of law enforcement functions, which is largely determined by effective mechanisms of interaction between public authorities and civil society institutions;

- methods of exercising law enforcement functions, which in the rule of law are primarily incentive methods (methods of coercion are minimized) primarily due to the high legal culture of citizens and law enforcement officials;

- assessment of the effectiveness of the enforcement of the law enforcement function of society (the maturity of civil society will properly form the criteria for which a real assessment of law enforcement functions on the part of society and the state is possible).

The rule of law and civil society are partners in the implementation of law enforcement functions[17], they realize the function of ensuring human and citizen's rights, dividing it as follows: the state secures the rights of citizens (political rights), and civil society – human rights (personal and social rights)[18]. An important condition for the functioning of civil society involves the presence in the mentality of citizens of such an important value as freedom. In the case of civil society, freedom is understood, first, as non-interference of the state in the private life of citizens.

16 Nizhnik N.S., Menshikova N.S. State bodies and civil society institutions: formation of a model of partnerships for the implementation of law enforcement functions of the Russian state, Bulletin of the Kaliningrad branch of the St. Petersburg University of the Ministry of Internal Affairs of Russia. 2014. No. 2 (36). pp. 62–63.

17 Nizhnik N.S., Menshikova N.S. Police and civil society in Russia: interaction and cooperation. St. Petersburg: Publishing house of the St. Petersburg University of the Ministry of Internal Affairs of Russia, 2016. p. 70–71.

18 Nersesyants V.S., Problems of Legal Understanding in the Context of Human Rights, Complexity and Contradictions in Ensuring Human Rights in the National, Ecological, Demographic, Migration Spheres, State and Law. 2001. № 5. With. 90.

CONCLUSION

It is thus worthy of note that, law enforcement function is highly critical and important in ensuring the rule of law. The implementation of this function has a significant impact on the process of achieving the rule of law – the main feature and the principle of the rule of law. Also worth noting is the fact that the effective implementation of law enforcement functions is impossible without the active interaction between the state law enforcement agencies and civil society institutions. This assumes one more condition: that there exists well-developed civil society, capable of supporting interaction at the proper level, as well as implementing its law enforcement programs. However, this should not be done at the cost of weakening the state or removing it from performing the functions entrusted to it[19]. Peculiarities of the enforcement of law enforcement functions under the rule of law are: there is a wide range of entities that implement it; close interaction of law enforcement agencies, including the police, with civil society institutions; conditionality of the development of a law-based state by the effectiveness of the implementation of law enforcement functions; a set of methods for implementing law enforcement functions; assessment of the effectiveness of the implementation of law enforcement functions of society.

It is not accidental that Russia and Serbia, who are both working at building their respective states based on the rule of law, attach great importance to the implementation of law enforcement functions and the status of national law enforcement system. Law enforcement agencies in the twenty-first century will undoubtedly play an important role in the process of the formation and development of rule of law in every State.

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19 Kerimov A.D. On the issue of the formation of civil society in Russia, Citizen and Law. 2002. № 3. p. 18.

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JOINT INVESTIGATION TEAMS AS A MECHANISM OF THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIMINALITY[1]

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Abstract: Transnational organized crime, besides terrorism, is undoubtedly the biggest threat to modern society at the beginning of the III millennium. New forms of organized crime, such as cybercrime, trafficking of human beings and human organs, money laundering, illegal migration, illegal trafficking in new types of narcotics, threaten to undermine the foundations of human civilization, demolish the state and its organization, and disregard democracy and the rule of law. In response to these challenges, the United Nations adopted the Convention against Transnational Organized Crime (Palermo, 2001) and III Supplementary Protocol. The signatory states of the Palermo Convention have undertaken to harmonize national legislation, adopt international standards and uniform solutions for the fight against organized crime. In the same way, Serbia, Croatia and other countries of the Region acted. One of the most important mechanisms for suppressing the most serious manifestations of transnational organized crime are Joint Investigation Teams, a significant form of international criminal justice and an effective instrument for the conduct of international investigations. It is the most direct form of international police and judicial cooperation, involving authorities and representatives of several states, who work together and coordinate measures and actions in the undertaken investigations. The paper examines the cooperation in the work of the joint investigation teams of the countries of the region and indicates the situation and the movement of organized crime in the territory of Serbia and Croatia. In the final part the authors propose measurement for improving the fight against organized crime and strengthening international criminal justice and police cooperation.

1 The report is the result of work on the Project on the Development of Institutional Capacities, Standards and Procedures for Combating Organized Crime and Terrorism in the Conditions of International Integration, conducted by MPNTR under no. 17904 and the result of activities in the KPA Internal Scientific Research Project “Managing the Police Organization in Preventing and Suppressing the Threats to Security in the Republic of Serbia”, the cycle of scientific research 2015–2019.This research has been fully supported by the Croatian Science Foundation, under the project number 1949, “Multidisciplinary Research Cluster on Crime in Transition – Trafficking in Human Beings, Corruption and Economic Crime”.

Keywords: organized crime, Palermo convention, special investigative techniques and special authorities, police, Serbia, Croatia, the EU.

INTRODUCTION

Organized crime, besides terrorism, is undoubtedly the biggest threat to humanity in peacetime conditions, because it successfully overcame all social changes and adapted to the conditions of life and work in today's society. New and more dangerous forms of organized crime have emerged and they threaten to undermine the trends of civilization, disregard work and creativity, and promote the criminal way of life as a social value. In some settings, organized crime has become a system of life, as is the case with some underdeveloped and developing countries, especially in transition countries. The consequences of organized crime are extremely difficult and affect the individual and the family, as well as society and the international community.

The most dangerous forms of organized crime today are the illegal production and trafficking of narcotic drugs, arms trafficking, human trafficking, high-tech crime and other more recent forms. A particular dimension to this problem is given a *transnational* character, as in the preparation of criminal acts, execution, concealment and other activities, as a rule, actors from several countries are involved, while the actions are taking place and the consequences arise in the territories of different countries. According to the UN data from the beginning of the second decade of the 21st century, total earnings from the activities of organized criminal groups amount to $ 870 billion, which is about 1.5% of global GDP.[2] In the study of the Special Committee of the European Parliament for Organized Crime, Corruption and Money Laundering, the minimum economic costs of criminal offenses of organized crime in the EU are reported in the following areas: trafficking in human beings – 30 billion euros; cigarettes smuggling – 11.3 billion; avoidance of payment of value added tax – 20 billion; frauds about agricultural and structural funds – 3 billion; scams that have damaged the EU citizens – 97 billion; theft of motor vehicles – 4.25 billion; falsification and abuse of payment cards – 1.16 billion euros.[3]

Public disturbance brings in not only the weight of these crimes and enormous material damage, but especially the fact that the work and perpetrators is very difficult to detect and prosecute. The most important reasons for the weakness of states and their organs are mostly poor criminal justice solutions, lack of professional staff and material resources, links between criminals and individuals from state structures and above all corruption in all areas of life and work. For these reasons, proving criminal acts of organized crime with classic criminal methods is almost impossible, while the results are modest and without much effect in most countries. It has precisely this effect on the most developed countries of the world to strengthen anti-criminal solidarity in the international community, to draft and adopt a legal framework on the basis of which it is possible to undertake an adequate operational response and achieve concrete results in the fight against organized crime.

The UN Convention Against Transnational Organized Crime (2000, Palermo)[4] is an umbrella document in combating the most serious forms of organized crime. In the function of

2 UNODC, UN Office on Drugs and Crime, Assessment of Illegal Cash Flows resulting from Narcotics Trade and Other Criminal Offenses of Transnational Organized Crime: Research Report (Vienna, October, 2011), p. 94.

3 Special Committee of the European Parliament for Organized Crime, Corruption and Money Laundering, "The Economic, Financial and Social Impacts of Organized Crime in the EU-Study", Brussels, 2013, pp.10–11.

4 United Nations Convention against Transnational Organized Crime (UNCATOC), United Nations,

its implementation, additional documents were adopted: Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children (I), Protocol against Smuggling of Mine, Sea and Air (II) and Protocol against Illegal Production and Traffic with Firearms, Its Parts, Assemblies and Ammunition (III).[5] The States Parties have undertaken to ratify the Palermo Convention and the Additional Protocols, to harmonize national regulations and to harmonize judicial practice in this area. The Republic of Serbia (FRY) ratified the aforementioned international documents by a special Act of 22 June 2001, which entered into force on June 30, 2001, while the Republic of Croatia ratified the Convention and Protocols on January 24, 2003, and it came into force on 29/09/2003.[6]

The Convention provides for the establishment of *specialized bodies* for the fight against organized crime such as the special prosecution, the special court, the special police unit and a special unit of the court police (guards). The greatest achievement of the Convention is the establishment of *special investigative methods and techniques* for proving criminal offenses in the field of organized crime. The group of specialized "tools" includes: controlled delivery, electronic tracking, surveillance, secret operations, interception of goods, protected witness, witness associate, covert investigator, etc.[7] Accordingly, there are also procedural mechanisms for support in criminal proceedings: transfer of criminal proceedings, KE reports, sanctions for interference with justice, witness protection, assistance and protection of victims and measures for improving police cooperation.[8]

JOINT INVESTIGATIVE TEAMS – CONCEPT AND CHARACTERISTICS

The successful fight against organized crime is not an insular issue of the state, but includes all aspects of *international criminal justice and police cooperation* between states and international organizations. The most common forms of cooperation are information exchange, handling of requests, taking actions, joint investigation teams, joint police operations, joint controlled deliveries.

Joint Investigation Teams (JIT) are one of the most important forms of cooperation as a way of responding to new challenges, risks and threats from organized crime in the 21st century and in order to more effectively fight against its most severe manifestations.[9] Prior to the adoption of the Palermo Convention, the Naples Political Declaration and Global Action Plan against Transnational Organized Crime[10] and the Vienna Declaration on Crime and Justice were adopted to meet the challenges of the 21st century.[11] The dynamics of the market, legal

New York, 2000, Treaty Series, vol. 2225.

5 Nikač Ž, "Palermo Convention and Supplementary Protocols for the Suppression of Organized Crime", Proceedings KPA, MPNTR Project, KPA, Belgrade, 2015, pp. 265–290.

6 Law on Ratification of the United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol on the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime , Act, OG SRJ, IA No. 6/2001 / Official Gazette of FRY - International treaties no. 06/01

7 Ibid, art. 20.

8 Ibid, art. 21–27.

9 More: Žarković M, Ivanović Z ,Criminalitic tactics, Belgrade 2014.

10 The Declaration was adopted at the World Ministerial Conference on Organized Transnational Crime, held on 21–23/11/1994.

11 The X Congress was held in Vienna, Austria, from 10 to 17 April 2000. The Declaration was adopted by Rez.GS UN 55/59, while the Implementation Action Plan was adopted by the Resolution GS UN 56/261.

and illegal, pointed to the international dimension of the market and transnational crime that does not know the state borders, geographical and other barriers. The transfer of crime and criminals from one country to another and from the continent to the continent is today a reality because organized criminal groups use the benefits of technical and technological development of the modern world. Monitoring of these phenomena requires international cooperation, and JIT is an integral part and one of the most important tools for combating the most serious forms of organized crime.

JIT conceptually represents the most direct form of judicial-police international cooperation. In substance, it includes representatives of judicial authorities (prosecution, court) and police of two or more countries that cooperate in a particular international investigation of one or more serious crimes and acts in the field of organized crime. As a rule, the investigation is conducted from a *joint investigation center* that represents the seat of the JIT in a specific case, from which all the measures and actions in the countries covered by the investigation are coordinated and directed. Formally, the JIT is determined by the provisions of the national regulations of the states and in the case of Serbia, it is one of the forms of international legal assistance in criminal matters[12] and is an effective instrument for the conduct of international investigations.

In addition to the joint investigation center, the other characteristics of the JIT are the way of its establishment, methodology of work and operation. The team is usually formed to deal with serious crimes in which the element of foreignism predominates, which is often basic and primary. The international dimension of some criminal activity gives special weight to the criminal offense, and this requires the joint work and cooperation of the interested states, their organs and specialized international organizations. Given that this is a very complex mechanism of international criminal and police cooperation, when deciding on the formation of the JIT, the states take into account the weight of the work performed or those in preparation and other elements. It is an important interest of any interested state participating in the investigation, without which there is no initiative to undertake concrete activities and successful cooperation of the participants. At the initial stages of the process, the participation and cooperation of the states are most intensive and are expressed through the interaction of the public prosecutor's office, the police and specialized services.

According to the regulations of the Republic of Serbia, the JIT is formed on the basis of the agreement of the Ministry of Justice and the competent foreign authority[13], which is complementary to the law and practice of the EU. The *EU Handbook for Joint Investigation Teams* provides that "a joint investigation team provides the best platform to define an optimal strategy for investigation and prosecution".[14] Participation in the team raises the awareness of managers and participants about the importance/priority of the investigation, and accordingly team members can significantly improve the results of an international investigation into a specific criminal case.

After the opening of the European borders, the cooperation between the EU and third countries in many areas has been improved, as well as in the field of security, internal affairs and the judiciary. Some particularly sensitive security issues are regulated on the basis of bilateral and multilateral agreements. Contemporary security strategies put special emphasis on strengthening police and judicial cooperation, and one of the important mechanisms in this regard is precisely joint investigation teams that have been fully implemented in all EU member states. The purpose of the JIT is to cooperate and jointly work with judicial authorities and

12 Law on International Legal Assistance in Criminal Matters (ZMPPKS), "Official Messenger of RS" no. 20/09.
13 Ibid.
14 Document No.15790 / 1/11, Rev 1, EU Council, Brussels, November 4, 2011.

state police services in investigations related to the most serious crimes, especially organized and cross-border crime, without unnecessary bureaucratic and other obstacles. Teamwork is also financially more cost-effective, saves resources and saves information, dispensed with specific formal procedures.

One of the objections is that JIT did not fully live in all parts of Europe and the world, as is the case with the EU Member States where the implementation of this mechanism is very noticeable (in 2012, 78 teams).[15]

THE LEGISLATIVE FRAMEWORK OF JOINT INVESTIGATION TEAMS

a) The International Legal Framework of the Joint JIT consists of several international documents that are of paramount importance to the fight against crime, especially organized crime. Some conventions, declarations, resolutions and other international acts related to the suppression of certain forms of crime, mutual cooperation between states and legal assistance in criminal matters are of particular importance.

The UN Convention against Transnational Organized Crime (UNCATOC)[16] is an international legal source of paramount importance for the fight against organized crime. The Convention provides for, inter alia, *joint investigations* initiated and implemented by States on the basis of Article 19, bilateral and multilateral agreements. Interested States may establish joint investigative bodies with the aim of investigating and collecting evidence of committed serious crimes that are the subject of investigations, prosecutions or judicial proceedings in one or more States. The mentioned solutions should not be viewed in isolation, but in the context of the entire Convention and all mechanisms that are used to fight organized crime groups.[17]

The European Convention on Mutual Legal Assistance in Criminal Matters provides a much more precise definition of the concept of joint investigation teams, which was done through its *Second Additional Protocol* adopted in Strasbourg on November 8, 2001. Thus, Article 20 of the Protocol regulates the formation of JIT, its operation and other issues (human resources, legal, material and financial) in more detail. The Republic of Serbia (formerly SCG) has also ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters by a special law.[18] Regarding the content of the JIT and other issues on them, it will be pointed out in the part relating to the practice of the work of the EU and joint investigative teams under the jurisdiction of Europol and Eurojust.

The Convention on Police Cooperation in South East Europe was signed in Vienna in 2006 and the Republic of Serbia ratified it the following year[19]. It is the most important regional legal source of international police cooperation. The Convention is particularly important for countries from the former Yugoslavia and for the fight against the most serious forms of crime, organized crime and terrorism. The basic objectives of the Convention are to deepen the cooperation of states, eliminate security threats, promote common security interests and

15 International Center for Countering Terrorism, The Hague, 2012, Report from the meeting of the expert team for ZIT, p.3 for more: www.europol.europa.eu (September 5, 2017), Europol official site, JITS.
16 Op.cit. nap.3, art. 19.
17 Nikač Ž, International Police Cooperation, KPA, Belgrade, 2015, p.79-89.
18 Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, "Official Gazette of SCG – International Treaties" no. 02/2006.
19 Law on the Endorsement of the Convention on Police Cooperation in South East Europe, "Official Gazette of the Republic of Serbia – International Agreements" no. 70/2007.

strengthen the security partnership. For the purpose of implementation, it is envisaged that the States Parties conclude bilateral agreements, standardize communication systems and establish systems for the protection of personal data.

The Convention envisages various forms of cooperation, among which are the exchange of information, joint threat analysis, cooperation on request, urgent search, cross-border surveillance, controlled deliveries and secrets of investigations. One of the more important mechanisms of cooperation is precisely *joint investigative teams* (Article 27), which are most often combined with other forms and types of cooperation such as cross-border operations, mixed patrols, joint ventures.[20]

In relation to the previous convention and protocol, the Convention on Police Cooperation in SEE represents a document that is less procedural and formal, it is more of a technical nature and deals with operational aspects of cooperation between states and their organs when undertaking criminal-operational measures. It is envisaged that delegated members of the JIT conduct investigative actions in the territory of another state, under conditions of consent and reciprocity. Further, solutions are provided relating to the acquisition, use and sharing of operational information with other team members, as well as the possibilities of extending the JIT.[21]

The SELEC Convention is an international agreement that transformed the former SECI Regional Center for the Fight against Trans border Crime and formed SELEC (Southeast European Law Enforcement Center) as a law enforcement center in Southeast Europe. The document was signed on 01/12/2009 in Bucharest, in which the Center is located.[22] The Republic of Serbia has also ratified this Convention with a separate Law on the Confirmation of the SELEC Law Enforcement Protocol in SEE.[23]

The Convention provides a legal basis for international regional cooperation in the fight against cross-border, especially organized crime, smuggling of people and other forms of crime, and in connection with the implementation of investigative and judicial procedures. In a wider sense, one of the tools for the work of SELEC is joint investigation teams that are not formally legally foreseen, but in the practice of this organization they are used in cooperation with the states signatories who have detained officers from the police, customs and other law enforcement agencies. In these activities, financial and expert assistance from the United States, which initiated and helped establish and operate the Center, is particularly important.[24]

b) The national legal framework of the joint investigation teams is largely relying on the aforementioned international solutions. Especially EU Member States and those applying for admission to this organization have developed national legislation harmonized with EU regulations. This applies to joint investigation teams and other mechanisms of international police and criminal justice cooperation.

In the Republic of Serbia, the issue of joint investigative teams is regulated in more detail in the *lex specialis* regulations in the area of international criminal justice assistance. ***The Law on International Legal Assistance in Criminal Matters*** regulates the procedure for providing international criminal justice assistance in cases where there is no international agreement

20 Ibid, art. 4-2.
21 Nikač Ž, Božić V, "International Cooperation of Southeast Europe in the Fight Against Crime", Lviv State University of the Interior, Ukraine, International Scientific-Professional Conference "Theory and Practice of Law Enforcement Activities", Proceedings, Lviv, 2016, pp. 431–443.
22 Ibid.
23 Law on Ratification of the SELEC Convention, "Official Gazette of the Republic of Serbia – International Agreements" No.08 / 11.
24 Nikač Ž, Juras D, "International Police Cooperation in SEE in the Function of Security", Institute for Comparative Law, Journal "Foreign Legal Life" No.3 / 15, Bgd.2015, pp. 283–302.

or when some of the issues are not regulated by it.[25] International legal assistance shall be provided in a proceeding that relates to a criminal offense which, at the time when the aid is claimed, falls within the jurisdiction of the court of the State of the applicant, then in the proceedings instituted before the administrative authorities for work punishable under the laws of the applicant State and the request of specific applicants such as the International Court of Justice, the International Criminal Court, the European Court of Human Rights and other international institutions established by international treaties accepted by Serbia (e.g. the Hague Tribunal).[26] National judicial authorities provide international legal assistance by respecting universal principles and standards, and above all the principle of reciprocity. Of course, general and specific requirements for providing international criminal justice assistance are required.[27]

Forms of international criminal-legal assistance are: a) extradition of the defendant or convicted person, b) taking over and transferring the criminal prosecution, c) execution of the criminal judgment, and d) other forms of international legal assistance. Within this last section, JIT are foreseen as one of the forms of international criminal law cooperation, and the agreement on participation in the JIT on behalf of the RS is signed by the Minister in charge of the judiciary.[28] In a broader sense, the legal bases for the work of the JIT in Serbia are made by the provisions of more important criminal laws such as the Criminal Code[29], the ZKP[30] and ZONDOSOK (Law on Organization and Jurisdiction of State Authorities in the Fight against Organized Crime, Corruption and Other Particularly Serious Crimes).[31]

he Law on Police[32] is the most important legal basis for the participation of police officers in the work of joint investigation teams. In the part of the Law referring to the cooperation of the Ministry of Interior with external subjects, international police cooperation and police engagement in that area are mentioned. In accordance with this and other laws, the Ministry of Interior meets international cooperation on the level of ministers and representatives of ministries with competent foreign bodies and organizations. At the operational level, the MoI and its representatives cooperate with foreign police services, international police services and specialized international organizations. The legal basis for cooperation was confirmed by international treaties and special international agreements on police cooperation were concluded, with respect for the principles of reciprocity and on the basis of membership in international police organizations.[33]

International police cooperation includes police affairs carried out by the relevant MoI organizational units in the territory of the foreign state, cooperation with foreign police services, exchange of police officers for the connection, or activity of foreign and international police services in the territory of RS.

In terms of content, international police operational cooperation includes: a) exchange of information, data and notifications, b) taking measures against terrorism, organized crime,

25 Law on International Legal Assistance in Criminal Matters, "Official Gazette of RS" no. 20 / 09, article 1–2.
26 Ibid, art. 3.
27 Ibid, art. 7 and 84.
28 Ibid, art. 83 and 96.
29 Criminal Code, "Official Gazette of RS" no. 85/2005, 88/2005 -107/2005 - 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.
30 Criminal Procedure Code, "Official Gazette of RS", no. "Official Gazette of RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.
31 Law on Organization and Jurisdiction of State Authorities in the Suppression of Organized Crime, Corruption and Other Particularly Serious Criminals, "Official Gazette of RS", no. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05, 61/05, 72/09, 72/11 – Law, 101/11 – Law and 32/13.
32 Law on Police, "Official Gazette of the Republic of Serbia" No.06 / 2016.
33 Ibid, art. 19.

illegal migration and other forms of international crime and violation of border security, c) establishment of joint working bodies, d) referral on training and education of members of the Ministry abroad and conducting training in the country for the needs of the police of a foreign state or international organization.

We believe that the participation of police officers of the Ministry of the Interior of the RS in the JIT can be based on an extensive interpretation of the participation in joint working bodies. In terms of employment status, the legal institute of referral to the work of police officers (abroad) should be applied, which is specifically mentioned in Article 202 of the Law on Police. Police officers during the execution of tasks abroad, as well as police officers of foreign and international police services engaged in performing activities in the territory of the RS, can apply the powers and funds stipulated by the international agreement on the basis of which the cooperation takes place.[34]

Bilateral and multilateral agreements can also provide a legal basis for the establishment and operation of the JIT, as is the case with the formation of investigative teams that can be referred to the JIT in a wider sense. Such is the Cooperation Agreement between the authorized bodies of Serbia and the Republic of Hungary in combating crime, preventing cross-border crime and combating organized crime, which in Article 13 foresees the establishment of a joint group for the elimination of criminal offenses.[35]

LEGISLATION OF JOINT INVESTIGATION TEAMSOF THE EUROPEAN UNION AND PRACTICE OF EUROPOL

a) In the Republic of Croatia the issue of joint investigation teams is regulated by EU and national legislation. As it is known, in mid-2013, Croatia entered the EU when it was obliged to harness national legislation and adopt EU legal practice during the accession process and later upon its accession.

The normative framework for the application of the JIT in the practice of the judicial authorities and the police of Croatia consists of several laws and by-laws of the EU and national legislation. In a wider sense, these include the following regulations: Law on Police of the Republic of Croatia[36], Law on Police Affairs and Powers[37], Criminal Law[38], USKOK Law[39], ZKP[40], Law on International Legal Assistance in Criminal Matters[41] and Law on Judicial Cooperation in Criminal Matters with Member States EU[42].

Joint investigative teams as a special mechanism for international judicial and police cooperation were introduced into the legal system of the Republic of Croatia firstly under the Law on Police Affairs and Powers[43], all based on the Framework Decision of the Council of Ministers of the EU on the JIT of June 13, 2002[44] and the Framework Decision of the Council

34 Ibid, art. 44.
35 Op.cit. u nap.16, pp. 86–87.
36 Law on Police, National newspapers, no.34 / 11,130 / 12,89 / 14,151 / 14,33 / 15,121 / 16.
37 Law on Police Affairs and Powers, NN No.79 / 09.92 / 14
38 Criminal Code, NN No.125 / 11,144 / 12,56 / 15 and 61/15.
39 Law of USKOKU, NN No.76 / 09,116 / 10,145 / 10,57 / 11,136 / 12,148 / 13,70 / 17.
40 ZKP, NN No.152 / 08.76 / 09.80 / 11.121 / 11.91 / 12.143 / 12.56 / 13.145 / 13.152 / 14.70 / 17
41 Law on International Legal Assistance in Criminal Matters, NN No.178 / 04.
42 Law on Judicial Cooperation in Criminal Matters with EU Member States, NN No.91 / 10,81 / 13,124 / 13, 26/15.
43 Op.cit. u nap.36, čl.14.
44 COUNCIL FRAMEWORK DECISION of 13 June 2002 on joint investigation teams. Framework Decision of the EU Council on ZIT, 2002/465 / PUP, OJ L 162, 20/06/2002.

on Protection personal data processed in the framework of police and judicial cooperation in criminal cases[45].

A particularly important regulation is the Law on Judicial Cooperation in Criminal Matters with EU Member States, in which some mechanisms of criminal justice cooperation with the member states, EU specialized bodies and bodies are elaborated in more detail. This applies in particular to the application of the EAW (European arrest warrant), cooperation with EUROJUST, and the application and protection of data from the SIS database (Schengen Information System).

One of the basic principles of cooperation is the principle of efficiency that equally respects the functional and economic elements within the judicial authorities' conduct. Furthermore, the principle of the exclusion of double-checking is emphasized, especially in relation to the most serious crimes, such as terrorism and acts of organized crime.[46] In the framework of cooperation with Eurojust, as a specialized EU agency for judicial cooperation and coordination of the work of judicial services, the establishment of the JIT together with the judicial bodies of the EU Member States is especially emphasized.[47] The national representative of the Republic of Croatia as a member and contact person for the Eurojust's network for JIT[48] plays an important role in the implementation of this solution.

b) The European Union has developed a legislative framework with regard to the JIT and, as the most important legal source is said to be the EU Council Framework Decision on the JIT[49], further elaborated in the EU Council Decision on the model of the joint investigation team agreement and the JIT Manual.[50] As one of the complementary legal bases for the JIT in the Manual, a well-known Convention on Mutual Assistance and Cooperation between Customs Administrations (Naples II Convention)[51] is cited, this, among other things, provides for conditions for the functioning of the teams. The solution is particularly important in terms of multi-agency approach and combined teams of law enforcement or pooled units (Task Forces). The solution is particularly applicable in countries where customs, court police and other services have certain police and investigative powers. This was previously legally shaped by the Council of the EU Council of 29 May 2000, which, in accordance with Article 24 of the EU Treaty, provides for the adoption of the Convention on Mutual Legal Assistance in Criminal Matters of EU Member States.[52]

The EU Council further adopted the Decision on the model of the Treaty establishing the JIT, which is a typical EU agreement on the establishment of this cooperation mechanism.[53] The model of the agreement contains standard elements related to: subjects of the agreement, timeframe, subject of agreement, mechanisms of information collection and exchange, coordination of activities, information processing, communication, media, financing. The basic objective of a typical agreement is to facilitate the procedure for the establishment of the JIT and the subsequent smooth functioning, as a flexible framework for achieving cooperation,

45 Framework Decision of the EU Council on the Protection of Personal Data Processed in the Field of Police and Judicial Cooperation in Criminal Cases of 27.11.2008, 2008/977 / PUP, SL L 350, 30.12.20098.
46 Op.cit. u nap.41, čl.4 i čl.10.
47 Ibid, art. 12, lbid. art. 4.
48 Op.cit. u nap. 43.
49 *Ibid.* Council framework decision of 13 June 2002 on Joint Investigation Teams (2002/465).
50 Op.cit. u nap.13.
51 The Convention on mutual assistance and co-operation between customs administrations (Naples II Convention), 18 December 1997, part. 24.
52 Council act of 29 may 2000 establishing in accordance with article 34 of the Treaty on European Union the Convention on mutual assistance in criminal matters between the member states of the European Union, 2000/C 197/01.
53 Council Resolution on a model agreement for setting up a Joint Investigation Team JIT), 2017/C 18/01.19.1.2017, Official Journal of the European Union C 18/1.

regardless of differences in national legislation and respecting the best legal practice. Further meaning is to improve criminal justice and police cooperation by increasing the number of investigative teams and accelerating the process of their establishment. Particular emphasis is placed on the establishment and maintenance of cooperation with non-EU countries, the inclusion of all resources and law enforcement agencies, as well as the intensification of activities carried out by Europol in its work.[54]

We think that the extensive EU access gives space for the involvement of the national authorities of Serbia and other countries from the former SFRY which are not yet part of the EU, especially as the concept of investigation (prosecution investigation) has changed under the new CPC in the RS and created opportunities for greater mobility and efficiency of investigative organs.

Next, a Practical Guide for the JIT was adopted, which examines in more detail the issues related to: the goal, concept and legal framework of the JIT, the establishment, operation, evaluation of the results of the work and the dissolution of the team. In the appendix there are articles related to the most frequent questions about the JIT, its establishment and the way of work.[55]

In the function of further work, the Council of the EU and other bodies have adopted several other important documents: Rules on marking members of JIT[56], Call for proposals for financial aid JIT[57], Manual (Guide) for financing JIT[58], Form for financial identification form[59], Manual for operational support of JIT[60], Manual for the JIT Financing Process[61], Practical Steps for the Evaluation of the JIT[62]. In addition, a significant legal source for the JIT is made by the expert meetings of the representatives of the states and members of the JIT under the auspices of Europol.[63]

Europol, Eurojust and other international organizations within the EU system have significantly contributed to the establishment and operation of joint investigation teams in many areas of the fight against the most serious forms of crime. It is logistical, technical, financial and expert assistance and support provided by these organizations in all situations when JIT is formed.

54 Lbid.

55 Joint Investigation Teams Practical Guide, Brussels, 14 February 2017 (OR. en), 6128/1/17 REV 1 MP/mvk DG D 2B EN.

56 Joint Investigation Teams - Proposal for designation of national experts, Brussels, 8 July 2005 11037/05 HGN/PF/lwp 1, DG H 2B EN.

57 Eurojust, Call for Proposals for Financial Assistance to Joint Investigation Teams (2017/6).

58 Eurojust, JITS funding guide, 03 July 2017, Version 2.1

59 Financial identification form, http://ec.europa.eu/budget/contracts_grants/info_privacy statement contracts/financial_id (20.09.2017).

60 Eurojust, Operational support to JITs, www.eurojust.europa.eu/(20.09.2017)

61 Financial identification form, http://ec.europa.eu/budget/contracts_grants/info_privacy statement contracts/financial_id (20.09.2017)

62 JIT Network, Practical steps for JIT evaluation, Council of The European Union, www.consilium.europa.eu/ (20.09.2017).

63 Europol, JITs Meetings 1th-12th, https://www.europol.europa.eu/activities-services/joint-investigation teams/(20.09.2017).

JOINT INVESTIGATIVE TEAMS – PRO AT CONTRA

Regarding the argumentation of "for" or "against" the establishment and operation of joint investigation teams, we will briefly look at one and the other reasons.

a) As an argument in favor of the formation and operation of the JIT, we primarily refer to the principle of immediacy and in this regard the direct cooperation of the interested states, their organs and international organizations. From the operational point of view, the *principle of mobility* is the most important because the JIT encompasses precisely effective communication, without excessive bureaucratic procedures and legal disturbances. Direct communication between states and their representatives excludes a long procedure of international legal assistance, which can sometimes disregard law and justice.

The arguments in favor of the JIT include the possibility of undertaking investigative actions in the countries participating in the JIT, without special requests for mutual legal assistance. This includes the factual ability of all team members to participate in the operational activities of the police such as searches of persons and objects, the collection of notifications and other actions within the team's competence. A significant argument "for" is the coordination and rapid exchange of data that can be materialized as potential evidence. In this respect, trust is established between representatives of the various services of the participating states of the JIT and other entities, which can, however, be crucial in the individual stages of the investigation.

The support and funding of international organizations such as Europol and Eurojust are also a positive side of the JIT. In this context, support from other EU bodies, third country authorities, non-governmental organizations and other organizations, is also important.

b) In terms of argumentation "against" the establishment and operation of the JIT, we can first of all mention the bureaucratic and long-standing procedure for the preparation of the contract on the establishment of the team. In this regard, the problem of overstated formalism is in the framework of the initiated procedure for the establishment and operation of the JIT, in particular the exchange of data and the taking of concrete measures and actions.

A particular problem is the dualism of investigations in individual criminal cases when different investigations are conducted by different states, their organs and international organizations. Of course, this affects the dissipation of forces and the spending of state resources, which in the end ultimately jeopardizes the effectiveness of the investigation and operation of the JIT.

One of the *contra* arguments is the problem of the lack of subordinate legislation, more precisely a special act that would somewhat envision the elements of the JIT and everything related to implementation in practice. This is the case, for example, in the practice of the Ministry of Interior, which does not yet have these mechanisms fully developed, but with the tendency of improvement in terms of international police cooperation with neighboring countries, regional countries and international organizations such as Europol and Interpol. The Convention on International Police Cooperation in SEE is a good example of an attempt to find a legal basis for concrete forms and forms of this cooperation.

We think that the arguments "for" the establishment and operation of the JIT prevail, because the joint work and cooperation guarantees an effective fight against the most serious forms of crime, especially organized crime and terrorism. It also implies rationalization of costs, disabling power and resource dispersion, concentration on work problems and elimination of potential dualism in investigations.

CONCLUSION

The fight against the most serious forms of crime, especially organized crime and terrorism, is now no longer possible with conventional criminal intelligence measures and actions, because crime has experienced an unprecedented expansion today. Enormous damage, great public upbringing and other harmful consequences affect common people, states and the international community as a whole, which is the main reason for a harmonized reaction on a wider scale.

In responding to all the challenges, risks and threats from the most serious forms of crime, the developed countries were the first responders and adopted new tools, mechanisms and procedures for the fight against crime and its most severe manifestations. In this sense, the well-known ***Palermo Convention*** Against Organized Crime was first adopted, which is a revolutionary document in this area, which envisages harmonization of the national legislations of the signatory states with its provisions, the establishment of specialized state bodies and the introduction of special investigative techniques and methods. Of the more important methods and techniques, a witness associate, a protected witness, a covert investigator, controlled deliveries, simulated jobs, rafter searches, and others that the states signatories have incorporated into national legislation and used to prove the most serious crimes are mentioned. According to the provisions of the ZKP, special probation actions are foreseen, such as: secret surveillance of communications, secret surveillance and recording, simulated jobs, computer search of data, searches, controlled deliveries and a hidden investigator.

Joint investigative teams are one of the new mechanisms for combating organized crime, terrorism and other extremely serious forms of crime. The JIT was first introduced by developed countries of the world, which first met with the problem of organized crime and difficulties in gathering evidence, prosecuting criminal offenses and sanctioning perpetrators. The problem was even more complicated in criminal cases with elements of foreign affairs, and especially in the absence of international judicial and police cooperation. ***EU*** countries were among the first to respond, through Europol and other specialized law enforcement agencies, to promote a number of specialized tools to combat organized crime and terrorism. Among them, JIT has a special place in international investigations, proving and prosecuting criminal offenses with elements of abroad. The instrument was put into practice in the framework of the European Convention on Provision of Mutual Assistance in Criminal Matters, or its Second Additional Protocol.

The advantages of JIT as the instruments of police and judicial cooperation, the increase in the effects (results) of criminal-police work and especially in complex international investigations are undoubted. JIT further provides opportunities for direct, immediate and rapid communication between interested countries and their specialized services. This is particularly noticeable in the practice of the work of the authorities of the member states of the EU, followed by Europol and Eurojust as the bearers of activities in the territory of the EU. Since the Republic of Serbia is a country that has outlined an application for admission to the EU, it is very important to use the experience of the EU in the establishment and operation of the JIT in the forthcoming period and, in cooperation with the authorities of the Union and neighboring countries will intensify the implementation of this mechanism. We believe that JIT would significantly contribute to the suppression of the most serious forms of crime, cross-border and organized crime and terrorism.

In the end, we think that the establishment and operation of the JIT in the coming period could be normatively and legally articulated by the novelties of the current RS Law on the RS or, according to the estimate, the *de lege ferenda* passed a special by-law to concretize the solution in the application of the JIT.

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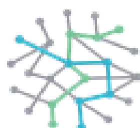

NARCOMAP

IMPROVING KNOWLEDGE ON NPS AND OPIATES TRAFFICKING IN EUROPE

PROHIBITION OF MITIGATION OF PENALTY – EXAMPLE OF DRUG TRAFFICKING[1][2]

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Abstract: The paper deals with the prohibition of mitigation of penalty stipulated by national criminal legislation for a set of offences as per Article 57, paragraph 2 of the Criminal Code of the Republic of Serbia. The introductory part of the paper focuses on the concept and significance of sentencing. Further, the paper analyzes mitigation of penalty and prohibition of mitigation of penalty for particular criminal offences. The author considers the reasons for which the legislator stipulated the prohibition of mitigation of penalty for particular criminal offences. Moreover, the author explains his criticism of this legal solution. In this connection, the paper analyzes more than 50 final judgments referring to the criminal offence of unlawful production and circulation of narcotics provided for in Article 246 of the Criminal Code.

Keywords: mitigation of penalty, drug trafficking, sentencing, penal policy.

INTRODUCTION

The literature on criminal law does not offer a generally accepted opinion on the justifiability and purpose of penalty. According to the utilitarian concept, the justifiability of penalty is its requisite and useful function which it performs for the society (crime prevention).[4] On the other hand, the concept of retributive justice holds that justness and proportion justify a penalty.[5] The retributive principle emphasizes that offenders should be punished solely for their culpable wrongdoing.[6] The retributive theories are based on two duties of citizens: on the primary duty of all citizens to restrain from any conducts that are wrongs in themselves

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1 NARCO-MAP; HOME/2015/ISFP/AG/TDFX/8742; Improving knowledge on NPS and opiates trafficking in Europe; Project developed with the financial support of the European Commission – Transnational initiatives to fight trafficking in drugs and firearms – DG Justice/DG Migrations and Home Affairs.

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3 radosav.risimovic@kpa.edu.rs.

4 Z. Stojanovic, Krivicno pravo – opsti deo, 2011, Beograd, p. 251.

5 G.V. Bradley, Retribution: The Central Aim of Punishment, Harvard Journal of Law and Public Policy, 1/2003, Boston, p. 22.

6 M.S. Moore, Placing Blame: A Theory of the Criminal Law, 1997, Oxford, p. 171.

(mala in se); and on the secondary duty of all citizens to consent to punishment if they violate their primary duty.[7] According to this perception, an offender should be punished because it is moral and just to be punished, even though the punishment itself will not bring about any benefit for the society. Eventually, according to mixed theories, the justifiability of punishment can be found both in the utilitarian and retributive principles.[8]

Sentencing is a criminal law institute which has undoubtedly great importance since proper sentencing is a prerequisite necessary for the achievement of the purpose of punishment. In other words, only proper sentencing may have an effect on an offender to refrain from committing criminal offences. The aim of punishing offenders is special prevention and resocialization of wrongdoers.[9] On the other hand, only appropriate sentencing may have an effect on potential offenders and deter them from violating the law. Consequently, the purpose of penalty is both special and general prevention i.e. its impact on offenders and potential wrongdoers. The perception of prevention as the purpose of punishment is accepted in the so-called relative theories prevailing in the theory of criminal law.[10] Therefore, just punishment must be neither excessive, nor insufficient. Lenient punishment will not be taken seriously by offenders and potential wrongdoers, while a strict sanction may be perceived as revenge. The punishment should be in proportion to the gravity of the offence.[11]

The theory of criminal law does not offer a single perception of the concept of sentencing. The standpoint advocating that the court should adjust punishment to the offender in each particular case is the standpoint of the individualization of punishment principle. Accordingly, an offender's personality traits are of great importance for the sentencing, although they are not in connection with the committed crime.[12] Some authors are of the opinion that the sentencing equals the individualization of punishment,

i.e. that the terms are synonyms.[13] This opinion can be accepted because there are no clear criteria that may discriminate the individualization of punishment and sentencing.[14]

Sentencing includes the type and the quantum of punishment.[15] Here, we shall answer the question who is in charge of sentencing. Indirectly, sentence is weighed up by the legislator since they prescribe types and ranges of sentences. However, since the ranges of sentences allow the courts to adjust punishment to the perpetrator and committed crime, it may be concluded that the court has a determinative role in sentencing. Yet, some authors are of the opinion that only sentencing by courts is relevant.[16] Hence, sentencing means to determine the type and quantum of punishment stipulated by the law for such crime (special minimum and maximum of penalty).

However, sentencing includes the mitigation of penalty: 1. imposing of penalties that are more lenient than those prescribed for such an offence, but within the range of general minimum for that type of penalty stipulated by the law; 2. imposing a more lenient penalty than

7 *Opus citatum*, p. 171.

8 W. Kaufman, Honor and Revenge: A Theory of Punishment, 2013, Lowell, p. 73.

9 F. Bacic, Krivicno pravo – opsti deo, 1995, Zagreb, pp. 372–373.

10 Z. Stojanovic, *Opus citatum*, p.252.

11 J. T. McHugh, Utilitarianism, Punishment and Ideal Proportionality in Penal Law: Punishment as an Intrinsic Evil, Journal of Bentham Studies, 1/2008, London, p. 8.

12 D. Jankovic, Odmeravanje kazne i individualizacija kazne u krivicnom zakonodavstvu, Anali Pravnog fakulteta, 2/2010, pp. 371–388.

13 V. Bajovic, Odmeravanje kazne i sporazum o priznanju krivicnog dela, Zurnal za kriminalistiku i pravo – NBP, 2/2015, Beograd, p. 179.

14 R. Risimovic, D. Kolaric, Redovno odmeravanje kazne, Teme – casopis za drustvene nauke, 1/2016, Nis, p. 3.

15 N. Srzentic, A. Stajic, Lj. Lazarevic, Krivicno pravo Jugoslavije, 1995, Beograd, p.307.

16 Z. Stojanovic, *Opus citatum*, p. 270.

the one prescribed for that type of crime as per Article 56 of the Criminal Code.[17] Therefore, Serbian national legislation recognizes mitigation of penalty per type and extent. According to the Article 56 of the Criminal Code: "The court may pronounce to a perpetrator of a criminal offence a penalty which is under statutory limits or a mitigated penalty, if: 1) mitigation of penalty is provided by law; 2) the law provides for remittance from punishment of the offender and the court decides otherwise; 3) the court finds that particularly extenuating circumstances exist and determines that the purpose of punishment may be achieved by a mitigated penalty." The disputed point is when extenuating circumstances can be deemed as particularly extenuating circumstances. As per one opinion, particularly extenuating circumstances differ from the "ordinary" ones in intensity since they are the circumstances qualifying an offence as less serious and which by their nature substantially reduce the significance of the committed wrongdoing and the grade of guilt, so that it may be concluded that the legally prescribed penalty in a concrete case is excessive.[18] Consequently, there are the legislator's (Article 56, paragraph 1, items 1 and 2 of the Criminal Code) and courts' mitigation of penalty (Article 56, paragraph 1, item 3 of the Criminal Code) although the court's decision on mitigation of penalty is final in both cases, especially in the case of the court's mitigation of penalty. The mitigation of penalty is always discretionary, i.e. it is the possibility that may be used by the court (there is no legal duty as regards the mitigation of penalty), which is of importance for the subject of this paper.

PROHIBITION OF MITIGATION OF PENALTY IN NATIONAL CRIMINAL LEGISLATION

The 2009 Modifications and Amendments Act to the Criminal Code prohibited the mitigation of penalty for particular criminal offences. Article 57, paragraph 2 of the Criminal Code stipulates that penalty cannot be mitigated for the following criminal offences: abduction (Article 134, paragraphs 2 and 3); rape (Article 178); sexual intercourse with a helpless person (Article 179); sexual intercourse with a child (Article 180); extortion (Article 214, paragraphs 2 and 3); unlawful production and circulation of narcotics (Article 246, paragraphs 1 and 3); illegal crossing of state border and human trafficking (Article 350, paragraphs 3 and 4) and human trafficking (Article 388). Furthermore, Article 57, paragraph 3 of the Criminal Code stipulates that penalty cannot be mitigated to the perpetrator who has been convicted of the same type of offence before. The legislator is of the opinion that "a repeat of the same type of offence is a sign of the perpetrator's propensity to recidivism, thus disqualifying him for mitigation of penalty".[19]

Prohibition of mitigation of penalty in the national theory and practice has been criticized by a number of arguments.[20] According to one opinion, numerous general institutes of the criminal law which are facultative grounds for mitigation of penalty are questioned in this way.[21] The grounds for mitigation of penalty in the national legislation include: exceeding the limits of self-defence (Article 19 of the Criminal Code) and necessity (Article 20 of the Crim-

17 Krivicni zakonik, (Sluzbeni glasnik RS, br. 85/2005 – ispr., 107/2005 – ispr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014).

18 J. Lazarevic, Zabrana ublazavanja kazne – da ili ne, Zbornik radova: Nova resenja u kaznenom zakonodavstvu Srbije i njihova prakticna primena, 2013, Beograd, p. 423.

19 Z. Kandic Popovic, Izmene u opstem delu KZ RS, Revija za kriminologiju i krivicno pravo, 3/2009, Beograd, p. 147.

20 J. Lazarevic, *Opus citatum*, p. 423.

21 N. Delic, Zabrana (iskljucenje) ublazavanja kazne u odredjenim slucajevima, Crimen, 2/2010, Beograd, p. 238.

inal Code); resistible force and threat (Article 21 of the Criminal Code); substantially diminished mental competence (Article 23 of the Criminal Code); avoidable mistake of law (Article 29 of the Criminal Code); attempt (Article 30 of the Criminal Code); aiding and abetting (Article 35 of the Criminal Code), etc. This perception may be accepted because the purpose of general institutes of the criminal law is their enforcement whenever legally prescribed conditions are fulfilled, regardless of the criminal offence the court is dealing with. For instance, prohibition of mitigation of penalty in practice means that the penalty imposed on a person abetting another person to commit a crime of unlawful production and circulation of narcotics, provided for in Article 246, paragraphs 1 and 3 of the Criminal Code, cannot be mitigated in spite of the Article 35 of the Criminal Code stipulating that an abettor should be punished by a penalty prescribed for such an offence or a mitigated penalty. Similarly, a perpetrator may commit this offence under the influence of resistible force or threat by a narco boss (Article 21 of the Criminal Code) or in the state of substantially diminished mental competence – drug addicts (Article 23 of the Criminal Code), both being general grounds for the mitigation of penalty. Yet, the penalty cannot be mitigated as per Article 57, paragraph 2 of the Criminal Code prescribing prohibition of mitigation of penalty for particular offences and the court will impose the penalty of three years' imprisonment on the perpetrator. It should be emphasized that this is not just the question of a technical argument against the prohibition of mitigation of penalty for particular offences due to the derogation of some general institutes of the criminal law. Specifically, the general grounds of mitigation of penalty exist in criminal legislation as *general* grounds because each criminal offence, regardless of its seriousness, may be committed under the circumstances justifying the mitigation of penalty, which will be discussed below.

Some authors do not recognize clear criteria according to which certain crimes are excluded from the mitigation of penalty.[22] The author of this opinion points out that the mitigation of penalty is proscribed for a variety of crimes; therefore it is not clear why the legislator excluded the mitigation of penalty for these particular offences, and not for some more serious ones. This standpoint may be accepted since the criminal offences for which the mitigation of penalty is excluded, include illegal crossing of state border and human trafficking provided for in Article 350, paragraph 3 stipulating that the perpetrator shall be punished by imprisonment from one to ten years. Oppositely, the prohibition of mitigation of penalty is not stipulated for murder (Article 113 of the Criminal Code) although whoever commits this crime shall be punished by imprisonment from five to fifteen years. Does our legislator assume that the offences for which the mitigation of penalty is prohibited are more serious than murder? We do believe that the legislator's reasoning is not founded on such logic, but we must point out that it is not clear what criterion is used for the classification of crimes into a separate category prohibiting the mitigation of penalty.

The legislator's standpoint might be the presumption that the mentioned offences cannot be committed in the circumstances justifying the mitigation of penalty. Namely, in court practice sentences imposed on offenders are mostly mitigated on the basis of Article 56, paragraph 3 of the Criminal Code[23] and only if the court establishes that there are particularly extenuating circumstances and under the condition that the purpose of punishment is achieved by the mitigated penalty. Our opinion is that each criminal offence may be committed under particularly extenuating circumstances as per Article 56, paragraph 3 of the Criminal Code. For instance, an underage person may be engaged in sexual intercourse with a child (Article 180

22 Dj. Djordjevic, Nova resenja o ublazavanju kazne u KZ Srbije, Revija za kriminologiju i krivicno pravo, 3/2010, Beograd, p. 170.

23 J. Lazarevic, *Opus citatum*, p. 423; A. Garacic, Zakonska i sudska politika kaznjavanja zupanijskih sudova u Republici Hrvatskoj za kaznena djela silovanja i zlouporabe droga, Hrvatski ljetopis za kazneno pravo i praksu, 2/2004, Zagreb, p. 505.

of the Criminal Code). If the victim is the offender's girlfriend only a couple of years younger than him, then the mitigation of penalty is justified. Accordingly, it is not our intention to challenge the seriousness of offences for which the legislator prescribed the prohibition of mitigation of penalty; we want to point out that all criminal offences may be committed under the circumstances justifying the mitigation of penalty.

While prescribing prohibition of mitigation of penalty, the legislator had probably in mind the fact that courts frequently mitigated penalty for those offences. Therefore, it may be concluded that the legislator and courts have different views on penal policy for this category of criminal offences. When prescribing penalties for criminal offences, the legislator estimates what degree of penal repression is required to achieve the purpose of punishment.[24] On the other hand, courts in each case assess what penalty will achieve the purpose of punishment. The assessments of the legislator and courts greatly differ with regard to this category of offences. Although it cannot be denied that courts often mitigated penalties to the perpetrators of these offences, it must be underlined that these are not the offences for which penalties were mitigated the most frequently. It is reasonable that penalty is not mitigated most frequently for this category of offences since they are serious crimes.[25] In other words, penalty is most commonly mitigated for less serious offences.

When the frequency of the commission of criminal offences is concerned, it must be pointed out that according to the court practice, the offences for which the prohibition of mitigation of penalty is prescribed are not most frequently committed offences, with the exception of the offence of unlawful production and circulation of narcotics (Article 246 of the Criminal Code).[26] However, the frequency of the commission of criminal offences should not be of any importance when prescribing and imposing sentences, because it would lead to stricter punishments for offences committed by other persons.[27]

A peculiar issue is the prohibition of mitigation of penalty for basic (paragraph 1) and more serious form of the offence of unlawful production and circulation of narcotics as per paragraph 3 (the offence committed by several persons acting as a group), while on the other hand, the mitigation of penalty is not prohibited for the most serious form of this crime specified in paragraph 4 (the offence committed by an organized criminal group).[28]

It is important to underline that the legislator's standpoint is that unlawful production and circulation of narcotics should be severely punished and it is reflected in the sentences stipulated for this criminal offence. Article 246, paragraph 1 specifies that the penalty for a basic form of this offence is three to twelve years of imprisonment. By comparison, Article 29, paragraph 1 of the German Narcotics Act stipulates the sentence of up to five years of imprisonment or a fine for a basic form of this offence. The German legislation does not specify a minimum penalty for this offence; thus it is equal to the general minimum for imprisonment sentence. Since the Serbian legislation prescribes a specified minimum of three years of imprisonment for this offence, it is obvious that our legislator's standpoint is that penal policy should be strict. This is more evident if we take into account that the specified maximum for this offence in Germany is five years of imprisonment, while in Serbia it is twelve years. Therefore, the difference between specified imprisonment minimum sentence in Serbia and specified maximum in Germany is only two years. Thus, the minimum penalty in Serbia is

24 A. Garacic, Ublazavanje kazne po sestoj novili kaznenog zakonika, Hrvatski ljetopis za kazneno pravo i praksu, 2/2006, Zagreb, p. 451.
25 J. Ciric, Dj. Djordjevic, R. Sepi, Kaznena politika sudova u Srbiji, 2006, Beograd, pp. 50–52.
26 Dj. Djordjevic, *Opus citatum*, p. 170.
27 J. Ciric, Neujednacenost kaznene politike sudova, Zbornik radova: Kaznena politika kao instrument drzavne politike na kriminalitet, 2014, Banja Luka, p. 152.
28 Z. Stojanovic, D. Kolaric, Nova resenja u krivicnom zakoniku Republike Srbije, Bezbednost, 3/2012, Beograd, p. 17.

almost a maximum penalty in Germany and it may become so soon if the legislator in our country keeps increasing specified sentence minimum for the offence of unlawful production and circulation of narcotics (Article 246, paragraph 1 of the Criminal Code). On the other hand, courts consider the penal policy the legislator wants to impose too strict, which will be discussed below.

One of the reasons why the legislator prohibited the mitigation of penalty for this category of offences is the public opinion. It is of a great advantage and undoubtedly of general interest if the public is informed about criminal procedures and comments punishments since penal policy is a very important instrument for tackling crime. However, when assessing the public attitudes toward penal policy of courts in general, as well as in particular cases, the following circumstances should be considered.[29] Firstly, the public attitude toward courts' penal policy is a lay attitude primarily based on emotions. The public is not acquainted with legal norms and their meaning. Secondly, the public establishes its attitudes toward penal policy issues on the information obtained from media which are frequently insufficient and not objective.[30] Another specific problem is that the public may get acquainted with the details of a particular case that were known at the time of the commission of the crime although the actualities in the given case will only be established in the course of procedure. It is clear that in such cases the public is disturbed by imposed sentences considering them to be too lenient because they do not possess sufficient information about the incident. Finally, the public attitudes are easy to be manipulated if the opinion of a limited number of individuals is deemed a general attitude and if an individual or an institution assumes a right to voice the general public opinion or if such opinion is based on unreliable facts.[31] Furthermore, the public opinion on penal policy is frequently formed on the basis of particular cases from the court practice sensationalized by tabloids and media. In order to increase the circulation of newspapers or the TV ratings, media purposefully release information that is far from being truthful. Hence, a conclusion on penal policy should not be based on particular cases, especially if the relevant information is insufficient and inaccurate. Moreover, the public does not comprehend that there is no perfect legal norms enabling all the cases to be solved ideally.

PROHIBITION OF MITIGATION OF PENALTY – EXAMPLE OF DRUG TRAFFICKING

As aforementioned, the legislator and courts have differentiated standpoints with regard to sentencing for a particular category of criminal offences including unlawful production and circulation of narcotics (Article 246 of the Criminal Code). The legislator's viewpoint is that penalties should be severer (stipulated specified minimum is three years of imprisonment; prescribed specified maximum is twelve years of imprisonment and prohibition of mitigation of penalty for this offence). On the other hand, according to the analyzed judgments, courts are apparently of the opinion that such a prescribed range of penalty for this offence is too strict. Our study included 46 judgments of the Higher Court of Cacak referring to the basic form of the criminal offence of unlawful production and circulation of narcotics (Article 246 of the Criminal Code) convicting 50 defendants.[32]

29 Lj. Lazarevic, Jugoslovenska kriminalna politika u oblasti represije, Jugoslovenska revija za kriminologiju i krivicno pravo, 1- 2/1986, Beograd, p. 55.

30 J. Kiurski, Zalba javnog tuzioca i kaznena politika, Zbornik radova: Kaznena politika kao instrument drzavne politike na kriminalitet, 2014, Banja Luka, p. 132.

31 Lj. Lazarevic, *Opus citatum*, p. 56.

32 K. 1/13; K. 2/16; K. 2/13; K. 3/13; K. 3/15; K. 3/14; K. 5/13; K. 5/15; K. 6/15; K. 13/16; K. 13/12; K. 14/13; K. 15/13; K.20/14; K. 21/12; K. 21/14; K. 23/12; K. 24/13; K. 26/13; K. 26/15; K. 30/15; K. 31/14;

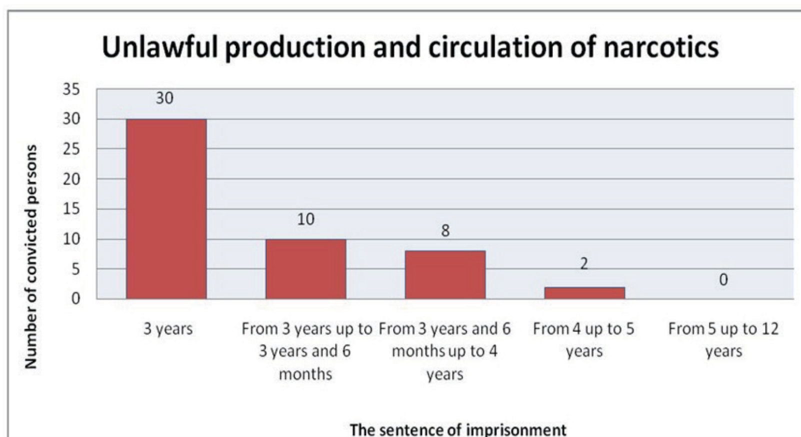

Chart 1

As shown in Chart 1 courts have imposed a specified imprisonment minimum (three years) for the offence of unlawful production and circulation of narcotics (Article 246 of the Criminal Code) in 60% of analyzed convictions. 20% of defendants have been sentenced to three years up to three years and six months of imprisonment; 16% of the accused have been sentenced to three years and six months up to four years of imprisonment; 4% of defendants have been sentenced to four up to five years of imprisonment. Surprisingly, none of the defendants from the analyzed sample has been sentenced to five or more years of imprisonment although the specified maximum for this offence is twelve years of imprisonment.

What do these facts reveal? Apparently, courts consider that the penal policy imposed by the legislator prescribing a specified minimum of three years of imprisonment for this offence is too strict. Before analyzing this subject, we shall take into consideration another issue: in our opinion, adequate penal policy is a more precise term since penal policy can neither be strict nor lenient, but either adequate or inadequate, as specified in the theory of criminal law.[33] Yet, the terms strict and lenient penal policy has been in use for a considerable time both in theory and practice and therefore we shall use it in this paper.

How do courts react to a high specified minimum (three years of imprisonment) for the offence of unlawful production and circulation of narcotics (Article 246 of the Criminal Code)? As we have already mentioned, courts have imposed a specified minimum of imprisonment in 60% of cases. Thus courts express their disagreement with the legislator with regard to the lowest statutory imprisonment sentence for this offence. It is evident that most courts would impose lighter sentences than those stipulated by the legislator, but they are not allowed to since the mitigation of penalty for this offence is prohibited. The reasons adduced for judgment from the analyzed samples show that courts unduly emphasize that the mitigation of penalty is prohibited: "The court has sentenced the defendants to three years of imprisonment compliant with a specified minimum set forth by law for this criminal offence which could not be mitigated under statutory limits as per Article 57, paragraph 2 of

K. 31/15; K. 32/14; K. 34/15; K. 35/11; K. 36/14; K. 39/13; K. 41/12; K. 45/14; K. 45/13; K. 46/14; K. 48/13; K. 48/14; K. 49/14; K. 50/14; K. 50/13; K. 52/12; K. 53/14; K. 53/12; K. 55/13; K. 55/14; K. 57/12; K. 57/14; K. 58/12; K. 60/12.

33 Dj. Djordjevic, Kaznena politika sudova – politika izricanja krivicnih sankcija u Republici Srbiji, Bilten sudske prakse, 3/2009, Beograd, p. 68.

the Criminal Code".[34] As if the court would have reduced sentence if there were not for the prohibition stipulated by the Criminal Code.

Here we shall try to answer the question who is right – the legislator or courts. In our opinion there are several reasons indicating that sentencing provided by law is too severe, i.e. that the specified minimum of three years of imprisonment is too strict since thus pronounced sentences combined with the prohibition of mitigation of penalty result in exceedingly severe punishments pronounced to perpetrators of criminal offences stipulated by Article 246, paragraph 1. First of all, a specified minimum of three years of imprisonment is set too high. Thus the range of penalties imposed by courts in concrete cases is reduced, preventing courts from creating their own penal policy. We are of the opinion that courts should have a decisive role in creating penal policy because they are faced with actual cases and acquainted with relevant circumstances. On the other hand, while stipulating penalties for particular cases, the legislator only takes into account their seriousness in abstract sense. The prohibition of mitigation of penalty presents another problem. As we have already mentioned, each criminal offence (including the most serious ones) may be committed under the circumstances justifying the mitigation of penalty, which will be discussed below.

Firstly, it is our opinion that the mitigation of penalty is justified in cases in which courts establish the presence of more extenuating circumstances with the absence of aggravating ones. For instance, the court established as extenuating circumstances that the defendant had not been convicted before; he/she was a young person; he/she was a student of the third year of the Faculty of Technology. On the other hand, the court did not establish the existence of any aggravating circumstances.[35] In this case, the court failed to establish another extenuating circumstance with regard to the seized drug (the amount of the sold drug – 2.67 g and the type of drug – marihuana). In spite of the mentioned extenuating circumstances, which according to our opinion have all the characteristics of particularly extenuating circumstances defined in Article 56, paragraph 3 of the Criminal Code, the defendant was sentenced to three years of imprisonment because of the prohibition of mitigation ofpenalty.

In one case the defendant brokered in selling 2 g of cannabis for 1000 dinars at the request of another defendant, who was convicted of illegal possession of narcotic drugs according to Article 246a. While considering the sentence in that case, the court took into account the extenuating circumstances, such as: his age (he was 21 at the time), occupation (he was a student), defendant's confession, his proper conduct in court, the fact that he had not been convicted before and that he was unemployed. On the other hand, the court established that "there were no aggravating circumstances with regard to the quantity ofnarcotics".[36] Accordingly, the court established that the quantity of drug was neither aggravating nor extenuating circumstance in that case. Our opinion is that the court should have taken into account both the quantity of drug (2 g) and the type (cannabis) as extenuating circumstances. In support of our viewpoint, we would like to point out that courts in particular cases take into account both the quantity (17 900 g of cannabis)[37] and the type of drug (heroin)[38] as aggravating circumstances. Therefore, the mitigation of penalty in this case is quite justifiable because of a number of extenuating circumstances which have the character of particularly extenuating circumstances as per Article 56, paragraph 3 of the Criminal Code and the absence of aggravating circumstances. Even so, the defendant was sentenced to three years of imprisonment because of the prohibition of mitigation of penalty. What quantity of drug should be con-

34 The ruling of the Higher Court of Cacak K. 50/13 of 11 September 2014.
35 The ruling of the Higher Court of Cacak K. 48/13 of 9 March 2015.
36 The ruling of the Higher Court of Cacak K. 50/13 of 9 November 2014.
37 The ruling of the Higher Court of Cacak K. 6/15 of 24 December 2015; likewise: The ruling of the Higher Court of Cacak K. 55/14 of 27 February 2015 (14900 g of cannabis).
38 The ruling of the Higher Court of Belgrade K. 18/12 of 20 July 2012.

sidered as aggravating or extenuating circumstance is a concrete question to be answered by courts in each case. For instance, on one occasion the Higher Court of Belgrade ruled that the quantity o f 11.62 g of heroin "is such that it cannot be considered as aggravating circumstance".[39]

Another interesting case is when a defendant was sentenced to three years of imprisonment because of the sale of 0.2 g of cannabis. The court did not establish the existence of aggravating circumstances that incriminated the defendant in that case. The defendant's poor health and little quantity of drug he had sold were taken into account as extenuating circumstances. The court did not consider as aggravating circumstance the fact that the defendant was being prosecuted for two drug-related criminal offences because the trials were not over at the time. It is unclear why the court did not take into account fact that defendant does not have criminal record as an extenuating circumstance. Hypothetically, the defendant could be sentenced to three years of imprisonment because of the sale of little amount of drug. Consequently, he could be sentenced to nine years of imprisonment for the sale of just a few grams of cannabis if convicted in three separate criminal procedures. How long would the defendant serve his sentence in this hypothetical case is an issue we shall not deal with in this paper.

In all aforementioned cases the accused had not been previously convicted. Our sample of 50 persons convicted of the criminal offence of unlawful production and circulation of narcotics (Article 246, paragraph 1 of the Criminal Code) included 23 offenders, i.e. 46% who had not been convicted before.

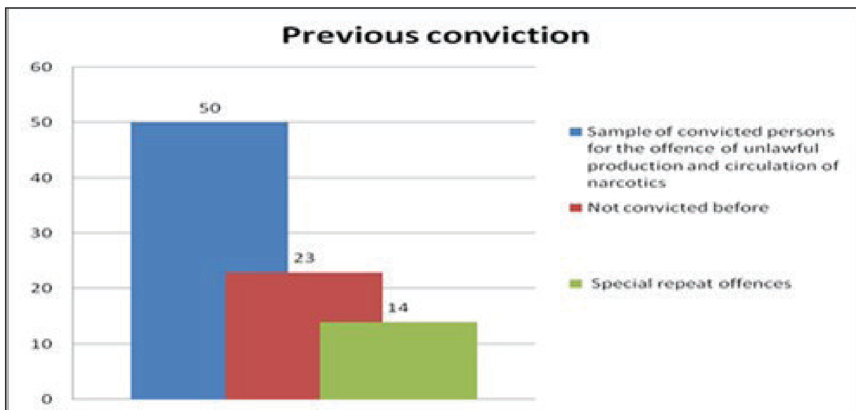

Chart 2

On the other hand, 28%, i.e. 14 out of 27 previously convicted persons were convicted for drug- related offences (special repeat offence) in the past. We believe that it is important to have the institute of mitigation of penalty for the offenders who are convicted of this crime for the first time, but only if other stipulations specified for mitigation of penalty by the Criminal Code are fulfilled. This is important since the number of persons who have not been convicted of this offence before is significant (46% out of the total number of convicted offenders). If the legislator's intent was to punish multiple repeat offenders with long-term imprisonment sentences by prohibiting penalty mitigation, then the purpose of the prohibition is of no effect. As our study of the court practice has shown, a lot of convicts are offenders who have not previously been convicted. This fact questions the prohibition of mitigation of penalty.

39 The ruling of the Higher Court of Belgrade K. 150/10 of 14 September 2012.

In this connection, it must be pointed out that a high specified minimum for this offence (three years of imprisonment) along with the prohibition of mitigation of penalty has another negative effect. It is reflected in the fact that in this way the prescribed range of the sentence (from 3 to 12 years) is in fact reduced, leading to the imposition of illogical and unjust sentences. Namely, courts impose sentences of three years of imprisonment in most cases although in their opinion the convicts deserve more lenient punishment. On the other hand, multiple repeat offenders or perpetrators who sell large quantities of drugs are punished by sentences that are barely above statutory specified minimum.

Therefore, all sentences included in our study range from three to five years although the statutory range for this offence is from three to twelve years of imprisonment. An example illustrating this standpoint is a multiple repeat offender convicted of three offences, two of them being drug-related (Article 246, paragraphs 1 and 3 of the Criminal Code). He was sentenced to 3 years and 3 months of imprisonment for selling 5.62 g of heroin.[40] The court took into account his previous conviction as aggravating circumstance while his personal characteristics (a young family man) and proper conduct in court were regarded as extenuating circumstances. A question arises whether it is reasonable and fair to sentence a multiple repeat offender who sells heroin to just a few months of imprisonment more than the aforementioned offender who mediated in the sale of 2 g of cannabis and who had never been convicted before. It is not reasonable and fair. Courts are aware of this fact but the existing legal solution prohibiting penalty mitigation forces them to impose sentences of three years of imprisonment on the defendants for selling just a few grams of cannabis.

Apart from previously not convicted persons, there is another category of perpetrators of the offence of unlawful production and circulation of narcotics (Article 246, paragraph 1 of the Criminal Code) for whom the mitigation of penalty would be justifiable (including all the conditions provided for by the Criminal Code). They are addicted to drugs. Out of 50 convicted persons from our study, 13 (26%) are addicted to drugs (Chart 3).

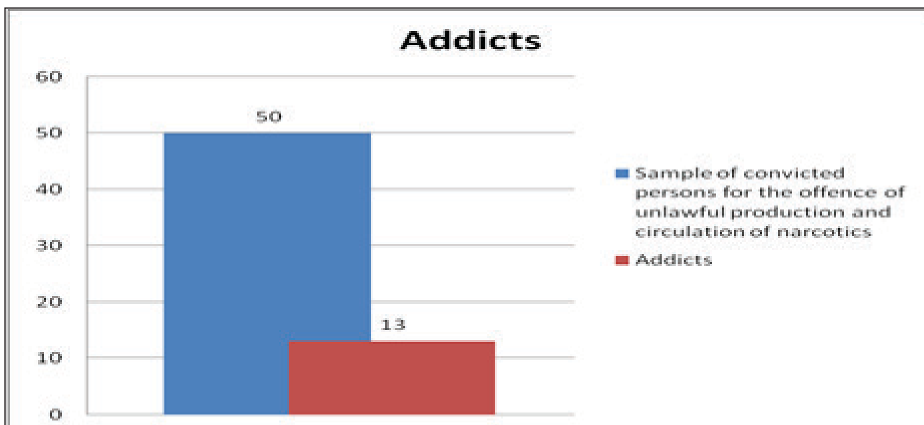

Chart 3

These are persons for whom experts have determined that they are addicted to drugs, i.e. that they have committed an offence in a state of diminished mental competence: "the findings and opinions of experts established that the accused has diminished intellectual capacity due to anxiety, that he respects authority and obeys rules, he is responsible and hard-working,

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40 The ruling of the Higher Court of Cacak K. 3/14 of 14 May 2014.

he has adopted moral principles, but is of uncertain temper, so he started abusing psychoactive drugs very early. In the past 6 months before he committed the offence, he smoked 5-6 joints every day. The abuse of alcohol and cannabis is a lasting habit, difficult to abstain from. Hence, we recommend that the defendant should be treated for drug abuse ambulatory".[41] In this case, the court did not establish the existence of aggravating circumstances. On the other hand, the court took into account the following extenuating circumstances: the defendant had not been previously convicted; he was unemployed; he did not possess any property; he was very young; the type and quantity of drug as well as the fact that at the time of the commission of the offence the defendant was an addict. We are of the opinion that the mentioned circumstances are significant as particularly extenuating circumstances (Article 56, paragraph 3 of the Criminal Code) and may be the ground for the mitigation of penalty. Additionally, when considering punishments for defendants who are addicts, the emphasis should be placed on the prevention (treatment) and not repression. "Addiction is a set of psychological disorders, changes in behaviour, existence of a significant number of corporeal and neurological disorders resulting from long-lasting and uncontrollable abuse of narcotics. The basic disorder is irrepressible need for the substance abuse either for feeling its effects or avoiding relapse in addiction crisis."[42] However, since the mitigation of penalty is prohibited, the court sentenced the defendant to three years of imprisonment for keeping with the intention of selling 40 g of cannabis.

In order to show to what extent the prohibition of mitigation of penalty for the offence defined in Article 246, paragraph 1 of the Criminal Code influences the sentencing by courts, we shall look into a case from 2006 on which the provisions stipulating mitigation of penalty were allowed. The perpetrator was sentenced to 6 months of imprisonment for selling 1 g of heroin for 1500 dinars. While sentencing, the court took into account "the fact that the defendant is a young newly married man who became the father of an underage child and is prepared to undergo treatment for substance abuse, as well as to engage in social life since he has found a job for the first time. The fact that he was previously convicted for a drug-related offence was taken into account as aggravating circumstance. Bearing in mind the time passed from the committed offence and his last conviction (three years), as well as his completely changed personal and family life conditions as a sign of his different attitude toward social values, the court finds that extenuating circumstances on the part of the defendant are particularly extenuating circumstances and therefore suggests the mitigation of penalty".[43] If the 2009 provisions prohibiting mitigation of penalty had been applied on this case, the defendant would have been sentenced to three years of imprisonment despite the mentioned particularly extenuating circumstances. This case brings into question whether mitigation of penalty is possible if the court establishes existence of aggravating circumstances. According to the prevailing standpoint in our criminal law theory, existence of aggravating circumstances does not exclude the possibility for the mitigation of penalty.[44] It is pointed out that the mitigation of penalty in that case "depends on the nature of aggravating circumstances and their relation to particularly extenuating circumstances, especially to the requisite that the purpose of punishment may be achieved by the mitigation of penalty".[45] However, pursuant to Article 57, paragraph 3 of the Criminal Code, "a penalty imposed on an offender who has previously been convicted of same kind/type of offence may not be mitigated".

41 The ruling of the Higher Court of Cacak K. 21/12 of 1 April 2013.

42 Z. Ciric, Sudsko-psihijatrijski aspect mentalnih poremecaja nastalih zloupotrebom droga, Zbornik radova Pravnog fakulteta u Nisu, 68/2014, Nis, pp. 517–518.

43 The ruling of the Higher Court of Belgrade K. 741/12 of 28 November 2012.

44 J. Lazarevic, *Opus citatum*, p. 423; N. Delic, *Opus citatum*, p. 240.

45 Z. Stojanovic, *Opus citatum*, p. 278.

CONCLUSION

Prevention of drug-related offences is of the utmost importance when our health is considered. Therefore, deterrence from such criminal offences should be achieved not only by repression, but by prevention as well. Prevention has an impact on the demand for narcotics, while repression decreases the supply.

There is no systematic approach with regard to preventive measures in our country, generally due to a lack of finances. However, it is possible to take certain preventive measures without significant financial resources. Undoubtedly, drug addiction is widespread among youngsters. Reasons for drug abuse are various: "bad marks at school, difficulties in communication with schoolmates, peer pressure to try drugs, curiosity, myth about hard and soft drugs and that occasional consumption of narcotics cannot cause addiction, family problems, etc.".[46] Education, information and other preventive measures may give remarkable results in the combat against the mentioned risk factors although they do not involve significant financial resources.

Reduced demand for narcotics is not sufficient. It is necessary to reduce supply as well. Enforcement of repressive measures implies that perpetrators who are supplying the market with illicit drugs are to be punished. It should be borne in mind that reduced offer of narcotics is possible to achieve only if major drug dealers are subject to punishment. All drug dealers may be categorized in four groups: 1. bosses; 2. chief operators; 3. assistant managers; 4. field workers[47]. There is a similar classification of drug dealers in our criminal law theory.[48] Almost all perpetrators included in the sample of our study (50) are field workers (minor drug dealers). Therefore, there is no one sentenced to imprisonment of five or more years (Chart 4).

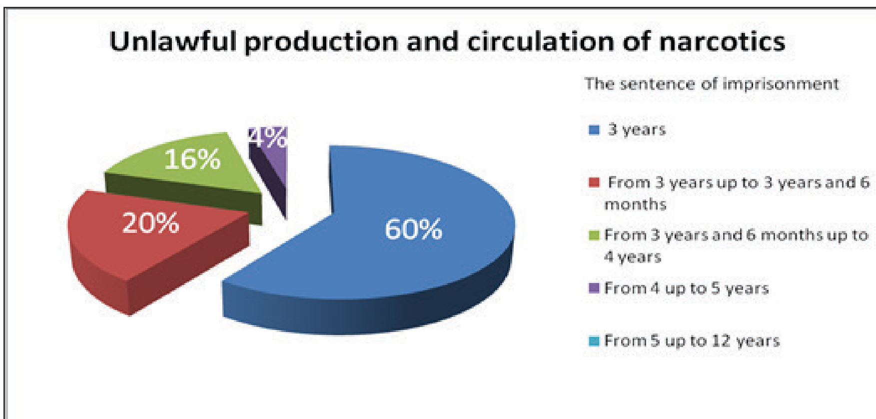

Chart 4

46 S. Vukovic, Prevencija zloupotrebe opojnih droga kroz strategiju smanjivanja potraznje za opojnim drogama, Zbornik radova: Suprotstavljanje savremenom organizovanom kriminalu i terorizmu, 2011, Beograd, p. 46.

47 M. Natarajan, Understanding the Structure of a Drug Trafficking Organization: A Conversational Analysis, Crime Prevention Studies, 11/2000, New York, pp. 291–292.

48 D. L. Nikolic, Kvalifikovani oblici neovlascene proizvodnje i stavljanje u promet opojne droge, Revija za kriminologiju i krivicno pravo, 1/2011, Beograd, p. 110.

Large amounts of cannabis, 39 634 g[49], 17 900 g[50], 14 900 g[51], were seized from a few perpetrators who were only couriers in charge of drug transport. As far as heroin and cocaine dealers from our study are concerned, more than 30 g were confiscated in only four cases, 74 g of cocaine[52], 56 g of cocaine[53], 124 g of heroin[54] and 98 g of heroin[55]. We do not want to argue the importance of punishing each perpetrator involved in selling even the smallest amounts of drugs, but the fact is that the offer of illicit drugs will not be reduced in this way. Accordingly, whether courts weigh up severe, lenient or adequate punishments should be assessed by taking into account not only the stipulated and imposed sentences, but "the character, structure and gravity of the crime in question".[56] This viewpoint resulting from our research is acceptable.

The paper explains why we oppose the prohibition of mitigation of penalty for particular criminal offences. One of the reasons is that mitigation of penalty is only one option available to courts in sentencing. Prohibition of mitigation of penalty prevents courts from mitigating penalty under special minimum in particular cases when particularly extenuating circumstances justify such punishment. If courts mitigated penalty too often, the solution should not be the prohibition of mitigation of penalty but "insistence on its proper and consistent enforcement."[57] In this connection, it is necessary to stipulate lower special minimum for the offence of unlawful production and circulation of narcotics (Article 246, paragraph 1 of the Criminal Code) which is now three years of imprisonment. If the national criminal legislation again allows for the mitigation of penalty without prescribing lower special minimum for this offence, courts would mitigate penalty more frequently than it is justifiable, thus modifying too severe penal policy of legislators, which is not a good approach either. To put it simply, courts will declaratively give significance to extenuating circumstances that are significant for sentencing (Article 54, paragraph 1, CC), particularly extenuating circumstances in terms of mitigation of penalty (Article 56, Paragraph 3, CC). For instance, in one case the court took into account the defendant's youth, the time passed from the commission of the offence and his personal and family situation as particularly extenuating circumstances (Article 56, paragraph 3, CC) for mitigation of penalty (he was sentenced to one year of imprisonment for selling 0.45 g of heroin).[58] It is clear that in this case we can talk about extenuating circumstances, but not about particularly extenuating circumstance. The issue in this case is why the time passed from the commission of the offence was taken into account as relevant circumstance since it is most frequently the result of the inefficiency of our courts.[59]

Therefore, the solution is to stipulate special minimum for the offence provided for in Article 246, paragraph 1 at a lower level than the existing one and to mitigate penalty only in exceptional cases when the court establishes the existence of particularly extenuating circumstances and determines that the purpose of punishment may be achieved by a mitigated penalty (Article 56, paragraph 3, CC). Thus the penal policy of the legislator would comply with the courts' policy. Additionally, in this way penal policy would be in accordance with the gravity of the committed offences.

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49 The ruling of the Higher Court of Cacak K. 5/15 of 30 April 2015.
50 The ruling of the Higher Court of Cacak K. 6/15 of 24 December 2015.
51 The ruling of the Higher Court of Cacak K. 55/14 of 27 February 2015.
52 The ruling of the Higher Court of Cacak K. 5/13 of 11 March 2012.
53The ruling of the Higher Court of Cacak K. 60/12 of 19 February 2013.
54 The ruling of the Higher Court of Cacak K. 13/12 of 24 December 2012.
55 The ruling of the Higher Court of Cacak K. 57/12 of 12 March 2012.
56 Z. Stojanovic, Kaznena politika u Srbiji: sukob zakonodavca i sudske prakse, Zbornik radova: Kaznena reakcija u Srbiji, 2012, Beograd, p. 2.
57 Dj. Djordjevic, *Opus citatum*, p. 172.
58 The ruling of the Higher Court of Belgrade K. 257/10 of 8 June 2012.
59 J. Kiurski, *Opus citatum*, p. 134.

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DEFENCE RIGHTS IN EU CRIMINAL LAW: RECENT DEVELOPMENTS

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Abstract: The European Commission proposed a Directive on the right to access to a lawyer and communication upon arrest in order to bring the EU Law more in line with the jurisprudence of the European Court of Human Rights. This will further improve the defence rights of the suspects. The initial draft did not contain the procedural rights for *de facto* suspects, who often were questioned by the police in the Member States simply as "witnesses" in order to avoid the procedural guarantees established by Article 6 of the ECHR and respective national laws. The compromise text after EP intervention recognized and rectified this anomaly, so now all suspects have the right to a lawyer. This reflects the judgment of the Strasbourg Court in *Brusco v France* which stated that all persons have the right to enjoy the procedural guarantees under Article 6 of the ECHR. Also, persons subject to EAW have access to a lawyer in both issuing and executing Member State.

Furthermore, the role of the defence lawyers is precisely defined: the accused has to be offered the whole range of services, to discuss the case, organize the defence, to collect evidence and prepare for questioning, to meet in private, etc. Still, some shortcomings remained, like the inevitable fact that these rights will be practically useless for persons who do not have resources to hire an attorney. Namely, the right to legal aid is not guaranteed effectively in all EU Member States. Also, other practical problems include the fact that often lawyers are not adequately paid in such proceedings, and often have little or no experience in criminal law. This particular article will have an aim to give an overview of these new developments, identify the possible problems in the exercise of the rights and offer possible solutions to overcome such shortcomings.

Keywords: defence rights, fair trial, courts

INTRODUCTION

Article 82 of TFEU confers to the European Union a functional competence to adopt legislation regarding the rights of persons in criminal proceedings. In 2009, the Council of EU adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings. The Roadmap called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communicate with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme — *An open and secure Europe serving and*

protecting citizens.[1] So far, the Directive on the rights to interpretation and translation, the Directive on the right to information, and the Directive on the access to lawyer have been adopted by the Council and the EP. Also the European Commission produced a Green Paper on the application of EU criminal justice legislation in the field of detention, and prepared proposals for directives: 1) on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings,[2] 2) on procedural safeguards for children suspected or accused in criminal proceedings,[3] and 3) on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.[4] Also, the European Commission published a Communication titled "Making Progress on the European Union Agenda on Procedural Safeguards for Suspects or Accused Persons - Strengthening the Foundation of the European Area of Criminal Justice",[5] and Recommendations on 1) procedural safeguards for vulnerable persons suspected or accused in criminal proceedings,[6] and 2) the right to legal aid for suspects or accused persons in criminal proceedings.[7] The focus of this particular article will be to give an overview and critical assessment of the Directive on the right to access to a lawyer. The aim of this Directive is to establish minimum standards among Member States in order to build on the principle of mutual recognition of judgments, judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.[8]

THE IMPORTANCE OF THE NEW DIRECTIVE

The Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty[9] was adopted by the EP and the Council on 22 October 2013. The Member States had an obligation to take implementing measures by 27 November 2016. The adoption of this Directive *inter alia* was a result of the long periods of resistance to implementation of the ECHR *Salduz* case law and its disrespect by the European states, since it was necessary to ensure enforcement of defence rights in pre-trial proceedings,[10] during the first questioning by the police, even in the so-called informal stages of the police investigation.

The new Directive recognizes the rights and principles enshrined in the Charter of Fundamental Rights of the EU, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and

1 OJ C 115, 4.5.2010.
2 COM/2013/0821 final - 2013/0407 (COD).
3 COM/2013/0822 final - 2013/0408 (COD).
4 COM/2013/0824 final - 2013/0409 (COD).
5 COM/2013/0820 final.
6** Official Journal of the European Union **C 378/8, 24.12.2013.
7 Ibid.
8 Janning, P., *The EU Directive on the Right to Access to Lawyer: A Guide for Practitioners*, Irish Council for Civil Liberties, available at: http://eujusticia.net/images/uploads/pdf/Practitioners_Guide.pdf (15.03.2017), p.5.
9 *Official Journal of the European Union*, L 294/8, 6.11.2013.
10 Đurđević, Z., *The Directive on the Right of Access to a Lawyer in Criminal Proceedings: filling a human rights gap in the European Union Legal Order,* p.21, https://www.pravo.unizg.hr/download/repository/1_-_The_Directive _on_the_Right _of_Access _to_a_ Lawyer_ in_Criminal_Proceedings_filling_a_ human_rights_gap_in_the_European_Union_legal_order.pdf.

the rights of the defence.[11] Moreover, Member States should ensure that these rights "…*are implemented consistently with those of the ECHR and as developed by case-law of the European Court of Human Rights*."[12]

It should be noted that the Directive sets minimum rights that should be available to suspected, accused or detained persons in the EU Member States, but the latter can provide greater array of rights under national law. The level of protection in individual cases should never fall below the standards set in the EU Charter of Fundamental Rights and the European Convention on Human Rights, as interpreted by the relevant case-law of the Court of Justice of the European Union and the Strasbourg Court.[13]

Particular attention should be given to the rights of children who are arrested/detained in accordance with the Guidelines of the Council of Europe on child friendly justice. In such cases, the holder of parental responsibility should be given a reasoned notification as soon as possible after the child's deprivation of liberty. If the latter is contrary to the best interests of the child, another suitable adult such as a relative should be informed instead. Also, any other person or institution responsible for welfare of children under the respective national law, may be informed. National authorities in the Member States should refrain from limiting the right of children to communicate with third parties, and in cases when such referral is exercised, the child should in any case be able to communicate with persons or institutions responsible for protection and welfare of children.[14]

This Directive does not apply to UK, Ireland and Denmark, which did not take part in its adoption.

THE SCOPE AND APPLICABILITY OF THE NEW DEFENCE RIGHTS

The aim of the new Directive is to overcome the vast divergences that existed in different Member States regarding the moment when suspected persons are entitled to access to a lawyer. Namely, in some Member States they are not entitled to a lawyer during police questioning, or the meetings with the lawyer are not confidential. Also, they cannot communicate with their families/relatives or contact their embassy/consular department when they are arrested outside their home country. The shortcomings can lead to infringement of the right to fair trial and miscarriages of justice. That is why it was essential to provide for minimum procedural guarantees for all arrested persons regardless where on the territory of the European Union they are detained. This is essential in order to live up to the standards set by Article 6 of the ECHR and Articles 47 (right to a fair trial) and 48 (right to defence) of the EU Charter on Human Rights. The right to communicate with a third party is one of the important safeguards against ill treatment prohibited by Article 3 of the ECHR and Article 4 of the EU Charter of Fundamental Rights.

Under the Directive, suspected or accused persons shall have access to a lawyer without *undue delay*. Namely, several studies of EU member states' criminal procedural law detected uneven and in some states poor protection of defence rights in the early stage of criminal proceedings.[15] Now, the wording of the Directive is very precise, in order not to provide for leeway by the competent authorities to different interpretations. The right to access to a law-

11 Preamble of the Directive, point 52
12 Ibid. point 53 (emphasis added).
13 Ibid. point 54.
14 Ibid. point 55.
15 See in more detail: Cape, Ed. et al, *Effective Criminal Defense in Europe*, Intersentia, 2010.

yer can be exercised whichever of the following points in time is the earliest: (a) before the person is questioned by the police or by another law enforcement or judicial authority; (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act identity parades, confrontations, reconstruction of the scene of the crime; (c) without undue delay after deprivation of liberty; (d) where they have been summoned to appear before a court having jurisdiction in criminal matters, *in due time* before they appear before that court.[16] This is in line with the case law of the Strasbourg Court in the abovementioned case *Salduz v Turkey*[17] (where it was found that that the applicant's rights under Article 6(1) and Article 6(3)(c) of the ECHR had been violated due to the applicant's lack of access to legal assistance while he was in police custody), *Sebalj v Croatia*[18] (where it clarified that the right extends to legal representation during questioning by the police) and *Dayanan v Turke*y[19] (where it stated "an accused person is entitled, as soon as he or she is taken into custody, to be assisted by a lawyer, and not only while being questioned").

The content of the right to access to a lawyer entails at least the possibility to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority, their lawyer to be present and participate effectively when the suspected or accused person is being questioned. All communication between the suspected or accused person and his lawyer are *confidential*. This means not only that the meetings should be held in private (with no presence of the police), but also all other communication such as correspondence, emails, telephone or other communication cannot be intercepted or recorded. This reflects the judgment of the Strasbourg Court in *S v Switzerland*:

> "… an accused's right to communicate with his advocate out of hearing of a third person is part of the
>
> basic requirements of a fair trial in a democratic society and follows from Article 6 para. 3(c) of the
>
> Convention."[20]

By the same token, in the case of *Brennan v the United Kingdom* the Court held "that the presence of the police officer within hearing during the applicant's first consultation with his solicitor infringed his right to an effective exercise of his defence rights"[21] and Article 6(3)(c) taken in conjunction with Article 6(1) had been violated.

Member States are obliged to provide general information in order to ensure effective access to lawyers by the accused or suspected person.[22] For instance, this can be provided by information on a website of the police or by way of a leaflet available in the police stations.[23]

Only limited derogations from the right to access to a lawyer and its exercise by the suspected or accused person are permitted: 1) where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty; 2) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person, and 3) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.[24]

16 Art. 3 of the Directive.
17 *Salduz v Turkey*, No. 36391/02, ECtHR, 27 November 2008.
18 *Sebalj v Croatia,* No. 4429/09, ECtHR 28 September 2011.
19 Dayanan v Turkey, No. 7377/03, ECtHR 13 October 2009.
20 *S v Switzerland*, No. 12629/87, 13965/88, ECtHR, *para. 48*.
21 *Brennan v the United Kingdom*, No. 39846/98, ECtHR, *para. 58.*
22 Art. 4.
23 Janning, P., *op.cit.,* p.11.
24 Art.3 (5) and (6).

The Directive contains a *lex specialis* provision regarding the right to access to a lawyer for persons requested under the European Arrest Warrant. These persons should be allowed: 1) to exercise the right of access to a lawyer in such time and in such a manner as to allow effective defence and in any event without undue delay from deprivation of liberty; 2) the right to meet and communicate with the lawyer representing them; 3) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.[25]

Additionally, the requested persons should be informed by the authority in the executing Member State that they have the right to appoint a lawyer in the issuing Member State. The lawyer in the issuing Member State is entitled to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA (European Arrest Warrant). For suspects that have financial resources to fund their defence, the coordinated actions between lawyers in the issuing and executing Member State frequently result in very satisfactory outcomes for the clients (e.g., no surrender proceedings would be needed in most cases). Trivial cases can be often disposed of by administrative sanction or by a payment of a fine. At present, there is a substantial number of persons who are returned in custody to issuing Member States, quite needlessly, simply because there is not a lawyer available in that state to assist the lawyer in the executing state, by e.g. negotiating a satisfactory local case disposition agreement.[26]

If the requested person exercises this right, then the competent authorities of the issuing Member State should be immediately informed and provide information in order to facilitate the process of engaging a lawyer on their territory. However, the appointment of the lawyer in the issuing Member State should be made promptly, since the exercise of this right is without prejudice with regard to the time-limits set by the EAW Framework Decision.[27] This is in line with the case – law of the CJEU in *Jeremy F. v Prime Minister,*[28] where the Court has stated that while the Framework Decision does not regulate the possible right to an appeal suspending decisions which relate to the European arrest warrant, certain limits must nonetheless be imposed on the discretion which Member States have in that regard. The objective of speeding up judicial cooperation is present in several aspects of the Framework Decision, particularly in the treatment of the time-limits within which decisions relating to the arrest warrant have to be adopted. In view of the importance of those time-limits, it follows that a final decision on the execution of a warrant must, in principle, be taken within a period of 10 days after consent to the surrender of the requested person has been given, or, in other cases, within 60 days after the arrest of that requested person. It is only in specific cases that those periods may be extended by further 30 days, while it is solely in exceptional circumstances that the time-limits need not be observed.[29] But the plain right to appoint a lawyer in the issuing Member State does not guarantee an effective protection of the rights of the defendant *per se*, since in most of the cases the persons not having sufficient financial resources to appoint a qualified and experienced lawyer will be *de facto* deprived of such effective protection. The latter will have to rely on the system of legal aid in the respective Member State, which often

25 Art.10 (2).
26 MacGuill, J., "Implementation of the Directive on the Access to Lawyer as Relevant for Legal Aid," Presentation to European Criminal Bar Association, Warsaw, 26 April 2014, available at: http://www.ecba.org/ extdocserv /conferences /warsaw2014 /MacGuill _ WARSAWspeech.pdf (accessed 22.03.2017), p.22.
27 Art.10 (6).
28 Case C-168/13 PPU.
29 Ibid.

provides lawyer – generalists with little or no experience in criminal law and procedure whatsoever. This does not amount to effective legal protection and in many cases will result in poor defence. Also, a major shortcoming is the fact that although the Directive provides for access to the second lawyer in the EAW procedures, it does not contain any reference to such right in relation to the cross-border investigative measures under the Directive on the European Investigation Order.[30] This is particularly important since the time-limit for transposition of the Directive expires on May 22, 2017. Also, the Directive lacks any special safeguards for suspects or accused persons in transnational criminal proceedings, where they are often placed at a disadvantaged position *vis–à–vis* the public prosecutor. These proceedings often do not provide guarantees for the essential defence rights under national law when permitting evidence gathered by the authorities from another state, which if were gathered by the national authorities in the same manner would be inadmissible. In some countries, the national courts established a presumption of validity of foreign evidence imposing the burden of proof on the party affected by the foreign evidence. Also, there are examples where national courts do not question at all whether the procedural law of the foreign country was applied properly when gathering evidence.[31] The result is an infringement of the principle of equality of arms and procedural fairness, which in most cases would not be remediable in the later proceedings.

The rights available to suspected and arrested persons under Articles 4, 5, 6, 7 and 9 apply *mutatis mutandis* to persons requested under the EAW. Also, the same limited derogations from these rights apply.

Still, as a general rule any derogation from these rights must be *temporary*. A test must be done on a case-by-case basis for any such derogation, and the latter can be approved only by the competent courts or other competent authority in the Member State, provided that their decision can be subject to judicial review. If allowed, such derogations must be proportionate and not go beyond what is necessary; be strictly limited in time; not be based exclusively on the type or the seriousness of the alleged offence; and not prejudice the overall fairness of the proceedings. The last condition provides wide discretion on the part of the judge that will review the case, giving him the possibility in rendering its decision to take into account the relevant case-law of the ECtHR and CJEU. Even where national rules provide possibilities for derogation, they must be construed in accordance with the European regulations establishing such derogations. Any abuse of the derogations provided for in the Directive in a lack of precise parameters would amount to "[…] irremediable prejudice to the rights of the defence".[32]

According to the Preamble, having regard of the fact that in some Member States criminal sanctions can be imposed by authorities different than courts, the rights under the Directive should be available during the proceedings before that court following an appeal or referral by the party or the authority. The Directive recognizes the fact that in some Member States minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. Therefore, the rights under the Directive are applicable only to the proceedings before a court having jurisdiction in criminal matters.[33]

30 Winter, L.B., "A EU Directive on the Right to access to Lawyer: A Critical Assessment," in: Ruggeri, S. (ed.), *Human Rights in EU Criminal Law: New Developments in European Legislation and Case Law after the Lisbon Treaty*, Springer, 2015, p.123.
31 See in more detail: Ruggeri, "Transnational inquiries and the protection of the fundamental rights in comparative law. Models of gathering overseas evidence in criminal matters," in: Ruggeri, S., *Transnational inquiries and the protection of fundamental rights in criminal proceedings*, Heidelberg, Springer, p. 547.
32 Arasi, S., "The Effects of Directive 2013/48/EU on the Italian System of Precautionary Measures," in: Ruggeri, S. (ed.), *op.cit., supra,* Springer, 2015 p.301.
33 Preamble to the Directive, points 16-7.

Member States should ensure that persons entitled to the rights of the Directive have effective legal remedy against any infringements. Particularly, national authorities are obliged to ensure that

> "… in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 3(6), *the rights of the defence and the fairness of the proceedings are respected*."[34]

In what way the new Directive to access to a lawyer (and the other two directives which are part of this package) will enhance the protection of human rights in criminal proceedings in the Member States? Firstly, a number of provisions of these Directives are capable of having direct effect, so the parties in the criminal proceedings can invoke them directly before the national courts if they have not been timely transposed or have been transposed inadequately. The European Commission has vast competence to monitor the proper implementation of these directives, including to initiate infringement proceedings before the Court of Justice for non-transposition or improper transposition, as well as to monitor whether these are applied effectively in practice. Beside this, national criminal law must be interpreted and applied in light of these Directives by the competent authorities in the Member States. The implementation of the Directives must also be done in accordance with the Charter on Fundamental Rights, which means that this is valid not only for the concrete implementing measures for the Directives conferring procedural rights to persons in criminal proceedings, but also to all other elements of domestic criminal procedure that will be in relation with the implementation of the procedural rights guaranteed by the EU law.[35] This is in line with recent case law of the CJEU in *Siragusa*.[36] The case concerned a preliminary reference on the compatibility of an Italian decree with the right to property enshrined in Article 17 of the Charter and proportionality as a general principle of the EU law. The decree required a property owner to restore a site to its former state, because some works that had been undertaken were incompatible with the national landscape conservation rules applicable to the whole area. Contrary to all the participants in the proceedings, the national court had suggested that the EU law was applicable to the case because landscape protection could not be seen to "stand alone as a concept separate from the protection of the environment", as a number of the EU rules based on the environmental competence of the Union would show.[37] The Court repeated the dictum in *Åkerberg Franssson*: the Member States were only bound by the EU fundamental rights in respect of matters "covered by the EU law."[38] This is because in the implementation of the EU Law there must be a "certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other." Here the Court developed a set of criteria in order to establish whether a certain Member State is in a process of implementing the EU Law and consequently bound by the fundamental rights guaranteed by the EU Charter. These criteria include, but are not limited to: 1) whether that legislation is intended to implement a provision of the EU law; 2) the nature of that legislation and whether it pursues objectives other than those covered by the EU law, even if it is capable of indirectly affecting the EU law; and also 3) whether there are specific rules of the EU law on the matter or capable of affecting it.[39] Fundamental rights must not be infringed in the areas

34 Art.12 of the Directive.

35 Mitsilegas, V., "Legislating for Human Rights after Lisbon: the transformative effect of EU measures on the rights of the individual in criminal procedure," in: Fletcher, M., Herlin-Karnell, E. & Matera, C. (eds.), *The European Union as an Area of Freedom, Security and Justice*, London: Routledge, 2016, pp.206-7.

36 Case C-206/13.

37 Para.10.

38 Para.22.

39 Para.25.

of the EU activity, be it through action at the EU level or the Member States implementing the EU law. On the other hand, there is a need to avoid a situation in which the level of protection of fundamental rights varied based on national law in such a way as to undermine the unity, primacy and effectiveness of the EU law.[40]

By the prescribed time-limit which expired in December 2016, 20 Member States have transposed the Directive via national measures. Bulgaria, Croatia, Cyprus, Greece and Germany have not taken implementation measures yet. The number of implementation measures varies from: 1 (Italy, Netherlands, and Portugal), 2 (Spain), 3 (Belgium, Estonia, France, Latvia, Luxembourg, Malta, and Austria), 5 (Poland), 9 (Romania), 11 (Lithuania), 12 (Hungary and Slovakia), 13 (Finland, Slovenia), 17 (Sweden), up to 30 (Czech Republic).[41] Whether the transposition was correct and adequate is yet to be seen.

Finally, the Directive contains a non-regression clause, so:

> …nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

This means that in the event where some other international law instrument, which can be directly before the courts of the Member States, provides more extensive protection or more rights than this Directive or the EU law, then this instrument will apply in the specific case. This rule applies for any provisions of national law as well. This is somewhat a case of derogation from the principles of unity, primacy and effectiveness of the EU Law. Despite the ruling in the Melloni case, where the ECJ held that "…where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of the EU law are not thereby compromised,"[42] in the abovementioned situations and particularly where cases regarding European Arrest Warrant are in question, the national courts and other authorities must apply the higher level of protection provided by national or international law instruments.

CONCLUSION

The recent developments regarding the rights of suspected and accused persons in the EU law represent both a qualitative and quantitative leap forward by establishing minimum common legal standards for the participating 25 Member States of the EU and further affirmation and implementation of the principle of mutual recognition of judicial decisions across the EU. It is particularly important that the new Directives (including the Directive on the right to access to a lawyer) are inspired by and built upon the European Convention on Human Rights and the respective jurisprudence of the European Court of Human Rights. The resulting text further enhances the rights of the suspected and accused persons, provides clear conditions for exercising these rights, and allows very limited possibilities for derogations from them. A number of indicators imply that national legislation so far has provided for much leeway in this regard. This means that the new rules leave very little margin of discretion for criminal courts in the Member States in rendering their decisions. This *mutatis mutandis* applies to other organs in the proceedings, particularly the police authorities. The competent national

40 Para.32.
41 http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32013L0048 (visited on: 10.03.2017).
42 Case C-399/11, *Stefano Melloni v Ministerio Fiscal*, para. 60.

authorities in the event of derogation of these rights must provide a sound rationale for their decisions in such cases, justifying the conditions for derogating from the Directive. The Directive evidently triggered significant action on the part of national authorities in order to ensure its transposition. *Vis–à–vis* national legislation, the Directive offers the possibility for the suspected or accused persons and defendants to resort to legal action before the Court of Justice of the EU and to exhaust other instruments and address many institutions at the EU level. Furthermore, after the expiry of the date for transposition in the Member States where no transposition measures were taken, the suspected and accused persons can invoke their rights that arise from the Directive before the national courts, and the latter will be obliged to ensure protection. Although the right to access to a lawyer *de facto* will not provide adequate legal protection and representation in all cases due to lack of financial resources on the part of the defendants, it currently represents the best possible solution until the time comes when the right to legal aid will be guaranteed across the EU adequately. Although the Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings refers to "high quality of legal aid" and calls the Member States to establish criteria for accreditation of legal aid lawyers "taking into account the best practices", there is no precise indication regarding e.g. the specialization in criminal law/certain types of criminal cases or working experience as criminal lawyers in order to be registered in the legal aid scheme. In major crime cases, for instance, the lawyer under legal aid schemes should have at least 10 years of experience in defending/representing cases in criminal courts and proper specialization in criminal law in order to ensure high quality defence for the suspected or accused person. The lack of any reference/right to access to a lawyer in proceedings regarding the new Directive on the European Investigation Order remains a major shortcoming. A legal gap also exists concerning transnational proceedings where (as practice shows) major flaws are frequent and often gross disregard of the essential defence rights persists. This should be rectified in the future. Nevertheless, the general impression is that in most Member States the Directive will enhance the standards of criminal defence in criminal proceedings, and particularly in the pre-trial stages, police investigations, etc. The effective presence of a lawyer from the first police questioning *inter alia* will protect the suspect from self-incrimination as a crucial right deriving from Article 6 of the ECHR and will ensure equality of arms between the prosecuting authorities and the defence, fair trial and proper administration of justice in the later stages of the criminal proceedings. Still, the effective exercise of the rights arising from the Directive will also depend on the adoption of other measures in the package, particularly the proposed Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.

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SOME CHARACTERISTICS OF LAWS AS MECHANISMSFOR STRENGTHENING THE PRINCIPLE OF THE RULE OF LAW

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Abstract: The main characteristics of laws include: universality *(law is equal for everyone*), clarity *(it refers to the fact that all demands must be as precise as it is possible*), stability (*or sustainability of laws, which means that legal norms even predict some situations, and in advance have solutions for them*), and achieving justice (*which is perceived as an inner moral value*). The manifestation of these characteristics and their significance is not always and immediately visible in public, but this does not mean they should be ignored because of it. Each of these characteristics can be misinterpreted, misused or simply not obeyed. When these activities come from the institutions of the system, the system itself collapses. The trust in the system and its institutions and thus the whole concept of the rule of law loses its significance and obligation to respect all that.

In this paper we will try to say something about the following:

- the achievement of a long-lasting and stable legal certainty as a value and as an imperative; from positive and natural law standpoints;

- establishing clarity and certainty of the law with the help of standardized terms, and specific legal language, all in order to prevent misunderstanding and abuse by all to whom the laws are referred;

- setting up justice as an imperative, especially when sentencing for committed crimes and offenses or establishing new penalties and new offenses, with examples from practice (*the debate for establishing sentence of 40 years in prison produced an interesting discussion, as well as recent discussions about the need for establishing the life imprisonment, the public register of perpetrators of crimes against sexual freedoms or reducing the age of criminal responsibility*)

Keywords: law, rule of law, certainty, justice

INTRODUCTION

We strongly believe that the legislative process is much more complicated, profound and serious than it is considered in public. All that is seen in public is the finale of the legislative process - the voting day and the very enactment of law are the only stages that are known to the audience. Research of some specific topic, and in the end writing of the text of any law are much left in shade of the enactment of laws. We also strongly believe that, if the stage of writing law is done properly, we could strengthen the principle of the rule of law more that it is today.

It is believed that people are not born with already created principles or behavior. Those are the rules of behavior and social skills that we are taught during our lives[1]. Creating new principles and rules, as well as accepting the existing principles and adapting behavior to these principles, are the activities that we learn throughout the lifetime.

As we mentioned earlier, we find that achieving the legal certainty in its entirety, establishing clarity of legal norms and setting up justice as an imperative are the main demands that must be fulfilled for achieving the principle of the rule of law. In further chapters, we will try in shortly to explain our conception.

LEGAL CERTAINTY

Certainty, as well as freedom, has its own internal and external dimension. The external dimension guarantees certain rights and freedoms, but also constitutes certain obligations. We must be aware of existence of the law itself, and of the obligation to obey that law. On the contrary, we will just have inefficient and not truly existing law. On the other hand, the internal dimension of certainty is the inner content of law itself: rights, freedoms and obligations, and what they mean, what impact they have on us, etc.

Because it exists, the law must be obeyed, even when it is hard to achieve, or we find it unjust. According to Plato, the law does not have feelings that one can be sure to find in the human soul[2]. The law must be reasonable, although it may not have "a heart at all". Deciding upon a reason is good, but it is not quite good, as if it would be done with – a little bit of emotions and empathy[3]. So, when laws are created, we must have both of these two aspects on mind. Certainty has its application in a lot of areas of social life. But what about certainty when it is applicable in law? What can be said about legal certainty or about certainty in law?

The best definition of legal certainty and all challenges that it sets to us, to society, to justice itself and to the system that we are living in, is so-called Radbruch Formula: "*The conflict between justice and the reliability of the law should be solved in favour of the positive law, law enacted by proper authority and power, even in cases where it is unjust in terms of content and purpose, except for cases where the discrepancy between the positive law and justice reaches a level so unbearable that the statute has to make way for justice because it has to be considered "erroneous law". It is impossible to draw a sharper line of demarcation between cases of legal injustice and statutes that are applicable despite their erroneous content; however, another line of demarcation can be drawn with rigidity: Where justice is not even strived for, where equality, which is the core of justice, is renounced in the process of legislation, there a statute is not just 'erroneous law', in fact it is not of legal nature at all. That is because law, also positive law, cannot be defined otherwise as a rule that is precisely intended to serve justice*"[4]. Here we can see the emphasis on the relationship between certainty and justice, but also the emphasis on the enacted and "living" law. So, law is law, and must be obeyed, although the law is sometimes unjust - it is better to have unjust law, than not to have law at all.

The very process of applying law means the realization of the will of the legislator. Ontologically speaking, it is considered that the law exists only if it is applied, otherwise, such inactive "dead" law does not need to exist. It is the crucial for certainty as a whole.

1 Pound, Roscoe, "Justice According to Law", *The Mid-West Quarterly*, 1:3 (April 1914), pp.223–235
2 Платон , „Закони", Дерета, 1996, 48;
3 Тадић Љубомир: "Филозофија права", Загреб, 1983 ,124.
4 Radbruch, Gustav, *Gesetzliches Unrecht und übergesetzliches Recht*, Süddeutsche Juristenzeitung (1946), p. 107

We obey law for two main reasons: because we are afraid of punishment for not doing something that is ruled, or we just voluntarily do what law expects us to do, because we believe that is the right way to act. Voluntary application of law has a much better basis. It is demonstrated when there is agreement at least of the majority of society about that, when there is trust in such law. The process of application must be equal to all. But sometimes, there is selective application of law. We may justify it and say: with this kind of selective application of law and some of its solutions we do not break the law, but we provide justice to be done. Although, as we have already said, even when the law is unjust, or not that efficient as we might wish it to be - the law still exists, and that is its external value, which leads us to legal certainty.

Legal certainty is regarded as one of the "crucial legal values", which is often associated with other legal values such as justice, peace and order. Viewed from another aspect, the very legal certainty makes it an element of general justice, when it promotes positive law, as one of the highest values[5]. It has been explained even better by Hayek[6], along with the principles of legal equality and generality of the law, as an integral part of the rule of law. Legal certainty in this sense represents an ideal certainty which would exist only if the right ideal was applied[7].

The main obstacles for the legal certainty, in our opinion, are the retroactivity of laws, and the multiplicity of laws.

States sometimes restrict what is usually unlimited guarantees in the name of higher goals such

as the protection of the rights of citizens or reputation of the governmental bodies, independence of courts, national security, public health or morals or public security.

At first, we must say that the retroactive legislation is inconsistent with the principles of legal state. Certainty exist when we know from the start our rights, freedoms and obligations. Uncertainty begins when someone punishes us because of doing something that was legally at the time that we were doing it, but out of that time frame, someone decided to change the rules and gave to that changed rules retroactive, kind a backwards legal power. People cannot obey the rules that are not simply there. Probably, if they knew the rules are different, they would never enter into any relationship that comes out of the changed rules. ***This problem with retroactive laws is easily solved with the constitutional prohibition of retroactive legislation and with truly commitment to respect this in practice.*** On the contrary, uncertainty will prevail.

"Law cannot be determined once and for all, in an absolute, objective, truthful, complete, comprehensive, holistic or any other similar way, nor there is no such definition of law. Full knowledge and finally defining law are beyond human capabilities "[8]. While trying to define what law is in any country and what content it has, the state can- overextend with enactment of specific laws and regulations. During the first six years in 21st century, Serbian Parliament enacted 392 laws and regulations. This great number can mean two thing: either the earlier legislator didn't do anything, so during these six years must be done all that it hadn't been done till then; or the legislator didn't have a precise plan which lead to legal confusion because of the great number of new laws. This problem can be solved with legislative planning, which might have two aspects:

5 Перовић Слободан, "Право на толеранцију", lecture given on *Forum iuris* 25. 2. 1999. in Podgorica, available on *www.informator.co.rs, date of visiting site :March 2017.*

6 Hayek, von, Friedrich August , *Put u ropstvo (Edicija sloboda izbora)* , Global Book, Novi Sad, 1997, p.37

7 Митровић, Драган, "Може ли право да се сазна: „Шта је право?" ",*Анали Правног факултета у Београду*, година X, бр. 1–2, јануар–јун 2002, 85—108.

8 Митровић, Драган, ibidem.

- *external planning*, especially in Serbia, should be facilitated with the recommendations of EU, during the period of negotiation, in order to harmonize domestic law with the EU law. Opening the chapters of the acquis, which are the conditions for membership in EU can be valuable resource for handling this area of legislative planning, because they consist of recommendations given upon the screening of domestic legal system and analysis what should be changed in order to become the member of EU.
- *Internal or inner planning* refers to specific content of laws and regulations that must be enacted in specific time frame. It means that Serbian legislator must know what legal institute will stay without any changes, and what laws are eligible for change in specific way. Sooner this part would be clear to legislator, it will be clearer to the citizens who are, finally, the"users" of these rules.
- We strongly believe that precise planning, as we describe it will strengthen the principle of rule of law, in both ways.

CLARITY OF NORMS. THE ROLE OF LANGUAE IN LAW

As a social science, law is dependent on the society, social relations and other social phenomena- they are daily delivered to us, to our reality, and they dictate the content of law. The law may possibly reflect the future, trying to build desired, improved version of the society in which it exists. We create new laws because new, different social circumstances appear; or state wants to prevent some situations to happen. The legal consciousness of the people, which means the awareness of the law and of obligation to obey the law, is slowly forming. One of the crucial moments in forming the legal consciousness of the people is the understanding the goal of law. If I know that any law exists, I must know what it means to me. I must be aware of the content and I must understand that content. The next obstacle in process of strengthening the rule of law, in our opinion, is the language used while writing the laws.

The issue of using adequate language style in the law is not only a legal or a linguistic issue, it is a historical, political, sociological and philosophical question. "Without language there is no law": it is the channel thru which the law communicates with the ones it refers to - citizens[9]. Language gives life to the law; on the contrary, it remains unknown, "unpublished". Creating law is an endlessly creative process, but faced with obstacles such as: legislators' understanding of goal which law must achieve in general, his knowledge of the mother tongue and other languages (especially if implemented legal solution originate from a foreign law), knowledge of national law and the primary principles of domestic law and knowledge of comparative legal principles, referred to a particular matter. It means that the creation of law is a creative process, but not that much inspiring and free as creating other written works - literary ones, for example.

Using adequate language and legal terms while creating law is more demanding than doing the same in other areas of life. For example, every time a legislator reaches for neologism or a foreign word untranslatable into the mother tongue, it is attributed to a lack of linguistic, political, historical and other patriotism. Even the older authors felt that in this way "people subjugates to another's culture and lose its independent value, turning into an ethnic material something that is other people's cultural and historical type"[10].

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9 Дракић, Драгиша, „ О стилу језика закона", *Зборник радова Правног факултета у Новом Саду*, 1/2012, 371

10 Демченко, Г.,"Закони историјског развитка културе и права. (Педесетогодишњица једне знамените књиге)",*Архив за правне и друштвене науке*,4/1924, 448.

Марковић, Чедомир, " Суд има да цени уставност закона" , Архив за правне и друштвене науке,

Leon Gerškovic held that a good and wise writer of regulations must have the following skills: "broad general legal education; knowledge of our social system, knowledge of the legal system (positive, valid); knowledge of all areas of the law, not just certain areas of law in which innovation is searched for, knowledge of legal and judicial practices; knowledge of specific legal terminology and terms; knowledge of the legal and social facts, the ability of checking facts". We can here also add the ability of conceptual abstraction, together with advanced literacy.[11]Without these special skills, writing of laws might be impossible, especially having in mind that regulations impose obligation for people to obey what is written. So, everything written must be clear, understandable to all, and not ambiguous.

It is clear that the creator of legal norms, in addition to a diverse knowledge of the law, must be a skilled linguist, for several reasons:

" - because of the purity of the language that it is a basic tool for work and expression of thought, i.e. of the legal norms;

- in order to achieve accuracy and comprehensibility of the norms and all in order to preclude the ambiguous, potentially bad and incomprehensible commanding to the one who it refers to, which may ultimately lead to non-compliance with the law or possible abuse;

- legal language is quite "dry" and devoid of emotion and superfluous terms, so it must be sufficiently clear and flexible, while using corresponding vocabulary of commonly and frequently used words; laws are created not only to be understood by trained lawyers, but to be understandable to everyone;

- for the introduction of foreign over domestic law concepts, as this increases the potential that they have these concepts and increases the efficiency and effectiveness of a single application of standards[12].

We find the stage of writing legal norms as one of the most profound in legislative process. We see great responsibility and effort that is present in this process. Then, the process of checking the meaningfulness of the written norms and the intelligibility of the text, as well as the logical check whether the newly written text fits into the rest of the legal system of the country, should also be regarded as being very important. It is a sort of test whether the new rules fit within the system and how it is possible their integration in the sense of avoiding contradictions or repetitions of the already existing norms.

Having in mind that we should strengthen the rule of law, we believe that those two stages of legislative process must be fully and with due attention fulfilled.

JUSTICE MATTERS

A lot has been said about justice as a human, social and legal value. For almost 25 centuries we have been pleading for justice, but we sometimes forget that one of the constituents of justice must be the truth. Justice must be done especially on those who lie.

In practice, if there is any justice, and regarding the fragility of the truth, we should even rigorously punish those who lie. Hanna Arendt said that a lie, positioned near political or

бр. 4/1907, 411-415

11 Гершковиц, Леон, „ Основни проблеми система и метода израде прописа" , у зборнику: *О изради правних прописа. Материјали са Семинара о основним проблемима система и метода израде прописа,које је организовао Секретаријат Савезног извршног већа за законодавство и организацију*, Београд, 11-22.маја 1959.,20-23.

12 Ђорић, Драгана М.,"Трагом расправа о унификацији југословенског права у првој половини 20. века- улога језика и народног духа у номотехници", *Зборник радова Правног факултета у Новом Саду*, 4/2016, 1393-1394

economic tops, is very powerful, even more powerful than any truth known by ordinary people. Reality speaks in favor of the thesis that masses can be easily manipulated and moved by lies. It seems that modern man of the 21st century is totally a *homo politicus*. Having in mind that truth-telling looks so apolitical, we can conclude that we are, in fact, surrounded by lots of un-truths[13].

On the other hand, *legal truth*, taken as established in legal processes, grants a bigger space for thinking over about its content and proving the need for its existence. A lot of wrongly made judicial decisions, carried out death penalties on persons whose culpability was wronfully established, should be a reminder to the judicial system as such to pay special sttention to this type of truth[14].

In the end, we must have in mind that we frequently call philosophy "the quest for the eternal truth", which will heal all the wounds and stop every negative reaction of common people, delivering the state of pure welfare. Such balans is possible theoretically, yet the practical dimension is rather different. Consequences of games that play with truth and lie can, in their rather drastic shape, bear influence on human lives, far from attempts of justice to always win.

Justice means - truth. Although sometimes it can be harsh, and difficult, it is the truth that leads us to proper punishment. And to the justice as well. So, we find it very important to precisely specify the crtieria for investigating and establishing the legal truth, on the one hand, and on the other hand - to even reconsider some penalties that are not so efficient as they were earlier.

For example, we are witnessing a lot of people's initiatives for changing laws, frequently named after children who unfortunately and very early lost their lives. In just a few years we had: Marija's law (established the special register of perpetrators of sexual offenses against children), Zoya's law (established special criteria for defining rare diseases, named upon a little girl who died because her disease could not be identified in Serbia and therefore could not to be treated properly), Tijana's law (established the obligation for police to start search for a minor immediately after the minor is reported to be missing and tracking cellphone signals of the minor), Alexa's law (currently in process, attempting to establish stricter penalties for all who fail to react in cases of school bullying), etc. All those changes were inspired by understanding that justice has not been served, that present penalties are not so strict as they should be, and that they need to be more severe because of crime prevention in future.

Justice means fairness in the protection of rights and punishment of wrongs. As regards punishment, we must answer three questions: Why punish? Who should be punished? What kind of punishment should they receive? Utilitarian theories look forward to the future consequences of punishment, while retributive theories look back to particular acts of wrongdoing, and attempt to balance them with deserved punishment. We have a moral obligation to punish more serious crimes more than the lesser ones. However, "so long as we adhere to that constraint then utilitarian ideals would play a significant secondary role".[15]Always punish the vice, and reward the virtue. But in what way? Which way is the best, the most righteous and cannot be put in doubt? What kind of criteria should it use, to always have - pure justice?

13 Presby, Gail M.: Arendt on Language and Lying in Politics, *Peace Studies Journal*, Vol.1, issue 1, Fall, 2008, ppg 32-64.

14 According to Arendt, politics and truth exactly-the truthfulness, are in constant conflict.Because they both give alternative ways of solving existential problems.Philosophy as such is taken away from this discourse, because it lead to constitutional rational principles which, one constitutted, instantly grant stabile human existence. Beiner, Ronald: Rereading Truth and Politics, *Philosophy and Social Critisism*, vol 34/2008, ppg 123.

15 See at : von Hirsch, Andrew ,"Doing Justice: The Choice of Punishments" (1976), 24.

As we mentioned earlier, we had theoretically and practically interesting debate due to establishing sentence of 40 years in prison in Serbia. This penalty was introduced in 2002, and only in the first six years of its application, there were 70 sentences with this penalty.

Recent discussions about the need for establishing the life imprisonment especially for the murderers of children, then for establishing the public register of perpetrators of crimes against sexual freedoms or reducing the age of criminal responsibility were, again, initiated because of the need for justice. The families which lost their loved ones in such a tragic way, strongly support these demands, and are eager to change the domestic legislation in the aforementioned ways. They all find that present penalties are rather weak for serving the justice and demand stricter penalties in order to achieve justice, once again, for other possible victims.

In the end, we find the need to reconsider the meaning of justice and the ways of winning it. We also strongly believe that future generations need another kind of serving justice then the ways that help us to win the justice in our time.

CONCLUDING REMARKS

After these few short chapters, we can summarize our findings as follows:

- The precise planning of internal and external legislative process will strengthen the principle of the rule of law. The particular problem of retroactive laws could be easily solved by the constitutional prohibition of retroactive legislation and by honest commitment to respect this in practice.

- We recommend that two stages of the legislative process: writing of the text of law, the process of checking the meaningfulness of the written norms and the intelligibility of the text, as well as the logical check whether the newly written text fits into the rest of the legal system of the country, must be fully and with due attention fulfilled.

- We find the need to reconsider the meaning of justice and ways of winning it.

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RELIGIOUS PROFILING – THE WAY OF *DE FACTO* LIMITATIONOF RELIGIOUS FREEDOM DURING THE `WAR ON TERRORISM[1]

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Abstract: After the 9/11/2001 terrorist attacks in the USA, as well as due to frequent subsequent various terrorist acts all over the world, balance between human rights and national security is becoming more and more actual and important. Limitation of religious freedom for the sake of national security interest is entirely limited in international documents, as well as in many constitutions of European countries. Although it is not normatively defined as a possible legal ground for limitation of religious freedom, demands of national security incite prevention of future attacks and it is more and more performed through so called racial, but also through religious profiling. Religious profiling comprehends use of different racial and religious stereotypes in order to foresee possible attacks and identify potential offenders. In that way religious profiling, used by many countries and their intelligence agencies, actually becomes a form of genuine religious freedom limitation. Even more, it is clearly confirmed by a recent statement of the USA president Donald Trump that the use of religious profiling would be reconsidered as a part of strategy in the war against terrorism.

This paper analyses different positions *pro et contra* religious profiling, and particularly theoretical attempts to make clear differentiation between allowed and unacceptable profiling. The author is of opinion that religious profiling may interfere into the *forum internum* (for example through questionnaires about religiosity, how many times per day someone is praying, etc.), but also within the *forum externum* of religious freedom.

Issue of religious profiling is very weakly regulated, mostly at the level of international soft law. The paper analysis one of the rare documents aiming to prevent religious profiling, namely the 2016 UN Human Rights Council *Resolution oncombating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief*. The author claims that the issue of religious profiling has to be more tightly regulated normatively both on international and national level, particularly in the context of defining a clear distinction between allowed and prohibited profiling.

Keywords: Religious Profiling; Human Rights; Religious Freedom; War on Terror; National Security.

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ABOUT RELIGIOUS PROFILING

Although limitation of religious freedom in the interest of national security is decisively forbidden through international documents and standards, as well as in constitutions of many European countries,[3] religious profiling as a genuine *de facto* form of religious freedom restraint became quite a frequent academic topic in the time of the continuing "war against terrorism".[4] Indeed, this issue is not only an academic field of interest, as many countries perform different measures in order to observe and control their citizens in their religious attitudes, commitments and behavior. More or less contrary to the legal norms many governments all over the world try to impose a kind of soft limitation of religious freedom in different forms. This development is closely connected to terrorist attacks of September 11, 2001 in the USA but this topic it is still vivid and actual due to the new wave of frequent terrorist acts all over the world.

Although it is not normatively defined as a sufficient and valid legal ground to impose religious freedom limitations, the interest of national security is often used as an excuse for prevention of future attacks. That endeavor is usually performed through racial, but also through religious profiling, which is a relatively new theoretical, academic, political and legal notion. Religious profiling is basically founded on religious and racial stereotypes, which serve as a tool to envisage possible attacks and identify potential offenders. Most usual stereotype is that colored people and followers of Islam are most frequent actors of terrorist attacks. After years of various experience it is evident that it is not a correct statement but a kind of prejudice, as many examples show that a number of white people act as terrorists, whether they are connected to Islam or not. Nevertheless, religious profiling incites discriminatory actions performed by the executive power in many countries regarding persons of certain race, ethnicity or religion. This is why Murphy rightly observes: „Religious profiling at the level of the individual takes place where individuals belonging to a certain religious minority (or thought to belong to the religion) are subjected to a disproportionately high level of police checks and security interference".[5] A similar definition of profiling is offered by Legomsky: "I shall use that term here to mean specially targeting individuals who possess identiable attributes that are believed to bear positive statistical correlations to particular kinds of misconduct–in this case, involvement in terrorism."[6]

INTERNATIONAL HUMAN RIGHTS AND THE RULE OF LAW DURING THE FIGHT AGAINST TERRORISM

The United Nations General Assembly adopted the Global Counter-Terrorism Strategy on 8 September 2006.[7]Among other provisions the Strategy underlines that "Reaffirming

3 More about that see in D. Avramović, S. Jugović, "Limitations of Religious Freedom during 'the war against terrorism'", *Pravni život* 12/2016, pp. 535-546.

4 Just to mention as an example S. Legomsky, „The Ethnic and Religious Profiling of Noncitizens: National Security and International Human Rights", *Boston College Third World Law Journal*, Vol. 25, 1/2005; H. Bielefeldt, N. Ghanea, M. Wiener,*Freedom of Religion or Belief – An International Law Commentary*, Oxford University Press, Oxford, 2016, p. 567; R. Singh, „Sikh Americans, Popular Constitutionalism, and Religious Liberty", *Religious Freedom in America – Constitutional Roots and Contemporary Challenges* (ed. A. D. Hertzke), University of Oklahoma Press, Norman (Oklahoma, USA), 2015, pp. 202-203.

5 K. Murphy, *State Security Regimes and the Right to Freedom of Religion and Belief – Changes in Europe since 2001*, Routledge, London–New York, 2013,p. 48.

6S. Legomsky,*op. cit*., p. 161. For similar definition of racial profiling see: S. Gross, D. Livingston, „Racial Profiling Under Attack", *Columbia Law Review*, Vol. 102, 5/2002, p. 1415.

7 *The United Nations Global Counter-Terrorism Strategy*, A/RES/60/288 (8 September 2006), available at: https://unispal.un.org/DPA/DPR/unispal.nsf/0/1EF6E139F9F1786F852571FE0069FF46.

also that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group". It is also asserted that „reaffirming that 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 counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing…To reaffirm the United Nations system's important role in strengthening the international legal architecture by promoting the rule of law, respect for human rights, and effective criminal justice systems, which constitute the fundamental basis of our common fight against terrorism".

However, all those proclamations look like wishful thinking ideals. In the 2014*Review of The United Nations Global Counter-Terrorism Strategy* it is stressed: "Recognizing also the need for Member States to prevent the abuse of non-governmental, non-profit and charitable organizations by and for terrorists, and calling upon non-governmental, non-profit and charitable organizations to prevent and oppose, as appropriate, attempts by terrorists to abuse the status of those organizations, while reaffirming the need to fully respect the rights to freedom of expression and association of individuals in civil society and to freedom of religion or belief of all persons".[8]

Total powerlessness of religious profiling through soft law regulationis particularly visible in 2016UN Human Rights Council Resolution *Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief.*[9]Namely, The Resolution "expresses deep concern at the continued serious instances of derogatory stereotyping, negative profiling and stigmatization of persons based on their religion or belief, as well as programs and agendas pursued by extremist organizations and groups aimed at creating and perpetuating negative stereotypes about religious groups, in particular when condoned by Governments". Also, the call is directed upon all states "To make a strong effort to counter religious profiling, which is understood to be the invidious use of religion as a criterion in conducting questionings, searches and other law enforcement investigative procedures". It is significant that, as a non-binding document, the Resolution as usually contents nothing more than a call to the states (an appeal for action, a plead) and it does not use a bit stronger wording like demand, request, expectation or similar.

RELIGIOUS PROFILING – DE FACTO LIMITATION OF RELIGIOUS FREEDOM

A relatively clear distinction between acceptable (legitimate) and the one which would be considered as non acceptable (non legitimate) profiling was founded already by *Martin Scheinin*, special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in his January 2007 UN Report. According to his statements, profiling is generally accepted and effective measure within the process of implementation of law if detailed profiles are founded upon the factors which are statistically proven to have been in correlation with a certain kind of criminal behavior.[10]However, if state bodies responsible for application of law use wide profiles which include non-proven generalizations,

8*The United Nations Global Counter-Terrorism StrategyReview*, A/RES/68/276 (13 June 2014), available at:http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/276.

9A/HRC/31/L.34 (22 March 2016), available at:https://www.article19.org/data/files/medialibrary/38324/Res-31.L.34.pdf.

10 Itincludescaseswhensecuritydatapointthatsomeoneisplanningaterroristattack,*ReportoftheSpecialRapporteuronthepromotionandprotectionof humanrightsandfundamentalfreedomswhilecounteringterrorism, Martin Scheinin*,A/HRC/4/26, 29 January 2007, para. 33, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/105/07/PDF/G0710507.pdf?OpenElement.

their acts could easily lead to unproportional interfering into the human rights. As special rapporteur stresses, profiling based upon stereotyped presumptions that a person of certain race, national or ethnic belonging or perticular religion is eligible to perform a certain crime, leads to activities non compatible with the non-discrimination principle.[11]Special rapporteur expresses particular concern about the fact that many states, during the fight against terrorism, apply exactly that type of "unauthorized" preventive profiling (for example by controll of the emigrants in the USA, by stopping and search of the persona in Great Britain, etc.).[12] In perception of *Martin Scheinin* in that way many human rights guaranteed by interational conventions are endangered, like right to privacy, freedom of movement, personal freedom, principle of non-discrimination.[13] However it is quite strange that violation of the freedom of religion by religious profiling is not mentioned at all in that listing.

A relatively similar attitude has A. Baker, who mostly has in mind the US case law. However, due to frequent abuses he criticize also the activities that Scheinin considers as "authorized" profiling. He stresses that intelligence-led policing,[14] as a weapon in the war on terror, justifies racial and religious profiling. This profiling is not acknowledged as discriminatory so long as police disproportionately target minority individuals because, on the basis of some intelligence, police consider members of their minority group more likely to be guilty of a crime rather than because they do not like those groups and wish to harass their members.[15] So, if police detain, search and questioning of Muslims justifies intelligence-led policing, the conclusion is that ethnicity or religion were not a criteria for police attention.

Religious profiling opens a number of legal and ethical issues, particularly considering innocent people whose actual limitation of human rights is based upon prejudices and discrimination. As a remarkable recent example one may mention the case of boxing champion Muhammad Ali's son in February 2017. Namely, Muhammad Ali Jr. was detained and questioned by the immigrant service at the Florida airport on his way back home with his mother. He was firstly asked for his name and surname, and then about his religion. When he stated that he is Muslim they took him in the office and investigated him hour and a half. This is without doubt a clear case of typical profiling, not only based upon race but also a typical case of religious profiling, as Muhammad Ali, Jr. states himself.[16] Nevertheless personal feeling of a person who is exposed to religious profiling, there are clear cases when religious profiling could be objectively detected. It is not only the issue of legal norms and normativity but also the issue of legal theory, ethics and moral principles. Since it is not possible to define normatively in details all potential cases of unacceptable legal profiling (as legal standards are

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11A/HRC/4/26, 29 January 2007, para. 34.

12 Scheinin considers that this kind of profiling as an inadequate, not efficient and disproportionate mean of fight against terrorism, for it affects thousands of innocent people, and does not produce a concrete result. Therefore it cannot pass the test of proportionality, A/HRC/4/26, 29 January 2007, para. 54. Instead he suggests to the states profiling based upon observance of behavior, A/HRC/4/26, 29 January 2007, para. 60.

13 A/HRC/4/26, 29 January 2007, para. 38–41.

14"Although `intelligence-led policing` means a lot of things, including obviously the use of tips, informants, and surveillance to identify individuals engaged in, or preparing for, criminal activity-it appears also to mean that as long as the police have information suggesting that a terrorist act is more likely to be committed by, say, an Asian than a non-Asian, it is not discrimination to subject individual Asians to more `policing` than individual non-Asians", A. Baker, "Controlling Racial and Religious Profiling: Article 14 ECHR Protection v. US Equal Protection Clause Prosecution", *Texas Wesleyan Law Review*, 13, 2/2007,p. 286.

15A. Backer also points out in the mentioned article strong sides of the ECHR Article 14 regulation over weaknesses of the USA Equal protection clause, mainly on the ground of protection v. prosecution.

16D. Morgan, "Muhammad Ali Jr. says he was target of religious profiling", *CBS News*, February 27, 2017, available at: http://www.cbsnews.com/news/muhammad-ali-jr-says-he-was-target-of-religious-profiling/

unavoidable in legislation) ethics and moral values should be also used as a corrective factor in evaluation of religious profiling.

Namely, by religious profiling it is possible to interfere not only in *forum externum* of the freedom of religion but also into much more delicate field of personal, intimate *forum internum* (by examining grade of religiosity, searching if someone is praying on a daily basis, etc.). Although religious freedom belongs to the category of non-derogable rights (except in European Convention on Human Rights) it is one of the most sensitive and fragile human rights which should be very carefuly examined in every single situation.

As already mentioned, national security as a legal ground for religious profiling, which evidently limits religious freedom, is not mentioned in the most important international documents protecting human rights. However, many countries apply religious profiling in their practice. Quite recently, before he was elected, during his presidential campaign, Donald Trump stated in an interview that in spite of his personal hesitation, religious profiling of American Muslims has to be considered as a part of the strategy in fight against terrorism, as it became a common sense approach, which is performed by other states as well.[17]

Religious profiling is often surreptitiously introduced in legal system of many countries, almost never in an explicit and open way. It is usually performed through internal regulations considering the fight against terrorism, by ignoring international human rights documents and contradicting them, particularly considering norms on non-discrimination. One of remarkable examples could be the USA presidents executive orders issued during the "war against terror".[18] Particularly controversial became recent Executive order by Donald Trump issued in January 2017, titled *Protecting the Nation From Foreign Terrorist Entry Into the United* States, which bans temporarily to citizens of seven mostly Muslim countries (Sudan, Syria, Iran, Iraq, Libya, Somalia and Yemen) to enter to the USA, nevertheless they have valid documents and visa. 9th Circuit court of Appeals suspended that executive order arguing that it violated constitutional protections against religious discrimination. As already mentioned Trump expected that the Supreme Court will overrule that decision, but in the meantime he decided that it is better to issue new Executive order, which could be defended more easily. On March 6, 2017 he introduced in the legal system a new Executive order which is narrower and specifies that 90-day travel ban on people from six Muslim-majority countries (now without Iraq) does not apply to those who already have valid visas.[19]

On the other side human rights NGOs in the USA strongly point to the need to more precise normative regulation of that issue. It seems that their activism during February 2017 succeeded to provoke discussions in the US Congress about the need to issue *Racial and Religious Profiling Act.* This is why D. Cole rightly warns that, in the situation when the balance between human rights and national security is to be made, it is necessary to obey equal dignity and basic human rights of all the people, without challenge to buy security on the account of basic human rights of those who are non-citizens.[20]

Many authors are of opinion that religious profiling is not an efficient way in the fight against terrorism.[21] An American law professor who is well-known expert in issues of national

17 M. Memoli, "Donald Trump: Profiling Muslims is 'common sense'", *Los Angeles Times*, June 19, 2016, available at: http://www.latimes.com/politics/la-na-trailguide-donald-trump-profiling-muslims-is-1466356415-htmlstory.html

18 See: D. Avramović, „Kad vanredno stanje postaje redovno", *Pravni život,* 14/2008, pp. 509-529.

19 A. Buncombe, "Donald Trump signs new travel ban executive order targeting six Muslim-majority countries", *Independent*, March 6, 2017, available at: http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-travel-ban-executive-order-latest-sign-muslim-majority-countries-six-iraq-white-house-a7614551.html

20 D. Cole, "Enemy Aliens", *Stanford Law Review*, Vol. 54, 5/2002, p. 959.

21 O. De Schutter, J. Ringelheim, „Ethnic Profiling: A Rising Challenge for European Human Rights

security and human rights, suggested to the French government in 2015 after the terrorist attack on the satirical magazine *Charlie Hebdo* that, while analyzing what the things gone so far and wrong, reconsider use of religious profiling as a form of the fight against terrorism. She thinks that prevention of terrorism is possible, but primarily by concentration to illegal activities rather than to practicing religion.[22] A group of Australian authors have a very similar standing and they claim that pprofiling involving the use of race, religion, ethnicity or national origin (or perceived race, religion, ethnicity or national origin) as a basis for law enforcement decisions in efforts to counter terrorism is ineffective in identifying potential terrorists. In addition, profiling can prove counterproductive because it stigmatizes and alienates communities, thus undermining social cohesion. These negative outcomes can fuel support for terrorism and distrust towards police.[23]

As an alternative to religious and racial profiling, more and more popular in the theory becomes an approach called "behavioural profiling"as a better form of prevention.[24] According to that view it is better to focus to pre-attack behaviours, not to personal characteristics such as race or religion. This type of profiling has given good results in prevention of other forms of crime, like drug trafficking. There are two key actors in behavioral profiling – objective and subjective one. A vivid example is offered by Stephen Ellmann: „At an airport, objective factors might include the lack of a round-trip ticket, or the lack of luggage; subjective considerations might include nervousness or failure to respond readily to initial, universally applied security procedures. If we can proceed this way, achieving protection without discrimination, we should. But there are important reasons to be skeptical of the promise of this approach".[25] Of course, behavioral profiling has its limits, and one of the most important is to slip and be transformed in racial and religious profiling. As a better way to solve profiling problems which is mentioned in the theory is the one which stresses building effective partnership between law enforcement and Arab, Muslim, and Sikh communities, especially in the USA.[26]It sounds as a perfect and modern model, but it is not so easy to achieve it, particularly in the short run.

TOWARD HARD LAW FRAMING OF RELIGIOUS PROFILING

In conclusion, having in mind all deficiencies of religious profiling or its derivates (like behavioral profiling) or long term possible solutions (like building effective partnership) the delicate issue of religious profiling should be precisely arranged normatively. Its defining should not be left to non-binding reports of different bodies and/or to soft law instruments. Religious profiling could be arranged at the international level, but in any case it should be necessarily done on the level of particular state as well. It is completely clear that in certain cases religious profiling is needed (but shaped with different intensity and approach in different countries due to their specificities). However it is extremely necessary to set a clear

Law", *Modern Law Review*, Vol. 71, 3/2008; D. A. Ramirez, J. Hoopes, T. L. Quinlan, "Defining Racial Profiling in a post-September 11 World", *American Criminal Law Review*, Vol. 40, 3/2003;S. Legomsky-,*op. cit*; D. Cole, *op. cit*., pp. 974-977;

22 S. Aziz, "Did Religious Profiling Allow Paris Terrorists to Proceed Undetected?", January 9, 2015, available at: http://www.huffingtonpost.com/sahar-aziz/did-religious-profiling-allow-paris-terrorists-to-proceedundetected_b_6435812.html

23 S. Pickering, J. McCulloch, D. Wright-Neville, *Counter-Terrorism Policing – Community, Cohesion and Security*, Springer, New York, 2008,p. 63.

24 D. Ramirez, S. Woldenberg, „Balancing Security and Liberty in a Post-September 11th World: The Search for Common Sense in Domestic Counterterrorism Policy", *Temple Political&Civil Rights Law Review*, Vol. 14, 2/2005, p. 499.

25 S. J. Ellmann, "Racial Profiling and Terrorism", *New York Law School Law Review*, Vol. 46, 3-4/2002-2003, p. 689.

26 D. Ramirez, S. Woldenberg,*op. cit*., pp. 501-515.

normative border which would delineate what belongs to the domain of allowed and what should be unauthorized profiling.

Of course, it should all be done in time, by preparing hard law framework in advance, in order to escape illegitimate violation of human rights through discriminative religious profiling for the sake of national security. Very instructive in that sense is a conclusion in the paper by prominent law professor at the New York Law School, Stephen Ellmann, who argues that discretional decisions and arbitrary assessments are unavoidable in race and religious profiling, accepting in that way capitulation of an adequate constitutional response. As an answer to the question "Is racial, religious or gender profiling constitutional as a response to terrorism", his answer is "yes, sometimes".[27] And what does it mean "sometimes" he left to *ad hoc* interpretation. This author basically follows relativistic approach and doctrine of decisionism, leaning upon Richard Posner's standpoint about balancing national security and human rights, which he launched in 2001 after the 9/11 terrorist attacks in the USA. Advocating a fluid approach like common sense, Posner states: „Concretely, the scope of these rights has been determined, through an interaction of constitutional text and subsequent judicial interpretation, by a weighing of competing interests. I'll call them the public-safety interest and the liberty interest. Neither, in my view, has priority. They are both important, and their relative importance changes from time to time and from situation to situation. The safer the nation feels, the more weight judges will be willing to give to the liberty interest. The greater the threat that an activity poses to the nation's safety, the stronger will the grounds seem for seeking to repress that activity, even at some cost to liberty".[28] In the same paper Posner is analyzing different methods of fight against drug trafficking which gave considerable results like electronic surveillance, elaborate sting operations, the infiltration of suspect organizations, random searches, the monitoring of airports and highways, and the profiling of likely suspects on the basis of ethnic or racial identity or national origin! He concludes that the time has come to use the same methods in the fight against terrorism. No doubt that he supports profiling as a method in suppressing terrorism.

In order to make more objective or at least to arrange more properly the issue of religious profiling it is necessary to reconsider possibility of introducing national security as a potential basis for limitation of religious freedom, both at international and national level. In that way, in cases when it is necessary for the national security (when the state of emergency is not proclaimed), religious profiling would not be issue of fact, basically illegal or para-legal form of arbitrary limitation of religious freedom. Having in mind serious constant threat of terrorist attacks, it seems that a kind of hard law framing could lead to a better, more efficient and more legalistic balance between human rights and national security.

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27 S. J. Ellmann, *op. cit*., pp. 729-730.
28 R. Posner, "Security Versus Civil Liberties", *The Atlantic*, December 2001, available at:https://www.theatlantic.com/magazine/archive/2001/12/security-versus-civil-liberties/302363/. In that article Posner quotes statement of the Supreme Court Justice Robert Jackson, who wrote in one of his dissenting opinions that "the Bill of Rights should not be made into a suicide pact".

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ABUSE OF NOBLE CAUSE IN POLICING – RISK FACTORS AND CONSEQUENCES1

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Abstract: The conflict between ends and means is undoubtedly one of the key ethical dilemmas in police action. The aim is ethically correct and police officers feel obliged to meet it, but the legitimate means make difficult to them to achieve that aim. This problem can occur in almost any situation where the restrictions have been put on the police methods, and which police officers perceived as undesirable, excessive, unreasonable or unfair. Numerous police officers tend to solve this dilemma by referring to the essence of the police role, in which base there is a „noble cause" (protection of public safety, combating crime), believing in the correctness of taking certain actions, even if they are illegal, if they have for the purpose achieving this goal. Given the fact that in our country this phenomenon has not been sufficiently analyzed, our work will primarily be based on consideration of its general characteristics (concept, risk factors, consequences), so that we will end the work reviewing options for possibly overcoming this problem.

Keywords: police authority, abuse, noble cause, risk factors, consequences

INTRODUCTION

One of the oldest dilemmas that people face is embodied in the question: 'Do good ends justify bad means?' The conflict between ends and means is undoubtedly one of the key ethical dilemmas in police action - the goal is ethically correct and the police officers feel obliged to fill it, but the legitimate means make them difficult to achieve that goal. In such circumstances police officers become convinced that the goal can be sometimes achieved only if they use 'dirty' means. Otherwise, the maxim 'the end justifies the means' is applied in the behavior of police officers characterized as process corruption - violation of legal procedures and rules of criminal procedure made by police officers in order to secure the conviction of concrete person (involves any perversion of the course of justice, including police lying in the witness box, withholding contrary evidence, or coercing suspects into making confession).[3] Keeping in mind the 'nobility' of intentions some authors name this kind of a police officer's conduct corruption of noble cause.[4]

1 This paper is the result of the research on project: "Crime in Serbia and instruments of state responce", which is financed and carried out by the Academy of Criminalistic and Police Studies, Belgrade - the cycle of scientific projects 2015-2019. The leader of the Project is Associate Professor Biljana Simeunović-Patić, PhD.

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3 T. Prenzler, *Police Corruption – Preventing Misconduct and Maintaining Integrity,* Boca Raton 2009, p. 16.

4 See: J. Crank, M. Caldero, *Police Ethics: The Corruption of Noble Cause*, Cincinnati 2010.

Using the term 'corruption' in this context is however questionable, since it is a fundamentally different methods of classical corruption. These differences are contained in the following characteristics: 1) *motivation* - process corruption violates regulations primarily to achieve the police role, while the classic corruption expresses more personal interest, embodied mostly in the motive of greed; 2) *initiation* - police officers are trained and psychologically prepared for the process corruption and later drawn into it, because even during the training they adopt the moral values that implicitly support this type of behavior, while in the classic corruption it is usually the opposite direction, since the willingness to such behavior is developed during the police work, usually after a period of adaptation to working environment and 3) *rationalization* - because of the specific motivation of the process corruption it finds a strong support in the police subculture, where the expressed commitment to the noble cause facilitates the rationalization of offence, while a violation of regulations in order to achieve economic benefits within the police subculture is treated as a deviant behavior, by which its tolerance and willingness of carrying out are less pronounced among police officers.

Searching for the appropriate expression, by which we would include any unlawful conduct embodied in the realization of 'noble' goal, we must not forget that it is the behavior wheh police officers intentionally violate rules regulating the police duty and the manner of treatment, i.e. to take actions for which they do not have a legal right. In this sense, the term abuse of a noble cause might be a good choice. Here it is worth consideration and formulation noble cause misbehavor - this is already present in the literature.[5] Despite good intentions and noble goal, the means that police officers used on that occasion 'are not appropriate' to people who should be the embodiment of the rule of law and a symbol of the state based on the rule of law.

CONSIDERATION OF CERTAIN RISK FACTORS FOR ABUSE OF NOBLE CAUSE

Commitment to noble cause

Almost the most important value that mobilizes the police is embodied in the "noble cause", i.e. achieving the noble cause. This is not a verbal commitment that is pronounced when an oath is taken, or a lesson which a police officer should learn during training. The police simply feel a moral obligation to create the world a safer place to live, which is closely linked with the essence of police work. This feeling, however, can develop for the police officers a belief that some goals are so important that all means are permitted in order to achieve them.

Otherwise, many authors distinguish commitment to the mission of crime prevention as one of the most important feature of the police subculture and the value that is especially cultivated among police officers. The myth of the necessity of police and its primary social role 'to serve and protect' represents the central line of police culture. For them policing is not just a job like any other, but way of life that has purpose and meaning, which is primarily related to the protection of the weak against the abuser.[6] Defining their job as a primarily moral occupation, police own a specific sense of mission that perceives the police as a crucial factor in the fight against evil in the society, as a force that protects citizens from harm. Kappeler, Sluder and Alpert explain how police project their image in public through the belief that the war for justice and social order rages in the streets in which they stand on the front lines, represent-

5 See: D. Bayley, "Law Enforcement and the Rule of Law: Is There a Tradeoff?", *Criminology & Public Policy* 1/2002, p. 135.
6 R. Reiner, *The Politics of the Police* – fourth edition, New York 2010, p. 119.

ing the 'thin blue line' between anarchy and order.[7] Seen in this context police work becomes more than a job, it actually becomes a social imperative, where the protection of citizens from criminal phenomenon becomes the major preoccupation.

Here, however, a logical question arises, whether the professional self-perception, embodied in the mission of fighting crime, is retained only in the rhetorical level, or has an impact on specific procedures in the field. The results of empirical research, based on ethnographic studies of policing (a combination of observation and tests with the participation of police officers), indicate that most police officers express commitment to work of protecting the innocent and the weak by the different criminal phenomena. Following the situation of several police departments in the British police, Bethan Loftus has found that crime prevention was often considered as the only real police work. As the author points out: 'Commitment of the police officers to the crime prevention was expressed to the level that it disturbed other processes within the police organizations. In that way, for example, the initiatives of community policing were underrated, because they failed to meet the real value of police work.'[8]

It is often overlooked in the literature that the victims of crime are one of the central components of police work. They motivate police officers to be firmly focused on achieving 'noble cause' - to provide protection to the weak and punish the criminals, simply put, to satisfy justice. As David Bayley explains: 'Their occupational attachment to the goal of crime-control through deterrence given emotional weight by their daily experience with the suffering of crime victims. Unlike judges and prosecutors, police see the raw hurt that criminality inflicts. For the police, as well as for most of us, doing justice in such circumstances means ensuring that the perpetrators are caught and punished.'[9]

It is important to mention that in developing the abuse of noble cause cynicism of police officers plays an important role. The literature cites different sources and consequences of police cynicism, especially among the direct perpetrators on the street.[10] Disappointment in functioning of the criminal justice system is set aside as one of the key sources of cynicism together with a feeling linked with it that the police officers are the only real crime fighters. This perception causes the appearance of two types of police officers. On the one hand we have officers who deliberately neglect their duties and responsibilities, avoid hard work, invest minimal effort in the work and take every opportunity to shirk, confident that their efforts are not worthwhile. They are individuals, called in jargon the *uniform carriers,*[11] whose disappointment and cynicism weaken their commitment to the noble cause. On the other hand there are officers who, despite the present cynicism, remain committed to the fight against crime and protection of innocent citizens. Truly believe that the police are the only ones who stand on the border between order and anarchy, they express willingness to do everything to achieve a noble goal, even if it means the application of the most extreme methods. This behavior is the most apparent in the type that Reiner named *new centurion* - a dedicated crime fighter.[12]

Belief in the inevitability of regulation violation

Scientific studies have repeatedly confirmed that police officers tend to be pragmatic and to resolve the situation faced with in the simplest way. Legal norms, however, impose various

7 V. Kappeler, R. Sluder, G. Alpert, *Forces of deviance, Understanding the dark side of policing* - second edition, Illinois 1998, p. 95.
8 B. Loftus, *Police Culture in a changing World*, New York 2009, p. 189.
9 D. Bayley, *op cit*., p. 135.
10 See: Р. Зекавица, З. Кесић, „Полицијски цинизам као обележје полицијске субкултуре и његов утицај на однос полиције и владавине права" – у: *Супростављање савременом организованом криминалу и тероризму – књига VIII* (ур. С. Мијалковић), Београд 2014, стр. 359-373.
11 M. Punch, *Police Corruption – Deviance, Reform and Accountability in policing*, London 2009, p. 23.
12 R. Reiner, *op cit*., p. 120.

restrictions on the use of police powers. Hence it is no wonder why the police usually see the formal rules of behavior as a stumbling block and the key obstacle to the effectiveness of their work. In particular, police officers usually complain about how their work is burdened with a number of rules, which consistently and effectively compliance is impossible. Leaving aside the broader discussion of whether such remarks are justified or not, the fact is that those develop in many police officers animosity towards work rules and procedures, which ultimately strengthens the attitude, 'sometimes the law must be broken in order to enforce a law'.

This paradoxical relationship of the police toward the law is for the most part derived from the requirements under which the police are also asked to be efficient and to work in observance of the law. Jerome Skolnick explains how the tension between operating consequences of ideas of order, efficiency and initiative on the one hand, and legality, on the other hand, represents the principal problem of police as a democratic and legal organization.[13] Judging by the results of research this requirement is not always feasible in practice. McNamara reported that 80% of surveyed police officers in his study agreed that 'it is impossible to always fully respect the rules and at the same time effectively carry out the police duties'.[14] Of 925 randomly selected members of the U.S. police from 121 police departments, 43% of them share the belief that 'consistent adherence to the rules is not compatible with the requirement to get the job done right'.[15] Of 249 surveyed members of Belgrade police department 57.5% believe that 'strict adherence to the law while carrying out tasks can tie the police officers' 'hands and to prevent them to do the job effectively'.[16]

For our discussion the following indicators are of particular interest- asking the question to the officers 'Do you justify breaking the law while performing police duties if the result of that can be obtaining adequate evidence for the committed criminal offence or an offender's accountability?' Radomir Zekavica found that 13.5% of police officers justify this, 40.5% of them do not justify, but they believe that it is often necessary, while 46% do not justify breaking the law regardless of the motives or the results of that.[17] So, faced with a situation when the law makes the realization of the professional goals difficult, police officers are tempted to break the law to ensure the achievement of these goals. Although these results do not prove that the officers will violate the law if they find themselves faced with this temptation, they talk enough about the rationalization of such procedures. Similar beliefs are found in the article *The necessity for dishonesty: Police Deviance, 'making the case' and public good* in which the author Jona Goldschmidt analyzes interviews with ten British officers, revealing that all of them share noticeable belief that only if they violate the rules can they do their jobs successfully. It is interesting that all collocutors justify such actions by serving to the 'public good'.[18]

Convinced of the 'inevitability' of rule violation police officers do not consider illegal a number of offences. On the contrary, there are behaviors that are according to the informal rules of police culture completely legitimate, as, for example, *making the case* - providing the conviction of dangerous criminals by manipulating and faking evidence. At the same time trickery and skill to 'hide' this process are especially valued, which is known among the police officers as *ducking and diving*.[19] The literature usually draws attention to how the police are especially prone to this type of abuse when acting according to the offences. To solve these,

13 J. Skolnick, *Justice without Trial: Law Enforcement in Democratic Society* – fourth edition, New York 2011, p. 6-7.

14 See: S. Kutnjak-Ivkovic, *Fallen Blue Knights: Controlling Police corruption*, New York 2005, p. 69.

15 D. Bayley, *op cit*., p. 134.

16 R. Zekavica, "Primena prava i efikasnost policije" –in: *Suzbijanje kriminala i evropske integracije* (Milošević G., ed.), Beograd 2010, str. 475.

17 *Ibid*.

18 See: J. Goldschmidt, "The necessity for dishonesty: Police Deviance, 'making the case' and public good", *Policing and Society* 2/2008, pp. 113-135.

19 M. Punch, *op cit*., p. 40.

one requires a proactive approach, which is especially expressed in the consensual crimes. Since they take place with the consent of their actors' will (gambling, prostitution, reselling narcotics), these offences do not have victims embodied in the specific person who would report the commitment of them which prevents the police officers' traditional role after the offence and makes the process of collecting evidence difficult.

In the absence of restrictions of legal possibilities police officers may be able to easily decide to use illegal methods (provocation of works, planting of evidence), particularly when dangerous forms of criminal behavior (e.g. organized resale of narcotics) are at stake. In the operative processing of these cases police officers are often forced into the informants' help. Sometimes it is difficult to find informants willing to cooperate. Therefore, police officers, especially when faced with the pressures to solve crimes, often seek to obtain information using various forms of coercion to cooperation (deception, blackmail, threat, etc.). In short, in order to resist the specific types of crime, forced to act proactively, police officers sometimes rely on methods that are more appropriate for criminals than for police officers. Despite the fact that the 'good intentions' underlie such activities they are aware that they found evidence by the abuse of authority which is a sufficient reason for a judge to dismiss the evidence. However, in order to prevent that some police officers express their willingness to continue with improper conduct, they falsely testify in court.

A significant stimulus to this behavior is a 'presumption of guilt', by which the police officers are otherwise often guided in their work. Despite the fact that regulations require from them to respect the presumption of innocence of a specific person, policemen, as pointed out by Crank and Caldero, are prone to think that they are dealing with people who are factually guilty, even if it cannot be proved in the present case, because of which they think that they must use trickery to find a guilt of a suspect.[20] For some authors, this logic is the logical outcome of the police profession. For example, Peter Manning explains that the police are usually pre-convinced of the guilt of the person they arrest primarily because of their unique experience in controlling crime and the fact that they are often required to have this security as a precondition to make an arrest.[21] During an interrogation the police are often guided by the same logic. As Skolnick says: 'The police officers primarily tend through investigation to maintain their own interest in confirming certain details. The guilt is placed as a fact, and the one who does the investigation usually directs their questions to the reasons why the crime was committed, rather than whether a particular person did it. This approach puts the suspect in a position where their story is just working out of what the police officers apparently already know - that the suspect is guilty. Explanations to the contrary are dismissed and discouraged.'[22]

This perception, however, is not always based on objective facts, but it is the result of professional intuition. That is, there is no legally reasonable doubt in a given case, but it is a so-called *sixth sense suspicion*, as Crank called it.[23] Although the presumption of guilt is often confirmed in further operational work, the problem is that this police practice allows the execution of numerous abuses and violations of basic freedoms and rights. First of all, the presumption of guilt may be based on stereotypes and prejudices, by which the control is tendentiously directed towards the 'usual suspects'. Pre-confident in one's blame the police officers can easily decide to extend their actions beyond the legal framework, using a 'dirty means' to confirm the guilt. They can, for example, fake evidence to convince a jury in what they already

20 J. Crank, M. Caldero, *op cit.*, p. 50.
21 P. Manning, "Lying, Secrecy and Social Control" –in: *Police Deviance* (Barker T. and Carter D., eds.), Cincinnati 1986, pp. 96-119.
22 J. Skolnick, "Deception by Police" –in: *Police Deviance* (Barker T. and Carter D., eds.), Cincinnati 1986, p. 133.
23 J. Crank, *Understanding Police Culture* – second edition, Cincinnati 2004, p. 145.

'know'. It remains, however, an open question whether the policemen by such procedure only 'provide the truth' that they cannot prove otherwise, or 'construct the truth, basing it on lies.

The pressures of productivity

To understand the process of the creation abuse of noble cause we must not be based solely on the personal character and feeling of the individual police officer, but we should also consider how various external pressures strengthen the police commitment to the 'noble cause' and the belief in necessity of regulation violations to achieve these goals. The fact is that police officers suffer a number of pressures during their work. Often, however, these pressures represent the conflicting requirements, since they come from different sources (people, media, politicians, police department). As such, for police officers they represent a source for both practical and moral dilemmas. In an effort to resolve them, police officers can easily reach for illegal means. Specifically, under pressure to create results police officers can feel compelled to extend the powers outside the legal framework. In this sense, the attitude of some of the officers that the violation of regulations in police work is necessarily should be understood as a result of external pressures to increase work productivity.

It is also known that most interest groups define that the priority mission of the police is crime reduction. Excessive emphasis on one goal, however, may put additional pressure on the police to adopt illegal means (e.g. definition of the goal as 'war' that must be achieved at any price). In this case it may be political pressure that justice should be satisfied as soon as possible, which is especially evident in the case of crimes that are particularly frightening or disturbing the public (e.g. terrorism). Prenzler recalls that in the case of England in the 1970's, fears of terrorist activities of Irish Republican Army provided a major catalyst for human rights violations by the police and prosecutors.[24] Researches in this area have identified a process by which the detectives began their case without prejudice, in order to quickly focus on those individuals who most closely resembled the suspect. In this case it is a so-called *tunnel vision* - concerned with the rapid resolution of all cases, the police officers pay all their attention to the seemingly best suspect, neglecting all other clues and evidence.

Police are without any doubt under considerable pressure to do something about crime. However, their ability to solve this problem is limited, which creates tension between desire and reality. Peter Manning described this dilemma as a conflict between the desired and possible, describing it as follows: 'Police officers are faced with the paradox between what is formally expected from them and what is possible to perform. Trying to cope with this dilemma, they are trying to withdraw themselves from collective definitions of morality, law and social order.'[25] The effect of this complex paradox may be explained by the most picturesque example of combating narcotics resale. The police are bombarded almost daily by messages such as 'clean our city' or 'make the streets safe for our children'. Such citizen appeals strengthen the noble feelings and belief of police officers that they must act strongly against all activities related to drugs. The police, however, are not able to solve this problem alone, but what they can often directly place them in a position to violate the law or the rights and freedoms of the offense players. Each time they perform such actions, they actually fulfill the wishes and desires of the public to solve a problem with drugs 'in their own way'. When citizens complain publicly they implicitly require from the officers to violate regulations, and they are not even aware that their complaints have real effects on police behavior.

In this sense, Klockars is right to a certain degree when it is necessary to shift the burden of using dirty means from the police to the public. As highlighted by this author: 'We all are

24 T. Prenzler, *op cit*., p. 22.
25 See: J. Crank, *op cit*., p. 297.

guilty in a sense by expecting certain ones among us to do the ''dirty work" and then condemnig them for their actions... In other words, when the police apply excessive force against troublemakers, or lie in court in order to ''help" a bad person be condemned, they are doing exactly what we want them to do, just we do not want to know that they do it.'[26] Of course, the citizens are not the only one who pressurize police to do something about crime. The police officers suffer the various political pressures, pressures through the media, and pressure within the police organization. Manning and Redlinger distinguish these pressures that the narcotics agents suffered, and which 'forced' them to break the rules: • *management directives* - the pressure to create results through arrest quota achievement • *moral and ideological commitment* – 'You're protecting the kids in winning the war against drugs"[27]

Reviewing the effect of different pressures and their importance in solving crimes, we can easily come to a conclusion that there is nothing wrong with them, because they only encourage the suppression of illegal activities, they encourage 'good' police work. However, when we think better about it we will wonder whether it is really so, whether that goal is so valuable that for its achievement it is necessary to bend the rules, and whether we may 'open the door' to the spread of many serious crimes and abuses. The pressures exerted on the police to resist crime should not be underestimated, because they are directly or indirectly linked to numerous cases of violations and obstruction of legal process. Such actions create indirect effect in which 'taking justice into one's hands' is treated as a rational solution. Prenzler explains: 'Perceived or real pressures for quick punishment and implementation of 'street justice' in the name of the society contribute to the police abuses. Disappointed in the criminal justice system the police officers take the role of a judge, jury and executioner under the utilitarian principle of greater good for society.'[28]

CONSEQUENCES OF THE ABUSE OF NOBLE CAUSE IN POLICING

As we have seen, many officers are convinced that violating regulations for 'a noble cause' achievement is justified, creating that justification according to a standard that sets a personal morality above the law. Simply put, 'the police act as if they were the law, believing that the law is precisely what they are doing'.[29] This interpretation emphasizes the difference between the police officers as those who enforce the law and police officers as law makers. The latter situation usually occurs when the behavior of the police is managed by their moral beliefs in the imperative of achieving a goal, under which influence the following attitude is created – 'our every action is valid by itself, as it serves the administration of justice.'

Almost all offenders whose act can be characterized as 'taking justice into one's hands' resort to the rationalization of illegal practices. These can be individuals or vigilante groups who try to alleviate their anger or frustration by implementation of 'raw justice', by which they rationalize the use of brutal methods applying the various techniques of neutralization, and in the most cases by 'denial of the victim' and 'appeal to higher loyalties'.[30] This pattern is perhaps more pronounced among police officers, because they consider justice both as a moral obligation and their professional duty, managing in such a way to rationalize application of even the most brutal methods, justifying them by the realization of 'a noble cause'.

26 See: J. Crank, M. Caldero, *op cit*., p. 51.
27 *Ibid*, p. 224.
28 T. Prenzler, *op cit*., p. 22.
29 J. Crank, M. Caldero, *op cit*., p. 139.
30 See: G. Sykes, D. Matza, "Tehnike neutralizacije" -in: *Teorije u kriminologiji* (Ignjatović Đ., ed), Beograd 2009, str. 294-299.

However, although it seems that such acts produce a positive outcome, the effects of the abuse of a noble cause are actually negative, primarily for the police officer. They can, as Newburn explained, make police officers lose their sense of moral proportion, to allow their passions to lead them to use dirty means too readily or too crudely.[31] The negative impact on the social level is even higher, because of the fact that such practice leads to degeneration of police objectives, whose achievement is based on the violation of basic human rights. As outlined by Herman Goldstein: 'An officer who relies on the work of "dirty" methods is like a firefighter who sets fire or a doctor who spreads a disease.'[32] Law enforcement and the rule of law, viewed in this context, lose all sense, because the police officers instead of acting as 'servants of the law', they place themselves 'above the law'.

As we already explained, the abuse of noble cause significantly shapes the noble intentions of a police officer – protection of innocent citizens from dangerous criminals. In this sense, the motivation of police officer seems entirely clear. Achieving a noble goal is not, however, the only motive that drives police officer to behave in this way. Motives or intentions can easily be mixed up. Alpert and Noble warn: 'A person may deceive to pursue some worthwhile utilitarian goal (such as public safety) and at the same time have a malicious disregard for the rights of the suspect and for the laws, policies, and limits that apply to policing. This willingness to betray basic principles of honesty attacks the very public safety that the person believes himself or herself to be pursuing. A police officer who by malicious disregard goes beyond the limits of legitimacy is a threat to the public safety. He or she could be capable of violating anybody's rights—poisoning the idea of public safety.'[33]

There are situations in which a police officer uses illegal methods, specific to the 'noble cause misbehavior', but to achieve a personal interest (to achieve personal profit, take revenge on a person). We recall that the police officers often act under the pressure of productivity. Often the perpetrators' motivation is encouraged by the rewards such as an increase in salary, incentives, promotions, etc. Guided by the logic of 'more charges, more privileges', the police can easily decide to 'strengthen' cases through various forms of abuse in order to also achieve the personal gain under the excuse of 'noble cause'.

Police officers may sometimes decide to use 'dirty' methods, characteristic of a noble cause misconduct (falsification of statements, perjury), also for personal gain, but this time changing the course of justice in a different direction - 'weakening' of specific cases and protecting a person's illegal activity. If this police officer's act is followed by the realization of a particular compensation then it is a classic corruption. If they want to take revenge on someone, the officer can also use a similar logic, adapting behaviour to the planned intention. As an illustration, the officer can 'find' a bag of heroin during the search of vehicle owned by a person who bears a grudge against them and use it as evidence, which will likely lead to accusation. If at the same time the officer is rewarded for it, all the better.

Thus, under the excuse of the 'noble' intentions a police officer may hide another, decisive motive by which was guided when they decided to violate regulations. Since in both cases the act of commission can be the same, it is difficult to determine the real motive by which the police officer was guided (a noble cause, personal gain, revenge). The fact is that a police officer may be motivated to take the law into their own hands for various reasons and in each of those cases they violates the elementary principle of the rule of law. It must be acknowledged, however, that it is not the same when such police officer's action is motivated by spirit of utilitarianism - the protection of innocent citizens from dangerous criminals, and when they do

31 T. Newburn, *Understanding and Preventing Police Corruption: Lessons from the Literature*, London 1999, p. 10.

32 H. Goldstein, *Problem-Oriented Policing*, Philadelphia 1990, p. 190.

33 G. Alpert, J. Noble, "Lies, True Lies, and Conscious Deception: Police Officers and the Truth", *Police Quarterly* 2/2009, p. 244.

it to take revenge on an individual, even if it is a criminal. In the first case we can talk about the possible moral obligation and commitment to the noble cause, while behind the other situation the bad intentions are usually hidden. The social reaction should be defined differently with regard to these two forms of taking justice into one's hands.

As we mentioned earlier, the police officers are required to make sometimes a difficult choice, knowing that in these situations it is not possible to be both innocent and righteous. The difficulty of police work is reflected in this paradoxical situation. We do not express doubt that the police officers will be 'worse than the bad guys' if they are extremely dedicated to a noble goal, if they believe that the violations in concrete case is inevitable and if they are doing this act under pressure to achieve results. The problem is, however, that such conduct tends to be frequently repeated, because it is not traditionally seen as bad, which can easily contributes to the progression of police abuse. More specifically, when the activities of law violation become routine in police practice, they can easily be turned to the classic abuse. Misconduct of noble cause and material corruption eventually can become closely linked in the sense that rule violations due to noble cause represent the entrance for corruption motivated by material reward, provided that where there is the first level of authority abuse, the classic corruption cannot be too far away either.

CONCLUSION

The importance of considering the phenomenon of the abuse of noble cause in policing is multiple. However, perhaps the most important significance of this discussion lies in presenting the fact that the excess and abuse of police powers may be triggered by a moral imperative and utilitarian ideal of the police profession, that is, the achievement of the noble goal. In this respect, citizen protection from criminal phenomena, particularly its most dangerous forms, could be characterized as one of the most valuable goals. Committed to carrying out this mission, confident that they cannot fully realize it without violating the regulations, further encouraged by external pressures of productivity, the police officers can easily reach for illegitimate means.

Although the administration of justice by the doctrine of 'the end justifies the mean' can be interesting, consequences of such possibilities are enormous. How Pomery explains: 'If the police are allowed to apply the means that exceed the legally permitted level, physical freedom and security of all of us will depend only on the one's fairness, good will and caprice.'[34] No matter how noble and worthy concrete goal is, it must not be forgotten that some behaviors are simply not acceptable in order for this goal be achieved, especially in the context of policing as the most visible symbol of legal system. Police officers must be aware that the goals themselves are insufficient to justify all the means necessary to achieve them. Also, they must always bear in mind that they cannot and must not possess identity or power that is above the law. So, the only correct answer to the question 'Does good end justify bad means?' should be negative. Also, all bad means have to be seen and punished as any other 'dirty' means, despite the fact that it might seem to the officer that they achieved 'noble' goal by their use. However, this is still easier to be said than implemented in practice.

There is no doubt that any violation must be treated as illegal, regardless of the cause of that behavior and motivation of the perpetrator, and, as such, must be followed by certain sanctions. However, this principle is not always feasible, especially when it comes to 'the noble cause misbehavior'. Namely, in the police organization where commitment to achieve professional tasks (goals) prevails at the expense of respect for the rules of the work (means), all

34 J. Crank, M. Caldero, *op cit.*, p. 139.

efforts aimed at controlling and combating violation of the rules police officers typically view as disloyalty to the profession or even as a betrayal. In addition, the supervisors themselves do not show so much willingness to intervene in situations where rules are violated due to the noble cause, as opposed to the cases where a police officer acts in their own interest. Organizational climate in which such behavior is tolerated and characterized by passively behavior of the supervisors not only makes it difficult for problem solving but also contributes to the spreading of the abuse of noble cause in the existing organization.

Hence the skepticism about overcoming abuse of noble cause is almost understandable, and it is also seen in the critical examination of the offered solution models: 1) *Agile bureaucrats* - police officers are trained professionals who adhere in their work to the clearly established bureaucratic rules and regulations. Klockars argues that 'dirty means' do not disappear completely from such a model, but the motivation for their use is more focused on other goals, not on punishment 2) *Bitner's peace* - policing is aimed at maintaining peace, not punishment. Klockars believes that it is unrealistic to expect that by this divert of policing other goals will automatically disappeared, and as long as "the punishments of guilty" find a place among these aims, a way to use dirty means will be found.[35]

In an attempt to find an adequate solution the following question arises: whether any violations of law by the police can be treated as correct and in what situations this option is potentially possible. Crank and Caldero believe that there are several important principles which the police must follow:

• decision on the use of illegal means should never be left to the discretion of police personnel from the lower ranks, or even mid-level administrative staff, but only senior management;

• use of illegal police tactics can be initiated solely to obtain information with which the insurmountable situation will be solved;

• making a decision on the use of illegal methods must be accompanied by an independent investigation in order to avoid the possibility of concealing of facts;

• in case of detection of unreasonableness of using illegal tactics the responsible person must immediately resign from his job and be held accountable.[36]

It must be admitted that the debate on this subject is very delicate because it emphasizes tolerance of non-compliance with the principles of legality and advocates open use of illegal methods. It is true that legal documents are often rigid and as such inflexible to all circumstances and emerging challenges, especially when we consider changing nature of crime, i.e., a constant emergence of some new forms of criminal behavior. Hence, in some situations adequate response may require 'extra-legal' measures. However, this option should be taken only as a last resort, which would be undertaken with respect to the above principles, and not giving freedom to the application of this 'extra powers' to individual police officers.

Eventually, a certain level of discretion in the application of illegal methods can be given to the police officers engaged in specific tasks (e.g. undercover investigators), but only in connection with the implementation and in the interests of specific investigations and in situations where they have no possibility of a different choice. However, given the circumstances and intentions of the undercover investigators, such cases could be partly treated as criminal offenses committed in extreme necessity. The fact is however that this 'privilege' can be easily abused, which imposes an obligation that each specific case of the offense by the undercover investigators should be examined in particular, but only when there are possibilities for con-

35 See: T. Newburn, *op cit.*, p. 11.
36 J. Crank, M. Caldero, *op cit.*, p. 49.

duct of official actions, and that on this occasion the status of undercover investigators is not compromised.

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POLICE ARREST AND HABEAS CORPUS PROCEDURE IN THE CRIMINAL PROCEDURE LEGISLATION OF THE FEDERAL REPUBLIC OF GERMANY (Doctrine, Casuistry of the European Court)[1]

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Abstract: The realization of international standards represents one of the major challenges in the contemporary society, the realization of the principle of the rule of law and the police misconduct. Contemporary trends in the criminal procedural legislation in general, reform criminal proceedings with a tendency towards the efficiency as an international standard, and when it comes to the qualitative and quantitative aspects of efficiency, habeas corpus proceedings through the right to liberty and security of person, it manifests a key determinant of the implementation of international standards by transforming the criminal procedure of the Federal Republic of Germany. Namely, the Federal Republic of Germany achieves an adequate regulatory framework through the proclamation of international standards, which through the critical tone and versatility of considerations require a valid theoretical standpoint analyzed through the following questions: firstly, the right to liberty and security of a person as an international standard in criminal proceedings of the Federal Republic of Germany (Introductory considerations); secondly, police arrest or detention and habeas corpus proceedings in the Federal Republic of Germany; thirdly, the casuistry of the European Court of Human Rights in the cases of the Federal Republic of Germany and concluding considerations

Keywords: right to liberty and security of person, police, deprivation of liberty, habeas corpus proceedings.

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THE RIGHT TO LIBERTY AND SECURITY OF PERSON AS AN INTERNATIONAL STANDARD IN CRIMINAL PROCEDU-REOF THE FEDERAL REPUBLIC OF GERMANY

(Introductory considerations)

The contemporary criminal proceedings, through the convergence of elements of the two major legal systems, deliberately searches for instruments to effectively combat crime and to achieve the ideals of a fair process[4] as a conditio sine qua non to achieve the rule of law. Accordingly, the Federal Republic of Germany creates a more adequate regulatory framework through continuous reform of criminal procedure, and by the proclamations habeas corpus proceedings, it reaches the desired international standard, the right to liberty and security of a person. The importance of international standards for criminal proceedings, among other things, is manifested through the proclamation in international documents, and the right to liberty and security of person, the right to a fair trial as key determinants of effective realization of the criminal proceedings of the Federal Republic of Germany. Namely, the Federal Republic of Germany has ratified a number of international documents that proclaim the right to liberty and security of person, including, the habeas corpus proceedings. Among the first documents, through the aspects of universality and setting the frames for the majority of international documents, though it does not belong to one of the hard right, the Universal Declaration of Human Rights[5] is manifested, which stands as a milestone in the history of mankind, as pointed out by most experts, it has reflected a stronger, more efficient image on Human Rights, but its effects can be seen in not so small number of international documents. In fact, guided by the principles of freedom, justice and world peace, by fostering social progress and improvement of social standards in greater freedom, it has proclaimed that no one should either be arbitrarily arrested, held in detention or exiled (Art. 9 of the Universal Declaration). Also, from the aspect of police conduct in the measures of deprivation of liberty, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Art. 5 of the Universal Declaration). The prohibition of discrimination as a basis for the realization of human rights is reflected in the work of the police, and accordingly the Universal Declaration proclaims that: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction as to race, color, sex, language, religion, political or other opinion, national or social order, property, birth or other status (Art. 2 of the Universal Declaration). Also, at the universal level, the International Covenant on Civil and Political Rights[6] provides for the right to liberty and security of person in the following way:

1. Everyone has the right to liberty and security of themselves. No one may be arbitrarily arrested or detained. No one shall be deprived of his liberty except on such grounds and in accordance to the procedure provided by law;

2. Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charge which was brought against him;

3. Any person who is arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be tried or released within a reasonable time. The detention of persons awaiting trial is not mandatory, but their release may be subject to guarantees to the arrival of the person concerned for trial,

4 D. Krauss, Der Grundsatz der Unschuldsvermutung im Strafverfahren, in H. Müller- Dietz (ed.). Strafrechtsdogmatik und Kriminalpolitik (Cologne, 1971), 153

5 Adopted and proclaimed by General Assembly Resolution of the United Nations 217 A (III) of 10 December 1948

6 International Covenant on Civil and Political Rights Germany ratified in 1973

at any other stage of the judicial proceedings in the present case and in order to execute the judgment;

4. Any person deprived of his liberty by arrest or detention shall be entitled to appeal to this Court to be resolved without delay on the lawfulness of his detention and the order of his release if the detention is not lawful;

5. Anyone who has been the victim of unlawful arrest or detention shall be entitled to compensation.

Also, the Federal Republic of Germany has continued successful way of strengthening international standards and creating more efficient criminal proceedings by ratifying the European Convention[7], and the right to liberty and security of person is manifested in Art. 5 of the EC:

1. Everyone has the right to liberty and security. No one shall be deprived of his liberty except in the following cases and in accordance with the procedure prescribed by the law:

a. in case of the lawful detention of a person after conviction by a competent court;

b. in case of the lawful arrest or detention of a person for non-performance of a lawful court decision or for the fulfillment of any obligation prescribed by law;

c. in case of the lawful arrest or detention for the purpose of bringing him before the competent legal authority on the existence of reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent an offense or fleeing after having done so;

d. in case of the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent authority;

e. in case of the lawful detention for the purpose of preventing the spread of infectious diseases or the lawful detention of mentally ill persons, alcoholics or drug addicts or vagrants;

f. in case of the lawful arrest or detention of a person to prevent his unauthorized entry into the territory of the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Anyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him;

3. Everyone arrested or detained in accordance with paragraph 1 c. of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released while pending trial. Release may be conditioned by guarantees to appear for trial;

4. Anyone who is deprived of his liberty shall be entitled to take proceedings by which the Court is to examine the legality of his detention and order release if the detention is unlawful;

5. Everyone who has been arrested or detained in contravention of the provisions of this Article is entitled by claim entitled to compensation.

We can notice the similarity in these documents between the determinants of habeas corpus proceeding through the notion of emergency, as well as through the entity of deciding on the legality of the arrest, and to the court. Those explicates are recognized by the criminal proceedings of the Federal Republic of Germany, along with certain derogations in accordance with the distinctive legal, historical heritage. The criminal proceedings of the Federal Republic of Germany regulates the international standard of a right to liberty and security

7 Germany ratified, by Code, the European Convention on Human Rights on 5th December1952, protocol 1 (ECHR) was ratified in 1957, protocol 4 (ECHR) was ratified in 1968, protocol 6 (ECHR) was ratified in 1989, protocol 7 (ECHR) was signed in 1985, protocol 12 (ECHR) was signed in 2000, protocol 13 (ECHR) was signed in 2004

of a person, including habeas corpus proceedings, by proclamations of the German Constitution[8], the Criminal Procedure Code of the Federal Republic of Germany[9], the Law on the Police Tasks of Bavaria[10].

THE POLICE ARREST AND HABEAS CORPUS PROCEDURE OF THE FEDERAL REPUBLIC OF GERMANY

Police represents one of the most important pre-trial subjects, in other words, the process of preparing a public lawsuit by the state prosecutor[11]. The activities of the police, which are manifested through operational actions, the actions of proving, also reflect its importance[12] in the fight against crime[13] through the measures of deprivation of liberty or implementation of the international standards of the rights to liberty and security of a person. Given that detention is considered to be one of the most important measures of the deprivation of liberty, especially when it comes to habeas corpus proceedings and judgments of the European Court of Human Rights in cases against the Federal Republic of Germany, we will present the basic characteristics of detention under the Code of Criminal Procedure Federal Republic of Germany[14], which is the exclusive responsibility of the court[15], as well as and the possibility of determining detention by the police according to the objectives of the police of Bavaria and the proclamation of rights to liberty and security of person provided by the Constitution of the Federal Republic of Germany.

Namely, the Constitution of the Federal Republic of Germany declares the right to liberty of any person, with the determinants of the deprivation of the said right, in the following way: 'Every person has the right to free development of personality, if he or she does not jeopardize the rights of another person, and if he or she does not violate the constitutional order or the moral norms of society. When it comes to the rights guaranteed to persons deprived of liberty, these are: 1. Freedom of a person may be restricted only under the law and as provided by law, and persons deprived of liberty must not be spiritually or physically abused; 2. The decision on the deprivation of liberty and its duration is determined only by a judge; 3. The police cannot keep anyone in detention for more than a day from the time of the arrest, whereas other issues in this regard should be regulated by law; 4. Anyone who is deprived of his liberty on suspicion of having committed a criminal offense shall not later than the day after the arrest

8 Grundgesetz für die Bundesrepublic Deutschland, ausfertigungsdatum: 23. 05. 1949, Federal Law Gazette I p. 2438, http://www.gesetze-im-internet.de/gg/BJNR000010949.html

9 Strafprozessordnung (StPO), [Bundesgesetzblatz , Part I p. 1074, 1319]; (BGBI. I S. 3799); (BGBI I S. 410). www.desetze-im-internet.de/englisch_stpo/index.html

10Gesetz uber Organisation der Bayerischen Statatlichen Polizei (GVBl.S.287, GVBL.s.136-GVBl.S.569)

11 Geisler, W. Stellung und Funktion der Staatsanwaltschaft im heutigen deutschen Strafverfahren, (1981) ZStW 1109; Rüping, H. (1992). Dei Geburt der Staatsanwaltschaft in Deutschland, Goltdammer s Archiv, 145; Blankenburg, E. and Treiber, H. (1985). The establishment of the public prosecutor's office in Germany, International Journal of the Sociology of Law, 375; Albrecht H. (2000) Criminal Prosecution: Developments, trends and open questions in the Federal Republic of Germany. Eur. J. Crime. Law Crim Justice. 8: 245- 256.

12 Grünwald, G. (1993). Das Beweisrecht der Strafprozesordnung , Baden- Baden

13 Beulke W. (2008) Strafprozessrecht, 10th edn. Müller, Heidelberg

14 Hannich R. (ed.). (2008). Karlsruher Kommentar zur Strafprozessordnung und zum Gerichtsverfassungsgesetz mit Einführungsgesetz, Rechtsstand: Mai 2008 (kkStPO) i 6th edn. C: H: Beck. München; Kühne H- H (2003) Strafprozessrecht. Eine systematische Darstellung des deutschen und Europäischen Strafverfahrensrechts (6th edn.). Müller, Heidelberg; Satzger H. (2004) Chancen und Risiken einer Reform des Strafrechtlichen Ermittlungsverfahrens: Gutachten C für den 65. Deutschen Juristentag. Beck, Bonn

15 Schild, W. (1983). Der Strafrichter in der Hauptverhandlung, Heidelberg

be brought before a judge who will communicate the reasons of his detention, do the hearing and give him the opportunity to file objections. Following this, the judge is obliged to immediately issue a written reasoned order either to detain or release the suspect. 5. A relative of the arrested or his or her confidential person shall be immediately informed of any decision of the judge to issue a warrant for detention or continued detention (Par. 2 of the Constitution of the Federal Republic of Germany).

When it comes to measures of deprivation of liberty, StPO provides for the following measures: provisional arrest, detention[16] and retention.

In addition to detention as the measure of the deprivation of liberty proclaimed by the StPO, and whose determination is in the exclusive jurisdiction of the court, the Law on the Police Tasks of Bavaria[17] proclaims detention available to the police alongside the additional court decision regarding the legibility or the extension of the deprivation of liberty. In accordance with the Par. 17 of the Law on the Police Tasks of Bavaria, the police may temporarily put into detention a certain person if:

-if it is necessary to protect the life and body, especially in the case of persons who are obviously not in the ability to freely choose or are in another helpless condition;

-if it is necessary to prevent imminent execution or completion of the initiated criminal act or offense which is of importance for the public order and peace. The assumption that a person is to perform or participate in the commission of a specific criminal act must be based on the following facts: first, that a person has announced or called for the execution of the unlawful acts or that he owns objects which justify suspicion that the person calls into criminal activity; secondly, that the person in question has a significant number of leaflets or other written text of similar content under the further condition that the same is suitable for distribution; thirdly, in case that the person is found with weapons, tools or other items that are obviously intended for the commission of offenses, or based on experience, one may conclude that it will be used for this purpose, or if the other persons who were in the company of suspicious persons, have such items with themselves, but circumstances suggest that they know for what purposes these items are intended; fourthly, that the person was found on nu-

16 Detention as the toughest measure of deprivation of liberty is determined by the judge in writing (Par. 114 paragraph 1 StPO) in case there is reasonable suspicion that the suspect (Müller, H. Dietz. (1981). Die Stellung des Beschuldigten im Strafprozes, ZStW, 1177)committed a criminal offense and if there is a reason for the detention. Otherwise, the detention may not be ordered if the detention does not commensurate with the importance of the case and the expected penalty or safety measure.
The reasons for detention exist if on the basis of certain facts: 1. it is established that the suspect has fled or is hiding; 2. it is established by assessment of the circumstances in this particular case that there is a risk of absconding, or suspect behavior justifies suspicion that the suspect might- destroy, modify, remove, conceal or falsify evidence or - illegally influence other suspects, witnesses or experts, or -stimulate others to do so and if as a result of that there is a danger of difficulty of establishing the truth (Par.112.StPO). Also, the reasons for detention exist when there is reasonable suspicion that the suspect committed certain serious offenses provided by StGB (par. 174, 174a, 176- 179, 238, Paragraphs 2, and 3), and if he did or continues to do a criminal act that seriously threatens public order, provided by StGB and the Law on Narcotic, whereas specific facts justify the suspicion that before making a final judgment, he may repeat the criminal offense or complete the initiated criminal offense, under the condition that the retention is necessary to prevent imminent danger (Par.112. StPO).
The rights with which the suspect is introduced are as follows: First, immediately, and no later than the day after the arrests, he is to be taken to court where they will hear and decide on its further retention; Secondly, he has the right to comment on the charges against him or anything that does not fit; third, he asks for presentation of evidence in his favor; Fourth, at any time, even before the hearing, he is to be examined by the appointed lawyer; Fifth, he has the right to request a review by the physician of his choice; sixth, to notify a family member or other trusted person, unless the purpose of the investigation is not eroded by that (par.114b StPO).
17 Lisken-Denninger, Handbuch des Polizeirechts, 4. Auflage, Verlag, C.H.Beck,Munchen, 2012, set.50

merous occasions during the commission of a crime or more serious offenses and the specific circumstances suggest that one can expect the repetition of such unlawful conduct.

-if it is necessary to implement a measure prohibiting residence in a particular place in terms of Par. 16 of the Law on the Police Tasks of Bavaria

In the above context, it is necessary to state that in the case of detention[18] of a person on the basis of any of these reasons, the police are obliged to promptly obtain a court decision allowing or extending the detention. However, the court decision would not be required only in case if it was made only after the cessation of the reasons for which the detention[19] was determined.

According to the proclamations of the decision on detention, here are the provisions relating to the abolition of detention, and it will happen in the following cases:

- As soon as the reason for the use of such police measures ceases;

- When the judge in his decision declares that a measure of detention is not permitted;

- In any event no later than the end of the day (24 hours) when the custody was ordered, if before that, the competent court does not specify the extension of custody[20].

In order to adequately comprehend the distinction between measures of deprivation of liberty[21] and restrictions provided for in the German criminal procedural law, it is necessary in addition to the period of police detention pursuant to the objectives of the police of Bavaria, to analyze StPO provisions relating to the temporary deprivation of liberty and detention, and the deprivation of liberty without a decision of the Court. Namely, the conceptual definition of temporary deprivation of liberty implies the police arrest[22] proclaimed by the CPC of the Republic of Serbia, which is in the nomenclature of the term[23] determined as a measure of deprivation of liberty (Art. 2 Para. 1, Item. 23 of CPC RS), as well as the retention, so, in line with that the consistency in determining the rate of deprivation of liberty may be observed at the European level, the conditions for implementation, the objective, distinction with respect to the restriction of freedoms, of the same criteria and others distinctions. Before we pres-

18 The treatment of detainees is regulated in Par. 19. Law of the Objectives of the Police of Bavaria

19 Par. 18 Law of the Tasks of the Police of Bavaria

20 Par. 20. Law of the Tasks of the Police of Bavaria

21 Defining measures of deprivation of liberty in criminal proceedings of the Federal Republic of Germany, with the doctrinal foundation, represents a measure of public authority by which the individual is retained in a limited specific place or being deprived of liberty, against their will, only in cases prescribed by law and based on the decision of the court. The police aspects of deprivation of liberty also manifest the possibility of deprivation of liberty only prescribed by the law, but with a shorter time determinant or the duty of being brought before a judicial authority no later than the day after the arrest. Habeas corpus proceedings guarantees to every person deprived of liberty the right to initiate legal proceedings which will urgently decide on the legality of the arrest. See: Dölling (1987) Polizeiliche Ermittlungstätigkeit und legalitätsprinzip: eine empirisce und juristische Analyse der Ermittlungsverfahrens unter besonders Berücksichtigung der Anfklärungs- und Veruteilungswarscheinlichkeit. Bundeskriminalamt (ed.), BKA- Forschungsreihe, Wiesbaden; Feest J, Blankenburg E. (1972) Definitionsmacht der Polizeistrategien der Strafverfolgung und sociale Selektion, Bertelsmann Univ-Verl, Düsseldorf.

22 Cvorovic, D. (2016) Doctoral Dissertation, Faculty of Law, University of Belgrade, p. 339; Cvorovic, D., International Standards of Derogations and Limitations of the Right to the Liberty and Security of Person, proceedings. ‘’ The position and role of the police in a democratic state ‘, Academy of Criminalistic and Police Studies, Belgrad, 2014. god., p. 27- 51

23 Skulic, M. (2014) Misconceptions and Numerous Legal and Technical Errors of the New Criminal Procedure Code-What to do Next and how to Reform the Reform of Serbian Criminal Procedure, Proceedings: Reform of Criminal Law, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Belgrade, p. 23- 66; Bejatovic, S., Few Reasons the Necessity of Continuing Work on the Reform of Criminal Procedural Legislation of Serbia, proceedings: ‘’ The reform of the criminal law ‘’, Belgrade, 2014; Djurdjic, V. (2014) Conceptual Downward in the new Criminal Procedure Code of Serbia, proceedings: Reform of Criminal Law, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Belgrade, p. 66- 87

ent the facts in favor of that consistency, we will present the proclamation of the provisional arrest and detention under the StPO. According to the above, a person caught at the scene of the crime as well as the person sought for, and who are suspected to escape or whose identity cannot be immediately established, can be deprived of liberty without a court order. Also, the state prosecutors and police officers, in case there is a risk of delay, are authorized to temporarily apprehend them even when there are prerequisites for making a decision on detention or accommodation in hospital or institution for care and treatment. The deprivation of liberty by the prosecutor or police authority is subjected to the provisions of Par. -114c 114a of the StPO. However, the Act proclaims another possibility of temporary deprivation of liberty by the State Prosecutor's Office and police officers[24], in case the person is caught at the crime scene or in case they found the person they are searching for, if:

-the decision is likely to be brought under urgent procedure;

-on the basis of certain facts there is a fear that a person deprived of liberty would not appear at the trial.

In the case of the deprivation of liberty, the detention order may be issued only if the trial is expected to be held within a week after the arrest. The detention on this basis cannot last longer than one week from the date of arrest. A detention order is issued by the judge who is responsible for the implementation of emergency procedure (par. 127b StPO).

When it comes to the procedure after the arrest, the Law proclaims that a person deprived of liberty must be immediately and not later than the day after his arrest, brought before a judge of the municipal court in whose territorial jurisdiction he or she is deprived of liberty, unless he or she is already released. The judge hears the arrested person and informs him about the circumstances against him and of his right to declare guilty or not to declare guilty regarding the subject for which he is charged. Also, he must be allowed to remove grounds for suspicion and the arrest and to state the facts that are in his favor. If the detention is extended, the suspect should be informed of his right to appeal and other remedies (Para. 115 StPO).

The arrested person will be released if the judge finds that the deprivation of liberty was not justified or that there are no conditions for which the detention was determined. Otherwise, as proposed by the prosecution, in case the state prosecutor is not available, ex officio, a decision on custody or solution to accommodation in an institution (Par. 128, Paragraph 2. StPO) will be issued. If the indictment against the arrested person is initiated, that person shall immediately, or by order of the judge before whom he was first brought before, be brought before the competent court, and the court in question shall, not later than one day after the arrest of that person, decide on his release, detention or temporary placement in an institution (Par. 129 StPO).

We can see that the police is a very active subject of previous criminal proceedings of the Federal Republic of Germany, sublimating detention measures, while respecting the constitutional proclamations and determinants of legal texts when it comes to the international standard of rights to liberty and security of a person.

24 The police have the right to take to the smooth concrete official action, on the spot, until the completion of an official act, to detain a person who intentionally interferes with an official activity or opposes its orders. The deprivation of liberty may last longer than the following day from the day of arrest (Para. 164 StPO).

CASUISTRY OF THE EUROPEAN COURT OF THE HUMAN RIGHTSIN THE CASES OF THE FEDERAL REPUBLIC OF GERMANYAND CONCLUDING CONSIDERATIONS

By ratifying the European Convention[25], the Federal Republic of Germany has made a commitment to harmonize their national framework with the standards defined in the European Convention in terms of determinants that are set out in Article 5 of the EC, in accordance with the Art. 17 of the EC, in other words, by the cancellation or prohibition or restriction of the rights to a greater extent than was proclaimed by the European Commission, while the Convention should in no way affect the broader scope of the rights guaranteed under national frameworks of the Member States (Art. 53 of the EC). Accordingly, arbitrary deprivation of liberty, although in accordance with the national legislation, does constitute a violation of the Art. 5 of the EC, a similar violation of national procedure does not per se result in the violation of the rights under Art. 5 of the EC, considering that the task of the European Court is not to control the application of the national law. Accordingly, one cannot a priori have the attitude regarding the legality of the deprivation of liberty or habeas corpus proceedings in the Federal Republic of Germany to the European Commission. However, the argument of the majority opinion in the doctrine of the European Court of Human Rights[26] manifests the key determinants of habeas corpus proceedings, whereas the casuistry of the European Court in the cases against the Federal Republic of Germany to respect the same implies. The EC proclaims that anyone who is arrested has the right to initiate proceedings by which the Court is to examine the legality of his detention and to order a release if the detention is unlawful (Art. 5 Para. 4 of the EC). According to the doctrinal positions of the European Court, a violation of Art. 5 Par. 4 of the EC will usually occur if the deprivation of liberty was brought by an administrative authority, whereas in the case of legal detention there are procedural guarantees for the legality of the arrest. According to this, the police apprehension could be the basis of violation of Art. 5 Par. 4 of the EC. In addition to the application of Article 5 Para 4 of the EC, the Commission raises the legitimate question of the subject who decides in habeas corpus proceedings, or whether, in the view of the European Court, the court exclusively is able to carry out the minimum procedural guarantees, or this can be done by someone else and who has the authority to free the person. Bearing in mind the verdicts of the European Court, as well as the statutory provisions in the criminal procedure legislation of the Federal Republic of Germany, the Republic of Serbia and other countries, the checkup of the legality of the arrest can be made by some other authority with the fulfillment of the previously stated conditions. When it comes to police detention in the criminal proceedings the Federal Republic of Germany and the authority which shall decide the habeas corpus proceedings, and that is the court, but it is very important to determine more precisely the concept of urgent decision on the legality of the arrest, as there are always doubts about the doctrinal foundation and the legal proclamations that often lead to the violation of Art. 5 Par. 4 of the EC[27]. The determi-

25 Rüdiger Worfrum- Ulrike Deutsch (eds.) The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions, Springer. 2007; Jochen Abr. Frowein, The Interaction Between National Protection of Human Rights and the EctHR, p. 51- 55; Nina- Louisa Arold, The Legal Culture of the European Court of Human Rights, Martinus Nijhoff Publishers, 2009

26 Rudolf Bernhardt, The Convention and Domestic Law, The European System for the Protection of Human Rights (J. Macdonald, F. Matschner and H. Petzold (eds.)), Kluwer Academic Publishers Group, Dordrecht, 1993, p. 25; Jonathan L. Black- Branch, Observing and Enforcing Human Rights under the Council of Europe: The Creation of a Permanent European Court of Human Rights, 3 Buffalo Journal of International Law, 1996, p. 15; Robert Blackburn, Current Developments, Assessment and Prospects, In: Fundamental Rights in Europe (Robert Blackburn and Jörg Polakiewicz (eds.)), Oxford University Press, Oxford, 2001, p. 76

27http://hudoc.echr.coe.int/eng#{“respondent”:[“DEU”],”article”:[“5-4”],”documentcole-

nants of urgent decisions on the legality of the detention by the police, the execution without delay before a judicial authority (Art. 5 Par. 3 of the EC) are very important from the aspect of the duration of detention or deprivation of liberty measures, and accordingly it is necessary to refine the doctrine of the European Court.

Namely, according to the European Court, the time limit of 6 months from the moment of arrest to the judicial review of the deprivation of liberty will certainly be considered a violation of Art. 5. Paragraph 4 of the EC, as well as in the case of a period of three weeks to examine the merits of custody on suspicion of the crime of drug trafficking, the existence of a request for release upon payment of bail[28]. The casuistry of the European Court in the cases against the Federal Republic of Germany raises the question of enabling persons deprived of liberty to realize the minimum procedural guarantees, which often led to violations of Art. 5. Paragraph 4 of the EC through the segment of non-realization of the principle of the fair process of oral proceedings, given that the detainee and his lawyer[29] were not entitled to inspect the documents on which deprivation of liberty was based to be able to exercise their right proclaimed in the habeas corpus proceedings, which has to be enabled by the European Court. Specifically, in the case of Mooren v. Germany[30], the lawyer of the arrested person was not allowed access to the records because of the reasons of obstructing the investigation, while the public prosecutor informed the defense counsel orally on the evidence on which the measure of deprivation of liberty was based. Accordingly, the minimum procedural guarantees according to the European Court include: the right to a defense, a trial within a reasonable time, the principle of oral proceedings, so in the above case, there has been a violation of Art. 5 Para. 4 of the EC, as the European Court decided in the judgment. A similli, in the case of Garcia Alva v. Germany[31], along with the existence of a reasonable suspicion of a criminal offense of trading and the production of drugs, the suspect was arrested, and when his lawyer requested the access to documents, the public prosecutor filed reports of the police questioning as well as before the investigating judge, the report of the search and the arrest warrant, while he did not send the remaining documents under the prerequisite of compromising the investigation. The denial of the rights of the arrested person and his counsel to have the insight in the documents on which the deprivation of liberty is based, constitutes a violation of Article 5 Par. 4 of the EC, as the European Court decided in its judgment. Also, the right to defense the explicit of the fair procedure, represents a key procedural guarantee to persons deprived of liberty, especially in situations where a person is unable to take care of himself or herself and realize the rights guaranteed by habeas corpus proceedings. In the case of Megyeri v. Germany[32], the insane offender was arrested and placed in the psychiatric institution where he was held for the next four years, along with the temporary judicial reviews of the arrest, but the offender was not allowed to have a defense lawyer who would exercise his rights in the habeas corpus proceedings, bearing in mind that he himself was not able to do so. Accordingly, the European Court ruled that there had been a violation of Art. 5 Par. 4 of the EC, and that in such situations the defense is mandatory.

In addition to the implementation of minimum procedural guarantees, one may raise a question of the consistency of the criminal procedural legislation of the Federal Republic of Germany with the proclamations of the EC and the positions of the European Court of

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ciond2":["GRANDCHAMBER","CHAMBER"]}access 28. 11. 2016.;ECHR, Toth v. Austria, app. no. 11894/85, judgment 12. Dec. 1991

28 ECHR, Rehbock v. Slovenia, app. no. 29462/95, judgment 28. Nov. 2000; Schöps v. Germany, app. no. 25116/94, , 2001; Lietrow v. Germany, app. no. 24479/94, 2001

29 Müller, M. P. (1992). Ensuring the right to effective counsel for the defence in the Federal Republic of Germany, International Review of Penal Law, 755

30 ECHR, Mooren v. Germany, app. no. 11364/03, judgment 13. Dec. 2007

31 ECHR, Garcia alva, app. No. 23541/94, judgment 13 Feb. 2001

32 ECHR, Megyeri v. Germany, app. no. 13770/88, judgment 12 May 1992

Human Rights when it comes to performing explicit promptly before the competent judicial authority, which according to the criminal procedure legislation of the Federal Republic of Germany when it comes to police detention or the retention by police officers as a measure of deprivation of liberty may last no longer than 24 hours, which when compared with the criminal procedural laws of other countries is considered in certain cases extremely short notice, especially when it comes to terrorism, so the time frame of 72 hours in the criminal proceedings of the Federal Republic of Germany would be more adequate, which is in line with contemporary trends in criminal procedural legislation.

Finally, with respect to this issue, we should emphasize also that even though critical reviews of certain provisions of German criminal procedural legislation when it comes to measures of deprivation and restriction of liberty by the police, imply the necessity of reforms, monitoring of modern trends, through the consistency at the universal level, the role of the police which is extremely important in preparing public complaints by the public prosecutor, the premise of respecting the international standards by the police in taking measures and actions to which it is authorized in the preliminary and previous criminal procedure, indicate to the police as more than important subject of German criminal procedure legislation, a problem of restrictions and the deprivation of the freedom extremely current, which has been confirmed by analyzing the current texts.

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EFFECTS OF HOUSE ARREST AS AN ALTERNATIVE TO SHORT-TERM IMPRISONMENT

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Abstract: The system of criminal sanctions in the Republic of Serbia was supplemented in 2009, when, with amendments to the Criminal Code, house arrest, as a new punishment was introduced. By the content and character, the punishment of house arrest is an independent criminal sanction, especially bearing in mind that, in its essence and qualitatively, it represents a different form of deprivation of liberty, compared to the punishment which it alternates. This prevailing attitude in Serbian criminal law theory did not have an impact on the legislator to prescribe house arrest as a separate criminal sanction but just as one of the possible models of the execution of a prison sentence imposed up to one year. Although the normative regulation of the status, purpose, and method of imposition and executing the house arrest, or "the prison sentence which is executed in the premises where the convict lives", as it is defined by the Criminal Code, was not complete even after several amendments of the criminal legislation, the frequency of its application in the past few years has led us to go into research of the effects of house arrest as the new alternative to short-term prison sentence. In addition to the presentation and the critical analysis of legislative norms and data of imposed and executed sentences, the paper is dedicated to determining the effects of house arrest as an alternative to imprisonment, respectively, to re-examining whether its application has achieved the main purpose of its introduction to the system of criminal sanctions, or that, quite the contrary, house arrest is applied as an alternative to other alternatives of imprisonment.

Keywords: alternatives to imprisonment, alternative criminal sanctions, short-term imprisonment, house arrest.

INTRODUCTION

The punishment of house arrest represents a new criminal sanction in the criminal legislation of the Republic of Serbia, which was introduced with amendments to the Criminal Code (hereinafter: CC) from 2009.[2] Although that was not the primary intention of the legislator while changing the criminal codes in 2005, only three years after the new CC went into the force, "suddenly" a need for expanding the register of criminal sanctions and introducing the new punishment - the house arrest, as the milder form of deprivation of liberty, was identified. By observing the criminal-political concept of the legislator and the penal politics of the courts in the period which precedes the changes in the code, the main reasons for introducing this penalty, as the facts known even before the passing of the new code, can be found in the overcrowding of the penitentiary system, the "crisis" of imprisonment and its essential inef-

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2 Zakon o izmenama i dopunama Krivičnog zakonika "Službeni glasnik Republike Srbije" no. 72/2009.

ficiency (especially with short-term imprisonment), the necessity of adjusting the national legislation with minimal international standards in the field of regulation and applying the alternative criminal sanctions and measures (first of all, with the documents of the Council of Europe), and indirectly, the need to humanize the penalty system and the development of the alternative concept of punishing the violators of the milder forms of criminal behavior.

CC officially did not regulate the punishment of house arrest as an independent sanction, nor did it name it that way.[3] It is prescribed as a potential model of the execution of the imprisonment imposed up to one year and was called "the punishment of imprisonment executed without leaving the premises in which the convict lives." Five years after the introduction, in the new law by which the procedure of the execution non-custodial sanctions and measures is regulated,[4] the term punishment of house arrest is used for this criminal sanction, but the concept still does not exist in CC which marks it with the term "the imprisonment in the premises in which the convict lives.[5]

Namely, the current regulation of Article 45, paragraph 5 of CC stipulates "that if the perpetrator of a crime is pronounced a sentence of imprisonment up to one year, the court can at the same time prescribe that the convict will serve it on the premises where he lives, if it is expected, by taking into consideration the character of the perpetrator, their prior life, their behavior after perpetrating the criminal act, the degree of guilt, and other circumstances under which they perpetrated the act, the purpose of punishment to be achieved."[6] By that, as it is stated in the literature, the new sanction - house arrest - was introduced "throught back door."[7]

SHORT REVIEW ON GENESIS AND MODALITIES OF HOUSE ARREST IN COMPARATIVE LEGISLATION

The house arrest as an independent criminal sanction originates from the USA. The precursors of this punishment are the programs of house imprisonment of juveniles that went into effect in 1971 in St. Louis, Missouri ,while only six years later they were in effect in sixteen American federal states.[8] The federal state of Florida passed Correctional Reform Act in

3 The supplemented Article 45. paragraph 5. of the Criminal Code foresaw that "to the convict on whom the imprisonment of up to one year was imposed, the court can determine this punishment to be executed without leaving the premises in which he lives, except in the cases prescribed by the law which regulates the execution of criminal sanctions."

4 Zakon o izvršenju vanzavodskih sankcija i mera "Službeni glasnik Republike Srbije" no. 55/2014.

5 5."The terminological alignment is, by all means, necessary, although it is obvious that the executive law assumes liability on the terminology from the material and not the other way." Đorđević Đ., Kazna kućnog zatvora kao alternativna krivična sankcija, *Suprostavljanje savremenim oblicima kriminaliteta – analiza stanja, evropski standardi i mere za unapređenje,* Tom 1, Beograd, 2015, p. 105. Ignjatovic indicates that "this measure should not be termed 'house arrest' because that would make confusion: since house (except in literary works) can - terminologically - be equalized to penitentiary institution" Ignjatović, Đ., Kritička analiza stanja i tendencija u krivičnom izvršnom pravu Srbije, *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja,* IV deo, Beograd, 2010, p. 51. That is why this author uses the term 'house incarceration'. See: Ignjatović, Đ., Normativno uređenje izvršenja vanzavodskih sankcija i mera, *Crimen*, No. 2, 2013, p. 156-157; Ignjatović, Đ., Novine u pravu izvršenja krivičnih sankcija Srbije, *Kaznena reakcija u Srbiji,* Beograd, 2011, p. 40-41; Ignjatović, Đ., *Pravo izvršenja krivičnih sankcija,* Beograd, 2014, p. 206-210.

6 Krivični zakonik "Službeni glasnik Republike Srbije" no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

7 Mrvić-Petrović N., *Alternativne krivične sankcije i postupci,* Beograd, 2010, p. 234.

8 "These programs, developed first as a means of dealing with youthful offenders within a context of home and family, were in part a response to widespread concern that increasing numbers of juveniles were being unnecessarily and unjustly detained in detention facilities prior to adjudication. In view of these concerns and the traditional use of such practices as curfews in dealing with troublesome youth,

1983, by which the house arrest is stipulated as an independent criminal sanction which can be applied to adult perpetrators of crime. The program of house arrest, under the name "community control", soon after the passing of this law, included five thousand people sentenced to prison who, at least for one day, served the prescribed sentence in their home.[9] In the same year, in New Mexico, the first punishment of house arrest was imposed and it was applied by using electronic surveillance. However, on the federal level, the first punishment of house arrest was not imposed until December 1985. It will stay in records that Maureen Murphy was the first person who was sentenced by the federal court to this punishment.[10]

In England, in 1991 the house arrest was introduced according to the rule which stipulates that a curfew order to spend a certain amount of time during the day at a prescribed location can be imposed on the convicts who are older than sixteen. The possibility of house imprisonment was stipulated to last not more than six months and it meant that the convict is obligated to spend in their home, or some other location, between two and twelve hours during a day.[11] We point out that in England in 1969, two years prior to the USA, there was a possibility to apply a special form of house arrest to children and juveniles, with the aim to protect them from criminal acts, lasting for a prescribed amount of time in a day.[12]

In Italy, with the passing of law 663. from 1986 the punishment of house arrest was prescribed (detenzione domiciliare). The article 47ter introduces the house imprisonment as a criminal sanction and as a modality in the execution of prison sentence which can be applied according to some categories of the perpetrators of crime.[13] In Sweden, the pilot project of house imprisonment started in 1994,[14] in Spain in 1995,[15] and in the years that follow in most of the countries of the European law system.[16] When it comes to the countries in the region, on the territory of ex SFRJ, the punishment of house arrest was stipulated in the legislation of Slovenia,[17] Macedonia[18] and Montenegro.[19]

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home detention seemed an attractive alternative and it had the additional merit of economic appeal." Lilly J. R., Ball R. A., A Brief History of House Arrest and Electronic Monitoring, *Northern Kentucky Law Review,* Vol. 13, No. 3, 1987, p. 360.

9 Petersillia J., Exploring the Option of House Arrest, *Federal Probation – A Journal of Correctional Philosophy and Pratice,* Vol. 50, No. 2, Washington, 1986, str. 50;

10 Ibid.

11 Criminal Justice Act (1991), Rule 12.

12 Child and Young Persons Act (1969).

13 The law stipulates that court can determine that pregnant women, mothers with children under ten with whom they live (or the father of the child if mother is not alive), the convicts who are terminally ill and need regular contact with their health services, convicts over 65, incapable, even partially, as well as persons under 21, and with later amendments persons with AIDS, on whom the prison sentence for four years or the remaining part of the prison sentence up to four years, is imposed, can execute the punishment at home or at healthcare institutions. The house arrest cannot be implemented or executed towards professional or habitual criminals, or if the perpetrator is convicted of the crime in connection with organized crime. Legge n. 354 „Norme sull'ordinamento penitenziario e sulla esecuzione delle misure privative e limitative della liberta".

14 *Extended Use of electronic tagging in Sweden*: *The Offender's and victim's view,* The Swedish National Council for Crime Prevention, Report 2007:3, Stockholm, 2007, p. 6.

15 Ministerio de Justicia, Codigo Penal (Criminal Code) 2011.

16 For data for member countries of the European Council and the application of the punishment of house arrest, see: Aebi M.F, Chopin J., Council of Europe Annual Penal Statistics SPACE II Survey 2015 Persons Serving Non-Custodial Sanctions and Measures in 2015, Strasbourg, 2016; http://wp.unil.ch/space/files/2017/03/SPACE-II_report_2015-Final-Report_160313.pdf (25.03.2017)

17 Article 86. Kazenski zakonik "Uradni List RS" no. 55/2008.

18 Article 59a Кривичниот законик „Службен весник на Република Македонија" no. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013.

19 Article 36a Krivični zakonik "Službeni list RCG", no. 70/2003, 13/2004, 47/2006 i "Službeni list CG", no. 40/2008, 25/2010, 32/2011, 40/2013 and 56/2013.

In the comparative law, the punishment of house arrest is most frequently prescribed in one of the two forms: as an independent criminal sanction or as a modality of the execution of short-term prison sentences.[20] Regardless of the form of prescription, in literature, the three possible contents of the punishment of house arrest are stated, differing in the mode in which the penalty is prescribed by the law: **curfew**, as a type of home confinement that requires offender to be at their residence during limited, specified hours, generally an night; **home detention**, requires that offender remain at home at all times, except for employment, education, treatment, or other specified for the purchase of food or for medical emergencies; **home incarceration**, offenders are to remain at home at all times with very limited exceptions, precluded from shopping, working or from any visitors outside prescribed hours.[21]

The basic systems of the control of execution and surveillance over the convict are: with electronic surveillance (using the radio frequency (RF) and satellite tracking (GPS) and without electronic surveillance.

CONTENT OF HOUSE ARREST AS A PENALTY

The basic content of the punishment of house arrest represents the deprivation of liberty of the perpetrators of crime who, instead of being sent to a penitentiary institution, serve the sentence in their home, that is, on the premises where they live. Designed as a form of deprivation of liberty at home, this punishment represents the mildest form of deprivation of liberty for the perpetrator of the crime.

Observed in a wider context, the perpetrator of the crime is not deprived of liberty in the absolute sense. Their freedom is limited only partially. By being in a house arrest, instead of being completely deprived of liberty as in the execution of prison sentence in the penitentiary institution, the convict is deprived, that is, limited in his rights of the freedom of movement outside of the premises in which he lives. All the other forms of deprivation or limitation of the convicts' rights, which are in effect in the prison institutions and which symbolize the prison sentence are not applied with house arrest. The "punitive" limitation of freedom of movement of the convict to the premises in which they live, as the only feature of the classic punishment, represents the basic content of the punishment of house arrest.

By applying the punishment of house arrest, the activity of the convict in the outside world, especially the activities that result in committing the crime, is supposed to be "passivized." The convict is practically brought to the state of incapacitation if they obey the prescribed rules of the execution. On the basis of this, the simple social integration is made possible indirectly, after the execution of the punishment.

Until recently, it was considered inconceivable that someone could be punished in a way in which the court imposes a punishment for the criminal act, consisting of the limitation of rights to leave the premises in which they live. The continuation of life in "normal" or common living conditions, without the limitation of work, food, communication, while keeping social and family contacts, cannot be considered, by any means, the punitive approach towards the perpetrators of crime.

20 For proper understanding of the position of punishment in the system of criminal sanctions, we must point out that the content of the house arrest, in comparative law, appears in several other modalities: as a measure of deprivation of liberty of the offender before, during or after completion of criminal proceedings (home detention), as a modality of the execution of other sanctions or measures, as well as model of conditional or early release from prison.

21 Hofer P. J., Meierhoefer B. S., *Home Confinement: An Evolving sanction in the Federal Justice System,* Washington, 1987, p. 6.

However, the change in the perception of the notion of freedom at the end of the twentieth century made it possible to prescribe and apply this criminal sanction in the modern criminal law system. Postmodern society sees any form of limitation of individual's freedom as a threat to basic human rights. In this context, the limitation of freedom of movement and the ban on leaving the premises where one lives, at the end of the twentieth century, assume the character of punishment.[22]

In contrast to the comparative law systems in which a sentence of house arrest imposed with the establishment of certain obligations, prohibitions or restrictions on the rights or intervention in relation to the convicted (usually with different probation obligations), during the legislative regulation of the content of this sentence in our system the legislator focused solely on the ban on leaving the premises where the convicted lives.[23]

NORMATIVE REGULATION OF THE HOUSE ARREST – FROM THE MODALITY OF THE EXECUTION OF SHORT-TERM IMPRISONMENT TO AN INDEPENDENT PUNISHMENT

In the previous part, we indicated that the punishment of house arrest was introduced as a potential modality in the execution of prison sentence imposed up to one year, and not as an independent punishment. In literature, it is stated that it was done not out of the conviction that this punishment is different from the prison sentence, but because of the regulatory procedure. In order not to make any changes in many of the provisions of CC, because by resolving some of the matters (for example obsolescence of the punishment and many other matters), besides prison sentence, the house arrest would have to be introduced, it was assumed that in this way the problem would be evaded. The legislator did evade that problem, but they created deeper, more vital problems concerning the application of this punishment. Above all, the legislator encountered contradictions and practically created an unsolvable problem in relation to the decisions of the court.[24]

Namely, a part of the provision of the Article 45, paragraph 5 which consists of the term "convict" created the main problem about who makes the decision about this modality of the implementation of prison sentence - the court which arbitrated or the court in the procedure after the finality of the judgment.[25] The following two paragraphs of this article caused prob-

22 „Home incarceration may not have been acceptable some years ago when the nature of "social reality" was somewhat different. The movement toward alternative sentences, however, had contributed to a partial reconstruction of collective perceptions ... has taken the position advocating the least drastic alternative consistent with public safety." Ball R. A., Lilly J. R., A Theoretical Examination of Home Incarceration, Federal Probation – A Journal of Correctional Philosophy and Practice, Vol. 50, No. 1, Washington, 1986, p. 19.

23 The ban on leaving the premises is not of absolute character. According to Article 24 of The Code of Execution of Non-custodial Sanctions and Measures, it is stipulated that by the decision of the Head of the Prison Administration the convict can leave the premises for following reasons: 1. For providing the convict or the member of his family with the necessary medical help if it is necessary to leave the premises for this medical help, 2. For going to work, if the crime for which they were convicted is not related to work, 3. For attending the lessons during regular education, 4. For responding to call of the state institution, 5. For going to take an exam, 6. For the terminal, acute or chronic illness, for going on regular health examination or stationary treatment, 7. For their own wedding or wedding of blood relative from the second generation, 8. For the death of blood relative, 9. For the obligation of caring for the members of the family, in case that the obligation cannot be done by some other person, 10. For seasonal agricultural work if that is his work, and 11. For other especially justified reasons for which the convict can submit a reasoned request.

24 Stojanović, Z., *Komentar Krivičnog zakonika,* Beograd, 2012, p. 214-215.

25 The temporary resolving of this dilemma is made possible based on the Conclusion of the Crime

lems in practice and were criticized in theory. The technical possibilities of the execution and other circumstances relevant for determining the punishment which the court has to pay attention of when determining this modality of the execution, as well as leaving the premises once when more than twelve hours, that is twice for up to six hours, as the reason to execute the rest of the punishment in the penitentiary institution, represent the solutions not that ideal when promoting a new criminal sanction.

Instead of solving the problems with amendments to CC, the legislator took another approach - changing the provisions which regulate the procedure of the execution of criminal sanctions. By passing the Law of amendments on The Code of Execution of Criminal Sanctions from 2011,[26] a more disputable solution was introduced. Namely, this act foresaw that the president of the court who brought the original sentence determines this way of the execution of prison sentence according to the proposal which can be submitted by the convict, prosecutor or Head of Prison Administration, after the finality of judgment, and during the execution of the punishment. Instead of the judge or the Chamber which arbitrated in the case, according to the new decision, the authority for making the decision is transferred to the President of the court. The amendments in the way of making the decision remained the same, therefore, the president of the court decides on the way of the execution of punishment according to the outlook of the technical possibilities of the execution and other circumstances which are determined in each particular case. Considerable innovation which was introduced with the amendments of this Law, were the new cases which allowed that convict can leave the premises in which he serves the sentence. The most disputable circumstance is the possibility for the convict to spend four hours a day outside of the premises in which they live, according to the program of the execution of punishment.[27]

The process of the legislative activities directed towards normative regulation of the punishment of house arrest continued in 2012. Namely, with the amendments of the Criminal Code,[28] the changes in Article 45 of CC occurred, that is, the changes of all paragraphs which stipulate the prison sentence that is executed in the premises in which the convict lives. In Article 5 the term "convict" is substituted with the term "perpetrator" and it was stipulated that the court, while imposing the punishment, concurrently decides on the modality of the implementation, by which the main obstacle for wider use of this punishment was removed.[29] The disputable part of this article appertains the prescribing of circumstances which the court must take into consideration in determining this modality of the implementation of the pris-

department of the Supreme Cassation Court from the session held on 10th March 2011, confirming the attitude that "the amendment of the Article 45, paragraph 5 of Criminal Code essentially legal matter and cannot have retroactive effect, therefore the possibility of implementation of punishment according to that amendment can be determined only through final judgment. Zaključak Vrhovnog kasacionog suda o primeni člana 45. stav 5-8 Krivičnog zakonika, 10. mart 2011. godine.

26 Zakon o izmenama i dopunama Zakona o izvršenju krivičnih sankcija "Službeni glasnik Republike Srbije" no. 31/2011.

27 This solution was unjustified and criminal-politically controversial because it infringed the basic concept of this form of punishing. Namely, enabling the convicted person to leave the premises to stay out of them does not make sense and justification because in this form of execution of sentence, practically, there is no program of execution (treatment), except prohibition to leave the premises where the convicted person lives. If, therefore, besides the possibility to leave the premises for going to work and regularly attending school or to perform seasonal agricultural work convict is allowed to reside outside the premises where serving a sentence of four hours during the day, the question is what is left of or what penalties condemned for "serving"?

28 Zakon o izmenama i dopunama Krivičnog zakonika "Službeni glasnik Republike Srbije" no. 121/2012.

29 However, the provisions of the Law on Execution of Criminal Sanctions, which determined the functional jurisdiction of the Court's President, who made the first-instance judgment to decide on the mode of execution was in force until the entry into force of the new Law on Execution of Criminal Sanctions in 2014. See: Zakon o izvršenju krivičnih sankcija "Službeni glasnik Republike Srbije" no. 55/2014.

on sentence. Namely, at issue were some of the circumstances which the court, according to general rules for determining the punishment, envisioned in the Article 54 of the Criminal Code, by all means, takes into consideration in the procedure of assessing the punishment in each concrete case. The remaining articles which were changed eliminated the shortcomings of which we argued.

During 2014 the new Law of Execution of Non-Custodial Sanctions and Measures was introduced, which stipulates the procedure of the execution of the punishment of house arrest, marks it with that term, and stipulates both modalities of the execution (with or without the electronic surveillance), the rights and obligations of the convict and the authorization of the commissary in the enforcement procedure, and defines the reasons for leaving the premises, etc.

The normative regulation of the punishment of house arrest did not end with adopting the amendments of the Criminal Code from 2012 and with the Law of Execution of Non-Custodial Sanctions and Measures going into effect. Namely, the draft of the Law of Amendments of the Criminal Code which was publicly presented during 2015, after many years of effort to apply the punishment of house arrest only as a modality in the implementation of prison sentence up to one year, finally presents this punishment as an independent criminal sanction.[30] According to the draft, the punishment of house arrest, according to paragraph 1 of the Article, could be imposed for the criminal acts which stipulate the prison sentence up to eight years. This decision is considered politically and criminally justifiable because the legislator decides this punishment to be stipulated for milder criminal acts and criminal acts of "middle criminality," contrariwise to current regulations which do not establish any limitation in terms of the type and severity of the criminal act, for which the implementation of prison sentence without leaving the premises in which the convict lives can be determined. In the next paragraph, the legislator maintains the concept under which the circumstances which relate to the perpetrator of the criminal act and the manner in which the act was done justify the pronouncement of this punishment because it is expected that with its application the purpose of punishment can be achieved.

The next two paragraphs stipulate the duration of the punishment of house arrest and the manner of implementation. A decision was suggested by which the punishment of house arrest can last up to two years and it determines that it be pronounced to the exact number of years and months, and up to six months even to the exact number of days.[31] The last two paragraphs of the suggested Article 45a stipulate the known solutions: the ban of the convict not leaving the premises in which the punishment is executed, except in the cases that are stipulated by the law which regulates the implementation of criminal sanctions, as well as the obligation of substituting the punishment of house arrest with prison sentence if the convict voluntarily leaves the premises in which he lives, once for more than six hours or twice for up to six hours; that is to say, that this punishment cannot be imposed on the perpetrator of criminal acts against marriage and family, who lives in the same household with the victim.

Will the solutions from the draft, which predict the independent character for the punishment of house arrest, be adopted? Bearing in mind that there were amendments to CC in 2016, the activities in this sector in the following period remain to be observed.

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30 http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php, (15.03.2017.)

31 This orientation of the legislator regarding the sentence of house arrest we consider as a controversial one. The house arrest represents a mild form of deprivation of liberty which was created as an alternative to short prison sentences. The question arises, why the sentence of house arrest could last twice longer than the sentence that originally alternates. It is obvious that the legislator reduced punitive component of sentence of deprivation of liberty and that he is trying to replace „punitive" content with the length of the house arrest.

THE APPLICATION AND THE EFFECTS OF THE HOUSE ARREST

The data about the imposed punishments of house arrest, that is, about the determined modalities of the implementation of prison sentences imposed for up to one year, which we used in the paper, are presented in the reports of the Prison Administration.[32] In direct communication with the representatives of the Department for Treatment and Alternative Sanctions (Probation Service) of the Ministry of Justice, we gathered the information which appertains to the number of cases (judgements) received in the period between 2010 and 2015, the number of successfully executed punishments, punishments in the process of execution, as well as the modalities of implementation (with or without the electronic surveillance). The single official information for 2016 is that the number of 3,130 imposed punishments of house arrest, that is, about the number of judgments which were submitted to the Probation Service for the execution.

It is important to notice that the Statistical Office of the Republic of Serbia did not gather the data on the punishment of house arrest, except for the year 2015. In the official report for 2015, it is presented that there were 1,134 imposed punishments of house arrest. This number does not respond to the number of 2.498 judgments from 2015, which were submitted to the Probation Service for the execution.

In the observed period there were in total 6.807 punishments of house arrest that are executed in the premises in which the convict lives, that is to say: in 2010 – 2, in 2011 - 390, in 2012 - 882, in 2013 – 1,101, in 2014 – 1,934, in 2015 – 2,498.

The obvious increase in the number of imposed punishments of house arrest, from 390 in 2011 to 2,498 in 2015 may indicate that courts recognized in this punishment an alternative for the short-term prison sentences which are executed in the penitentiary institutions.

In percentages the number of the imposed punishments of house arrest in 2015 was 540% greater than in 2011. Observed by year, in 2012 there is an increase of more than 126% compared to 2011, in 2013 close to 25% compared to 2012, in 2014 around 76.5% compared to 2013, and in 2015 nearly 30% compared to 2014.

The information about the imposed imprisonment lasting up to one year, in 2011 – 5.264, in 2012 – 6.833, in 2013 – 7.678, in 2014 – 9.435 and in 2015 – 5.732,[33] indicate that 34.932 punishments in total were imposed and the court determined for 6,805 of them to be executed in the premises in which the convict lives, which is in total 19.48% of imposed prison sentences lasting up to one year.

The information about the imposed imprisonment lasting up to one year, in 2011 – 5,264, in 2012 – 6,833, in 2013 – 7,678, in 2014, – 9,435 and in 2015 – 5,732, indicate that 34,932 punishments in total were imposed , and the court determined for 6,805 of them to be executed in the premises in which the convict lives, which is in total approximately 19.48% of imposed prison sentences lasting up to one year. The data for 2013 indicate that out of 7,678 imposed prison sentences up to one year, 1,101 were determined to be executed in the premises in which the convict lives, which is out of total number of punishments 14.34% in 2014, out of 9,435 imposed punishments 1,934 were determined, or 20.5%, while in 2015, out of 5,732 imposed punishments lasting up to one year 2,498 or 43% were determined to be executed at home. The total number of imposed punishments lasting up to one year is not offi-

32 2011 Annual Report on Prison Administration Operations, Ministry of Justice, Belgrade, 2012; 2012 Annual Report on Prison Administration Operations, Ministry of Justice, Belgrade, 2013; Annual Report 2013, Adminstration for Enforcement of Penal Sanctions, Belgrade, 2014,

33 Ibid.

cially announced; therefore we cannot use the information of the 3,130 imposed punishments of house arrest for comparison and determination of whether the trend continued.

However, the fact that punishments of house arrest as the alternatives to short-term prison sentences which are executed in prisons are imposed in greater number, should not be accepted easily, because, in 2014, the increase in total number of imposed criminal sanctions was recorded (33,376), in the number of the imposed prison sentences up to one year (9,435) and in the number of punishments which are executed without leaving the premises in which the convict lives (1,934). By comparison, in 2013, 32,241 criminal sanctions were imposed, out of which 7,678 were prison sentences up to one year, out of which 1,101 were determined to be executed without leaving the premises in which the convict lives. The percentage of inclusion of suspended sentence in the form of imposed criminal sanctions is for both of the observed years nearly the same: 53.2% in 2014 and 51.75% in 2013. In 2015 it increased up to 58%. In the reporting period, there was an evident decline in the share of fines up to a level of 8% in 2015.

When it comes to prison sentences that are executed in the premises in which the convict lives, the information of the Probation Service and the official information from the report of the Prison Administration indicate that in the period between 2011 and 2015 there were 3,394 successfully implemented punishments and that according to the status on the day of 31st December, 2015, 726 convicts were serving the punishment. By percentage, about 50% has been successfully executed, while 10.66% was in the process of execution.

In 2011, 88 prison sentences in the premises in which the convict lives were successfully executed: 70 with electronic surveillance and 18 without electronic surveillance. According to the status on the day of 31st December, 2011, the procedure of execution was enforced on 192 convicts, out of whom 158 served the sentence with electronic surveillance, while 34 persons served with no application of the electronic surveillance.

In 2012, 678 punishments of house arrest were successfully executed, 610 on male and 68 on female convicts. According to the data of the Prison Administration, out of 610 punishments of house arrest executed on male convicts, 528 were executed with electronic surveillance, while 82 without electronic surveillance. The process of execution was initiated on 512 male convicts and 60 female convicts, while previously 98 male convict and 8 female convicts were arrested. According to the status on the day of 31st December, 2012, 274 punishments of house arrest were in process of execution, 228 with electronic surveillance and 46 without electronic surveillance.

In 2013, 725 punishments of house arrest were successfully executed, 689 with the application of electronic surveillance and 36 without. In the structure of the convicts, 664 male convicts and 61 female convicts served the punishment. The execution of punishment on freedom was initiated on 599 male convicts and 56 female convicts, while 65 male convicts and 5 female convicts were previously arrested. On the last day of the year, 327 convicts served the punishment of house arrest, 299 with electronic surveillance and 28 without electronic surveillance.

In 2014, 689 punishments of house arrest were successfully executed, while on the 31st December, 685 additional convicts served the sentence. In 2015 1,214 punishments were successfully implemented, and on the last day of the year, 726 convicts served the sentence. The data for 2016 are not available.

CONCLUSION

By analyzing the normative framework and data about the application in practice, we can conclude that the punishment of house arrest, that is, the modality of the implementation of prison sentence without leaving the premises in which the convict lives, is a criminal sanction which the courts in the Republic of Serbia impose in increasing number in comparison to short-term prison sentences and is a more significant part of the structure of the imposed sanctions.

Although seven years have passed since the creation of legal assumptions for its imposition, the normative frame is not entirely completed. The path from the modality of the implementation of short-term prison sentences to an independent criminal sanction, both according to the content and to characteristics that this punishment represents, has not ended yet. The multiple amendments to the law in the criminal legal field acted as an attempt to rationally solve the problem which the previous matters produced in practice, although they were, in certain cases, more thorough than the rules that they changed. The presented draft of the amendments to the CC from 2015 represents a firm ground for the wider application of this punishment in practice. Based on this, the purpose of its introduction in the system of criminal sanctions would be achieved.

The data about the punishment of house arrest indicates that after the first few years of being applied moderately, the tendency of increase proceeded and it does not cease. The degree of 43% in the structure of the imposed prison sentences for up to one year in 2015 surprised even the most optimistic supporters of the introduction of this punishment.

The data about the implemented punishments of house arrest indicates that about 60% of them are successfully executed, which cannot be considered a low percentage, bearing in mind the limitation of the staff and technical capacities of the Probation service. Although there are no data on the recidivism of those imposed with the punishment of house arrest, the unofficial data indicate that in the minimal number of perpetrators judged with the same penalty (less than 0.5%).

However, it should be emphasized that the application of the punishment of house arrest did not achieve the effects of prison overcrowding and that the expenses of the functioning of the whole system were not reduced (Prison Administration) upon the end of 2014. Although that is one of the main reasons for its introduction in the system of criminal sanctions, the data indicate that the number of persons deprived of freedom in the prisons upon the aforementioned year was not decreased relative to the number of the imposed (or implemented) punishments of house arrest. The missing data for 2015 and 2016 do not make it possible to come to any other conclusion. However, bearing in mind that most of the punishments of house arrest is executed with the use of electronic surveillance and that the Probation Service possesses technical equipment, that the expenses of this way of the execution are significantly lesser in comparison to the expenses of serving the sentence in prison and with that, in any case, the total expenses of the functioning of penitentiary institution are decreased.

In conclusion, we will try to answer the question of whether the punishment of house arrest in the Republic of Serbia is applied as an alternative to the short-term prison sentences or as an alternative to other alternatives of the prison sentence. According to the previously revealed, it is clear that it is not simple to answer this question. By stating the shortcomings in the normative field and the limitation of the data, we can conclude that in the first few years of the application, until 2012, the punishment of house arrest was not recognized in the court practice as a serious alternative to short-term prison sentences.

In the years that follow, the punishment is more frequently applied up to the "expected" 20% of the punishments for up to one year, so that finally in 2015 the degree of

43%, by which it is signified as the “real” alternative to short-term imprisonment. Bearing in mind that the level of the presence of other alternatives prison sentences in the structure of the imposed criminal sanctions did not record a decrease, except for the fine with which there is that tendency from 2007, the punishment of house arrest in practice in the domestic courts does not represent an alternative to other alternatives of prison sentences.

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SUSPENDED SENTENCE WITH SUPERVISION - UNDERUSED ALTERNATIVE

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Abstract: The main objective and purpose of a suspended sentence with supervision is to treat the perpetrator of a minor offense, from whom one cannot expect with certainty to refrain from further criminal behavior, without the application of a short-term prison sentence, but to provide him with some assistance and supervision outside correctional institutions, in order to correct his behavior and return him to a life which is entirely in accordance with criminal law provisions. Although a suspended sentence with supervision is not a novelty in our criminal legislation, this criminal sanction has almost never been practiced so far. Of course, reasons for this should be sought in the fact that the adequate conditions for its practical application have never been created. These practical problems which entail the impossibility of applying a suspended sentence with supervision are mainly related to the insufficiency of funds and lack of organizational structures and adequately trained persons who could perform the job of a commissioner. Responsibility for the inadequate use of suspended sentence with supervision may also be attributed to the courts to a certain extent. However, a lot has been done in this respect in the recent years, and we believe that this type of sanction will in time achieve a better purpose of punishment. Therefore, the aim of this paper is to highlight the advantages of a suspended sentence with supervision, as well as the adequate practical conditions for its implementation. From now on, courts should start imposing a suspended sentence with supervision more frequently, and showing greater confidence in this criminal sentence, with reference to the normative and organizational assumptions concerning the enforcement of criminal sanctions.

Keywords: suspended sentence, protective supervision, commissioner service, alternative criminal sanctions

INTRODUCTION

A suspended sentence is a criminal sanction which arose primarily as a substitute for short-term prison sentence, because society recognized that the purpose of punishment can

be achieved by usinga threat that a particular sentence will be carried out. The purpose of issuing warnings and therefore suspended sentences is to deter perpetrators from committing crimes without imposing restrictions of rights and freedoms. A suspended sentence is formed as a reflection of the tendency to adjust the personality of the offender so that its execution is a reflection of the need for correcting the offender.[1]

A suspended sentence with supervision was adopted in our criminal legislation withthe Criminal Code of the Socialist Federal Republic of Yugoslavia.[2]Conditional sentence with supervision, a special type of conditional sentence in which the elements combined from the Anglo-American and French-Belgian probation system[3]. A suspended sentence with supervision, the other form or mode of the warning sanction was introduced in order to reduce differences between the Franco-Belgian and Anglo-American system suspended sentence.[4]It is a criminal sanction in which there is a delay in the execution of the punishments for some time while placing the offender under protective supervision. The aim of surveillance is to provide some form of assistance and support to the convict for the duration of the probation period, so he would slip back into committing crimes.

A suspended sentence with supervision, does not constitute a separate, independent criminal sanction which stems from its legal definition.[5]The legislator did not specifically determine the conditions for its imposition, the purpose of which he wants to achieve, the grounds for revocation, as they are the same as for the 'ordinary' or 'classical 'suspended sentence.

In relation to 'ordinary' suspended sentence, where the offender is only required to refrain from committing criminal acts and the fulfillment of imposed obligations by the court (compensation, restitution of things, etc.), in case of the suspended sentence with supervision the offender is expected to participate and respect the obligations imposed by the commissioner service, which consist in the provision of assistance and exercising control.

Thus, the suspended sentence with supervision aims to strengthen the impact on the offender during the probation period. Protective supervision seeks to replace the main purpose of a suspended sentence in the Franco-Belgian system, and that is the absence of any help to the convict during the probation period. The convicted offender is expected to live and orderly life under the threat of punishment. Certain obligations and orders are imposed on the offender, and the court determines the extent of involvement of the commissioner service for protective supervision. This represents a modality of treatment of prisoners outside confines and thus constitutes a comprehensive special preventive measure.[6] So, it is a criminal sanction which focuses on special preventive effects, but which, unfortunately, still has a very modest application in the Republic of Serbia, even though it is a criminal sanction which was introduced in our criminal legislation is 1976. Certainly, the reasons for this should be sought in the fact that adequate conditions for practical implementation have not been creat-

1 Joko Dragojlović, (2016). *Odnos uslovne osude i kazne*, Kultura polisa, year 13, no. 31, p. 511.
2 Some form of protective supervision is also mentioned in the Criminal Code of the Kingdom of Yugoslavia, in Article 68, paragraph 2, and also in the novel of the Criminal Code of 1959, which mentioned some form of control that can be imposed only for young adults. However, the possibility of applying protective supervision was extended to all adultsonly in the 1976 Criminal Code of Yugoslavia.
3 More about the probation system in: Stanko Bejatović (1986), *Uslovna osuda*, NIOPoslovna politika, Beograd, p. 30-39.
4 ŽeljkoHorvatić, (1978), Uslovnaosudasazaštitnimnadzorom u novomjugoslovenskomkrivičnompravu, *Našazakonitost*, Zagreb, year 32,no. 16, pp. 29-39.
5 Some authors such as Slobodanka Konstantinović fork and MiomirKostić believe that a suspended sentence with supervision, not just a variant of a suspended sentence, but the specific criminal sanctions. Uniqueness of the criminal penalties to emphasize the author consists in a special mode of its implementation and protective supervision: See: Slobodanka KonstantinovićVilić and MiomirKostic (2011), *Penologija*, Pravnifakultet, Univerzitet u Nišu, Nis, p. 266.
6 KoraljkaBumči and TomislavTomašić, (2006), Rad zaopćedobro i uvjetnaosudasazaštitnimnadzoromtenjihovaprimjena u praksi, *Hrvatskiljetopiszakaznenopravo i praksu*, year 13, no. 1, p. 250, 2006., p. 250

ed. These practical problems which entail the lack of enforcement of suspended sentence with supervision are mainly related to the lack of funds and lack of organizational structures and adequately trained persons who can perform the work of the commissioner.

Therefore, the aim of this paper is to highlight the advantages of a suspended sentence with supervision, with reference to the normative and organizational assumptions concerning enforcement of criminal sanctions.

A LOOK BACK AT THE PROBLEMS IN EXECUTION OF SUSPENDED SENTENCE WITH SUPERVISION

While a suspended sentence with supervision in our criminal law is not a novelty, this criminal sanction has so far almost never been applied in practice. However, it is common knowledge that every new institute in law, including criminal law, has to wage a difficult battle before being implemented, especially when its implementation is associated with an organization, supporting (executive) agencies and institutions.[7]Thus, the main reason for non-application of these penalties in practice is that we have not created adequate conditions for their implementation on the one hand, while, on the other hand, this they represent an institute that comes from the Anglo-Saxon legal system and is not a part of our legal tradition, so that its practical implementation creates a lot of difficulties. Also, judges do not opt for the imposition of criminal sanctions taking into account the situation and the possibilities in terms of its execution. The biggest problem is certainly the fact that the execution of a suspended sentence with supervision involves a guardianship body, due to which, as it seems, the enforcement of criminal penalties could not be properly implemented. Therefore, we have a situation that there is legal possibility of imposing a suspended sentence with supervision, as it was prescribed in the Criminal Code, but there are no adequate conditions for its practical application. For this reason, there was for a time proposalfor the abolition of the criminal sanction. However, the fact that the conditions for its implementation have not been created is certainly not a reason for its abolition. It is certainly better to invest the effort and provide the material and human conditions for the enforcement of the sanction which has proved to be effective in many countries than to simply abolish it.[8]

As the guardianship authority is not sufficiently qualified for the execution of this criminal sanction, and as in addition to this there are other problems of technical and organizational nature, it clearly demonstrates why the protective supervision in practice has never been applied. Law on Execution of Criminal Sanctions, which was adopted in 2014, stipulates that the enforcement of protective supervision is entrusted to the Administration for Execution of Penal Sanctions of the Ministry of Justice, which will have special officials (commissioners) for the execution of a suspended sentence with supervision. The main objective of the operation of commissioner services providing assistance to prisoners who serve their own sanction without being confined, as well as the successful social integration of the convicted persons.

In addition to the above-mentioned reasons for restricted application of a suspended sentence with supervision, the reasons that we need to consider is the fact that a large number of judges do not decide on the imposition of such criminal penalties because, on the one hand, they may be skeptical about their enforcement, and, on the other hand, certain obligations that related to the probation may be incomprehensible to judges in terms of their implementation, and these obligations include the following: visiting the appropriate professional,

7 Miloš Babić, (1997), Alternative kaznizatvora u ciljuefikasneborbeprotivkriminaliteta, *Jugoslovenskarevijazakriminologiju i krivičnoprav*o, year 35, no. 2-3, p. 135.
8 Zoran Stojanović, (2012), *Komentar Krivičnog zakonika*, JP Službeni glasnik, Beograd, p. 301.

psychological or other counselling, accepting a job appropriate to the abilities of the offender, refraining from visiting certain places, bars or events, while other obligations such as medical treatment in an appropriate medical institution and refraining from the use of drugs or alcohol are imposed as a security measure with a suspended sentence.[9]

EXECUTIONOFSUSPENDEDSENTENCEWITHSUPERVISION

Execution of a suspended sentence with supervision in the Republic of Serbia is regulated by the execution of non-custodial sanctions and measures, and with the Ordinance on the Execution of a suspended sentence with supervision [10].

Therefore, based on these two legal regulations, a procedure and method of execution of a suspended sentence with supervision is regulated. These regulations specify the principles that guarantee respect for human dignity, rights, freedoms and privacy of the convicted person and his family, as well as the prohibition of discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property status, birth, education, social status or other personal characteristics.[11]

The rules on the execution of a suspended sentence with supervision in Article 2 specify the meaning of protective supervision, stating that supervision monitors the behavior of the unconfined convicted persons for some time during the probation period and that it provides the necessary assistance, care and protection in order to achieve the purpose of the pronounced suspended sentence.[12]

The execution of protective supervision is implemented by organizational units responsible for alternative sanctions[13](commissioner service) within the Directorate for Execution of Criminal Sanctions.The enforcement of protective supervision isassigned to the commissioner serviceresponsible for the permanent or temporary residence of the convicted person. The commissioner service,at the proposal of the Chief of the Department, is decided upon by the director of the Board.[14]

Enforcement of protective supervision is carried out in a way that a convict and his family are guaranteed respect for human dignity, fundamental rights, freedom and privacy. Dscrimination because of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other personal characteristics is also prohibited.[15]

The court adjudicating in the first instance starts the procedure for the execution of a conditional sentence with supervision by the commissioner service and the residence of the prisoner. The court is obliged to submit its executive decision, along with the information about the personality of the convicted person obtained during the criminal proceedings, to the Commissioner within three days from the day the decision became final.[16]

9 NovicaPeković, (2006) Alternativnekrivičnesankcije – praktičniproblemi, *BiltensudskeprakseVrhovnogsudaSrbije*, no. 2/2006, p. 37.
10 Pravilnik o izvršenjuuslovneosudesazaštitnimnadzorom, *Sl. glasnik* RS, br. 20/08.
11 NenadBingulac and Milovan Komnenić, (2015), Implementacija alternativnih sankcija u krivični sistem Republike Srbije sa osvrtom na zemlje u okruženju, *Kultura polisa*, year 12, no. 28, p. 191.
12 *Ibid.*
13 NatašaMrvić-Petrović, (2006), Alternativnesankcije i novo zakonodavstvoRepublikeSrbije, *Temida*, year 9, no. 1, p. 55.
14 Pravilnik o izvršenju uslovne osude sa zaštitnim nadzorom, *Sl. glasnik* RS, br. 20/08., član 3 i 4.
15 Pravilnik o izvršenju uslovne osude sa zaštitnim nadzorom, *Sl. glasnik* RS, br. 20/08., član 2 stav 2.
16 MilenkoRadoman, (2009), *Penologija i kaznenoizvršnopravo*, PravnifakultetUniverziteta u NovomSadu, Novi Sad, p. 243.

The commissioner serviceshall immediately, upon receiving the decision, take necessary action for its implementation and, if necessary, establish cooperation with the family of the convicted person, police, health and social care workers, employers and other institutions, organizations and associations.The commissioner service shall, within 15 days of receiving the decision draftan enforcement of protective supervision program and present it to the convicted person.[17]The commissioner service will submit the program to the competent court and the relevant authorities, institutions, organizations and employers. The convicted person has the opportunity to file a complaint with the competent court within three days from the moment of introduction to the program.

The obligation of the convicted person is to behave in accordance with the program of execution of the protective supervision, and the obligation of the commissioner service is to monitor and check whether the program applies protective supervision.[18]Commissioner service monitors the success in the execution of protective supervision, and may propose to the court to amend or repeal certain obligations of the convicted person and to terminate protective supervision before the expiry of probation, if based on the results achieved it is believed that it has completely served the purpose of protective supervision.[19]

For the successful work that will ensure a greater degree of effectiveness of non-custodial sanctions, and therefore suspended sentence with supervision, special professional service is required.[20]In Serbia this isthe Commissioner service which is located within the Directorate for Execution of Criminal Sanctions. The key to effective conditional sentence with supervision adapted to the needs of the treatment of convicts lies in the quality of staff - probation officers' - qualifications.Therefore, the question of standards of vocational education and training as well as a selection of probation officers is placed in the foreground.[21] The treatment and the performance during the execution of a suspended sentence with supervision will depend on the expertise and knowledge of the commissioner service officers. In Serbia, the tasks of commissioner services are performed mainly by persons who are employed in various correctional institutions. So these people are responsible for the upbringing and education of persons who have been sentenced to prison. However, as the job of the commissioner in charge of the execution of non-custodial sanctions and measures is totally different and is realized in completely different conditions it is necessary to give this issue the necessary attention. In particular, it is necessary to work more on education and specialization of persons who will perform the work of the commissioner service. The success of re-socialization and reintegration of convicts who are on the execution of non-custodial sanctions and measures is directly related to the expertise of the commissioner service.The commissioner service in Serbia can engage any government official with a corresponding high degree (special educator, social worker, psychologist, etc.) with appropriate skills in the field.[22]The commissioner

17 ĐorđeIgnjatović, (2006),*Pravo izvršenja krivičnih sankcija*, Pravni fakultet Univerziteta u Beogradu, Beograd, p. 169.

18 Slobodanka Konstantinović-Vilić and Miomira Kostić, (2011) *Sistem izvršenja krivičnih sankcija i penalni tretman u Srbiji*, Pravni fakultet Univerziteta u Nišu, Niš, p. 121.

19 Zakon o izvršenjuvanzavodskihsankcija i mera, *Sl. glasnik* RS, br. 55/14, član 37.

20 ZoranIlić and MarijaMaljković, (2015) Povereničkaslužba i zaštitninadzoruslovnoosuđenihlica u Srbiji – stanje, dileme i izazovi u: *Suprostavljanjesavremenimoblicimakriminaliteta – analizastanja*, evropskistandardi i merazaunapređenje, Kriminalističko-policijskaakademijaandFondacijaHajns-zajdel, Beograd, p. 130.

21 ZoranIlić and MarijaMaljković, (2013), Probacija - tretman u zajednici, osvrtnaorganizacione i normativnepretpostavkeRepubliciSrbiji u LeposavaKron et. al. (editors) *Kriminal, državnareakcija i harmonizacijasaevropskimstandardima*, Institutzakriminološka i sociološkaistraživanja, Beograd, p. 294.

22 Zoran Ilić and Marija Maljković, Poverenička služba i zaštitni nadzor uslovno osuđenih lica u Srbiji – stanje, dileme i izazovi,*op. cit.*p. 130.

must have adequate human qualities, which can model the behavior of the convicts, as well as the flexibility and stability of personality, with a clear motivation to perform this work.[23]

Another of the contentious issues is the question of establishment and organization of the Commissioner service for the execution of non-custodial sanctions. Should the Commissioner Service be an independent state body, a special unit within the Ministry of Justice and the Directorate for Execution of Criminal Sanctions, or a non-state authority? It seems that the last option is the least acceptable, so the question is whether one of the existing bodies of formal social control should be entrusted with the execution of non-custodial sanctions and measures or we should create a new organization.[24]In terms of excessive application of measures of deprivation of liberty and overcrowded penal institutions, it seems that the optimal solution would be the creation of a special state body. This would, at the institutional level, demonstrate commitment to impose detention and imprisonment only in cases when it is necessary.[25]Although the creation of a special state body seems to be hardly conceivable at the moment and although it would necessarily lead to another delay in the application of alternative criminal sanctions, the Commissioner Service (probation) department which is responsible for the execution of alternative criminal sanctions should nevertheless be separated from the Directorate for Execution of Criminal Sanctions. The Department for Execution whose dominant jurisdiction is the execution of imprisonment may not be an organization that will show enthusiasm in introducing new ways to access the offenders. Without an independent organization within the Ministry of Justice, with the officers who make strategic and tactical decisions - and their responsibility - it is impossible to imagine that significant progress can be achieved in this area in the near future. So, for the efficient and effective execution of non-custodial criminal sanctions and therefore suspended sentence with supervision, it is necessary to make certain amendments to the Probation Service in organizational terms. It is necessary to separate this service from the Directorate for Execution of Criminal Sanctions and focus exclusively on the execution of non-custodial sanctions.

However, as the law on execution of non-custodial sanctions and measures laid down a large number of criminal sanctions under the jurisdiction of fiduciary services, it is necessary to make certain organizational changes in this regard. Certainly, the work performed by the commissioner service in the execution of a suspended sentence with supervision and work carried out in providing post penal assistance varies considerably. Different types and scope of commissioner service activities should lead to closer specialization for certain tasks.

In recent years, Serbia has done a lot when it comes to alternative sanctions. It has certainly done the most at the legislative level, but unfortunately, it appears that the legislation in the true sense is not accompanied by the creation of practical conditions for their use.

Even though a suspended sentence with supervision has existed in our criminal legislation for a long time, it still lacks adequate implementation.

The adoption of the Law on the execution of non-custodial sanctions and measures and the Ordinance on the Execution of a suspended sentence with supervision have demonstrated a clear willingness to as much as possibleimplement the practical application of non-custodial sanctions and measures and therefore suspended sentence with supervision.

However, as we have already mentioned, it is necessary to make additional effort to create favorable conditions for its wider application and full affirmation. However, in addition to providing technical and human resources for the execution of criminal penalties, it is neces-

23 *Ibid.*

24 ĐorđeIgnjatović,Normativno uređenje izvršenja vanzavodskih krivičnih sankcija u Srbiji, preuzeto sa:http://www.ius.bg.ac.rs/crimenjournal/articles/crimen_002-2013/Crimen%202-2013%20-%20Djordje%20Ignjatovic.pdfstr. 27 (03. 03. 2017.)

25 *Ibid.*

sary to build awareness and trust among judges who act in criminal cases, so that they should more frequently opt for the imposition of a suspended sentence with supervision.

Finally, all this should lead to a reduction in the prison population, reducing the cost of the prison system and finally to a reduction of recidivism and crime.

SUSPENDED SENTENCE WITH SUPERVISION IN THE SYSTEM OF IMPOSED CRIMINAL SANCTIONS

Table 1. Number of imposed suspended sentences with protective supervision in the period from 2010 to 2015, by sex and age of the convict

Year	Imposed	Men	Women	To 21 years of age.	From 21to 30 years of age.	Over 30 years of age.
2012.	23	22	1	1	10	12
2013.	29	26	3	2	19	8
2014.	27	26	1	5	13	9
2015.	21	20	1	1	9	11

Source: Department for Execution of Criminal Sanctions
- Department for non-custodial sanctions and measures

As we can see in Table 1, the smallest number of imposed suspended sentences with protective supervision was in 2015 in total 21, in 2012 the total number was 23, in 2013it was 29 and in 2014it was 27. So, we can conclude that, with minor fluctuations, there are no excessive discrepancies in terms of the number of handed down suspended sentences with protective supervision, and certainly the conclusion is that a very small number of suspended sentences with protective supervision was imposed in the observed period.

A further analysis of data from Table 1 shows that a suspended sentence with supervision is imposed on men more frequently than on women. In this sense, in 2012, out of 23 sanctions imposed, 22 were imposedagainst men and one against a woman. In 2013, out of 29 imposed suspended sentences with supervision, 26 were issued to men and 3 to women. In 2014, out of 27 imposed sanctions, 26 on men and 1 on a woman, and finally, in 2015 out of the total of 21 imposed suspended sentence with supervision, 20 were pronounced to men and 1 to a woman. The fact that a much larger number of imposed suspended sentences with protective supervision were issued to men than women results from the fact that men more frequently commit crimes, and it is therefore understandable that more criminal sanctions, including the suspended sentence with supervision, are imposed against them.

Further analysing Table 1 we can see that in 2012, out of 23 imposed suspended sentence with supervision, one was pronounced to a person younger than 21 years, 10 to persons aged 21 to 30 years, while 12 were over 30 years. In 2013 out of 29 imposed suspended sentences with protective supervision, 2 persons that were sentenced were under 21 years of age, 19 persons aged 21 to 30 years, while 8 were persons over 30 years of age. In 2014, out of 27 imposed suspended sentences with supervision, 5 were issued to persons under 21 years of age, 13 to persons from 21 to 30 years of age, while 9 were issued to persons over 30 years. In 2015, out of 21 imposed suspended sentences with supervision, 1 was issued to a person under 21 years

of age, 9 to persons in the age group from 21 to 30 years, while 11 were issued to persons over 30 years of age.

Analyzing the age of persons who were imposed suspended sentence with supervision, we can see that most often they are persons from 21 to 30 years of age, with minor fluctuations in 2012 and 2015, when the number was slightly higher in favor of persons that were older than 30.In this respect, it is somewhat understandable that the suspended sentence with supervision, is most frequently imposedon persons aged between 21 and 30, because it is precisely the age at which the commitment of criminal offenses for which a suspended sentence can be imposed occurs or it is just this period whenoffenders for the first time commit”petty” crimesfor which a suspended sentence with supervision may be imposed.

Table2. Number of imposed suspended sentences with protective supervision in 2012 in relation to certain offenses

Year	Domestic violence	Illicit production and trafficking of narcotic drugs	Non payment of alimony	Theft	Aggravated assault	Minor bodily harm	Endangering safety
2012.	11	6	2	1	1	1	1

Source: Department for Execution of Criminal Sanctions-Department for non-custodial sanctions and measures

As we can see in Table 2, in 2012, out of the total of 23 imposed suspended sentences with supervision, 11 were imposed for the crime of domestic violence, 6 for the crime of illegal production of and trafficking in illegal drugs, 2 for the offense of non-payment of alimony and one suspended sentence with supervision, for the following offenses: theft, serious bodily harm, bodily injury and the offense of endangering safety.

Table 3. Number of imposed suspended sentences with protective supervision in 2013 in relation to certain offenses

Year	Domestic violence	Illicit production and trafficking of narcotic drugs	Aggravated assault	Minor bodily harm	Endangering safety	Forgery and abuse of a payment cards	Enabling the use of narcotics	Violent conduct
2013.	7	9	1	1	3	3	2	3

Source: Department for Execution of Criminal Sanctions-department for non-custodial sanctions and measures

As we can see in Table 3, in 2013, out of the total of 29 imposed suspended sentences with protective supervision, 7 were imposed for the crime of domestic violence, 9 for the crime of illegal production of and trafficking in illegal drugs, 3 for the crime of endangering safety, 3 for the forgery and misuse of credit cards and for the criminal act of violence, 2 for the act of enabling the use of drugs and one for the criminal acts of minor bodily harm and aggravated assault.

Table 4. Number of imposed suspended sentences with protective supervision in 2014 in relation to certain offenses

Year	Domestic violence	Illicit production and trafficking of narcotic drugs	Theft	Minor bodily harm	Participation in a fight	Enabling the use of narcotics	Attack on an official person while performing official duties
2014.	10	9	1	1	2	3	1

Source: Department for Execution of Criminal Sanctions- Department for non-custodial sanctions and measures

Analyzing Table 4, we can see that in 2014 out of the total of 27 imposed suspended sentences with supervision, 10 were imposed for the crime of domestic violence, 9 for the crime of illegal production of and trafficking in illegal drugs, 3 for the crime of enabling the use of narcotics, 2 for participation in a fight and one for the criminal acts of minor bodily harm, theft and assaulting an officer while performing official duties.

Table 5. Number of imposed suspended sentences with protective supervision in 2054 in relation to certain offenses

Year	Domestic violence	Illicit production and trafficking of narcotic drugs	Aggravated assault	Confiscation of property belonging to another	Attack on an official person while performing official duties
2015.	14	4	1	1	1

Source: Department for Execution of Criminal Sanctions - Department for non-custodial sanctions and measures

As we can see in Table 5, in 2015 from the total of 21 imposed suspended sentences with supervision, 14 were imposed for the crime of domestic violence, 4 for the crime of illegal production of and trafficking in narcotic drugs, and one suspended sentence with supervision for the crimes of aggravated assault, confiscation of property belonging to another, and the attack on the official in the performance of official duties.

Analyzing the tables above in terms of the number of imposed suspended sentences with protective supervision in relation to specific crimes, we can conclude that the suspended sentence with supervision was most often imposed for crimes of domestic violence, as well as offenses of illegal production of and trafficking in narcotic drugs.

Table 6. The ratio of the number imposed and the number of revoked suspended sentences in 2012

Year	Imposed	Revoked	Success-fully complet-ed	Failure to respond	Not Started	Deceased	In the process of execution
2012.	23	2	15	1	3	1	2

Source: Department for Execution of Criminal Sanctions - Department for non-custodial sanctions and measures

According to the data in Table 6, we can conclude that in 2012 out of the total number of 23 imposed suspended sentences with supervision, 15 were successfully completed, 2 were revoked, 3 have not yet been executed, in one there was a failure to respond, one prisoner died while 2 suspended sentences with supervision are in the process of execution.

Table 7. The ratio of the number of imposed and the number of revoked suspended sentences in 2013

Year	Imposed	Revoked	Success-fully complet-ed	Failure to respond	Not Started	Deceased	In the process of execution
2013.	29	3	11	4	4	1	6

Source: Department for Execution of Criminal Sanctions - Department for non-custodial sanctions and measures

According to the data from Table 7, we can conclude that in 2013, out of the total of 29 imposed suspended sentences with supervision, 11 were successfully completed, 3 were revoked, 4 not started with the execution, in 4 there has been a failure to respond, one prisoner died, while 6 suspended sentences with protective supervision are in the process of execution.

Table 8.*The ratio of the number of imposed and the number of revoked suspended sentences in 2014*

Year	Imposed	Revoked	Successfully completed	Failure to respond	In the process of execution	Terminated
2014.	27	1	4	8	12	2

Source: Department for Execution of Criminal Sanctions - Department for non-custodial sanctions and measures

According to the data from Table 8, we can conclude that in 2014, out of the total of 27 imposed suspended sentences with protective supervision, 4 were completed successfully, one was revoked, in 8 there has been a failure to respond, two were terminated, while 12 suspended sentences with supervision are in the process of execution. A large number of suspended sentences with supervision, which are still being executed is understandable, because they were imposed in 2014.

Table 9. The ratio of the number of handed down and the number of revoked suspended sentences in 2015

Year	Imposed	Successfully completed	Failure to respond	In the process of execution
2015.	21	1	3	17

Source: Department for Execution of Criminal Sanctions - Department for non-custodial sanctions and measures

As can be seen from Table 9 in 2015 from the total of 21 imposed suspended sentences with supervision, one was successfully carried out; in 3 there was failure to respond, while 17 are still in the process of execution

Analyzing the data from the tables above we can see that a large number of suspended sentences with protective supervision were successfully executed.

This further confirms the fact that the suspended sentence with supervision is very effective criminal sanction, which unfortunately is still not sufficiently used in Serbia.

However, although we have noted a certain number of suspended sentences with supervision which resulted in a failure, there is a particularly large number of imposed suspended sentences with supervision for which there is a lack of response or the execution of which has not even started.

CONCLUSION

Modern policy of crime reduction has been showing an increasing desire to raise the level of humanity, and to reduce the level of repression towards the offenders. Nowadays more and more criminal sanctions are applied which do not limit the freedom of the offender or which seek as much as possible to reduce the use of imprisonment, especially short-term imprisonment, when the purpose of punishment can be achieved by imposing an alternative criminal sanction. A suspended sentence is such a criminal sanction.

A suspended sentence with supervision aims to amplify the impact on the offender during the probation period. Protective Supervision seeks to replace the main shortcoming of the Franco-Belgian system of a suspended sentence, and that is the absence of any help to the convict during the probation period. In case of the suspended sentence with supervision, the goal of providing a particular treatment for the offender is achieved. Instead of being imprisoned, the convicted offenders are given assistance and supervision in order to correct their behavior and return to a life that is in accordance with the criminal justice standards. The fact that the convicted person does not face prison conditions but individual treatment that is tailored to his personality is the biggest advantage of this criminal sanction. However, this is a criminal sanction, which has not been used in the right way and at full capacity in our country, but we believe that its increased implementation in the future will give good results, as is the case in comparative law.

So, while a suspended sentence with supervision is a very effective tool in the fight against crime, i.e. although this is a very effective criminal sanction, it still does not have adequate implementation in Serbia, as indicated and confirmed by statistics offered in the paper. The main reason for this lack of application of criminal sanctions originally was that there were no adequate technical, material, or personal conditions for its implementation. However, today the situation is different: much has been done in terms of adequate execution of a suspended

sentence with supervision, but its implementation is still not at the desired level. The reason for this can certainly be sought in the lack of awareness of the effectiveness of the criminal sanctions, insufficient number of commissioners, etc.

The issue that remains to be solved as regards the suspended sentence with supervision is the establishment and organization of the Service or Office of the Commissioner for the execution of non-custodial sanctions. Additionally, it remains to be decided on whether the commissioner service should be an independent state body, a special unit within the Ministry of Justice and the Directorate for Execution of Criminal Sanctions, or a non-state body. Also, there is the open question of education of commissioner for enforcement of non-custodial sanctions. At present, the duties of commissioner services are performed mostly by persons without appropriate educational qualification for the profession, but who used to work or still work in different penitentiaries.

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STRENGHTENING INFRASTRUCTURAL CAPACITITES OF JUDICIARY AS A PRECONDITION FOR EFFICIENCY OF CRIMINAL JUSTICE

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Abstract: Achieving an efficiency of criminal justice requires an ideal balance between reasonable length of procedure, protection of defendant's procedural rights and reasonable usage of resources. Having that in mind, it is understandable that significant efforts have been made in last decades by legal theoreticians, legislators as well as legal practitioners to identify all relevant factors that could have a positive influence on efficiency. One of these factors lies in ensuring appropriate infrastructural conditions in courts and prosecutors' offices. The term infrastructure traditionally assumed adequate buildings/facilities for courts and prosecutors' offices but the situation has been significantly changed since 1990's. A new technologies brought not just the evolution but the revolution in automatization of internal procedures, case management, video conferencing and recording of hearings, improvement of investigative techniques as well as in transparency of judiciary. Strengthening infrastructural capacities of judiciary has become one of the biggest challenges when it comes to reform of criminal justice system having in mind significant financial resources that need to be allocated through the state budget as well as through the project support. Beyond investments, the important obstacle in improvement of the ICT infrastructure could be found in coordination with renovation of court and prosecution facilities as the most usual way of their improvement. The last, but not less important obstacle is in resistance that has existed among judges, public prosecutors and administrative staff. Although persistent in their requests to get better working conditions they are not likely to change their work routine and built professional skills.

Keywords: judicial efficiency, criminal proceedings, infrastructure, ICT.

OVERBURDENING OF SERBIAN JUDICIARY

The Serbian judicial system faces with chronic overburdening that lasts for decades. A huge backlog and workload; lack of comprehensive training; poor working conditions and inadequate premises for courts and prosecutor's offices; obsolete and fragmentized case management system and outdated internal procedures are just some of problems that prevents efficiency.

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Table 1. *Annual Workload in Serbian Courts*[2]

Annual Workload			
Court	**2013**	**2014**	**2015**
SUPREME COURT OF CASSATION	11.544	9.161	20.842
ADMINISTRATIVE COURT	21.756	19.423	20.315
COMMERCIAL APPELLATE COURT	12.395	10.921	14.514
MISDEMEANOR APPELLATE COURT	31.009	39.103	29.583
APPELLATE COURTS	83.215	61.290	55.555
HIGHER COURTS	112.372	112.879	128.093
BASIC COURTS	901.737	822.272	967.475
COMMERCIAL COURTS	94.417	82.495	83.170
MISDEMEANOR COURTS	532.301	594.641	816.936
TOTAL	**1.800.746**	**1.752.185**	**2.136.483**

Inefficiency in service of documents plays also an important role in the length of proceedings. It's not rare to have a few months or even a multiannual periods of procedural inactivity caused by multiple unsuccessful attempts to deliver court documents or just to get a proper address of recipient. That has especially serious consequences in criminal proceedings in connection with status of limitation period as well as with access to justice guaranties for victims. In addition to extensive caseload there is a chronic problem with the caseload inconsistency e.g. the annual caseload in basic courts ranged from 1.295 to 118.258 cases per court and from 108 to 33.823 in higher courts in 2015. The extensive and inconsistent caseload per judge remains an issue, too. The average annual caseload per basic court judge ranged from 23.55 to 119, 25 in 2015. An average caseload per higher court judge was 36.50 and ranged from 22.41 (1.40) to 61.48[3]. In parallel with a huge and misbalanced workload, significant differences exist also in court efficiency depending of case type. From data given bellow is visible that courts still struggling to resolve annual caseload despite the huge backlog that needs to be reduced.

Table 2. Average clearance rate in Serbian courts[4]

AVERAGE CLEARANCE RATE	
The first instance civil cases (basic and higher courts	92.02%
The first instance commercial cases	114.54%
The first instance administrative cases	91.96%
The first instance criminal cases (basic and higher courts)	124.65%

2 *Comprehensive assessment of court and prosecution network with a focus on costs and allocated resources, efficiency, workload and access to justice*, Belgrade, 2017.
3 *Analysis of the court work (general and special jurisdiction)*, Supreme Court of Cassation, 2015, p. 41.
4 *Ibid.*

The second instance civil/commercial/criminal cases	108%
Supreme Court of Cassation	91.69%

When it comes to public prosecutor's offices, significant changes in average annual workload came with the new Criminal Procedure Code implementation since 2014.

Table 3. *Average workload in Serbian public prosecutor's offices*[5]

ANNUAL CASELOAD			
Prosecutor's Office	**2013**	**2014**	**2015**
Republic Public Prosecutor's Office	15.310	30.033	30.886
Appellate Public Prosecutor's Offices	41.675	19.497	20.037
Higher Public Prosecutor's Offices	65.019	92.642	87.894
Basic Public Prosecutor's Offices	241.874	350.190	341.601
Organized Crime Prosecutor's Office	3.263	3.099	3.154
War Crime Prosecutor's Office	852	953	936
TOTAL	367.993	496.414	484.508

From data given below its clear that in more than 53% of basic public prosecutor's offices the annual caseload exceeds 1000 of cases per public prosecutor's office (in 3 prosecutor's offices exceeds even a 2000). An average annual caseload per deputy public prosecutor in basic prosecutor's offices in 2015 was 1197 and 494 in higher prosecutor's offices. The average clearance rate in prosecutor's offices is around 80%.

The annual workload in Serbian courts remains huge and accompanied with significant number of old cases' backlog keeps judiciary in the zone of inefficiency. As of September 1st 2016, the judicial system in the Republic of Serbia, encompasses 2789 judges. Average number of judges per 100.000 citizens is 39, compared to EU average 21, according to CEPEJ Report from 2016 that presents data from 2014. Compared to data from 2010, when average number of judges per 100.000 was 33.7. In 2012 this number was even a higher 40.5 and was reduced due to rationalization of court network in 2014. The interesting fact is that there are no transparent and objective criteria adopted by the High Judicial Council (hereinafter: HJC) and the State Prosecutorial Council (hereinafter: SPC) in order to determine total number of judges and public prosecutors, while both councils has criteria for their allocation. 86% of total number are first instance judges, compared to European average of 74%. Only 12% of judges serve as a second instance judges compared to European average of 22%. The significant difference exists also when it comes to percent of the supreme-court judges - 1% in Serbia compared with 6% that is European average.[6]

In accordance with current systematization adopted in 2012 (and amended on 2012, 2013 and 2015) there are 741 vacancies for the position of deputy public prosecutor. Currently 114 are not fulfilled. The number of public prosecutors per 100.000 citizens in Serbia is 9.2 com-

5 *Ibid.*
6 *European judicial systems Efficiency and quality of justice*, CEPEJ STUDIES No. 23, Edition 2016 (2014 data), Strasbourg, 2016, table 3.13.

pared to European average 11.3[7]. 90% serve as first instance prosecutors compared to 78% that is European average. 9% of total umber serve as second instance prosecutors compared to 18% that is European average. Just 2% of Serbian public prosecutors serve in the third instance compared to 18% as European average.[8]

When it comes to non-judicial staff, according to CEPEJ, their average number per judge in 2014 was 3.7 that is close to European average (3.9 including common law countries and 3.2 for continental law countries) and has been decreased from 4.5 since 2010. The number of non –judicial staff per 100.000 has been significantly reduced in last decade. [9] The average number of staff per public prosecutor is 1.8 compared with 1.5 that is European average. The number of administrative staff per 100.000 has been significantly reduced in last decade[10].

BALANCED APROACH TO INCREASING JUSTICE EFFICIENCY

Improvement of the justice efficiency requires a balanced approach that includes various activities in the field of procedural laws, human resources (adequate number and well trained staff) and organizational measures, providing adequate budget but also continuous improvement of the judicial infrastructure (premises and ICT). Accession negotiations with the EU have brought such a comprehensive and strategic approach to justice efficiency.

It has been already said that Serbia has one of the highest ratios of judges to population in all of Europe, along with a very high ratio of staff to judges. In spite of that, the HJC and SPC still operate without clear criteria for determination of total number of judges and prosecutors. Also, there is no any prediction of potential reduction of number of judges, despite the fact that in Serbia currently operate 234 enforcement agents, 152 public notaries and 419 mediators whose work and taking over jurisdiction under various types of cases significantly disburden courts.

Implementation of the new Criminal Procedure Code based on prosecutorial investigation, brought additional caseload to prosecutor's offices since 2014. Legislative amendments have enabled extended use of plead guilty/plea bargaining and other simplified forms of criminal proceeding's as a way to speed up proceedings but they were not followed by adequate additional administrative capacities for the public prosecutor's offices.

Having in mind that quantitative and qualitative characteristics of human resources represent the horizontal issue determining judicial efficiency and quality of justice adoption of the Human Resource Strategy for the judiciary has been recognized as a one of the priorities for improvement of the judicial efficiency in the Action Plan for Chapter 23 (hereinafter: AP CH23). Importance of this issue is underlined in the Functional Review but also by the European Commission which included the adoption and implementation of the HR Strategy for the entire judiciary, leading to a measurable improvement in the workload spread, efficiency and effectiveness of the justice system, on the list of interim benchmarks[11] (IB No. 11) for CH23.

Having all said above in mind, it's obvious that implementation of future HR Strategy will required support in determination the criteria for more efficient allocation of HR in the judiciary, taking into account caseload, available budget and infrastructural preconditions. In

7 CEPEJ (2016): table 3.2.
8 CEPEJ (2016): table 3.33.
9 CEPEJ (2016): table 3.
10 CEPEJ (2016): table 3.46.
11 *Common Negotiation Position for Chapter 23*, available on: http://mpravde.gov.rs/files/Ch23%20EU%20Common%20Position.pdf, last accessed on March 17th 2017.

addition to infrastructure improvement and salaries, budget allocation is important when it comes to quality of the initial but especially continuous training for judges, prosecutors and their assistants and administrative staff. The Judicial Academy (hereinafter JA) annual budget is approx. 1.5mil. € and stagnates in last few years. The biggest portion of the JA's budget is allocated on salaries of JA's attendants of the initial training who still wait to be elected on judicial functions. That results in extremely reduced resources for training programs that are essential for capacities of judicial office holders as well as for non-judicial staff. During 2016 Judicial Academy organized 359 trainings for 7886 trainees. Trainings were delivered by 807 lecturers on 94 different topics.[12] Trainings were mostly financed from donor aid programs and focused on judges and prosecutors and their familiarity with recent legislative changes. Practical skills and non-judicial staff training are traditionally marginalized or out of JA's and donors' focus. The same goes for court management staff that need serious improvement of various skills. Additional issues regarding the training could be found in lack of serious and comprehensive TNA that's usually limited practice on small target groups or based on a very few courts or prosecutor's offices sample. Training programs are not always tailor made and doesn't ensure compatibility with real training needs identified by potential users. That has serious influence of judicial efficiency and requires reconceptualization of the trainings having in mind assistants' work and their duties that are overlapping with judges'/prosecutors' work as well as the importance of the administrative and management staff in improvement of efficiency and effectiveness.

JUDICIAL INFRASTRUCTURE AS A FACTOR OF IMPROVING EFFICIENCY

Apart from changing and harmonising legal framework during negotiation process, part of efforts must be devoted to the tackling other inadequacies of the justice system such as providing adequate physical infrastructure and equipment, which largely affecting efficiency, performance of judiciary and delivery of justice. Having in mind that the biggest part of buildings are shared between two or more courts and/or prosecutor's offices, efficiency of criminal proceedings is preconditioned by infrastructural investments in judiciary in general. Additionally, having in mind that procedural efficiency includes reasonable length of proceedings but also ensuring other aspects of fair trial, planning of infrastructure's improvement should also include that perspective.

Currently, insufficient capacity of existing infrastructure affects delivery of service and access to justice. Lack of courtrooms in courts and interview rooms in prosecutor's offices along with poor working conditions leads to reduced quality of court service and prosecution. High number of employees in limited space influence efficiency and productivity. Also, high number of cases per year influences the efficiency of operations, requirements for additional archive space. Insufficient space jeopardizes mostly relations with citizens, access for people with limited mobility. Proper facilities for witnesses, lawyers, and security staff are problem in most of courts and prosecutor's offices.[13] The status of judicial budget as well infrastructural investments play significant role in balancing HR and judicial efficiency. The judicial budget hasn't been significantly increased or decreased last few years but there was subject of some reductions in late 2015 due to austerity measures adopted by the Government to consolidate

12 Action plan for Chapter 23 with implementation status as of 31. December 2016, available on: http://mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20as%20of%2031.%20December....pdf, last accessed on March 17th 2017.

13 *Serbia Judicial Functional Review*, World Bank, Washington, 2014, available on: https://openknowledge.worldbank.org/handle/10986/21531, last accessed on March 25th 2017.

State budget. Limited budget funds do not enable adequate planning of renovation, adaptation and construction of facilities in judiciary. Most of budget is provided for the maintenance and running costs.

According to CEPEJ data (2016 Report) the annual court budget is 22 €[14] compared to 36 € that is European average. However, this amount is 0.65% of GDP per citizen[15] that is significantly above the 0.33% that is European average. It is important to notice that approx. 80% of total annual judicial budget (122.458.496 €) is allocated on salaries.

However, the working conditions in courts and prosecutor's offices were improved due to significant investments in judicial infrastructure since 2012. Approx. 1.718.491.000 rsd. have been invested since 2014 in building, renovation and reconstruction of 28.317m2 of judicial infrastructure and approx. 133.516.000 rsd. has been invested in refurbishment and equipment (TOTAL 1.938.813.000,00 rsd.).[16] Investments in infrastructure have an important influence, not only on working conditions, but also on efficiency of internal proceedings and utilization of HR use.

The Comprehensive Assessment Report of the current state of each facility in judiciary was prepared by IPA 2012 Project *Judicial Infrastructure Assessment (JIA)* in 2016. The purpose of that Project is to improve - the infrastructure of judicial bodies by establishing technical conditions for reconstruction/renovation and/or additional spaces needed and upgrade of ICT infrastructure of buildings in which courts and prosecutors' offices are seated in order to enable them to perform their tasks in a manner that is consistent with European standards. The JIA Project so far resulted in development of Model Court Guidelines and Model Public Prosecutor's Office Guidelines as well as the Methodology & Checklists for Infrastructure Assessment. The JIA also conducted On-site Assessments and drafted Comprehensive Report including proposed interventions in accordance with Model Guidelines. Based on these results the MoJ, HJC and SPC improved their Buildings Database and prepared a preliminary list of priority buildings. The priority list was prepared by a ponderation of numerous indicators such as: territorial jurisdiction of judicial institutions in judicial building, number of employees in the judicial building, number of judicial institutions in the judicial building, number of cases during the year, compatibility with Model Courts guidelines and Model Prosecutors guidelines, building and land ownership status, backlogs and year of construction and year of the most recent reconstruction of the facility.

In addition to ensuring the adequate number of court rooms and investigation rooms and cabinets for prosecutors as well as modern equipment, the special attention of the infrastructural investment in upcoming years should be paid on specific requirements coming from procedural safeguards (especially for victims and witnesses) and EU standards regarding access to justice for persons with disabilities.

When it comes to special requirements to protect victims and witnesses, it is important to ensure info-desks in all courts and prosecutor's offices; video surveillance in all courts and prosecutor's offices; additional/separate entrances for accused and victim; entrance security check; video link equipment; separate waiting room for victims and witnesses; premises for victims' support service, etc.

Enabling physical access to courts and prosecutor's offices for persons with disabilities was out of focus for decades, that's obvious from data given bellow.

14 CEPEJ (2016): table 2.12.

15 CEPEJ (2016): table 2.25.

16 See more in: *Comprehensive assessment of court and prosecution network with a focus on costs and allocated resources, efficiency, workload and access to justice*, Belgrade, 2017.

THE ROLE OF ICT IN JUDICIAL EFFICIENCY

The ICT modernization as horizontal issue has the strong influence on judicial efficiency, effectiveness, transparency and promotion of confidence in judiciary,[17] especially in criminal proceedings. "Computers are incredibly fast, accurate, and stupid; humans are incredibly slow, inaccurate and brilliant; together they are powerful beyond imagination."[18] There is no doubt that an e-justice systems are built linking and reshaping heterogeneous components, building blocks of technological, organizational and normative nature.[19] With technological deployment "specific tasks and the associated institutional responsibilities are transferred to machine technologies, and therefore dethatched from the traditional channels of responsibilities and awareness."[20] Significant number of tasks traditionally undertaken by humans and that concerned production, management, and processing of paper documents are now digitized and automatically executed by computers. Digitalisation must assemble a diverse skill set of people who can create content, establish business processes, develop software, etc.[21] Case Management Systems (hereinafter: CMSs) constitute the backbone of judicial operation that collect key case related information, automate the tracking of court cases, prompt administrative or judicial action and allows the exploitation of the data collected for statistical, judicial, and managerial purposes. Their deployment force courts to increase the level of standardization of data and procedures. CMSs structure procedural law, and court practices into software codes, and in various guises reduce the traditional influence of courts and judicial operators over the interpretation of procedural law.[22] Schedule of hearings; service of documents (including e-filing); recording of hearings; use of audio and video link are some of the key points where ICT can significantly increase procedural efficiency but also to strengthen procedural guaranties, especially when it comes to protection of vulnerable victims and witnesses. "Integrated e-filing justice interoperability systems used by the different judicial and law enforcement agencies: courts, police, prosecutors' offices and prisons departments might change the administrative responsibility on the management of the investigation and prosecutions when they actions are coordinated via integrated ICTs architectures."[23] Various aspects of transparency, more coherent court practice and access to justice could be improved through legal information systems that collect legislation and case law made it digitally available to the public. The change of media from paper to electronic collections, with enhanced data access, can create questions related to the right to privacy of the persons mentioned in the judgments, right to be balanced with the principle of publicity of court decisions." Making digitally available laws and case laws might affect the way in which they are interpreted

17 Velicogna, M., Justice Systems and ICT What can be learned from Europe?, Utrecht Law Review, available on: file:///C:/Users/Milica%20Kolakovic/Downloads/41-41-1-PB.pdf, last accessed on March 20th 2017.

18 This quotas is frequently cited as Einstein's but there is no any evidence that he ever said that. See more on: https://www.benshoemate.com/2008/11/30/einstein-never-said-that/, last accessed on March 26, 2017.

19 Velicogna, M, *Electronic Access to Justice: From Theory to Practice and Back,* available on: https://droitcultures.revues.org/2447, last accessed on March 20th 2017.

20 Czarniawska, B., Joerges, B., The Question of Technology, or How Organizations Inscribe the World, Organisation Studies, 19(3), 1998, pp. 363-385, available on: http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.195.4715&rep=rep1&type=pdf, last accessed on March 20th 2017.

21 Mountain, D.R. "An Update and Reconsideration of Chrissy Burns' 'Online Legal Services-A Revolution that Failed?'", European Journal of Law and Technology, Vol. 1, Issue 3, 2010, available on: http://ejlt.org/rt/printerFriendly/48/77, last accessed on March 26th 2017.

22 Steelman, D.C., Goerdt, J., and Mcmillan, J.E., *Caseflow Management. The Hart of Court Management in the New Millennium*, National Center for State Courts, Williamsburg, Va., 2000, available on: http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1498, last accessed on March 26th 2017.

23 Cordella, A., and Iannacci, F., "Information Systems in the Public Sector: The E-Government Enactment Framework", Journal of Strategic Information Systems, 19(1), 2010, pp. 52-66.

making it easier for the civil society and media to voice their interpretation of the law on the specific case or criticize a specific judgement based on pre-existing court decisions. Moreover, legal information systems are not necessarily neutral in identifying relevant case law and jurisprudence."[24]

Seen from the other angle, the ICT tools are irreplaceable in development of central statistics systems in order to monitor judicial efficiency at various levels (per single court/prosecutor's office; per court/prosecutor's office type; per type of crime, etc.) Currently, the non-existence of interoperability among the CMS systems in Serbia and limited e-data exchange result in additional paper work and causing extensive administrative workload as for judges and prosecutors as for their assistants and administrative staff. The Republic of Serbia began court automatization a decade ago. Originally, several discrete initiatives introduced electronic case registration and document indexing systems from various donor sources. Although all initiatives had a big positive impact on future court automation, only some of them can be seen as successful. The judiciary relies on a variety of unlinked ICT systems for case processing, case management, and document management. There is no meaningful, accurate, and timely statistics generated by the case management system to become more effective in managing overall system performance. The collating of statistical data currently requires substantial efforts and leads to inconsistent data collection via numerous entities. However, the courts enter data manually instead of downloading from the case management system. This is time-consuming, inefficient, and prone to errors. This negatively affects daily operations and impedes much needed evidence-based management and planning.

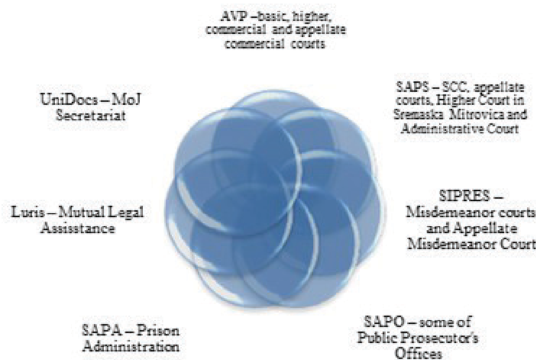

Figure 1. *Structure of ICT system in Serbian judiciary*[25]

The important role in unification of the ICT system has the shared responsibility for ICT within Serbian judiciary. Establishment of an overall governance group representing primary justice institutions has been established in 2016, by constitution of ICT Sectorial Council[26]. The scope of work of the ICT Sector Council is to institutionalize the coordination and management of ICT in the judiciary, in accordance with the activities of the AP CH23 and work plan of the Department for e-justice of Ministry of Justice. ICT Sectorial Council consist of all

24 Contini, F., Cordella, A. *Assembling law and technology in the public sector: the case of e-justice reforms,* available on: https://www.researchgate.net/profile/Antonio_Cordella/publication/277332369_Assembling_law_and_technology_in_the_public_sector_the_case_of_e-justice_reforms/links/5569c9e708aec22683035ac1.pdf?disableCoverPage=true, last accessed on March 26th 2017.

25 *Comprehensive assessment of court and prosecution network with a focus on costs and allocated resources, efficiency, workload and access to justice*, Belgrade, 2017, p. 46.

26 The Sectorial Council was established in cooperation of the MoJ, SCC and RPPO.

relevant stakeholders in the judiciary and it should be looked, as temporary institutional body established to make transfer of ICT jurisdiction from MoJ to HJC (High Judicial Council).

In previous period, several analyses were conducted which gives a comprehensive overview of ICT as well as recommendations for the future. Overall view and recommendations on ICT were given in Serbian Judicial Functional Review, prepared by World Bank and more detailed insight regarding ICT and especially court case management systems were given in Assessment of Case Management Systems (CMS), donated by USAID Mission in Serbia. Latest feasibility study with total cost of ownership for the centralized case management system for the courts of general jurisdiction and the administrative court has been done by the DEU through framework contract. The main goal of particular contract was to support the justice system of the Republic of Serbia on strategic, technical and financial level in order to address the best feasible solution to further development and harmonization of the system covering necessary software, network infrastructure, hardware, training, software maintenance and support of legislative changes.

It is foreseen that new centralised CMS must replace existing decentralised MEGA AVP system in all instances of courts and their units, enabling courts of general jurisdiction to have better management of security issues in the field of data protection and interoperability – interconnectivity between courts, as well as government institutions and agencies. By the latest strategic decision of ICT Sectorial Council, based on the developed feasibility study, new centralised CMS should follow several major characteristics: system should be robust, commercial of the shelf product, manufactured by world-wide known vendors, bundling full fledge Enterprise Content Management, related tools and scanning/digitalisation features from the same vendor in order to avoid several points of responsibility; needs to be able to operate with thousands of business users in high performance, cost independent of changes in total number of users; software vendor needs to be present on the market in Serbia with representative office, due to better understanding of needs from the judiciary; solution needs to be able to communicate with other ICT system within judiciary and public administration.

Efficient performance of criminal justice procedures requires coordination and development of interoperability not only within judiciary but among various state authorities as Ministry of Finance, Ministry of Interior, Prison Administration, etc.

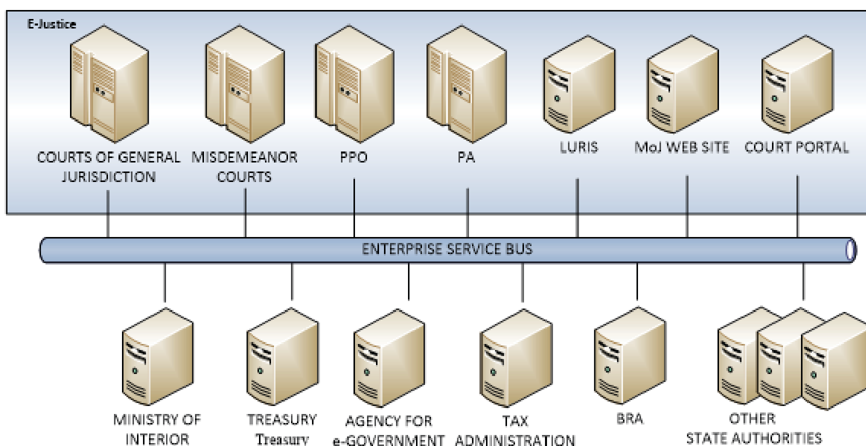

Figure 2 – e-Justice layout [27]

27 *IT Development Guidelines in Justice Sector*, ICT Sectorial Council, Belgrade, 2016, p. 18.

Due to fact that there was no strategic decision and orientation with cost estimation, court management of different court type has different idea on how the electronic case registration and case management should look like. Therefore, during past decade, Serbian judiciary have had a dozen ICT systems, from pure case registration system on obsolete technology, along with simple imaging of the incoming court papers (as picture) without possibility of text recognition and possible search feature, to fully-fledged case management systems on modern technology and possibility of paper text recognition, which is not properly or even not used at all.

Even it seems that Serbian judiciary is making significant progress, it is still struggling with incompatible or inappropriate ICT systems, making, already inefficient justice sector, more inefficient and not transparent. All major investments in ICT systems were donated, even though it remains under-funded from the national budget. In 2016, MoJ department for e-Justice (former ICT department) has started several projects, among which some of them can be defined as crucial. On the ICT infrastructure level, identity management has been implemented, allowing basic courts desktop computers to be visible with proper user role in the whole judiciary system. On the level of case management systems, there is a pilot project for roll-out of prosecutors' offices and prison administration case management (expected to start in mid-2017). On the statistical level of reporting and monitoring, pilot project has started implementing central statistics for basic and higher courts. On the interconnectivity level, MoJ has started implementation of *Enterprise Service Bus* – interoperability technology platform in order to establish unique communication between all ICT system within judiciary and other government bodies and agencies. On the same platform, unique e-filling portal will be established, allowing citizens to be able to file any type of the court document and to monitor case progress.[28]

FUTURE STEPS

According to the AP CH23, improvement of the judicial infrastructure in general as well as of the ICT system needs to be continued in order to enable judiciary to perform more efficient but also to monitor the statistical parameters of judicial efficiency, reporting and to exchange information between courts and all other judicial and government bodies. In addition to ICT investments and governance the important factor in this process should be advancement of ICT skills' trough tailor made training for judges, public prosecutors and non-judicial staff that also need to be provided with better working conditions and adequate premises to make their results comparable with other judicial systems. There is an also need for utilization of use of existing infrastructural capacities, through e-scheduling of hearings and more flexible working hours. Positive influence on efficiency of criminal justice can also have more frequent acting in accordance with art. 354 of the CPC that allows performing a hearings in other, more appropriate (or better equipped) court rooms, out of building of the competent court. Significant time and money savings could also be made through more advanced use of video link and more efficient service of documents system. This is of the key importance to avoid negative effects of numerous postponed hearings due to unsuccessful delivery of documents or inability of court parties to come into a court that usually causing an empty court rooms in parallel with a huge backlog and overbooked judges schedule.

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28 *Ibid.*

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DEFINING PREDICTORS OF ORGANIZED CRIME IN FUNCTIONOF STRENGHTENING CAPABILITIES OF THE COUNTRY

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Abstract: Organized crime is one of the greatest challenges which modern state is facing today. In contemporary era, the circle of activities that can be classified as organized crime has gained new dimensions and ranges of expression. States faced with the phenomenon of organized crime engage their capabilities by applying various measures and activities intended to prevent threats to national security. Even though in the scientific and professional community there are different dilemmas relating to organized crime, preventive activities have priority in countering this phenomenon in the opinion of the leading theorists. Appropriate and efficient functioning of the system of preventive measures includes engagement and aiming all of the necessary capabilities of the country, based on preliminary analyses and predictions. The authors define the most important criminal factors that cause the creation and development of organized criminal activity in a certain area, and which are of importance to define predictors. Presented and systematized predictors represent a reliable basis for further upgrading and identifying conditions that may contribute to the appearance of the phenomenon of organized crime. In this regard, the list of specific factors has not been exhausted due to recognition of specific areas. Specific factors also further contribute to the possibility of manifestation of organized crime, and increase the probability of the presence of organized crime in a certain area. However, dynamics and flexibility of organized crime to social changes require constant monitoring and updating of existing predictors for prevention and combat this phenomenon.

Keywords: organized crime, predictors, prevention, state capabilities, law enforcement.

VARIOUS DEFINITIONS OF AN ORGANIZED CRIME PHENOMENON

One of the many definitions of organized crime defines this phenomenon as an ideological association of a number of persons who among them achieved a very close social interaction, organized on a hierarchical basis, of at least three levels (ranks), in order to ensure profits and power, thanks to its participation in the illegal and legitimate activities. The position in

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the hierarchy and position of functional specialization must be transferred from the family ties or friendship or rational transferred (checked), due to the skill of which the particular position granted. Continuity of membership includes a membership that strives to preserve the integrity of their organization and activities in accordance with the objectives of the organization. Competition with similar organizations should be avoided and total control should be achieved in certain illegal activities and to a certain area. The organization is willing to use violence or bribery in order to achieve the set goals. Violence is also used in order to ensure the discipline of members of criminal organizations. Membership has restrictive characteristics, although some members may be involved in criminal activities in exceptional situations. There are explicit rules, verbal or written, whose application provides the threat of certain sanctions, including murder.[2] Despite the large number of definitions of this phenomenon, we can see two approaches. The first approach, which is also more comprehensive, equates organized crime with any form of organization in the perpetration of criminal activities in order to obtain illegal profit. Second approach significantly narrower defines this concept because its proponents beside organizational elements consider that organized crime must include the characteristics of a criminal organization, its structure and way of functioning. It is also narrower approach because the concept of organized crime in addition to the organizational elements needs to include some other aggravating circumstances.[3] Based on the synthesis definitions of this term, organized crime is defined as "permanent criminal enterprise which is rationally implemented in order to make profits in an illegal way and to meet certain needs of society (prostitution, gambling, usury, etc.), and its continuity of operation is achieved by using force, threats, control of monopolies and (or) the corruption of public officials".[4]

ORGANIZATION OR ACTIVITY AS A DILEMMA

Based on fact that the proper definition of organized crime significantly contributes and facilitates its prevention and control, almost all modern states are making efforts of a precise and conceptually determination of this phenomenon, with the aim of finding a set of specific legal solutions that would prevent and curb more efficient. The above mentioned statement is applicable to countries that are in the political and economic transition, i.e. countries where organized crime has a tendency of enlargement, but also for countries with a long and stable democracy based on the principles the rule of law. Among the determinations which contribute to confusion on the conceptual plan, special place has the fact that the concept of organized crime has given at least two different meanings.

- first, that puts in the center of the study a group of people who take certain criminal activities and to achieve their goals of establishing an appropriate organization that relies on a network of relationships based on subordination and hierarchy and

- second, in which understanding of organized crime is not the answer to the question "when?" but "what?" - activities that can be considered as an organized crime.[5]

2 Abadinsky Howard, *Organized crime, third edition*, Nelson-Hall, Chicago, 1990, p.1-6
3 Marinković Darko, *Suzbijanje organizovanog kriminala:specijalne istražne metode,* Prometej, Novi Sad, 2010, str. 19
4 Jay Albanese, North American Organised Crime, Global Crime, Vol 6, No.1, 2004, Internet http://jay-albanese.com/yahoo_site_admin/assets/docs/AlbaneseNAorganisedcrimeglobalcrime.35194323.pdf , 25/06/2016, p.10.
5 Ignjatović Đ.: Organizovani kriminalitete u XXI veku-kontraverze i dileme, u: *Suzbijanje organizovanog kriminala kao preduslov vladavine prava*, zbornik radova, Institut za uporedno pravo, Beograd, 2016, str. 17

Table 1. *The definition of organized crime in the legislation of individual states*

STATE	WHO? (ORGANIZATION)	WHAT? (ACTIVITY)
Bosnia and Herzegovina[1]	organized group of at least three persons, existing for a time	activity in the aim of committing one or more criminal offenses for which the law provides punishment of imprisonment of three years or more
Macedonia[2]	organized group of at least three persons, existing for a time	the realization of direct or indirect financial or other material benefits as well as other criminal offenses for which a punishment of imprisonment of at least four years
Turkey[3]	organized group of at least three persons, existing for a time	illegal use, production and trafficking of drugs, psychotropic substances and substances necessary for their manufacture, smuggling of weapons, ammunition, nuclear and radioactive material, cultural and natural resources, migrants and human trafficking, organs and tissues, forgery, fraud, money laundering, corruption and high-tech crime

From a historical point of view in European area contemplating dilemma did not exist until the end of the last century, as the key explanation of organized crime was in response to the question “what”. The exception is the Italian legislation, which is the emphasis given in the answer to the question “when”, and what can be justified by the fact that in Italian society existed various criminal groups that have had centuries of roots and whose operation among other things marked and killings of government officials. The provisions of the Italian legislation had an impact on legislation of other countries which has resulted in the abandonment of the concept of activity and move on to the concept of the organization. On the other hand the introduction of the use of the term “international”, “cross-border”, “multinational” and “transnational” organized crime, further was hampering the search in finding an adequate definition of the phenomenon. In addition the United Nations had an important role in the search for an adequate concept of the notion of organized crime. Thus, at an international conference in Palermo adopted the UN Convention against Transnational Organized Crime[6], which included organized crime as a structured group of three or more members face acting longer period of time with the aim of committing one or more serious crimes for profit. This approach further complicate adequate definition of organized crime as stated in the conclusion that all forms of organized crime can be subsumed under the transnational, which in fact represents misleading because a significant volume of organized criminal activity does

6 https://www.unodc.org/documents/middleeastandnorthafrica/organisedcrime/united_nations_convention_against_transnational_organized_crime_and_the_protocols_thereto.pdf

not have a transnational character and must not be forgotten when defining this phenomenon. All until now referred primarily confirms that organized crime exists as one of the most dangerous forms of threat to modern society. However, in order to undertake activities that will reduce the risk of its operation, it is extremely important that we have a clear idea of what is possible to mark as organized crime or in other words to comment on the above dilemma “who” or “what”. However, it should not be a dilemma; focus should be primarily on the activities. Activities of organized crime are also a factor linking members of a criminal organization and period of time of their operations. Otherwise, criminal organization has no purpose of its existence and operation.

Table 2. Characteristics of organized crime [7]

CHARACTERISTICS	**numbers of authors**
Stable hierarchical arrangement	16
criminal activity profits	13
Using force or threats	12
The use corruption to gain immunity	11
Illegal activities meet specific needs of the society (e.g. gambling, usury, prostitution)	7
Monopoly on certain “markets”	6
Limited membership	4
Not oriented ideologically	4
Specialization	3
Conspiracy code (omerta)	3
Comprehensive planning	2

Based on the synthesized definition of this term, organized crime is defined as “permanent criminal undertaking rationally implemented in order to make profits in an illegal way and to meet certain needs of society (prostitution, gambling, usury, etc.), and its continuity of operation is achieved by using of force, threats, control of monopolies and (or) the corruption of public officials”.[8] A more complete definition of organized crime defines this phenomenon as a non-ideological association of a number of persons who between them achieved a very close social interaction, organized on a hierarchical basis, of at least three levels (rank), in order to ensure profits and power, thanks to the participation in illegal and legal activities. Continuity of membership is understood, and members are trying to preserve the integrity of their organization and activity in accordance with the objectives of the organization. Trying to avoid competition and seeks to achieve total control in certain illegal activities, or in a certain area. The organization is willing to use violence or bribery in order to achieve the set goals. Violence is also used in order to ensure the discipline of members of criminal organizations. Membership has got restrictive character, although some members may be involved in activities in exceptional situations. There are explicit rules, verbal or written, whose application provides the threat of certain sanctions, including murder.[9]

7 Albanese Jay S: North American Organised Crime, Global Crime, Taylor & Francis Group UK Vol 6, No.1, 2004, p. 9, dostupno na : http://jayalbanese.com/yahoo_site_admin/assets/docs/AlbaneseNAorganisedcrimeglobalcrime.35194323.pdf
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PREDICTORS (FACTORS) OF MANIFESTATION OF ORGANIZED CRIME

In scientific and professional literature in Serbia, very little attention is devoted to discussions on the possibilities of forecasting future manifestations of organized crime. Taking into consideration the connection that can be set up and the way in which the planning of future activities of the competent state actors and in particular the strategic approach to combating criminal activities. For the purpose of forecasting predictors should be used to predict future trends in crime and their determination is the first and most important step in the prognosis of crime. In this regard, the selection of predictors is particularly significant and implies an adequate knowledge of criminological issues, but also a clear theoretical orientation with adequate methodological basis. Because of its importance predictors must be determined on the basis of information previously verified from multiple sources in accordance with the relevant theoretical concept.[10] Analysis of current trends in organized crime is important in identification of the key factors in manifestation of organized crime. There are numerous factors which influence increasing of organized crime in individual countries, and on wider areas. There are different theories explaining crime and criminal behavior and some of them provide insight into organized crime. However, scientific studies have shown that the critical situation and circumstances responsible for expression of organized crime.[11] This means that in the case of perpetrators of crimes in the field of organized crime special importance has situational factor regarding the realization of profits, but does not exclude completely personality of the perpetrator. Effectively combating organized crime implies knowledge of the conditions that contribute to its appearance and development. Therefore, it is very important to define the most important crime factors which cause the appearance and development of organized criminal activity in a certain area. The main factors which may affect the development and spread of organized crime in the territory of a particular country are economic framework, the government (executive), and law enforcement, social and technological changes[12] and individual factors with specific characteristics of a particular country or region. Each of these factors has its influence in the nature and extent of organized crime in a certain area. Technological and social changes represent the possibility of “promoting” or the limits of manifestation of organized crime. Availability and massive use of modern technologies extend the operating range of criminals. Many forms of crime have improved having in mind intensive and fast development IT technologies which are increasingly used in crime activities (Table 3) as well as in establishing connections and mutual communication between members of criminal groups. Considering the rapid development of technology and information systems, as well as the development of transport, it is an undoubted risk of the spread of various forms of threats to the security and above all organized crime, due to the great financial power and organizational structure of certain criminal organizations. The development of online payment system has caused new forms of cybercrime. Therefore, payment cards have become the subject of forging. It is one of the most widespread forms of misuse, which is expanding, and it is possible that it will take the form of organized cybercrime. Otherwise, high-tech crime is increasingly common, constantly getting new forms, crossing national boundaries and therefore increasingly takes the form of transnational organized crime. Otherwise, high-tech crime is increasingly common, constantly getting new forms, crossing national boundar-

10 Ignjatović Đorđe: *Metodologija istraživanja kriminaliteta: sa metodikom izrade naučnog rada*, Pravni fakultet, Beograd, 2009, str. 49

11 Videti: Slaviša Vuković, Goran Bošković, Osnovni pristupi i mogućnosti prevencije savremenog organizovanog kriminala, *Kultura polisa, posebno izdanje*, Beograd, 2012, str. 49-74

12 Jay Albanese, The Prediction and Control of Organized Crime: A Risk Assessment Instrument for Targeting Law Enforcement Efforts, op. cit., p.15,

ies and therefore increasingly takes the form of transnational organized crime. It is expected that the electronic communication will be used in the following period in order to purchase and sale of drugs, weapons, human trafficking more than ever. It is obvious expansion of the Internet in criminal activities such as abuse of children and juveniles for pornography. Consequently, organized crime groups have extended knowledge and skills which improve their illegal activities on a large scale. These tendencies particularly expressed in the area of economic and financial operations, as a criminal organization in the field of fast adapting the modern economic environment and the functioning internationally. The operation at an international level provides benefits of access to global financial flows, various criminal markets, and offshore financial centers and creates opportunities for the assessment of risk of criminal prosecution of specific criminal activities. Organized and transnational organized crime in modern environment have become a business that is rapidly evolving and whose achievements and fatal consequences represent a global threat against which are necessary comprehensive and general measures to counter this evil of modern era.[13]

Table no. 3: *forms of traditional and modern organized crime* [14]

Traditional model	**Contemporary model**
Local gambling, trafficking heroin, cocaine	Online gambling (international web sites), synthetic drugs (e.g. Ecstasy)
Street prostitution	Prostitution and human trafficking organized online
Extortion and usury	Extortion of big businessmen, corruption and kidnapping of high officials of the company
Storage stolen goods	Theft of intellectual property rights of software, CDs, DVDs

Turbulent social circumstances, such as wars or social unrest were in favor of appearance of organized crime. This can be easily spotted in the recent past of the Republic of Serbia and certain countries in its surroundings, where the wars, especially economic sanctions have accelerated appearance, development and strengthening of organized crime. In addition, the above mentioned social circumstances indicate the ability of crime to adapt to the particular economic situation, which flows through the "gray economy" successfully, breaks through the economic blockade and market supplies smuggled goods. Such situations always represent a latent threat to the establishment of certain links between criminal organizations and individual state authorities.[15] Mentioned picture completes the transition from the state owned economy to the market economy, the transformation from social ownership and the state capital to the private ownership at the end of the last century. This represented a fertile ground for corruption and organized crime, as well as protection from prosecution. The economic factor is very significant because it is included in a definition of organized crime. In the criminal modus operandi are all those illegal activities that can be characterized as highly profitable. Also for the organized crime of the utmost importance is chain of supply and demand on the black market, in which organized criminal groups act as suppliers of consumer goods and ser-

13 Shelly Louise: Transnational Organized Crime: An Imminent Threat to the Nation–State. Columbia *Journal of International Affairs*, n2, Columbia1995, Internet, http://n.ereserve.fiu.edu/010034785-1.pdf, 04/07/2016, pp. 7-11

14 Jay Albanese, *North American Organised Crime, Global Crime*, Vol. 6, Taylor & Francis, 2004, Internet, http://jayalbanese.com/yahoo_site_admin/assets/docs/AlbaneseNAorganisedcrimeglobalcrime.35194323.pdf, 02/07/2016, p.10

15 Mićo Bošković, *Organizovani kriminalitet, prvi deo*, Policijska akademija, Beograd, 1998, str. 18

vices deficit. In addition, there are situations when the ban access to certain goods or services for which there is demand from a significant number of citizens, are suitable factor for the participation of criminal groups in the supply of those goods or services. On the other hand, for organized criminal groups are significant inappropriate regulations which enable them detection of potential benefits from them. The impact of economic factors on the expression of organized crime is related primarily to the economic situation in the countries with poor living standards, high demand for certain products and more. Thus, for example, poor economic conditions in Eastern Europe and Asia produced for impetus of human international trafficking to Western Europe, but also the increasing exploitation women and children by organized criminal groups.[16] The sharp decline in living standards, widespread unemployment and rising inflation, among other things is the reason why an increasing number of people searching job on the black market, which offers higher amount of money but without the possibility to stay there unless there is a willingness to commit a crime. Organized crime among other things is based on the "hidden economy" or "shadow economy" which has two aspects. The first is the gray market on which the offer products that are not there (or not in sufficient quantities), and the other is a black market that offers goods and services that are prohibited. On the other hand, the reduction of the shadow economy can contribute to adequate economic and legal measures in order to eliminate its causes, as well as increased use of appropriate preventive and repressive measures. Organized and synchronized approach in the implementation of adequate measures can influence the direction of the "gray economy" into legal economy. In addition, the "gray economy" influences the existence and creation of new forms of economic crime. On the illegal market of banned goods and services controlled by organized crime special place occupy psychoactive substances. Illegally acquired funds from the organized crime represent illegal money that passes through various transactions "money laundering", which later appeared as legitimate money in the flows of legal business. Without further elaboration we can define the individual factors that have an impact on the possibility of manifestation of organized crime.

These are:

- living standards (low standard of living encourages involvement in illegal activities),
- a high demand for products or services (in particular the demand for drugs, protection of business, prostitution, etc.)
- availability of supply of products or services and
- competitiveness of the market ("low-barrier" and easy access of criminal groups).[17]

The government has the most important role in fighting all forms of organized crime, through appropriate measures which can directly apply principles of legality and equal treatment of all offenders, regardless of their status, social status and power. In allows a higher degree of efficiency in combating current forms of organized crime. Insufficient influence of the government through legal mechanisms to illegal markets and organized crime enable profit from the illegal market and infiltration to society as well as corruption in the government structures. Activities of the executive power can be impeded which also enable activities of organized crime. In this regard, factors which enable activities of organized crime may include weak central or local governments which might have difficulties in the implementation rule of laws, corruption among political leaders or passed laws which create or expand criminal markets (e.g., laws banning new medicaments, new tobacco taxes or restrictions, changes in the way they are raised taxes on certain products, and the privatization of enterprises in the former socialist countries without regulation of privatization). In Russian Federation

16 Jay Albanese, The Prediction and Control of Organized Crime: A Risk Assessment Instrument for Targeting Law Enforcement Efforts, op.cit. p. 13.
17 Ibid, p.14.

during 1990s, lack of transparency, the general corruption and inadequate laws governing commercial business resulted in the government which did not have the political will and the legal instruments necessary to prevent organized crime. For example, Russian oil is stolen by criminals or corrupted managers, and then this oil sold in Rotterdam. Funds from the sale were first contained in the companies themselves, and then are deposited in British banking system. This criminal project was enabled by the state due to the lack of legislation regulating privatization and anti-money laundering (or its absence), existing climate of corruption in the business sector, and the existence of banks that were either under the control of organized crime or because their interests were not paying special attention to the profile of clients.[18] At the end of the twentieth century, a period of expansion of organized crime in the former Yugoslavia, state legislation was inadequate to meet the challenge of organized crime, which is at the very least contributed to its expansion. From one point of view, the laws which regulated the mechanisms of business were powerless to prevent the infiltration of illegal into legal businesses, government institutions had not been able to fight with the threat of organized crime. In addition, the criminal law and criminal procedural law did not include this criminal phenomenon, but was evident with the lack of special investigative techniques, special procedural subjects and powers as well as specialized body to combat organized crime. In these circumstances it was difficult to be able to achieve satisfactory results in the field. On the other hand the Republic of Serbia had a period of complete confusion in the definition of this phenomenon. For three years the law on organization and jurisdiction of state bodies in the fight against organized crime changed eight times, with incompliance in the key documents defining term organized crime.[19]

Scheme No. 1: *Smuggling routes in the Balkans*[20]

The activity of the Government, fighting organized crime can be viewed through:

18 Ibid, p.19

19 Ignjatović Đorđe: Organizovani kriminalitet u XXI veku-kontroverze i dileme, zbornik radova: *Suzbijanje organizovanog kriminala kao preduslov vladavine prava*, Institut za uporedno pravo i Hanns Seidel fondacija, Beograd, 2016, str. 22-23

20 International Crime Threat Assessment, dostupno na: https://fas.org/irp/threat/pub45270chap3.html#r11

- the efficiency of the state bodies, courts and local government in the implementation of the law,
- fight against corruption

Historical reasons should be considered for complete understanding of the appearance and activities of organized crime in an above mentioned area. Looking to the historical facts and criminal heritage the probability of the appearance of different organized crime groups will be increased in the future. The long history of smuggling, tax evasion and so increases the possibility of appearance of organized crime, which also requires a special attention to them. Also, turbulent events from the recent history of the region such as wars or ethnic violence and conflicts affect the appearance of organized crime. Historical factors are crucial when new laws or regulations should be passed to fight organized crime.[21] Cultural factors also have huge impact on the appearance and activities of organized crime in a certain area. Historical and cultural factor should be considered in a strategic approach of promotion new social values. The important cultural factors for the expression of organized crime on a certain area are social tolerance to corruption, abuse of drugs, position and status of vulnerable groups of population (women, children) and others. The existence of those factors in a certain area increase the possibility of organized crime activities such as drugs trafficking, prostitution and human trafficking. These factors are of specific importance in a preventive approach to the organized crime. Therefore it must be taken into consideration in the planning of preventive measures. The most obvious impact of cultural factor can be seen in the case of Albania. Albanians mostly live in the brotherhoods, which are also the "economic and military unit", and the head of each house there is the master who is also "commander". Further, the traditional ties of the Albanian families and its strict hierarchical patriarchal structure have contributed to a certain extent, the expansion of the Albanian organized crime groups in a wider region.[22]

STRENGTHENING THE CAPACITY OF COUNTRIES ON THE CASE OF THE REPUBLIC OF SERBIA

The Republic of Serbia is a positive example in the intention of strengthening capacities in fight organized crime. The draft of the Law on the Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime and Corruption[23] which, inter alia, is planned establishment of a liaison and ad hoc groups for fight corruption and economic crimes and expert teams for financial forensics. It is anticipated that certain institutions such as the Tax Administration, the Tax Police, Customs Administration, National Bank of Serbia have their own liaison office with the prosecution. Thus, the State's intention is to strengthen its own capacity, primarily prosecutors, police and the courts for appropriate action in cases of corruption and organized financial crime. The aforementioned could be viewed as the fact that in previous activities are identified shortcomings in cooperation and exchange of information of state bodies. This is the reason for deploying liaison officers in each state body whose jurisdiction related to organized crime and corruption, and which may be evidence in future criminal proceedings. Framework for the strengthening capacities should be continuous education of personnel involved in the analysis of the money flow and financial transactions. These are financial professionals who already have special knowledge in the field of fi-

21 Jay Albanese, The Prediction and Control of Organized Crime: A Risk Assessment Instrument for Targeting Law Enforcement Efforts, op.cit. p.18

22 Milan Škulić, *Organizovani kriminalitet: pojam, pojavni oblici, krivična dela i krivični postupak*, op.cit. str. 150-152

23 Sadržaj nacrta Zakona o organizaciji i nadležnostima državnih organa u suzbijanju organizovanog kriminala i korupcije, dostupan je na: http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

nance, accounting, auditing, banking, stock exchange and business operations. As part of the planned changes is establishment of task forces which should solve specific complex problems or which require a multidisciplinary approach. In accordance, members of the group may be, except police officers, officials of other government bodies whose knowledge is needed to solve specific cases of organized crime activities. Also is necessary to strengthen citizen's security culture. Security culture is one of the most important factors for the security functions of the state. Behavior and acceptance of the positive values and the standard of a society have huge impact to the strengthening of security culture. Society as a whole decides how to react to certain negative phenomena. Additionally, significant is the feeling of the citizens' to the relevant bodies, which are fighting organized crime. If society has built security culture it will create conditions for a partnership of citizens and elements of national security.

CONCLUSION

There is no country in the world without existence of certain forms of organized crime; the richest countries with a developed judicial and police organization also are facing with existence of organized criminal groups. However, the essential problem are the insufficient preventive measures in fighting organized crime, a much larger space is given to the repressive measures. Thus, the focus is shifted to the consequences not to roots which produced activities of organized crime. On the other hand, preventive approach has much greater significance in fighting expression of harmful effects of organized crime. However, successful preventive measures are important for determination of the organized crime activities in a certain area. Systemized factors in this article represent a reliable basis for their further upgrading and identifying future conditions that may contribute fight against organized crime phenomenon. Although characteristics of the factors are universal, it may be a god starting point for further analysis in order to determine their specific content. In this context, special list of factors is not exhaustive because it is necessary to take into account the characteristics of the certain area to which they relate. Factors are direct related to the possibility of manifestation of organized crime or increase appearance of organized crime in dedicated area, country or region. Factors may be expressed in a qualitative and quantitative way, in order to make comparisons and objective assessment of the problems. In the end, shouldn't be forgotten that fight against organized crime is a complex, lengthy and uncertain mission which requires operational experience, specialization and expert knowledge in the application of modern techniques and tools. Reasonable expectation is that the competent police authorities, judicial authorities and law enforcement institutions pay the greatest attention to this course of action.

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STRENGHTENING THE JUDICIAL INSTITUTIONS OF SERBIA IN REACTION TOWARDS TERRORISM – IMPLEMENTATION OF THE EUROPEAN STANDARDS

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Abstract: Nowadays, terrorism is the most serious form of negation of democracy and human rights in the world. With regard to this reason, states are determined to fight all acts of terrorism, due to their duty to protect all individuals within their jurisdiction. In order to meet this goal, an establishment of a comprehensive approach is needed, with the particular focus on prevention and fight against violent extremism and radicalization.

This paper deals with the analysis of the European standards implementation within the Republic of Serbia's criminal justice system, with regard to fight against terrorism. The authors offer a meticulous overview of the existing legal instruments for prosecuting persons suspected of terrorism, as well as individuals who provide them any kind of support (logistical or financial). Mechanisms for effectiveness improvement of the judicial institutions - public prosecution and courts, related to fight against terrorism, shall be presented as well.

Keywords: terrorism, prosecution, judicial institutions, implementation, EU.

INTRODUCTORY NOTES

Within numerous resolutions of the UN General Assembly and the Commission on Human Rights, as well as within the EU instruments, it is stated that terrorism is a threat to fundamental human rights and freedoms, with the emphasis on the right to life, security and liberty, a threat to social, economic and cultural rights, and also a threat to international peace and security (the resolutions of the UN General Assembly and the Commission on Human Rights), and democracy (the EU Framework Decision).[1] In respect of the contemporary global state of affairs regarding terrorist attacks and arrising radicalization and extremism, and concerning Serbia's process in accessing the European Union, it is of the utmost importance to implement international criteria and particularly the EU acquis in combating one of the most serious global threats. On the other hand, implementation itself is not sufficient if institutions fail to excercise the adopted standards and mechanisms and to work on their improvement. Since the law enforcement and judicial bodies, namely, police, prosecutors and judges, are the main actors in the process, they have the responsibility for the protection of citizens, along with government agencies. However, cooperation with institutions at regional level is of great importance for strengthening their protector role, particularly because it offers a variety of possibilities for

1 Saul, B., *Defining Terrorism in International Law*, Oxford, Oxford University Press, 2006, p. 28.

the advanced and effective investigation and prosecution, and sets a good practice example. In this paper we will examine the European Union standards in combating terrorism, and the highlights of their implementation within the Republic of Serbia's legal sytem, being the EU candidate. We will start by addressing the issues around the notion of terrorism at the global level, given the fact that all the counter-terrorism policies have roots in the fight against terrorism at the international level. Then we highlight the EU counter-terrorism legal framework, as well as the national one - which is partly the result of Serbia's work-in-progress related to the Chapter 24 – Justice, Freedom and Security and to the sub-chapter Fight Against Terrorism, in the process of accessing the EU. Further, we continue to examine the very implementation process, refering to the key issues surrounding the accomplishments and failiures to meet certain standards and requirements. Finally, we refer to the place for improvement of the current state, and thus we note some key reccommendations for enhancing the role of judicial bodies in combating terrorism.

ON THE NOTION OF TERRORISM FROM THE GLOBAL PERSPECTIVE

Although terrorism is one of the World's legal and political issues of the highest priority, a unanimous definition of terrorism is still not reached, mostly due to ideological backgrounds of different nation-states and acts they want to fight against within the scope of terrorism.[2] In fact, in a study from 1983, 109 official and academic definitions of terrorism were found.[3] Regardless of the definition, fight against terrorism has been on since 1934, when the League of Nations proposed a draft of the Convention for the Prevention and Punishment of Terrorism (adopted in 1937, but never came into force).[4] This document regards terrorism as "all criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public".[5] However, a universally accepted definition would be valuable in terms of legitimacy, unification, implementation, and combating terrorism at large.[6] In other words, nation-states need to define what they fight against, both at national and international level. The first attempt to define a scope of international terrorism, rather than the term itself, was within the UN Convention on the Suppression of Financing of Terrorism (New York, 1999), which first refers to offences in the international treaties adopted between 1960s and 1980s, and then to "any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act".[7] Ever since 1963 there had been 14 major international treaties related to terrorism adopted

2 Setty, S., *What's in a Name? How Nations Define Terrorism Ten Years after 9/11*, in: University of Pennsylvania Journal of International Law, Vol. 33, Issue 1, pp. 1-63, Philadelphia, University of Pennsylvania Law School, 2011; pp. 7, 9-10.

3 Saul, B., op. cit., p. 57.

4 UN Counter-Terrorism Implementation Task Force, International Legal Instruments; https://www.un.org/counterterrorism/ctitf/en/international-legal-instruments, accessed 14/03/17.

5 Conte, A., *The Nature and Definition of Terrorism*, in: *Human Rights in the Prevention and Punishment of Terrorism*: *Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand* , Chapter II, pp. 7-37, Berlin, Heidelberg, Springer-Verlag, 2010, p. 20; Cassese, A., The Multifaceted Criminal Notion of Terrorism in International Law, Journal of International Criminal Justice, Vol. 4, Issue 5, pp. 933-958, Oxford, Oxford University Press, 2006, p. 934.

6 Setty, S., op. cit., p. 7; Saul, B., op. cit., p. 3.

7 Conte, A., op.cit. p. 12; International Convention for the Suppression of the Financing of Terrorism, 1999, Art. 2(b); http://www.un.org/law/cod/finterr.htm, accessed 13/03/17.

by the UN and the International Atomic Energy Agency; however, as the majority of those refer to the specific terrorism-related subject matter, the only one among them with a wider scope is the abovementioned Convention on the Suppression of Financing of Terrorism.[8] At the regional level, the Council of Europe's Convention on the Suppression of Terrorism (1977) regulates extradition for the terrorist acts, although the Convention itself does not define terrorism.[9] The Council of Europe's Convention on the Prevention of Terrorism (2005) does not explicitly define terrorism, but states that the purpose of terrorism acts is to "seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization".[10] The terms *terrorism* and *terrorist* first occurred at the end of the 18th century, referring to the Jacobin's repression system in the French revolution, and this notion of state-terrorism persisted as far as after the II World War, with simultaneous development of non-state terrorism.[11] That brings us to different types of terrorism, which as well contribute to the lack of a unanimous definition, primarily because imputing a universal moral judgement in the notion of terrorism is difficult due to its instrumental nature.[12] In fact, there are various typologies and sub-typologies, differing among authors (e.g. political terrorism, terrorism related to organized crime, pathological, discriminate, indiscriminate etc.).[13] In the EU Terrorism Situation and Trend Report delivered by Europol in 2016, four types of terrorism are distinguished: jihadist, ethno-nationalist and separatist, left-wing and anarchist, and right-wing terrorism.[14] The lack of a universal definition and a variety of typologies with respect to the instrumental nature of terrorism are somewhat compensated by the definitions incorporated in the regional instruments, particularly the EU one, as well as in the national legislation of Serbia.

THE EUROPEAN UNION LEGAL FRAMEWORK

The fundamental documents at the EU level related to terrorism are the Framework Decision on Combating Terrorism 2002/475/JHA and the amending Framework Decision 2008/919/JHA,15 with a much wider scope vis-à-vis the UN instruments.16 The definition of terrorism is given in Article 1 of the Framework Decision 2002, and it embodies the nature, aim, and specific acts of terrorism: a) the acts must be of international nature, defined under national law, which, "given their nature or context, may seriously damage a country

8 UN Counter-Terrorism Implementation Task Force, op. cit.; Conte, A., op. cit., p. 24.
9 CoE Convention on the Suppression of Terrorism, 1977; https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800771b2, accessed 14/03/17.
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15 The Framework Decision on Combating Terrorism 2002/475/JHA, 2002; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002F0475&from=EN; The Amending Framework Decision 2008/919/JHA on Combating Terrorism, 2008; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0919&from=EN, accessed 17/03/17.
16 Peers, S., *EU Responses To Terrorism*, in: International and Comparative Law Quarterly, Vol. 52, Issue 1, pp. 227-243, Cambridge, Cambridge University Press, 2003, p. 229.

or an international organization"; b) the acts must be committed with one of the three aims – to seriously intimidate a population, or to unduly compel a Government or an international organization to perform or abstain from performing any act, or to seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; c) the acts include: 1) attacks upon a person's life which may cause death; 2) attacks upon the physical integrity of a person; 3) kidnapping or hostage taking; 4) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss; 5) seizure of aircraft, ships or other means of public or goods transport; 6) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons; 7) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life; 8) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life; and 9) a threat to commit any of these. The Decision also foresees responsibility for directing or participating in a terrorist group (Art. 2), and activities linked to terrorism (aggravated theft, extortion, and drawing up false administrative documents - in the 2002 Decision, Art. 3; and public provocation to commit a terrorist offence, recruitment for terrorism, and training for terrorism - in the amending 2008 Decision, Art. 3). Aiding, abetting and inciting all the stated activities must also be punishable, so as attempting to commit a terrorist act or any linked activity expect for: manufacture, possession, acquisition, transport, supply or use of weapons, explosives or nuclear, biological or chemical weapons, research into, and development of, biological and chemical weapons, and attempts to threaten to commit terrorist acts (Art. 4 of the 2002 Decision and Art. 1(2) of the amending 2008 Decision). Penalties for individual and legal persons are left to imposition of the member states, but they must be "heavier than those impossible under national law for such offences in the absence of the special intent" (except if already maximum possible), whereas a mitigated sentence may be imposed for renouncing terrorism and providing the authorities with information to identify and catch the offenders, find evidence or prevent offences (Art. 2(3), 5, 6, 8 of the 2002 Decision). The jurisdiction should be set within the member states, with a possibility of extradition (in the case of more than one jurisdiction the states should cooperate), and the states also have duties of support and assistance to victims and their families (Art. 5, 9, 10 of the 2002 Decision). The second important document is the European Council Counter-Terrorism Strategy (2005). This document embodies four main pillars to counter terrorism: 1) prevent; 2) protect; 3) pursue; and 4) respond.17 Prevention refers to recruitment and radicalization at the international and European level,18 and as to it, the EU Strategy for Combating Radicalisation and Recruitment and the Strategy Guidelines were adopted in 2005 (revised in 2014),19 and the Radicalisation Awareness Network was founded in 2011.20 Protection of the citizens and infrastructure embodies enhancing borders, transport, critical

17 The EU Counter-Terrorism Strategy, 2005, p. 3, http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204, accessed 18/03/17.

18 Ibid.

19 The Revised EU Strategy for Combating Radicalisation and Recruitment, 2014, http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209956%202014%20INIT; the Guidelines for the EU Radicalisation and Recruitment Strategy, 2014; http://statewatch.org/news/2014/dec/eu-council-2014-11-27-13469-rev1-draft-strategy-radicalisation-recruitment.pdf; accessed 17/03/17.

20 Report on the Implementation of the EU Counter-Terrorism Strategy, 2014, p. 15; http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015799%202014%20INIT, accessed 17/03/17.

infrastructure, cyber and nuclear security, with the aim of reducing vulnerability to terrorist attacks.21 Among many other instruments and practices, the EU PNR Directive was adopted in 2016. It deals with flight passenger name record data, where air carriers need to provide these data to member states' law enforcement authorities, which will use them only for the prevention, detection, investigation and prosecution of terrorist acts and transnational crime.22 Pursuit means bringing terrorists to justice, within and outside Europe, strengthening national capacities, cooperation and information exchange between authorities, with the particular stress on Europol and Eurojust, developing mutual recognition of judicial decision by European Evidence Warrant (which replaces extradition within the EU), and combating financing of terrorism.23 The most important developments with regard to this pillar are: the ECRIS - European Criminal Records Information System (provides the member states with a uniform electronic interconnection between criminal records databases on the EU nationals, which prosecutors and judges can easily access); Eurodac (a biometric database for comparing fingerprints); the Europol Prüm helpdesk (provides automated data exchange of DNA, fingerprints and vehicle registration data); and The Europol Terrorist Finance Tracking Program.24 Response refers to terrorism aftermath, help and support to victims, and response to consequences more generally.25 Decision on the Arrangements for the Implementation by the Union of the Solidarity Clause (providing that all the states act jointly to support the member state where terrorism occurred), the EU integrated political crisis response arrangements (enabling and coordinating rapid political decisions in major crisis), and the European Civil Protection Mechanism (system of prevention and response to disasters, which demonstrates solidarity and support, joined by Serbia among several non-EU states) make the main body of the response pillar.26 The EU legal framework and accordingly developed practices make a valuable example to non-member states for engaging in the fight against terrorism, and they are of specific importance for the EU candidates, which ought to undertake implementation and action as per certain standards.

IMPLEMENTATION OF THE EUROPEAN STANDARDS

As regards the implementation of the EU *acquis* in the process of accessing the EU, Serbia must meet standards of the Chapter 24 – Justice, Freedom and Security and the sub-chapter - Fight against Terrorism, closely linked to the sub-chapters Judicial Cooperation in Civil, Commercial and Criminal Matters, and Police Cooperation and Fight against Organised Crime. In the European Commission Serbia 2016 Report of November 11th it is stated that Serbia's legal framework is largely in line with the EU acquis and international instruments (the RS Criminal Code amandement in 2012 incriminated a wider scope of terrorist acts; whereas the amendment from 2014 criminalized the activity of foreign fighters according to UN Security Council Resolution 2178 (2014); further, the Law on Interna-

21 The EU Counter-Terrorism Strategy, op. cit., p. 3; Report on the Implementation of the EU Counter-Terrorism Strategy, op. cit., p. 17

22 The EU Directive 2016/681 on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, 2016; http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0681&qid=1489960516826&from=en, accessed 17/03/17.

23 The EU Counter-Terrorism Strategy, op. cit., p.14; Report on the Implementation of the EU Counter-Terrorism Strategy, op. cit., pp. 17, 18.

24 Report on the Implementation of the EU Counter-Terrorism Strategy, op. cit., p. 41, 52, 53, 55.

25 The EU Counter-Terrorism Strategy, op. cit., p. 3.

26 Report on the Implementation of the EU Counter-Terrorism Strategy, op. cit., pp. 61-63; European Civil Protection and Humanitarian Aid Operations, http://ec.europa.eu/echo/what/civil-protection/mechanism_en, accessed 18/03/17.

tional Restrictive Measures was passed in 2016, and the National Anti-Money Laundering and Countering the Financing of Terrorism Strategy was adopted in 2008).[27] By the 2012 amendment to the Criminal Code, terrorism was incriminated in Art. 391, in the chapter *Crimes against Humanity and Other Values Protected under International Law*, with the same definition as in the Framework Decision 2002.[28] Before this novelty, terrorism was clasiffied in the chapter *Crimes against Order and Security of the Republic of Serbia*, as a crime of political nature, and also in the chapter *Crimes against Humanity and Other Values Protected under International Law*, as an act of international terrorism. The former classification was abandoned and terrorism became a unified incrimination, regardless of an objective in question (the state, a foreign state, or an international organization), subject to extradition (excluded for crimes of political nature).[29] The activities associated with terrorism are as well incriminated: public provocation to commit a terrorist offence (Art. 391a), recruitment and training for terrorism (Art. 391b), use of a deadly device (Art. 391v), destruction of and damage to a nuclear object (Art. 391g), financing of terrorism (Art. 393), and terrorist organization (Art. 393a).[30] As to financing of terrorism, Serbia passed the Act on Supressing Money-Laundring and Financing of Terrorism and the Act on Limiting the Asset Disposal with the Aim of the Prevention of Terrorism, but of specific importance is the National Anti-Money Laundering and Countering the Financing of Terrorism Strategy, which gives recommendations for the authorities cooperation, information and expertise exchange, access to databases, and working teams organization.[31] However, while the Framework Decision 2002 foresees the maximum sentence of not less than 15 years for directing and not less than 8 years for participating in a terrorist group (Art. 2(3)), the Criminal Code imposes a sentence as per the crime a group is organized for, not taking into account the Decision standards, whereas a sentence for renouncing the organization and providing information can even be excluded (Art. 393a). As per the Act on Organization and Jurisdiction of the Authorities for the Suppression of Organized Crime, Corruption and Other Particularly Serious Crimes, all the abovementioned terrorist acts are prosecuted before the Special Department of the Higher Court in Belgrade in the first instance and the Appeal Court in Belgrade in the second distance, investigation is conducted by the Prosecutor for Organized Crime, whereas the Service for the Suppression of Organized Crime is established within the Ministry of Interior.[32] Further, the Report states that cooperation between the special police service for combating terrorism and extremism and Europol has intensified, and that Serbia is actively involved in international and regional police and judicial cooperation.[33] The Criminal Code amendments and the special criminal procedure measures related to terrorist offences are set in accordance to the Framework Decision 2002, particularly the provisions for plea agreement on confession, agreement on testifying of the defendant, and agreement on tes-

27 The European Commission Serbia 2016 Report; p. 18, 73; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf, accessed 20/03/17.

28 The Amendment to the Criminal Code, The Official Gazette of the Republic of Serbia, No. 121, 2012.

29 Stojanović, Z. & Kolarić, D., *Krivičnopravno reagovanje na teške oblike kriminaliteta*, Belgrade, the Faculty of Law University of Belgrade, 2008, p. 74.

30 The Criminal Code, the Official Gazette of the Republic Of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012,104/2013, 108/2014.

31 The National Anti-Money Laundering and Countering the Financing of Terrorism Strategy, the Official Gazette of the Republic of Serbia, No. 89/08.

32 The Act on Organization and Jurisdiction of the Authorities for the Suppression of Organized Crime, Corruption and Other Particularly Serious Crimes, the Official Gazette of the Republic of Serbia, No. 2/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004, 45/2005, 61/2005, 72/2009, 72/2011, 101/2011, 32/2013.

33 The European Commission Serbia 2016 Report; op. cit., pp. 19, 73.

tifying of the convicted person, as they improve detecting and proving the terrorist acts.[34] However, the secure platform for exchanging sensitive information between police and prosecutors is not established, and albeit their investigations are more proactive, they lack specialised tools and training (particularly the specialized units, including the units for combating terrorism,[35] which also lack staff), while there is no a liaison officer in the Hague for cooperation with Europol.[36] Attention should be given to enhancing anti-radicalization activities, interrupting terrorist financial flows, and diminishing police's dependency on security and intelligence agencies.[37] Although Serbia has made a significant progress in countering terrorism, much work is still needed.

THE ROOM FOR IMPROVEMENT

In combating terrorism, the state's first priority must be to adopt the National Strategy to prevent and fight terrorism and the Action Plan for its implementation, as well as to establish the body that will handle their application. Without an appropriate framework, as per the EU standards, it would be meaningless to speak in terms of terrorism prevention and suppresion. The Strategy was drafted a year ago, in February 2016, as per: the model „prevent, protect, pursue and respond" of the EU Counter-Terrorism Strategy; the four pillars of the UN Counter-Terrorism Strategy (addressing the conditions conductive to the spread of terrorism; preventing and combating terrorism; buliding states' capacity and strenghtening the role of the United Nations; and ensuring human rights and the rule of law);[38] and according to the Council of Europe's Convention on the Suppression of Terrorism (1977).[39] However, the Strategy draft itself has certain deficiencies, for instance - dealing with islamic terrorism and extermism, but not refering to the forms of Serbian ethnic majority extremism, such as extreme nationalism, neo-nacism and fascism.[40] As a further issue, Serbia's Action plan for the Chapter 24 states that it is a particular challenge to establish a strategic framework for preventing radicalization that may lead to terrorism, since it requires a wide inter-ministry cooperation and coordianation, as well as cooperation with private sector and civil society.[41] Establishing, intensifying and enhancing coordination and cooperation among police, prosecutors and courts, i.e. building expansive and efficient common networks, is the issue of an urgent matter. Of specific importance are the matters of surveillance, investigation, convictions followed by maximum penalties, and confiscation of assets gained from terrorism. Providing the effective IT systems for information exchange and creating comprehensive statistical forms to monitor the phases of criminal trial are also the upmost prirority. Of special concern is to establish effective protection of critical infrastructures,[42] as modern technologies today impose a serious risk to public security when misused with the purpose of commiting a terrorist activity.

34 European Integration Office, *National Programme for the Adoption of the EU Acquis 2014-2018*, 2014; pp. 675, 676; http://www.seio.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_eng__2014_2018.pdf, accessed 20/03/17.
35 Counter-Terrorism and Counter-Extremism Unit within the Criminal Force Directorate of the Ministry of Interior.
36 The European Commission Serbia 2016 Report, op. cit., pp. 16, 18, 71, 72.
37 The European Commission Serbia 2016 Report, op. cit., p. 18, 71, 73.
38 The UN Counter-Terrorism Strategy 2006; http://www.un.org/en/sc/ctc/resources/res-ga.html, accessed 20/03/17.
39 Aleksić, M. et al, *PrEUgovor – Izveštaj o napretku Srbije u poglavljima 23 i 24*, (ur.) Aleksić, M., Beograd, Beogradski centar za bezbednosnu politiku, 2016, p. 47.
40 Ibid.
41 Pregovaračka grupa Vlade RS za poglavlje 24, *Akcioni plan za poglavlje 24*, 7. Borba protiv terorizma, 2016; http://www.bezbednost.org/upload/document/akcioni_plan_pg_24.pdf, accessed 21/03/17.
42 Ibid.

In 2015 the training of police officers on EUROPOL operative methods was conducted,[43] however, apropos of the cited Report, further advancement is still needed, as we have discussed earlier. This is crucial for enabling prosecutors to conduct successful investigations, keeping in mind that they mostly rely on the police capacities. In turn, the criminal courts that prosecute terrorist offences need to rely on effective and fast procedure and cooperation with European courts, and to ensure frequent use of a trustworthy witness protection system. The state ought to strengthen its law enforcement and judicial bodies (particularly prosecutor offices, who are primarily responsible for investigation and therefore conviction), both internally and externally, i.e. to enhance connection, cooperation and information exchange with the EU member states, and follow the good practice examples across Europe. Of peculiar importance is to develop training programmes for police, prosecutors and judges on the best application of the provisions, to form interconnected databases among those authorities, to ensure up-to-date experience exchange, to organize judges counselling for action in accordance with court practice unification, at both national and European level, as well as to finance research in order to find loops in the legislative and judicial system and to come up with some novel, more adequate counter-terrorism instruments and mechanisms.

CONCLUDING REMARKS

Nowadays, no country is safe when it comes to terrorism, but it would be unimaginable to combat terrorism without acknowledging the exercise of the specific policies. The attention should be drawn to how many attacks were prevented (with the parole: *We prevented this, and we work on improvement*) and what are the lessons of the aftermath (with the parole: *We did not prevent this, yet now we know how to prevent it and how to reduce sustained harm*). Hence, Serbia has to take its work-in-progress seriously and to meticulously set the priorities. Application of the new mechanisms provided by the EU framework is the first step of the journey. However, the travails and failures to meet certain criteria in this process need to be considered and addressed properly. The background of every legal and institutional reform lies in political decision-making and this is the reason why the highest authorities play the main role in defining the reform goals and deciding how they are going to be met. Thus, they must hold the responsibility for the lack of adequate policies, capacities, mechanisms, equipment, training, and inter-institutional cooperation at the national and regional level, and engage in improvement of the current state of affairs. Yet, only a joint action of the law enforcement and judicial bodies, the government agencies, and the civil sector, can contribute to countering terrorism and establishing a secure society. In the light of globally wide-spread terrorist attacks, Serbia's legislative and institutional counter-measures need to be enhanced forthwith.

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43 Ibid.

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LEGAL CERTAINTY AS A VALUE – BETWEEN WISHES AND POSSIBILITIES

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Abstract: Legal certainty is one of the fundamental values of *Rechtsstaat*. Some legal writers differentiate between two aspects of legal certainty. Certainty as a value is one of the main objectives of a legal system, but it is also something which is impossible to achieve fully. Practically, certainty means legality. The author indicates the significance of certainty in human life in general, therefore also in law. On the contrary, in Anglo-American version of *Rechtsstaat*, *Rule of Law*, the representatives of American legal realism considered legal certainty only as a myth. In modern literature there are opinions that legal certainty is an important feature of American legal system, which may indicate that Anglo-American and Euro-Continental legal systems are becoming closer to each other in that sense. The author indicates that there is a connection between legal certainty and other legal values, above all with order and peace. The author concludes that a person as a human being needs relatively high level of legal certainty, considering that law regulates the majority of social relationships. Nevertheless, this is not guarantee that legal and social systems are going to be just and permanent. Legal certainty as a value is subject to different perceptions and just one of many conditions for legal and social systems to be functioning steadily.

Keywords: Legal certainty, values, *Rechtsstaat*, *Rule of Law,* legality.

ON UNCERTAINTY IN GENERAL

Legal certainty is most probably one of the most significant terms connected with *Rechtsstaat* and the rule of law. It is regarded as the fundamental value of *Rechtsstaat* and it is likely therefore to provoke numerous discussions whether it exists and to what extent. Generally, uncertainty is a controversial term. It is perceived to be a lack of own behavior orientation and unreliability of the behavior predictability of the others. Given that humans can and must decide on everything, there is an anguish facing unknown and perilous world. On the other hand, uncertainty is always a chance, the expansion of the horizon of the possible action, less rigid attachment to what exists and what is defined and the possibility of an intense experience of liberation, emancipation, individual existence in the case of overcoming the risk of uncertainty. At the early stages of human evolution, uncertainty was the consequence of the first awakening of awareness where all the surroundings gradually become relevant. This was the moment of opening inconceivable possibilities, but also the emergence of insatiable abyss of danger. Modern man experiences uncertainty in equal measure although the same resources reach the consciousness differently. Man sees the expansion of his capabilities as an individual and as a species, but also realizes the risk of new threats. They do not derive so much from the natural environment as from the man's own frightening nature. The reaction to the uncertainty changes with development as well, although it basically remains the same: the

action to take advantage of new opportunities or protect themselves from new threats. While the man's action on nature in its infancy of the human race was modest, it focused gradually on where it could influence and change, to the domain of their own behavior.[1]

The issue of uncertainty in humans is not simple, but multi-layered. A special form of uncertainty arising from the internal functioning of the system of consciousness is known as cognitive dissonance. It is a condition when the individual's consciousness consists of the opposite features, not only cognitive, but also normative sphere and the sphere of interest. The experiments demonstrate that subjects perceive this state as intensely uncomfortable and tend to remove it by the *ad hoc* alteration of the principles, i.e. interest orientations, as well as the change of their perception of reality. The importance of cognitive dissonance is that a ruler by force can provide a certain behavior, and psychologically speaking subordinates accept "voluntarily" the interests of those who govern as their own interests. The reason is that it is harder to be aware that from fear of force one does something that is against one's personal beliefs and interests than to convince oneself that the interests of those in power are, in fact, one's own interests. Similarly, especially in modern times, there is also the problem of the so-called alienation. There is the lack of power to achieve their own interests and the control of their destiny, the isolation of the individual from society, his alienation from society and himself. Then man loses his independence, but at the same time he does not acquire a personalized dependence, which was in earlier relations of governance and subjugation a kind of counter to the lost autonomy. The tendency towards self-realization and de-alienation becomes the greatest form of need or interest orientation.[2]

In the relation of man to uncertainty and the evolutionary development of this relationship, the rationalization process is considered to have the primary role. Rationality means that the human mind has reached a level that allows it to recognize through sense the necessity of social discipline in order to mitigate the uncertainty. Therefore, community members recognize that their behavior is regulated by some standards.

AMERICAN LEGAL REALISM AND THE ISSUE OF LEGAL CERTAINTY

The countries of the European continental legal system have performed the standardization of human behavior in society by creating rules "above" and by systematically and methodically prescribing the norms that in advance regulate the behavior of people in society. In this way, they have established some kind of certainty about what is allowed and what is not as well as about resolving any future legal disputes. However, in the United States in the twenties of the 20th century, there were different opinions about what was law and how it was formed, and therefore the question of legal certainty. In the literature a judge and a writer on law Jerome Frank is commonly cited as the main advocate of the aforementioned redirection from the established course of legal formalism. Frank generally avoided to define law in his works, although sometimes he did, stating that the law was not a set of rules, but the totality of individual judicial decisions.

Though he changed his opinions during his career, one thing was constant: the key role in the creation of law is in the hands of judges. However, during the verdict reaching, the determination of the facts is not an objective task, so decisions are made by judges' personal, psychological characteristics. They govern unconsciously and then neither justice nor the truth decides, but the above-mentioned peculiarities of each judge individually. For that rea-

1 Pusić, E., *Društvena regulacija*, Zagreb 1989, 116-118.
2 *Ibid*., 119-120.

son the proponents of Oliver Wendell Holmes, who Frank believed to have put an end to the view that the law consists of rules and that the rules are law, stand out: “The personal element is unavoidable in judicial decisions. Being unavoidable, it should be recognized as such and not treated as negligible and unimportant. It is childish, unwise and dangerous here as in all important human affairs to ignore unavoidables and to pretend that they do not exist. Since the personal element exists, the sensible course is to cope with it and, so far as possible, perfect it. Indeed, like many unavoidables, bravely and intelligibly faced, it can be made to yield some advantages.”[3]

The conventional theory holds that the decision stems from a compound of rules and facts. Frank holds that the decision is made as a result of certain incentives and the judge’s character. This attitude is the consequence of the influence of Freud’s belief that the key of the character lies buried in the depths of the unconsciousness. It is hence futile to give judges the normative guidance for dealing with specific cases, and prediction of judicial decisions is generally impossible. Everything else reflects an infantile desire for reliability and certainty, and that is what Frank regards as basic *Myth* in law.[4] American legal realists generally believed that law is the set of individual judicial decisions. Thus they generally had a problem to explain the issue of legal certainty. In particular, it was Frank who contemplated about it considerably and he was classified under the “extreme” current of American legal realism, more radical than sociological one.

Since the book *Law and the Modern Mind* was published, Frank’s thought has been marked as an attack on traditional jurisprudence. It particularly refers to the skepticism about the ability to predict future judicial decisions, or the legal certainty or uncertainty and the relative insignificance of the existing legal rules for the outcome of a particular case.[5] Frank identified at least two reasons for skepticism. First, even if the rule is so clear that, with the specific facts, there is a broad agreement on what the decision should be made, the question of determining the factual circumstances of the case still exists. Which facts the judge will consider proven and which not depends on which witnesses he will put his trust in. But even the same fact can be interpreted in different ways by two judges. The facts are just those the judge believes in and whose testimony the judge will believe depends on personal prejudice and bias.[6]

The second reason is the existence of too many potential, psychological impacts on the way the judge thinks so as to foresee the verdict.[7] Thus, the lawyer anticipates future decisions better if he bears in mind as many factors (including legal rules) that influence the judge to make the decision as he can, than concentrates only on the rules. Also, the judge will be less successful if he limits his attention only to the rules, and much more effective if he tries to be aware of the existence of a number of factors (including rules as well) that lead and drive him to decide one way or another.[8] “The judge’s knowledge of the rules combines with his reactions to the conflicting testimony, with his sense of fairness, with his background of economic and social views, and with that complicated compound loosely named his “personality”, to form an incalculable mixture out of which comes the court order we call his decision.”[9] Thus Barzun concludes that Frank was honestly characterized as extreme in his skepticism regarding the capacity of use of scientific methods in order to predict the result of the case.[10]

3 Frank, J., Are Judges Human? *Part 1: The Effect on Legal Thinking of the Assumption That Judges Behave Like Human Beings*, *University of Pennsylvania Law Review*, 1931, 25.
4 Tucakov, B., “Pravni realizam Džeroma Franka”, *Američka jurisprudencija XX veka*, ur. Gordana Vukadinović, Agneš Kartag-Odri, Novi Sad 2006, 113-114.
5 Barzun, C. L., Jerome Frank and the Modern Mind, *Buffalo Law Review*, 2010, 1131-1132.
6 Frank, J., *op. cit.*, 35-36.
7 Barzun, C. L., *op. cit.*, 1141.
8 Frank, J., *op. cit.*, 38-39.
9 *Ibid.*, 47.
10 Barzun, C. L., *op. cit.*, 1140-1142.

Frank's "extremism" even denies the existence of common law. He says that some claim it is possible to find common elements of judicial decisions and label them as "rules". However, these alleged common elements are at best some kind of help to lawyers to guess the future behavior of a judge or assistance to judges in resolving future disputes. "The rules will not directly decide any other cases in any given way, nor authoritatively compel the judges to decide those other cases in any given way; nor make it possible for lawyers to bring it about that the judges will decide any other cases in any given way, nor infallibly to predict how the judges will decide any other cases. Rules, whether stated by judges or others, whether in statutes, opinions or text-books by learned authors, are not the Law, but are only some among many of the sources to which judges go in making the law of the cases tried before them. There is no rule by which you can force a judge to follow an old rule or by which you can predict when he will verbalize his conclusion in the form of a new rule, or by which he can determine when to consider a case as an exception to an old rule, or by which he can make up his mind whether to select one or another old rule to explain or guide his judgment. His decision is primary, the rules he may happen to refer to are incidental."[11]

Defending his position that judge's psychology and character affect most of his decision making and therefore the court verdict is almost impossible to predict (and therefore what would be right), Frank argues that the certainty of law is a mere *Myth*. Frank finds the proof in the analysis of child psychology, maturation and the formation of personality.[12] A little child overcomes his fears with help of his parents, who will do everything to meet a rather small child's requirements. However, as he is getting mature, he encounters unforeseen and unexpected situations, he becomes aware that parents are not omniscient and omnipotent, and again there are the feelings of fear of the unknown and uncertain. Then law appears to have the role of a guardian, man regains his faith that the predictability is achievable through the legal system.[13] Thus, initially the society was childlike because the human mind, which was ruled by magic, was undeveloped. Now, instead of magic words which primitive man invoked, modern childish man evokes the rules of law or other related uniformity in court decisions.[14] This psychological need for security, which is developed in humans from an early age, is a major factor in the performance of law that is neither safe, nor specified and predictable, but we think so.

Frank's explanation for where man's desire for certainty came from was subjected to a rather strong criticism. Some criticized it as just bad science, calling Frank's discussion of psychology, "a poor statement of psychoanalytical theory".[15] Adler cited the results of Ferenczi's research and his views on the development of a sense of reality.[16] Ferenczi considers that father is not a symbol of authority, but the reality and the escape from reality into fantasy is a reaction *against* father, and not *towards* him. In addition, Adler's point of view was that psychoanalysis is a double-edged sword. "In the same way that Mr. Frank has psychoanalyzed the myth of certainty as the lawyer's snare and delusion, one could psychoanalyze the scientist's belief that empirical science portrays the real world, as the myth with which he fools himself and his public in order to satisfy an unconscious craving developed in him by subservience to

11 Frank, J., *op. cit.*, 39-40.
12 Explaining the origin of *Myth* and the desire for certainty, Frank relied on Jean Piaget 's. Piaget was a Swiss psychologist who worked with Alfred Binet testing the children's intelligence and wrote numerous books on childhood development. Piaget, J., *The Language and Thought of the Child*, Third Edition, transl. by Marjorie and Ruth Gabain, London / New York 1959.
13 Tucakov, B., *op. cit.*, 114.
14 Molnar, A., *Društvo i pravo, istorija кlasičnih sociološkopravnih teorija*, knjiga 1, Novi Sad 1994, 248.
15 Llewellyn, K.N., Adler, M. J., Cook, W. W., Law and the Modern Mind: A Symposium*, Columbia Law Review*, 1931, 82-115, Adler's contribution.
16 Ferenczi, S., *First Contributions to Psycho-analysis*, transl. by Ernest Jones, London 1994, 213-240.

parental authority and the reality principle."[17] Even those who accept other Frank's arguments suggest that readers more or less ignore his psychological one. Hence Schauer points out that Frank focused too much attention on the psychoanalysis of the judge's personality, while neglecting other factors which could also have an impact on the judge's prelegal views on how the case should be resolved. "But the more than occasional rhetorical excesses and psychological silliness in Frank's work should not blind us to the importance and arguable soundness of his major insight, the one he shared with Hutcheson. By insisting that the outcome preceded the law rather than vice versa, Frank offered an account of judging with which few sitting judges, then and now, would disagree."[18]

Defending Frank's standpoint, we may indicate that he was not so interested in identifying the origin of legal uncertainty, and even less in preventing it. His task was to reject the objective of legal certainty in general. The problem with the *Myth* was that people require certainty and predictability in law, which means that judges must abide by the law exclusively. Frank complained about the attempts to reach certainty by the mechanization of law through reducing it to a formula by which human beings would be treated as identical mathematical entities. He believed that the predictability of the law was provided by the generality of law, to the detriment of correctness and thus the fairness of the trial. Thereby Frank directly attacked the main value which he observed to lie behind every legal regime based on rules - generality in making decisions for the sake of the predictability of solutions.[19]

Barzun believes that Frank's explanation of *Myth* serves only rhetorical purposes, to highlight the importance and need for a skeptical attitude which he favors. Frank's world of children is something he could oppose the "adult" or "modern" mind, which he considers crucial to intellectual progress. Frank held that there is a rough causal link between the emotional behavior of the young and yearning for legal certainty. "But the point is that the contrast in mental outlook itself, not the particular 'father- substitution' theory, does the important work in Frank's argument."[20] However, if Frank's theory of *Myth* is perceived as fiction, the question is what it is for. The answer to this question is crucial to justifying the interpretation advocated by Barzun. "Frank's speculations on child development illuminate a type of philosophical disposition or stance toward the world that Frank thought necessary to improve legal thought and practice. But if one takes *Law and the Modern Mind* on its own terms and if one reads its argument as a whole, rather than simply as a series of one-off critiques, one can see that Frank did not deny the possibility of rational legal decision making, but rather sought to articulate the habits of mind and character on which he believed the sound administration of justice depended." Therefore Barzun "argues that this "father- substitute" explanation for the *Myth* is best understood not as a literal causal explanation of the desire for legal certainty, but as a useful heuristic or "fiction" that Frank hoped would channel reform efforts in the right direction, namely the cultivation of a "modern mind" in judges."[21]

ON THE WAY TO LEGAL CERTAINTY

Legal certainty is the guiding principle of the European legal systems. It "requires that all law (must) be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given

17 Llewellyn, K.N., Adler, M. J., Cook, W. W., *op. cit*., 97.
18 Schauer, F., *Thinking Like a Lawyer*, London 2009, 130-131.
19 Barzun, C. L., *op. cit*., 1142-1143.
20 *Ibid*., 1156-1157.
21 *Ibid*., 1157-1158, 1129, 1130.

action may entail."[22] Maxeiner argues that a high level of legal uncertainty in American law is the consequence of the choice of legal methods of the American legal thought.[23] He adds that the legal methods are the means by which the law content is made clear and application of law certain. They are used for the application of abstract legal rules to factual situations in resolving specific cases, and it becomes clear why the author argues that the choice of the legal method diverge the Europeans and the Americans.

Legal certainty is a general principle of law of the EU.[24] However, general principles usually do not give concrete answers, but the direction and the justification for the answer.[25] In addition, complete legal certainty is impossible because you cannot predict in advance all legal situations (cases), and even if it could be done, it would be impossible to classify all these cases by abstract norms so that no one is exempt.[26] The inability to foresee completely, nevertheless, should not lead to the abandonment of the concept. We should strive to achieve legal certainty as far as this is possible. Also, Mitrović said that the certainty is the "state" of legality. The "state" of legality is the realm of certainty. As the "state" and not as value certainty forms and maintains the authoritative or authoritarian social or state apparatus. In other words, the kind of society defines its legality. If society is in crisis, its legality is in crisis as well; If society is not in crisis, legality is affirmed as a general, social principle, as a measure of affirmation of its values and borders to distinguish the rule of law from self-will, arbitrariness and various forms of abuse of rights. In legal and political theory legal writers usually think of this kind of certainty as a "state" when they speak of legality. Distinguishing between "legitimate power of law" and the illegitimate power of the state and emphasizing the certainty as "civilized legal quality of life" are just some of the reflexes of the same problem that legal and political writers have dealt with. Accordingly, we must distinguish legal certainty as it should be, i.e. there must be value – cognitive and political- legal ways of differentiation between different forms of certainty, which is an essential problem of valorization of specific forms of certainty. The problem is huge because only rational and empirical criteria are not enough for determining the norms, but also the use of value criteria and ethical preferences and views. This distinction of legal certainty in democratic and autocratic orders is not the result of the facts but the judgment and reviews of the value.[27]

Bearing in mind that legal certainty is very important in the European legal systems, Maxeiner tried, in one of his works, to analyze the concept of certainty, particularly in German law. He notes that, when it comes to this topic, there are a few benefits of the orientation of the German legal thought towards the following standards: 1) Predictability of the legal results; rules tie specific results to specific prerequisites, which helps practical predictability; 2) There are always the norms that are indeterminate; however, this does not necessarily affect the legal indeterminacy if their application is predictable; predictability is enhanced when who may invoke the rules and who will apply the rules are known beforehand; 3) In order to preserve flexibility, German law uses vague legal concepts that deal with different aspects of life that are not clearly defined in advance; judges, however, cannot solve these legal disputes as they

22 Korchuganova v. Russia, No. 75039/1, European Court of Human Rights, June 8, 2006. http://hudoc.echr.coe.int/webservices/content/pdf/001-75706?TID=ihgdqbxnfi. Accessed on 1 March 2017.
23 Maxeiner, J. R., Legal Indeterminancy Made in America: U.S. Legal Methods and the Rule of Law, *Valparaiso University Law Review*, 2007, 517-590.
24 Jason-Lloyd, L., Bajwa, S., *The Legal Framework of the European Union*, London 1997.
25 Braithwaite, J., Rules and Principles: A Theory of Legal Certainty, *Australian Journal of Legal Philosophy,* 2002, 47-82.
26 Maxeiner, J. R., Legal Certainty: A European Alternative to American Indeterminacy, *Tulane Journal of International and Comparative Law*, *2007.*
27 Mitrović, D., *Sadržina i oblici zakonitosti*, doktorska disertacija, Beograd 1987, 219-224. An interesting concept, "real legal certainty" offered by Jan Michiel Otto. Maxeiner, J. R., "Legal Certainty: A European Alternative to American Indeterminacy", 551-552.

please, decisions are made in a manner close to common law, and a judge should only have a certain freedom in dealing with new cases and finding new solutions.[28]

In addition to this, Maxeiner points to a number of other elements of German law that increase certainty. For example, the very procedure of passing laws (although to some extent it reduces the democratic principle in making law), understanding of law as a system of rules (reduces the conflict between the rules, especially between the rules of different lawmakers), interpretation of law (the application of the Roman rule *Iura novit curia*) because unlike the American judicial system, judges find law, not lawyers, depending on how much they are paid.[29]

The orientation of the German legal thought to the norms was initiated by another Austrian legal writer Hans Kelsen, and the concept of legal certainty was under the spotlight due to the reaction to the extreme interpretation of his normative theory and Hitler's "state of law". Gustav Radbruch was the author who after World War II insisted that there were three parts of the idea of law: justice, purposefulness and legal certainty. Radbruch perceives justice as distributive, that is, equal treatment of the same, unequal treatment of different people and relationships. But justice does not say anything about the view whereby the same and the different should be characterized as such; justice also determines the relationship but not the procedure. Purposefulness gives the answer to these two questions. But the answer to the question of the purpose cannot be determined, but relativistic. Therefore, there is the third part of the idea of law, legal certainty.[30]

Requests for justice and legal certainty are acceded by all. However, although the requests are above the parties, the extent to which they should go ahead or stay behind other requirements of law depends to what extent purposefulness or fairness should be sacrificed to legal certainty or vice versa. Universal elements of the idea of law are justice and legal certainty, but the relativistic element is not just expediency itself, but also the order of priority between the three elements that require each other, but also contradict each other. Justice and expediency impose opposite requirements. Justice is equality, but equality of law requires the generality of legal regulations. Justice, therefore, generalizes and expediency must individualize. The ratio of the tension cannot be removed. Moreover, the justice and expediency come in contradiction to legal certainty. Legal certainty requires positivity and positive law needs to be applied regardless of the fairness and purposefulness. Positive law presupposes the power that will regulate and ensure its implementation, and hence law and power, which are in fact the contrary, at the same time, come into close connection. Legal certainty, however, requires not only the validity of the legal rules prescribed by power and their implementation but it also imposes requirements in terms of their content, the requirements that the law can be used safely and be applicable, but it often embeds characteristics that are in contradiction with the purposefulness which individualizes.[31]

Even though these three elements of the idea may come into sharp contradiction among themselves, they jointly rule law in all its aspects. Different times are prone to put main emphasis on one or the other principle. For instance, police state sought to make the principle of expediency solely ruling. Natural law tried to conjure from the formal principles of justice the entire legal content and at the same time carry out its validity. In that period legal positivism

28 Maxeiner, J. R., „Legal Certainty: A European Alternative to American Indeterminacy", 559-561.
29 *Ibid*., 555, 558, 562-570.
30 Radbruh, G., *Filozofija prava*, Beograd 1998, 77. Radbruh considers that legal certainty involves other two values: peace and order. Lukić, on the other hand, holds that it seems unjustified, as the peace and order are clearly distinguishable from certainty. Consequently, Lukić explained legal certainty in the narrow sense as a state of certainty of application of legal norms in all cases that they regulate. Lukić, R. D., *Sistem filozofije prava*, Beograd 1992, 479.
31 *Ibid*., 78-81.

just saw the positivity of law and legal certainty. But all this one-sidedness of various stages of law is appropriate to present the versatility of the idea of law, which is full of contradictions. Although Radbruch is not able to eliminate them, he does not see that as the lack of a system. Philosophy should not accept the decision, but impose the decision; it does not make life easy but its role is to problematize it. Otherwise, philosophy would turn into an ideology and human existence in such a world would be superfluous.[32]

CONCLUSION

At the time of its publication Frank's book was focused on the legalistic discussion. It was not a threat outside the academic community nor was the debate on legal realism associated with the political implications of arbitrary judicial system. However, in the late 30s of the last century no academic discussion was isolated in relation to the events that afflicted Europe at that time. Legal realism was associated with fascism and criticisms were extremely harsh.

After the Second World War and its horrors, the most attention was paid to the theories that put the spotlight on man and his basic values and as the most important values of humanity were peace, order and stability. In such circumstances, legal certainty had an important role, but it was not devoid of the value aspect. Therefore, Radbruch's learning means the rebirth of the idea of law.

If we look at the question of legal certainty in Frank's work separately, it can be very controversial, especially the explanation with reference to child psychology. However, as Kelsen was once charged of reducing the notion of law to just one aspect, Jerome Frank's attitudes seem to be observed similarly. He did not deny the impact of legal rules on the outcome of the case, but also spoke about other elements that can influence the judges by giving them advantage in justified or not justified ways, which is questionable. So, it is not a negation but a meticulous scientific examination of certain aspects of law.

It is a fact that the Anglo-American and the Continental European legal systems are different and that they apply different methods to the creation and application of law. This is influenced by many factors, ranging from history and culture to the government, and the size of the area in which the legal system is applied. Also, the fact remains that the man needs a certain, relatively high level of certainty generally and in law as well. It is the intrinsic value of man as a living being to have his desire to survive. An individual struggling with any group inevitably loses, so he needs the certainty of his own existence. It has always been accomplished through appropriate rules of man's behavior in society, and today through legal rules. The existence of a certain degree of legal certainty is not a guarantee of a democratic state of law. In this sense Radbruch's understanding of the idea of law has growing importance. It is not enough to ensure compliance with the mere form, but it must be accompanied by adequate content to make people live a life of dignity. This shows that legal certainty influences the realization of a number of other legal values. Without legal certainty there is no peace, order, dignified life, and therefore no civilization progress. Hence the desire to achieve legal certainty as a value is a necessary, but not sufficient step towards democratic, legal state. It is necessary to examine concrete possibilities for ensuring legal certainty, in its reality, complete with the reality of other legal values. And all these legal values must limit each other, i.e. there is no absolute realization of a single legal value. Otherwise, they nullify each other, and law, says Lukić, ceases to be law and turns into a violent normative system based only on force. It is certain that mankind should not repeat that mistake.

32 *Ibid*., 81-82.

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THE ROLE OF INTERNATIONAL ORGANIZATIONS IN SUPRESSION CHILD LABOR AND ANALYSIS OF PRESENT CIRCUMSTANCES IN THE REPUBLIC OF SERBIA

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Abstract: From the very beginning of human society to nowadays, the children have been involved in *heavy manual labor*. Child labor whose root causes can be found in poverty, lack of education, unemployment over population, human trafficking, etc. is present in various forms of social life. International Labor Organization (ILO), as a specialized agency of the United Nations, has significantly contributed to removing child labor and improving the working conditions of employees. The aim of this research is to analyze the regulatory activities of the International Labor Organization in the field of child and juvenile workers protection. The paper also provides a comparative overview of conventions and recommendations of the International Labor Organization relating to the protection of children from work exploitation. The effects of implemented conventions and recommendations on legal status of minors and children have been determined using a comparative method. At the same time, the position of minors and children in positive legislation of the Republic of Serbia as well as their position in terms of ratified Conventions and Recommendations of the International Labor Organization has been determined.

Keywords: child labor, the International Labor Organization, conventions, recommendations, Republic of Serbia

INTRODUCTION

The specialized agencies, according to Article 57 of the Charter of the United Nations[2], are agencies established by intergovernmental agreements having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields. The article implies that the specialized agencies have functioned as: 1.the international organizations established by international agreements; 2.the independent organizations having their own instruments, and 3.the organizations devoted to problems in the economic and social realm.[3]

The International Labor Organization (ILO) is one of the oldest organizations, created in 1919 by the *Versailles Peace Treaty*, with the aim to formulate and protect the rights of workers. The ILO is characteristic since its structure is based on the principle of tripartism-equal representation of employers, workers and governments in all bodies of the organization (the

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2 The United Nations Charter was adopted at a conference in San Francisco on June 26, 1945
3 Šunderić B.: International Labor Organization Law, Faculty of Law, University of Belgrade, Belgrade, 2001, p. 60.

International Labor Conference, International Labor Office and the Administrative Council). Its activities are focused on setting conditions to fully achieve fundamental freedoms and human rights, and to ban the child labor as its key issue, evident from Section 4 of the preamble of the Constitution of the organization, which provides for the "protection of children, young people and women." International labor standards are the result of legislative activities of the ILO - the international standards in the conventions and recommendations that this organization has started to create since the first session. International labor standards are the principles, standards or guidelines on economic and social rights, working conditions, social security and prosperity in the global international / universal level. [4] Convention and recommendations generally relate to four sets of issues and problems: (1) the *minimum age* required by law for a young person to *work,* (2) medical scrutiny; (3) prohibition of night work of young persons, and (4) improvement of working conditions.[5]

According to the ILO, 168 million children worldwide have been involved in child labor since 2013. Of these 168 million, 85 million children work in "dangerous conditions" [6] The ILO and UNICEF defines eight types of "child labor: hazardous working conditions, work in the household, street work, work in the informal economy, child slavery, the use of children in war activities, child prostitution and pornography, as well as the use of children for illicit activities. The last four are considered to be absolutely the worst forms of child labor that must be eradicated at all costs.[7]

The ILO defines child labor as "work that deprives children of their childhood, their dignity and their potential and that is harmful to physical and mental development"[8]. According to the definition, child labor refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children;
- interferes with their schooling;
- deprives children of the opportunity to attend school;
- obliges children to leave school prematurely;
- requires children to attempt to combine school attendance with excessively long and heavy work

The most important international conventions in the field of child labor, ratified by most countries, are C.138-Minimum Age *Convention,* concerning minimum age for admission to employment an*d C.182* - Worst Forms of Child Labor *Convention***,** which will be further elaborated in the paper due to their great importance and contributions concerning the protection of child labor.

C. 138 − MINIMUM AGE CONVENCTION

Convention No. 138, concerning minimum age for admission to employment, was adopted on 26 June 1973 by the General Conference of the ILO and represents the highest standard in the field of child labor. The convention was ratified by only 72 countries for 26 years, causing fear that the efforts made to create a single convention intesifying the fight against child labor, will be futile and not globally applied. The situation gradually improved by April 2014,

4 Petrović A .: International labor standards, Faculty of Law, Publication Center, Niš, 2009, p. 1, 2
5 Pešic R.: International Labor Organization, Novi Sad, 1969, p. 140.
6 http://borgenproject.org/10-child-labor-facts/ available since 17 September 2016.
7 F. Humbert, The Challenge of Child Labour in International Law, Cambridge University Press, Cambridge, 2009, p. 19.
8 Source: http://www.ilo.org/ipec/facts/lang--en/index.htm, available since 11 October 2016.

the convention was ratified by 167 countries. This Convention covers all branches of work, paid or unpaid, and has more ambitious goals than any convention adopted earlier concerning child labor in particular economic sectors[9]. It was adopted with the intention to combine a whole series of earlier conventions[10] that had addressed the issue of minimum age for admission to employment in different sectors, but which lacked comprehensiveness necessary for reaching the ultimate goal - the eradication of child labor.

The Convention contains flexible provisions that allow States to adapt its application to national conditions, i.e. within the framework set by the Convention, determine the scope of the commitments they are willing to undertake.[11] The main objective of this Convention was to oblige states that ratify it to create and implement an active policy of preventing child labor that would lead to its complete eradication, as well as to clearly define the minimum age for admission children to work. The principle of flexibility has been implemented in terms of the duration of the convention, the obligation to apply the Convention, as well as in terms of child labor in *hazardous working* conditions. Pursuant to Article 12 of the Convention, the Convention shall enter into force twelve months after the date on which the Director- General has registered the ratification of the two members, while Article 13 stipulates that a member ratifying the Convention may annul it after the ten years from the date on which the Convention first came into force. As far as child work in dangerous conditions, the principle of flexibility is established in Article 3 of the Convention, which provides that national laws or regulations or the competent authority, after consultation with interested organizations of employers and workers, if such organizations exist, may allow admission to employment, i.e. 16 years of the minimum age for admission to employment, provided that the health, safety and morality of these persons are fully protected and that they have completed the appropriate schooling, that is, they have been trained in the appropriate branch of the work. The same stand is taken in Recommendation No. 146 fixing minimum age for admission to employment.

The connection between an explicit minimum age for the completion of compulsory education and the minimum age of employment is of particular importance. Education is a core element of every effort to eliminate child labor and labor exploitation, as it offers children the basis, knowledge and skills needed to create the future. The right to education is primarily a child's right. The purpose of education is not only the eradication of illiteracy, but also the training for full participation in social life. [12] Minimum age for admission to any employment

9 Vučković, Šahović, N.: Children's Rights and International Law, Yugoslav Child Rights Center, Belgrade, 2000, p. 56.

10 The ILO has adopted Convention No. 5 concerning the minimum age for admission children to employment to industrial work, then nine more conventions and four recommendations in specific sectors of work (Convention No. 7 fixing the minimum age for admission of children to employment at sea (1920), Convention No. 10 concerning the minimum age for admission children to work in agriculture undertaking (1921), Convention No. 15 fixing the minimum age for the admission of young persons to employment as trimmers or stokers (1921), Convention No. 33 fixing the minimum age for admission of children to industrial employment (1932), Convention No. 58 fixing the minimum age for admission of children to employment at sea - revised 1936, Convention No. 59 fixing the minimum age for admission of children to industrial employment - revised 1937, Convention No. 60 concerning the age of admission of children to non-industrial employment - revised in 1937, Convention No. 112 concerning the minimum age for admission to employment as fishermen (1959), Convention no. 123 concerning the minimum age for admission to employment underground in mines (1965), Recommendation no. 41 concerning the age for admission of children to employment in non-industrial occupations (1932), Recommendation no. 52 fixing the minimum age for admission of children to industrial employment in family undertakings (1937), Recommendation no. 96 concerning the minimum age of admission to work underground in coal mines (1953) and Recommendation no. 124 concerning the minimum age for admission to employment underground in mine (1965).

11 Compare with: Lubarda B.: Labor Law - Discussion on dignity at work and social dialogue, Faculty of Law, University of Belgrade, Belgrade, 2012, p. 200.

12 Vučković, Šahović, N., op. cit., p. 214.

should not be lower than the age of completion of compulsory schooling and, in any case, no less than 15[13]. Otherwise there would be a period of absenteeism, which could lead to negative social events, such as drug addiction and various forms of juvenile delinquency. In order to avoid the period of absenteeism, it is necessary to ensure and require the participation of young people in approved vocational orientation programs or training up to the age of at least equal to those set for admission to employment or work. [14] In this way, the Convention enabled the States to rise the age for employment in their national laws, in relation to the minimum age prescribed by the Convention.

Article 7 of the Convention provides that National laws or regulations may permit the employment or work of persons 13 to 15 years of age on so called light work which is: not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Article 6 of the Convention provides that it does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work in undertakings, where such work is carried out as an integral part of a training or education.

Although the minimum age for employment is not less than15 years, the minimum age for work which by its nature is likely to jeopardize the health, safety or morals of young children is not less than 18 years, while for work by its nature is extremely difficult and dangerous is possible to stipulate a higher age limit. For this type of work, Member States are given the option of reducing the age limit to 16 years, provided that the juvenile workers have received adequate specific instruction or vocational training and that the health, safety and morals of the young person's concerned are fully protected.

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. [15] Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory. In order to ensure the effective implementation and enforcement of the provisions giving effect to this Convention and to ban and abolished child labor, all necessary measures stipulated by national laws or regulations should be taken, including the provision and application of penal sanctions or, as appropriate, other sanctions. To ensure effective implementation of the Convention, it is essential that countries have developed mechanisms that will allow monitoring of its implementation, mechanisms that shall prescribe the registers of employees who are less than 18 years of age, as well as the conditions in which they work. Any employer who employs minors is obliged to keep separate record that is necessary in the exercise of control of employment, but also for obtaining statistical data necessary for further planning and improvement of legislation in this area.

The Convention No. 138 was adopted in 1973 together with the Recommendation 146 on minimum age for employment, which regulates in certain parts of the Convention. According to this recommendation, priority should be given to the planning needs of children and youth in national development policies and programs and satisfying those needs.[16]Similarly, priority should be given to the progressive extension of interrelated measures necessary to ensure the

13 Article 2, paragraph 3, of the Convention No. 138 concerning minimum age for admission employment
14 Article 4 of Recommendation No. 146 on minimum age for admission employment
15 Article 1 of the Convention No. 138 concerning the minimum age for employment
16 Šunderić B., op. cit., p. 431.

best possible conditions for the physical and mental development of children and youth.[17]

CONVECTION NO. 182 ON THE WORST FORMS OF CHILD LABOR

Bearing in mind that the ILO is primarily devoted to promoting and protecting human rights and labor rights and dignity, and that the worst forms of child labor directly undermine these values, on 17 June 1999, the General Conference of the ILO adopted the Convention No. 182 on the Worst Forms of Child Labor. It was adopted unanimously by the representatives of the Member States of the ILO. The fact is that until September 2001, only two years after its adoption, Convention No. 182 achieved a record rate of ratifications - ratified by a hundred countries, which made more than half of the member countries of the ILO.[18] By March 2014, the Convention was ratified by 179 of the 185 member states of the ILO, so it has been considered the most ratified convention. The Recommendation No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor was adopted at the same session. Its preamble states that it complements Convention No. 182 and that its provisions should be applied together with the provisions of Convention No. 182. Unlike Convention No. 138, this Convention does not contain a clause of flexibility, makes no distinction between developed countries and developing countries and applies to all girls and boys under the age of 18 years. Although the adoption of this ILO Convention represents a major event in the field of international legal protection of children, the adoption of the above mentioned C.138-Minimum Age Convenction remains the "cornerstone" of national and international activities, since the provisions of this Convention represent a huge progress in the development of existing standards.[19] By ratifying the Convention, States formally undertake, within the framework of international law, to do everything required by the Convention, and undertake all actions above mentioned, in particular, to take immediate and effective measures to prohibit and eradicate the worst forms of child labor.

The term "worst forms of child labor" is a generic term. As such, it includes a larger number of forms of child labor that are considered the worst. Convention No. 182, unlike Convention No. 138 expressly enumerates unconditional worst forms of child labor.[20] Article 3 of the Convention defines the worst forms of child labor as:

- forced or compulsory labor, including all forms of slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;

- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The Convention does not define the conceptual forms of child labor that is considered the worst, since some of them are regulated by other international instruments, especially Con-

17 Ibid. p. 431.

18 International Labor Organization, the Eliminating the Worst Forms of Child Labor – A Practical Guide to ILO Convention No. 182, 2002, p. 21 http://staging.ilo.org/public/libdoc/ilo/2011/467886.pdf, available since 17 January 2017.

19 Vučković Šahović N., op. cit., p. 244.

20 Humbert F., op. cit., p. 102.

vention No. 29 concerning Forced or Compulsory labor[21] and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.[22] Convention No. 29 on Forced or Compulsory Labor defines the term "forced or compulsory labor" as " all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[23] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery defines the term "slavery" as " the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".[24] "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.[25] The worst forms of child labor are covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Single Convention on Narcotic Drugs, etc.

The worst forms of child labor include hazardous work, i.e. "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." [26] Dangerous work includes different types of activities. These activities will be determined by national laws or regulations or by the competent state authority after consultations with organizations of interested employers and workers.[27] The obligation of the States Parties to the Convention is to draw up their own list of hazardous activities, in accordance with the specificities of the climate and the opportunities in society. Recommendation No. 190, Article 3, defines types of work identified as hazardous work: work that exposes children to physical, psychological or sexual abuse, work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads, as well as work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer. Type of work that implies hazardous work should be reviewed periodically and revised if necessary, in accordance with the development of science and technology.

Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions. Article 7 of the Convention provides that Each Member shall, taking into account the importance of education in eliminating child labor, take effective and time-bound measures to:

(a) prevent the engagement of children in the worst forms of child labor;

21 Convention No. 29 concerning *Forced* or *Compulsory Labor* was adopted by the General Conference of the International Labor Organization in June 1930.
22 The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery was adopted under the auspices of the United Nations in Geneva in 1956 and entered into force on 30 April 1957.
23 Article 2 of Convention No. 29 on Forced or Compulsory Labor
24 Article 1 of the Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
25 Ibid., Article 7.
26 Article 3 of Convention No. 182 on Worst Forms of Child Labor
27 Ibid., Article 4.

(b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration;

(c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labor;

(d) identify and reach out to children at special risk; and

(e) take account of the special situation of girls.

All Members that ratify the Convention shall identify or determine appropriate mechanisms to monitor the application of the provisions of this Convention.[28] According to Article 6 of the Convention, each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labor as a priority. These implement programmes should be urgently conceived and implemented, taking into consideration the views of children directly affected by the worst forms of child labor, their families, and other concerned groups identified for the purposes of the Convention and Recommendation No. 190. These programs should aim at:

(a) identify and condemn the worst forms of child labor;

(b) prevent engagement and remove the children concerned from the worst forms of child labor, protecting them from reprisals and providing their rehabilitation and social integration through measures while addressing their educational, physical and psychological needs;

(c) draw the attention to young children, girls, and the problem of undercover work situations in which girls and other groups of children are particularly vulnerable or have special needs;

(d) identify, approach, and work with communities where children are particularly vulnerable;

(e) inform, make sensitive and launch public opinion and stakeholders, including children and their families.

Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.[29]

CHILD LABOR IN THE REPUBLIC OF SERBIA

The positive law of the Republic of Serbia regulates child labor through several worth mentioning legal acts: the Constitution of the Republic of Serbia[30], the Labor Law[31], the Family Act[32], the Criminal Code of the Republic of Serbia[33] and the Law on the Foundations of the Education System.[34]

For the first time in the constitutional history of the Republic of Serbia, the Constitution explicitly speaks about the rights of the child. Children enjoy human rights suitable to their age and mental maturity. As the highest legal act, the Constitution regulates the protection of

28 Article 5 of Convention No. 182 on Worst Forms of Child Labor and Paragraph 8. Recommendation No. 190 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor
29 Article 8 of Convention No. 182 on Worst Forms of Child Labor
30 Official Gazette of the RS, No. 98/2006
31 Official Herald of the RS, Nos. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014
32 Official Gazette RS, Nos. 18/2005, 72/2011 - other law and 6/201
33 Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012 and 104/2013
34 Gazette RS Nos. 72/2009, 52/2011, 55/2013 and 35/2015 - authentic interpretation

children and youth in an adequate manner and determines the minimum age for admission to employment. Thus, Article 66, paragraph 4 provides that "Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals." The Constitution guarantees the protection of children from psychological, physical, economic and any other exploitation or misuse.

The Labor Law regulates the admission children to employment in a general way. Article 12, paragraph 4, introduces the general obligation of special protection of children and disabled people at work. Pursuant to Convention No. 138, the Law permits the employment or work of persons who are at least 15, provided that in each specific case, other work conditions required by the law or the relevant rules of procedure are fulfilled. An employment relation may be established with a person under 18 years of age by the consent in writing of a parent, adopting parent or a guardian, provided that such work does not put at risk his health, moral and education, and/or provided that such work is not prohibited by law. (Article 25, Paragraph 1). The law stipulates that persons under the age of 18 years cannot work in jobs involving particularly difficult physical labor, work under ground, under water or at considerable height; those including exposure to harmful radiation or poisonous and cancerogeneous matters or the ones causing hereditary illness, as well as those hazardous to health due to coldness, warmth, noise or vibration; those which, due to the finding of a competent medical agency, considering his psycho-physical abilities, would affect harmfully and by higher risk his health and life. (Article 84).

The Family Act stipulates the principle of the best interests of the child. Article 6 of the Act establishes all necessary measures that the state is obliged to undertake, in order to protect the child from neglect, physical, sexual and emotional abuse and from every form of exploitation. Since one of the basic means of preventing child labor is the introduction of compulsory schooling, Article 71 of the Act prescribes that parents are under the obligation to provide elementary education to child, and that have the duty to take care of further education of the child according to their possibilities. As far as further education of children is concerned, the state is obliged to encourage the development of various forms of secondary education and make it available to its children, and to enable everyone to acquire higher education based on individual abilities, but parents have the main role in providing further education. [35]

The Criminal Code also deals with the problem resulting from a violation of rights based on labor and social security rights, and in Article 163, it states: " Whoever deliberately fails to comply with law or other regulations, collective agreement and other general acts on labor rights and on special protection of young persons, women and disabled persons at work, or on social insurance rights and thereby deprives or restricts another's guaranteed right, shall be punished with a fine or imprisonment up to two years". When it comes to incriminating the exploitation of children, the Criminal Code stipulates a whole range of criminal offenses, thus greatly fulfilling the international obligations that Serbia took over.[36]The Criminal Code incriminates behavior related to the sexual intercourse with a child, pimping and procuring for sexual intercourse (Article 183 and 184), showing pornographic material and child pornography (Article 185), neglecting and abusing a minor (Article 193), as well as trafficking and holding a minor in slavery (Article 388). The Criminal Code provides for minimum penalties for the child pornography. The instability and poor security conditions in the last decade of the XX century, expressed primarily in the political, normative, economic, social and moral crisis of the society, have made Serbia a very important factor in the global

35 Draškić M.: Family Law and Rights of the Child, Faculty of Law, University of Belgrade, Belgrade, 2010, p. 283.
36 Reljanović, M.: Preventing Exploitation of Children - International Standards and Condition in Serbia, Foreign Legal Life: Theory, Legislation and Practice, no. 2/2008, p. 102.

network of illegal migration and trafficking in human beings.[37]

The Law on the Foundations of the Education System provides for the right to free preschool, elementary and secondary education.

The Republic of Serbia, as the legal successor of Yugoslavia, committed itself to adhering to ratified conventions and adopted recommendations. By ratifying the Convention itself, its postulates become an integral part of Serbian legislation. It is considered in Serbian legal theory that a ratified convention becomes not only a law, but a higher law and that cannot be abrogated by later adopted law without violating international law.[38] The Convention on Minimum Age for Admission to Employment was ratified in 1982, and the Worst Forms of Child Labor Convention was ratified in 2003. However, it is not enough just to ratify conventions, but domestic legislation should be in line with its provisions and ensure their implementation.

Based on the above mentioned, it can be concluded that domestic legislation is largely harmonized with international law. In terms of constitutional and legal frameworks, Serbia has a good basis for combating child labor. However, the real picture is somehow different. In 2015, about 3,000 economically exploited children were registered in Serbia. According to various estimates and researches, about 40% of the Roma population is under 14 years of age, and about 70,000 Roma children of school age in Serbia do not attend primary school. [39] Of course, Roma children are not the only vulnerable to this type of exploitation, and the overall assessment is that about 4% of children are exposed to work exploitation in Serbia (UNICEF, 2005: 13). In the Republic of Serbia, there are no unified criteria and the way to register the phenomenon of child exploitation. Also the criteria for registration and recording are yet to be defined and the mechanisms for processing these data at all levels provided. [40] In our country, there are no exact data on the dimensions, specific forms of appearance, and characteristics of children of child pornography victims, because there is no unique system for recording and monitoring this phenomenon.[41]

The big problem in this field is that Serbian legislation still does not specify what is meant by hazardous jobs, i.e. "jobs that could endanger health, morals or education". For that purpose, the technical working group of the Minister of Labor, Employment, Veteran and Social Policy, with the technical support of the International Labor Organization has made the List of hazardous jobs for children under the age of 18, which is still in the form of a draft. Hazardous jobs include three categories: engagement in certain activities, exposure to physical conditions or chemical substances and hazardous circumstances[42]. Some of the prohibited working conditions listed in the List of hazardous jobs are: too cold or warm weather, increased atmospheric pressure (dumps, diving), underground work and mines, work at altitude or depth - construction, work at night, overtime, using sharp tools, etc. When this list is adopted, children will finally be protected from engaging in hazardous work.

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37 Mijalković S., Marinković, D .: Criminalistic Methods of Proofing the *Crime* of *Trafficking* in Human Beings, Security, vol. 52, no. 1/2010, p. 42.

38 Obradović, G .: Protection of youth at work: in the light of the conventions of the International Labor Organization and Yugoslav Labor Law, Themes, no. 1-2 / 1998, p. 147.

39 Žegarac et al.: Children without parental care; Child Trafficking in Serbia and Montenegro, Center for Evaluation, Testing and Research, Belgrade, 2005, p. 50.

40 Hadži Zdravko Kovač, Vojvodina Educational Workers Union's Press Release on the Child Work, Novi Sad, 2011, p. 3., http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/12/Saopštenje-Nezavisnog-sindikata-prosvetnih-radnika-Vojvodine-2011.pdf, available since 8 October 2016.

41 N. Tanjević: Fighting Child Pornography on the Internet - International and Domestic Criminal Legal Framework, Security, Vol. 54, no. 2, 2012, p. 174

42 Source: www.ozon.rs/.../poslovi-koje-deca-nece-smeti-da-rade-cak-ni-kao-pomoc-roditeljima/, available since 9 February 2017.

CONCLUSION

Analysis of ILO Conventions shows that attention is primarily focused on protecting children from exploitation in work. [43] On the international level, significant progress has been made in the fight against child labor. The international community demands immediate prohibition of all forms of child labor, through national regulations, as well as taking urgent and effective measures to eliminate it. However, a legal ban is not sufficient to eliminate the worst forms of child labor. The law needs to be complemented with certain coordinated programs of preventive and corrective measures that affect the causes of child labor (e.g. poverty). For this reason, Convention No. 182 expressly requires the countries that have ratified it to "create and implement action programs to eliminate the worst forms of child labor as its priority."[44] It should not be forgotten that states that have ratified Convention No. 182 on worst forms of child labor have a duty to cooperate with each other in this field. Our Labor Law uses solutions of many European countries and is one of the better laws, as far as it concerns regulation of children and minor's position in employment. An important step has recently been made with making working group for making list of jobs considered hazardous and which juveniles and children shouldn't be allowed to perform. By adopting the List of Hazardous jobs for Children under the age of 18, children will finally be protected from engaging in dangerous work. After that, appropriate measures will be taken to prohibit and eliminate the worst forms of child labor in practice.

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43 Vučković, Šahović, N., op. cit., p. 55

44 International Labor Organization, Elimination of the Worst Forms of Child Labor - A Practical Guide to ILO Convention No. 182, 2002, p. 85, http: // staging.ilo.org/public/libdoc/ilo/2011/467886.pdf, available since 17 January 2017.

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THE STATUS OF CHILDREN IN INTERNATIONAL CRIMINAL LAW

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Abstract: Although both, national and international level is constantly working on improvement of the status and protection of children, especially in armed conflicts, the fact is that children are those who are most affected by the consequences of armed conflicts. Therefore, the question raises over and over again whether we can do something else in order to protect children, starting from raising the awareness about all negative consequences of war to children, and to improve or finding new instruments for their protection during armed conflicts. In the paper the author analyzes the status of children in proceedings before international courts, bearing in mind that children may appear as victims and witnesses, as well as perpetrators of international crimes. The emphasis is placed on often considered dilemma - the status of child soldiers in International criminal law. The question is whether they should be seen only as victims, but also, under certain conditions, as perpetrators of international crimes. Whether it is justified to hold children accountable for these crimes, and if so, under what conditions? On the one hand, it should be noted that the recruitment of children under the age of 15 years into armed forces is a war crime, and on the other hand, one must take into account the fact that these children can appear as the direct perpetrators of war crimes and other international crimes. In the paper the provisions of international regulations pertaining to these issues are analyzed, as well as certain procedures before international courts where children had participation.

Keywords: international criminal law, armed conflicts, war crimes, children, child soldiers.

INTRODUCTION

The inevitable part of all armed conflicts is the violation of fundamental human rights and freedoms. Taking into account that this is not a new phenomenon, the international community has always strived to regulate some rules of armed conflict. The main examples of this aspiration are the Geneva Conventions and the Hague Conventions, which tended to regulate protection of specific categories of persons during armed conflicts and to limit the means and methods of warfare. However, the fact is that modern armed conflicts resulted in greater number of civilians as victims. Some researches show that the number of civilians who are victims of armed conflicts is 90% nowadays, and it used to be much less[1]. Among these civilians, the most affected by war and its consequences are children and women. It is evident that all international crimes can directly or indirectly have children as victims. In some of these crimes children are material element of the crime, for example in enlistment, conscription and use of children under the age of fifteen to participate actively in the hostilities, which is

1 UNGA, *Impact of Armed Conflict on Children: Note by the Secretary-General A/51/306*, 1996, para.24; available at: http://www.un.org/documents/ga/docs/51/plenary/a51-306.htm; access: March 2017

one of the actus reus of war crime. In other crimes, where children are not material element of the crime, they may appear as victims, for example children can be, and mostly are, victims of genocide, war crimes and crimes against humanity. Consequently, children will appear as witnesses before international courts. On the other hand, modern armed conflicts brought one new practice - the use of children in armed conflicts in a large scale. Therefore, children also appear as perpetrators of international crimes. All these roles of children in international justice, create a need to reexamine the international documents which regulate children status. The aim of this paper is to analyze existing international documents related to children, to analyze the real position of children in international practice, especially respect of their rights, and to propose how status of children in international practice can be improved.

INTERNATIONAL LEGAL PROTECTION OF CHILDREN IN ARMED CONFLICTS

There are many documents of international law that provide broad protection for children in armed conflicts, both, international and non-international. These documents are mainly part of International humanitarian law, which provides general protection for all civilians who do not take part in conflicts, and special protection related particularly to children. Firstly, children were protected through general protection norms, but then it became evident that this kind of protection is not sufficient. Consequently, special protection norm, related particularly to children, were included in international instruments. Today, children are also protected through instruments of International criminal law, especially through Statute of International Criminal Court[2]. The question is whether all these normative protections are implemented and whether they function in practice. Now we will analyze the most important norms related to the protection of children in armed conflicts.

Geneva Conventions and Additional Protocols

The 1949 Geneva Convention IV (hereinafter: GC IV), which was adopted as a result of world War II, was the first international treaty related to laws of armed conflicts that exclusively regulates the treatment of civilians. General protection of civilians is provided through articles 27-34. The most important article is article 27, which expresses the fundamental principle of respect, protection, and human treatment for the protected persons.[3] This includes respect for their personality, their honor, their family rights, and protection from acts or threats of violence, insults and public curiosity. Further, GC IV prohibits the maltreatment of civilians, including "physical or moral coercion" (article 31), any measures which could cause "the physical suffering or extermination of protected persons" (article 32), all collective penalties, intimidation and reprisals against civilians (article 33). Children, among other civilians, are further protected by the principle that "the civilian population as such, as well as individual civilians, shall not be the object of attack" (article 13 of Additional Protocol II (hereinafter: AP II)).

Additional protocol I (hereinafter: AP I) sets the principle of special protection for children: "Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason" (article 77).

2 International Criminal Court, *The Statute*, 1998, available at: https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf; access: March 2017

3 Kuper, J., *International Law Concerning Child Civilians in Armed Conflict*, Oxford, 1997, p.63.

Children participation in armed conflicts has become something we encounter every day. This participation may occur in many different ways, from aiding combatants (bringing them weapons and munitions, cooking, transferring information, etc.), to recruitment of children as combatants in armed forces and groups[4], which may make them perpetrators of international crimes. The 1977 Additional Protocols were the first international treaties to cover such situations. AP I obliges States to take all feasible measures to prevent children under 15 from taking direct part in hostilities. It expressly prohibits their recruitment into the armed forces and encourages Parties to give priority in recruiting among those aged from 15 to 18 to the oldest (article 77). AP II extends this protection, prohibiting both the recruitment and the participation, direct or indirect, in hostilities by children under 15 years (article 4, paragraph 3c). Additional Protocols further provide that child combatants under 15, who take direct part in conflicts, are entitled to privileged treatment and they continue to benefit from special protection accorded to children by International humanitarian law (article 77, par. 3 AP I; article 4, par. 3d AP II).[5]

The 1989 Convention on the rights of the child

Article 38 of the 1989 Convention on the rights of the child[6] (hereinafter: CRC) is the key article related to protection of children in armed conflicts, stating that: "1. States Parties undertake to respect and to ensure respect for rules of International humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are the oldest". Although article 38 of CRC did not represent progress in regard to article 77 (2) AP I, and even weakened what was provided in article 4 (3)(c) of AP II (because article 38 of CRC refers only to *direct* participation of children in hostilities), there are two significant contributions to this provision: first, article 38 shows consistency of International humanitarian law and Human rights law on the subject of children in armed conflicts; second, unlike APs, the CRC, and therefore article 38 as well, applies both, in time of war and time of peace, and therefore clarifies that child recruitment and the use in hostilities is prohibited also outside the conflicts.[7] The most important fact is that the CRC is almost a universally ratified document.

Because of the increasing participation and starvation of children in armed conflicts, and dissatisfaction among states related to article 38 of the CRC, as a result of advocating for higher standard regard to child recruitment, The Optional Protocol[8] to the CRC on the involvement of children in armed conflict (hereinafter: OPAC) was adopted. Article 1 of the OPAC states: "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities". This article represents a step forward because of raising the age limit to 18, but this is related only to direct participation, while indirect participation, which can be as dangerous as direct,

4 ICRC Advisory Service on International Humanitarian Law, *Legal Protection of Children in Armed Conflict*, 2003, available at: https://www.icrc.org/en/document/legal-protection-children-armed-conflict-factsheet
5 *Ibid.*
6 UN, *The Convention on the rights of the child*, 1989, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, access: March 2017
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8 UN, *Optional Protocol to the CRC*, 2002, available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx, access: March 2014

is not prohibited. Because of the scope of this paper, other articles of OPAC will not be analyzed. Now, when we saw how International humanitarian law regulates position of children in armed conflicts, we can move on to the analysis of relevant regulations of International criminal law related to this subject.

Statutes of international criminal courts

As noted in the introduction, all international crimes can directly or indirectly affect children. In some of these crimes children are a material element of the crime, while in other crimes, where children are not a material element of the crime, they may appear as victims. For the purposes of this paper, we will analyze in detail only provisions of the Statute of permanent International Criminal Court (hereinafter: ICC), bearing in mind ad hoc character of all other international criminal courts. Also, only crimes where children appear as material element will be analyzed.

Children appear as material element of two crimes before ICC: war crime and genocide. Child recruitment has been prescribed as a war crime and included in two articles of the ICC Statute: first, article 8 (2)(b)(xxvi) which prohibits conscripting or enlisting children under the age of fifteen into the national armed forces or using them to participate actively in hostilities, which refers to international armed conflict, and second, article 8 (2)(e)(vii) which prohibits conscripting or enlisting children under the age of fifteen years into the armed forces or groups or using them to participate actively in hostilities, which refers to non-international armed conflict. The crime encompasses the principle of non-recruitment, which prohibits both compulsory and voluntary enlistment of children, as well as their participation in hostilities.[9] Recruitment of children violates children's rights to physical and psychological health, education and family rights, it destroys childhood and permanently enters children into adulthood, along with all other negative effects.[10] In terms of genocide, article 6 of the ICC Statute prohibits the act of genocide by forcibly transferring children as follows: "For the purpose of this Statute, "genocide" means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such: (...) (e) Forcibly transferring children of the group to another group". According to the Elements of Crimes[11], as stated in footnote 5, forcible transfer of children is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment. Further, the Elements of Crimes establish that "child", in context of article 6 (e) of the ICC Statute, is a person under the age of 18 years.

CHILDREN AS VICTIMS OF ARMED CONFLICTS AND AS WITNESSES BEFORE INTERNATIONAL CRIMINAL COURTS

Bearing in mind that the number of international regulations related to children is growing from day to day, and that great attention is paid to constant improvement and implemen-

9 Chamberlain Bolanos, C., *Children and the International Criminal Court: analysis of the Rome Statute through children's rights perspective*, University of Leiden, 2014, p.116.
10 Davison, A., *Child Soldiers: No Longer a Minor Incident*, Willamette Journal of International Law and Dispute Resolution, 2004, p.125.
11 ICC, *Elements of Crimes*, 2002, available at: https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf, access: March 2017

tation of these regulations, the question is which are practical consequences of this? Does this trend have positive impact on position of children in armed conflict?

During World War I the number of civilian victims rose to 5% of the total war casualties, while the 1996 reports show that the proportion of war victims who are civilians has leaped dramatically from 5% to over 90%.[12] In the latest Report of the Secretary-General related to children in armed conflict it is stated that protracted conflicts had a substantial impact on children. Examples of some countries are given. Thus, in the Syrian Arab Republic, the results of a five-year conflict are deaths of thousands of children. In Afghanistan in 2015 the highest number of child victims was recorded since United Nations began documenting civilian casualties. Violations against children in Somalia have now increased for 50% compared with 2014, with many hundreds of children recruited, used, killed and maimed. In South Sudan, children were victims of all six grave violations.[13] These are only some examples of child victims, bearing in mind that there are many other conflicts all around the world and therefore much more child victims. Violence against children has long-lasting consequences for the children's lives. The CRC Committee determined multiple short and long-term health consequences, such as physical health problems, cognitive impairment (including impaired school and work performance), psychological and emotional consequences, mental health problems and health-risk behaviors. Further, there are many developmental, behavioral and socioeconomic consequences.[14]

The experience of ad hoc tribunals related to children as victims is limited to their acting as witnesses, because participation scheme was not foreseen. Unlike the ad hoc tribunals, the Statute[15], the Rules of Procedure and Evidence[16] and the practice of the Special Court for Sierra Leone (hereinafter: SCSL), represent the first step forward in regard to children participation in court proceedings. This is maybe a consequence of the facts that children were both victims and perpetrators of brutal violence during Sierra Leonean civil war, and that child recruitment and use in hostilities was widespread.[17] Article 15 (4) of the SCSL states that: "Given the nature of the crimes committed and the particular sensitivities of girls, young women and children victims of rape, sexual assault, abduction and slavery of all kinds, due consideration should be given in the appointment of staff to the employment of prosecutors and investigators experienced in gender-related crimes and juvenile justice". This was the first provision within an international criminal court, which takes into account special vulnerability of children and the need for personnel specially educated and experienced in dealing with children. Further, within the SCSL was developed an initial framework of principles and best practices for identifying child witnesses in accordance with international standards.[18]

The fact that civilians appear very often as victims and witness of international crimes, has contributed to the drafting of the ICC Statute, which is consequently civilian-friendly oriented. Children can interact with the ICC as participating victims, as witnesses and they

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12 UNGA, *Impact of Armed Conflict on Children: Note by the Secretary-General A/51/306*, 1996, para.24; available at: http://www.un.org/documents/ga/docs/51/plenary/a51-306.htm; access: April 2017
13 UNGA, *Children and Armed Conflict: Report of the Secretary-General A/70/836-S/2016/360*, 2016, para.5; available at: http://reliefweb.int/sites/reliefweb.int/files/resources/N1611119.pdf; access: April 2017
14 CRC Committee, *General Comment No.13: The right of the child to freedom from all forms of violence*, 2011; available at: http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf; access: April 2017
15 SCSL, *The Statute*, 2000, available at: http://www.rscsl.org/Documents/scsl-statute.pdf; access: April 2017
16 SCSL, The *Rules of Procedure and Evidence*, 2000, available at: http://hrlibrary.umn.edu/instree/SCSL/Rules-of-proced-SCSL.pdf; access: April 2017
17 Cedrangolo, U., *op.cit.*, p.41-42.
18 *Ibid.*, p.42-43.

can benefit from reparations for the harms they suffered as a result of the crime within ICC jurisdiction. The same child can interact with the ICC with all these three categories.[19] There are many provisions related to the protection of victims and witnesses, and some of them are particularly relevant to children.

Article 68(1) of the ICC Statute provides that: "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including *age*, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against *children*`. With regard to victims" participation before the ICC, the key provision is article 68(3) of the Statute, which states: "Where the personal interests of the victims are affected, the ICC shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the ICC and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the ICC considers it appropriate, in accordance with RPE". According to Rule 89 of the RPE, victims who want to participate in ICC proceedings should present a written application to the ICC. ICC practice related to applications on behalf of children or submitted by children was not consistent. In its first decision on this issue, the ICC rejected some of these applications because of the lack of consent of children's parents or legal guardian.[20] Then the practice of the ICC changed, so trial chambers allowed children to act on their own[21], and the consequence was that children can submit a victim's application to participate in ICC proceeding, regardless of parental consent. Still, the fact is that children have special legal treatment because of their age, maturity and psycho-physical development. Consequently, there should not be any general provision which will allow all children to submit application and participate in ICC proceeding. Preferably, this should be determined on a case-to-case basis. When deciding on this issue, ICC staff educated and experienced in work with children should be consulted.

Considering children who appear as witnesses before international criminal courts, their number is low. Some of the reasons for this are special concerns for their security, possible retraumatization and the fact that prosecutors consider children less reliable witnesses than adults.[22] The SCSL represents the step forward regarding protection of victims and witnesses, because many children, who were involved in conflict as victims or perpetrators, appeared as witnesses before this court. For instance, the SCSL allowed children to testify via video-link, in order to avoid contact with the accused. It is important to note that protective measures cannot be limited to in-court measures, but should include pre-trial and post-trial period.[23] Before the ICC many in-court protective measures, according to Rule 87 of the RPE, are being used for child witnesses, such as withholding witnesses' identities from the public, use of pseudonyms, closed session, face and voice distortion, testimony via electronic means etc.[24] It is evident that prosecutor has a key role with regard to protection of children, and it is also

19 Chamberlain Bolanos, *op.cit*., p.153.

20 ICC, *Decision on the applications for participation filed in connection with the investigation in the Democratic Republic of Congo by Applicants a/0047/06 to a/0052/06, a/163/06 to a/0187/06, a/0221/06, a/0226/06, a/0231/06 to a/0233/06, a/0237/06 to a/0239/06, and a/0241/06 to a/0250/06, ICC-01/04*, 3 July 2008, para. 31., available at: https://www.icc-cpi.int/CourtRecords/CR2008_03762.PDF; access: April 2017

21 See: *Lubanga case, Katanga and Ngudjolo case, Bemba case*.

22 Cedrangolo, U., *op.cit*., p.49.

23 *Ibid*., p.50-51.

24 *Ibid*., p.52.

very important to engage a person who is specially trained to deal with children and who will assist a child witness through all stages of the proceeding.[25]

Children can benefit from reparations for the harms they suffered as a result of the crime within ICC jurisdiction. The article 75(1) of the ICC Statute provides that the ICC shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Bearing in mind all consequences of international crimes, restitution is often impossible. Childhood that had once been affected by war can not be reinstated. Compensation, as a payment for the harm that victim suffered as a result of the crime, should include harm directly suffered by the crime and effects that crime had on the future life of the child. Compensation to child victims should be combined with other measures, such as rehabilitation.[26] Rehabilitation is the most appropriate type of retribution for children because it focuses on physical and mental treatment and social reintegration of the child victims. The expert witness on child trauma in *Lubanga case* stated that if no rehabilitation is provided, the cycle of violence could affect future generations.[27]

CHILDREN AS PERPETRATORS OF INTERNATIONAL CRIMES

Children participation in armed conflicts has been known since time immemorial. Back to ancient times, children participated in hostilities, because it was necessary for community preservation. During the Middle Ages, many children were part of armed forces, which was considered a great honor. Still, children involvement in armed conflicts was not the practice during I and II World War.[28] Then this practice changed. One research shows that tens of thousands of children have been recruited or used by armed forces or groups in 2014.[29] Children can become associated with armed conflicts in many different ways, some of them are abducted, others join military groups to escape poverty, to protect their families or communities, or because of the revenge. There are three reasons for child recruitment listed in the literature: 1. social disruptions and failure in development; 2. technological improvement in production of lighter and easier to use weapons; 3. the rise in brutality.[30] Usually children take direct part in combat, but they can be involved in some other way, as cooks, messengers, spies and even sex slaves.[31] The use of children for acts of terror, such as suicide bombers, is a means of modern warfare. The UN receives reports each year, which show that children, as young as eight or nine years old, are associated with armed groups. Position of girls who take part in hostilities is more specific because they have vulnerabilities unique to their gender and place in society, so they suffer specific consequences, such as rape and sexual violence, pregnancy and pregnancy-related complications, stigma and rejection by families and communities.[32] Because of the frequent use of children in armed conflicted, Paris Principles and Guidelines

25 There are many provisions in the ICC legal documents related to this, for example: articles 42(9), 43(6) of the Statute; rules 17(3), 19(f) of the RPE.
26 Chamberlain Bolanos, C., *op.cit*., p.213.
27 Schauer, E., *The Psychological Impact of Child Soldiering*, available at: https://www.icc-cpi.int/RelatedRecords/CR2009_01399.PDF; access: April 2017, p.34.
28 Vučinić, Z., *International legal protection of child in armed conflicts*, Faculty of Law, University of Belgrade, 1988, p.87.
29 UNICEF, *Press release*, 2014, available at: https://www.unicef.org/media/media_78058.html; access: April 2017
30 Singer, P.W., *Children in War*, Pantheon Books, New York. 2005, p.38.
31 UN Office of the Special Representative of the Secretary-General for Children and Armed conflict, *Child Recruitment and Use*, 2016, available at: https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/child-soldiers/; access: April 2017
32 *Ibid*.

on Children Associated with Armed Groups or Forces[33] (hereinafter: Paris Principles), gave definition of a child soldier: "A child associated with an armed force or armed group refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes". It can be observed that the definition is quite broad and doesn't refer only to children who take direct part in hostilities, but rather try to include broad range of activities that children can perform during armed conflicts.

The main question here is whether child soldiers should be considered only as victims, or as well as criminally responsible perpetrators of international crimes? The consensus on this issue has not been achieved, because of several reasons: 1. the widespread perception that children involved in armed conflicts should be consider more as victims rather than perpetrators of international crimes; 2. the lack of agreement on a minimum age of criminal responsibility at international level; 3. the different opinion on to what extent children can really voluntary join an armed force or group; 4. how the standard of "the best interests of the child" should be comprehended when it comes to assessment of child soldiers responsibilities; 5. the difference existing across countries and cultures about the concept of childhood, adulthood and evolving capacities of children.[34]

Now we will analyze the responsibility of juveniles from the aspect of above mentioned international criminal courts. The Statutes[35] of the ICTY and ICTR do not have any provision related to minimum age of criminal responsibility for international crimes. There are different opinions in the literature regarding this omission. Some argues that omission of such provision means that 18 is a minimum age of criminal responsibility[36], while others believe that if the intention was to exclude persons under the age of 18, that would be done explicitly.[37] Still, there was no trial for persons under the 18 in the practice of tribunals. Article 7(1) of the SCSL Statute stipulates: "the Special Court shall have no jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Should any person who was at the time of the alleged commission of the crime between 15 and 18 years of age come before the Court, he or she shall be treated with dignity and the sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society, and in accordance with international human rights standards, in particular the rights of the child". We can notice that age limit of criminal responsibility is 15, which means that the Court have jurisdiction over juvenile too, but the fact that prosecutor can prosecute only persons who are most responsible for international crimes influenced that non person under the age of 18 has been charged. Regarding the ICC Statute, article 26 contains explicit exclusion of jurisdiction over persons under the 18: `The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of the crime`.

As we saw, the fact is that children appear as perpetrators of international crimes and therefore it is necessary to take a stand on the issue of their criminal responsibility. On the one hand, prohibition of recruitment of children under the age of 15 is universally recognized and consequently even if those children commit an international crime, they will be

33 UNICEF, *Paris Principles*, 2007, available at: https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf, access: April 2017
34 Cedrangolo, U., *op.cit*., p.213.
35 ICTY, *The Statute*, 1993, available at: http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf, access: April 2017; ICTR, *The Statute*, 1994, available at: http://www.icls.de/dokumente/ictr_statute.pdf; access: April 2017
36 Happold, M., *Child soldiers, victims or perpetrators?*, University La Verne Law Review, no.29, 2008, p.84-85.
Konge, P., *International Crimes and Child Soldiers*, Southwestern Journal of International Law, vol.16, 2010, p.48.

considered only as victims, not as perpetrators. The persons who recruited children should be responsible for those crimes. On the other hand, most of the international courts (special emphasis should be put on ICC as the only one permanent international criminal court) have jurisdiction over persons under the age of 18. So the question is what is the position of juveniles over the age of 15 and under the age of 18 who committed an international crime? The fact that international courts mostly don't have jurisdiction over persons under 18 does not mean that these persons are not criminally responsible. It can be considered that international justice system is not interested in prosecuting these persons because they are mostly not the most responsible for international crimes. Maybe the solution could be prosecution before national courts of juveniles between 15 and 18 years old who committed an international crime, bearing in mind that mostly all national legal systems have specific rules for the prosecution and trial of juveniles. A good point of this solution is the fact that the juvenile can stay in their home country with the support of their family (bearing in mind potential problem of reintegration in society), but negative point is potential unequal treatment in the same cases (because juvenile justice systems differ from one country to another and the age limit for criminal responsibility is not the same in each country). This negative point could be overcome by some kind of international supervision over national trials. Still, the question is if the states are willing to accept this kind of supervision.

The other solution can be raising the limit of prohibition of child recruitment to 18, and, as we saw, there is a tendency in that direction at international level, bearing in mind that OPAC represents the first step toward this solution.

CONLUSION

We saw that the need for protection of children in armed conflicts was recognized a long time ago. At the beginning, this protection was provided through the instruments of International humanitarian law and Human rights law. These instruments provide general protection for all civilians, and children among them, and special protection which pertain to children only. The most important norms of these instruments, from the aspect of our analysis, are those which prohibit recruitment of children under the age of 15 in armed forces, bearing in mind that OPAC raises this age limit to 18. Further protection is provided through statutes of international criminal courts, prescribing child recruitment as war crime. These statutes include some other crimes where children are material element of the crime (such as genocide), but the fact is that children can appear as victims of all international crimes. The ICC Statute represents the step forward in regard to protection of children, prescribing their direct participation as victims in court proceedings whenever their personal interests are affected, prescribing a broad range of witness protective measures which are child-friendly oriented, and prescribing that children can benefit from reparation too. Vis-a-vis all these norms related to protection of children in armed conflicts is the fact that more and more children appear as perpetrators of international crimes. If the child who commits an international crime is under the age of 15 at the time of crime commission, the person who recruited the child should be responsible. But, if the child is over the age of 15 and under the age of 18 at the time of crime commission, bearing in mind that most of international courts have jurisdiction over persons over the age of 18, there are two potential solutions: first, to consider the child criminally responsible for having committed the crime and hold the trial at a national level with some kind of international supervision, or, secondly, to raise the limit of prohibition of child recruitment to 18, and consider the person who recruited child criminally responsible.

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THE SIGNIFICANCE OF THE OMBUDSMAN IN THE FIELDOF CHILDREN'S RIGHTS PROTECTION

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Abstract: Protection of children's rights, proclaimed by international and national documents will not make much sense unless socio-political conditions of their accomplishment and an adequate system of their protection are not provided. An important role in providing the respectance of children's rights and their protection has the Ombudsman, as an independent authority. The Ombudsman institution was first introduced into the legal order of the Republic of Serbia as a legal category, with the adoption of the Law on the Ombudsman in 2005, and then as a constitutional category with the adoption the Constitution of the Republic of Serbia in 2006. The Law on the Ombudsman foresaw the specialization in the performance of law-entrusted tasks, which, conditionally speaking, caused the specialization of the Ombudsman institution in our country. One of the areas in which specialization is applied in the performance of the Ombudsman's work is the area of the child's rights, where the Deputy Ombudsman for the child's rights and gender equality has been established. Performing duties defined by law, it supports respecting the most important principles proclaimed by the Convention of children's rights, being as following: non-discrimination, dedication to children's best interests, the right to live, survive and development and respectance of children's attitudes. This essay analyzes constitutional and legal position of the institution of the Ombudsman in the Republic of Serbia, i.e. its position in the Constitution of the Republic of Serbia and the Law of the Ombudsman.

Keywords: the Constitution of the Republic of Serbia, the Law of the Ombudsman, the Ombudsman, children's rights, violence

INTRODUCTORY REMARKS

The Ombudsman is a body that protects human rights primarily from mismanagement of state authorities. The term "bad administration" implies "administrative irregularities, omissions, abuse of position, negligence, unlawful conduct, unfair treatment, improper and incompetent treatment, discrimination, unnecessary delay or non-interference".[1]

According to the Constitution of the Republic of Serbia[2] from 2006, the Ombudsman acquires the epithet of the constitutional category and is defined in the highest legal act as "an independent state body that protects the rights of citizens and controls the work of public administration bodies, the body competent for the legal protection of property rights and the interests of the Republic of Serbia, as well as other bodies and organizations, enterprises and

1 Аћимовска – Малетић, И. European standards on the institution of an Ombudsman, in: *The law of the Republic of Serbia and the EU law – current state of affairs and perspectives – collection of papers*, Vol. 1, Ниш, 2009,377-378.
2*Устав Републике Србије*, ''Сл. гласник РС", бр. 98/2006

institutions entrusted with public authority" (Article 138). The Constitution determines the role, position and functions of the Ombudsman.

One of the objections that can be addressed to a creator of the Constitution, which Simovic points out, is his failure to constitutionalize the Ombudsman's powers, and this question is left to the legislator. Otherwise, the institution of the Ombudsman, which for the first time appeared in our legal order, would be strengthened, and therefore its legal position would remain outside the reach of the parliamentary majority.[3]

At the time of the adoption of the Law on the Ombudsman, the 1990 Constitution of the Republic of Serbia,which did not foresee the institution of the ombudsman, was in force. This institution represented a non-constitutional category until the adoption of the Constitution in 2006. The Law on the Ombudsman[4] defines the conditions and procedure for the election and dismissal of the Ombudsman and the Deputy Ombudsman, regulates the authority and procedure before the Ombudsman, the Ombudsman's responsibility in regards to the National Assembly and the internal structure of the institution. Pursuant to the Law on the Ombudsman, the basic duty of the Ombudsman is to ensure the protection and promotion of human and minority freedoms and rights (Article 1).

The Law stipulates that the Ombudsman has four deputies who assist him in carrying out the tasks established by the law, and within the authority that he conferred on them. The law also contains a provision according to which the Ombudsman should take care of providing certain specialization for carrying out tasks within his competence when transferring the powers to the deputies. In this regard, specialization in the areas of protection of the rights of the child, the rights of detained persons, the rights of persons belonging to national minorities, the rights of persons with disabilities and gender equality is explicitly proclaimed (Article 6).

The most powerful means of action of the Ombudsman are the report he submits to the Parliament and his possibility of addressing to the public regarding the illegal and inappropriate work of state authorities. In this sense, the existing law envisages the obligation of submitting a regular annual report of the Ombudsman to the National Assembly, which contains data on the activities of the Ombudsman in the previous year, noted shortcomings in the work of the administrative bodies and proposals for improving the position of citizens in relation to the administrative bodies. The report shall be published in the "Official Gazette of the Republic of Serbia" and on the website of the Ombudsman, and shall also be submitted to the media (Article 33). However, discouraging is the fact that administrative bodies generally do not act in accordance with these proposals, and futhermore the National Assembly has not been reviewing the Ombudsman's reports for the past two years.

According to the solutions envisaged in the Constitution of the Republic of Serbia and the Law on the Ombudsman, the institution of the Ombudsman corresponds to the traditional model of the ombudsman. The role of the Ombudsman consists, on the one hand, of control of the administration and serves to check the work of the administration in the broadest sense of the word. On the other hand, the role of the ombudsman is increasingly linked to the protection of citizens' rights, and the most recent tendency is the extension of the Ombudsman's role in the area of protection of human rights in the broadest sense of the word.[5]According to the solutions in our legal order, the Ombudsman performs all these functions.

3 Симовић, Д. Зекавица, Р. *Полиција и људска права*, Криминалистичко-полицијска академија, Београд, 2012,191

4 *Закон о Заштитнику грађана*, ''Сл. гласник РС", бр. 79/2005 и 54/2007

5 Милков Драган. Заштитник грађана Републике Србије, in: *Зборник радова Правног факултета*, бр. 1-2. Правни факултет Универзитета у Новом Саду, Нови Сад, 2008, 198

CHILDREN'S RIGHTS AND THE MOST IMPORTANT DOCUMENTSIN THE FIELD OF THEIR PROTECTION

The Republic of Serbia ratified a large number of international documents in the field of children's rights, by which it is obliged to create comprehensive national legislative framework in the field of respecting and protecting the children's rights. The most important international document in the field of children's rights is the Convention on the Rights of the Child which was adopted by the United Nations' General Assembly in 1989, by the Resolution 44/25.The Socialistic Federal Republic of Yugoslavia ratified this document in 1990[6], and thus took over obligations coming out of the Convention. In 2002 the Federal Republic of Yugoslavia ratified two optional protocols[7], and in 2012 the Republic of Serbia ratified the third optional protocol together with the Convention. In this way the Republic of Serbia has shown the readiness to protect the children's rights that are determined by the Convention. Republic of Serbia, by article 44 of the Convention, obliged itself to make initial and periodic reports to the Children's Rights Committee. These reports to the application of the Convention, optional protocols and respect of the guaranteed children's rights. The basic principles proclaimed by the conventions are: non-discrimination, dedication to the best interests of child, the right to live, survival, as well as development and respect for child's attitudes.[8] The Convention protects children's rights by setting standards in the fields of healthcare, education, as well as in legal, civic and social services.

Children's rights are regulated by the Constitution of the Republic of Serbia, so that the Constituent states that children enjoy human rights according to their age and mental maturity, as well as that every child has the right to his/her name, to be enlisted in the birth register, the right to know his/her origin and the right to preserve identity. The Constitution also proclaims children's protection from psychological, physical, economic and any other way of exploitation and abuse and guarantees equal rights to both children born in marriage and out of wedlock (Article 64). Hence, this is the first time in the constitutional history of the Republic of Serbia that children's rights are explicitly proclaimed. Article 66 of the Constitution defines special protection of the family, mother, single parent and a child and it guarantees special protection of children without parental care, psychologically and physically disabled children, prohibition of work for children yonger than fifteen, but also prohibition of work for children younger than eighteen in regards to the jobs that have bad influence for their health and moral. Article 68 of the Constitution guarantees children right to health care, financed out of public revenue, unless they accomplish it from other source, while the Article 71 proclaims everybody's right to education, stating that primary and high education are free of charge.

However, it's very important to mention that Serbia still doesn't have a legal definition of a term "child", nor a Law of children's rights, which would determine child's position in an overall manner, although the work on preparation of this Law was started in 2011 by the Ombudsman. The adoption of this Law would determine child's position in an overall manner and it would respond on the demands of the Convention of children's rights for harmonization of the regulations in this field in order for these to be applied more efficiently.

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6 *Закон о ратификацији Конвенције Уједињених нација о правима детета*, "Сл. лист СФРЈ – Међународни уговори", бр. 15/90 и "Сл. лист СРЈ – Међународни уговори", бр. 4/96 и 2/97

7 *Закон о потврђивању Факултативног протокола о продаји деце, дечијој проституцији и дечијој порнографији, уз Конвенцију о правима детета*, "Сл. лист СРЈ – Међународни уговори", бр. 7/2002 and *Закон о потврђивању Факултативног протокола о учешћу деце у оружаним сукобима уз Конвенцију о правима детета,* "Сл. лист СРЈ – Међународни уговори", бр. 7/2002

8 *Convention on the Rights of the Child,* November 20th 1989, Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx Accessed: January 26th 2017

THE IMPORTANCE OF THE OMBUDSMAN IN THE PROTECTION OF CHILDREN'S RIGHTS

Activities of the Omubdsman in the field of the children's rights relate to dealing upon complaints of citizens and children in case of infringement of the children's rights or even acting by own initiative in case of being informed about possible infringements of children's rights. According to the data from Regular Annual Report, the Ombudsman dealt with 479 cases, out of which 450 were initiated by complaints of citizens and 29 were result of his own initiative. The cases from the field of children's rights represent 7.64% of the total number of examined cases and during 2016 this number increased by 7.4% compared to 2015.[9]

According to the Ombudsman's data, the endangering of children's rights in Serbia is particularly obvious in certain social categories, as follows: poor children, children with disabilities and children with developmental disorders, children without parental care, especially those placed in institutions, children living on the street, children who are working. In most categories of particularly vulnerable children, the rights of Roma children are most often endangered. The Ombudsman states that violence against children is still expressed - from neglect, various forms of exploitation, to physical and sexual abuse, both in the family, which is least visible, and among peers.[10]

Regarding the types of children's rights violations during 2016, there were as many as 175 cases of violation of the right to respect the best interests of the child, which makes up 34.72% of the total recorded children's rights violations and classify this violation in the first place. The second most violated right of child is the right to protection against violence, abuse and neglect (20.83%). The following are the violation of the rights of the child to maintain personal relationships with the parent (12.1%), then violation of the right on the proper development (5.56%), etc.[11]During 2015, these were the most frequently violated children's rights.

The best interest of the child is one of the basic principles in achieving, respecting and protecting the rights of the child, which is contained in the Convention on the Rights of the Child. It stipulates the obligation of all public or private institutions of social care, courts, administrative bodies or legislative bodies to take into account their best interests in all child-related activities.[12]This right is closely related to the right of the child for his opinion to be heard, and primarily to be informed about his rights, which implies the obligation of the acting authorities to ensure that the child is informed beforehand about all the facts that are important for the decision and in a language adapted to the child, and to enable him to express his opinion freely.[13]This principle is also provided in other international documents and is closely related to the right of the child to participate.

9 *Редован годишњи извештај Заштитника грађана за 2016. годину*, Република Србија, Заштитник грађана, 161-7/17, Београд, 2017, 71. Available at: http://www.zastitnik.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf Accessed: March 28th 2017

10 Available at: http://www.zastitnik.rs/index.php/prava-deteta Accessed: December 14th 2016

11 *Редован годишњи извештај Заштитника грађана за 2016. годину*, Република Србија, Заштитник грађана, 161-7/17, Београд, 2017, 73. Available at:: http://www.zastitnik.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf Accessed: March 28th 2017

12 Вучковић Шаховић, Н. Doek, J. Zermatten, J. (2012) The CRC Committee's General Comment No. 10, in: *The Rights of the Child in International Law*, Berne: Stampfli Publications Ltd., 303-309

13 Стевановић, И. Вујић, Н. Значај уважавања принципа најбољих интереса детета и његовог права да се његово мишљење чује у области заштите малолетних лица жртава савремених облика криминалитета од последица секундарне виктимизације у кривичном поступку, in: *Супротстављање савременим облицима криминалитета – анализа стања, европски стандарди и мере за унапређење* (Том 1) – зборник радова, 179-192, Криминалистичко-полицијска академија, Фондација ''Ханс Зајдел'', Београд, 2015, 179

The contribution of the Ombudsman in the area of the rights of the children is reflected in his support and respect for this principle, which is also provided by the Convention on the Rights of the Child. The principle is based on the appreciation of the child's opinion in matters that concern him, i.e. which relate to him. This concept was promoted by the Ombudsman by forming a "Panel of Young Advocates of the Ombudsman" in 2010, as an advisory body to the Ombudsman. The panel is composed of 30 boys and girls who have been selected through the Public Invitation on the entire territory of the Republic of Serbia and their role is reflected in the fact that they point out the problems they face with to the Ombudsman and make suggestions for improving the position of young people in Serbia.

However, traditional practices and cultural attitudes in the family, schools and certain social and judicial institutions continue to impede the full realization of the rights of child to express their views freely, as the Committee on the Rights of the Child points out in its observations.[14]

In its annual reports, the Ombudsman presents a series of proposals to the authorities in the field of child's rights and the protection of children against violence. In this regard, the Ombudsman sent a proposal to the Government to: prepare and submit for adoption the Bill on the Confirmation of the Optional Protocol to the Convention on the Rights of the Child on the procedure for submitting complaints to the Committee on the Rights of the Child to the National Assembly, signed by the Republic of Serbia in 2012; perform an overview of the realization and evaluation of the National Action Plan for Children and adopt a new National Action Plan for Children; intensify activities to make the process of protecting children from violence, abuse and neglect efficient and functional. The Ombudsman also sent a suggestion to the Ministry of Justice to propose amendments of the Criminal Code and the Law on Juvenile Offenders and Criminal Protection of Juveniles in accordance with the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse in a way that provides full protection of children victims of secondary traumatization and victimization. A number of proposals related to the rights of the child is also addressed to the Ministry of Education, Science and Technological Development, autonomous province bodies and local self-government units, which relate to: the need for a significantly greater scope of control over the acting of educational institutions and education in cases of violence against pupils, especially the timely, correct and conscientious application of the Law on the Foundations of the education system, the Rulebook on the Protocol of institution's acting in response to violence, abuse and neglect, the General Protocol for the protection of children from abuse and the Special Protocol for the protection of children and students against violence, abuse and neglect in educational institutions; ensuring efficient and timely initiation and conduct of proceedings in order to determine the personal responsibility of employees at school for violation of the prohibition of violence, abuse and neglect, for violation of work obligation and for failures in the implementation of measures to protect child from violence, abuse and neglect.[15] However, as Simović points out, one cannot get the impression that anyone fears from the regular annual reports of the Ombudsman, including the government that leads the state administration for which the results are devastating.[16]

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14 *Concluding observations on the combined second and third periodic reports of Serbia,* Adopted by the Committee at its seventy-fourth session (January 16th – February 3th 2017) Available at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/concluding_observations_on_the_combined_second_and_third_periodic_reports_of_serbia.pdf Accessed: June 10th 2017

15*Редован годишњи извештај Заштитника грађана за 2015. годину,* Република Србија, Заштитник грађана 161-3/16, Београд 2016, 304
Available at: http://www.zastitnik.rs/attachments/article/1431/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202015%202.pdf Accessed: February 18th 2017

16 Симовић, Д. Зекавица, Р. *Полиција и људска права,* Криминалистичко-полицијска академија, Београд, 2012, 193

This preventive significance of the Ombudsman Institution should instigate the holders of public authority to more responsible and more conscientious action, because “the sword of Damocles hangs over their heads”.[17]However, according to these proposals of the Ombudsman for the improvement of the position of children in relation to the authorities, there were no actions taken either during 2015 or 2016; nor did the National Assembly and the Committee for the Rights of the Child of the National Assembly consider the Annual Reports of the Ombudsman for 2014 and 2015. Thus, the recommendations, opinions and initiatives pointed out by the Ombudsman remain a dead letter, which also diminishes the significance of the institution of the Ombudsman.

Given that there are no specialized Ombudsmen yet, the establishment of a Deputy Ombudsman for the should be of great importance for the realization and protection of the rights of the child. However, at the same time, the Deputy Ombudsman for the rights of child is given the authority in the field of gender equality, which are two different and large fields of activity. The Deputy Ombudsman for children’s rights is a member of the European Network of Ombudspersons for Children (ENOC)[18], whose task is to facilitate the promotion and protection of children’s rights formulated by the UN Convention on the rights of child. Also, the Ombudsman is a member of the Network of Ombudsmen for Children of South East Europe, which consists of both general ombudsmen and ombudspersons specializing in the field of child rights, which aims to promote and protect the rights of the child. However, the impression is that the role of Deputy Ombudsman for children’s rights is somewhat limited due to insufficient resources, but also insufficient powers and visibility.

At the end of November 2016, the Draft Law on the Ombudsman for Children[19] was adopted, which, at least formally, made a significant step towards improving the rights of the child and protecting children from violence. By the Draft law, the Ombudsman for Chidren is designated as an “independent state body that protects, monitors and promotes the rights of the child” (Article 1). According to the Draft, the competence of the Ombudsman for Children is to: monitor the compliance of laws and other regulations in the Republic of Serbia concerning the protection of children’s rights with the provisions of the Constitution of the Republic of Serbia, the United Nations Convention on the Rights of the Child and other international documents relating to the protection of rights and interests of children; monitor the fulfillment of the obligations of the Republic of Serbia arising from the United Nations Convention on the Rights of the Child and other international documents relating to the protection of the rights and interests of children; monitor the implementation of all regulations relating to the protection of the rights and interests of children; monitor violations of the rights and interests of children; advocates the protection and promotion of the rights and interests of children; propose taking measures to protect and promote the rights of children, as well as preventing harmful acts that endanger the rights and interests of children; inform the public about the state of children’s rights; perform other tasks determined by this Law (Article 5).

By determining the scope of responsibilities of the Ombudsman for Children, the impression is that no progress has been made in relation to the existing solutions envisaged by the Ombudsman institution. The Draft did not foresee the possibility of lodging a complaint, i.e. it did not foresee any appeal procedure that would allow child to address the Ombudsman, nor any new mechanism for protecting the rights of child, in order to justify the establishment of a special Ombudsman in the field of child’s rights. In regards to this Draft Law on the

17 Јовичић, М. Омбудсман, in: *Демократија и одговорност, изабрана дела*, Службени гласник, Београд, 2006, 52

18 *ENOC – European Network of Ombudspersons for Children*. Available at: http://enoc.eu/?page_id=8 Accessed: February 18th 2017

19*Нацрт Закона о Заштитнику права детета.* Available at: http://www.paragraf.rs/nacrti_i_predlozi/221116-nacrt_zakona_o_zastitniku_prava_deteta.html Accessed: February 16th 2017

Ombudsman for Children, the Committee on the Rights of the Child expressed its concern over the Draft's incomplete alignment with the "Paris Principles" concerning the status and functioning of national institutions for the protection and promotion of human rights.[21]

Bringing down the Ombudsman's rights to promotion of the rights of child, pointing out irregularities, monitoring compliance of national regulations with international documents relating to the protection of the rights of child or notifying the public about the state of the rights of child, does not provide any additional or stronger authority than those available to the Ombudsman of the General A type that has existed for over a decade in our country. Therefore, as a more efficient solution, the empowerment of the Ombudsman institution of the general type, the strengthening of its position and institutional independence, and the observance of the recommendations addressed by the Ombudsman are imposed.

CONCLUSION

The Convention on the Rights of Child, as the most important international document in the field of child's rights, obliges the Republic of Serbia to respect the undertaken obligations and continuous work on the protection and promotion of the rights of child and the protection of children against violence. This document represents a framework for the advancement of children's rights and is based on four basic principles - the right to life, survival and development, the best interests of child, the right to participate and the right to non-discrimination. The establishment of the Ombudsman for Children, as an independent institution, should contribute to the more efficient realization, promotion and protection of the rights of child, as well as the protection of children against violence. The existing Draft Law on the Ombudsman for Children does not provide the Ombudsman for Children with any more significant powers than those available to the existing institution of the Ombudsman. This calls into question the justification of the establishment of a special Ombudsman for Children, as a specialized Ombudsman in the field of child's rights. The establishment of the Ombudsman for Children will make sense if more significant powers are determined, as well as the procedure of filling a complaint to a so-called Child Ombudsman, but also if Ombudsman becomes visible and more accessible to children, and if the assumptions for his institutional independence are fulfilled. This would also increase the role and contribution of this institution in the field of child's rights protection.

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CRIMINAL PROCEDURE ACT AS THE »SKELETONS OF THE LEGAL ORDER« - WHAT'S NEW IN SLOVENIA?

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Abstract: Slovenian Criminal Procedure Act has been amended thirteen times since 1995. The changes were principally made to comply with the decisions of the Constitutional Court or binding transnational acts. The last Draft Act comes as mandatory implementation of transnational rules, decisions of the Constitutional Court and the ambition to achieve a more efficient and economical conduct of criminal proceedings while ensuring an appropriate level of rights protection of the participants, and more adversarial criminal proceedings, elimination of shortcomings and ensuring greater legal certainty and legality in proceedings. The analysis of the Draft Act has shown changes in the performance of certain investigative and procedural acts: the hearing of witnesses in pre-trial proceedings before the Prosecutor or the Police, the Police duty to inform the Prosecutor, the possibility of using the IMSI-catcher, the arrangements regarding the confidentiality of the relationship between lawyer and client, a more precisely arranged appeal process, changes in the procedure for extradition of accused and convicted persons and transferring the enforcement of sentences, and most significantly - the abolition of the judicial investigation. The changes are presented in the legislation of other legal systems. Practically all institutions are concerned by these changes and have expressed their opposition, because they believe the Draft Act represents a significant conceptual change of Slovenian criminal procedural law which may be extremely harmful if implemented recklessly. Further, the question arises which of the provided changes are actually needed, since according to publicly available data, more than half of the criminal cases end with the recognition of guilt or an agreement on the admission of guilt. That has significantly shortened the duration of the procedures and consequently increased their efficiency. An increase of efficiency is probably one of the main reasons for the abolition of judicial investigation.

Keywords: legislation, principles, legal certainty, legality, criminal proceedings

INTRODUCTION

Thirteen amendments of the Criminal Procedure Act (hereinafter: CPA) have since 1995 shared both lay and professional public at two poles [1]. Since 2000 the legislature has been preparing a new model of ciminal procedure based on amendments and changes of the Act. The new act shall set out a different role and authority of the Police, Public Prosecutors and courts in criminal proceedings in terms of the transfer of jurisdiction for an investigation by the court to the Prosecutor's office. Simultaneously, the role of the court as guarantor for the most

1 Official Gazette of the RS, nr. 32/12, 47/13, 87/14 and 8/16

invasive interference in the rights of suspects shall be preserved, which results in changes within the organization of the trial and regular and extraordinary legal remedies. The CPA-N Draft Act is also pursuing other important goals like increasing the level of transparency and building trust in the rule of law[2].

»OLD PROBLEMS OF CPA'S »V. NEW SOLUTIONS?

According to the legislature, CPA-N amended draft includes positive solutions. At the same time, it is necessary to eliminate the weaknesses in practice from the past.

The opinon was given by those using the law on a daily basis or working in the field of ensuring legal certainty and respect for human rights. In the course of proposal preparation, the legislature tried to follow the proposal for improving efficiency of the criminal proceedings provided by judicial experts, including the recommendations of the Ombudsman[3].

The analysis of the amended CPA-N is presented in strands below, including identification of the problems in implementation and response of the professional public[4]:

1. The principle of mutual recognition of judgments and other decisions of judicial authorities, which should become the cornerstone of judicial cooperation in civil and criminal matters between the Member States of the European Union[5].

2. Adequate protection of victims of crime as one of the commitments of the European Union[6]. Implementation of Directive 2012/29/EU[7], establishing minimum standards for rights, support and protection of victims of crime, will lead to significant progress in the level of protection of victims in criminal proceedings throughout the EU Member States, as so that the victims of crime receive appropriate information, support and opportunity to participate in criminal proceedings and, if necessary, appropriate protection. In the directive, the concept of a victim is defined differently than in the current CPA-M[8], as it also applies to family members of a person whose death was directly caused by the crime and have suffered greatly due to the death of this person. At the same time, the Directive requires the adoption of appropriate measures to assist victims to understand and be understood from the first contact onwards with the competent authorities. That may foresee the possibility of the victim being accompanied by someone of his choice from the first contact onwards, especially when the victims affected by the crime need help. It is necessary to ensure the timely and individual assessment of the victims in order to identify specific protection needs, taking into account personal characteristics of the victim and the type, nature and circumstances of the offense.

3. Covert investigational measures: CPA covert investigational measures, the conditions and procedure of ordering and their implementation shall be governed by the 149.a to 155.a, 156.a articles. The Constitutional Court of the Republic of Slovenia has annulled the entire XIII. Chapter Electronic Communications Act.[9] Among other things, it is estimated that this measure is not necessary because the legislature processing of personal data is not bounded only to the investigation, detection and prosecution of serious crime.[10] And thereby markedly

2 The Draft Act CPA - N ; 2016
3 The Draft Act – N, 2016; Prelesnik, 2016; Prelesnik, 2016a
4 Ibid
5 As defined in the Presidency Conclusions of the European Council in Tampere, 15. and 16. October 1999
6 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings
7 The European Parliament and of the Council of the European Union, 2012
8 Official Gazette Nr. 87/14
9 Decision of the Constitutional Court Nr. U-I-65/13
10 Judgement of the European Union Court in Joined Cases C-293/12 and C-594/12

interfers with the right of personal data protection, while not carefully measuring out the circumstances under which this interference is limited and thus interfered with the right of personal data protection in accordance with Paragraph 1 / Article 38 of the Constitution[11].

4. Interrogation of the suspect and witnesses by the Public Prosecutor or the Police in pre-trial proceedings: On the one hand, it is necessary to facilitate the possibility to interrogate the suspect in pre-trial proceedings; on the other hand, there are adequate safeguards required to prevent abuse. The same applies to the examination of witnesses.

5. Penal order: Procedure with penal order was implemented in 2003 with the amended CPA-E [12] and represents one of the two shortened procedures. In practice, however, there were situations where the judgment of the penal order could not be served to the defendant, who was hiding, not revealing his residence or avoiding the service.

6. Improvements of the legal basis for cooperation between competent authorities and faster duration of the procedure: Under current arrangements, decisions amending the final judgment without reopening of criminal proceedings, a change of security measures, probation revocation, conviction deletion and termination of security measures are to be dealt with by the interlocutory-proceedings panel. In practice, there was a need for a more flexible determination of competence of the specialized department conducting the investigation and being part of more complex cases of organized and economic crime, terrorism, corruption and other related offenses as well as facilitating access to information from criminal records.

7. Arrangements for interventions in the confidential relationship between a lawyer and a client: The Constitutional Court [13] has recently deliberated on the initiative of the Slovenian Bar Association to review the constitutionality of the Criminal Procedure Act and the Attorneys Act [14], where there were issues raised as to what extent the Police can intervene in the confidential relationship between a lawyer and a client. The same view is to be found in the judgments of the European Court of Human Rights [15]. The initiative has been taken into account in the draft amendment to the CPA-N.

8. Deciding on detention: The current regulation is not clear when it comes to deciding on an appeal against a decision to order detention, ordered by the Supreme Court of the Republic of Slovenia in deciding on an appeal against the judgment of the court of second instance (in this regard constitutional audit is also open).

9. Detention: Taking into account the recommendations of the Human Rights Ombudsman [16] it applies as appropriate to consider amending the disciplinary punishment of the detainee, more humane rules of detention and the possibility of remedy in the case of banned visits for detainees.

10. Access to the file in the pre-trial proceedings: Under limited circumstances and subject to appropriate safeguards an explicit legal basis to view or copy the Police file in pre-trial proceedings by the suspect and the defense lawyer could be set.

11. Exclusion of public from the main hearing: Taking into account the recommendations of the Human Rights Ombudsman [17] as well as the Supreme Public Prosecutor's Office it

11 Constitution of the Republic of Slovenia
12 ZKP – E;2013
13 Decision of the Constitutional Court of the Republic of Slovenia U-I-115/14, Up-218/14 z dne 21. 1. 2016
14 Official Gazette of the RS, nr. 8/2016
15 Cases like Michaud v. Francija (no. 12323/11) , Heino v. Finska, no. 56720/09, Roemen and Schmit v. Luxemburg, no. 51772/99, Kolesnichenko v. Rusija, no. 19856/04, Heino v. Finska, no. 56720/09, Roemen and Schmit v. Luxemburg, not. 51772/99
16 Prelesnik, 2016; 2016a
17 Ibid

applies as reasonable to consider the possibility of clearer security interest of witnesses during the hearing.

12. The protection of the journalist's source or identification of the author

13. The rights of the house and personal search: It is necessary to ensure the protection of the rights of the holder of an apartment or premises in a house search, when the holder or his representative are not avaliable. In addition, a person that may request a court order for house or personal search shall be chosen.

14. Appeal against the judgment of the court of second instance: Appeal against the judgment of the court of second instance is rather limited in the current CPA.

15. Separate opinion of Supreme Court judges: Supreme Court judges could be given the opportunity to give separate opinions.

16. The procedure for extradition of accused and convicted persons and the transfer of enforcement of the sentence: International cooperation in criminal matters is carried out in accordance with the Act on Cooperation in Criminal Matters with the Member States of the European Union[18].

17. Punishment with a fine due to insulting statement: In accordance with the judgment of the ECHR Pečnik against Slovenia [19] and Kyprianou v. Ciper[20] and the fact that the current CPA is under constitutional review, punishment with a fine should be considered. The judge against whom the insult applies, shall not decide on the punishment.

CPA-N - THE FIRST STEP TOWARDS THE ABOLITION OF THE JUDICIAL INVESTIGATION?

The Draft Act foresees the abolition of judicial investigations, which is opposed by all experts in pre-trial and criminal proceedings, i.e. prosecutors, judges, lawyers and the Police. According to the Police they would receive the greatest burden, as it will be necessary to audiovisually record the confessions of victims and witnesses[21].

The prosecution, in particular lawyers, however, warn that the accused would have the first opportunity to propose the exculpatory evidence at the trial. The Ljubljana District Judge Andreja Sedej Grčar noted that CPA-N could jeopardize the agreement on admission of guilt, which was implemented in our judicial system in the CPA-K[22]. Reports of Public Prosecutions Office[23] for 2012-2015 show that the number of agreements on admission of guilt is rising on annual bases. With regard to statements of admission of guilt from 2012 to 2015 there was a constant increase of approximately 50% per year recorded. In 2012, there were 1,335, whereas in 2015 there were 3,838 of such cases. This institute undoubtedly reduces the duration of procedures, and the same view is shared by Mr. Blaž Kovačič Mlinar who adds that there is no reason to implement some new changes for faster completion of procedures at the expense of the abolition of the judicial investigation. Ciril Keršmanc's opinion from the Ministry is the opposite[24].

18 Official Gazette of the RS, nr. 48/13, 37/15
19 Application no. 44901/05
20 Application no. 73797/01
21 Bobnar, 2016
22 CPA – K, 2012; Šugman Stubbs, 2015
23 Annual Report of Suprime State Prosecutors Office of the Republic of Slovenia ; 2012, 2013, 2014, 2015
24 Žišt; 2016

THE PRINCIPLES AND MAIN SOLUTIONS CPA – N

The main purpose of the proposed solution followed by practical experience is to enhance legal certainty and ensure respect for legality in criminal proceedings. Proposal of CPA-N, in addition to the below mentioned solution, also introduces a new principle (or general obligation) of considerate conduct in pre-trial and criminal proceedings with parties to the proceedings, who are vulnerable in the broadest sense of the word (New Article 18a CPA). **Solutions for the proposal of CPA-N [25]:**

- Implementation of Directive 2012/29/EU or systemic regulation of the victim's position in criminal proceedings;

- Appropriate rules for action in the privileged communication, taking into account the recent constitutional jurisprudence and law of the ECHR concerning confidentiality of the lawyer-client relationship;

- Enhancing the efficiency of the Police and the Public Prosecutor's Office to detect and investigate complex and serious crimes and prosecuting offenders by establishing two new covert investigational measures and a change in conditions for the use of traffic data;

- Introducing the possibility of hearing the witnesses by the Public Prosecutor or the Police in pre-trial proceedings or facilitating the possibility of interrogation of suspects by the Public Prosecutor or the Police in pre-trial proceedings, while ensuring appropriate safeguards (recording of the hearing, the possibility of a subsequent confrontation with the witness, inability to base a judgment on the evidence of hearing if they have not complied with the provided standards);

- The establishment of an explicit legal basis for accessing the suspect's file in pre-trial proceedings, thus indirectly providing equality of arms;

- Ensuring the protection of the journalist's source, except when the latter is necessarily required to be disclosed in relation to narrowly prescribed statutory exceptions;

- Expanding the possibilities to exclude public from the main hearing, taking into account the proposals of Ombudsman[26];

- Protecting the rights of suspects or defendants (decision on custody, arrangement of extradition proceedings) and others (the appeal against the judgment of the court of second instance);

- Punishment with a fine for insulting statements shall be governed in accordance with the law of the ECHR and the Constitutional Court of the Republic of Slovenia;

- More precise regulation of the power to issue a court order for house and personal search and the rights of the holder of the premises when he is not present;

- Reducing the burden of the competent authorities by improving the legal basis for their cooperation and faster duration of the processes, e.g. the possibility to transfer a case that is dealt with by a specialized department to be dealt with by the district court in which a specialized department operates;

- Providing the possibility that Supreme Court judges explain their (dis)agreement with a separate opinion;

- Providing the possibility that the Public Prosecutor proposes supervised probation at the proposal to pass judgment on the penal order.

The Government of the Republic of Slovenia is convinced that effective pre-trial and crim-

25 The Draft Act CPA - N ; 2016
26 Prelesnik, 2016; 2016a

inal proceedings are those in which the rights of the defense adequately protect the individual against unreasonable accusations and unjustified interference with their rights, and should not be a tool to delay the proceedings. The CPA-N amended act shall provide the authorities of detection, prosecution and trial with all necessary tools for more efficient work. The actual use of these tools is completely in their hands, while the Ministry of Justice feels optimistic about improving prosecution of criminal offenses, not only because of the improved legal framework, but also due to the arrival of new generations of employees in these bodies. We hope that these novelties will be used adequately[27].

REGULATION IN OTHER LEGAL SYSTEMS

A short overview of the regulation in other legal systems is presented below[28]:

1. Examination of witnesses in pre-trial proceedings before the Public Prosecutor or the Police.

GERMANY: The Public Prosecutor and the Police can interrogate witnesses in pre-trial proceedings. Audio and video recording of the hearing is not mandatory. Such hearings of pre-trial proceedings are generally not a fully valid evidence in court proceedings.

PORTUGAL: Witnesses can be heard during the Public Prosecutor investigation by a Public Prosecutor or a criminal investigator. The hearing may be audio or video recorded.

POLAND: The Public Prosecutor or the Police may hear a witness in pre-trial proceedings. Hearing may be audio or video recorded.

2. IMSI-catcher

POLAND: Polish law does not regulate the use of the IMSI-catcher. However, institutions such as Post, Telecom and Customs are obliged to provide the court or the Public Prosecutor with correspondence, transfers, and information relevant to criminal proceedings.

FINLAND: In Finland the Police may use IMSI-catcher for the purposes of criminal investigations.

FRANCE: The French criminal procedural legislation does not regulate the use of the IMSI-catcher (but it is used in the field of intelligence).

IRELAND: In Ireland, there is no specific legislation. Surveillance of mail and electronic communications is ordered by the Minister.

GERMANY: The German Criminal Procedure Act regulates the use of the IMSI-catcher in order to obtain cell phone numbers and cards and the location of a mobile phone. However, use of data obtained from the core of private life is prohibited.

3. Arrangements for interventions in the confidential relationship between a lawyer and a client

GERMANY: The German legislation prohibits the seizure of items or files of correspondence between the accused and persons who have the status of privileged witnesses and records of persons in the realm of privilege for the protection of professional secrecy.

SWITZERLAND: The Swiss Criminal Procedure Act regulates the right to give up the profession of witnesses in order to protect the confidentiality of data thus also lawyers.

4. Judges' separate opinions

ENGLAND AND WALES: Whenever the Chamber is making decisions, the possibility of

27 Press release; 2017
28 The Draft Act CPA - N ; 2016

passing the judge's opinion is limited.

LITHUANIA: The right of general jurisdiction or administrative judges at all levels of judicial decision-making, including the Contitutional Court, is to give a dissenting opinion.

CROATIA: Dissenting opinions are kept in a special envelope in a case file.

POLAND: Concurring and dissenting opinions in criminal and administrative litigation are allowed at all levels of the judicial decision-making.

5. An extradition of the accused and convicted

AUSTRIA: Austria's international legal assistance is regulated in the Federal Act. Extradition process is divided into two phases, namely the judicial and political phase.

UNITED KINGDOM: Regulated in Extradition Act[29]. The court decides about the extradition (»Magistrate Court«).

GERMANY: International Legal Assistance Act in criminal matters[30] provides a twin-track extradition procedure, which is divided into the judicial phase and the proceedings with the administrative authorities.

CROATIA: The process is regulated by the International Legal Assistance Act in criminal matters[31] and is biphasic.

BELGIUM: The process is regulated by the Extradition Act including the grounds for extradition refusal.

ITALY: Regulated in the Criminal Procedure Act, as decided by a court of appeal, which may also reject extradition.

As presented, the CPA-N introduces the institutes that are already present in the legal systems of European countries and the latter does not conflict with the primary law of the EU. At the same time, judicial investigation is being abolished, following the example of most European countries[32].

CONCLUSION

The social environment is changing along with the way of life and crime. Detection and investigation of complex, severe, as well as cross-border offenses and rapid technological development are the reasons for authorities having effective measures and legal levers for detection, prosecution and trial. I am not in favor of the revolutionary solutions, but the latter becomes meaningful when the accumulated amount of things becomes an obstacle or even dangerous in this gradual progress.

And we can say that twenty years for a radical change in changing of a system is enough, even if such an important part as criminal procedural law is in question. The new framework leads to changing of roles in the criminal proceedings. For this reason, there are also concerns and comments by anyone who is involved in the proceedings, i.e. judges, lawyers, Prosecutors and the Police. Finally, the dynamics of dealing with crime is more than anything else affected by changes in the central part of the criminal proceedings, in particular the introduction of the pre-trial hearing, as well as agreements on admission of guilt. The law is not something to be excessively changed and updated. According to Locke, each Act should be prepared in order to last 100 years. This rule should be even more applicable to laws that are skeletons of

29 Extradition Act; 2003
30 Gesetz über die Internationale Rechtshilfe in Strafsachen
31 The Republic of Croatia – national procedures for extradition; 2014
32 Statement of the Ministry of Justice; 2017

the legal order with all procedural regulations included. And as far as CPA-N revolutionary proposal is concerned, it must be acknowledged that there is a process in which the parties will have greater autonomy and accountability. And as such it is possible, acceptable and possibly even necessary. Although caution is never redundant.

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