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VOLUME I

Topic I

CRIMINALISTIC AND CRIMINAL JUSTICE ASPECTS IN SOLVING AND PROVING OF CRIMINAL OFFENCES

IS "LIFE WITHOUT PAROLE" SENTENCE A DEAD END OR A REASONABLE SELF-DEFENCE REACTION?

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Abstract: This study focuses on a very special prison sentence: "life without parole". We investigate the international and Hungarian experience related to the use of life without parole; review the way of life of those who have been sentenced to it; examine the punishment's mechanism and impact and finally conduct an analysis of the present form of the notion "not allowing them to live, not letting them die".In Hungary, the practice of sentencing convicts to life without parole is regulated by the Criminal Code. In its principle, this form of punishment means that those who receive this sentence will never be released on parole. The Prison Code, however, also introduces a mandatory amnesty procedure for those who are serving a life sentence without parole. Furthermore, we also endeavor to collect the characteristics of this sanction, evaluate related professional opinions and initiate a suggestion for an amendment, as well.

Keywords: life without parole, sentencing policy, prison

INTRODUCTION

The special prison sentence i.e. "life without parole" is a widely used punishment nowadays and comes to the fore. The trends in international criminal justice and the corresponding practice both seem to be heading towards this direction. Soon after the ratification of the European Agreement for abolishing death penalty in the 1990s, the sanction of life without parole was introduced. The legislators believed that societies would only support the termination of death sentence if a punishment that is severe enough would take its place. The scope and number of the subjected prisoners have expanded manifold. According to the most up-to-date statistics,[2] in 2014 there were 27,000 convicts sentenced to life within the member states of the European Council. 22 of those countries that possess official statistics show an increase in 66% from 2004 to 2014 in the number of convicts

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2 Council of Europe Annual Penal Statistics (SPACE) August 2004 and July 2014

sentenced to life without parole. The fact that there had been 7,500 convicts sentenced to life without parole in these countries is even more staggering. Most of them are held in the United Kingdom, Germany, Italy and Switzerland. (CoE, 2016: 34–35)

The timeliness of the study does not only derive from the mushrooming of the infliction of stiffer and longer prison sentence, but the fact that Serbia on May 21, 2019 amended its penal code to introduce a life sentence without the possibility of parole for crimes such as rape and the murder of children, pregnant women and helpless people. (AP News, 2019; Miljojkovic, 2019; Vasovic, 2019) For this reason, we tend to introduce such pieces of information, penal policy approaches, and practical examples, which may contribute to the elaboration and clarification of the law enforcement rules regarding the new Serbian concept of law.

THE PAST, PRESENT AND THE POSSIBLE FUTURE OF "LIFE WITHOUT PAROLE"

A theoretical approach to life without parole in Hungary

The events that led up to the *creation* of life without parole are summarized by Vókó: "in 1971, the punishment of life was introduced once again into the roster of criminal sanctions. The ban on death penalty was issued by Decree no. 23. of the Hungarian Constitutional Court, initiated on 31 October 1990. The legislators – seeking to provide a response to criminal offences while closing the gap that was apparent between determined-length sentences, life sentences with the possibility of parole and death penalty – introduced the sentence of life without parole where the conditional release is not an option." (Vókó, 2010: 217) Polt takes a more straightforward approach and states that "life sentence without providing the possibility of parole is an adequate substitution to death penalty, as the perpetrators are removed once and for all from society with no practical chance to earn their way back to it". (Polt, 2013: 29)

Ferenc Nagy analyses the function of the sentence from the historical aspect of criminal law. He emphasizes that within the hierarchy of criminal sanctions available in countries where the rule of law is more developed, deprivation of liberty is the leading and most widely used form of punishment with its harshest variant being the one that excludes parole. In this context, life without parole seems to "bridge the gap between capital punishment and determinate sentences." (Nagy, 2008: 272)

Kabódi takes a systematic approach. In his opinion, this form of sanction cannot be regarded as loss of freedom, since when compared to the "temporary, transitional and »preparative« nature of regular (determinate) prison sentences, life without parole permanently deprives the subjects from their freedom. Life without parole – both in theory and in practice – is inadequate for fulfilling the

standard goal of the convicts' successful reintegration. In short: from the aspect of penology, life without parole is not the deprivation of liberty." (Kabódi, 2014: 219) Pál Kiszely and István Nagy take a similar approach: they state that the introduction of the sentence has opened a new chapter in the history of Hungarian penology. (Kiszely & Nagy, 2012)

The opinions of Hungarian experts on the topic seem to disagree when it comes to debating its necessity and availability. One of the extremes is represented by Kornélia Hagymási, who claims that in the case of convicts sentenced to life without parole, the "aim of imprisonment is imprisonment itself". (Hagymási, 2009: 68)

Another approach is taken by Garami, who emphasizes the cooperative, active and responsible activity of the prison service and the prisoner: "the greatest question that the prison service has to face is whether they can create a form of punishment that does not disagree with the principles set by the prohibition of torture and inhuman treatment and at the same time provides adequate security measures while also offering a viable, acceptable, albeit limited perspective for those who had been sentenced to life without parole." (Garami, 1999: 60) He highlights that the detention of such convicts has to be organized in a "special way that requires the individual application of the concept of minimal security, the establishment of a sense of responsibility, and allowing the convicts to make their life within better and that these efforts culminate in visible results. During the first period of serving the punishment, it is important to make sure that the convicts work out a notion of what might happen to them, what goals they can strive for and how these goals can be achieved". (Garami, 1999: 59)

Do life sentences without parole have a deterrent effect?

Although analysing this question as a whole is beyond the reach of our current paper, we still consider it indispensable to briefly investigate the issue. First of all, we would like to point out the fact that we were unable to find genuine academic studies or arguments for the supposed deterrent effect of death penalty, which was the most serious form of punishment before the era of life without parole. Due to this reason, our approach is sceptical. Our opinion is largely the same about its substitution, the sentence of life without parole.

We accept the conclusions of Vont and his co-authors, who – based on the academic results of Hirsch – express their doubts about the empirical justification of the deterrent effects of severe punishments. In order to obtain sufficient evidence, it has to be proven that during the perpetration of a crime, the criminals are aware of the severity of the sentence that would be imposed upon them, and no other reason but this severity itself is the factor that finally deters them from actually committing the crime. It seems that there is a connection between the certainty of the punishment and the ration of criminality; however, this link is a lot weaker when it comes to their severity. (Vont, Bottoms, Burney & Wilkström, 1999)

Lőrincz uses his own results to support the train of thoughts shown above. According to him, statistical data provides ample evidence for the non-existence

of the link between the repressive periods of criminal policy and criminalism and the fact that the increase in imprisonments did not have any effect on the rate of crimes. We endorse his conclusion without reserve: "no repressive cycles have ever reduced criminality, but all of them had a significant negative impact on the prison service's chances in the successful reintegration of prisoners." (Lőrincz, 2014: 121)

Are prisoners sentenced to life without parole dangerous?

In 1999, the year the sentence of life without parole emerged in Hungary, experts tried to predict the expected behaviour of those who had been subjected to this form of punishment. Since the beginning, Garami has emphasized that as long as psychological attributes are concerned, each subject is a different personality with different coping strategies and varied reactions to outside stimuli. When compared to other convicts however, there is a significant difference as the presence of futility, the *seemingly infinite nature of time,* coupled with the fact that these convicts have already been given the most severe punishment, leaves them with nothing to lose. These attributes raise the question of what reactions and perceived changes in the behaviour of convicts can be expected. According to the author, the most likely outcome is increased aggression, especially so because these people are already familiar with it due to the violent acts for which they were convicted. Out of recognition to this fact, it can even be assumed that these convicts will try to take hostages (staff members or fellow prisoners) in the unforeseeable future. (Garami, 1999)

During establishing the conditions for accommodation, József Csapó, the former Governor of the Szeged Strict and Medium Regime Prison – the first institution to be designated to admit prisoners sentenced to life without parole – focused on the likely dangers emanating from the introduction of the new legal institution. In his opinion, the "greatest, detention-related security risk is the fact that these people tend to feel like they do not have anything else left to lose. Though their behaviour might still have an effect on certain allowances within the prison, criminal law lacks any further sanctions […] We are unable to predict future events: we do not know what may occur three, five or ten years later, when due to the changes in the convicts' personality, they end up becoming aware of the futility of their situation". (Békés, 2007, according to Hagymási, 2009: 25)

Current experiences and relevant scientific results

Taking into account the hypotheses set by academic literature following the introduction of life without parole – according to which the frequency of events that threaten the order and/or the security of detention will grow – we can conclude that fortunately, this prognosis has not been proven as of yet. What has been proven though, is the presumption that those sentenced to life without parole

would perform self-harming acts and attempt suicides more often. (Kiszely & Nagy, 2012: 11) This result corresponds to those of international researches which emphasize the mentally destructive nature of the feeling of permanent insecurity. Lifers consider the authority who decided about their fate isolated, and although they are well aware of the control that limits them, the actual expectations regarding their behaviour is perceived and interpreted in a confusing way, leading to anxiety and aggression as primary consequences. (Matovics, 2009) Pál Kiszely and István Nagy analyse the behaviour of prisoners who serve long sentences and state that "besides a generally balanced behaviour during serving a sentence, the most notable emotions from the prisoners are hopelessness and perplexity". (Kiszely & Nagy, 2012: 11–12)

For decades, the international academic literature has been providing systemic reports about long-term (and life) sentences, and scientific studies that analyse the behaviour of prisoners sentenced to death.

In 2003, Sorensen and Cunningham compared the behaviour of 5,010 persons convicted for homicide housed in the state persecution system of Florida with the behaviour of 45,000 convicts sentenced to prison for different crimes. After the results had been processed, they came to the conclusion that "convicted murderers exhibited lower prevalence rates of disciplinary infractions and potentially violent misconduct, when compared to other inmates". (Sorensen & Cunningham, 2009: 239)

Marquart, Ekland-Olson, and Sorensen retrospectively reviewed (1974–1988) the prison disciplinary records of 107 convicted capital offenders in Texas who had been sentenced to life terms after their sentencing juries had rejected a *special issue* in the Texas capital-sentencing scheme (i.e., whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society). These offenders, who had averaged serving 7.2 years on their life sentences, exhibited annual frequency rates of assault on an inmate with a weapon of 0.009 – similar to the rate exhibited by inmates in the Texas prison population as a whole in 1986. (Marquart, Ekland-Olson & Sorensen, 1989)

Cunningham and Sorensen discovered largely identical results in 2007 when – also in Texas – they analysed the behaviour of 136 inmates serving life for homicide. Their results further enforce the aspect that the frequency of violent misconducts, attacks (14%) and acts of aggression (5%) is similar to the number of misconducts perpetrated by other prisoners. (Cunningham & Sorensen, 2007)

In the United States, the results of scientific inquiries performed in the correctional services of various states seem to completely agree with the results received from federal prisons. Cunningham, Reidy and Sorensen depicted in 2008 – during a comparative analysis of federal prisoners – that 9% of prisoners convicted for homicide resorted to violent attacks, 1% of them ending with major injury. This is similar to the number and frequency of misconducts performed by other members of the prison populace. (Cunningham, Reidy & Sorensen, 2005)

Even the somewhat conforming behaviour of the prisoners convicted for homicide is overshadowed by the integration of those once sentenced to death and their successful avoidance of open conflict within the prison regime. The much-quoted scientific results of Sorensen and Cunningham put down convincing evidence for the fact that former death-penalty convicts, the *worst of the worst* are not as far as threatening to the staff and the prisons in general as presumptions might have suggested. As a matter of fact, those prisoners who belong to the maximum security category attack members of the staff three times as often than those who had been sentenced to death earlier. Statistical analysis shows that out of 1,000 prisoners, 12.4, formerly death-sentenced inmates exhibited violence against staff members, this number is 37.6 in the case of maximum-security prisoners. (Sorensen & Cunningham, 2009: 262)

On the basis of their own inquiries and other comparative studies, the authors find it proven that "convicted murderers are neither likely, nor disproportionately likely to be involved in assaultive misconduct in prison". (Sorensen & Cunningham, 2009: 243)

The academic literature on the topic contains a research which goes even further by analysing a new method introduced in 1991 within the Potosi Correctional Center, located in Missouri state. In this maximum-security prison, death-sentenced inmates are not isolated from the general prison population within death rows, but instead housed in the same cells with nondeath inmates and are also able to interact in the yard and take part in other activities together with the general population (school, sports, employment). Cunningham, Reidy and Sorensen compared the disciplinary records of the institution (ranging from 1991 to 2002) and discovered intriguing results: 1. Inmates sentenced to death and convicts sentenced to life without parole exhibited similar prevalence of violent mi sconduct; and 2. their rates were half of those of the parole-eligible inmates with whom they were side by side in the same facility during the same timeframe. (Cunningham, Reidy & Sorensen, 2005)

In the inquiry, however, we were unable to find explanations to the surprising statistical results, therefore we solely consider them curiosities out of which scientific deductions cannot be drawn as of yet. Based on the numerous international results, Sorensen and Cunningham concluded that "most of these offenders have not engaged in serious prison violence and are not a disproportionate source of this type of misconduct that is of greatest concern to correctional staff". (Sorensen & Cunningham, 2009: 240)

Results of scientific inquiries conducted in Europe seem to agree with those of the United States. The Committee for the Prevention of Torture (CPT) – based on their analyses of 2015 – emphasizes that "the experience in various European countries has shown that life-sentenced prisoners are not necessarily more dangerous than other prisoners". (CoE, 2016: 36)

This conclusion may serve as grounds for a more optimistic approach and may also provide a theoretical background for a more lenient system and a corre-

sponding practice dedicated to those prisoners who are responsible for the most severe crimes perpetrated in Hungary.

Employment and activities

The treatment of prisoners serving a long sentence is a difficult and highly important task for the prison service, as the life of these convicts has to be organised within the framework of the most severe regime category. (Garami, 1999) Experts recognised this problem during the drafting phase of the legislation on the sentence of life without parole. Csóti already emphasized multiple forums ten years ago that during "organizing everyday activities, we do not wish to exclude those who had been sentenced to life without parole from activities such as education, vocational and other forms of trainings and therapeutic activities, because we consider these devices indispensable. In our opinion, such activities engage the convicts, help them reduce their stress and facilitate the maintenance of their mental and physical health." (Csóti, 2005: 28) If someone is convicted and imprisoned, he is entitled to a programme of resocialization, which works towards the prevention of committing further crimes, maintaining his self-esteem, and the improvement of his social responsibility. (Ürmösné, 2018a) Theoretical assumptions have only exerted a slight influence on the actual matters of everyday life since the greatest factor that influences this life is security. While analysing the experiences resulting from the first decade of life without parole Kiszely and Nagy added that "maintaining these security considerations is reasonable. Furthermore, upgrading the security conditions will even be more indispensable in the long run. We have to accept the fact that convicts sentenced to life will continue to *play chess* with the security system of the prison, and their attempts at getting to know it better are constant. Static security elements will have to be swapped for more advanced ones…" (Kiszely & Nagy, 2012: 13) Apparently, reducing the security risk to a minimal level has become the principal task. Kabódi states that "the necessity of organizing activities that help preserve the dignity of prisoners while providing a useful way to spend time is constantly conflicting with the requirements of the prison system which is aware of the increased security risks". (Kabódi, 2014: 219)

Internal movement from the "Long-Term Special Section" (HSR)

When it comes to accommodating serial murderers, the most frequent location of placement is the Long-term Special Regime. In our opinion, their personality, length of incarceration and overall attitude towards the prison system justifies this – primarily security-related – decision. The relevant legislative background recognises this fact by declaring that "those convicts who are serving a life sentence or a pre-determinate sentence of at least 15 years and whose behaviour,

attitude towards the security and operation of the institution and individual risk assessment results require special treatment and placement may be housed within the HSR section" (2013. évi CCXL: 105. § [1]) in order to facilitate their successful re-insertion into the community.

During the establishment of this special section, the continuous safety of life and material goods was the principal condition. Under the professional leadership of András Csóti, the aim was to create a security system that completely satisfies these requirements. The best solution was considered to be accommodation within an individual and separate section where ample living space would ensure the successful execution of special programs and at the same time reduces stress while guaranteeing security. (Csóti, 2005)

Based on practical experiences, Kiszely and Nagy point out that "by being situated within an enclosed and isolated place, the prisoners' desire for living a purposeful life eventually fades, giving way to the strengthening of their instinctiveness and social decay. The HSR section does not provide sufficient means for personal development and is isolated from the life lived by the members of the general prison population. As time goes by, this fact makes it even more difficult to relocate life-sentenced prisoners into more open regimes". (Kiszely & Nagy, 2012: 12) Matovics also warns that in case of prisoners sentenced to life without parole, the "personal perception of time is demolished, inevitably causing damage in other functions. The monotony of life and time is an enormous issue which cannot be avoided in the case of those sentences that remain in practice until the death of the convict". (Matovics, 2009: 101)

As time goes by, providing the possibility for a more dynamical movement within the HSR, the *general* strict regime or other regimes will continuously gain importance. The fact that life without parole prisoners located within HSR sections are without exception subjects of acts of self-harm, attempted suicides and perpetrators of misconducts such as "preparation for act of terrorism, escape attempts and preparations" can be considered a warning sign. These people become increasingly stressed and consider their situation hopeless. The issue set forth by Pál Kiszely and István Nagy shows a vivid picture: first of all, "providing the means for maximum security during the life without parole prisoners' – who therefore have nothing to lose – accommodation and supervision is by no means futile", and secondly "it cannot be proven whether some convicts would actually not be suitable for replacement within »regular« sections". (Kiszely & Nagy, 2012: 10-11) So far, we do not have practical experience that would support this claim, as no serial murderer sentenced to life without parole has ever been moved out of the HSR. For the reason why most of the serial killers exhibit varying degrees of mental illness and/or psychopathy, sociopathy, lack of remorse, guilt, or empathy, and deceitful, impulsive, manipulative attributes characterize them, their location in a penal institution is a crucial factor. (Ürmösné, 2018b)

International practices regarding the accommodation of prisoners sentenced to life seem to disagree. In 2015, the CPT visited the prisons of a variety of Eu-

ropean countries where prisoners sentenced to life are being housed. Their experience was that the general practice is to place these convicts together with other prisoners and their regime rules (their rights regarding employment, education, training and leisure activities) and the ways maintaining connection to the outside world are the same as of the *general* populace. In the Czech Republic, Lithuania and Slovakia life prisoners tend to spend the first 10 and 15 years in an isolated and specially designated cell. After serving these years, they are moved into *general regimes* where they are able to live together with other prisoners.

Certain countries including Armenia, Azerbaijan, Bulgaria, Georgia, Latvia, Moldova, Romania, the Russian Federation, Turkey and Ukraine employ a different practice, as they tend to keep these convicts separated and among very severe conditions.

We find it thought-provoking that all those countries – excluding Turkey – who employ either *severe* or a *mixed* way of isolation were members of the Eastern Bloc. Four decades of the Soviet ideological suppression, special moral approach toward sin and sinners and its dismissive and punitive practice probably still have an effect today. (Ruzsonyi, 2017)

Thought experiment: providing the option for release on parole for convicts Sentenced to life excluding it

Expert opinions on the introduction of the release on parole for prisoners sentenced to life without parole seem to greatly differ.

A supporter, Mihály Tóth provides a very concise opinion about the punishment: "the isolation, the permanent and complete exclusion from society, the discrimination, the reduction of existence into its most basic, vegetative form – and foremost the conservation of this state without any hope for further change – cannot even be justified with the goals and role of criminal law and when viewed from the aspect of the legal systems of the third millennia, the whole context in general seems an inhuman, unjustifiable and thus unreasonable punishment." (Tóth, 2012: 271)

We completely agree with the professional opinion of Ferenc Nagy, who besides presenting his approach also offers a solution to the issue: "it should be made possible that the judges responsible for the execution of prison sentences are given the chance to investigate the question and – after a multi-step procedure – may decide to grant or decline releases on parole." (Nagy, 2009 according to Hagymási, 2009: 71)

Our approach is that the possibility of investigating the matter of granting release on parole after 40–45 years served, of course, does not mean that certain subjects would not be kept behind bars for the remainder of their lives. The sole aim of this suggested measure is to enable the courts to investigate whether or not the goals of imprisonment have been met and proceed accordingly. Mihály

Tóth takes a similar approach. He believes that it would be beneficial to introduce a system based on differentiation and proportionality that would provide a basis for multi-disciplinary periodic investigations where the convicts may at least recognise the fact that "instead of being buried alive for a lifetime, his fate would eventually be decided responsibly". (Tóth, 2012: 272)

Renáta Uitz uses different wording but arrives at the same conclusion: she emphasises that providing the chance for revisions that are based on fixed and consistent rules would be nothing more than a symbol for a national criminal policy that treats the victim and the perpetrator as human beings. (Uitz, 2014) Szilvia Antal, László Nagy and Ágnes Solt aim serious criticism towards life imprisonment based on their research on the topic: "we consider the current legal background regulating life without parole unacceptable, as it can actually be considered a «lite edition» of death sentences since it completely disagrees with constitutional principles and the civilized criminal justice of modern Europe. It can never be assumed during sentencing that the suspects and convicts in question would commit another crime in the future. It is highly doubtful to allow the court to completely and irrevocably set a bar against possible changes in personality." (Antal, Nagy & Solt, 2008: 62)

In the international outlook of his study analysing life without parole from the aspect of human rights, Gönczi adds that the English and American professional literature considers the permanent privation of freedom a slower and actually more disadvantageous form of death sentences and equal to torture. He provides evidence to this claim by reviewing a startling occurrence: in Belgium, a court sentence from 15 September 2014 gave permission to a person – who was psychopathic but self-aware enough to be condemned – sentenced to life without parole for *euthanasia* with medical help, which is basically suicide with assistance. The convict chose death rather than the hopeless deprivation from freedom for the rest of his life. (Gönczi, 2014)

The suggestion of György Magyar contains strictness and humanity alike. In his opinion, it has to be made possible that "the law treats bestial and completely depraved people with the highest possible severity by subjecting them to the second most severe sanction after death penalty but also employing rules of humanity during incarceration. At the same time it should also set a period of 20–25 years after which the convict is heard by a court of three members who after gaining the opinions of the governor, experts and psychologists and analysing the subject's behaviour declare whether or not any hopes of further re-examinations and possible release should be kept alive. This procedure does not have to become a general practice, but the possibility should be left open. In regulating this by allowing the convicts to be heard by a commission each year after 20 or 25 years, thus allowing them to become aware that if their way of life within prison is acceptable, with no violent misconducts against staff members or fellow inmates, then there is a spark of hope remaining". (Arató & Bátyi, 2009: 130)

In their most up-to-date approach, the CPT seems highly supportive of the possibility of parole for convicts sentenced to life without parole. The document emphasizes that: "Prisons must be safe, secure and ordered, for the sake of all who become involved with them. Since being locked up, especially for an unknown period, is inherently damaging for almost all human beings, steps must be taken to minimise the damage. One important method of achieving this for life sentenced prisoners is to give them a definite date for the first review for possible release, and a tailored individual programme which provides a realistic series of interventions for each prisoner leading towards that date." (CoE, 2016: 38)

The arguments of the suggestion's opposers are summarized by Mária Herczog: "Punishment is only one goal of detention, the other one being the fact that we are not to let these people back into the community […] From the aspect of the community, protecting fellow humans, potential victims, us all from people who are multiple recidivists or who premeditatedly murder multiple people (one or more persons) is a reasonable goal." (Herczog, 2009 according to Hagymási, 2009: 71) András Polgár shares this view: "following the ban on death sentence, the only viable method of expulsing these people from society is this sanction." (Polgár, 2009: 39) András Szabó takes a theoretical approach justifying its existence and its necessity: "The goal of the punishment is found within itself: public declaration of legal capacity, and retribution without regards to the goal." (*23/1990. [X. 31.]* Constitutional Court's Decision)

The gap between professional – and in many cases emotional – opinions seems to be unbridgeable as of yet. We hope that by collecting arguments for and against the introduction of probation, we can alter this static situation.

CONCLUSION

We believe that from a systematic approach, the methods used during the execution of the life without parole sentences can be compared to a litmus paper. They show the state of the criminal justice system, its rigidity and flexibility, the constant search for answers to press issues and our perception of human beings.

Our study is only the introductory part of a pathfinding effort. We tried to give a brief introduction to the best-known international practices and approaches and at the same time point out difficulties and novelties.

In Hungary, the punishment of "life without parole" was exactly initiated 20 years ago. However, such a long period of time was not enough either, for the representatives of diverse penal policies, penologists, criminologists, criminal psychologists or the society to achieve consensus. We have introduced the principal international trends, together with the national experience, in order to provide help and create operational development concerning the Serbian location, custody and the employment of the affected inmates. Obviously, we do not possess the "perfect solution", but at least we might state that we are more or less aware

of what we are arguing about. To our judgement, science is solely capable of contributing to problem solving, if it has sufficient knowledge of the experiences of life in practice.

We agree with Vókó's forward-looking standpoint: "Recognizing practical questions will help the scientists, lawmakers and those who implement these laws achieve the best possible solution to professional questions. Progress is not to be sought until science and practice had been harmonized. This is something we all endeavour to achieve. It is in our mutual interest to bridge the gap between the differing jurisprudential approaches and today's trends of criminal justice theory and practice on which the criminal law of the future and prison services can build upon." (Vókó, 2010: 737)

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THE NOVELTIES OF THE SERBIAN CIVIL SERVICE LEGISLATION – INTRODUCING A COMPETENCY BASED HUMAN RESOURCE MANAGEMENT[1]

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Abstract: Strengthening administrative capacities and development of a professional and efficient public administration is one of the European Union key requirements. Introducing a new human resource management system based on competences represents an essential element of a comprehensive public administration reform in the Republic of Serbia. The main objective of the paper is to review new public administration legislative framework introducing a modern human resource management. Consequently, the paper restricts itself to the following elements: personnel planning, recruitment and selection based on competences, performance appraisal, professional training, and mobility within public administration at central and local level. In addition, according to the novelties in laws and by-laws, competences are connected with all human resources management functions. Essentially, it will create the legal basis to support professional, efficient, effective and high quality public administration performance. All of these elements make public administration dynamic and more responsive to the needs of clients and society. Furthermore, in order to provide efficient implementation of new management instruments, significant efforts need to be invested in order to implement and sustain ambitious reform program.

Keywords: Serbian public administration, European standards, legislative framework, human resource management based on competences.

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INTRODUCTION

Over the past years, a lot of efforts have been done in order to reform Serbian public administration at all levels. The motivation for the public administration reform has emerged from a need to strengthen professionalism, accountability, transparency, coherency, efficiency and effectiveness. In addition to this, one of the key drivers for reform is the objective to meet the European Union accession requirements. Although the European Union legal system leaves autonomy to the member states regarding their institutional and administrative organization, preparation for membership gradually worked as a factor and incentive to shape and develop structures and institutions capable of meeting the obligation and needs of European Union membership (Painter, Peters, 2009). Bearing in mind that Serbia is a candidate country, it is also to accelerate European integration process and support efficient performance of administrative functions.

Inevitably, Serbian civil service regulation creates a legal basis which provides professional, efficient, and high quality civil service operation. The regulation, by itself, however is not the guarantee for successful civil service development – it has to be effectively and appropriately implemented. Furthermore, frequent changes of the regulations (or delays of legal provisions) cannot offer a solid ground for establishing professionalism and ensuring depoliticization. Practice has shown how difficult it is to introduce a professional senior management corps in an administrative environment where political shifts have strong influence to the appointments and dismissal of leadership positions (Lippert, Umbbach, 2005).

In spite of all invested efforts, there are still significant challenges for the establishment of an efficient human resource management system. Professionalization and senior civil service de-politicization remain excessively complex issues, due to predominant political criteria for the appointment, promotion and dismissal of senior officials, as opposed to meritocratic criterion (Pierre, Peters, 2003). The future reform efforts need to be focused on strengthening the key elements of human resource functions and creation of strong linkages between them.

Introducing new human resource management practice in Serbian civil service is expected to be a challenge for managers and all employees. Main reform objective is to ensure political support and cooperation between political parties and interest groups in combating against political influence in order to develop professional civil service based on merit, adhering to the principles of legal predictability, continuity and stability of civil service (Peters, Pierre, 2004).

The Serbian Civil Service Act introduces new rules with respect to modern human resource management. Consequently, new job classification system and advanced pay system, personnel planning, competency based selection, evaluation of performance based on fair and determined criteria, promotion based on performance appraisal, professional training, shall enhance merit principle, depolitization, accountability and efficiency. The paper emphasizes the importance of upgrading administrative capacities by developing appropriate and adequate

human resource management instruments which will exceed the gaps between formal rules and informal practice.

Key novelties of the Civil Service Act – formal rules vs. informal practice

Institutions of the European Union have done a lot of efforts in order to define standards and principles for public administration development. The idea of "European Administrative Space" was that, in spite of the differences of institutional configurations, a degree of convergence existed among member states at least at the level of general principles (Sahling, 2009).

The area of human resources management has been a subject of *acquis communautaire,* which represents "*soft acquis*". It constitutes common standards of the EU member states, and influences indirectly the development of the national legislation (Keune,2009: 52). Although they are not legally binding, these standards can have significant practical impacts on the countries seeking EU membership, as the European Commission uses them as benchmarks for assessing progress towards membership (Vukašinović Radojičić, Rabrenović,2018: 184-200). In 2014, SIGMA prepared a new document entitled *"Principles of Public Administration*", which sets out qualitative and quantitative indicators in six areas of public administration. These areas include: strategic framework for public administration reform, policy development and co-ordination, public service and human resource management, accountability, service delivery and public financial management, including public procurement and external audit. The Principles succeeded the previous SIGMA "baseline assessment" system (SIGMA, 1999), which reviewed the quality of civil service and public management systems based on a set of qualitative indicators, related to six core functions that public management systems are expected to fulfill (SIGMA, 2009).

The key area of the Principles which sets out the requirements in the area of civil service development is the section on public service and human resource management. The section includes seven principles which cover the following areas: the scope of public service; institutional set up for HR management; recruitment and selection of senior and other civil service personnel; remuneration; professional development; measures for promoting integrity. Each of the mentioned areas contains key principles and several sub-principles and assigned indicators to measure each of them.

In its 2017 Report on the Implementation of Principles of Public Administration, European Commission recommended that the Serbian Civil Servants Act should be revised in order to ensure a depoliticised public administration and a stronger merit-based human resource management (SIGMA, 2017). Similarly, in an earlier Report, while acknowledging Serbia's progress in the public administration reform, European Commission advised the revision of the Civil Servants Act to ensure the application of the principles of merit. In the context of the public administration reform in the Republic of Serbia, professionalization and senior civil service de-politicization remain excessively complex issues, due to predominant political criteria for the appointment, promotion and dismissal of

senior officials, as opposed to meritocratic criterion. The trend of growing politicization is continuing. Depoliticization has been highlighted as one of the main principles of the human resource management in the PAR Strategy from 2014 and identified as one of the main problems in the public administration reform in the EU accession process.

Although the existing legal framework of Serbia does initially presume these principles, the 'delay' in depoliticization seems to be influenced by several factors, some of which include: non-application of legal rules, or absence of legal sanctions for not complying with them, frequent revisions of the provisions relating to the recruitment for and dismissal from the appointed positions and to the appointment to the senior–level positions in the civil service, and generally, failure to recognise this issue as essential for ensuring professional and politically neutral work and the importance of continuity of the public administration. When assessing the progress achieved, SIGMA starts from the key standard concerned with ensuring professionalism through the application of good standards and practices of human resource management which involves the recruitment based on merit and equal treatment in all phases of the procedure, and clearly established criteria for advancement and termination of employment (SIGMA, 2017).

According to SIGMA Report for 2017, the implementation of predefined principles of good governance was low, and, because of the lack of performance indicators, it was impossible to evaluate the level of achievement of the set strategic objectives (SIGMA, 2017). A methodological approach used to assess compliance with the set standards include both qualitative and quantitative methods – the analysis of quantitative indicators that verify to what extent the law is implemented in practice and the predefined principles fulfilled. Considering the specific characteristics of the public administration and the impossibility to verify all its elements based on quantitative indicators, it seems possible to make even the compliance assessment methods significantly simplified. The insisting by the European Commission to carry out the quantitative analysis of the performance of public administration does not always give an actual, objective and reliable picture of 'non-implemented' activities, bearing in mind the immanent political and legal characteristics of the national system (Vukašinović Radojičić, 2018: 245-259).

In following the EU guidelines on the needs for the development of the civil service system, and the adopted strategic acts of the Serbian Government, the Public Administration Reform Council adopted a document *Policy Framework for Human Resource Management in the Public Administration of the Republic of Serbia,* which gives recommendations for the creation of HRM, staff retention and motivation strengthening policies. The primary goal defined under the *Policy Framework for Human Resource Management in the Public Administration of the Republic of Serbia* is the established comprehensive approach to competency-based human resource management – from human resource planning, selec-

tion and recruitment, introduction to job duties, performance management, employee development, to their leaving from the organisation.

European Commission often notes the fragmented application of rules with respect to selection and recruitment in the civil service of Serbia. As pointed out in the *Policy Framework*, to one third of all civil servants – employees in the Customs Administration, Tax Administration, Administration for Execution of Criminal Sanctions, security services – general rules in this respect do not apply, which causes a 'concern'. Given the specific nature of jobs in these particular sections of the civil service, their organisation, work objectives, working methods and management, a question arises whether it is necessary to insist that the general framework for recruitment and selection should consistently apply to servants whose position is regulated by special regulations. Professionalism is, indeed, a *differentia specifica* of all civil servants; however, their distinct position depends on the authorities and organisations in which they work (Pusić, 1973:176). It seems that the Commission's requirement for the 'extension of the scope of the civil service system' is roughly defined, without due regard to the specific nature of jobs and work objectives in certain sections of the civil service and in public authorities.

In keeping with SIGMA's key recommendation noting that the recruitment process is complex and that the competition procedure should be simplified and each phase of the selection clearly defined in order to improve the efficiency of the process, the amendments to the Act proceed from the assumption that procedure for the selection on the basis of internal and external competitions is simple, and the system for candidate evaluation clearly established. The amendments include: anonymous competition procedure, where applicants are assigned codenames during the submission of applications, to ensure anonymity before the selection commission; introduction of mandatory phases of the selection process which should enable shortlisting of high quality candidates; simplification of certain bureaucratic formalities that burden the competition procedure; introduction of a uniform application form for all public authorities which will contain all the essential and relevant data that the applicant must provide. Additionally, the selection process accelerates the collection of documents proving the fulfilment of appropriate admission requirements, contained in the official records of public authorities. The aim is for the Committee to conduct and conclude the selection procedure for appointed civil service positions in the shortest possible time. This rule is an asset towards further depoliticization, ensuring continuity and prevention of any direct or indirect political influence on managers.

With respect to filling vacant appointments, there is a legal obligation to undertake internal or public (external) recruitment competitions, following the clearly defined eligibility conditions, which is in line with the modern practice of fair and transparent appointment. The conditions that are of explicit concern: holding of a university qualification, a minimum professional experience of nine years in the field of expertise and a passed civil servant exam.

The fact that the provisions on filling vacant appointed positions have undergone numerous revisions since 2007 also confirms this point. Preventing the competency-based selection and dismissal of senior civil servants undermines the principles of professionalism and continuity in the work of the administration. That there are a large number of appointees in these positions serving in an 'acting' capacity is pointed out in the reports by the Human Resource Management Department and by the European Commission, frequently noting a large percentage of acting appointments in the civil service. The Commission assesses it as necessary to make provisions to regulate the status of acting civil service appointees and to implement these provisions. Since more than 70% of the civil servants in appointed positions have not been appointed according to formal criteria, the Civil Servants Act explicitly states the duration of the 'acting' appointment. Until the appointed position is formally filled, one or more civil servants can be selected and appointed on an acting basis, for a period of no longer than six months without running internal or public competitions, provided that they fulfil the relevant eligibility conditions. The aim is for the Committee to conduct and conclude the selection procedure for appointed civil service positions in the shortest possible time. This rule is an asset towards further depoliticization, ensuring continuity and prevention of any direct or indirect political influence on managers.

The European Commission assesses that heads of public authorities still have excessive discretion when choosing candidates from the list. Also, the decision issued by the president of the Selection Committee should contain reasons for deciding a candidate as (un)fit and the evaluation of candidate's performance during the selection process. Although heads of institutions have no obligation to propose a candidate from the list, they must communicate the reasons for deciding a candidate as unfit to the High Civil Service Council and the Human Resource Management Service. An appeal against the Government's decision on the appointment is not allowed; however, the candidate has a right to initiate the administrative proceedings.

In further connection with the selection process, on the basis of evaluation of candidates' performance in the selection process, the Selection Committee prepares a list of candidates eligible for the appointment and submits it to the institution head. Within 15 days from the receipt of the list, the institution head must hire the candidate who performs best in relation to the set criteria. This provision is a novelty in two respects: it terminates the possibility of discretionary decision making by institution heads when selecting the best-fitted candidate, and secondly, it ensures fairness of the process. Moreover, to ensure impartiality and transparency of the competition procedure, as recommended by the European Commission, the Act provides for the list of candidates to be published on the websites of the public authority making the announcement and the Human Resource Management Service, anonymously, using the codenames assigned during the application phase, along with the full name of the selected candidate.

Formation of the selection committees and well-functioning staff selection methods should ensure adherence to the merit principle in the staff recruitment, whether from inside or outside the civil service. In its Report, the European Commission further noted that the criteria for the selection of members of the selection committees must also be clearly defined. In view of the weak capacities of the selection committees, special importance is accorded to their composition, and the requirement for their members to act in an impartial and politically neutral manner and to possess relevant knowledge, competencies and experience in particular fields. The Civil Servants Act thus provides for the introduction of regular professional training for members of the selection committees.

SIGMA's requirement with respect to professionalism assumes that conditions for the termination of employment are also explicit. Towards specifying the grounds for dismissal and ensuring lawfulness, fairness and accountability in the work of a manager in the civil service, the law introduces one more ground for dismissal – namely, if during his/her mandate serious disruptions occur in the work of the body he/she manages, as a consequence of his/her accountability for failing to achieve the strategic plans and goals. The Act provides that a civil servant will be dismissed from the appointed position if he/she receives a rating 'needs improvement' upon an annual or a special performance appraisal or if his/her employment terminates for other reasons, that is, for failure to meet the expectation. If it is found, during the monitoring of his/her work, that a civil servant in an appointed position does not produce the desired outcomes, the head of the institution must notify those shortcomings to the civil servant, with a time limit of three months for improvement, on which expiry the civil servant undergoes reassessment.

Taking into account the Human Resource Management Strategy, the Act envisages the introduction and integration of competencies in all functions of human resource management. The processes of human resource management in public authorities are based on competencies necessary for the effective performance of functions of the public authority. The importance of enhancing the system for human resource management in the public administration of Serbia was recognised in the European Commission's annual Monitoring Report for 2006.

The application of the modern concept of human resource management based on competencies strengthens professionalism, work transparency, employees' personal responsibility, motivation and retention of highly-skilled staff in the civil service. The Decree more closely defines the term competencies by referring to it as a set of knowledge, skills, personal attributes, attitudes and abilities of the civil servant that shape his/her behaviour and lead to the expected performance at work. It distinguishes between behavioural and functional competencies that are required to carry out job-specific duties. While behavioural competencies refer to a set of behaviours essential to effective performance at work, functional competencies refer to a set of knowledge and skills essential to successful performance.

An aspect of crucial importance for the admission of highly competent staff is the competency assessment in the selection phase of the recruitment process. The Act provides that the selection of a candidate is based on professional qualifications, knowledge and skills and made on the basis of competencies. Candidate selection assumes clear definition of the assessment criteria and training for members of the selection committees, who must know how to identify competencies essential for particular jobs, how to test them and how to evaluate specific competencies. Further, professional assistance in the procedure for the verification of competencies during the internal and public competitions and in analysing individual development potentials of civil servants will be provided by the Human Resources Management Service of the Government of Serbia. Additionally, job systematisation acts will determine special requirements relating to competencies that are necessary to perform the job. The heads of public authorities have a duty to send civil servants from staff management units to training programmes where they will acquire and enhance knowledge and skills necessary for verifying candidate competencies in the selection procedure.

The Act introduces a new system of assessment which it refers to as 'performance appraisal'. Although the existing Act's solutions are compatible with European systems, in practice, the existing performance assessment system proved to have many deficiencies. The major ones are: failure to achieve the main goal and purpose of the performance assessment system for public administration; limited opportunities for the advancement of civil servants; inadequate linkage with professional training/development of civil servants; inappropriate rewarding-performance policy; a complicated and bureaucratic assessment procedure representing a burden for managers; organisational culture and 'spite avoidance' policy – since its introduction, around 85% of the civil servants have received the two highest ratings ('distinction' and 'exceptional distinction'); existing rating scale; poor target setting model; lack of connection between individual objectives and strategic/organisational targets; lack of management knowledge and skills; infrequent training for managers.

The results of performance appraisals serve as a means for identifying training needs and their planning, planning of personal and professional development and training, removing shortcomings in the work, and deciding on advancement and reassignment, transfer, reward allocation and termination of employment. The appraisal is based on performance criteria, which include behavioural competencies and work results of the organisational unit in which a civil servant performs his job duties. The level of functional competencies serves to identify the needs for knowledge and skills improvement, or for professional training. The advancement of the civil servant depends on his/her performance, the evaluation of which aims to ensure the achievement of all organisational goals of a public authority and the desired work behaviour.

Current performance rating scale is undergoing changes, which will be reflected in the amendments as four options: 'failed to meet most of the expectations',

'needs improvement', 'meets expectations' and 'exceeds expectations'. The rating must be accompanied by an explanation stating the concrete examples of actual work behaviour, and the evaluators must attend a newly-introduced mandatory training for effective performance appraisal. The Government will take steps to bring relevant regulations in line with new legal provisions. The alignment of new rules with the Public Sector Salary System Act is necessary.

Since performance appraisal and promotion are still often based on arbitrary decisions, in order to strengthen the process of setting individual work objectives, it would be necessary to develop organizational performance management framework, which would set out clear organizational objectives. In this way, a civil servant would be able to recognize his/her influence and role in achieving of the institutional and overall Government's objectives.

Further, the Act introduces new rules with respect to civil service staff retention policy. While the Human Resources Management Service will determine the methodology to be used to monitor the state of play regarding staff drain and the effects of the drain on the functioning of public authorities, and propose measures for staff retention and prevention of drain impacts, the Government will, upon these analyses, determine the following legal measures – professional training obligation, obligation to transfer professional knowledge, increased recruitment of trainees, transfer, right to a correction coefficient, and other. To facilitate the efficient fluctuation and mobility of staff within the public administration and units of local self-government, the internal labour market is more closely regulated and thus conditions created for the efficient functioning of the Central Staff Register.

CONCLUSION

Bearing in mind that the European Union accession is a strategic goal of Serbia, one of the fundamental requirements is to strengthen administrative capacities and accelerate approaching European Union. Inevitably, Serbia has made an important progress in developing civil service legislation in alignment with the EU requirements. The new Civil Service Act introduces a comprehensive approach to competency-based human resource management – from human resource planning, selection and recruitment, introduction to job duties, performance management, employee development, to their leaving from the organisation.

Competencies should be interlinked with all human resources management processes - human resources planning, job analysis, recruitment and selection, transfer and mobility, performance appraisal and reward system, personal and career development. In order to effectively implement the new framework, there will also be a need for intensive civil servants training, especially of high level managerial staff. In addition to this, it would be important to ensure that the central institutions responsible for the human resources management in the civil service get recognized as useful partners of civil servants and attempt to attract broader inside and outside support for their future development. The capacity of

the newly established Training Academy and its ability to demonstrate its contribution to professional development of civil servants will be very important in this respect.

However, to make the introduction of competencies in the public administration of Serbia meaningful, it is necessary to continually increase awareness and capacities of all key institutional factors, and particularly managerial civil servants. One major factor in the reform of any part of the public administration, and particularly the human resources, are good managers. If they encourage changes, changes proceed swiftly; if they hold them back, nothing will ever change. Therefore, it is crucial that managers recognise the importance of good and professional human resource management practice, and cherish and promote it. If managers have good management skills and pay sufficient attention to employee motivation and development, the organisation also develops - good results are achieved, job satisfaction increases, as well as the quality of services provided to citizens, and therefore the integrity and resistance to any form of corruption in the public sector.

The aim of the newly established system of performance appraisal is to ensure the achievement of organisational goals of public authorities and the desired work behaviour and work values of civil servants. Furthermore, a stronger linkage should also be made between performance appraisal and training, by using performance appraisal results as a key source of training needs assessment. In addition to this, it is very important to invest efforts in strengthening the fairness and effectiveness of the promotion system. To the extent that the promotion process is perceived as too slow, too inflexible, or based on factors other than merit, the most-talented and ambitious civil servants will most likely find alternative employment.

After taking into account European standards and practice, we should be primarily aware of national legal and political environment and administrative tradition and consider its relevance. Absorbing changes and upgrading administrative capacities take a lot of efforts and time. Let us hope the changes will fit with the realities of our region and our tradition.

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FORENSIC EVIDENCE IN CRIMINAL CASE ATTRITION

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Abstract: It is well established that the forensic evidence presence in the Criminal Justice System brings complex questions regarding its collection, impact on legal outcomes, and interpretation by forensic specialists and judges. The paper presents research from the Anglo-Saxon legal doctrine (UK and USA) and the opinion of the U.S. Supreme Court on the admissibility of forensic evidence in criminal proceedings, since it was not the subject of research in the domestic scientific and professional community. Illustrating forensic evidence presence and the attrition process, we were able to highlight potential differences between subgroups in this interdisciplinary community (law enforcement, forensic specialists, and court members). Deficient funding and research opportunities in correlation with a lack of engagement with new technologies, absence of sufficient databases are main issues while trying to establish contribution of forensic evidence in legal outcomes. By bringing scientists, the judge members, police and forensic science practitioners together, we are creating bright-spots of activity in an effort to properly address the issues as a community.

Keywords: Forensics, Legal evidence, Attrition, Criminal Justice System

INTRODUCTION

There is wide interest in establishing how forensic cases advance through the Criminal Justice System. This paper is written to improve understanding and help in the minimisation of attrition (cases discontinued which do not result in a criminal conviction) in forensic evidence cases, in order to advise future policy development. Attrition is not an equivalent to an incident that did not happen, but rather the evidence in the criminal case was not sufficient from a prosecution viewpoint (Hester, 2005; Burton, et al., 2012).

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Forensic science is the application of science in a crime investigation and court proceedings, which consists of crime scene investigation and the collection, documentation, analysis, interpretation of potential evidence such as fingerprints, biological evidence, digital evidence, drug analyses and footwear marks (Burrows, et al., 2005; Home Office, 2016).

The study examines forensic evidence stance at three stages: report, police investigation, and court hearings. For us to understand forensic evidence importance at court and its contribution towards legal outcome, it is necessary to explore each stage of forensic evidence presence. In that manner, we will be able to methodically approach each difficulty and propose new methods.

If the forensic science is providing numerous analyses which help in Criminal Justice System, why are statistics not showing any particular progress? The main issue is *which, why* and *how* forensic evidence is presented and explained at court proceedings.

The contribution of scene examination and forensic techniques

It is established that quality of initial instruction on preservation, the available resources to examine crime scenes and procedures concerning forensic attendance are affecting the retrieval rate. So far there is not any statistical analysis combining attendance rates and retrieval rates, within particular crime types (Burrows, et al., 2005; Bradbury & Feist, 2005).

Resource allocation is a constant issue when it comes to collecting and analysing physical evidence. Knowing which evidence type has the best chance of increasing the odds of an arrest and a conviction would allow for a more informed way of deciding which types of cases to send crime scene investigators to and what kind of evidence they should focus on (Schroeder & Elink-Schuurman-Laura, 2017).

Peterson, Sommers, Baskin, & Johnson (2010) suggested the prioritizing forensic evidence analysis as method of backlog reduction and creating the analysis process to be more efficient to the requests of the criminal justice system. First of all, forensic evidence should be analysed in relation to arrest and conviction rates for a significant amount of cases within all offence categories – assault, burglary, homicide, rape and robbery. Once each type of forensic evidence has been connected with higher arrest and conviction rates for every offence category, an analysis of other related variables will be used to rule out any other variables which may account for these correlations. Finally, a prognostic statement of probable efficacy can then be designed and assigned to any incoming evidence given the type of evidence and the type of investigated offence. The gathered findings from the mentioned results can advise investigators and crime laboratories in prioritizing the analyses of any forensic evidence (Table 1). In that manner, crime laboratory

information and management systems (LIMS) would be improved (Schroeder & Elink-Schuurman-Laura, 2017).

These are the main steps from Peterson et al. (2010) protocol:

1. Percentage estimate of crime scenes from which various types of forensic evidence are collected;

2. Description and registry of all collected forensic evidence at crime scenes;

3. Following the use and attrition of forensic evidence during crime scenes examination, laboratory analyses, and criminal justice processes;

4. Establishing which types of forensic evidence contribute more often (in relation to their presence at a crime scene) to successful criminal case outcomes.

Table 1. *Forensic evidence stages by offence*

Study	Collection (%)	Submission (%)	Examination (%)	**Report generated**
Homicide				
Study 1*	**97.0**	**88.5**	**81.0**	-
Study 2*	**91.6**	**98.6**	**85.2**	**82.9**
Assault				
Study 1	**30.3**	**11.9**	**9.2**	-
Study 2	**5.3**	**99.0**	**82.7**	**82.7**
Robbery				
Study 1	**24.8**	**10.9**	**9.9**	-
Study 2	**6.3**	**98.9**	**86.3**	**86.2**
Rape				
Study 1	**63.8**	**32.2**	**18.6**	-
Study 2	**66.4**	**97.7**	**84.5**	**84.5**
Burglary				
Study 1	**19.6**	**13.0**	**9.2**	-
Study 2	**5.5**	**99.3**	**84.8**	**84.9**

*Study 1 - Peterson et al., 2010.

*Study 2 - Schroeder & Elink-Schuurman-Laura, 2017.

All types of evidence have a small number of cases with timely reports, which shows the scarcity of case outcomes directly influenced by what the forensic evidence states to the investigator or courts. This suggests that whatever impact physical evidence has on a case, it does not directly come from the information that evidence examination can provide to an investigation (Schroeder & Elink-Schuurman-Laura, 2017).

Expenditure for forensic crime scene analysis should be given higher priority over the increased collection of evidence. Further developments in DNA detection rates depend on increasing crime scene collection rates and establishing full usage of the material collected (Nuffield Council on Bioethics, 2007). Furthermore, lack of forensic facilities and expertise result in low rates of forensic examinations and documented evidence; which later influences the possibility of conviction (Lovett & Kelly, 2009).

Several studies have noted a difference in the utilization of forensic evidence from city to city. These differences include how much evidence is collected for a specific crime type as well as what evidence type investigators focus on for that particular crime type (Schroeder & Elink-Schuurman-Laura, 2017). For example, process mapping in diverse cities indicated that taking ten prints and buccal swabs was sometimes overlooked while a suspect was being held in custody. This results in some poor DNA hits and fingerprint identification rates by numbers of incidents, despite relatively high rates of scene attendance (Burrows, et al., 2005). In addition, Peterson et al. (2010) showed low rates of examination for biological evidence in assault cases while this study shows biological evidence examination was the second only to weapon/firearm evidence.

Scene attendance practices obviously have a very marked impact on the benefits obtained from forensic science (Figure 1). The research literature also shows that while fingerprints tend to be collected more regularly at crime scenes than DNA, the differences between the two techniques are reduced when the greater relative likelihood of DNA samples obtaining a match from the DNA database is taken into account. Equally, it seems that in larger cities, whilst effective and efficient in obtaining DNA evidence, is missing potential fingerprint identification (Burrows, et al., 2005).

Police investigation

The investigation phase is a significant point of attrition. Prosecution have put emphasis on incomplete and delayed submissions of forensic evidence in volume crime cases. Mutually, law enforcement and court members were critical of insufficient forensic awareness of officers (Bradbury & Feist, 2005).

There should be amended recordings of police data regarding DNA matches and the statistical improvement for informing crime justice stakeholders and the wider public. The statistics would also contribute with examination of the cost-effectiveness of the scientific usage of bio-information and may deliver evidence as

to whether infringements on the liberty, privacy and autonomy of individuals are justified (Nuffield Council on Bioethics, 2007). The primary aim is to produce a serious crime database that would organise data from a sample of case files relating to criminal offences (Burton, et al., 2012).

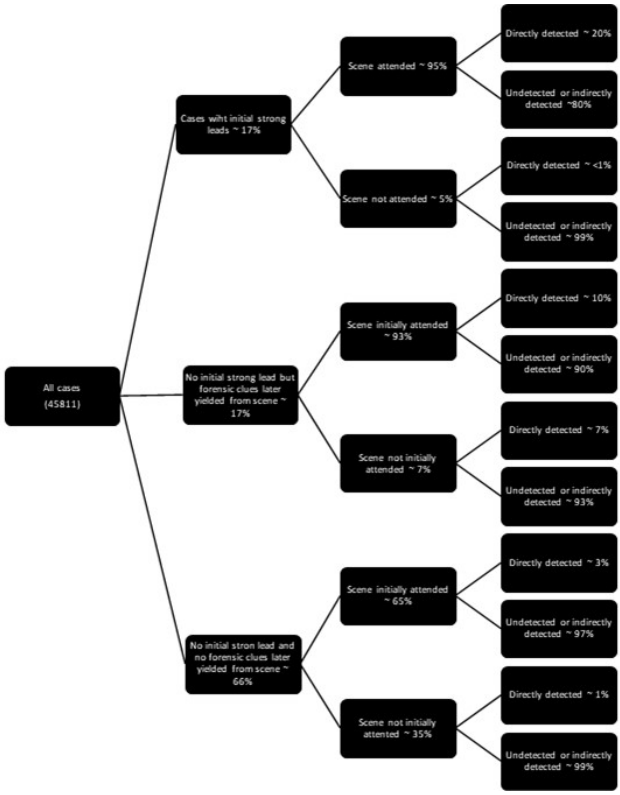

Fig. 1: *Summary of cases with strong leads, no initial strong leads, but forensic clues were later obtained, and no initial strong lead and no forensic clues (John Burrows et al, 2005).*

Forensic specialists' views on how case handling could be improved included clear leadership from experienced officers. This was seen in gathering reliable detailed evidence, particularly in the early stages of a case. An emphasis is placed on the investigating officer who has responsibility in criminal case; and the role of specialist officers for sexual offences as a model of good practice (Burton, et al., 2012). This was not meant as a criticism of either inspectors or response officers, but rather as a priority from a management perspective (Leane, Ryan, Fennell, & Egan, 2001; Daeid, Cole, & Marra, 2019).

Police forces could enhance knowledge and skills of forensic science through associations with universities within developing a strategy for the review and development of national police forensic learning from crime scene to court (Home Office, 2016).

Why cases fail to proceed through the criminal process to result in a conviction (attrition)?

Regardless of the complexity and difficulty with identification of cause and effect, there are common themes (investment of extensive resources; difficult or impossible identification), issues and references through research and attrition analyses of criminal cases (Leane, et al., 2001). The main idea relates to the perception of forensic evidence as a rather legal than scientific evidence, with leading study being focused on whether and how forensic evidence impacts on legal outcome in criminal cases (such as charge, prosecution, or conviction) (Quadara, Fileborn, & Parkinson, 2013).

Despite having a high probability of detection (Figure 2), the first concern is failed identification of a suspect through forensic linking, due to their absence from database or legitimate access. The second most common cause relates to the quality of available evidence (Burrows et al, 2005, Bradbury & Feist, 2005). All mentioned would lead to "no further action" (NFA) decisions due to insufficient evidence (Burton, et al., 2012).

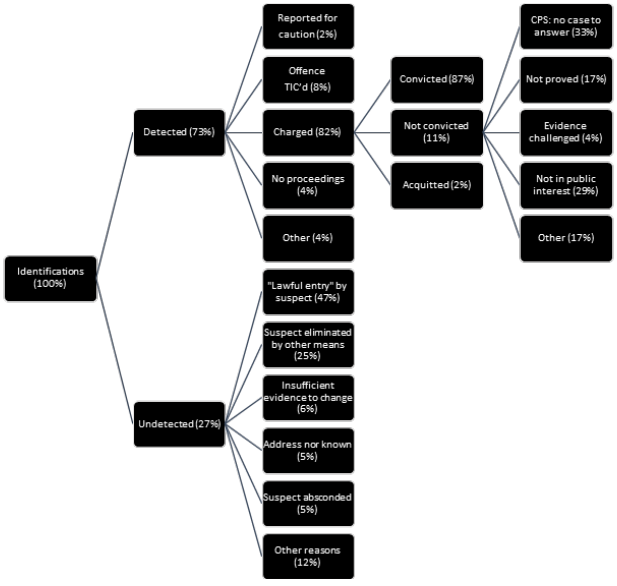

Figure 2. *Attrition through the forensic process, from identification to conviction presented as simplified version of the results of the police, prosecution and court data collection exercises (Bradbury & Feist, 2005)*

Regardless of the rising expectations of forensic evidence, the empirical research is not conclusive whether forensic evidence by itself has a definitive role in, or in association with positive legal outcomes (Burrows, et al., 2005). It is true that prosecutors are more likely to file charges when forensic evidence is present against the suspect. But, while some studies conclude that forensic evidence is

associated with arrest and charge, others have determined an association between forensic evidence and conviction (whether through plea or verdict) (Quadara, et. al, 2013).

Firstly, not all forms of forensic evidence is equally examined and presented. While DNA evidence specifically can identify an individual with a high level of certainty, and associate an individual to a crime scene, it is not always apparent how an individual's DNA has come to be at a crime scene. Likewise, on the subject of sexual offences, DNA evidence is unable to testify about the issue of consent, even though it can help in establishing that a sexual act has occurred. Thus, DNA and other biological evidence alone are generally not sufficient evidence to found a conviction on, and classify as one of numerous supportive evidence presented by the prosecution in court (Haesler, 2006). Even the evidence of the victim's resistance and the evidence of the defendant's force do not provide legal proof of non-consent (Quadara, et. al, 2013).

Due to these examples, biological evidence is not usually perceived as main impact on legal outcomes. Oppositely, evidence of injury is frequently associated with a positive legal outcome (Quadara, et. al, 2013). Besides, studies report that weapons, firearm and trace evidence do not significantly influence the odds of arrest for assault cases. While other scientists have concluded that weapons, firearm and fingerprint evidence have no impact on conviction. The inconsistent report statements are a result of insufficient number of cases with evidence reports (Schroeder & Elink-Schuurman-Laura, 2017).

Nevertheless, the presence of laboratory reports has great impact on the conviction for murder, theft and burglary charges. For rape cases, the absence of a laboratory report produces 50% decrease of conviction rates than when a lab report is present (Bradbury & Feist, 2005).

Therefore, we have determined these main challenging questions:

Evidence definition — dependency on forensic evidence by investigators and prosecutors to signal "a strong case" at the expense of other forms evidence (Burrows, et al., 2005).

Evidentiary sufficiency — if the availability of forensic evidence is a starting point for offence matters to proceed (Briody, 2002-03; Lievore, 2004).

Public interest - seriousness of the offence, and the likelihood of the perpetrator re-offending (Quadara, et. al., 2013; Lievore, 2004).

Does forensic evidence equals "legal evidence"?

Two demands should guide admission and use of forensic evidence in the court room: the extent to which a specific forensic discipline is based on a consistent scientific methodology; and the extent to which specialists in a specific forensic discipline that relies on interpretation could be fouled by error, the risk of bias, or the absence of effective procedures and strong performance standards (National Academy of Sciences, 2009). That is, is the expert witness qualified to

testify about the particular forensic evidence under examination and is the evidence sufficiently reliable to forensic specialist knowledge and reliance on it in making judgements about legal liability (Quadara, et. al., 2013).

To be credible in court, experts must be not only experts in their field, but also be experts in presenting evidence. Accurate presentation of complex scientific and statistical information to a non-scientific listeners, can be particularly difficult. Professionals (including judges) working within the criminal justice system should acquire a minimum standard of understanding of statistics, particularly with regard to DNA evidence. Judges need to ensure that evidence in its statistical presentation are accurately adhered during trials. For instance, The Royal Statistical Society (RSS) in the United Kingdom has intervened in cases where statistics was misrepresented during trials (Nuffield Council on Bioethics, 2007).

All cases where bio-information evidence is presented, introductory information should be offered to panel of judge's members, to ensure basic understanding of the capabilities, and also the limitations, of such evidence. Moreover, question on the contribution of bio-information to criminal justice requires more thorough research, especially as regards its interference with the autonomy and liberty of society members. In particular, information is required on how and why DNA matches may eventually translate (or not) into convictions in various situations, and for different offences (Nuffield Council on Bioethics, 2007; Daeid, Cole, & Marra, 2019).

Therefore, there is a need for a transparent and strict accreditation and oversight body for a forensic specialist on field and in laboratories, because, unfortunately, experts testifying on areas beyond their expertise have been widely reported in the courts worldwide (Nuffield Council on Bioethics, 2007). Each crime laboratory needs to have established clear and definite management and work procedures, as well as, cost analysis of forensic evidence. In Serbia the accreditation of forensic laboratories, as an authority of the EU, involves the application of European standards of ISO\IEC17025 in forensic laboratories and ISO 17020 for forensic examination at crime scenes (Ivanović & Ivanović, 2013).

For that reason, the U.S. Supreme Court purposed following issues to determine the admissibility of scientific evidence (Fisher, 2016):

- Has the technique been tested in field and laboratory conditions?
- Has the technique been subject to scientific review and publication?
- Has the technique been commonly accepted within the specific scientific community?
- What is potential rate of error?
- What are the control standards of the technique operation?

Another subject for consideration is how we are expressing levels of certainty.

The necessity for answering these particular demands also comes from studies which have found that rather than resulting in an increase in guilty pleas, there has instead been a change in defence tactics towards the question of science re-

liability rather than one of offender identity (Briody, 2002-03; Quadara, et. al., 2013).

Forensic evidence and The "CSI Effect"

This raised question as to whether individuals who watch crime shows develop inaccurate or unrealistic understandings of the uses and accuracy of forensic evidence, otherwise referred to as the CSI Effect. Some of the false understandings present in general public are (Quadara, et. al., 2013):

- Increased expectations of forensic evidence presence at trial;
- Overly trustworthy of forensic evidence and its higher expectations than from other evidence types;
- Incomprehensiveness of the forensic evidence meaning itself;
- Overly biased by articulate court experts (referred to as "White Coat Syndrome").

Peterson (1974) analysed evidence screening model which consisted of eight decision stages:

1. Decision to intervene in a crime.
2. Decision to process a crime formally.
3. Decision to request a forensic evidence specialist.
4. Decision of forensic evidence specialist to respond.
5. Decisions during investigation at the scene.
6. Decision to return evidence for analysis.
7. Decision to submit evidence to laboratory.
8. Decision to accept evidence.

Peterson describes how circumstantial factors shape verdicts - the speed of notification, weather, the patrol officer and the specialist's prior experience and learning. The development of forensic databases brought additional stages to be considered (Bradbury & Feist, 2005):

9. Decision to load forensic evidence on to databases.
10. Decision to search databases (contingent on the database and legal context).
11. Decision to follow up a match to accomplish a detection.
12. Decision to proceed with a case at court.

Further forensic research

Traditionally, forensic science research and innovation has mostly been associated with established technologies in other disciplines, such as statistics, chemis-

try, natural science or molecular genetics, where techniques have been developed in detection and analysis. There is a lack of engagement with new technologies. The current research shortage within forensic science, clearly highpoints that unchanged standard is not suitable anymore nor should it be. We have to accept transparent practices and share our knowledge for the benefit of the courts – the judges, attorneys at law, accused, and defendants (Daeid, Cole, & Marra, 2019).

Consequences to mentioned, have prevailed as accidental costs and operational challenges, such as contamination prevention and increased sample complexity. For instance, LCN (Low Copy Number) technique provides a DNA profile to be extracted from a fraction of a nanogram (10^{-9} g) of DNA, and the possibility of contamination that could be given inappropriate importance can also be greatly increased. The results may therefore be misleading, and yet they could be presented as powerful evidence in a courtroom (Nuffield Council on Bioethics, 2007).

Finally, the interpretation and evaluation of forensic evidence and its part in the context of individual criminal case remains at times very challenging, mainly in the absence of sufficient databases. In order to establish unusualness at a crime scene, first we must recognise what is normal. The databases allow forensic researchers to examine and authorise current and developing technologies. This should be required in order to understand the importance of evidence recovered from crime scene (Daeid, Cole, & Marra, 2019).

Further forensic steps in court

It is clear that forensic advances have not yet proved to be a universal solution that will resolve the challenges faced in crime investigations. Until now, research studies have been limited when dealing with the impact of forensic evidence in the crime investigation (Home Office, 2016). As mentioned previously, forensic evidence is only processed in some criminal cases, partially due to its availability during investigation (Burrows, et al., 2005).

Even though, forensic evidence has become an essential element of the criminal justice system, our knowledge is quite limited as regards how forensic evidence contributes to decisions in case processing at various stages. For example, do different types of forensic evidence (e.g. physical injuries vs. DNA or chemical trace analyses) or different assessments by forensic specialists concerning the evidence meaning, influence decisions to proceed with building a criminal case, engaging the suspect, and referring the case to prosecuting attorneys? How do central factors such as socio-culture, investigation leadership, risk management and resources influence the uses to which forensic evidence is put in lawyers' decision-making? (Julian, et al., 2011; Quadara, et. al., 2013).

CONCLUSION

Crime is declining, but it is also changing. The evidence-based research and the discussions about the collaboration between forensic science and the criminal law presents an uncertain scenario with regard to what the role of forensic evidence in criminal prosecutions is, and what it should be. It is important to have a clear idea what this role entails, because the collection and analysis of forensic evidence is resource intensive (Home Office, 2016; Quadara, et. al, 2013).

Some of the more exciting research developments that will contribute to improving the efficiency and effectiveness of the stream of forensic processes will be the greater use of data mining approaches. This may provide further ideas for defining the inter-relationships between different forensic sub-processes, main stages of attrition, the places with existing blockages and how they can be overcome or ameliorated with the greatest impact on outcomes (Bradbury & Feist, 2005).

At the beginning of the forensic process, the individual performance of crime scene examiners appears to differ; exactly why individual performance varies, or what occurs to detection rates if crime scene examiners take higher investigative role, is still uncertain. The lacking statistical connection between forensic attendance and retrieval rates has long been a segment of analysis in establishing the level of attrition. What sort of factors contribute to higher rates of forensic retrieval (and successful identification) requires to be more clearly identified.

Not all recovered forensic materials are submitted for further analysis (or for subsequent loading on forensic databases). There is a variety of reasons why attrition occurs during retrieval and submission, commonly from the poor quality of the recovered forensic evidence or financial limits on what can be submitted for analysis (Bradbury & Feist, 2005).

And finally, we have limited knowledge regarding contribution of forensic evidence in court. Further studies should focus on how forensic evidence is received and heard by the court; how it is led as being relevant to the elements of the offence or to specific facts in issue; and the basis upon which it is challenged by the defence (Quadara, et al., 2013).

Forensic evidence is not a sole factor that can predict case progression or positive legal outcomes. Quadara and colleagues (2013) and Lievore (2004) stated that there are complex interactions between various factors, together with forensic evidence, which investigators and prosecutors evaluate through the means of discretion and convictability.

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EXPLOITATION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN THE CONTEXT OF ARMED CONFLICTS

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Abstract: The areas where armed conflicts take place and have been perpetrated by state or non-state actors involved in conflicts represent a suitable place for emergence of phenomenon of human trafficking. The exploitation of victims of trafficking in human beings in the context of armed conflicts can take various forms, so that for the purposes of our research, this category of victims will be classified into two groups: victims of armed activities and victims of non-armed activities. Hence, the first group includes victims that take direct participation in armed combat activities or other activities during combat operations such as minefield cleaning, transport and medical services, etc. The second group includes victims of sexual exploitation in the conflict area and their forms, forced labour in different sectors and trafficking in organs.

Key words: trafficking in human beings, conflict, victims, exploitation

INTRODUCTION

Trafficking in human beings is a complex global problem that is present in both regular or peacetime conditions, and even more in the extraordinary conditions, and thus in conflict and post-conflict periods. The reason we can find in the fact that factors contributing to the emergence and expansions of this form of human rights violations are numerous and diverse. In addition, those factors are very present in the conditions that occur as a direct consequence of a different crisis situations, including those that are manifested in armed conflicts. The United Nations General Assembly recognized trafficking in human beings as a direct consequence of crisis situations in the Resolution 63/156 which calls upon "gov-

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ernments, the international community and all other organizations and entities that deal with conflict and post-conflict, disaster and other emergency situations to address the heightened vulnerability of women and girls to trafficking and exploitation, and associated gender-based violence" (General Assembly, Sixty-third Session, 2009, paragraph 4).

Armed conflicts, as a type of crisis situations, are related with several and specific risk factors linked with trafficking in human beings, primarily due to the fact that these conditions feature the erosion of the rule of law and the breakdown of institutions, including changes in economic system. Crisis-affected populations tend to increase their reliance on negative coping mechanisms and adopt risky survival strategies, so they become vulnerable to the various forms of criminal activity. They are forced to find and accept the available ways of leaving the conflict zone, accepting also those who expose them to an increased risk of victimization through those forms of criminal activity related to their smuggling, and under such conditions, they are additionally exposed to trafficking in human beings. At the same time, criminal networks are adapting to the new situation, by targeting new victims in new places, such as refugee and internally displaced persons, especially those who are located in camps where there is insufficient level of protection and safety (IOM, 2015:3).

Victims of trafficking in human beings in the context of armed conflicts may be exposed to various forms of exploitation related to armed and non-armed activities. Each of these forms of exploitation has a specific characteristic related to the conditions of armed conflict or post-conflict situations in which the trafficking process takes place. There is a particularly high risk of victim's exploitation in countries that do not recognize human trafficking as a criminal act in their national legislation, so do not have adequate legal and other mechanisms for implementation of preventive and repressive measures in countering this type of crime.

DEFINITION OF TRAFFICKING IN HUMAN BEINGS IN THE CONTEXT OF ARMED CONFLICTS

Conflict areas, whether a country or a region, are characterized by instability, insecurity, economic devastation, impaired/suspended rule of law and weakened state institutions. Due to the existence and functioning of numerous negative social factors - state collapse, erosion of rights and non-respect of laws, forced eviction, humanitarian crisis, social fragmentation and socioeconomic stress, the vulnerability of all categories of people has increased. People have been facing different challenges - armed acts, violence, brutality, abuse and exploitation, numerous criminal activities, and trafficking in human beings. The changed nature of modern armed conflicts that involve various actors and means, an increasing number of non-state actors, resulted in the emergence of new forms of conflict, such as hybrid warfare. The fact that victims of trafficking in human beings are

especially vulnerable during and immediately after an armed conflict have put the focus on trafficking in human beings in the context of armed conflicts.

This special vulnerability of victims is confirmed by two resolutions of the UN Security Council on human trafficking in the context of armed conflicts. By the Resolution 2331 of 2016 the UN Security Council "condemns in the strongest terms all instances of trafficking in persons in areas affected by armed conflicts, and stresses that trafficking in persons undermines the rule of law and contributes to other forms of transnational organized crime, which can exacerbate conflict and foster insecurity and instability and undermine development" (Security Council, Resolution 2331, 2016). This resolution specifically draws attention to the fact that human trafficking in armed conflicts and post-conflict period may be for the purpose of various forms of exploitation, including sexual exploitation, forced labour, slavery and practices similar to slavery and trafficking in human organs.

The Security Council reiterates its condemnation of the crime of trafficking in human beings by adopting the Resolution 2388 of 2017, which strongly expresses concern about the vulnerability of children in relation to exploitation and abuse, the recruitment and use of children in the armed forces; reaffirms its condemnation in the strongest terms of all instances of trafficking in persons, especially women and children, who make up the majority of all victims of trafficking in persons in areas affected by armed conflicts (Security Council, Resolution 2388, 2017).

The above resolutions indicate the importance of preventing trafficking and punishing perpetrators and emphasizing the fact that victims of trafficking in human beings are additionally vulnerable when their exploitation occurs in the context of armed conflicts. Trafficking in human beings, as a form of criminal activity, makes the process of establishing peace and the rule of law very difficult. The suspension of national legislation during the duration of armed conflicts and the lack of legal mechanisms obstruct the prevention and punishment of trafficking in human beings, thereby reducing the possibility for victims to realize their rights.

Classification of victims of trafficking in human beings

The exploitation of victims of trafficking in human beings can be realized through various forms: sexual and labour exploitation, reselling people, illegal adoption of children, forced marriage, trafficking in human organs, forced participation in armed conflicts and criminal activities. Accordingly, it is possible to classify victims of human trafficking based on several criteria: the degree of social danger, the geographical level of realization, the bio physiological characteristics of the victim, the relationship of the victim to his position and the type of exploitation (Mijalkovic, 2009:84). "In conflict areas, trafficking in persons for sexual slavery, recruitment of children into armed groups, forced labour and abduction of women and girls for forced marriages are the most commonly reported forms of trafficking" (UNODC, Global Report on Trafficking in Persons, 2018:6). Therefore, when analysing the phenomenon of trafficking in human beings that

occurs during the armed conflict, we can notice that new classification is not introduced, but attention is drawn to the increased vulnerability of victims and its specific manifestations. Some forms of exploitation, identified by exploration of exploitative practices in conflict situations, have emerged as specific to the context of the conflict, including, but not limited to the following:
1. Sexual exploitation of women and girls by members of armed and terrorist groups;
2. Use of trafficked children as soldiers;
3. Removal of organs to treat wounded fighters or finance war, and
4. Enslavement as a tactic of terrorism, including its use to suppress ethnic minorities (UNDOC, Countering Trafficking in Person in Conflict Situation, 2018: VII -VIII).

Considering the existing classifications of victims of trafficking in human beings, the fact that this phenomenon in the context of armed conflicts has been very pronounced, that victims in such circumstances are especially vulnerable, represents reasons and basis for creating a new classification of victims of trafficking in the context of armed conflicts. It is expected that its introduction into the conceptual and categorical apparatus of criminalistics and security sciences and practices will contribute to a better understanding of this complex phenomenon and easier distinction of related concepts and phenomena. By highlighting the emerging forms of trafficking in persons that are characteristic to the context of armed conflicts, attention has been drawn to the social danger of this phenomenon, but also to encourage new research in the context of justified criticism.

In the context of armed conflicts and based on the criteria of the type of activity to which the victims of human trafficking were executed, it is possible to distinguish two basic groups: victims of trafficking in human beings in armed activities and victims of trafficking in human beings in non-armed activities. Within these main categories, and with reference to the type of exploitation that victims of trafficking are exposed to, it is possible to further classify them. Between victims of trafficking in human beings in armed activities we distinguish those who took direct or indirect participation in combat activities. Victims of trafficking in human beings in non-armed conflict can be victims of sexual exploitation, forced labour, trafficking in human organs and body parts or reselling people (Chart 1).

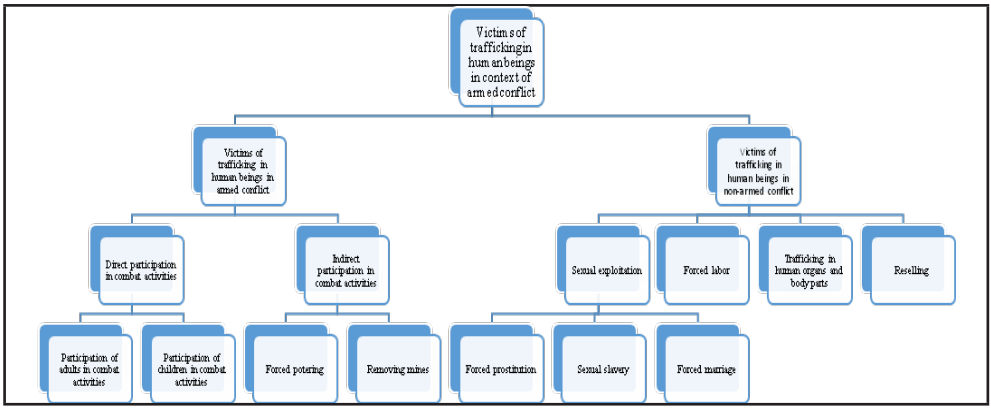

Chart 1: Classification of victims of trafficking in human beings in the context of armed conflicts

Spatial and temporal determination of trafficking in human beings in the context of armed conflicts

Armed conflicts cause negative consequences that manifest in the territory of the state in which the conflict is taking place, and very often beyond its borders, most often on the territory of neighbouring countries and regions, along migration routes of refugee population, but also on the global level. People forced to flee their homes leave families, friends and support networks behind. This social isolation makes them extremely vulnerable and easy targets for traffickers. The urgency of conflict-related displacement compels people to gather in locations with limited protection, safety and economic opportunities, such as informal settlements, camps for internally displaced persons and refugee camps (UNODC, Global Report on Trafficking in Persons, 2018: 16). By changing the place of life, forcibly displaced persons seek shelter, both within the boundaries of their state, as well as in the territory of the neighbouring state and beyond. In this way, the spatial determination of trafficking in human beings in the context of armed conflicts is possible through the separation of factors, actors, activities and consequences in the countries of origin, transit and final destination.

The time frame of occurrence of trafficking in human beings in the context of armed conflict includes conflict and post-conflict periods. The conflict period implies the duration of the armed conflict itself, whether it is an internal or international conflict. It is generally clear when the conflict starts, but the moment it ends is not, since peace agreements do not always mean the end of all hostile activities. However, with regard to trafficking in human beings in the context of armed conflicts, the moment of ending the conflict is essential for the legal classification of the act, but it is not crucial when it comes to the research of the

phenomenon itself, since the phenomenon of trafficking in human beings is also expressed in the post-conflict period.

In the report of the Special Rapporteur on trafficking in persons, especially women and children of the UN General Assembly it is stated that "post-conflict situations are typically characterized by absent or dysfunctional justice and law enforcement institutions, and consequently by: a climate of impunity that fosters violent criminal networks; high levels of poverty and lack of basic resources; significant inequality; large populations of highly vulnerable individuals (displaced persons, returnees, widows, unaccompanied children); fractured communities and lack of trust; and militarized societies tolerant of extreme levels of violence. These features render men, women and children in post-conflict societies especially vulnerable to trafficking" (A/71/303, 2016:13). Peyroux identified four groups of factors that promote the existence of trafficking in human beings in the post-conflict period: organized crime (warlords are shifting the market for arms trafficking to trade in narcotics, cigarettes and humans beings); the appearance of vulnerable population groups (unaccompanied women and orphaned children); the dissolution of the traditional value system and the lack of economic opportunities as a result of the country's impoverishment (Peyroux, 2016:38).

VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN ARMED ACTIVITIES

Victims of trafficking in human beings can be exploited through involuntary involvement in armed activities. Any exploitation of victims of trafficking involves a number of risks to the victim; however, this kind of exploitation brings with it a number of additional risks. Above all, these victims are at constant risk of losing their lives in conditions of war activities in which they are compelled to participate. Also, in many instances, victims of trafficking released from the captivity of armed and terrorist groups are not identified and supported as victims of trafficking and terrorism, but rather classified as "combatants" and treated as threats or intelligence assets, potentially detained and denied access to protection and assistance, or stigmatized for their involvement with terrorist groups if they are returned to their communities. Ultimately, with this approach and additional victimization and stigmatization by their community, they have been denied access to protection and help they need (UNDOC, Countering Trafficking in Person in Conflict Situation, 2018:17). Depending on the specific (predominant) activities on whose performance the victims are forced, it is possible to distinguish participation in armed activities through combat (direct) or non-combat (indirect) activities.

Direct participation of victims of trafficking in human beings in combat activities

Direct participation in armed activities implies the participation of victims of trafficking in human beings in the combat activities of one of the actors in the conflict. In order to protect their fighters from the increased risk of losing the life in acts that are particularly dangerous or to replace those who died in the previous stages of the fight, they force adult victims, and often children, to take part in armed and terrorist activities in the conflict zone. The variety of forms of trafficking in human beings, the modality of recruiting victims and ensuring their obedience, on the one hand, and the nature and context of armed conflicts, on the other hand, can lead to difficult identification and clear distinction between the situation and the position of specific victims. There won't be any dilemma of changing the situation of the victim if the victim is exploited through forced labour and then forced to participate in fighting. Similar situation is in the case of the use of force or threat of force during the recruitment of adults in armed and terrorist groups. The problem may arise in cases where more subtle means, such as ideological, were used during the recruitment, and the victims are previously marginalized, discriminated persons, persons who do not have economic opportunities, etc. The fact of the abuse of power, on the one hand, and the difficult position of individuals and groups of people, on the other hand, are the real basis for easier manipulation, recruitment and exploitation of victims of trafficking in human beings. The greatest possible paradox is reflected in the fact that victims, because of fear for their own life or the lives of the people close to them, take part in those combat activities that carry the greatest possible risk of death.

Numerous and prolonged conflicts have produced a new and particularly dangerous form of exploitation of children in the form of their coercion to participate in combat activities. The number of children involved in armed conflicts in recent years is on a rapid increase. According to the UN reports, from 2005 to 2016 the participation of 49 640 children was confirmed, and only in 2016 there were 7734 confirmed cases of participation of children in armed conflicts (The war on children, 2018:22). According to the Special Representative of the UN Secretary General for Children and Armed Conflict, "recruitment and use of children in armed conflicts is almost always a trafficking in human beings" (A/HRC/37/47, 2018: 6). The proliferation of light weapons has made children effective soldiers. Schauer and Elbert summarized the motivational factors for recruiting and abduction of children: in poor countries, children and adolescents represent the largest share in the population, making them available for recruitment and abduction. The limited ability of children to assess feelings and risks, make them fearless and without firmly built moral barriers. They are cheaper than adult soldiers because they require less resources. They attract less attention, making them suitable for various tasks, such as placing mines and committing suicide attacks. They are subject to control and indoctrination, so they do not question the authorities and the decisions they need to implement (Schauer and Elbert, 2010: 316-317).

After intensive training, children become armed and sent to battle ranks. Even there are units made exclusively of children, as a 12-year-old boy from Liberia, who commanded an eight-child unit (4 girls and 5 boys), testified for the Human Rights Watch that they secured checkpoints and participated in direct combat actions (HRW Report-How to fight, How to Kill, 2004:20). Children are trained to install explosive devices, and in Colombia the cases have been reported that children placed foot-breakers mines (HRW Report-You'll learn not to cry, 2003:67). They were also used as spies to collect information about the opposing side of the conflict (Beber, Blaattman, 2013:88). The phenomenon that is more frequent is the use of girls and boys in suicide attacks, primarily in Islamic countries. Children who commit suicide attacks have previously been recruited, abducted or exploited in other forms of trafficking in human beings (Olivier, 2018:117). Also, children in armed conflicts are used as a "human shield" (McKnight, 2010:113).

Indirect participation of victims of trafficking in human beings in combat activities

Indirect participation in armed activities includes compulsion of the victim to activities that represent the support to the main armed activities. These are activities that are implemented in parallel with armed actions and which also carry a high level of danger. Victims are forced to carry heavy equipment and weapons (forced pottering), often through inaccessible terrains such as jungles and mountains, and they are not allowed to put off equipment in order to rest, despite physical pain and suffering. They are also forced to be human landmine sweep by walking in front of the military in the areas suspected of having mines or forced to remove mines after their detection (Cook, et al., 2015: 8-9). Engagement may also include the provision of medical assistance in conflict zones. Victims of trafficking in human beings can be forced to carry out various criminal activities, such as transport of opium or conducting of abduction, as recorded during the conflict in Iraq (Heartland Alliance for Human Needs & Human Rights Report, 2007:17).

VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN NON-ARMED ACTIVITIES

Another form of exploitation of people in the context of armed conflict is their participation in non-armed activities. That considers different forms of exploitation that are usually happening in time of peace, but they have certain specificities when they have occurred in the context of war. This group includes: sexual exploitation, forced labour and trafficking in human organs and body parts.

Sexual exploitation

In the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, sexual exploitation is defined as "the exploitation of the prostitution of others or other forms of sexual exploitation" (UN General Assembly, 2000: article 3 (a)). According to the UN Secretary-General's Bulletin, sexual exploitation is defined as any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another (The UN Secretary-General's Bulletin, 2003: section 1). It is a form of exploitation that is related to gender-based violence that is widespread during armed conflicts.

Forced prostitution is one of the most common forms of sexual exploitation in the context of armed conflict. During conflict, women and girls are particularly vulnerable categories that are physically and economically forced or left with little choice but to become sex workers or to exchange sex for food, shelter, safe passage or other existential needs (UNIFEM, 2002:11). This phenomenon is known as "survival sex" and does not, by itself, represent trafficking in human beings, but it can be of an exploitative nature because of the vulnerability of those who practice it. In addition to cases in which women decide to become sex workers, in the conditions of armed conflict there is also a practice in which women and girls are surrendered or sold by family members. Such cases were recorded in Syria, where men sent their wives to Lebanon, with a promise of decent work, but women were forced to work in bars or forced into prostitution or where poor Syrian families in order to marry their daughters decided to use a go-between, who then sold the girl or forced her into prostitution (Peyroux, 2015: 22). Forced prostitution is also featured in refugee camps where members of the armed forces, police and camp authorities use the sexual services of refugees and asylum seekers in exchange for providing assistance with documents and safe transit. During the armed conflict there were cases in which the victims were videotaped during the act of rape, after which these video tapes were sold as pornographic material or used for the purpose of war propaganda (Žarkov, 1997: 75-80).

Trafficking in human beings is also related to countries in post-conflict period, especially in situations where serious human rights violations and exploitation, such as slavery, forced labour, forced pregnancy, forced pregnancy terminations and systematic rape campaigns, have been perpetrated during conflict (UN Department of Peacekeeping Operations, 2004:4). Members of armed and peacekeeping missions in post-conflict areas are often perceived by traffickers as a potential source of sexual demands. One of the reasons that contribute to their participation in sexual exploitations of victims of human trafficking is the fact that they are immune from prosecution for crimes they may commit while deployed.

For the purpose of preventing sexual exploitation and abuse in humanitarian crises, the Inter-Agency Standing Committee (IASC) established a special Task

Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises. The core central recommendations of the IASC imply that any sexual exploitation and abuse is prohibited, especially sexual activity with children (persons under the age of 18), regardless of the age of majority or age of consent locally; exchange of money, employment, goods, or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited (Inter-Agency Standing Committee, 2002:4). The United Nations also responds to this problem by establishing the special Department for Peacekeeping Operations (DPKO) which should play an important role in combating trafficking in people in post-conflict areas, and as one of the objectives it emphasized the establishment of mechanisms for preventing, monitoring, reporting complaints, investigative procedures, disciplinary processes and punishment for all members of the UN peacekeeping missions who participate in activities that support human trafficking (The Freedom Fund, 2016:17).

Sexual slavery includes almost all forms of forced prostitution, but also other forms of exploitation related to human trafficking. The practice of sexual slavery in the context of armed conflict is accepted as a war or terrorist strategy, and in some cases is supported by religious ideology of actors in conflict (Holz, 2017: 14). It should be noted that victims are not always captured for the purpose of sexual exploitation, but in case of female victims, sexual violence is almost always a part of their exploitation. One of the current examples of sexual slavery in the context of armed conflicts is the abduction and capture of about 3200 women and girls of the ethno-confessional community of Yazidis by the fighters of the Islamic State of Iraq and Syria (ISIS) (UN Human Rights Council, thirty-second session, 2016). Captured women and girls, some of them aged 12, were threatened as sex slaves (sabayas) and sold in slave markets, as well as in online auctions where potential buyers had insight in their pictures and "specifications" such as: age, virginity or marital status, how many times has been bought before and also, their current location and starting price from which bidding would start (International Federation for Human Rights, 2018:25).

In slavery, victims were constantly raped and beaten, without the possibility of access to medical assistance, which is why victims often suffered from contagious, sexually transmitted diseases. Some of them were forced to give birth or in some cases, they were victims of forced pregnancy termination. Sabayas were often forced into marriage with members of the armed forces, where they were exploited in their households. After a certain period of time, most of them were sold or given as a gift to other soldiers. Also, it should be noted that men who are in captivity can be victims of different forms of sexual exploitation such as rape, genital mutilation and enforced sterilization, and sometimes can be forced to perform this brutal acts on each other, sometimes among family members (Lewis, 2009: 10-13). One of the cases of sexual slavery in which boys were victims is recorded during the armed conflict in Afghanistan where local commanders of the armed forces sexually exploited "dancing boys", which was related with cultural practice known as "bacha bazi" (UN Security Council, 2015:4). Boys aged 11 or 12 were

picked off the street or sold by family members and taken into the ownership of a wealthy trafficker who trained them to be able to sing and dance in order to entertain men who wish to pay to see them. Besides that, boys were exploited through pornography and prostitution (Erdogdu et al, 2016:4). Based on the above, it can be concluded that sexual slavery is one of the most complex forms of exploitation of the victims, as it includes many other forms of exploitation that can last for a longer period of time, which is why this practice is related with a large number of suicide cases among victims.

Forced marriage is defined as the exploitation of the victim through the imposed role of the spouse, because the marriage is concluded by the consent of only one party in the marital community (Mijalković, Žarković, 2012: 167). In the conflict, there is diminished capacity for the victim to leave the perpetrator-captor husband, which could include the reasons such as: forced capture, child-bearing, strict restriction of movement, physical restraint or markings that identify the victim as belonging to a particular group or captor, strong feelings of culpability on the part of the victim if she was forced to commit atrocities, and the fear of inability to reintegrate due to stigma and abuse by community members because of her past association with the fighting force (Mazurana & Carlson, 2006:11).

Victims are often kidnapped during the combat operations in their communities, which sometimes includes the executions of their family members, after which they are forced to marry with the direct perpetrators of such executions. Girls and unmarried women are more desirable for forced marriages, but the victims can also be women who already have children. In these cases, children are used by imposed husband as a means of intimidating and controlling the victim. Sometimes, parents or other relatives of the victims agree with alleged marriage, in good faith that in this way they will be protected from violence, after which they are sold or forced to prostitution by armed groups. Forced marriage in the context of armed conflict should be considered as a form of sex slavery, because victims are captured and detained under conditions of extreme cruelty, with the deliberate intention of raping them and perpetrating other acts of sexual violence upon them; they are forced to child-bearing, work in households, travel with the perpetrator-captor husband and support his activities, including combat operations (Bunting, 2012:172). This form of exploitation is characteristic for traditional societies in which it is considered that forced marriage guarantees a higher and more far reaching degree of control over women than rape or sexual slavery, especially during the conflict and post-conflict period.

Forced labour

Victims of trafficking in human beings may be forced to conduct various activities that are not directly correlated with armed conflicts. Armed and terrorist groups force victims to various jobs, including construction work, cleaning, mining, trenches, agriculture and household services (UNODOC, Countering

Trafficking in Person in Conflict Situation: 2018:15). The range of these forced activities is wide, and we can divide it into forced labour in industry, agriculture and households. The forced labour includes victims who are forced to work in mines to finance the operations of armed groups. This form of trafficking in human beings is conditioned by the availability of rich natural resources that can be separated without advanced technology, and it is documented in various conflict zones in sub-Saharan Africa (UNODC, Global Report on Trafficking in Persons, 2018: 13). Victims may be forced to do housework in households, that is, to be chefs, drivers, repairman, etc. (Heartland Alliance for Human Needs & Human Rights Report, 2007:23).

Trafficking in human organs and body parts

According to the Palermo Protocol, removal of organs is a form of exploitation of victims of human trafficking. Organ trafficking can be defined as recruitment, transport, transfer, harbouring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation (The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, 2008).

This definition of organ trafficking includes primarily the cases in which removal of organs is related to their exploitation for transplantation, but in the context of armed conflicts, there are many other motives of such practice such as: animosity, revenge, desire for destruction and showing supremacy, religious beliefs, taking body parts of the enemy as war trophies and others. Victims of this kind of trafficking can be killed or alive enemy soldiers, in some cases also the domestic soldiers who were killed during combat operations, as well as the civilian population in conflict areas. This practice can be validated with religious beliefs, as in case with ISIS who through fatwas, religious expert pronouncement realized from religious authorities, regulate combatants' behaviour during conflict. These fatwas informed ISIS combatants that harvesting organs from the bodies of the enemy-infidel or removing organs from living apostates, even if this might cause their death, was permissible, because there is a religious obligation of all combatants to save a Muslim soul from sickness and death by transferring them the healthy organs; in some fatwas, there is a permission to eat their flash (Scheper-Hughes, 2017:168-169). In some conflict areas there was organized transportation of combatant's bodies to the medical institute where their eyes, skin, bones, solid organs and other body parts had been removed during autopsy, without consent of their family members (Scheper-Hughes & Boström, 2013:246). There was a doubt that some of the soldiers were injured, but alive, and that they were deliberately hunted by enemy soldiers in order to cut their organs. Armed con-

flicts are also related to the large number of refugees and internally displace persons, so traffickers can exploit their vulnerability by offering them to sell their organs or by threatening them into donating their organs. There was reported that some refugees were undergone an operation in hospitals and that their kidneys were removed during the operation, without their knowledge or that some of them, after the treatment in hospital, were found dead with their organs missing (Peyroux, 2015:20). Trafficked organs and body parts can be used for the purpose of medical treatment of injured soldiers or civilians in the conflict areas or they can be sold across the border, on a black market to other interested persons who have a need for transplantation. Also, the pharmaceutical and medical industries could be potential buyers of body parts such as skin, scalps, fingernails, tendons, heart, valves, skulls, and bones, which then find their way into research, drug manufacturing, and replacement surgery (Territo & Matteson, 2012:6).

CONCLUSION

There are many reasons which support the view that human trafficking should also be considered a direct consequence of crisis situations, especially armed conflicts. During armed conflicts and in the post-conflict periods, the vulnerability of the population is increased because of the economic deprivation and erosion of the legal system, limited access to social services and forced displacement of the civilian. In addition to these conditions, trafficking in human beings becomes more complex, both in terms of victims and forms of exploitation that can occur in armed conflict. The transnational and multidimensional nature of trafficking in human beings in the context of armed conflicts is also reflected in the dissemination of the consequences and effects of trafficking outside of conflict areas, due to the fact that the migrant population can be exploited outside the country of origin.

Regarding the form of exploitation, the problem becomes even more complex, because of the fact that in the context of armed conflicts, certain forms of exploitation become more present, while others take on specific characteristics. In regular, peacetime conditions, there is a clear distinction between the various forms of exploitation, which is not the case during the armed conflicts in which they very often can be diffused. It is difficult to classify them in strict categories, bearing in mind that victims are almost always exploited multiple times. A particular problem occurs in sexual exploitation, because of the fact that sexual slavery in armed conflicts is accepted as a war strategy, and that it contains almost all other forms of sexual exploitation, including prostitution and forced marriage. Besides that, it is difficult to make a clear distinction between forced labour and the victim's forced participation in armed conflicts, especially when it comes to indirect participation, which includes a various activities that are not directly related to combat operations. Also, victims who are forced to participate directly in armed conflicts are often forced to execute criminal activities, which is a special form of exploitation in regular conditions. On the other hand, reselling can be

considered a special form of exploitation in cases when the victims were immediately sold to another person, so traffickers had material or other kind of benefit. In the context of armed conflict, reselling is a component of almost every form of exploitation, since the victims are initially exploited and after a certain period of time, resold or given to another person who will exploit them further.

In international criminal law, trafficking in human beings in the context of armed conflict is overly prosecuted as a crime against humanity,[2] genocide or war crimes,[3] so there is a dilemma whether all cases of victim's exploitation during the armed conflict can fulfil the specific conditions contained as elements of these international crimes. It further imposes the question of whether in this way the possibilities for prosecution of human trafficking as an international crime are limited.

Based on the above, the classification of the forms of exploitation presented in this paper must be considered as conditional, because it is based on the criteria whether victims were exploited through participation in armed or non-armed activities, so there is a need for further research of each of the mentioned forms of exploitation in the context of armed conflict, for the purpose of their complete explanation and systematization.

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DIGITALISATION IN THE CRIMINALISTICS

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Abstract: In this paper the authors attempt to briefly characterize the specific evolution in criminalistics in recent years. Basic evolutionary processes concentrate not on biology and genetics, despite this area is preferable by practitioners. The biggest changes in objects for research are concentrating in digital traces. Similar evolution in content and scope of methods and their parts are oriented on digitalisation processes. Especially documentation of criminalistics traces including traces ensuring, and criminalistics or forensic methods and processes in connection with their relations, applications and technologies. Authors analyse this non-marginal actual situation, needs and possibilities for the explanation of their place, importance and relatives in the system of criminalistics, too. These are recognized in the uncovering and clarifying activities performed by police officers. Authors demonstrate the ground conditions under which such crimes are revealed and documentation is effective with criminalistics methods. This study is a free continuation of the knowledge presented in 2018 at Archibald Reiss Days. The study is the result of the project Security Centre of Excellence research European ESF grant no. NFP26240120065.

Keywords: criminalistics, digitalisation, traces, digital traces, digital documentation,.

INTRODUCTION - SIGNIFICANCE AND CONTENT OF CRIMINALISTIC DOCUMENTATION

Content of criminalistic documentation, as well as the content of the term is connected predominantly with the process of criminalistics research (Krajník, 1996) and criminal investigation (Viktoryová & Blatnický, 2007).

Criminalistic research begins at the very moment of searching the criminalistic trace. Therefore, the criminalistic documentation is a part of criminalistic

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research and is liable not only to its rules and the principles valid for criminalistic methods, but the substantive influence upon its form and content are born also by other procedural principles – principles connected with the technology of its acquirement. From the most commonly practical usage of the outcomes of criminalistic documentation it is obvious that it should count the principles related to theory and practice of criminal investigation and penal process (Kurilovský, 2018).

The structure of the content of criminalistic documentation is afterwards the reflection of developmental trends in cognitive processes and technologies, which the documentation is based on. This is mirrored in particular ways – some authors talk about methods and others about types of criminalistic documentation in general, as well as about other forms – the majority of authors, however, do not distinguish this fact and they talk only about the types of documentation (Straus, 1999, Doležalová 2012).

Substance of documentation

Basic tasks for documentation are not oriented to one way only. Criminalistic traces are oriented, but also every interference and manipulation with the criminalistic trace. These facts are taken into account not only in the criminalistic research, but also in the criminalistic identification. Traditionally, criminalistic text books emphasized the documentation of traces, however the need for documentation of processes related to searching, asking research and research of traces in broader context were minimized in practice.

Criminalistic traces are submitted for the criminalistic research in the form of:
- criminalistic documentation,
- traces ensured "in natura".

The aim of criminalistic documentation is predominantly to ensure all the objects - especially criminalistic traces and especially those, which are hardly insurable "in natura".

The core of the documentation is therefore ensuring of traces and objects related by information and the surroundings. By means of ensuring, the criminalistic traces are submitted for criminalistic research in several ways – methods of ensuring:
- In natural form – „in natura",
- By ensuring the signs of functional and dynamic manifestations,
- By scanning the outside signs,
- By imprinting,
- By casting,
- By making photographs,
- By drawing,
- By describing,

- By ensuring memory traces by describing and ensuring the signs including of functional and dynamic manifestations (witness, etc.).

From the mentioned results, the criminalistic documentation is, apart from other and predominantly, the means for ensuring the criminalistic traces for the purposes of criminalistic research.

Object of criminalistic documentation

Object of criminalistic documentation is the process (approach) of:
- Providing the criminalistic traces for research, and
- Providing the documentation of the course and results[3] of criminalistic research.

Forms and ways of criminalistic documentation

Style, or in scientific knowledge often called method and form of manifestation, have in the knowledge, research and substantiation very close – immediately existential relationship – one cannot exist without the other. In the criminalistic documentation it is the same in scientific point of view, or different in connection with prescientific or practical point of view.

Methods of criminalistic documentation

In their substance, criminalistic traces are provided and presented in four ways, in the criminalistic understanding – methods – for the purposes of research by means of criminalistic documentation:
- In writing,
- Acoustically,
- In optical records (a form of photography), and
- Topographically.

Within the criminalistic documentation we could still talk about a more general division into methods of displaying and methods of describing.

Forms of criminalistic documentation

Criminalistic traces, or their displaying in a form of a record, are ensured and presented for the purposes of research by means of criminalistic documentation. Form is the outside manifestation of the respective method. Criminalistic documentation often comprises the combination of methods:

3 Including their presentation, e.g. during the trial.

- With the written method we actually present forms of our conditions – minute-books, references, statements, record (written);[4]
- With the method of acoustic record it is most often in all forms and formats of phonogram;
- With the photographic method (optical records), there are very lively forms – photographs, photogrammetric record, holography, film record, video record;
- With the topographic method we talk about the forms such as sketches, plans, schemes, and graphs.

In some criminalistic concepts of criminalistic documentation, video-documentation, TV documentation, PC documentation, or other similar concepts appear as independent concepts. We put all these forms among the above mentioned ones.

Not all the forms of documentations have to be used for successful result and fulfilment of the aim of criminalistic documentation. Methods and forms of documentation are chosen according to the need, in order to reach the determined aim.

Defining the term and content of criminalistic documentation

Different problems are connected with trends of criminalistics definitions of criminalistics documentation. One of this is problem non acceptation of documentation as a self-standing method in criminalistics which is historically conditioned probably for hundreds of years. The second one is connected with the concept of criminalistics research oriented only to the "white coats researcher". In this concept based on similar orientation as in forensics concepts, only onto technique, it is not an accepted need to make research in investigators activities, from crime scene investigation to recognition or interview.

Attempts of defining in criminalistic documentation

In some criminalistic text-books the criminalistic documentation is denoted as specific criminalistic method. We are also of the opinion that criminalistic documentation fulfils the needs of criminalistic method in the entire range and it is, therefore, an independent and special method of criminalistics – in the sense of method classification (Krajník, 2005). There is an open theoretical discussion whether it is the method of criminalistic tactics or the criminalistic technique. Our opinion is that it is the tactical method with the significant utilization of technical tools and approaches. The problem may be in the fact that criminalistic

4 Term "protocol" was taken from the Czech language into the Traffic Service, however, it can be accepted only as a jargon. Specific problems are connected with transformation and language translation into English. English reality is fully different from Slovak, Czech or German one. But we need make transformation in language content.

documentation has been perceived for a long time as the photographical documentation, somewhere commented in a broader scope also as video-documentation, PC documentation, etc. (Metenko, 2008).

Instead of using the term criminalistic documentation when characterizing the criminalistic documentation, several authors use the term fixation as the synonym.[5] According to Musil, however, it is more suitable to use the term documentation, which is in the language of criminalistic practice generally used. The process of fixation constitutes only of the part of documentation activity. Fixation as a synonym is used also by Straus, who works with criminalistic-technical documentation and mentions that it is one of the most important sources of permanent and objective information.

Musil understands the criminalistic documentation as a complex of activities of the investigator, retrieving body, operative–searching body or expert from the field of criminalistics, realized with criminalistic actions and oriented towards objective and permanent interception of criminalistically relevant information. He calls the criminalistic documentation also the result of this activity. (Musil, 2008)

Problematic of criminalistic documentation is also dealt with by Hupka. He characterizes it as a specific method of criminalistic clarification, which documents, in a verbal and visual way with the assistance of technical tools, the course and results of investigative actions and expert research, and by means of accessible forms it documents material situation and status of relevant objects in the sense of criminalistic recommendations. (Šimovček, 2008)

Criminalistic-technical documentation is for some Czech authors one of the most important sources of permanent information, it is a reflection of the course and result of time, space and, under certain conditions, performed actions and the used criminalistic and criminalistic-technical methods, ways and means of fixation of course and results of these specified actions (Suchánek, Porada, Padyšák, 2002).

Relation of criminalistic documentation to criminalistic-technical methods is manifested mostly in criminalistic expertise and criminalistic-technical research. For example, snapped trace, as a disputable material with visible marks can serve for the comparison with traces from other unsubstantiated scenes of crime or with the snapshot of comparing trace of a suspect. Similar relation can be seen with the comparison of micro-photographs of dactyloscopic, mechanoscopic traces and micro-traces. It is used for a production of snapshots from the research and comparison with the use of comparative microscopy.

Very often used is also the comparative method – connection of visualization of two photographic snapshots. Each of the compared objects is photographed separately and the snapshots are cut in a way, so that the cut goes through the highest number of identification signs.

5 Fixation means stabilization, capturing of something in some shape or state.

When connecting the snapshots, the identification signs continue through the cutting line from one snapshot to another one.

That is the evident proof of utilization of the criminalistic documentation as a method of research of criminalistically significant objects. But all of these concepts are not oriented to general object of criminalistics – all criminalistics traces, not only technical. Those concepts did not accept tactical objects, traces as memories and tactical methods.

Relation of the documentation towards criminalistic-tactical methods is manifested especially in the fact, that basically documentation is an inseparable part of all criminalistic methods. Its significance is vividly expressed predominantly during interrogations, reconstructions, proving the statements on the spot, recognitions, searches of premises, criminalistic experiments, criminalistic versions, etc. Information snapped during the actions is used by almost every investigator participating in the process of detection and clarification. Such documentation later serves also as evidence. Research and assessment of information from the evidence can also lead to identification of persons and things. For example, minute-book on recognition has to contain data on who, when, where and why performed the action, under which conditions, who the identification person was, which object was identified, content of instruction of participating persons, how many and which objects were included, what the level of their similarity was, what the trail was of individual identified acts, what their result was, etc. (Krajník, Straus, 2002)

By criminalistic documentation we most often understand the process of verbal and visual ensuring of traces, things and relations among them, as well as other relevant information about the course and results of criminalistic and expert search, ensuring and research. In the same way we assign the results of this process, which can have different form (Metenko, 2007).

Criminalistic documentation constitutes a complex material about the course and results of all used criminalistic methods in the particular case. Documentation is also a tool of recognition of what happened in the past and what left its reflection in the material environment (Suchánek, 2014).

Definition of connections of criminalistic documentation and modern technologies

Recent post-modern human society is characterized by the development of new technologies. Automatic processing of data and information is being developed, which penetrates into all areas of life. Similarly significant becomes also their transmission, especially as a tool of management of complex processes in various, predominantly technical aspects of life. Fast development in the area of information and communication technologies has a direct influence upon all the areas of today's society. Integration of telecommunication and information systems en-

ables acceleration and better reliability of processing, storage and transmission of information. It happens with no respect to distance and way of communication, which opens a broad spectrum of possibilities in both positive and negative way. This development, in a positive sense, creates and supports enormous economical and social changes also in the Slovak Republic (Metenko, 2004).

Technique and technologies are generally created for the purpose of serving people. Development of information and communication technologies (ICT) is very fast. Capacity value of the technique and technologies grows, but the number of areas where they are used grows, too. Worthily this is preliminary implicated in government services.

Practically, there is no sector of human activity today where we cannot see the electronics and its applications. For the period of the near future even greater and deeper integration of information and communication technologies with other ones, recent home and office appliances (TV set, telephone, fridge, etc.) is going to be typical. We will be surrounded by technologies everywhere and in broader extent (Rak, 2000).

Capacity value of profession, but also the realization of free time, is more and more dependent on correct, reliable and uninterrupted performance of complex computer and communication systems. In their way, the information and communication technologies started to create a new form of behaviour of individual subjects in economical and management sphere. These technologies significantly influence our daily life. Development is so fast, that tracing new information is a must, otherwise a huge gap between the reality and knowledge rises. Information technologies expand very quickly also into a daily life and a very fast development in the area of technologies themselves occurs at the same time.

We can state that the phenomenon of criminality is a social appearance, which is directly connected with the societal development, with the development of the mankind. We can also state without any doubt that as the development of human civilization in different communities is on different levels, the criminality development has its shoals and peculiarities, too and it does not develop in an immediate connection of direct proportion with the advance of the mankind. Knowledge of criminology, as well as development of criminality within Slovakia (Chalka, Holcr, Holomek, 1998), point out that democratization trends in societal relations lead to their release, but at the same time, to the growth of criminality. Therefore, the level of security gets worse and investments into security and safety significantly grow, with this, logically, by the use of modern technologies and technique. To the third instance, we take the liberty to state the premise also towards the question of mutual relativity of societal advance and its structures against "development of technologies of criminality". It is so, because technologies and technique are used in every human activity not only for the positive aims, but naturally for the negative, even abject aims. Neither the technique, nor technology has the possibility to select the result or the way of its accomplishing.

This feature is own only to the human as a creator and, at the same time, abuser of the mentioned "means for improvement of life".

Trends and future of criminalistic documentation

Accepting the before presented means, we prefer in the future all trends and possibilities in criminalistics documentation. Preferable are technical and technological processes especially ICT and their application and concept of transmission documentation outputs due to digitalisation forms as actual trends all over the world.

In their paper related to the relation of traffic accident documentation, as a specific case of criminalistic documentation, towards knowledge and principles of criminalistics about documentation, Krajník and Meteňko (2004) state that there is not a principal difference between the criminalistic documentation and the traffic accident documentation. In this case of the broadest aspect, too, it is an example of application of the knowledge of criminalistics as a general source of knowledge about traces and their handling, for the particular and narrower intention of police sciences and a need of traffic-safety actions, as the main subject of Traffic Police service performance and related methods and processes (Holomek, Stacho, 2001, sim. Peťovský, Lofler, 2017). Other basic knowledge we present in the past as a part of criminalistics education processes and training for the criminalist, especially for technician as outputs from any other scientific researches (Metenko, Metenková, Rybář, 2013).

Such sort/method of criminalistic documentation is often, still only in some text-books, marked as computer documentation. Considering our questions of terms computer, information, cybernetic, digital (Metenko, 2004), we suggest to use the term digital documentation for the purposes of complex documentation realized in the digital format.

As an active possibility, we present frequent cases of solving the criminalistically relevant events in a form of the so called "small traffic accidents" under a time stress led to the requirement for a fundamental fastening and making effective the traffic-safety actions, which can, in their substance, serve also for other ways of technical, organizational, legal, and criminalistic solving of documentation of the scene of criminalistically relevant event.

If the member of Traffic Police, in our case in the position of a criminalist, talks over a traffic accident in a block proceeding, or if there is no other substantiation performed in that case, he/she will fill in the record on traffic accident. In this case such documentation will contain the sketch of the situation from the scene of traffic accident and the photo-documentation (Felcan, 2003). Thus, simplified and accelerated graphical ways of documentation based on photographic documentation substitute classical ways – written, topographical, with the common forms – minute-book, sketch, plan.

Attached negative of photo-documentation, however most frequently the visual information recorded in electronic form on magnetic or optical carrier, enables – thanks to its statement value, accuracy, availability and objectivity – gradual substitution of relatively complex, demanding, and thus expensive ways and forms of classical documentation. Photo-documentation in an electronic form is stored and archived in compliance with the specific regulation (Nariadenie, 2002). That is exactly the example and possibility of how the legal norms, although so far only on internal level, can accept the quality of electronic/digital carrier of information (Štefanovská, Meteňko, Hrvol, 2003). Members of the Traffic Police do not prepare the plan of the scene of traffic accident and the minute-book on the search of spot in mentioned case anymore (Felcan, 2003).

It is very important to mention here that the results and individual methods of measurement to a large extent are used by experts called to the reconnaissance of the scene of traffic accident, but especially for the purposes of working out the expert opinion. More complicated methods and processes, which require relatively time-consuming progresses and, of course with the demanded accuracy, and for which there is not created sufficient time space during the search of the scene of traffic accident, are applied predominantly by the forensic engineering (Bradáč, Porada, Straus, 2001).

Measuring on the scene of traffic accident is de jure considered as one of the most important and demanding activities. However, it is also very time-consuming as such and those are the reasons, which lead to its unification and making it effective. Such practical experiences from the traffic-safety actions enable the criminalistics to utilize the processes and techniques, which are used as a result of criminalistic or traffic-safety, or forensic engineering research (Porada, 2000, Porada, Vajda 1993).

There are three basic ways of measuring on the scene of traffic accident, which are known from practice and used for a long time – similarly as with the work on the scene of any other criminalistically relevant event:

- Method of rectangular projection,
- Measuring by intersection method,
- Measuring by triangle method,

which are known and used also in other criminalistic practice. Through their development the criminalistic documentation climbed to stereo-photogrammetry, which happened to be the most effective method used in the criminalistic documentation for a long time. It was exactly the development of computer technique and software, which enabled the further development and which we can observe even today.

But not only classical stereo-photogrammetry outputs are the base for actual and perspective using. Application of classical photogrammetry to new technologies application such as a laser, polarised and other frequency of light using is the basis for its future. But technological development and evolution of application

was based on photogrammetry and actual application is really complicated and needs huge specialised equipment and knowledge.

In the past years, with respect to already mentioned process of effectiveness, the mentioned classical and photogrammetric advances have been accompanied with the fourth method, based on the utilization of connection of photographic documentation, known geometric principles with the use of computer technique and measuring (Felcan, 2003) - rectification of photographs with the assistance of PC – Rect, which the Traffic Police of the Police Force has started to use in on a large scale since 1998.

This, but also other new demonstrated progresses and methods of utilization of favourable parameters of visual information record about traces, realized in electronic ways on magnetic and optical carriers, enable gradually to realize effective progresses and methods in criminalistic documentation, too (Metenko, M 2018). These significantly shortened the reaction and action times connected with the documentation of criminalistically relevant scene, eventually event (Metenko, Bačíková, Samek, 2008). Taking into account the mentioned possibilities and needs of development, it is desired to prepare new criminalists in a way, so that they are capable to handle the needed technique on a standard level, accordingly to the needs of developing practice. Recent stage in this field requires overcoming several types of resistance related to application of technique, which permits such a progress. Primarily, it is the disbelief of one's own abilities and skills, and then the overcoming of routine connected with the utilization of usual or rather common advances.

DIGITALISATION OF TRACES

In examining our issues, we have come up with a discussion with interview researchers on the answering sheets of the question of what is and may be the content of police, especially criminal, filing and database systems. That is, basically the basic group of information police systems that are under investigation. Our knowledge thus led to the need to solve the problem of duplication of classical criminalistic traces, e.g. traceological, dactyloscopical, ballistical or other, which are ensured during their reinsurance or exploration - recorded as their digital image (Metenko, 2010).

Criminalistics has not solved this problem for a long time and leaves the system of work with traces - where they include their digitization, for individual forensic areas, or rather individual experts who directly deal with archiving, filing and increasingly their research in digitized form.

Despite the seeming simplicity and smoothness of digitizing criminalistic traces, there are at least a few issues that will need to be resolved systemically in the future. These relate to acceptance problems, whether in the whole of criminalistics or in the individual sectors of investigation of criminalistic traces. Above all,

there is the question of the originality of the examination and the accuracy of the display. This is certainly related, for example, to the issue of digital record resolution, which then limits not only the accuracy of the survey, but also the format of the appropriate record, the possibility of transforming the record into other - for example, foreign information systems.

Given the scope of the issue, which is far from being related only to the criminalistic documentation of criminalistic traces, but also directly to their examination and research - for example, methods of comparison and its automation. Practical knowledge of critical factors related to the digitization of forensic traces would be appropriate to examine the future, for example, on the findings of criminalistic dactyloscopy. In the field of digitization of the dactyloscopic record, this sector was probably the most widely used in criminalistic practice (Metenko, Masnicova, Nemethova, Deščikova, 2010, sim. Nemethova, Marak, Hambalik, 2014).

In addition to dactyloscopy, these problems are already directly related, for example, to the field of criminalistic/forensic biology, ballistics and are also intensively being introduced in the field of trasology and mechanoscopy. The timeliness of the issue is a challenge for criminalistic/forensic research, which has to address the issue now.

Since this problem is not a major issue in our work, it is advisable to orient ourselves on this issue by analyzing the signs of the digital traces, which formed the very analysis devoted to this issue published last 2018 at such a conference in Odessa (Metenko, J. Metenko, M., Metenkova, 2018).

CONCEPTIONS OF DIGITAL DOCUMENTATION

General requirements for such a complex form – digitalized documentation – come out from our researches, so far realized within the project 9/2008 - Methods and advances of work at the scene of crime. The task is being solved by the Academy of the Police Force in Bratislava. Solving of the task is long time planned for the period 2008–2021. It comprises a realized international project with a perspective of utilization of European funds, which already presents its outcomes also in this area recently (Metenko, 2008).

By means of applying the gathered data we can set a group requirement for the digital criminalistic documentation. This requires especially:

1. Full value implementation of electronic file,
2. Automatic records of all relevant registry documents (records and files),
3. Automatic creation of all records instruments (e.g. registry diary) in electronic and printed form,
4. Automatic assigning of number of the report and number of file,
5. Unified formal layout of records from the work of organization – set of templates, generating of number of the paper (our brand), etc.,

6. Control of all obligatory data,
7. Automatic circulation of records in electronic form with the use of scanning,
8. Monitoring of working out the records and files.
9. Maintenance of the history of record and file,
10. Sophisticated and fast search of information,
11. All needed functions for the administrator of registry, e.g. yearly balance of files, etc.

At the same time, the application has to go over the scope of requirements valid for the area of registry and are presented for the set up by the legislation and has to meet the requirements of criminalistic digital documentation. Basic problem is a long time of acceptance in legislation in Slovakia. Finally late last year – 2018 we started testing digitalisation in processes of criminal and investigation files in Slovakia.

For the fulfilment of operation demands in the field of crime scene, but also the entire criminalistics, inclusive investigation, it is required, after our research in the project Security Centre of Excellence research European ESF grant no. NFP26240120065:

1. To create central storage of all documents;
2. To have fully electronic internal correspondence within the organization, without the need of paper sheets;
3. In an electronic way to pass any documents for communication, marking, requesting the consideration and approval – support of process management;
4. To provide fully electronic circulation of special types of files (abstract sheets);
5. To create the grounds for gradual full automation of all administrative activities and process management of organization, e.g. process of elaboration of delivered invoices, etc.;
6. To have the possibility to use secure electronic signature;
7. To have integration with other applications;
8. To create the grounds for gradual full automation of all administrative activities and process management of organization by means of building further specialized applications.

General scenario of work with the system is as follows:

1. Electronic registry[6] records the delivered record and sends the addressee (organizational unit) within the organization;
2. Responsible employee in the organizational unit assigns the delivered record to the contact person for processing and determines instructions for processing;
3. Contact person inserts the delivered record into the file or creates a new file for the record;

6 In our case, it is recently substituted by the system "Evidence / KEU NEO", until the complete application of electronic file in the Police Force is done.

4. Contact person executes the file (creates sent/internal records in the file, inserts delivered records into the file, gives to understanding, requests remarks, prepares responses, etc.);
5. Within creation of the response (sent record) the contact person uses the process of approval and signing;
6. Contact person marks the file as settled (after eventual control of the superior) and then as closed (after eventual control of the superior);
7. File is saved in the reference registry, after operation period – currently 2 years, it is transferred into registry centre; and
8. After passing the period of deposition the file becomes a subject of the process of deletion.

System has to provide extensive and rich functionality – it has to be sufficiently universal. Even in spite of demands, the work with the system has to be simple as each of the users has at his/her disposal only those parts and functions of the system, which he/she needs for his/her work, independently from his/her category in which he/she is assigned (e.g. registry employee, criminalistic technician, contact person – shortened investigation, investigator, head of organizational unit, etc.) (Metenko, 2010).

Among the most important requirements for the legal adjustment of operational registry administration belong:
1. Distinct identification of records and files,
2. Elaboration of every record within the file,
3. Keeping the prescribed way of manipulation with the file – from its origination up to archiving/deletion,
4. Maintenance of related documentation about the registry administration.

Application has to meet all the legal and security requirements all the time, and it has to ease and simplify work and administration – maintenance for the registry of the entire Police organization at the same time.

Functionality for the registry administrator

Application provides the registry administrator with all the functions necessary for professional maintenance of registry, which is required by the legislation.

In bigger organizations, which have several registry administrators, it is possible to define various roles, that is individual role for the central administrator and the roles for local registry administrators. Central registry administrator has access to all files/records within the entire organization and is allowed to perform functions related to the whole organization (e.g. actualization of registry plan, actualization of template categories, yearly balance). Local administrators have access only to selected part of files/records and perform work related to this part of data (e.g. yearly balance of files, transfer into registry centre, etc.). For his/her performance, the registry administrator has an independent portal at his/her disposal, which appears after switching into particular role.

Application offers the following functions:

1. Maintenance of registry plan,
2. Maintenance of types of files (template categories,
3. Balance of the current year,
4. Collective balance of accumulating files,
5. Yearly balance of files,
6. Transfer of files from the reference registry into registry centre,
7. Deletion proceeding,
8. Schemes.

Guaranteed management and flow of information and documents are essential for a safe and reliable operation. It concerns "Document Management and Workflow",[7] administration of standard documents and transition for the use of intelligent documents.

System for administration of documents (Document Management System - DMS) is a computer system or set of applications used for tracing, management of circulation and saving electronic documents and visions of paper documents. It includes capturing, searching, fulfilment, safety, archiving, destruction, work advances (workflow), authentication and approval of documents.

The most frequent cases of application of the Document Management System in practice, from which it is recently possible to swab in the current police operation:

1. Publication of documents, annotations and marking up, scanning, OCR and archiving of documents,
2. Intelligent forms,
3. Electronic file, electronic signature, authenticity and safety of information.

Requirements for systems of paper circulation management are of broad scope; generally, they can be divided into several categories:

1. Functional coverage of all "lively" stages of papers (origination, complementing, marking up, flow of information, arrangement, storage for necessary period),
2. Inerrability (Inerrability with other systems, multi-functionality and open architecture of services, that is cooperation with applications on the level Web Services and XML),
3. Safety (certification, support of electronic signature, security of the document during its entire viable cycle, ability of audit and tracing selected actions independently on application),
4. Legislation (e.g. archiving in compliance with valid legislation),
5. Technology (platform of electronic document based on recognized open standards, independency of document from application, minimization of user restrictions, optimization of widening of technical tools, stability of future development and support).

7 As components to see on: http://www.anasoft.com/sk/pages/dms.shtml

For the purposes of safe operation of the system of digital criminalistic documentation and electronic file, the key criteria of safety are secured by the document:

1. Intimacy – securing the content against abuse,
2. Authorization – who and what is allowed to do with the document,
3. Responsibility – what the particular person did with the document,
4. Integrity – attestation that the document was not changed,
5. Originality – verification of the origin of document,
6. Indisputability – guarantee that person cannot deny his/her own signature on the document.

POSSIBILITIES AND TECHNIQUES OF ASSURANCE OF RELIABILITY IN DIGITAL COMMUNICATION

Our opinion is, that each one of us can imagine realization of the entire documentation in such form – as we showed on the example of students in connection with the training reconnaissance and work on the crime scene. Significant problem connected with the application of modern technologies is the question of need and possibilities of verification of originality of results of this activity – digital (electronic) documentation.

One of the possibilities is the electronic signature, which is already adjusted by the law and it is used in some performances (bank sphere, state administration and control, etc.). Electronic signature is defined by the Act on Electronic Signature No. 215/ 2002 from 15 March 2002 and on amendments of and supplementation to some acts. From its provision § 2 the following important terms result for the purposes of our analysis:

a) Document is any final non-empty sequence of signs,

b) Digital document is a numerical coded document,

c) Electronic document is a digital document preserved on a physical carrier, carried or elaborated by technical means in electronic, optical or other form,

d) Signed electronic document is electronic document, which the electronic signature was created for, if this electronic document is accessible together with electronic transcription of the given document.

This problem is addressed in a more detailed way, for example, by D. Gregušová (2003) or Z. Veiner (2003) in the Czech provenience.

Steganography is another possibility of quality protection of the content of digital communication against penetration into the content – respectively, possibility of decoding the information about such penetration. Considerably simpler possibilities of control provide system logs, but also usual documents, created or revised by the users. In many cases they provide information on authorship and time data (the so-called time tokens), performing particular actions (Metenko,

2004). We can find such data in a form of "metadata", with manifold formats of digital communications.

Apart from classical possibility to find out information about the file and its handling from the content of the so-called "document revision" in the well-known MS Office, pdf formats, etc., using of steganography as control steganographic techniques is much more sophisticated form. The most effective of them appears to be the technique of "digital watermarking" (Čandík, 2004).

Even though the original purpose of use was the covering transition technique, its utilization for the purposes of verification is very suitable.

CONCLUSION

Actual action in Slovak Police is based on the SAP system (Metenko, M 2018). The use of information systems in police activities or in criminalistics is not at such a level and is not used to the extent that it offers information value. In particular, the use of combinations of different information systems for obtaining information useful for criminal investigation is underused. Paper forms of forensic documentation clearly show the same level of inefficiency and inaccuracies in criminal documentation. The need for intensive integration into a single information system has also been confirmed temporarily. In the follow-up research discussions, the need for a unit information system that has not yet fulfilled any partial integration efforts (a unit lustration console, integration in SAP) has been expressed.

By analysing and evaluating research and knowledge in the field of information systems for the needs of police activities, it was also possible to state by comparing the years 2015 and 2017 that the use of information systems in police practice is expanding. There is a large number of information systems that provide the necessary information support to detect and clarify crime in clarifying crime. But their effectiveness is low just because of their disintegration.

By analysing research results in the digital traces, we find a much worse situation. Knowledge, orientation, practical skills and the ability to respond to the new digital footprint environment are alarmingly inadequate. Also, entities directly responsible for investigative processes are not, according to the results of their testing, eligible for qualified activities linked to the processes of searching, securing and investigating this type of track. Perhaps only the immediate onset of training and training activities would help minimize this handicap, with an expected increase in the usable digital traces for investigating all kinds of crimes by 80 percent by 2020.

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BIOMETRIC FEATURES OF A PERSON AND FORENSIC IDENTIFICATION

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Abstract: The authors of the article deal with issues of misuse of the term of criminalistic identification replacing it with the concept of biometric verification. They point out that for biometric features of a person only those biometric features can be considered of people who are individually unique and unmistakable ever, verifiable and inimitable with another person.

Keywords: criminalistics, forensic identification, biometric features.

INTRODUCTION

The concept of biometrics is very often used and even abused in different contexts.

For example, in connection with securing of premises against intrusion by unauthorized persons, the opening of different databases, registration of persons, the protection of financial accounts, electronic form of the document, etc. Not always, however, the identifiers are chosen for the biometric data that are truly biometric. In security then there is the fact that these data are easily falsified and consequently unsafe. A forensic expertise is then powerless in those cases because of incorrect choice of the protective element. A common cause of this condition is superficial assessment of the importance of criminalistics and the selection is often conditioned only by commercial interests.

At this post we want to point out the mistakes we commit due to wrong interpretation of the findings of the forensic tracks, forensic identification and in particular the methods of forensic investigation.

Criminalistics is an interdisciplinary science, not only due to the fact that while examining forensic tracks it uses the methods of other sciences but it has also provided other sciences with forensic methods. The knowledge of criminalistics can

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be used in different areas of life in a society. In everyday life we are not even aware that the signature – such a simple operation to confirm the very significant acts – is actually the use of the knowledge of criminalistics on handwriting of a person on the constituent elements of the manual signature fonts. The use of rubber stamps is based on the knowledge of criminalistics of the inimitability of the relief at a micro level, the use of the photographs as a means of identification on various licenses, which is based on the knowledge of criminalistics on the uniqueness of the photographic portrait of a person, a description of the person, etc.

The different types of registers are based on the knowledge about one's relative stability as well as inimitability of forensic traits. Here it is necessary to point out that forensic traits are even traces of memory, which we usually include in the existing system of criminalistics to criminalistic tactics.

In the Slovak Republic in recent years we also started to exploit more fully the knowledge of criminalistics on the identification of the person, and this for a variety of purposes – mostly for the security of objects of a different kind. Generally known are personal computer security systems against misuse of data based on the voice and the imprint of a finger, securing, opening and closing doors, but also to secure the deeds and documents. Recently the hot topic is also an electronic form of the document, the problem of ensuring the safe conversion of written documents to electronic documents by performing a visual check of a document and the subsequent narrative description of all the visible security features, the introduction of an advanced electronic signature with time stamp, but in particular the possibility of using the handwritten signature by using a touch tablet with special pen introduced by some banks, mobile operators, etc. This type of signature is massively promoted compared with advanced electronic signature (EP or KEP) as a less expensive, more readily available, and even as a more secure (Krajnikova et al., 2014)!

Extremely quickly and with a wide range of activities, various types of information technology are being used for the purpose of ensuring and simplifying various - mostly administrative - actions. These technologies are based on various features, dispositions and characteristics of the persons that we call summary biometric data – the biometric identifiers. The concept of biometrics here actually reflects the characteristics of a "live" person given the biological nature. Emphasized is the fact that any change to these characteristics is either factually impossible or would require such interference with the integrity of the person, that it is very unlikely that the person would be willing to undergo such interference, or that if would find the apparatus that would be legally able and willing to do it.

The term "biometric data" became "discreetly" and almost automatically associated with a term "forensic trait". It relies on the fact that it is given once and for all and that there are no doubts about its individuality because the criminalistics is using it for the purpose of individualization. But it is not as simple and direct as that. The feature of the person who creates a forensic trait, or is directly a foren-

sic trait, can also be the biometric data. However, not every feature of a person, which can be a forensic trait, is in fact also a biometric data.

It is necessary to deal with the term "biometrics". If you have the space for this concept of defining a living person, we need to emphasize that biometric data are those that can be responsibly used for individualization of the person, or biometric verification. They are, however, (if we adhere to the principle of science) in criminal practice proven and recognized characteristics – the parts of the human body that make up the forensic traits. Certainly, there is not a signature among them, nor the voice of a person, nor the smell of a person. It means those data, which make up the forensic traits, but traces of the functional and dynamic properties of the examination are basically different. A fundamental difference is that, in the examination of such forensic traits it is necessary to evaluate and explain the natural differences and inaccuracies, and they can still lead to individualization of the person (e.g. mechanical differences in font, signature). On the contrary, if the traits resemble or even overlap, it may not lead to individualization of a person. Signature, which at first glance resembles, or is almost identical with another signature, may not to be the result of the handwriting of the same person. Evaluation of external characters is considerably easier, but not easy. We can make use of information technology resources, which, in any case "fail" to assess the individuality, which does not mean that they can be good helpers that can simplify the examination, but not replace.

This reasoning also has practical consequences. Such biometric characteristics cannot be evaluated without special training, and it requires several years of systematic training.

The question that remains unanswered is what the real individual biometric data are, whether it is the shape of the retina of the eye, the shape of the veins on the hands or feet, the relief of nails and feet. These are the questions that criminalistics does not evaluate them as forensics traits also due to a fact that these characteristics do not often form forensic traits. Its characteristics – if they remain relatively still, individual and fixed, might be biometric data. Traces of the functional and dynamic features, however, are not biometric data. Thus, manual font, signature, voice of the person, walking, the smell of a person are not biometric data of the person!

What is the relationship between the biometric **identifier,** biometric **data, and personal data**?

In section 4 part 1 of the Act No. 122/2013 Coll. on Protection of Personal Data and on Changing and Amending of other acts, resulting from amendments and additions executed by the Act. No. 84/2014 Coll. the creator of the Slovak Act defines personal data as „any information relating to an identified or identifiable natural person, while such person is one who can be identified, directly or indirectly, in particular by reference to an identifier of general application or by reference to one or more characteristics or factors specific to his physical, physiological, psychic, mental, economic, cultural or social identity" (Act

No. 122/2013 Coll. on Protection of Personal Data and on Changing and Amending of other acts, resulting from amendments and additions executed by the Act. No. 84/2014 Coll.). According to the methodological guidance of the Office for the protection of personal data no. 6/2013 of 28.11.2013, the Office defines the biometric data as follows: biometric data is the "personal data of a natural person that identifies its biological or physiological characteristic or characteristics, on the basis of which it is clearly and individually determinable; biometric data in particular is fingerprint, palm print, analysis of deoxyribonucleic acid (Methodological Guidance of the Office for Personal Data Protection No. 6/2013 of 28.11.2013). In the next paragraph of the same methodological guidelines there is addition for the calculation of the biometric data as follows: "Biometric signature, walking, etc.", with which it is not possible to agree from the point of view of criminalistics and forensic identification. Under the abbreviation "etc." it is not specified what the creator of the methodological guidelines had in mind, but practice proves that as a biometric data, for example, in the banking sector, in addition to the signature on the touch-sensitive tablet and pen they are making use of the human voice. The creator of a methodological guidance notes that "the value of biometric data is based on the universal biometric element, or sample, which implies the uniqueness (distinguish the individual from others), stability (individual maintains the individual element throughout the life) and measurability-characteristic/feature is comparable and quantified (Methodological Guidance of the Office for Personal Data Protection no. 6/2013 of 28. 11. 2013).

Is the signature of the person seen as a personal, biometric data? The signature is the result of a handwriting of man (bio) and has its (metric) signs. Metric signature characters are: the inclination of letters, character strokes, and the total size of the signature, the ratios of the heights, widths, shapes and letters. This means that these are the characters that are measurable. The analysis of the measurable characters of the signature is insufficient for the forensic identification, because these characters may appear as similar, consistent with two different writers at the same time and on the other hand, the signatures of the same author may be different. For the forensic identification of the author's signature the morphological characteristics of the signature are essential. Any signature that is unreadable (learned by practice signature, signature brand, or abbreviated signature "parafa"), it is not possible to read the text of the name of the person. Therefore, no signature as an isolated phenomenon can be a personal data and as mentioned above, quite logically, biometric data.

In forensic examination of a signature some of the basic axioms apply:

- No two genuine signatures of the same author are, nor can ever be absolutely identical. Narrowing down the match to only metric characters would mean incomprehension of the forensic identification.
- Two genuine signatures of the same correspondent reported similar, identical and different characters.
- Different characters in two or more genuine signatures are an expression of the natural variability of expression of the same author's variability of handwriting.

- Variability in the expression of handwriting itself is a valuable feature of the identification.
- Each one of the signatures, which is the subject of a forensic examination, can be genuine signature, intentionally or unintentionally changed author's signature, imitated signature, drawn up by using one of the methods of a technical or mechanical tampering.
- The forensic identification of the writer of one signature requires a sample comparison of signatures (approx. 15-20 samples of signatures), which must come from an objective source, and of a comparable period of time. Only under these conditions it is possible to examine the variability of writer's expression. Figuratively expressed: it is possible to compare apple to apples at each other, from the same tree, and from a single harvest.
- Signatures change over time. Their characters are not only affected by the time (the author's age), but also the quality of the pads, the type and quality of the resource, the author's mental and physical health at a particular time.

One writer can use several types of signatures, when compared they show different characters.

Figure: 1 *The signatures of one and the same author showing different characters*

At present the writers, but also for example, banks in asking for specimen signature, pay less and less attention to the signature. Formally (by law or some sort of mandatory regulations, regulation) it is not provided what form should signature have ("how many" and "which" characters should contain), and so it is actually possible for the article to instead of the text or learned by practice signature to use abbreviated signature "parafa", which often consists of one simple letter, a tilde — and if we exaggerate - three crosses. Such signatures are very simple, they do not contain a sufficient number of identifiable valuable characters, and therefore they are vulnerable (easily imitable). If the signature is used only occasionally, the reason that the writer does not work and prefers the electronic form of communication – then his signature often does not have a steady (a practiced enough) appearance.

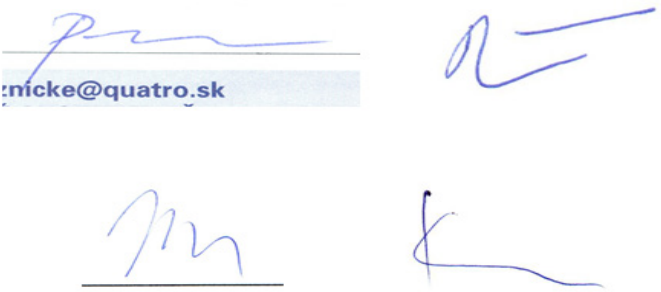

Figure 2: *Examples of simple, easily imitable signatures of four writers*

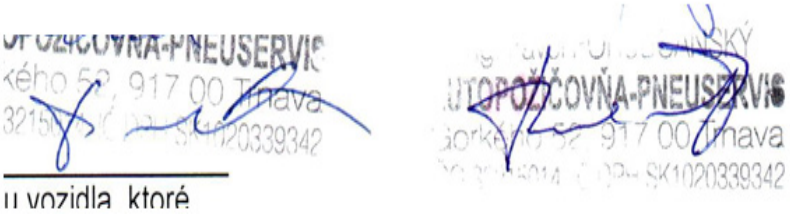

Figure 3: *An example of unsteady signatures of the same author*

The biometric data can be treated as patterns of papillary lines, shape of blood vessels of the retina of the eye, the shape of the ridge of the veins on the parts of the body, relief of the nails and the like – characters whose shape is relatively stable, and that as the forensic tracks are among the signs of external shapes. Their examination is possible by comparing, which is carried out by technical means, relatively easy to make.

Among many other definitions of biometrics the one that captivated our interest defines biometrics as the application of biostatistics to identify people. This finding is tellingus to be cautious about this argument. A statistical assessment cannot be used to identify objects. Thus, it is necessary to establish the exact term of the problem that indicates that we are talking about forensic identification.

All the existing biometric methods so far do not guarantee neither theoretically nor practically system failure and they are applied (just to be on the safe side) only where "it is not a life" concerned but "only money".

Such an approach, however, criminalistics "cannot afford". It cannot approve the methods, in which the accuracy is at 60-70%. We have to acknowledge that even the forensic methods are not in the scientific sense of the word 100%. And they cannot even be if we regard them as scientific methods, because scientific is just what we may have doubts about. And we may doubt the results of the forensic investigation, but their "accuracy", or more precisely, the accuracy of the identification is at 99%. We are talking of course about the individual identification (Krajník et al. 2005), when based on forensic examination we individualize the object based on the above "statistical standard". Yes, the criminalistics uses and works with statistics,

but does not make conclusions about the individualization of objects based on it. Therefore, the criminalistics is not "perfect", not completely scientifically - mathematically accurate. The conclusions are based on one's own policies and procedures, which are so difficult, they are not "yet" mathematically or statistically solvable.

The basic problem, which in the current effort to utilize the use of biometrics they could not avoid is that they built their methods for finding certain characteristics - in particular the characteristics of the human body, but these properties were not sufficiently explored. Otherwise they would not be able to rely on the shape of the lid slit, eye ground, height, facial features etc. to individualize a person.

Criminalistics is not science because it refers to various types of characteristics of objects, but because it has and develops methods for examining these objects and their properties, so as to make it possible to individualize these objects.

Methods (of science) are critical attributes of the science, not the properties of the objects. There are many features that criminalistics refuses to examine for the individualization of a person, just because **they are not sufficiently scientifically researched** - cheiloscopy, poroscopy, nail shape, body language, facial expression and gait.

CONCLUSION

At present there are more and more emerging efforts to interpret the lessons of criminalistics in different areas of life. We can be quite bold to say that with the development of computer science forensic methods are readily available for study to more and more users.

It is understandable that this knowledge many people are trying to use for their own needs and goals. The most common area of knowledge is the area of the individualization of the person. This is understandable, because the person is very often a source of forensic traits in the most serious criminal offences. As such, it creates three kinds of forensic traits-traces of external characteristics, functional and dynamic properties and biochemical clues to track the composition and physiochemical structure. In the case of a person, we would be able to track external characteristics of a person called biometric identifiers - because they represent the characteristics that are customized to the individual parts of the body of a person.

In the use of the knowledge of criminalistics by the general public, there is a wrong use of the concept and it also includes the characteristics that are not permanent and are not examined for forensic identification. This means that the outward signs of a person as forensic traits are (can be) biometrics. However, not all external signs are biometric.

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CRIMINAL LAW AND CRIMINOLOGICAL ASPECTS OF MONEY LAUNDERING IN THE REPUBLIC OF NORTH MACEDONIA AND THE REPUBLIC OF SERBIA

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Abstract: Money laundering is a security and financial problem which is even more pronounced than the globalization process, quite intense with capital movements and economic cooperation, especially with the latest rapid development of information technology and the development of communications. Investing of illegal money of criminal groups in legal businesses does not recognize borders, it only recognizes disorganized national economies and a messy legal system for achieving the sole purpose of gaining higher profits and avoiding penal responsibility. The fight against organized crime also involves illuminating the elements of legalization of criminal proceeds, i.e. money laundering and securing criminal proceeds and enabling their confiscation by national and foreign states. This is also the purpose of the paper, an analysis of criminal offenses with elements of money laundering in two neighbouring states, and an analysis of the legal measures and actions applied in criminal and financial research, as well as an analysis of the course of proceedings against perpetrators of money laundering and that of investigating reported, charged and convicted money laundering offenders and thereby drawing conclusions on efficiency in providing relevant evidence relevant to convicting offenders.

Keywords: money laundering, criminal money, crime, criminal investigation, financial investigation

INTRODUCTION

Money laundering has many forms of criminal activity and that is why international legal acts give recommendations to national legislation for criminalizing these activities at all stages of the money laundering process and to foresee the ways, measures and actions for detection, illumination and providing evidence of crime with elements of money laundering, and also for crimes that are indicating money laundering.

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Money laundering involves various methods through which criminals hide the source, origin and ownership of illegally obtained money by participating in transactions that externally indicate that the funds have a legitimate source. The very term "money laundering" is used to describe the procedure in which "money" derived from illegal and criminal activities is converted into legal form, in a manner that conceals their origin or property. While money laundering schemes can be of varying degrees of sophistication, they are all designed to accomplish the very purpose - to blur, or if it is possible to remove attempts at control. The various ways and modus operandi that follow the money laundering of dirty money are only limited by the creative imagination and expertise of the entrepreneurs who make these schemes (Mihajlova, 1997: 17).

The international community's latest endeavours to criminalize money laundering and distinguish it from any kind of crime, the efforts to provide maximum opportunities for detecting criminal offenses and their perpetrators, as well as all the more prominent efforts to improve the confiscation opportunities that come to be widely accepted and implemented in national legislations, impose the need to extend the definitions of money laundering with the element of avoiding the legal consequences of such an action.

The RN Macedonia has in recent years paid particular attention to the harmonization of criminal law with the criminal offense of "Money Laundering and Other Proceeds from Crime" which has undergone numerous amendments as a result of the recommendations of international conventions and the recommendations of international bodies and committees. Reforms have also been made in criminal procedure legislation in terms of providing appropriate measures and actions to be applied in the criminal and financial investigation of this crime.

The two states, the Republic North Macedonia (RNA) and the Republic of Serbia (RS), are in the process of ongoing reform and harmonization of legislation with international recommendations, and in this regard, criminal offenses with elements of money laundering are analysed and the criminal offenses under the penal legislation.

THE CONCEPT AND THE PROCESS OF MONEY LAUNDERING

Money laundering by its definition is a process or procedure in which perpetrators carry out criminal activity sequentially, or one phase without the other is not possible. It is not possible to transfer money or move it from account to account if it is not placed in an account. Or it is not possible to withdraw from other accounts if it is not transferred to two or more accounts or is not split from one account to multiple accounts in one or more countries (Nikoloska: 2014). Perpetrators are using the global financial system with multiple entry opportunities, extremely fast fund transfer opportunities, the great disparity between countries

in terms of the extent to which banking and other financial transactions are supervised and controlled, the susceptibility of members of the legal financial system to blackmail and corruption, the existence of parallel or informal economies in many countries that are beyond the control of governments and the enormous mass of financial transactions that hinder export, thereby controlling the illegal activities (Vilijams, 1997).

The money laundering process is adopted in three phases that are covered by all definitions of this phenomenon, a complex process that crosses national boundaries. In order to cover up criminally obtained money criminals use appropriate techniques and tactics to transfer money from nation-states to "safe places" outside the "reach of law enforcement authorities". And these money laundering operations give "security to criminals to think criminal money is safe and use it after a period of time in returning to national economies as foreign investment or safe", to corrupt if they are prosecuted for crimes. The purpose of combating crime, in particular organized crime, is not only to provide evidence and convict the offenders with prison sentences; the aim should be comprehensive detection and sanctioning of the perpetrators, but also to secure and confiscate the criminal proceeds and property (Čudan & Nikoloska, 2018).

CRIMINAL OFFENSE WITH MONEY LAUNDERING ELEMENTS IN MACEDONIAN AND SERBIAN CRIMINAL MATERIAL LAW

Money laundering and other proceeds of crime under the Macedonian criminal law

Money laundering as a criminal conduct was first criminalized in 1996 with the adoption of the first Macedonian Criminal Code (Criminal Code of the RM, Official Gazette of the RM, No. 37/96) entitled "Money laundering and other criminal proceeds". The crime is systematized in the Chapter on Crimes against Public Finance, Payment Operations and the Economy. The criminalization itself provides for several modes of criminal activity that allow money from criminal sources to be found in banking, financial or other transaction operations. A facility of this act is money obtained from trafficking in narcotics, arms selling or other criminal activity (Kambovski, 2003).

Following the recommendations of the Vienna, Strasbourg and Palermo Conventions, Article 273 has been amended (Criminal Code of the RM, Official Gazette of the RM, No. 19/04), "Money Laundering and Others" has been changed and "proceeds of crime" is included, specifying punitive conduct with elements of money laundering, introducing liability for legal entities and instituting liability based on the subjective circumstances of the offenders, including laundering criminal proceeds of negligence, i.e. when the offender did not know but that the

proceeds derived from a criminal offense. Such an approach to negligent conduct in this context is consistent with Recommendation No. 6 of the FATF and has been adopted in the penal legislation of several European countries (Netherlands, Norway, Sweden, etc.) (Nikoloska, 2014). A gradation has also been made in respect of the damage done or the property gain of the perpetrators (Art. 122 para. 26 Criminal Code of the RM, Official Gazette of the RM No. 19/04). The measure of confiscation of property was also introduced, namely immediate and extended confiscation, i.e. gaining property and money acquired by crime and transferred to third parties.

In 2009, complete redefinition of economic and financial crimes was made, and in particular the crime of money laundering and other proceeds of crime (Criminal Code of the RM, Official Gazette of the RM No. 114/09). The recommendations of MONEYVAL and FATF (Kambovski, 2003), which have not been implemented before, have been reviewed and implemented, and therefore the standards set by the Vienna Convention and the Palermo Convention have not been fully met. The changes are essential, first the "threshold" of the amount of property gain or damage of greater value is removed, which is a value of up to five average salaries at the time the offense is committed. Perhaps the greatest qualitative element is that it is not always necessary to prove a "predicate offense", only to prove objective circumstances that "money or property derives from criminal activity". Criminal responsibility for financial institution officials for failing to report "suspicious" financial transactions and "suspicious" clients is provided for, as well as for their responsibility for "disclosing confidential financial investigation data" (Nikoloska, 2015).

The crime "Money Laundering and Other Proceeds from Crime" with these amendments is the most complex and comprehensive criminal offense in the Macedonian Criminal Code (Criminal Code of the RM No. 19/04 and 114/09).

The work itself is structured in 13 paragraphs as follows:

P. 1 A person who puts into circulation, receives, takes over, substitutes or forfeits money or other property which he has acquired by a criminal offense or knows to have been acquired by a criminal offense, or by conversion, alteration, transfer or otherwise concealing that it came from such a source or concealing its location, movement or ownership shall be punishable by imprisonment of one to ten years.

P. 2 The punishment referred to in paragraph 1 of this Article shall also apply to a person possessing or using property or objects which he knows to have been acquired by committing an offense or by falsifying documents, failing to report facts or otherwise concealing the origin, or conceals their location, movement and ownership.

P. 3 If the offense referred to in paragraphs 1 and 2 has been committed in banking, financial or other business or if the transaction has been avoided, the offender shall be required to report cases provided for by law, and the offender shall be punished by imprisonment of at least three years.

P. 4 Anyone who commits the offense referred to in paragraphs 1, 2 and 3 and is liable and entitled to know that the money, property and other proceeds of crime have been obtained by the offense, shall be punishable by a fine, or by imprisonment of up to three years.

P. 5 A person who commits the offense referred to in paragraphs 1, 2 and 3 as a member of a group or other association engaged in money laundering, the unlawful acquisition of property or other proceeds of crime, or with the assistance of foreign banks, financial institutions or persons , will be sentenced to imprisonment of at least five years.

P. 6 An official, a bank officer, an insurance company, a gambling company, an exchange office, money exchange or any other financial institution, a lawyer, unless acting as a lawyer, notary public or any other person with public authorizations or performing public works that enables or permits a transaction or business relationship against his/her statutory duty or performs a transaction in spite of a prohibition imposed by a competent authority or a provisional measure ordered by a court or fails to report money laundering, that he has learned about in the course of his/her function or duty shall be punishable by imprisonment of at least five years.

P. 7 An official, responsible person in a bank or other financial institution, or a person performing public interest affairs, who is authorized by law to apply measures and actions for the prevention of money laundering and other proceeds of crime, who would reveal data relating to investigation of suspicious transactions to clients or an unauthorized person, shall be punishable by imprisonment of three months to five years.

P. 8 If the offense is committed for profit or for purposes of data abuse abroad, the offender shall be punished by imprisonment of at least one year.

P. 9 If the crime referred to in paragraph 7 of this Article has been committed out of negligence the offender shall be punished with a fine, or with imprisonment of up to three years.

P. 10 If there are factual or legal obstacles to establishing an earlier offense and prosecuting its offender, the existence of such offense shall be determined on the basis of the factual circumstances of the case and the existence of a reasonable suspicion that the property was acquired by such offense.

P. 11 The offender's knowledge, that is, his duty and ability to know that the property was acquired by a criminal offense, may be determined on the basis of the objective factual circumstances of the case.

P. 12 If the offense referred to in paragraph 1 is committed by a legal person, it shall be punished by a fine.

P. 13 The proceeds of crime shall be confiscated and, if such confiscation is not possible, the offender shall be deprived of any property corresponding to his value.

Money laundering in the Serbian Criminal Code

In the Serbian criminal legislation, for the first time, the criminal case "Money Laundering" was systematized in the Law on Prevention of Money Laundering in 2001. Later, the criminal offense is systematized in the Criminal Code in Chapter 22 of Criminal Offenses against the Economy in Article 231 (Criminal Code, Official Gazette of the RS, No. 85/2005, 88/2005 - corrections, 107/2005 - corrections, 72/2009, 111/2009 and 121/2012).

The crime is structured in 7 paragraphs as follows:

P. 1 A person who converts or transfers property with the knowledge that such property originates from a crime, with the intention of concealing or misrepresenting the unlawful origin of property, or concealing or misrepresenting the fact of property with knowledge that such property derives from a criminal offense, or is acquired, held or uses property with knowledge at the time of admission, that such property derives from a criminal offense, shall be punishable by imprisonment of 6 months to 5 years, or by a fine.

P. 2 If the amount of the money or property referred to in the preceding paragraph exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of one to ten years and a fine.

P. 3. A person who commits the offense referred to in paragraphs 1 and 2 with property which he has himself acquired by committing a crime shall be punished by the same penalties provided for in the relevant paragraphs and by a fine.

P. 4 If the offense set forth in paragraphs 1 and 2 is committed by a group, it shall be punishable by imprisonment of two to twelve years and a fine.

P. 5 Anyone who has committed the offense referred to in paragraphs 1 and 2 may or may have been obliged to know that money and property constitute income derived from a criminal offense shall be punished by imprisonment of up to three years.

P. 6 A responsible person in a legal person who commits the offense referred to in paragraphs 1, 2 and 5 shall be punished by the prescribed penalty for that offense if he knew, could have known or was obliged to know that the money or property constitutes income derived from a criminal offense.

P. 7 Money and property from paragraphs 1 to 6 shall be confiscated.

COMPARISON OF CRIMINAL OFFENSES FROM THE TWO CRIMINAL LAWS

The criminal offenses in both penal legislations include criminal conduct that corresponds to the definition of money laundering and the three-phase money laundering process itself, which involves placement, transfer and integration.

The object of protection is defined as: 1) monetary, financial, and 2) legally, in terms of acquiring and disposing of money and property in economic operation (Petrović, 2009: 810). As an object of protection in this crime the following is important: 1) whether the money or property was acquired through the commission of a previous crime or there were reasonable suspicions that the money or property was of an illegal source; 2) to determine the characteristics, status and criminal role of the perpetrators in the criminal operation; 3) the structure and functioning of a criminal gang, in order to detect whether the money laundering is an offense committed by an organized criminal group or gang; 4) ascertain involvement of official, responsible persons or persons performing public interest activities; 5) type and amount of money sent.

The object of protection comes first from the money that comes from the crime, but also from the money that comes from other illegal activities (*exempli causa*), but the term of illegal activities is not clearly defined (*lex certa* infringement), usually considered to be money originating from a "grey economy" or finances obtained by performing an unregistered activity (Đorđević, 2016).

The Macedonian legislator provides a broader framework for prosecuting perpetrators and in cases of inability to prove a predicate offense in cases of factual circumstances and a reasonable suspicion that the money originates from criminal or other unlawful activities, as well as the existence of legal obstacles to the detection of predicate criminal activity. In the area of sanctions, the Macedonian legislator provides for stricter penalties for the basic form of the offense from paragraph 1, imprisonment from one to ten years, and the punishments of at least 5 years imprisonment for perpetrators of organized crime group or perpetrators with the status of official persons in financial institutions. Serbian lawmakers are imposing a prison sentence of six months to five years for the basic form of the offense referred to in paragraph 1, and the maximum sentence of up to 12 years for offenders acting in an organized crime group.

MEASURES AND ACTIONS IN MACEDONIAN AND SERBIAN CRIMINAL PROCEDURAL LEGISLATION

The criminal procedural legislation provides the procedural framework of legal police authorizations, and these are operational-tactical measures and actions, investigative measures and actions and special investigative measures. It also stipulates which state authorities have police powers to investigate tax-codified criminal offenses and for crimes that result in the acquisition of unlawful property gain or damages above the legally prescribed amount. Namely, all the authorizations and all criminal acts are held by the Police and the Public Prosecutor's Office, and the Financial Police, they are responsible for investigating and providing evidence for several financial crimes: money laundering and other proceeds of crime, illicit trafficking, smuggling, tax evasion and other crimes with

unlawful property gain of considerable value (Art. 47, paragraph 1 of the Law on criminal Procedure, Official Gazette of the RM, No 150/10).

Measures and actions according to the Macedonian criminal procedural legislation

In 2010, the Republic of Macedonia changed the concept of pre-investigation and investigation procedures, especially in the part for increasing the role of the public prosecutor who has a key role in the pre-investigation and investigation procedures, that of the coordinator of the bodies with police authorizations, that is, the public prosecution also leads the pre-investigation and the investigation procedures and instead of an investigative judge in the part of carrying out certain orders and authorizations there is a judge in a pre-trial procedure. In the criminal and financial investigation of money laundering, as well as other criminal offenses for which there are reasonable doubts, the Macedonian Penal Procedures Act provides for an investigative action for "**Handling data that is bank secrecy, property in a bank safe, payment transactions and transactions on accounts and temporary suspension of execution of certain financial transactions"** (Art. 200 of the Law on Criminal Procedure of the RM, Official Gazette of RM No. 150/10).

The above investigative action is applied in the cases: "If there is a reasonable suspicion that a person in his bank accounts receives, stores, transfers or otherwise disposes of proceeds from a criminal offense, and that proceeds are important for the investigative procedure of that criminal offense or according to the court is liable for forcible seizure, upon a reasoned request from the public prosecutor, the court may issue a decision by which it will order the bank or other financial institutions to submit documentation and data on bank accounts and other finances transactions and the work of that person, as well as for the persons who are believed to be involved in those financial transactions or works of the suspect, if such data could be evidence in the criminal procedure. The public prosecutor's request refers to data of a legal entity or natural person, for all proceeds that it receives, stores, transfers or otherwise disposes of. If the person is kept in a bank safe, or in some other way has proceeds from a criminal offense, and that proceeds are important for the investigative procedure of that criminal act or is subject to forcible seizure, upon a reasoned request from the public prosecutor, the court may issue a decision by which it will instruct the bank to provide the public prosecutor with access to the safe deposit box. The decisions shall specify the deadline within which the bank or other financial institution must act upon them. Before the beginning and during the investigative procedure, a decision on the request of the public prosecutor shall be made by the judge of the previous procedure, and after the indictment is raised in the court before which the hearing will be held. The preliminary procedure judge decides upon the request of the public prosecutor immediately, and no later than 12 hours after

the receipt of the request. If the preliminary procedure judge does not accept the request of the public prosecutor, he shall without delay request a decision to be taken by the council within 24 hours from the receipt of the request. Also, upon an elaborated proposal by the public prosecutor, the preliminary procedure judge may by a decision instruct the bank or the other financial institution to monitor the payment operations, transactions in the accounts or other affairs of a certain person and regularly inform the public prosecutor about the time determined in the decision. After an elaborated proposal by the public prosecutor, the court may order a financial institution or a legal entity to temporarily suspend the execution of a particular financial transaction or work, and the property is temporarily confiscated with a decision. In urgent cases, the public prosecutor may determine the measures without a court order. The public prosecutor shall immediately notify the preliminary procedure judge, who shall issue the order within 72 hours. In case the judge of the preliminary procedure does not issue an order, the public prosecutor will return the data without opening them.

Measures and actions under the Serbian criminal procedural legislation

The Law on Criminal Procedure of the Republic of Serbia provides for appropriate measures and actions that are necessary in the process of criminal and financial investigation of crime with elements of money laundering, in addition to classical operational-tactical measures and investigative actions, a specific measure is also foreseen that refers to checking accounts and controlling and tracking suspicious transactions.

Checking bills and suspicious transactions is a measure applied in the following cases: (Art. 143 - 146 of the Criminal Procedure Code of the RS, Official Gazette RS No. 72/11, 101/11, 121/12, 32 / 13, 45/13, 55/14)

1. If there are grounds for suspicion that the suspect committed a criminal offense for which a sentence of four years of imprisonment or a more severe sentence is prescribed, i.e. a criminal act, display, acquire and possess pornographic material and use a juvenile for pornography, money laundering, receiving a bribe;

2. Possessing accounts and performing transactions.

3. The state authority that administers the procedure may order to check the accounts and suspicious transactions by:

- The acquisition of data, which is a measure of the public prosecutor who can give a written order to a bank or other financial institution to submit data on: the accounts of the suspect or accounts that he controls and the type and amount of financial assets on the accounts of the records of data. The bank or other financial institution is obliged to keep the secrecy that it acted by providing data to the public prosecutor. If criminal proceedings are not initiated against the suspect within a period of 6 months, the public prosecutor shall issue a decision

for annulment of the provided data. The suspect is informed of this and the data are destroyed under the supervision of the public prosecutor, and a report is compiled on it.

• Supervision over suspicious transactions is a measure that the public prosecutor, with a written explanation, submits a request for its determination with a decision by the judge in a pre-trial procedure. The order should contain data on the suspect, his account and the need for an obligation for the bank or other financial institution to submit periodic reports to the public prosecutor within the specified period, which may last for a maximum of three months, with a further three months' duration. Supervision is terminated if the reasons for its application cease to exist. If the order is not precisely specified in the order, the bank or other financial institution shall be obliged before each transaction to inform the public prosecutor that a particular transaction will be executed and indicate the time period within which it will be executed, or if the transaction is not executed within the stated deadline explain the reasons for this. In this case, the measure is a secret, and if no criminal procedure is initiated within six months, the bank or other financial institution will destroy the data in the presence of a public prosecutor for which a minutes will be prepared.

• Temporary suspension of suspicious transactions, if there are legal requirements for this and if there are grounds for suspicion that the suspect performs transactions that are under supervision, i.e. a measure for supervision over suspicious ones is determined, upon a written and reasoned request from the public prosecutor, the judge in a pre-trial procedure may issue an order to the bank or other financial institution for the temporary suspension of a particular transaction. The interim injunction can be the longest within 72 hours, and in the event that in the period there are also non-working days it can be continued for a maximum of 48 hours. And this measure is a secret.

In the Macedonian criminal procedural legislation regarding the verification, monitoring and blocking of dubious financial transactions, all actions are envisaged in one article of the law, and the condition for determining the measure is the level of "reasonable doubt", while in the Serbian penal procedure legislation the actions are contained in four provisions and there is a lower degree of doubt "grounds of doubt". In the part of the essence of the provisions, the Serbian legislation also specifies the criminal acts from which "suspicious finances" originate, but as a special criminal activity money laundering is indicated, in the remaining part the content is almost identical, with the fact that the Macedonian law is more precise and deals with financial assets that are in bank safes.

The analysis of these provisions indicates that the two countries have paid due attention to the harmonization of the penal procedural legislation with the European criminal legislation, which fulfils the conditions for realization of international cooperation, primarily in the area of criminal and financial investigation of money laundering.

SCOPE, STRUCTURE AND DYNAMICS OF MONEY LAUNDERING IN THE REPUBLIC OF NORTH MACEDONIA AND THE REPUBLIC OF SERBIA

Research has been done on the course of criminal offenders with money laundering in both countries, but there is a difference in the way the data are presented, but the aim is to obtain the indicators of the conviction rate of perpetrators in both countries, because Reports from the international community indicate a small number of cases, insignificant number of convicts and poor confiscation of money and other proceeds of crime.

Table 1: *Scope, structure and dynamics of reported, charged and convicted perpetrators of the crime of "Money laundering and other proceeds of crime" under Art. 273 of the Criminal Code of the RM*

Year	Reported offenders under Art. 273	Accused perpetrators under Art. 273	Convicted perpetrators under Art. 273 %
2008	7	19	19
2009	12	1	1
2010	14	1	0
2011	13	7	6
2012	19	8	8
2013	14	20	20
2014	0	27	27
2015	8	15	15
2016	4	5	4
2017	3	3	3
Total	94	106	103

In the RNM in the investigated period 2008-2017, according to the analysis of the data from the State Statistical Office, indicators can be extracted that there were 94 reported perpetrators of the investigated crime in total, while in the investigation procedure circumstances were increased and the number increased of the defendants in relation to the reported perpetrators, 106 of them and 103 of them were convicted. These data point to the fact that the investigators and the prosecution have been paying close attention to the investigation into the full clearance of the "money flow" and all persons involved in the money laundering process and to whom all relevant evidence has been provided, the court has rendered valid court verdict. It can be concluded that out of the total number of defendants, only three perpetrators have not been given a final verdict. These data indicate that the Macedonian prosecution authorities pay attention to illuminat-

ing criminal situations for full disclosure and in the financial proceeds of crime and providing evidence of secondary crime with elements of money laundering. Predictable crimes include abuse of power and authority, tax evasion, unauthorized drug trafficking and migrant smuggling. Criminal money is placed through the banking sector, and accountants are the category of professionals involved in money laundering schemes (Report published by the Financial Intelligence Service of the Republic of Macedonia, 2016).

Table 2: *Scope, structure and dynamics of reported, accused and convicted perpetrators of the crime of money laundering under Art. 231 of the Criminal Code of the RS*

Year	Reported offenders under Art. 231	Accused perpetrators under Art. 231	Convicted perpetrators under Art. 231
2008	15	4	4
2009	8	6	6
2010	34	0	0
2011	23	4	3
2012	21	1	1
2013	3	10	3
2014	9	2	2
2015	14	8	2
2016	13	11	11
2017	13	2	1
Total	153	47	34

In the Republic of Serbia in the period 2008-2017, according to the State Statistical Office data, 153 perpetrators were reported, 47 perpetrators of which were accused and 34 convicted. These data indicate a low indictment of 30.7%, and an even lower degree of conviction in relation to the reporting of 22.2%. The low level of conviction of the perpetrators may be an indicator of incomplete illumination of criminal situations, insufficient commitment to financial investigation and providing evidence of "cash flow" from criminal activities, but also an indicator of corruption. This is also part of the data that has been researched and analysed in order for the Republic of Serbia to receive a negative report on anti-money laundering action. However, some progress is shown in Moneyval's 2018 Recommendations for the Republic of Serbia, but it remains a State to be monitored after a negative 2016 report where nine out of ten recommendations were assessed by Moneyval being "partially fulfilled" or "unfulfilled", there are no recommendations in the latest report on the non-fulfilment of the recommendations.

CONCLUSION

The Macedonian and Serbian material penal legislation has systematized special offenses with elements of money laundering, including criminal offenses that have similar criminal characteristics. The acts in both legislations are harmonized with the recommendations of the international documents, while the incrimination in the Macedonian legislation is more complex and covers criminal activities for officials in financial institutions, but these acts also have the character of offenses, so if the perpetrators are found to be involved in money laundering they may be liable to either money laundering or abuse of office.

There is an evident difference in penal policy, with the Republic of North Macedonia providing for shorter prison terms of at least five years, while in the Republic of Serbia the most severe punishment is up to twelve years in prison. The most severe punishments are for criminal activity within organized criminal groups and associations.

A particular indicator is the efficiency of the prosecution and judiciary, which is that in the RNM almost all the perpetrators who are indicted and accused are convicted and it is particularly emphasized that during the investigation they were provided with more persons than those reported, which points to the fact of a dedicated financial investigation. These are indicators that should be recommended to investigators for commitment in the process of criminal and financial investigation and improvement of the situation with the prevention of money laundering and the application of more effective prevention by the competent state authorities and institutions.

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FIGHT AGAINST ORGANISED CRIME AND SOME CONTEMPORARY CRIMINALISTICS METHODS[1]

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Abstract: The paper gives a brief overview of the definition of organized crime with the answer what definition is most appropriate from the aspect of police work. The basic characteristics of organized crime are also presented. In the continuation, the paper gives an overview on some methods used by members of an organized criminal group or criminal organization as a whole in order to obscure their criminal activities and avoid criminal prosecution. An analysis of the practical activities of the police and modern technologies reveals certain possibilities that can lead to the improvement of police work in the field of the fight against organized crime. An analysis of the content of available literature related to the topic of paper was also carried out. To improve the rates of detecting and clarifying of organized crime, police must primarily be able to assess the perpetrators of such crimes. Finally, the synthesis of all methods leads to the conclusion what methods are the most effective. All contemporary methods have to be used while respecting the fundamental rights and freedoms that are guaranteed by the constitution and international legal acts. If not so, all police and prosecutor work on proving the felonies will 'go down the drain' as the courts must declare the evidence to be inadmissible and unlawful.

Keywords: organized crime, contemporary methods, mobile phones, i2 analysis, drones.

INTRODUCTION

Organized crime of the modern era has introduced completely new forms and types of criminal behavior, characterized by new ways of perpetrating the felonies, which causes great (material and non-material) damage to the community.

1 The paper is the result of work on the project on the *Development of Institutional Capacities, Standards and Procedures for Combating Organized Crime anda Terrorism in the Conditions of International Integration*, conducted by MPNTR No.17904.

An essential characteristic of the criminal acts of organized crime is reflected in the increasing need for covert resolving and proofing because perpetrators, as members of organized criminal groups, use modern technical achievements. An additional problem is the lack of legal regulations, non-equal judicial practices, outdated criminal-intelligence methods and the lack of professional staff to monitor this kind of organized crime. Drug trafficking, illegal dealing in weapons, kidnapping, extortion, cybercrime, corruptive offenses can be distinguished as the most serious forms of organized crime.

In scientific and professional circles there are various theoretical definitions of the concept of organized crime, its characteristics and elements. Regarding the fulfillment of the conditions for the existence of felonies in the field of organized crime, the established conditions laid down in the UN Convention against Transnational Organized Crime (Palermo Convention) should be respected, and the provisions of the national criminal legislation of most states are harmonized with it. According to Nikač and Božić (2018) it is necessary to accept an extensive interpretation, according to which organized crime is an organized criminal activity by a criminal organization with a properly established hierarchy of relationships, division of labor, network structure, methodology of action which implies systematicity, conspiracy, corruption and connection with parts of state structures with the aim of achieving extra profits, avoiding criminal responsibility and legalizing criminal proceeds. From the police point of view, the most important are the elements prescribed by the national criminal legislation, as it is directly enforced by police officers[2].

The most important characteristics of organized crime that stand out include:

1. Specific network organization;
2. Clear "deal of business" both in the criminal organization itself and between criminal organizations;
3. Strict subordination relationship;
4. Loyalty and solidarity of members of a criminal organization;
5. Family morality elements;
6. 'The law of silence' (*omerta*);
7. Criminal activity planning;
8. Specialization of members of a criminal organization;
9. Terrorism and organized crime nexus; and
10. Use of violence and intimidation.

The most famous criminal organizations in the world have been distinguished and they include: the Italian mafia (*Cosa Nostra, Camorra, and N'drangheta*), Albanian mafia, Russian mafia, Chinese Triad, Japanese Yakuza, Colombian and Mexican cartels, Nigerian organization and numerous US criminal organizations[3].

2 Further readings in Božić, Nikač, Simić, 2017:273-276
3 Further readings in Nikač, 2014:135-158

The aim of this paper is to give an overview of some methods used by members of an organized criminal group (OCG) or criminal organization as a whole in order to obscure their criminal activities and avoid criminal prosecution. An analysis of the practical activities of the police and modern technologies reveals certain possibilities that can lead to the improvement of police work in the field of the fight against organized crime. Finally, the synthesis of all methods leads to the conclusion what methods are most effective.

MOBILE PHONES AND ORGANIZED CRIME

In the first place, in the collection of data on organized crime, the criminal intelligence policing are set up, where, using informants and other operational methods, data on the criminal activity of a particular criminal organization and its members have to be collected. Various contemporary technical accomplishments can help members of OCGs in committing the crimes that allows them greater motion and mobility, so it is one of the essential characteristics and a few examples will be given to illustrate the monitoring of these activities.

In order to avoid 'linking' by monitoring the listing (records) of mobile phones, or secret surveillance of communication, perpetrators use the so-called 'specials' i.e. mobile phones and SIM[4] cards that only serve to commit a felony and use during the commission of it. To improve efficiency in identifying the numbers of SIM cards, the law enforcement agency could use software that can identify unknown calls and messages. That kind of software (apps) can be downloaded from web stores (Windows, Google, Apple) for free and be useful tool for analyzing the communication between perpetrators. As an example, it can be listed as one of the following: Everybody, Truecaller, NumBuster, CallClerk, Saller ID Spoofer, etc.

It has been noticed by law enforcement officers that mobile phones appeared with the so-called 'cracked' and 'cloned' IMEI[5] number that is very difficult to track and which is used by the perpetrators not only of these, but also of other crimes. Often perpetrators also own several mobile phones and SIM cards (usually prepaid) and if they suspect that there is a possibility of discovery, they throw mobile phones and cards in separate places to cover up any trace. To avoid the so-called 'regular' communication via calls or SMS messages, perpetrators use social networking services such as Facebook, Viber, Skype, WhatsApp, Twitter, LinkedIn, Flickr etc. (Leštanin, 2017:299). However, in this type of communication, it is specific that it is necessary for the phone to be connected to a wireless (Wi-Fi) internet or mobile internet data exchange in order for the software application to function. Recently the Viber and WhatsApp have introduced the 'end-to-end'

4 Subscriber Identity Module

5 International Mobile Equipment Identity; 'Cracked' IMEI is actually changed, falsified, fake number with software which shows that one mobile phone device has several IMEI numbers. These IMEI numbers are also used by some other mobile phone devices that do not have anything in common with perpetrator(s). 'Cloned' IMEI speaks for itself that there are two mobile phone devices with the same IMEI number.

encrypted system between participants in conversation that disables the possibility to intercept it. This kind of obstacle probably could be overcome by some encryption software.

To overcome this, law enforcement could use the stingray devices or/and IMSI[6]-catchers (or just a Catcher) contemporary technical devices that can track all communications (phone calls, SMS messages, emails and communications via all kind of messengers) nearby. Basically the Catcher represents the 'fake' cell tower (base station) acting between the mobile phone that is targeted and the service provider's real cell towers. Mobile phone always chooses the cell tower with the strongest signal which is this case the Catcher. Metaphorically speaking, the Catcher is like a 'sponge' for mobile phone waves. In professional cycles there are rumors that alternative communications by all kind of messengers, electronic mails and so on can be followed with these devices.

The biggest controversy, from the fundamental rights and freedoms aspects, is the fact that the Catcher device monitors all communications that take place over the cell tower and not just the target's communication. It is therefore necessary that the court warrant for the using of this device be clear and precise, with the obligation to delete data from other non-targeted communications. Some preliminary research has been done in trying to detect and frustrate Catchers. One such project is through the Osmocom open source mobile station software. This is a special type of mobile phone firmware that can be used to detect and fingerprint certain network characteristics of Catchers, and warn the user that there is such a device operating in their area. But this firmware/software-based detection is strongly limited to a select few, outdated GSM mobile phones (i.e. Motorola) that are no longer available in the open market. The main problem is the closed-source nature of the major mobile phone producers (*https://en.wikipedia.org/wiki/IMSI-catcher#cite_ref-20*). Several apps listed on the Google Play Store as Catcher detector apps include SnoopSnitch, Cell Spy Catcher, and GSM Spy Finder and have between 100,000 and 500,000 app downloads each. However, these apps have limitations in that they do not have access to phone's underlying hardware and may offer only minimal protection (*https://motherboard.vice.com/en_us/article/neeb5g/stingray-detection-apps-might-not-be-all-that-good-research-suggests*).

IPhones are a special issue for detecting the communication between the crime perpetrators. The iPhones have six-digit passwords which are used to access them. Additionally the iOS operating system has own apps for audio/video calls and messages communication. For audio/video calls it can be used Face Time app and for messages iMessage app. The main precondition is that a device must be on wireless or mobile data exchange network. The Apple Inc. does not want to help law enforcement (above all the FBI) to crack it open. In 2015 and 2016, Apple Inc. has received and objected to or challenged at least 11 orders issued by US district courts under the *All Writs Act* from 1789. Most of these seek to

6 International Mobile Subscriber Identity

compel Apple 'to use its existing capabilities to extract data like contacts, photos and calls from locked iPhones running on operating systems iOS 7 and older' in order to assist in criminal investigations and prosecutions. A few requests, however, involve phones with more extensive security protections, which Apple has no current ability to break. These orders would compel Apple to write new software that would let the government bypass these devices' security and unlock the phones (*https://theintercept.com/2016/02/23/new-court-filing-reveals-apple-faces-12-other-requests-to-break-into-locked-iphones/*). The use of the *All Writs Act* to compel Apple to produce new software was unprecedented and, according to legal experts, it was likely to prompt 'an epic fight pitting privacy against national security' (*http://www.latimes.com/business/la-me-fbi-apple-legal-20160219-story.html*). It was also pointed out that the implications of the legal precedent that would be established by the success of this action against Apple would go far beyond the issues of privacy (*https://www.newyorker.com/news/amy-davidson/a-dangerous-all-writ-precedent-in-the-apple-case*). The FBI vs. Apple Inc. case did not end before a court because FBI announced that the device had been cracked. In any case, other law enforcement agencies will follow the example of FBI.

Whatever type of mobile phone appears to be used for the purpose of a perpetrator's communication, in order to get into its content and to extract the contacts, recorded calls, messages, images or anything else the law enforcement officers and prosecutor will need a court warrant. This procedure is considered as the special investigative procedure of computer data search although the mobile phone and computer are different devices. Regardless of this, contemporary mobile phones have most of the computer functions (storing the video and image, emails, social networking, links to cloud storage, storing all kind of data, etc.). For that reasons, in a broader sense, this procedure could be considered as computer data search.

For analyzing the mobile phone's data and other intelligence, police use the so-called 'i2' analysis. The first products included the i2 Link Notebook and i2 Case Notebook. The *i2 Link Notebook* enabled investigators to create entity relationship diagrams (a kind of visual database) allowing raw intelligence – largely textual reports (e.g. witness statements) – to be entered manually, revealing the relationships within the data and enabling data from different sources to be collated and graded. Automatic and manual layouts, and the ability to create, share, search, analyze and, most importantly, print, even extremely large charts (sometimes tens of meters in length), dramatically improved law enforcement's ability to understand and communicate the status of investigations, and to direct and manage the process. The *i2 Case Notebook* provided similar data entry and visualization of time series data (i.e. laying events out along themes such as people and places), allowing once again the law enforcement officials to handle very large data sets. Even with variable density timescales, due to the very large number of events uncovered in a large investigation, a single Case Chart could cover several walls in an office, or stretch tens of meters along a corridor (*https://en.wikipedia.org/wiki/I2_Limited*).

In terms of communications, the i2 analysis helps law enforcers to analyze recorded communication between perpetrators and, concretely, to establish from which telephone numbers perpetrators communicated, how many times, for how long, what base stations they used, what their relationships are, and many other information (Image 1). It can also connect all other data from intelligence reports, statements, notes regarding the perpetrators, and so on. What must be emphasized is that not every police officer can work in i2. Only the well trained analysts can operate this complex software. The end result could be the most important finding for the criminal proceedings.

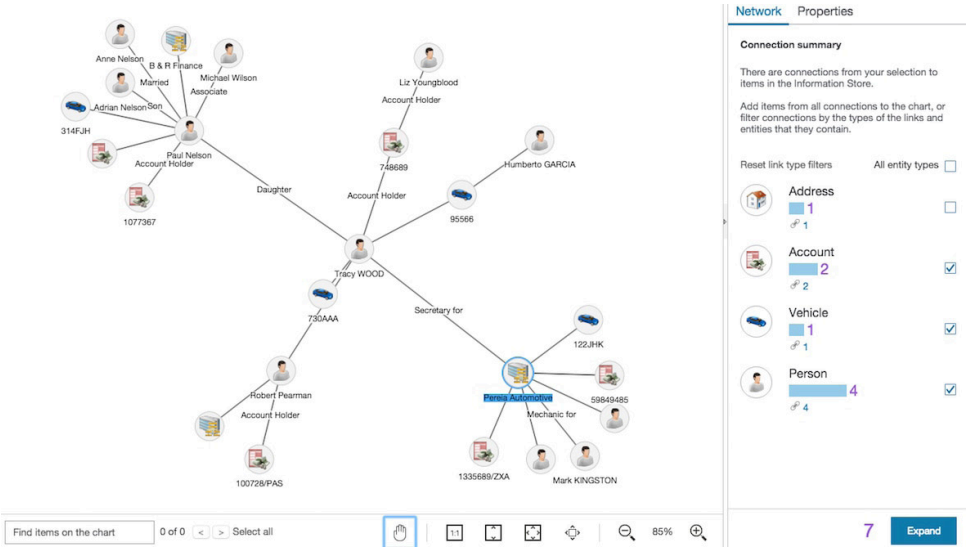

Image 1 – i2: *analysis software application report*
(source: https://www.ibm.com/us-en/marketplace/enterprise-intelligence-analysis)

DRONES IN POLICE WORK

Talking about monitoring, this primarily refers to secret surveillance and perceiving or undercover operations as 'operative' police procedures, and not to secret monitoring and recording as special evidentiary procedures from Criminal Procedures Code (CPC). Before there is a basis for suspicion or a sufficient set of facts, police officers may collect information and data aiming to determine whether they have acquired the basis of suspicion that a felony or misdemeanor has been committed. Collecting data and information is done through secret and direct observation–scanning or observing persons, objects, means of transport and space, but only for the purpose of checking the received information or knowledge (indications) and forming a proposal to the competent authorities for which they are authorized by the CPC (Djurdjević, Radović, 2017:108). This procedure is undertaken with the aim of collecting information on persons

and groups dealing with organized crime, primarily information on the place of residence, work, data on business friends, friendly and other relationships, information on propensities and habits, and in particular information on location of secret hiding places and shelters, information on intermediaries and resellers, on how to transfer and conceal goods, discover the source of goods and discover the organizer and the main bearers of such activity. The main purpose of doing this is to find the items or goods in order to provide material evidence for further criminal procedure. Further, for the purpose of monitoring the movements of perpetrators in their vehicles, the GPS devices could also be used. This is essential when police want to find hidden storages with illicit goods. The processes of placing a GPS device on the vehicle and removing it must be strictly confidential, quick and in accordance with the CPC.

In addition, the police can use an unmanned aircrafts-UA[7] to reconnaissance the terrain or monitor the movement of perpetrators. It must be emphasized that the use of drones could violate the air space of another state. To overcome this problem the states and their police must arrange the using of drones reciprocally. The advantages of drones that the police can use are that they are small, relatively fast, offer the possibility of day and night surveillance (recording), have the silent mode, provide extensive coverage of the observation area, make it possible to capture a perpetrator at the crime scene, etc. The use of drones is not always possible; because of this, it is always necessary to assess the configuration of terrain and climatic (atmospheric) conditions (e.g. closely-set buildings, a large number of wires in the area of drone movement, dense trees, the strength and direction of the wind, possible rainfall, fog-visibility, etc.). Using drones must be pursuant to the legal framework and without violations of rights and freedoms of citizens. If there is reasonable doubt that criminal evidence will be collected using a drone or that the usage will intrude upon reasonable expectations of privacy it must be used with a court warrant. Except when used on a warrant by the criminal court, the use of UAs must include some controlling (supervising) mechanism too. A drone's footages can be evidence in the criminal court in the case where a court warrant was previously issued.[8]

The IACP[9] even suggests that police should engage their community early in the planning process, including their governing body and civil liberties advocates. The community should be provided an opportunity to review and comment on agency procedures as they are being drafted. Where appropriate, recommendations should be considered for adoption in the policy. As with the community, the news media should be brought into the process early in its development (Aviation Committee of International Association of Chiefs of Police, 2012:2).

7 Unmanned aerial vehicle (UAV), Remote Piloted Aircraft (RPA) or simply a drone
8 Further reading in S.C. Schwartz, 2017
9 International Association of Chiefs of Police

SOME OTHER METHODS

Special emphasis must be placed on the fact that a trend has been noted in Serbia where crime perpetrators communicate using handheld radio devices (walkie talkie) that are easily accessible in any store and are difficult to survey by the law enforcement agencies (Leštanin, 2017:299). We think it is very difficult to put these devices under surveillance because they work on various frequencies, they sometimes can only be dual, they do not have the need for base stations as mobile phones, they are difficult to locate, etc. As a result, it is very easy for the perpetrators to avoid prosecution using the radio or to prevent the detection of other offenders. However, this can be achieved through a well-planned inquiry and possibly using an undercover policeman.

It has been noticed lately that well organized transnational criminals use draft emails. They create an account on a free email provider's web (Gmail, Yahoo, Hotmail, etc.) that does not contain any personal data of actual owner in order to avoid detection. Through that account they neither send nor receive any emails but they only write drafts and save these on the account. Both sides in conversation have a password of that account and use it for accessing. In this manner they avoid email going through network and being tracked or intercepted. For law enforcement it is one more task to be accomplished if they want their counter-crime operations to be efficient and effective.

Cloud storages are a special story, too. Cloud computing is the on-demand delivery of compute power, database storage, applications, and other IT resources through a cloud services platform via the Internet with pay-as-you-go pricing. With cloud computing, you do not need to make large upfront investments in hardware and spend a lot of time on the managing of that hardware. Instead, you can be provided with exactly the right type and size of computing resources you need to power your newest bright idea or operate your IT department. You can access as many resources as you need, almost instantly, and only pay for what you use (https://aws.amazon.com/what-is-cloud-computing/). These opportunities can be abused by criminals in order to store data in storages that are necessary for their criminal activity. They can also be used for data exchange and communication regardless of where criminals are.

All of these special investigative techniques must be pursuant the law. Speaking in terms of Western Balkan countries, it is CPC. It is especially important that everything is done in accordance with the norms of the Constitution and laws (Codes) and respecting the fundamental rights and freedoms guaranteed in them. Essential for the performance of these procedures is a court warrant, but not just any warrant. The warrant must specify the reasons for the court ruling on such a decision and justifying the lawful violation of the guaranteed rights and freedoms (the right to private life, the right to freedom of movement and so on)[10].

10 Further readings in Marinković, 2010

When communicating between themselves, perpetrators try to use pre-arranged codes to avoid detection if their mobile phones or radio are surveyed or monitored. Here, we are faced with the creativity of the perpetrators who invent various codes, for example, for police officers, for police vehicles, for the police building, for the warehouses where they store their illicit goods or the vehicles used during the commission of the felony, as well as the specific nicknames they give to one another during the commission of the felony, which are only known to them (Leštanin, 2017:299). Practice points to the following: suspects use encryption for communication; the result of the application of special investigative procedures surveillance and technical recording of telecommunications is a very small number of relevant communications; police officers carrying out this special investigative procedure do not conduct adequate analyses of intercepted telecommunications; in Bosnia and Herzegovina, an expert is not engaged in criminal proceedings who would, through the use of their knowledge and skills for the purposes of criminal proceedings, conduct an analysis and interpretation of encrypted intercepted telecommunications. Bearing in mind the fact that the above operation and the technical recording of telecommunications can be carried out for a relatively long period of time (up to 6 months) and that as a final outcome of its implementation we have a small number of relevant communications, it would be inadmissible for this small sample to be 'spent' in an inadequate manner at the main trial (Vujić, Zimonja, 2017:103).

Finally the criminals have to communicate in order to make arrangements about how to carry out the felony. The major task for law enforcement agencies is to find the way how to intercept this communication.

Well-organized OCGs use the so-called (in police jargon) 'cleaners'. These are the aiders who observe the way of moving vehicles with illicit goods, the movement of police patrols, police buildings and other interesting personalities and phenomena. If they notice anything suspicious, they have a task to inform either the organizer or the person directly transporting the illicit goods to avoid contact with the police, customs, etc. In this sense, two types can be distinguished: *static and dynamic* 'cleaners'. The static 'cleaners' are those who observe one or more locations or movement of law enforcement from one place or just static objects. The dynamic 'cleaners' are those who use some means of transportation (a vehicle, a motorbike, a bicycle, etc.) and who, while on the movement, observe a certain part of the terrain and inform about the suspicious events. The term 'cleaner' was created in the 90's because the term 'clean' was used purely as a code confirming that there are no police patrols on the way of movement of illicit goods. According to some intelligence, this coded term is still used in Serbia. They pay special attention to shifts handover between police officers so that they should move right at the time of handover when police officers are not expected to be able to detect and arrest them.

Criminals often use decoys to avoid police ambushes. The perpetrators of crime found out that police officers in the police ambush let through the 'clean-

ers' going in front of the vehicle with the goods and then stopped only the vehicle with goods and arrested perpetrators. In order to avoid this, the organizers send no more than a few vehicles – decoys (usually a van or a small truck) which is acting in the transport of goods. If they are stopped, no goods are found since these vehicles are empty, so that no arrests can occur. In order to avoid this kind of embarrassment, police officers have to prepare a police ambush well and collect intelligence about all vehicles, about the exact vehicle that transports goods, to find out the beginning of the movement of the vehicle with the goods, to pay attention to a vehicle (the truck/van with the goods moves slowly, its motor is buzzing, tires and buffers are lower than usual, etc.).

Great adaptability to the situation and movement on the market is another important feature of the perpetrators of these crimes. They have knowledge about where and what kind of goods are prohibited or restricted (e.g. basic provisions for human life, goods of wide consumption, etc.) and how to avoid to be spotted by law enforcement officials. Prices of certain goods vary depend on supply and demand and other economic factors. Therefore, the perpetrators can quickly change the type of goods that are the subject of felony, which only indicates the level of professionalization and specialization of the perpetrators. Regardless of the changes in the types of goods, the perpetrators do not change the modus operandi, the established routes of movement on which they have not been discovered, the members of the group, and all other circumstances related to the commission of felonies. Only the change of end customers and users of certain illicit goods can occur, as consumers are different. What is particularly dangerous with these perpetrators is the possibility to easily pass from the smuggling of weapons and drugs into the sphere of terrorism. In police practice, there were indications that certain criminal groups engaged in illicit trade were switching to the smuggling of drugs, weapons and aiding terrorists. However, these indications have not been confirmed through the policing in practice.

As for the personality of a person involved in organized crime, these are people are, as a rule, very intelligent, skillful, very communicative and mobile, but at the same time very cunning, ingenious and resourceful, yet also very perfidious and without much scruples (Djošić, 1970:43). They do not keep their goods in their homes or apartments, there are already rented 'stacks' and hidden warehouses where goods are stored and which very few people know of. The organizers of the 'business' are very cautious and cooperate only with already known and tried associates (buyers/sellers) and a 'new player' can enter the job only on the recommendation of a confidential one. The new arrivals are often thoroughly checked in order to establish who are they, what they did before, what the members of the family are doing, etc., as well the put on a test through scheduling multiple meetings in different places, giving smaller quantities of illicit goods, tendentious arrest and disclosure by the police, and so on.

They are often prone to fleeing both in the course of and after arrest, as well as to offer resistance and launch attacks on police officers in order to avoid capture

and responsibility for crime and possibly hide the tracks and evidence which may lead to them. On the other hand, if they find it convenient, they do not hesitate to offer money or any other gift to police officers or other persons involved in suppressing this phenomenon (inspections). In community, they are perceived as being gallant and cavaliers and tend to give the impression of people with nice manners, and when they are caught in the illegal business they usually try to make a 'legend' that they are not guilty; they almost never admit committing of a crime and will frequently put up an act of a naive and honest man, etc. They often help the local community where they have hidden storages, where they exchange money and goods, on the ways where they transporting the goods, etc. Helping implies giving the money, taking care of lone and old members of family, giving some basic means for living, housekeeping, etc.

In clashing with the competition and in order to achieve the material gain from felonies, they do not refrain from using the worst threats, blackmail and fraud (Djošić, 1970:43). It is not uncommon for perpetrators to offer 'cooperation' to police officers, but they must be particularly careful not to become involved in their traps aimed at destroying the criminal competition and taking a 'monopoly' over an illegal market. By belonging to this group of people and moving in these circles, police officers can directly come to the knowledge when they are preparing to commit or arranging the perpetration of a felony or some other criminal activity. A police officer must be smart enough and able to visualize the true motives of criminals who gives him/her information so that there is no abuse of police protocols (rules).

CONCLUSION

Organized crime groups are specialized in perpetrating felonies and most of them are professionals. Severity of felonies in Western Balkan countries is considered differently due to varying criminal-law aspects. In this sense, their respective police authorities involve different resources in detecting and clarifying them. For that purpose members of OCGs also use contemporary techniques and devices which put them a 'step forward' in respect of the state authorities.

To improve the detecting and clarifying rates of organized crime, the police must first assess the resources of both perpetrators and the police force. When they are assessing the perpetrators, the police have to gather useful intelligence referring to their personal data, family members, apartments, houses, storages, vehicles, legal or illegal firearms, associates, places of gathering (pubs, restaurants, hotels, etc.), means of communication (personal computers, tablets, laptops, cell phones, radio, etc.) and all other intelligence that is important for assessing the perpetrators. For efficient assessment of police forces, it must be known what their resources are (human, vehicles, communications, etc.), if they need extra resources, whether they have trained officers or enough human and technical

means to enforce the operations. After assessing both sides, the operations can be planned and carried out.

Taking into account that OCGs are well organized in the region of the Western Balkans, the police should, together with the prosecutor, investigate these felonies with special evidentiary procedures and applying special contemporary techniques and devices. But one very important fact must be on their mind. All measures and techniques have to be taken with due respect of fundamental rights and freedoms that are guaranteed by the constitution and international legal acts. If not, the police and prosecution's work on proving the felonies will 'go down the drain' since the courts must declare the evidence inadmissible and unlawful.

One of the main tools is the contemporary method of analyzing the intelligence data; exchange of intelligence between state authorities (in and out of state) and special investigate techniques. Using such tools, the police and prosecutors can do their job competently and improve detecting and clarifying rates of these felonies. In future, if the countries want to have successful investigation of organized crime and all other forms of crime they will have to undergo de-politicization of all state authorities that deal with crime issues.

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THERMAL IMAGING APPLICATION IN EVIDENCE SECURING

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Abstract: Physical and personal evidence are often considered in criminal literature. New scientific and technical methods and achievements are also applied in securing evidence material for the court's needs. Thus, the thermal imaging technique can be used to provide primarily physical, as well as personal proofs. The paper presents an overview of the possibility of thermal imaging application in various forensic areas, bearing in mind that the thermal imaging technique is based on the fact that the heated bodies emit the thermal radiation that is registered by the existence of different temperature fields on the recorded objects.

Keywords: proof, material proof, personal proof, thermal imaging.

INTRODUCTION

Evidence is the most important institute of criminal procedural law because the task and aim of criminal proceedings are achieved through it. Evidence is the base for drawing conclusion about truthfulness or untruthfulness of facts and it is established in the proceedings (Vasiljević, 1981). Evidence is a source of the information which points out to specified legally relevant facts and they are subjected to determination. The evidence relates to material or psychological change occurring in the connection with the commission of a criminal offence, which in itself carries the information about a criminal offence, defendant and other legally relevant facts, which is documented in the form and in a manner defined in the Criminal Procedure Code (Aleksić, Škulić, Žarković, 2004).

In the criminal process theory there are different classifications of evidence that take different criteria as the basis. Among the most undisputed is the one which creates divison of evidence based on the criterion of the nature of the evidence, i.e. type of evidentiary actions, so the evidence can be divided into personal and physical (real). According to this classification, personal evidence is

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evidence that consists of statements of specified persons and physical evidence includes physical things that can serve as evidence (Grubač, 2006).

Physical evidence can serve several important roles during the criminal investigative process. It can help establish the elements of crime, or make associations between crime scenes, offenders, victims and instruments and can function as corroborative evidence and support other evidence that establishes an issue in question (Brandl, 2004). Considering the nature and role of physical evidence, its significance in the criminal proceedings is enormous and, consequently, an authority conducting proceedings perceives it as the most reliable evidence. Therefore, special attention is paid to the detection and securing of this evidence in the criminal investigation.

The process of proving begins with crime scene investigation from the moment of obtaining operational information and appropriate traces that indicate the existing of a criminal act and a perpetrator. The team work of police officers, i.e. crime scene investigators – detectives and forensic workers, has the great importance for successful performance of criminalistics processing and clarification of some criminal act. Crime scene investigators – forensic officers -find, fix, interpret and analyze traces, while detectives collect information, which will later, in the course of the procedure, become material and personal evidence.

Physical evidence (traces, etc.) at the scene, as well as the collected information from citizens, can provide useful information in relation to the criminal act and its perpetrator which have to be checked whether they were obtained during the crime scene investigation, expertise or some other process.

Images taken with the thermal cameras are one of the most important physical evidence, since they can be a source of important information about criminal offence and/or perpetrator, and constitute ground for collecting other evidence.

THERMAL IMAGING TECHNIQUE

Infrared (IR) radiation, emitted by every object depending on its temperature, is invisible to the human eye. The wavelength of IR radiation is within the range from 780nm to 1mm in the electromagnetic spectrum. Thermal infrared radiation (wavelengths from 0.1 to 100 μm) is emitted by all matter with temperature above absolute zero and it depends on an object's temperature and emissivity only. Thermal cameras convert infrared radiation into visible radiation for human eye and it was originally developed for military applications (IR guided missiles, etc.). Thermal imaging is a nondestructive technique, which can help obtain information invisible to the naked eye (Edelman et. al., 2013). Thermal imaging means recording for the purpose of detecting energy in the area of the invisible part of the spectrum of electromagnetic radiation and its converting into a visible image (Thurman, 2006).

Thermal imaging technique is applied in cases when there is a need to measure the temperature of the object without any contact with the measuring device. Thermal image shows the temperature distribution on the surface of the recorded object. By observing and photographing an object with the use of thermal camera, it can be monitored by changing its temperature for a certain period of time. The object illuminated by infrared light emits radiation that the thermal camera registers and artificially generates colors.

The thermal camera detects the radiation of the infrared rays (the range of long infrared rays) from the recorded object, which identifies the image of the temperature fields. Thermal image, so called thermogram, is a graphical representation of the measured temperature values, where each point in the image represents a certain value. Thermal camera allows the visualization of thermal contrast because the detector of the difference in the received infrared radiation flux turns into an electrical signal that generates a visible image in proportion to the thermal contrast. Colors on the thermal camera are artificially generated in such a way that the warmer surfaces of the red shades of the electromagnetic spectrum are while the colored fields are purple, dark blue and blue. In order to measure the exact value of the temperature of the recording object, its emissivity, ambient temperature, humidity, distance from the object to the fixed point from which it is being recorded must be taken into account. Inside the device, infrared radiation is converted to visible according to the fact that the human eye does not register it (Васиљевић, 2005). The first uses of infrared sensors were recorded for military purposes in the First World War (Барбарић, 2014:3). Nowadays, this application is much wider (industry, veterinary medicine, medicine, art, etc.), which uses image analysis methods and determines statistical and deterministic parameters (Барбарић, 2014:107). An infrared imaging system consists of optical system, infrared detector, unit for signal processing, and the system for image acquisition. Also a part of thermal imaging system is personal computer with appropriate software for image analyzing. Infrared radiation detected by the lens of thermal camera is a combination of emitted, transmitted, and reflected radiation and comes from three different sources: the target object, its surroundings, and the atmosphere (Edelman et.al., 2013). The cameraman is also the source of thermal radiation, because the human body has the temperature of 36-37 degrees Celsius, which is above the room temperature. Interpretation of the image received by thermal camera should be done by an expert person who is specially trained for working with the camera.

THERMAL IMAGING IN OBTAINING OF PHYSICAL EVIDENCES

Physical evidence implies every material change arising in connection with a criminal event (Митровић & Ступар, 2002). Thermal imaging can be used to provide physical evidences in forensics and for video surveillance when there

is a need for detection of the presence of some person. Thermal imaging is used by police and security agencies as an evidence material in the cases of border crossing control, identifications of perpetrators and secure access control. Also thermal imaging can be used in identification of people by thermal diagrams of certain body parts such as face, ear, hand, etc. (Bebis et. al.,2006; Mašković et. al, 2013).

Infrared imaging can be used in forensics such as the estimation of the post-mortem time interval - postmortem cooling curve of a human body, crime scene investigation when there are blood traces on similarly colored surfaces which may be highlighted with IR light and an indication of recent human contact or the time since a thermal camera was used (Edelman, et.al., 2013). It is used in the visualization of other body fluids at the crime scene and to find possible victims in a thick smoke and dark.

Also, thermal imaging can be used for making thermal 3D model of the crime scene (Edelman & Aalders, 2018). Thermal imaging can be applied in forensic processing of the explosion scene and fire, since the explosion and fire are exothermic chemical reactions. The crater as a characteristic evidence high explosive explosion can be recorded with an infrared camera, since a large amount of heat is freed at that location. The thermal camera can be used to determine the explosion time based on the cooling rate of the crater. An example of using the thermal imaging in forensics, at the scene of explosion is given in Figure 1.

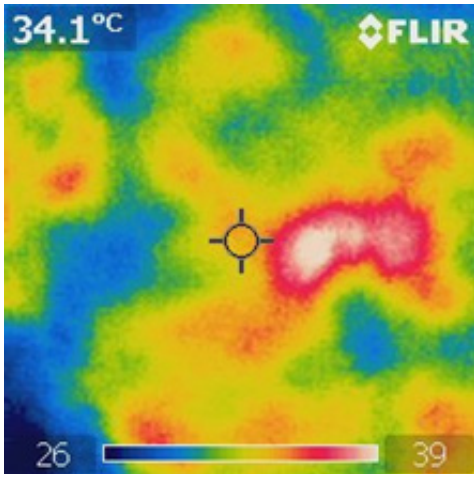

Figure 1: *Thermal imaging of the crater after explosion of TNT on soil*

In the USA, thermal imaging is dominantly used for the detection of illegal laboratories for cultivation of cannabis, as autonomous evidence in the criminal proceeding and as proof that reinforces the request for a search of specified premises. Therefore, in the practice of the US courts the question arises as to whether this evidence should be seen through the prism of the protection of the right to privacy, i.e. the Fourth Amendment to the Constitution of the US. According to

this Amendment "the people have a right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized". The Fourth Amendment issue raised by thermal imaging technology is whether law enforcement's use of the device constitutes a search within the meaning of the Fourth Amendment.

In the beginning, a majority of US courts have held that a thermal imaging is not a search and have accepted thermal image as evidence although the warrant for a search wasn't obtained. Majority-view courts rely on several different rationales. One rationale posits that thermal imaging is non-intrusive and, therefore, not a search. Another rationale analogizes thermal imaging to canine sniffs. Other courts reason that because thermal imaging detects heat emitted from a source, thermal imagers should be compared to cases involving the legal status of garbage placed on the curb. Finally, some courts justified the use of thermal imaging on the plain view doctrine for a search (Campisi, 2001).

Only a minority of US courts considered that for this type of evidence law enforcement officers must obtain a court warrant because otherwise it constitutes a search under the Fourth Amendment. These courts focus on the intrusive nature of this technology. Minority-view courts also focus on the individual's expectation of privacy in the activities conducted within the home, rather than on the expectation of privacy in the heat emitted from the residence. Other courts stated that the use of thermal imaging devices reveals intimate details occurring within the sanctity of the home, the place deserving the utmost protection pursuant to the Fourth Amendment (Larks-Stanford, 2000).

The Supreme Court put an end to mentioned discussion in the *Kyllo v. US* and took a stand that thermal imaging constitutes a search under the Fourth Amendment. The court stated: "It would be foolish to contend that the degree of privacy secured to citizens by the Fourth Amendment has been entirely unaffected by the advance of technology". Also, the Court noted: "Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a warrant" (Kyllo v. US, 2001).

Bearing in mind the fact that Serbian police officers use thermal imaging technology and the fact that Criminal Procedure Code of the Republic of Serbia (CPC) does not include any provision for the use of this evidence, the question arises whether the thermal imaginig can be used as evidence in a court. At this point it is important to note that the CPC does not prohibit the use of other evidentiary actions except those explicitly enumerated in its provisions, as it prescribes that evidence is not only collected and examined in proceedings in accordance with the provisions of the CPC, but also in other manner prescribed by law (Art. 82). This means that in the criminal proceedings evidence can be collected and ex-

amined through unnamed evidentiary actions. In support of that it is stated that the possibility to use, under certain conditions, everything that can contribute to determining the facts in the proceedings should not be denied (Ilić *et al.,* 2013). The only condition that must be satisfied is expressed by the rule that court decisions may not be based on evidence which is, directly or indirectly, in itself or by the manner in which it was obtained, in contravention of the Constitution, CPC, other statute or universally accepted rules of international law and ratified international treaties (Art. 16, Par. 1 CPC).

APPLICATION OF THERMAL IMAGING IN EVIDENCE SECURING

The theoretical assumption, based on thermal imaging in obtaining personal evidence, is a change in the temperature on the part of the face around the eyes (Baić & Areh, 2015; Ivanović & Baić, 2016), which is essential for the detection of misleading behavior. In this sense, it is assumed that a person who does not speak the truth due to tension and fear will increase the speed of blood flow in the upper part of the face (Pavlidis, Eberhart & Levine, 2002; Vrij & Grangh, 2007 according to Baić & Areh, 2015:211). As the fluid (blood) in the tube (blood vessel) increases the kinetic energy of the particles, and indirectly the pressure, it is expected that the temperature will increase. The ultra-sensitive thermal imaging camera will register the temperature change in the eye area by changing the color. The first researchers (Pavlidis, Eberhart & Levine, 2002) who noticed the possibility of using a thermal camera in recording a person's face and detecting of lies, showed, with 87% of the accuracy, that people who do not speak the truth differ from the truth-tellers. The advantages of this method are reflected in the fact that it is noninvasive, i.e. does not leave any traces on the recording object because there is no physical contact between the cameraman and the recorded person. Since this conclusion is made on a small sample (20 respondents), the reliability of the conclusion can be called into question. The other studies that have been carried out on a larger number of respondents, confirmed the percentage of reliability (Rayoub & Zwiggelaar, 2014, according to Baić & Areh, 2015:212), while the other authors reported 76% confidence (Yhu, Tsiamyrtzis & Pavlidis, 2007 according to Baić & Areh, 2015:212) and 67% (Warmelink, et.al., 2011 according to Baić & Areh, 2015:212). Research results about thermal imaging in lie detection realized in Colombia show a success rate of 79.2 % (Bedoya-Echeverry et. al., 2017). Considering the fact that this percentage is greater than 50 in all of these studies, this technique can`t be completely rejected, but this deviation must be kept in mind when making conclusions in expert evidences. When someone does the thermal imaging for the purpose of lie detection, it is possible to include several persons at the same time that can be considered an advantage of this method (Bedoya-Echeverry, et.al. 2017). Thermal imaging technique is used globally to evaluate the truth of the testimony, but not yet in Serbia,

CONCLUSION

Although the use of thermal imaging as evidence in criminal proceedings has been overwhelmed with difficulties, this technique is permitted in the USA if the probable cause and warrant are provided. In Serbian law, this evidentiary action is not specifically prescribed, but its use can be based on the rule that evidence in criminal proceeding can be collected and examined in proceedings in accordance with the provisions of the CPC and in other manner prescribed by law as long as they are in accordance with the legal order and if they do not violate basic freedoms and human rights.

Thermal imaging is the technology that is the most isolated in the field of lie detection which gives promising results. The basic advantage of the use of thermal imaging in securing evidence is that it is a non-invasive method that does not require contact between the device and the subject being recorded. Therefore, this technology does not require direct contact, when measuring physiological reactions, as in the case of polygraph testing. Problems that arise in thermal imaging are first of a technical nature, such as temperature and humidity, the distance between the person and the camera, and the impossibility of applying it when a person wears glasses (Ring & Ammer, 2012; Jones & Plassmann, 2002). Second, it is possible to cover several people simultaneously when applying the thermal imaging (Bedoya-Echeverry et. al., 2017); however, it should be taken into account that each of these objects can affect the thermal image of another object. Third, as the thermal imaging and imaging system require an ultra-sensitive thermal camera and the corresponding software and computer equipment, the cost can also be considered as a limiting factor. When using the thermal imaging, it is possible to cover several people at the same time. However, it should be taken into consideration that each of these recording objects can affect the thermal image of another object.

Considering the fact that the infrared radiation of the objects at the crime scene is conditioned by the radiation of the other objects in the environment, as well as crime scene investigators at the scene, it is necessary to interpret the thermal image from the crime scene by an expert trained to work with the thermal camera. In the application of thermodynamics in the lie detection, all of the above mentioned researchers used a percentage of confidence greater than 50, which is a sign that this technique can`t be completely rejected, but this deviation must be considered as a form of limitation in making conclusions in expert testimonies.

Bearing in mind the fact that even professionals (police officers, judges, customs officers, etc.) without the help of technical devices, such as polygraph, accurately recognize misleading behavior in only 50 to 60% of cases (Knapp & Hall, 2002) or at an average of 50% (Baić, 2010). Therefore, man's capabilities are limited in the field of lie detection and in evaluation of the truthfulness of the testimony. Thermal imaging, in a certain sense, provides the opportunity to classify statements as true or false, by the so-called discriminatory patterns involving the

detection of anxiety (increasing blood flow in the periorbital regions and the increas in the skin temperature), while the anxiety can also occur when a person tells the truth, that is why it is important to take into account individual differences in an emotional expression.

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PLACE OF POLYGRAPH IN CRIMINAL PROCEEDINGS

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Abstract: Polygraph examination has been used in criminal cases in Hungary since the late 1960s. In the beginning, the Hungarian legislation did not name or regulate the polygraph examination. The expert was the polygraph examiner, whose activities were subject to statutory provisions. The new Penal Procedure Act, which entered into force in Hungary in 2018, placed instrumental credibility examination of testimonies among the evidence acts. The polygraph is performed by an adviser. As in international practice, consent is required in Hungary for conducting a polygraph test. The result of the polygraph examination is recorded, which can be brought to court. The aim of the paper is to show what the polygraph is suitable for and what the international practice is. The paper will also take into account the potential of polygraph and the method's concerns, for example the mistakes that can lead to the wrong direction.

Keywords: polygraph, lie detection, evidence, adviser, testimony

INTRODUCTORY THOUGHTS

One of the innovations of the Hungarian statutory Act on criminal procedures that came into force on July 1, 2018 (Act XC of 2017 on criminal proceedings, hereinafter referred to as Be. IV.) is that it regulates instrumental credibility examinations amongst the evidentiary actions. The previous statutory Act on criminal proceedings did not refer to instrumental credibility examinations, but only to one of its best known and the most widespread method, to the polygraph examination. The statutory regulations on polygraph examination were stipulated amongst the rules on the interrogation of the defendant and of the witness, thus in this way the polygraph examination was not an individual evidentiary act. This study aims to analyse whether the Hungarian legislation has made the right decision to implement and regulate instrumental credibility examinations among the rules on evidentiary actions. For us, it also raises the issue whether instruments other than the polygraph can be approved in criminal procedures. Furthermore,

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it is worth analysing whether it is required to have stipulations on instrumental credibility examinations in the criminal procedural act.

Evidentiary measures and evidentiary actions

Section 165 of Be. IV. gives exhaustively listed stipulations on evidentiary measures, namely evidence may only originate from the expressly stipulated evidentiary measures. Evidentiary measures are the following: the statement of the witness, the statement of the defendant, the opinion of the probation officer, the physical evidence (including documents and other instruments) and the electronic data. For this reason, evidentiary measures can be regarded as the origins of evidence. Evidentiary measures provide data that can be used as evidence by the court.

Evidentiary actions are intended to provide evidentiary measures if completed by the authorities. In accordance with the provisions of Section 206 of Be. IV. such evidentiary actions are 'especially' the crime scene investigation, the on-site interrogation, the reconstruction, the presentation for identification, the confrontation and the instrumental credibility examination. By using the expression 'especially', the Hungarian statutory act, Be. imposes that the specification is not a closed list, but evidentiary measures might arise from evidentiary actions other than those expressly stipulated in the specification. The Preamble of the statutory act refers to smell identification facilitated by criminal justice dogs that can be considered as an evidentiary action, although it is not expressly stipulated in the statutory provisions (Horváth, 2018).

ISSUES OF INSTRUMENTAL CREDIBILITY EXAMINATIONS

Be. IV. refers to instrumental credibility examinations among the rules of evidentiary actions that aim to acquire circumstantial evidence in accordance with the Preamble of the Act. Namely, there are three innovations regarding the instrumental credibility examinations:

Ad 1) Whereas Be. III. only refers to the polygraph, Be. IV. stipulates regulatory provisions on instrumental credibility examinations.

Ad 2) Instrumental credibility examinations became specific evidentiary actions expressly mentioned in the Act.

Ad 3) Instrumental credibility examinations aim to acquire circumstantial evidence.

INSTRUMENTAL CREDIBILITY EXAMINATIONS INSTEAD OF POLYGRAPH

According to the provisions of Be. III., polygraph examinations were construed by an expert advisor (Budaházi, 2015), whereas its subject could only be the major witness and the adult suspect, if consent was given to complete the examination (Sections 180 (2); 181 (4); 182 (2) and 453 (7) of Be. III.). However, the specification of the polygraph did not necessarily mean that other instruments were not allowed in the Hungarian criminal justice. True, much less frequently than polygraph examinations, two other, script-based credibility examination methods were used, namely, the computer graphometer examination and the graphometer. According to the admitted practice, an expert was appointed to conduct the examination and the statutory provisions on experts applied to computer graphometer and graphometer examinations accordingly. Although volunteering is not the characteristic of expert examinations, likely to polygraph practice, the conduct of such examinations was also condition to the consent of the subject. We must admit the significance of such consent, since not only the polygraph examination, but also the two other, script-based credibility examinations require intense cooperation from the examinee. If the subject does not approve to the examiner's orders, the examination cannot even start or it will be interrupted.

Using the expression of instrumental credibility examination reflects the aim of standardisation, whereas Be. IV. gives a unified regulation on different measures of instrumental credibility examinations. If instrumental credibility examination is conducted, it may only be completed by an expert advisor, who may later be interrogated as a witness regarding his procedure and conclusions (Section 212 (2) of Be. IV.). Experience has shown that such interviews mostly refer to the circumstances of the examination, explicitly to the reliability and to the operational principles of the credibility examination method. According to Section 79 (8) of the Nyer. (Gov. Decree on the detailed rules of the investigation and the preliminary procedure) the expert advisor shall take notes on the instrumental credibility examination, including the results of the examination. Such notes shall be included in the investigation documents, thus the memorandums taken upon the provisions of the Nyer. shall practically replace the interrogation of the expert advisor as a witness, in case the authority does not require more information regarding the examination. Interviewing the expert advisor is most likely conducted before court and less often during the investigation procedure. I have started an empiric research in April, 2019, acquiring questionnaire replies of 131 police officers until May 14, 2019, out of which 67 persons were engaged as detectives or examiners in their duty. The survey proved that only three out of the 67 detectives or examiners were subject to a witness interview as expert advisors completing instrumental credibility examinations during the investigation. Nevertheless, the interrogation of the polygraph expert may also be reasonable if the defence opposes the results of the polygraph examination upon the grounds that the defendant was in no condition to analyse, or, in the given case, the un-

favourable result of the examination was caused by the fact that the subject was under the influence of drugs. Since the operation and reliability of the polygraph method is quite commonly known (at least, for the authorities), questioning the expert advisor as a witness may be more significant for other instrumental methods, whereas he must also provide detailed introduction of the applied measure.

According to Section 82 (2) of Be. IV. the witness under the age of eighteen shall not be subject to an instrumental credibility examination. The reason behind this provision is that instrumental credibility examination requires a certain level of physical and mental maturity of the subject. Most likely it is the polygraph that raises the issue, since it takes a certain maturity of the subject person to properly get himself right into the examination situation. On the other hand, we may interpret this statutory provision in a way, that for witnesses under the age of eighteen the sense of a special treatment reflecting to the requirement of tolerance also appears, as a reason for protecting the witness from certain stressful evidentiary actions. Nevertheless, it is a legislative failure that Section 212 (1) of Be. IV. allows the instrumental credibility examination of the defendant without explicitly stipulating a prohibition regarding minor defendants. Due to the above reasons, expert advisors chose not to complete the polygraph examination on minor subjects, even though otherwise there would be no legal obstacles to the examination.

Instrumental credibility examinations have become specifically stipulated evidentiary actions

Not only theoretically it allows instruments other than the polygraph, as another one of its innovations, Be. IV. specifies instrumental credibility examinations as an individual group of evidentiary actions. Its statutory position assumes that ideally the instrumental credibility examination shall result in a memorandum of the expert advisor that might be considered as an evidentiary measure by the proceeding authority. It is also the speciality of instrumental credibility examinations that apart from other evidentiary actions, it may only and exclusively be conducted in the course of the investigation. In itself, this particular characteristic assumes that instrumental credibility examination is not a typical form of evidentiary actions, further supported by the practice of the courts, whereas the result of the instrumental credibility examination shall not be deemed as an evidentiary measure. Such court practice has been previously established in the era of Be. III., when instrumental credibility examinations were not evidentiary actions. According to the opinion No. BK 4/2007 of the Supreme Court's Criminal Law Department there are no references to the expert advisor or to the polygraph examination in the specification of evidentiary measures (Section 76 (1) of Be. III.). The Supreme Court established that polygraph examinations are not allowed in court procedures, nevertheless, the records taken on the proceedings of the expert advisor can be approved to be the subject of the trial. Decision No.

Bhar.II.1271/2013/8 of the Curia further confirms the opinion No. BK 4/2007, whereas the decision allows the court to approve the results of the polygraph examination as part of the trial and to read such results before the court. Judgement of the Nyíregyháza Appeal Court also assumes that the results of the polygraph examination can be approved as part of the trial (Nyíregyháza Appeal Court, Decision No. 1.B.88/2013/81). However, contrary to the above, the Decision No. Bfv.III.953/2012/34 of the Curia refers that the polygraph does not assist the interpretation of the evidence (the content of the testimony), it can only effect the adjudication of the credibility and trustworthiness of the testifying person. Nevertheless, the latter may only be considered as an aid assisting the actual orientation, as in the testimony is subject to free adjudication, in other words, the result of the polygraph examination cannot be considered as evidence. The Opinion No. 5/2014. (IX.29.) BK. of the Metropolitan Appeal Court confirms the same approach, declaring that the opinion of the expert advisor on the polygraph examination shall not be considered as means of evidence, not being enlisted in the exclusive stipulations of Be. III. Moreover, in its decision of 2015, the Metropolitan Appeal Court has again stated, that Be. III. does not mention polygraph examination amongst the evidentiary measures (Metropolitan Appeal Court Decision No. Bf.218/2015/17). The Metropolitan Appeal Court has also interpreted polygraph examinations in the era of Be. IV. Adjudication of the appeal court confirms that the legislator 'did not specify instrumental credibility examinations amongst the evidentiary measures, but we can find the method among the evidentiary actions, likely to reconstruction and presentation for identification. The aim of such evidentiary actions is the credibility analysis of a testimony already given. As for the instrumental credibility examiner, the instrument is used to detect the changes in the body activities during the analysis of the testimony, thus, the facts detailed in the testimony may either be verified or, on the contrary, they can be confuted' (Metropolitan Appeal Court Decision No. B./1286/2017/13). The decision proves that the court practice of the Metropolitan Appeal Court has not changed after the coming into force of Be. IV. I have consulted with several Hungarian judges in the past few months. Solidly they stated that we cannot expect any changes in the judicial interpretation of instrumental credibility examinations.

Nevertheless, police personnel has a different approach on judicial changes. Prior to the coming into force of Be. IV., they expected the significance of polygraph examinations to grow in evidentiary procedures after the July 1, 2018. Between April 11, 2018 and May 11, 2018, altogether 418 police officers have completed my electronic questionnaire, namely, 119 detectives (28.5%), 79 investigators (18.9%) and further 220 officers (52.6%) assigned to other duties, serving in Budapest and in all Hungarian counties except for Hajdú-Bihar County. Different number of police officers filled out the questionnaire in each county, I did not try to have an equal number of police officers per county in the survey. I asked my sergeant students to send their colleagues the availability of the questionnaire and encourage them to complete it. The volunteer-based, anonymous questionnaire survey was not representative, but it shows what we can see in polygraph

cases. When I conducted interviews with investigators, they had similar thoughts to those shown in the questionnaire responses. The questionnaire contained 14 questions. 208 officers (50.01%) answered 'yes', 65 officers (15.7%) gave negative response and 142 persons (34.2%) said 'maybe' to question No. 10 ('Be. IV. stipulates the provisions on instrumental credibility examinations within the scope of evidentiary actions. Do you agree, that it will increase the significance of the results of the instrumental credibility examinations in evidentiary procedures?') I have implemented further electronic questionnaire surveys in November 2018 on 106 police officers. They worked for the police for 8 years on average, and they were serving in Budapest and in all Hungarian counties. This survey was also not representative. This time I asked sergeant students from another class to send the questionnaire to their colleagues. 68.9% of the questioned (73 officers) responded 'aye', 17.9% (19 persons) gave the answer 'maybe', while 13.2% (14 officers) said 'no' to question No. 5. (5. 'Do you agree that instrumental credibility examinations becoming evidentiary actions shall increase polygraph examination's role in evidentiary procedures?'). During my empiric research implemented in the spring of 2019, out of altogether 131 officers questioned, 104 (79.38%) said 'yes' to the same question, (this time, it was question No. 2. 'Do you agree, that instrumental credibility examinations becoming evidentiary actions shall increase polygraph examination's role in evidentiary procedures?'), while other 20 (15.26%) said 'maybe' and 7 (5.34%) replied 'no'. This survey was also not representative. This time I asked the students of our university to send the questionnaire to their colleagues. The questionnaire came from all Hungarian counties.

These three empiric, but not representative surveys lead to the conclusion that the more time goes by the less police officers believe that the importance of instrumental credibility examinations will not grow in evidentiary procedures. Certainly, this theory cannot effect court practice, however, it might have an influence on the growing number of cases, whereas an instrument is used for liability examination purposes during the investigative sequence of the procedure.

Do instrumental credibility examinations aim to acquire circumstantial evidence?

It is worth to examine, whether instrumental credibility examinations result in direct evidence or not. Since the expert advisor shall not establish an opinion on the facts to be proved, consequently, 'what he states, shall not prove the criminal act/culpability, etc.' (Bejczi, 2013). Neither his records taken on the results of the examination, nor his testimony taken as a witness shall give rise to direct evidence. On the other hand, eventual testimonies of either the witness or of the defendant might follow the instrumental credibility examination, however, such statements might include data on the provable facts. Thus, even if the expert advisor's records do not result in direct evidence, instrumental credibility examination may still play part in leading authorities to acquire direct evidence (Budaházi, 2008).

Examining the issue of circumstantial evidence, we may state, that the conclusions made in the memorandum implementing the results of polygraph examination cannot even be considered as circumstantial evidence, since the expert advisor may only establish whether the physiological changes of reaction of the examinee imply deception when giving denying answers to relevant questions. For example, the perpetrator's denial to the question, whether he has killed the victim with a knife was deceptive or not. Although the expert advisor's question refers to the provable fact, he may only examine the physiological changes of reaction of the examinee when analysing the answer. The physiological change of reaction does not correlate to the provable fact, neither can it presume the provable fact. The memorandum taken on the results of the examination can either confirm the credibility of the testifying person, as in the witness of the suspect sincerely denies the conduct of the crime, or, on the contrary, it points out to the deceptive nature of the examinee's denial, since his physiological changes of reactions show his fear of being caught a liar. This is exactly why we see that court practice does not approve of the results of instrumental credibility examinations, whether it is direct or circumstantial evidence. Actually, instrumental credibility examination is not about 'acquiring evidence', but it is about the 'credibility inspection of the evidence originating from the evidentiary measure (Belegi, 2018). Namely, for circumstantial evidence, the evidentiary measure does not directly refer to the provable fact, but to another fact, from which we may conclude to the provable fact upon the rules of logic, the principles of science, practical knowledge and experience, and upon other evidence available regarding the given case (Fantoly & Budaházi, 2019). Due to these reasons, neither the records of the expert advisor, nor his testimony will result in circumstantial evidence. However, circumstantial evidence may arise from instrumental credibility examination if, for example, the location of the hidden weapon used to conduct the criminal act or the location of the victim's body is revealed by using the polygraph examination (Krispán & Pusztai, 2016).

THE ROLE OF INSTRUMENTAL CREDIBILITY EXAMINATION IN CRIMINAL PROCEEDINGS

Instrumental credibility examinations have their most significant place and role in the inspection sequence of the investigation, whereas the objective is the identification of the perpetrator, furthermore, the gathering and recording of the evidentiary measures necessary to do so. In general, even judges agree to have no doubt on the significance of polygraph's role in orienting the investigation and in the identification of the suspect (Budaházi, 2009). Nevertheless, investigating authorities must be alert, and should not have unquestioning belief in instrumental measures, or namely, in the polygraph. To one of the questions exposed in my empiric questionnaire research implemented in the spring of 2019, according to which 'In your professional practice, has it ever occurred, that the result of

the polygraph examination proved to be wrong?' I have collected altogether 119 answers, 105 of them (88.2%) replied 'no', but 14 of those answering the questionnaire (11.8%) said 'yes', confirming that the result of the polygraph examination proved to be wrong in their practice. Nonetheless, the results of the empiric analysis show that the authority must also consider other data when determining the direction of the investigation, or when changing its focus from one suspected perpetrator to another. During the inspection sequence of the investigation, polygraph examination may also be used to determine, whether the suspect's denial of crime is plain and sincere or not. If the denial is solid, the investigating authority or the prosecutor's office should reconsider, whether the suspect has committed the criminal act or not. On the other hand, in case of deceptive denial polygraph examination may conclude to the suspect's change of mind, or in other words him seeing no point in further denial.

Although the court may rely on the results of the polygraph examination, it will actually do so in case of damning adjudication or if the results of the examination are incriminating the defendant. In this relation, 'relying' means a reference worded in the court's judgement, stipulating that the result of the polygraph survey has also weakened the credibility of the defendant's denial. Contrary enough, examination results referring to the defendant's innocence are typically not part of the acquittal's statement of reasons. Since polygraph examination may only and exclusively support or weaken the credibility of the testimony, generally, for the purpose of inspection, it truly has no justification in the court procedure. Since alike to instrumental credibility examinations, both presentation for identification and reconstruction may also strengthen or weaken the credibility of the testimony, I cannot see a problem in its implementation amongst the evidentiary actions. Even less so, because ideally it may lead authorities to both direct and circumstantial evidences. The same way other evidentiary actions do so.

INTERNATIONAL ASPECTS OF THE REGULATIONS ON POLYGRAPH EXAMINATION

I have analysed the criminal procedural statutes of forty-two European countries, furthermore, of Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, and Uzbekistan, moreover, the criminal procedural regulations of the USA and of Canada, from the aspects of their approach to referring to polygraph examination, more actually, whether they have statutory provisions on polygraph or on instrumental credibility examinations. Besides the Hungarian stipulations, only the Polish and the Montenegrin criminal procedural act have statutory provisions on polygraph or on instrumental credibility examinations. 2003's modification of the Polish criminal procedural code has implemented Article 199 (Hofmansk & Kunštek, 2004), according to which any examinations analysing the non-conscious reactions of the human body may only be executed upon the consent of the examinee. By these means, the Polish criminal statute does not exclude the possibility of

using instrumental credibility examinations other than the polygraph in criminal procedures. The Montenegrin criminal procedural act (Criminal Proceedings Code, Official Gazette of Montenegro, no. 57/2009, 49/2010, 47/2014 – the Decision of the Constitutional Court of Montenegro, 2/2015 – the Decision of the Constitutional Court of Montenegro and 35/2015 - Articles 88-91 are not in the consolidated text) allows the polygraph examination during the preliminary investigation. Besides other procedural actions, a polygraph examination may be used, for the purpose of conducting such preliminary tasks, in accordance with the provisions of Section 257 (2) of the statute. However, the act does not have any other stipulations on the polygraph examination.

Although the Lithuanian act on criminal procedures does not regulate polygraph examination, the Lithuanian legislation has dedicated an individual statute to polygraph examinations (LIETUVOS RESPUBLIKOS POLIGRAFO NAUDOJIMO ĮSTATYMAS (2000 m. rugpjūčio 29 d. Nr. VIII-1906)), nevertheless, this act does not refer to polygraph examinations used in the course of criminal procedures, but on survey approved for recruitment purposes or aptitude tests taken at certain government bodies.

Polygraph survey has a certain place and role in several countries' criminal procedures, however, statutory implementation of such procedural action is a rather unique legislative method. Usually, polygraph examinations are conducted by an expert, in turn, to whom the statutory provisions of the given criminal procedural act on experts are accordingly applicable, therefore, polygraph examinations are not deregulated or uncontrolled. Typically, polygraph examinations are subject to prior consent, their results are concluded in the expert opinion, whereas the latter shall only be used for the purpose of orientation of the investigation, and cannot be used as evidence. Out of all instruments, the polygraph has the utmost significance, other instruments usually do not have any role in criminal cases whatsoever.

CLOSING REMARKS

Generally, both polygraph examination and instrumental credibility examinations have a place in the investigating sequence of the procedure, while their functional role is limited to the orientation of the investigation. They may assist the perpetrator's identification, moreover, they may support or weaken the credibility of the testimonies, and may generate further testimonies.

The statutory provisions on instrumental credibility investigations in Be. IV. refer to and confirm its significance in criminal proceedings. Due to its importance, the Act stipulates the institution amongst the evidentiary actions. Such relevance was mainly achieved by polygraph examinations, since other instruments, such as computer graphometer analysis (Agárdi, 2018), graphometer (Farkas, 2005), Layered Voice Analysis (Kis & Takács, 2018)] have only marginally appeared in Hungarian criminal cases, and even Be. IV. could not break this tendency yet.

Nevertheless, this is not an actual problem, since the polygraph examination is an adequately validated method, while the internationally approved validation of other measures has not been completed yet.

All is not lost that is delayed, but polygraph examination will surely preserve its dominance for years, not only in Hungary, but in foreign countries as well.

My non-representative empirical researches in 2018 and 2019 show that police reckons a greater role for polygraph in evidence because the new Criminal Procedure Law placed instrumental credibility examination of testimonies among the evidence acts. Conversely, case law shows otherwise, judges still do not consider polygraph results as evidence. This is not expected to change in the near future.

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REINTERPRETING SECURITY IN THE CONTEXT OF THE NEW TYPES OF RISKS AND CONFLICTS OF GLOBALISATION 4.0[1]

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Abstract: This study maps the political, social and economic trends expected for the next 15-20 years, which will determine the processes of the so-called globalisation 4.0, making sure that the changed nature of the risks and their identification are also examined in the light of these prognoses.

Besides analysing the shift in the geopolitical system and the increasing risks that result from new global roles, we also discuss the new, already perceivable security challenges like energy security, the security related aspects of climate change and the risks generated by demographic-change-related urbanisation processes – laying an emphasis on the context of interconnections between these and the 4.0 revolution.

Keywords: security, risk, geopolitical system, globalisaton, "Black Swan".

INTRODUCTION

"At the beginning of the 21st century, international security is undergoing revolutionary changes, led by the powers of globalisation and information technology. From a security point of view, the past one and a half decades have been characterised by unpredictability." (Szenes, 2005)

We are living in the new wave of globalisation, the era of Globalisation 4.0[4]. The international order is changing fast, and the likelihood of surprising, some-

1 This paper has never been presented or published before. It is the result of research related to the project "Crime in Serbia and Instruments of State Response", financed and implemented by the University of Criminal Investigation and Police Studies, cycle of scientific research 2015/2019.
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4 "Shaping the global, regional and industry agendas at the beginning of 2019 will take place in a context of unprecedented uncertainty, fragility and controversy. In a world preoccupied by crisis management at a moment of transformative change we will use the spirit of Davos to build the future in a constructive, collaborative way. … The World Economic Forum Annual

times shocking, events, which professional literature is starting to refer to as "black swans"[5], is exponentially increasing. Nassim Nicholas Taleb (2011) uses the black swan as the symbol of highly improbable events. He describes three principle characteristics of such events: they are unpredictable; carry a massive impact; and, after their occurrence, we concoct an explanation that makes them appear less random and more predictable than they are. The astonishing success of Google was a black swan; so was 9/11. Examining the "process of self-deception" of society, he identifies the sensitive points around which society becomes increasingly vulnerable, building on imaginary knowledge.

Due to the complexity and tight interrelation of risks, the defence system is becoming increasingly vulnerable to unexpected events. Par excellence, the challenge is a complicated security net, in which even almost unnoticeable defects become perceivable. Today, ensuring the continuous alertness level of the system and the minimisation of potential defects (to avoid major problems) are fundamental requirements.

Concerns about high-risk events are becoming increasingly reasonable – and, at the same time, one must expect the simultaneous and mutually reinforcing appearance of the impacts of minor, less noticeable failures. The system is more vulnerable and easier to attack – as a result, it is gradually weakening. Taking all these factors into account, a high level of resistibility can be interpreted as a fundamental requirement in the context of security.

The aim of this study is to present how the soft nature of these risk factors influences the reinterpretation of the toolset used for risk identification, with special respect to human aspects and the security challenges resulting from the reorientation of the process generated by the value system of western civilisation. (Garai & Szalai & Szőke, 2017)

From epistemological perspective, our research is constructivist: in this study, we accept the foundations of scientific approaches rooted in the constructivist philosophy of science. These include, inter alia, the questioning of the security of the external, objective world and social reality independent of human activities and knowledge, and a value-neutral scientific method. According to this approach, "the purpose of both lay and scientific knowledge construction is to provide useful, adequate, coherent, stable, or meaningful representation of the world in accordance with particular sets of systemic and sociolinguistic rules and constraints in given contexts" (Maréchal, 2010: p. 220).[6]

Meeting will focus on the strategic ramifications of Globalization 4.0 and its future impact on global cooperation and the Fourth Industrial Revolution." (WEF, 2019, Global Agenda)

5 See: Nassim Nicholas Taleb's book "The Black Swan – The Impact of the Highly Improbable". The author is a professor in the Sciences of Uncertainty at the University of Massachusetts at Amherst and a researcher of interrelations between uncertainty, probability, and knowledge. His work, published in 2007 and, in reedited form, in 2010, was very popular in the United States and Canada.

6 It may be interesting to compare it with the concept of securitization by Barry Buzan.

THE NEW TYPE OF RISKS AND CONFLICTS

Since the 1990s, the international system has been shaped by two, mutually reinforcing, processes. On the one hand, the security architecture, which used to be based on the bipolar conflict of the cold war and its predictability, is becoming more and more obsolete. On the other, as globalisation accelerates, the state-centred system is weakening. In the international system of our days, a significant part of security challenges are rooted not in the states themselves but in non-state actors like terrorist organisations, organised crime groups and transnational business organisations. (Juhász, 2014:10)

The spectrum of geopolitical challenges is growing, partly because the classic, Westphalia type system is eroding (even though the state will remain the key player on a global scale) and partly because the influence of non-state players is growing. (Haas, 2017)

The transition into the new international system carries new types of risks. As a result of emerging security challenges and threats, the classic concept of security, which covers foreign policy and the military, is becoming outdated – meanwhile, the importance of the economic, cyber, environmental and human aspects of the security concept are increasing[7]. The Global Risk Report of the World Economic Forum presented in Davos in 2019, identifies the polarisation of politics and societies, and a weakening of the rules-based international system as headline threats – besides extreme weather, which has been at the top of the global risk factor list for years. The environmental risks category first appeared among the top 5 in 2011 – but in recent years' reports, such risks have become increasingly dominant. According to the Report, climate change, extreme weather and natural disasters have an extremely high likelihood, while their management is more and more difficult, due to the deteriorating geopolitical situation.

The Report refers to fast emerging cyber and technological threats as potential "blind spots", and societies still fail to recognise the vulnerability of network-based societies – which is a phenomenon that can also be interpreted as a threat in itself. The potential negative impacts of new communication devices on the individual's private life and cultural integrity of societies are worrying. (Szászi, 2019)

Among the security challenges of the 21st century, the maintenance, protection and economical utilisation of the natural and man-made environments that surround people have become tasks which, although far from the traditional military dimensions of security, are exciting and require a complex approach.

A unique trend of this era is the 4.0 technological revolution, which is characterised by a fusion of different technologies, which eliminates the borderline

7 One of the new key questions in the 2019 Report is whether the growth of macroeconomic risks may push the international economy into a crisis again – as the global intent for overcoming these risks seems to be weakening. According to the Report, a stop of economic growth and, consequently, a recession are to be expected, yet central banks will have limited power to mitigate the negative impacts of this downturn, as interest rates are still near zero. (WEF Report, 2019)

between physical, digital and biological spheres. (Schwab, 2016/a) Besides the transformation of the different disciplines, the economy and the industry, this phenomenon also raises the question of what the essence of the human being is. (Schwab, 2016/b)

According to forecasts, one of the most dominant trends will be the continual development of technology at a revolutionary rate, robotics, bio- and nanotechnology and the so-called big data phenomenon (i.e. giant data volumes generated by users) being the key areas of this revolutionary development. From an ethical (e.g. artificial intelligence) and security (e.g. cyber attacks) perspective, this development is becoming an increasingly worrying risk factor, while we must also be aware that far-reaching social impacts of the technological revolution (mostly the social tensions generated by the loss of jobs due to automation) are to be expected. (Garai & Szalai & Szőke, 2017)

Meanwhile, the complex security risks posed by the natural environment are also becoming more and more challenging and must be taken into account looking forward. According to research results, the most serious threat factor of contemporary civilisation is the global climate change. "The management of the climate crisis definitely calls for global cooperation and innovation, with the inclusion of a wide range of actors. However, in this increasingly multipolar international system it may happen that competition for resources will strengthen, protectionist tendencies will appear and the scope of partnerships will shrink. … At the end of the first decade of the 21st century, 21 countries in the world did not have enough agricultural land or water, which impacted the lives of 600 million people. According to forecasts, 1.4 billion people in 36 countries will live in such circumstances by 2025. The two main sources of the lack of water are accelerating urbanisation and population increase." (Matus, 2018)

Forecasts expect a continuous global population increase throughout the 21st century. (Atlantic Council, 2016)[8] The world's population is expected to reach 9 billion already by the middle of the century, and some say this number will be as high as over 11 million by then.[9]

The demographic problem is full of contradictions,[10] though forecasts expect the formation of a global middle class as a result of the population explosion.[11] By the middle of the century, the majority of the Earth's population are expected to live in cities, which carries challenges mostly in the areas of transport, healthcare, air quality and public utilities. In the context of the revolutionary technological

8 In relative terms, the largest population increase is expected to take place in Sub-Saharan Africa (Democratic Republic of Congo, Ethiopia and Nigeria). The population of India is likely to exceed that of China in the next decades. (Szőke, 2018)

9 This population explosion is likely to last until 2050, after which stagnation is expected. (The Economist, 2015)

10 A population explosion is expected to be seen in emerging countries, which will eventually lead to the widening of the global middle class. It is becoming increasingly obvious that the developed world will, meanwhile, suffer from the social and economic consequences of ageing.

11 The Rise of Creative Cities and Creative Class (Florida, 2002, 2012)

development expected to take place until 2035, urbanisation as a key trend will bring about such changes in lifestyle which, taken together, can be interpreted as a new, complex risk source.[12] The role of environmental factors (drinking water, agriculture, energy utilisation) will increase and, as a result of climate change, the sustainment of the natural environment will become a security issue in itself.[13] "By 2035, access to natural resources will become a constant source of conflict, with consequences such as famine, lack of arable land and drinking water, armed conflicts because of access to natural resources or the mass migration of the so-called "climate refugees". In general, developing countries will suffer most from these changes. The situation of Sub-Saharan countries will be highly risky, while the Middle-East will suffer from a severe lack of water. Certain small developing island countries will continue to have to face climate change and the increase in sea level as processes that threaten their existence." (Szőke, 2018)

MULTIPOLARITY AND/OR GEOFUSION?

The problems foreseen by contemporary forecasts and research clearly include the trend that existential threats – as a central element of security – can be interpreted increasingly indirectly. As the international security situation is undergoing radical changes, new problems require a fundamentally novel approach. The identification and understanding of risks requires new maps. (Csizmadia, 2017:106) New aspects – all in all, a new perspective is required for security policy to define adequate and, to a significant extent, preventive measures, taking into account the large variety of challenges, as a synthesis of civil solutions, using a complex set of tools.

Instead of the traditional, narrow-focused military perspective, we must realise that there is a new geopolitical reality in the 21st century. Asia is emerging as a new power centre, and the world's economic focus is gradually shifting to the developing world. Though the economic context of future scenarios outlines rather optimistic trends, a large amount of concern is expressed in their political aspects. Opinions differ on whether economic interdependence will deepen or

12 We cannot ignore the contradictory nature of the impact mechanism of technological development. Besides the positive impacts occurring in medicine, education – in general: in the increase in the standard of living – scientific breakthroughs are becoming an ever more threatening source of danger, while the utilisation of technological development feats is uneven between different regions of the world, even between the inhabitants of one single country. The technological explosion increasingly surfaces the paradox of technological development that as access increases, so does exclusion. (Czirják, 2018) This context is becoming more and more important from the point of view of security policy.

13 "One of the key aspects of technological progress is connected to the global energy industry. The patterns of the combined macroeconomic energy need are expected to follow the trends in global economic prospects. The demand for primary energy is likely to increase at the highest rate in China, India and South-East Asia (due to their dynamic economic growth) and in Sub-Saharan Africa (due to its population explosion). However, the global energy map will continue to change. The so-called "oil era" is expected to end slowly, in a die-hard manner, rather than with a sudden and loud bang." (Szőke, 2018)

protectionism and commercial barriers will become even stronger in the next decades. (Szőke, 2018)

The majority of publications forecast a further upheaval of China, which may bring about radical changes in many respects. (Major & Cudan, 2018) There is also general agreement that the United States will retain its superpower position, though with some relative loss of its power, while the global role of Europe will weaken. According to the forecast of Pricewaterhouse Coopers, Germany will be the only European country which will be among the world's top ten economic powers by 2050, and the importance of the European Union in world economy, compared to Asia and the United States, will continue to decrease (PwC, 2017).

"There are many disputes in professional literature about the future role of Russia. Most forecasts foresee Russia as a regional player in Eurasia. It comes as no surprise, therefore, that, in the medium term, the most important global bilateral partnership will be the relationship between the USA and China. South and East Asia can expect significant political and economic success. Meanwhile, the Middle-East and Sub-Sharan Africa are likely to continue to suffer from conflicts, in parallel with demographic growth and an increasing environmental pressure. It is reasonably assumed that LatinAmerica will continue to suffer from depending on the fluctuations in the world market prices of raw materials." (Szőke, 2018)

Forecasts warn us of the lessons to be learnt from the legitimacy crisis of global institutions following WWII, and an increasing number of researchers prognosticate the end of multilateralism.[14] Eventually, this will lead to the weakening of international institutions – in general, of former multilateral practices[15] – and to

14 However, there are works which try to interpret security policy risks in the light of an expected strengthening of the world's multipolar nature. For us to see clearly, we must understand the concept of multipolarity. In the circumstances prevailing in the nineties, the term meant that, in the long run, several (5-6) key powers will come to existence with roughly equal economic and military power. The relationships between these powers will decide international political relations, alliances and conflicts alike. (Bíró, 2003) With a system theory approach, the multipolarity of the international system can also be seen as a sign of increasing entropy, i.e. as a loss of energy, which, as regards political relations, will lead to a gradual collapse of order and an increase in security risks (Sur, 1995:290). "System approach, which has decreasing importance in the study of international relations, enables the compilation of a model in which the political and legal aspects of multipolarity can be separated. In a legal sense, multipolarity also includes the concept of sovereign equality of states, i.e. the opportunity for states to participate in international affairs as entities with an autonomous identity and with equal legal capacities. By contrast, in the context of politics, multipolarity makes the uniform management of affairs in the international arena extremely complicated." (Bíró, 2003) However, this situation also has a positive aspect: a clearer line between regional affairs and international political relations than before (Sur, 1995:291) – and this is exactly where the contemporary expression of multipolarity differs from the world of international politics as seen in 18th and 19th centuries. Thus multipolarity strengthens and pushes the world towards not a balance of power but disorder, and the events of the first half of the nineties confirm this concept. In an environment like the one that took shape in international political relations in the nineties, this tendency will take effect, pointing towards an increasing diffusion of power. (Bíró, 2003)

15 The role of the United Nations is expected to shift towards "softer" issues (e.g. humanitarian aid in conflict zones, sustainable development) and, at the same time, the composition of

a new world: instead of the appearance of a new global hegemony, competition may form between regional powers, and conflicts between states may intensify. (Garai & Szalai & Szőke, 2017)

IDEOLOGICAL VACUUM AND/OR A RACE BETWEEN RELIGIONS?

Analyses pay increasing attention to the security policy context of ideologies since the number of attacks and terrorist acts for religious reasons has risen in recent years. As faith plays an increasing role in politics and international relations, the fight between civilisations actually means a fight between religions. (Toft & Philpott & Shah 2011)[16] It comes as no surprise, therefore, that the investigation of the trend of religions becoming a world politics factor is a research topic of increasing importance.[17]

Peter Ludwig Berger's book The De-secularisation of the World, published in 1999, can be interpreted as a paradigm shift in the sociology of religion.[18] In this book, Berger clearly proves that modernity and the consumer society have undermined people's former (religious) certainties, though the human psyche cannot tolerate uncertainty in the long term[19]. It is for this reason that masses of people

the UN Security Council is expected to be redefined (above all, in that Japan, Germany, Brazil and India should also be given the right of veto).

16 In their book God is Back, British authors Micklethwait and Wooldridge (2009) state, writing about the cultural war between America and Europe, that America succeeded in what Europe did not: making peace between religion and modern freedom, equality and rationality. In Europe, churches have become too comfortable, their innovative power has diminished. By contrast, a competition between religions has formed in the USA, which serves as an incentive for religious communities.

The free practice of faith is tightly connected to the history of the United States. Free practice of religion has always been a fundamental principle as it was a leading social expectation in the colonies. The first article of the Bill of Rights, the amendments to the American Constitution, also ratifies it, besides the freedom of religion, press and assembly. (Janda & Berry & Goldman 2011, pp. 488–489)

In our days, though there are different opinions about the role of religion in foreign policy, one must realise that the idea of exceptionality often appears in the relationship of the USA with the outer world – the roots of this idea partly having a religious nature. (Csizmadia, 2018) Consequently, it is a generally accepted view that America is a country that has been chosen by some superior power and has a mission to change the world – and the difficulties faced in carrying out this mission are the manifestations of the fight between the good and the bad. (Judis 2005, 1–3 p.)

17 E.g. the monitoring activities of Boston University or the Berger Centre for Religion and Modernity of Munster University.

18 American sociologist of religion P.L. Berger earlier wrote that religions would die out and secularisation will once and for all close humankind's religious era. His work published in 1999, however, is a total opposite of this former concept. The question is whether this is a change of mind of a researcher or we must identify far deeper changes taking place in reality.

19 In this context, we must make mention of *Jeggle's publication on global culture, in which he warns of the dangers of borderlessness, the breaking down of borders, which may evoke new feelings and aspects of vulnerability* and the loss of the sense of security, since they generate emotional vulnerability and liability. (Jeggle, 1994)

will return to religions that have stood the test of time for millennia. According to Berger, the 21st century will be a unique era of a neo-renaissance of religions, which will see an unprecedented prosperity. (Békefy 2015; Békefy & Birkás 2015,)

"All this actually also entails a serious danger: if religious fundamentalism strengthens in a world religion that cannot accept the diversity and coexistence of different religious and belief systems, that fundamentalism will sooner or later claim the exclusiveness of its religion. And that may lead to severe conflicts." (Békefy, 2018)

The problem is deepened by the fact that the idea of capitalism lost face in general after the 2008 world financial crisis. The era of the main ideological trends of the post-cold-war world order is nearing its end, and these ideologies are expected to be replaced by a leading ideological alternative in the near future. "As a consequence of this, a transformation in the internal politics of developed western countries can also be expected: politics will eventually leave behind the traditional left-right ideological conflict. One new potential ideological conflict is that between pro-globalisation and anti-globalisation parties: as a result of the Internet and globalisation, a cosmopolitan identity will be born, while others argue that – paradoxically – personal (religious, ethnic or national) identity may appreciate." (Garai & Szalai & Szőke, 2017)

CONCLUSIONS

"It is far from obvious that the legacy left to us by the currently ongoing mergers will be a future that offers a higher level of peacefulness, prosperity or cultural unity." (R. D. Kaplan, 2018:18)

The concept of the traditional nation state is being overwritten by the opportunities arising as a result of digitalisation and widespread Internet access. The emergence of new forms of expression of opinion and the strengthening of the civil society carry the opportunity for multi-level governance – and these trends make the changing and redefinition of the concept of security inevitable.[20] (Szőke, 2018)

The study examines the new types of threats. Looking at the most significant geopolitical dynamics, in the context of the "crisis of internationalism"[21], we surveyed the risks of the redistribution of burdens[22] - but it was in the same context that the risks which can be reasonably prognosticated as a result of populist politics and which are primarily connected to the technological revolution and the

20 See the National Intelligence Council's prognosis until 2025 (2008)
21 "Communism is dead, but is the other great postwar ideology, liberal internationalism, also dying?" (Hoffmann, 1995:159)
22 With reference to the work of Hal Brands (2019), we considered it important to take into account the assumption that, by ensuring more advantageous bargains and agreements for the United States through the redistribution of burdens, Washington can further reinforce the position of America in the status quo, together with its partners and allies.

fears generated by the changes in cultural identity and the natural environment, were discussed.

The study also highlights the "black swan" phenomenon – events that are unpredictable, unforeseen, often have extraordinary consequences and whose occurrence renders prognoses invalid – thus also restricting the security context of forecasts. (Taleb, 2011)

In this regard, the study's aim is to inspire new thoughts and their presentation and encourages a new type of security assurance, defined along unconventional views. In other words, a security narrative which interprets the new system of conditions of global security based on the broadest possible interpretation of cause and effect interrelations, the understanding of interrelated root causes and drivers and, ideally, the redefined operation of economics and society.[23]

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FUTURE TRENDS IN CRIMINALITY, JITs AND EU POLICY CYCLE AS ANSWERS FOR EVOLVING SECURITY THREATS

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Abstract: In our socially, economically and technically changing word criminals and criminal networks invent new modi operandi and exploit new technologies flexibly and fast evolving new security threats. Organized crime is dynamic and adaptable and law enforcement agencies in EU member states also make use of technological innovations and improve new investigative measures to counter these challenging threats. What might be the main features of future criminality? What are the key driving factors of changing criminality? How law enforcement should change and develop? Proactive approach, better allocation of resources, international cooperation and effective use of new instruments are needed. Joint investigation teams (JITs) and the multi annual policy cycle on organized and serious crime (EU Policy Cycle) are outstanding „new" instruments in the hand of law enforcement authorities. Both are joint efforts in fighting organized crime and aim to coordinate the activities of many participating stakeholders in international dimension. This paper gives a short overview about the possible future trends of criminality based on the Europol's analysis, and a brief introduction of JITs and policy cycle.

Keywords: security trends, joint investigation team, EU Policy Cycle.

INTRODUCTION

Living in security is an essential need in every age, in every culture and in every society. Due to the increased security environmental challenges, extended risk factors and threats this need has greater importance and higher priority in the everyday life of states.

Globalization, cyberspace and freedom of movements are major sources of opportunities for criminals to improve and invent their modi operandi, to expand

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their markets, operational areas and target groups of victims. Organized crime became unpredictably dynamic and adaptable.

The experienced qualitative and quantitative changes of crime, the changing criminal landscape of Europe calls for a wider international professional cooperation between different law enforcement authorities in fighting against cross border crime. As a necessary consequence of this trend investigation processes require more complex, modern and more effective innovations and methods in the toolkits of criminalistics, and more flexible and efficient forms (legal and institutional) of international police and judicial cooperation.

According to the analytical outcome of the Europol SOCTA 2017 report, we can characterize the organized crime groups (OCG) in Europe with the following features. There are approximately 5000 active organized crime groups operating in the territory of EU on a network-style basis. 70% of these groups are composed of members of multiple nationalities and more than 30% of these organized crime groups are poly-crime groups. These groups are increasingly entrepreneurial in approach and business management, and mostly characterized by shared leadership approach and/or a flexible hierarchy.

POSSIBLE FUTURE TRENDS OF CRIMINALITY (EUROPOL DOCUMENT, 2015)

The Serious and Organized Crime Futures Forum was organized by Europol in March 2014, and was followed by adopting a document with the title of "Exploring tomorrow's organized crime".

Based on this document the possible future trends and potential developments of serious and organized crime might be the follows.

A virtual and global criminal underground made up of individual criminal entrepreneurs will appear beside the declined traditional hierarchical criminal networks and groups working on project-basis lending their knowledge and expertise. This phenomenon already exists in the field of cybercrime, but will extend to other areas of traditional crime as well in which competing actors interact or cooperate ad hoc.

Flexible, loose and undefined networks of individual criminal entrepreneurs will work on a freelance basis without belonging to a bigger group. These individual criminal entrepreneurs and groups will operate based on a crime-as-a-service business model facilitated by social networking online. Organized crime will seek to change the commodities they trade meaning new commodities besides the traditional goods.

Organized crime activities will rely on digital infrastructures. By "using" virtual currencies criminals will be able to exchange and use financial resources anonymously without the need for "risky" money-laundering schemes. Cybercriminals already form a complex a dynamic online community. Increasingly criminals

of other crime areas will come together on online platforms as well planning, coordinating and executing special criminal activities.

Targeting vulnerable people for exploitation by organized crime will change and extend pools of victims and clients for illicit goods and services. The growing number of elderly and legal business structures will emerge as the main target groups for organized crime.

KEY DRIVERS THAT MIGHT IMPACT ON SERIOUS AND ORGANIZED OVER THE NEAR FUTURE (EUROPOL DOCUMENT, 2015)

Demographic change in the EU will have great influence on the trends of criminalities. The average age and life expectancy has been increased significantly in the last few decades resulting in the rise of silver citizens and opening new criminal markets. Organized crime groups will be more engaged in different forms of fraud against pension schemes and social benefit system. Elderly people will be target groups for fraud offences and also they might be target consumer group for illicit commodities.

Innovation in transportation and logistics will give the possibility for organized crime groups to increasingly commit crime over the internet anonymously avoiding being physically present. Criminal groups will find new ways to exploit changing modes of transport, new routes and technologies. Changes in transportation and logistics will change where and how illicit goods (for example drugs, firearms) are trafficked.

Nanotechnologies and robotics will open new markets for criminals and will offer new tools for a more sophisticated criminal method as well. Current applications of nanotechnology and robotics are mostly used only in hospitals and research institutes, in the areas of agriculture, medicine, information technology and engineering. Robotic workers will mean vulnerabilities that can be exploited by criminals, and developing market in nanotechnology can improve to produce counterfeit drugs or devices.

Personal data is going to become an increasingly valuable commodity. The increasing exploitation of Big Data and personal data will make criminal groups capable to carry out very complex and sophisticated identity frauds. Cybercriminals are already able to collect great amount of information on potential victims. The data stolen from advertising agencies and product manufacturers can be sold to other criminal groups.

Without improved and adequate responses from decision makers and policing illicit trade in e-waste is going to grow enormously in the very near future. This means a dramatic growth in terms of quantities traded and will also improve new methods used by criminals. The proliferation of electronic devices containing precious metals (for example gold, silver, palladium…etc) has already made e-waste

a valuable commodity to be traded, bartered and trafficked on a global scale. Furthermore processing of illicit e-waste can cause environmental damages.

Besides the above mentioned key factors economic disparity within in the EU, increase of competition for natural resources and proliferation of virtual currencies will also have great influence and will affect the phenomena of criminality.

POSSIBLE TRENDS IN THE CRIMINAL MARKET LANDSCAPE (EUROPOL DOCUMENT, 2015)

There are many actors in the European criminal "society" including individual criminals, organized crime groups and loose networks as well carrying out crimes ranging from traditional "old fashioned" crimes to new "trendy" ones. (SOCTA, 2017)

Predictions of the United Nations (UN Document, 2019)

New emerging crime areas were identified by the 9th Session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime organized in Vienna on the 15-19 October 2018. Global security is threatened by new emerging threats, meaning that people can become victimized by organized crime groups in an increasing number of ways, and in an increasing number of places. The Conference identified cybercrime, economic fraud and identity-related crimes, trafficking in cultural property, environmental crime (wildlife and forest crime), maritime crime and piracy, and organ trafficking as new and emerging crimes of concern.

Both perpetrators and victims of cybercrime can be located in different regions, and its effects can ripple through societies around the world.

Identity-related information obtained by criminals can be abused to launder money, to commit fraud and to enable illicit activities for organized crime purposes (including human trafficking, migrant smuggling, acts of corruption and even terrorism).

Organized criminal groups have infiltrated into the cultural property market, both through legitimate markets (auctions and through the Internet), and in underground illicit markets. Trafficking in cultural property seems to be an important source for the laundering of the proceeds of crime, and has been recently identified as a possible source of financing for terrorist groups as well.

Wildlife and forest crime[2] recently has become one of the largest transnational organized criminal activities, by using the same routes and methods for wildlife trafficking as for smuggling of other illicit commodities.

2 Wildlife and forest crime means taking, trading (supplying, selling or trafficking), importing,

Recently there has been a significant rise in piracy, armed robbery, armed attacks on commercial vessels with a view to hijacking the vessel and taking the crew hostage for ransom, illegal oil bunkering and cargo theft and other maritime crimes.

The sharply increasing demand for healthy organs to be transplanted has created an expanding underground market for illicitly obtained organs by international organ trafficking syndicates.

Future scenarios based on Europol analysis

Based on the analytical work of Europol some criminal markets seem to be the most dynamic ones recently within the EU, which are not always the biggest markets, but mean great challenge for law enforcement authorities with their new forms of modi operandi, unknown substances and new technologies they use. These markets are the synthetic drugs and new psychoactive substances (NPS), counterfeiting of goods, cybercrime and environmental crimes. Besides the traditional synthetic drugs (for example amphetamine, methamphetamine, MDMA… etc) and their existing markets, new psychoactive substances will emerge and explode the markets of distribution and consumption. The increasing ratio of elderly population in the EU might cause a great increase in the production and trafficking of counterfeit medical devices, pharmaceuticals…etc. Cybercrime already affects virtually all other criminal activities, but its changing character will directly impact even more on how criminal groups will carry out other crimes. New forms of environmental crime might be improved in the future and the trafficking of e-waste will have significantly expanded the market.

FUTURE TRENDS IN LAW ENFORCEMENT

Serious and organized crime will remain highly dynamic and being able to change flexibly in the future, therefore European law enforcement authorities are challenged to keep pace with the increasingly complex and improved criminal structures within the EU, and also with the technological innovations they use for committing crimes in expanded areas of the society and economy.

Parallel with this phenomena law enforcement should also become more complex and improved based on the required unprecedented degree of specialization and expert knowledge.

exporting, processing, possessing, obtaining and consumption of wild fauna and flora, including timber and other forest products, in contravention of national or international law.

Cyberspace, internet and Big Data

The explosion of internet and the rise of Big Data will offer invaluable opportunities for law enforcement in identifying and surveying suspects and developing new methods for investigations. Beside phones and personal computers the increasing connectivity of products (for example clothes, footwear…etc) law enforcement has more and more possibility to find someone's location at a given time.

Big Data analysis will be able to be used for predictive policing and opinion mining as well by law enforcement in the future in a wider scale, and will give the possibility to „map" more precisely the criminal activity by finding links between events and criminal actors. However, the increased use of this technology also raises serious questions relating to data protection, since reliable data protection and transparency are the main priorities and mean the basic bridge towards citizens' trust in policing.

Training

The increased use of internet, data analytics and Big Data will require high level of specialized knowledge and expertise to be able to carry out complex and more specific tasks and projects. Beside the need of improved training and recruitment within law enforcement the extended involvement of private sector into investigation is also highly recommended in the future.[3] In the fields of nanotechnology and robotics law enforcement will also have to employ specialists to be competitive against criminals.

Increased involvement of private sector

New tendency is the increased involvement of the private sector into solving the public security problems. Besides the logistical services many other functions – traditionally done by law enforcement authorities – are already carried out by private security companies[4] and this involvement will be extended more in the future.

International law enforcement cooperation

Decision makers, professional law enforcement actors and also academia agrees that organized crime has already been globalized, and soon criminals will

3 Cybercrime counterfeiting and financial investigation is already largely investigated by private companies working alongside law enforcement.
4 Insurance companies and banks established their own analysis and investigation capacities, sonsultancy services and private investigatiorn services are available often offered by former police oficers.

carry out almost all their activities as part of a global virtual underworld without borders, therefore law enforcement response should be globalized as well. By today there are many legal and institutional instruments available for national law enforcement agencies to reach a more effective and successful international law enforcement cooperation.

Main instruments of the existing toolbar of international law enforcement cooperation:

- European agencies, institutions and bodies: Europol, Eurojust, CEPOL, EJN, COSI…
- Practical cooperation: common culture, joint operations, manual on cross border cooperation, clarification of roles…
- Criminal substantive and procedure law - concept of approximation/ harmonization - compatibility of legal frameworks
- Analyzing the future scenarios, threat assessments, policy cycles: SOCTA, TE-SAT, EU Policy Cycle…
- Information exchange in law enforcement cooperation: Swedish initiative, Prüm decision, Schengen Information System (SIS II), EUROSUR…
- Multiannual Programs and Strategies: Tampere Program, Hague Program and Stockholm Program, Internal Security Strategy…etc.

EU has to face to some coordination challenges in fight against organized crime, such as the great number of agencies and institutions dealing with this policy creating overlaps, since there is still prejudice and reluctance of member States European agencies and institutions must prove their added value, and EU policies against organized crime must be coordinated at the global level considering external dimension, foreign policy tools and agendas of the EU.

Coordination should exits at different levels including EU internal coordination (DG Justice and Consumers, DG Migration and Home Affairs, Agencies… etc), there must be appropriate coordination among MMs (EU Policy Cycle, Working groups…etc), coordination with the EU's broader foreign policy tools (external dimension of the fight against organized crime) is also needed (European External Action Service -EEAS-, Common Security and Defence Policy -CSDP- missions, counter trafficking operations…etc), and also extended coordination with global partners (US, Russia…) has essential importance.

Due to the new and complex threats effective and coordinated response was needed at European level which called for a renewed Internal Security Strategy. The European Agenda on Security adopted in 2015 prioritizes terrorism, organized crime and cybercrime along the following five key principles:

- need to ensure full compliance with fundamental rights,
- need more transparency, accountability and democratic control, to give citizens confidence

- need to ensure better application and implementation of existing EU legal instruments
- need a more joined-up inter-agency and a cross-sectorial approach
- need to bring together all internal and external dimensions of security

Besides the importance of better information exchange (Schengen Information System –SIS-, Interpol's database on Stolen and Lost Travel Documents -SLTD-, Prüm framework, Europol's analytical capabilities, Single Points of Contact -SPOC-, EU Passenger Name Record -PNR- system, European Criminal Records Information System –ECRIS-, European Police Record Index System -EPRIS-, Maritime Common Information Sharing Environment -CISE-…etc) and the great demand for an increased operational cooperation (such as EU Policy Cycle for serious and organized crime, EU agencies, developing risk assessments, a coherent European response during crises and emergencies, Joint Investigation Teams -JITs-, Joint Customs Operations –JCOs-, networks of national specialized units, Police and Customs Cooperation Centres –PCCCs-, regional cooperation, judicial cooperation in criminal matters…etc) the Agenda emphasizes the essential importance of supporting actions, like training, funding, research and innovation (CEPOL, Internal Security Fund, European Structural and Investment Funds, EU Justice Programs, Customs 2020 Program, European Judicial Training Network –EJTN-, European Security Training Centre, Research and innovation HORIZON 2020, European Forensic Area…etc)

Joint investigation Team (JIT)

A joint investigation team is an international cooperation instrument based on an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges…etc) and law enforcement – of two or more Member States, established for a specific purpose and for a limited duration, to carry out criminal investigations in one or more of the involved Member States.

The legal framework for setting up JITs between EU Member States can be found in Article 13 of the 2000 EU Mutual Legal Assistance Convention[5] and the 2002 Framework Decision on JITs[6].

There are many instruments being adopted by EU institutions at Member States disposal to support and establish JITs, such as the Model agreement for setting up joint investigation teams appended to Council Resolution (2017/C 18/01), JITs Practical Guide, Network of National Experts on Joint Investigation Teams, JITs Network Secretariat.

5 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.07.2000, pp. 1-23.
6 2 Council Framework Decision of 13 June 2002 on Joint Investigation Teams, OJ L 162, 20.06.2002, pp. 1-3.

JIT has the following main added value compared to traditional forms of police and judicial cooperation:

- JIT enables the direct gathering and exchange of information and evidence without the need of using traditional channels of mutual legal assistance. Information and evidence gathered in accordance with the legislation of the State in which the team operates can be shared on the basis of the JIT agreement.
- Seconded members of the team (the ones, who are originating from a State other than the one in which the JIT operates) are entitled to be present and to take part – within some limitations - in investigative measures conducted outside their home country.
- It means an extensive, coordinated cross-border and a common "active" approach to organized crime, working together on common priorities.
- Perfect platform to determine the optimal investigation and prosecution strategies, to create a professional network based on trust and expertise, to share know-how and specialized knowledge.
- JIT gives the possibility to Member States to coordinate efforts on the spot and to exchange informally specialized knowledge, reaching a better efficiency of manpower.
- Human, financial and technical resources are more guaranteed by using JIT.
- There are two particular situations – based on EU documents - in which a JIT can be established:

1. Demanding cross-border investigations: when a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States.

2. Connected investigations requiring coordination: when several of Member States are conducting investigations into criminal offences in which coordinated, concerted action in the Member States involved is needed due to the circumstances of the case.

EU Policy Cycle

In 2010, the EU Council established a multi-annual policy cycle with the aim of ensuring that in the fight against serious international and organized crime there is effective cooperation between Member States, law enforcement agencies, EU Institutions, EU Agencies, relevant third countries and organizations and private sector (where it is needed), and also with the aim of carrying out coherent and robust operational actions targeting the most pressing criminal threats facing the EU.

The EU Policy Cycle was established in order to:

- define priorities in the EU-wide „fight against serious international and organized crime", on this basis

- develop and implement appropriate interventions to tackle the prioritized crime phenomena
- evaluate the results achieved in order to identify a new set of priorities for the following cycle

The full policy cycle consists of four key steps, which are:

Step 1: *Policy development - EU SOCTA*

The EU Serious and Organized Crime Threat Assessment (EU SOCTA) developed by Europol, delivers a set of recommendations based on an in-depth analysis of the major crime threats threatening the EU (based on source of data). SOCTA contains the analysis of the present and future threats and the set of recommended crime priorities. It has a core role in the policy cycle by ensuring an intelligence-led approach from the strategic priorities through to operational actions. These recommendations are used to define the main priorities for the coming 4 years by the Council of Justice and Home Affairs.

Step 2: Policy setting and decision making - MASP

Policy setting and decision making through the identification of the priorities based on the recommendations. Multi-Annual Strategic Action Plans (MASPs) are developed from these priorities in order to be able to define the strategic goals for fighting against each priority threat. For each of the priorities a MASP needs to be developed in order to achieve a multidisciplinary, integrated and integral (covering preventive as well repressive measures) approach to effectively address

the prioritized threats. MASP contains list of general objectives (strategic goals) that should be achieved during the cycle. (Busuioc, M., Curtin, D. 2011)

Roles and actors in this step:

- COSI[7]: examines the SOCTA recommended priorities
- Council of Justice and Home Affairs Ministers: adopt the EU crime priorities for the policy cycle
- Commission: convenes a meeting of representatives of MSs, JHA agencies, EU institutions to draft a 4-year multi-annual strategic plan (1 MASP / priority)
- COSI: MAPS are approved by COSI

Step 3: Operational actions, Implementation and monitoring – OAP

Joint actions are carried out as EMPACT (European Multidisciplinary Platform Against Criminal Threats which is an ad hoc management environment) projects, whose framework provides a structured cooperation platform for the stakeholders. These projects set out operational action plans (OAPs) to tackle the priority threats. OAPs include joint member states/agencies actions, agencies' actions and national actions.

Actors and roles in this step:

- OAPs are drafted by the MSs, EU Agencies and Institutions
- COSI: OAPs are approved by COSI
- Driver: leads the implementation of each OAP
- NECs – National EMPACT Coordinator: oversees the implementation
- ESU-EMPACT Support Unit: provides administrational and logistical support (+ monitoring)
- EMPACT Support Manager: ensures operational support
- COSI: monitors the implementation on the basis of a 6 monthly reporting by the Drivers via the ESU

Step 4: Evaluation, review and assessment

At the end of the policy cycle a thorough evaluation needs to be conducted which serves as an input for the next policy cycle.

Actors and roles in this step:

- Drivers: annual reporting
- Europol: an interim threat assessment prepared by Europol to evaluate, monitor and adjust (if required) the effort in tackling the priority threats.
- Commission: provides a yearly state of play to COSI
- COSI: reviews the effectiveness of the OAPs and their impact on the priority threat
- Within the framework of EU Policy Cycle:

7 Standing Committee on Internal Security

• COSI is instructed to agree and endorse the costumers' requirements for the EU SOCTA, to submit conclusion to the Council to decide on the priorities (on the basis of the Policy Advisory Document drafted by the Presidency and the European Commission based upon the SOCTA), to adopt MASPs and OAPs and to coordinate and monitor the implementation.

• Members States are called upon to integrate the actions developed within the EU Policy Cycle into their national planning, to allocate dedicated resources to support a common EU approach and to actively support all the phases that constitute the cycle.

• European Commission is called upon to develop together with the Member States and EU agencies a MASP for each priority defining the most appropriate strategy to tackle the problem, to report yearly to the COSI on the implementation of planned activities related to OAPs, to carry out at the end of the policy cycle an overall evaluation of the implementation of MASPs, and transmit the results to the Council via COSI and also to propose to review the Prevention of and Fight against Crime (ISEC) funding and consider the feasibility of setting up of the Internal Security Fund (ISF).

• EU agencies are called upon to develop together with Member States the OAP's concerning priorities corresponding to their mandate, to integrate the actions developed within the policy cycle into their yearly working programs, to develop under the leadership of Europol the EU SOCTA and its methodology and to contribute to raising awareness about the policy cycle, in particular CEPOL by providing training packages.

In the period of 2011-2013 there was a pilot project which was followed by the first 4 year-long EU Policy Cycle between 2013-2017.

EU crime priorities for the period of 2014-2017:

• Facilitation of Illegal Immigration (especially in the source country)

• Trafficking in Human Beings (especially for labour and sexual exploitation)

• Production and distribution of counterfeit goods (violating health, safety and food regulations)

• Excise and MTIC Fraud (Missing Trader Intra Community fraud)

• Production and trafficking of synthetic drugs in the EU

• Cocaine and Heroin trafficking to the EU and distribution in the EU.

• Illicit Firearms Trafficking

• Organized Property Crime committed by Mobile Organized Crime Groups.

• Cybercrime (online and payment card fraud, Child Sexual Exploitation, cyber-attacks which affect critical infrastructure and information systems in the EU)

On 27 March 2017, the Council decided to continue the EU Policy Cycle for organized and serious international crime for the period 2018 - 2021.

The following priorities were adopted by the Council of the EU at its meeting on 18 May 2017 for the fight against organized and serious international crime between 2018 and 2021:

- Cybercrime
- Drug trafficking
- Facilitation of illegal immigration
- Organized property crimes
- Trafficking in human beings
- Excise and MTIC fraud
- Illicit firearms trafficking
- Environmental crimes
- Criminal finances and money laundering
- Document fraud

Advantages and added value of EU Policy Cycle: (Busuioc, M., Curtin, D. 2011)

- Institutionalyses and streamlines the policy process with regard to serious and organized crime
- Introduces clarity, coherence and continuity in the system
- Aims establishing direct link between clear needs, identified on the basis of threat assessment and political priority – settings,
- Aims to align the agreed political priorities with actual operational actions
- Ensures policy continuity due to its multi-annual character
- Creates the potential for moving:

  - from status quo approach of uploading a variety of national domestic priorities to RU level towards developing a more coherent common policy.

  - from an intergovernmental towards a more supranational character in ASFJ area (more in line with post – Lisbon changes)

- Reduces the existing lack of consistent operational follow-up of identified priorities (the work program of Europol in the past was an aggregate of „wish lists" stemming from a variety of sources.
- Reducing the existing dislocation between policy priorities and their systematic operational implementation
- Generates more efficient information collection/exchange
- Creates common methodology by the relevant EU agencies
- Creates shared sense of responsibility for the EU SOCTA product (various agencies and MSs are assigned an explicit role in its development, which spans from methodological input to substantive, information input)
- Provides opportunity for integration between the different structures:

- Generates synergies among law enforcement and border management authorities
- Enhances further cooperation between EU agencies
- Creates opportunity to make better use of European agencies and their capacities, incorporating their (threat assessment) products and output into policymaking and showcasing their performance.
- Provides opportunity for specific agencies to demonstrate their abilities. (Europol: limited support, lack of information contributed, mistrust, reluctance, but EU Policy Cycle signals the importance placed on Europol at the political level)
- Develops joint methodology
- Strengthens inter-agency cooperation

CONCLUSION

Organized crime groups are very quick to identify new criminal opportunities and take advantage of the weakness of the system. The globalization of organized crime has been the topic of debate amongst policy-makers, law enforcement and academia for decades.

JITs and EU Policy Cycle can have added value and may open a newer dimension in combatting cross-border organized crime since we can characterize them with the following main features:

- Intelligence – led approach: future oriented and targeted approach to crime control
- Integrated character: best using of complementary contributions (multi-agency „theatre")
- Multi-disciplinary, integrated and integral approach:
  - repressive and preventive nature,
  - proactive and reactive measures,
  - strategic (trying to impact the threat) and operational (trying to impact the organized crime group/networks) nature

What about the future of policing? It is not easy to give The Answer. There are several answers with possible scenarios and priorities that might influence the future tendencies. Here below you may read opinions from some police leaders.[8]

Jörg Ziercke (Former president –Federal Criminal Police /BKA Germany): *"Member States have to cooperate even more closely in the area of law enforcement and the European security architecture has to be developed further. "*

8 Quotes are taken from the Europol Document „Exploring Tomorrow's Organized Crime" 2015 p. 49-55.

Glyn Lewis (Director specialized crime and analysis – Interpol): *"Collaboration for bringing about a safer world need to go beyond traditional frameworks that bind law enforcement and international police cooperation."*

Ints Kuzis (Chief of the State Police – Latvian State Police, Latvia): *"The European Multidisciplinary Platform against Criminal Threats (EMPACT) is crucial in strengthening cooperation between competent authorities."*

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SECURITY ASSESSMENT IN THE FUNCTION OF COVERT POLICE ACTIVITY

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Abstract: The state has always tried to timely collect data about occurrences that can negatively affect the preservation and protection of vital social interests by its intensity and manner of expression. In that way, it sought to secure a certain "advantage" and organize the entities of its security system in a way that guarantees an adequate response to the destructive effect of various security phenomena. The method of collecting data is conditioned by the availability of the sources from which the data is to be collected. Having in mind the fact that the most important data are under a special protection regime (stored as classified information), the techniques for collecting them must be adapted to their conspiratorial character and must be hidden (secret).Covert police operations are an important instrument in collecting such data and information that cannot be collected in any other way and are important for criminal proceedings and for opposing the most difficult forms of crime. These operations are carried out covertly, without the knowledge of the person against whom they are directed, and their implementation temporarily restricts human rights and fundamental freedoms, primarily the right to privacy. In this regard, given their sensitivity, the security assessment is a very important segment in the planning, preparation and implementation of covert police activities.The paper points to the purpose and necessity of covert policing in the collection of important data for criminal proceedings. What is particularly emphasized is the specificity of covert data collection. Special attention is paid to the importance of quality security assessment referring to its specificity in the process of planning, preparing and implementing covert police operations.

Keywords: covert operations, security assessment, data collection.

INTRODUCTION

The security of each society has always been conditioned by timely data and information about phenomena which threaten the proclaimed values of the society by their intensity and type of their manifestation. Security system factors

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(including police authorities) plan and take various activities based on the collected data, in order to ensure that they are adequate to the intensity of certain phenomena and threats. The data and information collection is done using public or secret sources, using different collection techniques. Bearing in mind the fact that the most important data and information is classified data, covert operations are imposed as a collection mechanism that is adequate to the conspiratorial character of such data.

Covert operations are mostly related to military operations which are conducted with different objectives, but they are also a very reliable mechanism in the activities of police authorities in situations when it is not possible to collect relevant data of importance for the criminal procedure and to achieve satisfactory effect in the detection, prevention and proving of serious crimes by using the so-called traditional police methods. In that case, covert police operations are used as a proven mechanism, which secures detection, prevention and proof of the most serious crimes, especially criminal offenses with elements of organization.

Bearing in mind the sensitivity of covert operations at all stages, their use requires timely and detailed preparation. In particular, this means a quality security assessment, as a basis for planning and a precondition for the successful use of each, especially the undercover police activity.

COVERT POLICE OPERATIONS

Operation, as a general term, in initial theoretical considerations, was used to mark the army movement to the battlefield. However, over time, the theory of operations has gone beyond military frameworks, because state subsystems, government organizations and agencies are engaged in the process of planning, preparation and execution and the possibility of achieving the defined goals depends on the success of their efforts. Operations are prepared and done continuously, in accordance with defined operational plans so that the goal is achieved quickly and economically. In theory, operations are divided on the basis of different criteria, but the basic division mostly involves combat and non-combat operations. One type of the operations from the category of non-combat operations are intelligence operations (Kovac, 2010:3).

In their essence, intelligence operations are operations which are not public. As such, they are used in situations when it is not possible to achieve a specific objective using an open, public approach. In this regard, covert operations may also include covert operations conducted by the police in order to collect data for the detection, prevention and proving of the most serious crimes. Such data and information are primarily collected for the purposes of criminal proceedings. This in most cases involves classified data that cannot be collected by traditional police activities, but rather using covert techniques, which in essence are not different from the techniques used by intelligence services. The police authorities accomplish the primary objective of these operations - detecting, preventing and

proving the most serious crimes by using (implementing) different undercover techniques (Nincic, 2019:83). In this regard, covert police operations represent a legally-based procedure in which covert operative-tactical activities and actions are used by police, in order to collect operational data or the documentation of certain actions of person/persons for whom there are indications (grounds of suspicion) for the criminal offense, or collection of evidence against the person/persons for whom there are indications (grounds of suspicion) for the committed criminal offense (Dundovic, 2009:37). In fact, covert police operations are investigative methods that use various forms of 'disguise' to gain the confidence of the criminal environment in order to determine the type and extent of the crimes committed or being planned. In modern conditions, when organized forms of crime are widespread, police actions that are conducted through covert police operations are the only reliable mechanism for detecting, preventing and proving criminal offenses of organized crime, and such actions are characteristically of covert nature.

The term action should be understood as a specially organized act of the security forces which is focused on resolving one or a group of security related issues different from the usual activities in terms of the intensity of operational actions: which is expressed more; act focused on a narrowly defined objective, which can be a special security issue or destroying crime object or a security object that protects security ; for the realization of objectives, as a rule, a special organization is established or an existing one is used, but adjusted to the defined goal which is to be achieved by the action, which can be extended to a narrower or wider area, depending on the content of the defined objective; such a special organization with its work intensity has its starting and finishing time (Kostic, 1977:199). All police actions (operations) target individuals or criminal groups. However, those targeting criminal groups must take into account all the specifics of criminal organizations (first of all, clandestine actions) both in the preparation phase and during the operationalization of such operations.

As secrecy is a logical consequence of a criminal organization in the furtherance of its objectives, which are basically criminal in nature, members of such an organization will characteristically try to act maximally discreetly. This secrecy can be absolute (which is practically impossible because there is always a certain circle of persons who know about the existence and functioning of a criminal organization) and relative, which is more frequent, and means that state authorities do not have information on the existence or functioning of a criminal organization. In this case, it is factual or formal ignorance. If the state authorities are really not familiar with the existence and functioning of a criminal organization, this is factual secrecy. However, if the state authorities have information about the existence and functioning of a criminal organization, but that information cannot be given sufficient credibility, then it is formal secrecy (Шкулић, 2003:47). In this sense, the use of covert (secret) police operations, in itself, is an activity and its planning, preparation and realization means that it must be strictly confidential and take place far from the public. The secrecy allows all activities related

to covert operations (from planning through preparation to realization) to take place in such a manner that the criminal environment is not able to determine their scope, the "target group", towards whom are directed, as well as the results achieved and the "cost-effectiveness" of their implementation, in relation to the planned objectives.

Covert police operations include different methods with varying degrees of infiltration into the criminal environment. Known operations include: (*light cover operations*), when the covert agent is not permanently staying in the criminal environment, is not becoming a part of its structure, but appears only occasionally in some role, and these operations do not require special training and special control; (*deep cover operations*) require personal training, preparation, and logistic support. A covert agent is inserted into a criminal environment and cooperates with its members (Fejes, 2006: 407). According to the duration, covert police operations can be divided into long-term, short-term and ad hoc operations. *Long-term operations* span several months of certain actions, individually or combined, which help in the collection of possible information or evidence. *Short-term covert operations* relate to a period of up to a month, and sometimes to a period of only a few days or even hours. *Ad hoc operations* are conditioned by the impossibility of postponing implementation, so they are implemented as soon as possible with a shorter preparation and that is why they should not be complex (Dundovic, 2009: 41).

The main objectives of covert police operations, among other things, are:

- collecting data and information which criminal offenses a criminal organization has committed or is preparing to perpetrate;
- identification of all persons associated with a criminal organization, regardless of whether they are members or they prepare or commit criminal offenses or provide logistic support;
- identification of criminal organization leaders;
- collecting information that is not available to the police (narcotics price, scope of operations assessment, identification of associates, identification of the criminal organization assets, etc.);
- identification of the degree and type of "cooperation" with representatives of state bodies (police, prosecutor's office, court, etc.);
- identification of the criminal case objects;
- identification of the places unfamiliar to the police where members of a criminal organization gather or hide (secret hiding places - "bins");
- the collection of data and information important for the infiltration of the covert investigator into the criminal environment, especially those important for establishing a connection between the covert investigator and the suspect;
- collecting crime evidence which could not be collected by other (traditional) police techniques;

- identification of potential informers;
- collecting information about "fraternal" criminal organizations, with special target on cooperation, planned or performed joint actions;
- collecting information about rival criminal organizations and possible conflict areas (spatial and temporal dimension);
- collecting other data and information in accordance with the covert operation plan.

Based on the defined goal, in accordance with the covert operation plan, preparations are made for its realization. Bearing in mind the specificity of such activities (the need for confidentiality of all phases, above all), it is necessary to identify phenomena which may influence the process of preparation and implementation, or realization of the ultimate goal of the undercover operation and their effects.

SPECIFICATIONS OF COVERT DATA COLLECTION

Data collection is an activity that has had a different purpose throughout the history of society's development. On the one hand, those who had the invasive ambitions sought to collect data and information that targeted "holes" in defense targets of the attack, providing an advantage for a quick and efficient way of realizing their invading goals. The other party also tried to conceal the attack and set up its defense system so it can guarantee security. Both tried to collect information about the opposite side and to secure advantage over the opponent. However, what is common to them is that the most important data (on both sides) was classified, and had to be dealt with accordingly in a confidential way, in an effort to prevent their detection by undertaking various measures for protection.

The same relation to this type of data has remained to date, where the most important data is classified. The secret as a phenomenon appeared with the concept of social class and a society in which the classes were opposed to one another. This resulted in the fact that people, or narrow/broad groups and communities and states, deliberately and in an organized manner, hid data from one another and kept certain data and facts as elements of a secret. This conspiracy is all the more deliberate, more persistent and secretive if it is aimed at protecting significant interests and information. Under the influence of the same principles, the opposite tendency and necessity is to discover and find out others' secrets. Thus, the secret became the main object of the work of the two aforementioned information functions, and during the development of human society, specific tools and methods for the execution of these functions were developed (RSUP, 1974: 18).

Data collection includes the use of various techniques. Quite naturally, these techniques can be different in relation to the "visibility" of the source from which they are collected, so they can be public and secret. Special techniques are applied to covert (secret) data collection, bearing in mind the conspiratorial nature of

the sources which have such data. This "specialty" is reflected in the sensitivity of planning, preparing and implementing covert operations, which are performed with the aim of collecting this type of data. However, covert data collection also means the temporary limitation of human rights and fundamental freedoms (above all, the right to privacy) of the targeted persons, bearing in mind that the fact collection is conducted without the knowledge of the subject, who is not aware of such official measures. This fact, in particular, is important in planning, preparation and realization of such data collection techniques.

Regardless of which group of techniques is used in the operational work, as the basic system of legally defined, confidential or secret operations of the law enforcement authorities, complexly guided outside the criminal and administrative process and other official acts of these authorities, and serves to suppress and prevent criminal offenses, primarily by collecting, checking and using information about events, environments or persons that have become the subject of a legally motivated interest, with the aim of detecting and aiming evidence (Костић, 1987:27).

Secret methods of collecting information use secrecy to collect information about objects of interest, even though they are not even aware of it. Such a covert (secret) methods of data collection may include the use of informants, interception of information, electronic and physical surveillance, and photographing. When those methods are used in such a way as to temporarily limit the individual's privacy, they are called *intrusive methods of investigation* and those are special investigative measures or special investigative techniques. Any use of such methods must be in accordance with the law and used only for specific, legitimate purposes (Hutton, 2012:92). By using these methods, security services can come up with very important, but also sensitive data that can be used to act in the direction of preventing some of the threatening activities directed against the vital values of society as well as for initiating criminal proceedings. Bearing in mind the nature of the collected data and the type of rights that derogate from these actions, it is very important to establish multiple, impartial and independent control over these actions (Mirkovic, 2017:90).

Notices about the criminal offense and perpetrator mean all of information about the facts that may be important for successfully conducting criminal proceedings and that we obtained within and out of the process of collecting. However, these notices also include data in a narrower term. We have to abstract that the term data, unlike the term notice, has the subjective component or the understanding of the bearer of the evidence. Therefore, data is an objective category and it refers to legally relevant facts that can be reliably determined (Peric, 1971:9). Intelligence data is a product created through the process of collecting, classifying and analyzing data for dissemination of useful information that typically assesses events, locations, or opponents, to enable the appropriate allocation of resources in order to achieve the desired outcome. Information is generated from data, as data that can be used or can be applied to the current context. Information is

the data that we will use in improving our predictions, forecasts and assessments (Metscher, Gilbride, 2005:3).

Bearing in mind the purpose of collecting data by the police authorities (data relevant for the criminal procedure), the most important data related to the functioning of the criminal environment, especially in dealing with organized crime, it is necessary to plan and prepare the realization of police operations (especially covert ones that are aimed at collecting data important for detecting, preventing and proving the most serious crimes), which must be consistent with and respect all the specificities of the covert techniques.

This means that specificities of covert data collection, among other things, include the following:

- use of covert data collection is (despite the hidden character) strictly defined by the framework;
- limited availability of classified information, which due to their importance are always under the "special regime" of protection;
- a limited number of persons to whom covert (classified) data are available;
- the difference in their "capability" for the proper selection of the most important data and information;
- "closeness" with the "target" of the covert operation (covert data collection which is, for example, done by using methods of surveillance and technical recording of communications, surveillance and technical recording of premises, secret photographing and video documentation, using technical means for monitoring and positioning, differs from covert data collection by engaging a covert investigator, using controlled delivery techniques or simulated jobs);
- covert police operations have special requirements such as selecting a person with special mental/physical characteristics (especially when it comes to infiltration operations);
- danger of entering a "punitive zone" in the course of covert police operations (especially when engaging a covert investigator).

SECURITY ASSESSMENT AND COVERT POLICE ACTIVITY- SPECIFICITY OF PRODUCTION

In general, the term *assessment* represents the process of determining the value of something, the value of some area of the life and activity (*Речник*, 1973:265). In terms of security, an assessment represents an analysis of certain factors which, individually or together, affect the level of security in particular communities or societies, but also an analysis of the readiness of the system and security services to confront the endangering activities (Ђорђевић, 1986:299). The main objective of the security assessment, to be more specific, is the establishment of such a protection system which guarantees reducing the possibility of harmful event and

which by own stratification prevents the exploitation of the vulnerability of the existing protection system and increases attackers' costs or significantly reduces their potential "gain" and the negative effect of harmful event (Nincic, 2017:390).

The amount of data and information that is required to make a quality security assessment can never be determined in advance. It takes as much information as is sufficient to describe the danger whose possible manifestation is assessed and negative effects of security challenges, risks and threats. Data collection is necessary until sufficient level for assessing is reached and in accordance with the principle of completeness, as one of the basic principles which is necessarily respected when making a security assessment. During data and information collection, it is necessary that they meet some basic requirements, such as timeliness, completeness and representativeness, which makes it easier to create a quality security assessment.

Criminal acts of organized crime, cyber crime, international criminal offenses envisioned by the Geneva Conventions and additional protocols, as well as by other international conventions, require a longer period to collect facts and evidence that would be necessary for the court if they are to be collected in a lawful manner and therefore confirm justified suspicion that a certain perpetrator has committed a criminal offense, and this applies in particular to special types of evidence which is required for very serious crimes. Primarily because these crimes are a "cream" of crime and have a high degree of social danger in themselves, among other things, the criminal justice system is highly motivated to incriminate these "special" crimes. This specialization is reflected both at the organizational and the legislative levels (Plazinic, Stojkovic, 2015:14). In this regard, bearing in mind what kind of crimes and perpetrators are involved, it is quite natural that certain techniques can match the gravity of such offenses by their "specialty" and contribute to the collection of evidence. Therefore, special investigative methods and covert police operations, as a tool for their operationalization, require precise planning and preparation in which a security assessment has a great importance.

When it comes to the security assessment which is used as a basis for the planning, preparation and realization of covert police operations, it must be in line with all the specifics that this type of police action contains. As a precondition for its production it is necessary to, in accordance with the defined goal of covert police operation, look at all the risks (legal, technical and operational) of such operations. *Legal risks* basically represent risks of unlawful use of covert operations (use of covert operations without a legal framework; enforcement by a body without given jurisdiction for such an action; enforcement in relation to offenses that are not legally defined as acts for which prevention, detection and proofing can be undertaken by covert investigative techniques, etc.). *Technical risks* include risks that can be caused by the installation and use of technical means during a covert operation (technical means may not work or could be detected). *Operational risks* are the risks related to the manner of conducting a covert operation, from the preparation to the final realization (conducting a covert operation without prior

security assessment, engagement in the operation of persons who, in terms of their mental/physical characteristics, fail to meet the requirements of a specific operation, engagement of persons who are not adequately trained, endangering of covert operation's direct executors, etc.) (Нинчић, 2019:91).

The primary goal of a security assessment is to identify all the facts and circumstances which may influence the planning, preparation and use of a covert operation, determine the important assumptions concerning the criminal offense and possible perpetrators and define the method (technique) of collecting evidence which must be on the same level as a crime for whose detection, prevention and proving a covert operation is conducted. In this sense, it is necessary to meet the following requirements:

1. Merging all (current) information we have about a criminal organization that is the subject of a covert police operation. This means:

- currently available information about the criminal organization (size, number of members, hierarchical connection, indicators of criminal activity by type, place and time with manifest forms and manner of operation, specialization for certain types of crimes, specificity in the mode of operation, possible connections with representatives of state authorities, material capacities available to the criminal organization, places of assembly, etc.);

- currently available information about the organizers and members of the criminal organization (their past, criminal records, earlier criminal and felony sanctions, professionalism in committing certain crimes, horizontal and vertical connections, "real" authorities among members of the criminal organization, data on finances and properties in the country and abroad, etc.).

2. After merging the currently available information, actions are taken to expand them with additional information, which includes information on usual daily activities of the suspect (organizers or members of a criminal organization), such as:

- define the narrow and wider circle of persons with whom they are in contact, the frequency of such contacts and their character (contacts with family members, "business" contacts with representatives of other criminal organizations, etc.);
- the most visited places (space and time dimension);
- the way of dressing, behaving and "level of violence" in behavior;
- usual means and ways of communication with the narrow and wider circle of persons they are in contact with;
- special preferences and hobbies;
- certain vices (drugs, alcohol, gambling, etc.).

3. If some additional information is obtained from an informer or associate, it is necessary to:

- assess the reliability of the source and data, with an assessment of the relevance and completeness of the data and the possibilities for their use;

- identify the motives for co-operation of the data source (to establish "real" motivation, but also to continuously assess the motivation of the data source as it changes over time);

- find out whether the informant is capable of assisting the police in undergoing and future covert operations.

4. Based on the collected data, it is necessary to:

- determine the general and special causes and objective conditions for the functioning of the criminal organization through defining its «profile» (areas of operation - murders, narcotics, arms traficking, human trafficking, prostitution, etc.; specificities, human and material resources of the criminal organization, cooperation with state authorities, etc.);

- predict the behavior of the criminal organization members through defining their «profile» (behavior assessment in different situations, possible «patterns of behavior», members who can be the «weakest» link in the organization and suitable for making contact with in the course of an infiltration operation, etc.).

5. Covert police operation risk assessment, which includes a timely analysis of legal, technical and operational risks, which may have an influence on the planning, preparation and implementation of the undercover operation. On the basis of the determined elements, a conclusion is drawn and it defines the covert operation risk level which is used as a parameter to "recommend" the use of a covert operation or, if the risk is too high, suspend such an operation.

6. Based on defining the previous elements, a general conclusion with an assessment is made, which has to give a complete picture of covert operation conditions, what phenomena and how intensely they would affect its implementation, what are the greatest security risks, chances of achieving a defined goal, the "cost-effectiveness" assessment of the undercover operation.

7. In accordance with the conclusion and the objective of a concrete covert operation, assessment and selection of the most acceptable method of covert investigation is made. This means defining the basic parameters, such as:

- identification of the facts that need to be determined in order to prove the specific criminal offense;

- determining concrete directions of action in order to achieve the defined goal;

- the order of the individual phases of proving, depending on what specific criminal act is investigated;

- the time frame needed for evidence collection;

- the optimal way of contact with external bodies (prosecution, court, etc.).

8. Assessment of the resources which are necessary for the realization of a covert operation and which include:

- human resources (tactical teams, logistic support, medical assistance. etc.);

- technical resources (communication means, surveillance and monitoring, special vehicles, etc.);

- financial resources (funds for operational needs, funds for technical and operational preparation, etc.).

The quality of all the previous elements determines the quality of the security assessment. If they essentially reflect the actual state of the observed phenomenon, then the security assessment will be valuable and useful. This means that it will contribute to choosing the most effective way of implementing a covert police operation and the collection of data and information of crucial importance in the criminal procedure, which may play a decisive role in an effort to prove the most serious crimes.

CONCLUSION

By collecting various types of data and information, the police try to identify various criminal activities and their perpetrators. In modern conditions, the perpetrators of criminal activities (especially those with characteristics of organized crime) try to make them secret, covert. Therefore, information about such activities is secret that can be disclosed only through methods that match their conspiratorial character.

Covert data collection techniques are the techniques which police use to collect data and information important for criminal proceedings. They are conducted without the knowledge of the targeted person, who is not aware of their official character, so they interfere with human rights and fundamental freedoms, especially the right to privacy. Therefore, the covert police operations that use covert data collection techniques must be precisely planned. As a necessary condition in the planning, preparation and realization of a covert police operation, there is a security assessment, which defines all important factors for a covert operation. Because of that, a quality security assessment must include the planning, preparation and realization of a covert police operation in a manner that is in line with its purpose - collecting evidence for the prevention, detection and proving of the most serious crimes.

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RIGHT TO LIFE AND USE OF FIREARMS IN THE CASE OF SAŠO GORGIEV V. MACEDONIA

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Abstract: The European Court of Human Rights (ECHR) has noted that the Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Having in mind that the Macedonian Assembly adopted the said Convention, the paper shall give an overview of the Case of Sašo Gorgiev v. Macedonia, especially of the ECHR's ruling that there has been a violation of Article 2.

In addition, the paper shall pay attention to other ECHR's judgements, as well as to the Macedonian relevant documents. Since Article 2 lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction, the paper shall give proposals with an aim for such violations to be prevented in the future especially from the aspect that the States must display the utmost diligence and define the limited circumstances in which law enforcement officials may use firearms.

Keywords: Gorgiev, Macedonia, Article 2, right to life, use of firearms.

INTRODUCTION

The first right guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) is the right to life (Council of Europe, 1950). According to Korff (2006: 6), the right to life is listed first because it is the most basic human right of all: if one could be arbitrarily deprived of one's right to life, all other rights would become illusory. The fundamental nature of the right is also clear from the fact that it is "non-derogable": it may not be denied even in "time of war or other public emergency threatening the life of the nation" - although, as discussed later, "deaths resulting from lawful acts of war" do not constitute violations of the right to life (Article 15 (2)). In addition, Harris, O'Boyle and Warbrick (2014: 203), note that as well as a negative obligation not to take life, Article 2 places upon states a positive obligation to protect the right to

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life. This positive obligation must be interpreted and applied so that it is 'practical and effective'. They also point out that physical assault by a state agent that does not result in death will 'almost always' be examined under Article 3, not Article 2. But Article 2 may apply in the absence of death in 'exceptional circumstances': relevant factors are the 'degree and type of force used and the intention or aim' underlying it (2014: 222).

If the Macedonian cases are taken into account, i.e. the total number of 153 judgements delivered by the European Court of Human Rights (ECHR), then it can be established that starting from 1997 (when the Convention has entered into force) till 2018, the ECHR in their 136 judgements has found at least one violation, and in 12 judgements has found no violation (the rest goes to friendly settlements (3) and other judgments (2)). When Article 2 is in question, only by 2 judgements a violation of the "Right to life - deprivation of life" has been found and by 2 judgements a "Lack of effective investigation" has been found (ECHR, 2019). In essence, the 3 judgements in which a violation of the Article 2 was established, are the following:

- *Sašo Gorgiev v. Macedonia* (ECHR, 2012a): Right to life (Article 2-1 - Life) (Substantive aspect),

- *Kitanovski v. Macedonia* (ECHR, 2015): Right to life (Article 2-1 - Life) (Substantive aspect) and Right to life (Article 2-1 - Effective investigation) (Procedural aspect),

- *Kitanovska Stanojkovic and Others v. Macedonia* (ECHR, 2017): Right to life (Article 2 - Positive obligations; Article 2-1 - Effective investigation) (Procedural aspect).

As Davis observes (2016: 169), in its case-law the ECHR refers to the "substantive" and "procedural" limbs of Article 2. The substantive limb relates to the duty to secure life and prevent disproportional use of force; the procedural limb refers to the provision of adequate remedies and, in particular, a state's duty to investigate well founded allegations that Article 2 has been breached. Consequently to this, the point shall be given to the first case because of its importance, i.e. it is classified by the ECHR as a part of "Key cases" (ECHR, 2013). The other two cases are classified with importance level 3 (the second case) and importance level 2 (the third case).

THE CIRCUMSTANCES OF THE GORGIEV'S CASE

Sašo Gorgiev lodged an application no. 49382/06 on 27 November 2006, in which he alleged that the State had been responsible under the Convection's Article 2 for a life-threatening action against him taken by R. D. Namely, Gorgiev was working as a waiter in a bar in Skopje, when at 3.50 a.m. on 6 January 2002, R. D., a police reservist, shot him in the chest. A medical certificate was issued on 12 September 2002, by Skopje Clinical Centre, according to which Gorgiev was

urgently admitted in a "serious condition" (the injuries sustained were described as broken right clavicle and four broken ribs, injury to the subclavian artery, internal haemorrhaging and seizure of the brachial plexus nerves). Also, his right arm was paralysed, which implied that he had sustained serious bodily injury with life-threatening damage and lasting consequences. As a result of the injuries, Gorgiev was operated twice.

Having in mind the above, on 27 March 2003, R. D. was convicted by the Skopje Court of First Instance and was sentenced to two years' imprisonment, for committing serious crimes against public security. Based on the provided evidence (oral evidence given by R. D., Gorgiev and six witnesses, as well as other material evidence), the Court established that R. D., while intoxicated, had unintentionally pulled the trigger of his service gun and shot Gorgiev, who had been at a distance of one metre. In addition, the Court advised Gorgiev to pursue his compensation claim by means of a separate civil action. Despite the fact that R. D. started to serve his sentence on 6 June 2008, at his request on 23 June 2008, the Trial court reopened the proceedings. Once again, on 12 March 2009 the Trial court found him guilty. However, it sentenced him to two years' imprisonment, suspended for four years.

Parallel to the criminal proceedings, on 11 November 2002, Gorgiev initiated a civil proceedings for damages against the Ministry of Internal Affairs (the Ministry), i.e. he was seeking a compensation (28,000,000 MKD for non-pecuniary damage and 208,480 MKD for pecuniary damage - expenses related to his medical treatment), and claimed that the State should be held responsible (the reasons were: R. D. had shot him in the bar, instead of being on duty in a police station; R. D. had used his service gun; R. D. had been in uniform). However, on 12 December 2003, the Skopje Court of First Instance dismissed Gorgiev's claim, finding that the Ministry lacked the requisite capacity to be sued for the damage caused by R. D., who, being a police reservist, was regarded a State official. The Court established the following: R. D. had been on duty in a police station in Skopje between 7.30 p.m. on 5 January 2002 and 7.30 a.m. on 6 January 2002; R. D. had been assigned to stand guard between midnight and 1 a.m. and between 6 a.m. and 7 a.m. on 6 January 2002; After 1 a.m. on 6 January 2002, instead of returning to the police station, R.D. had gone to the bar on his own initiative, without informing his superior or the latter's replacement; R. D. had been in uniform and had been carrying his service gun; in the bar, in the presence of other customers and under an influence of alcohol, R. D. had pulled the gun out and shot Gorgiev, who had been in front of him at a distance of about 1.5 metres.

Despite the fact that the Court found that Gorgiev had suffered damage as a result of R. D.'s action, it noted that the State can be held responsible only if the damage is caused in the course of or in connection with the performance of the official duties. The Court's arguments were that the damage must be caused by an official in the performance of his/her duties and has to result from an unlawful action, also the damage may be caused outside official duties, but there must be a

causal link with the performance of the duty or the duty itself. Further, the Court concluded that R. D. was not in the bar in an official capacity, and the damage was not caused in connection with the performance of the Ministry's duties, even though it was caused at a time when R. D. was supposed to be on duty (R. D. was not acting in an official capacity but as a private person, despite the fact that it was within working hours), which implied that R. D. was responsible for the action taken and the damage caused. The Court noted that there was no causal link between R. D.'s action and his duty, and the fact that R. D. was in uniform and used his service gun did not mean, in itself, that he was acting in an official capacity (R. D. did not use the gun in connection with the performance of his duties, but as a customer in the bar). In addition, the Court mentioned that at the time when the damage occurred, R. D., as a police reservist, was an adult and trained to use a gun, indicating the Ministry, as an owner of the gun, was relieved, from responsibility because the damage occurred solely as a result of an unforeseeable action by its agent whose consequences could neither have been prevented nor removed. Once again, the Court concluded that Gorgiev was entitled to claim compensation from R. D. under the Obligations Act.

Even though Gorgiev appealed such judgement, it was dismissed by the Skopje Court of Appeal on 27 April 2004. The Court found no grounds to depart from the lower court's finding, i.e. the Ministry was not responsible (R. D.'s actions in the bar were not related to his official duties as a police officer; When R. D. shot Gorgiev, he had not been acting as a police officer and had not been performing official duties). In addition, the Court confirmed the Gorgiev's entitlement to claim compensation from R. D. Finally, Gorgiev on 21 July 2004 lodged an appeal on points of law to the Supreme Court, arguing that the Court of Appeal had not addressed his arguments regarding the Ministry's responsibility under the Employment Act. However, reiterating the reasons given by the lower courts, the Supreme Court dismissed the appeal on 31 May 2006.

ECHR'S RULING

The ECHR noted that the force used against Gorgiev was not in the event lethal, and it pointed out that this did not exclude an examination of his complaints under the Article 2. The Government objected that Gorgiev had not exhausted all effective remedies (Gorgiev had not claimed compensation from R. D., despite the fact that he had been advised to do so by the first and second instance courts), and gave several arguments to supports its submissions (R. D. had not intended to kill Gorgiev; in view of the seriousness of the injuries sustained, Gorgiev had been subjected to ill-treatment capable of falling within Article 3, but the State bore no responsibility under the substantive limb of that Article; the State responsibility ended with the criminal proceedings by which R. D. had been convicted and punished; the civil courts, at three levels, had dismissed Gorgiev's claim, finding that the State could not be held responsible given the absence of a causal link

between R. D.'s action and his official duties; at the critical time R. D. had left his post during his working hours, without the consent of his superiors; the incident had happened after R. D. had carried out his official duty - to stand guard; in the bar R. D. had not performed any official duty in the course of or in connection with his work; R. D. had acted as a private person).

Analysing the arguments given by Gorgiev and the Government, the ECHR concluded that Article 2 can be applicable, since Gorgiev was a victim of conduct by which his life was put at risk, even though, he survived (irrespective of whether or not R. D. actually intended to kill him). Also, the ECHR observed that Article 2 does not solely concern deaths resulting from the use of force by State's agents but also, in the first sentence of the Paragraph 1, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction. Based on the ECHR point of view, despite the fact that the positive obligation imposes several duties to the states, it should not be interpreted in such way as not to impose an excessive burden on the authorities, bearing in mind, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. In order to justify its ruling, the ECHR reiterated its case-law by pointing to other relevant judgements. For example, as noted in *Makaratzis v. Greece* (ECHR, 2004), a primary duty on the State is to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Also, the ECHR stressed that the police officers should not be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this respect. For the ECHR, as mentioned in *Ciechońska v. Poland* (ECHR, 2011), the State's duty to safeguard the right to life must also be considered to involve the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. Further, bearing in mind the difficulties in policing modern societies, observed by the ECHR in *Keenan v. the United Kingdom* (ECHR, 2001), the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from

the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

Having in mind the above, the ECHR assessed that the fact that Gorgiev did not seek compensation from R. D. was not decisive, since the object of his claim, as well as of his application before the ECHR, was to establish the State's responsibility as such. Therefore, the ECHR dismissed the Government's objection of non-exhaustion. Finally, the ECHR ruled that there has been a violation of the Convection's Article 2 (under its substantive limb), i.e. the State can be held responsible for the unlawful actions of its agent taken outside his official duties, based on the following findings:

- The incident occurred during R. D.'s working hours - R. D. was supposed to be on duty in the police station; R. D. left his place of duty without the authorisation of his superiors;
- R. D. was intoxicated - R. D.'s dangerous behaviour put Gorgiev's life at risk;
- R. D. was in uniform when he shot Gorgiev - R. D. was perceived by the public as a law-enforcement agent;
- R. D. shot Gorgiev using his service gun - the gun was provided to R. D. by the authorities.

The ECHR underlined that the State has to put in place and rigorously apply a system of adequate and effective safeguards designed to prevent its agents, in particular temporary mobilised reservists, from making improper use of service weapons provided to them in the context of their official duties. In essence, the Government have not informed the ECHR of any regulations in force in this respect. Consequently, the ECHR pointed out to the Internal Affairs Act, which required that State agents performed their duties "at all times, whether on or off duty" (the permanent engagement of State agents as police officers required that they always carry their service weapon in order to exercise their duties). The ECHR also noted that the States are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria. In particular, when equipping police forces with firearms, not only must the necessary technical training be given, but the selection of agents allowed to carry such firearms must also be subject to particular scrutiny. Finally, the Government have not informed the ECHR whether any assessment was made by the national authorities as to whether R. D. was fit to be recruited and equipped with a weapon. As mentioned in the press release, the ECHR found in particular that the Government had neither provided information on regulations for the prevention of abuse of official weapons by its agents nor with information as to whether the police reservist had been assessed to ensure that he was fit to be recruited and equipped with a weapon (ECHR, 2012b). Therefore, the ECHR considered that the harmful action taken by R. D. in the bar must be imputable to the respondent State, and obliged the State to pay for the

pecuniary damage (3,390 EUR) and non-pecuniary damage (12,000 EUR), plus any tax that may be chargeable.

CONCLUSION

The Convention's Article 2 protects the right to life. As noted by Murdoch & Roche (2013: 25), it comprises three main requirements: (i) a prohibition on unlawful killing by State agents; (ii) a duty to investigate suspicious deaths; and (iii) a positive obligation, in certain circumstances, to take steps to prevent an avoidable loss of life. This implies that the States must take appropriate steps to safeguard the lives of those within their jurisdiction, and as mentioned in the ECHR's case-law, must put in place a legislative and administrative framework designed to provide effective prevention; must display the utmost diligence and define the limited circumstances in which law enforcement officials may use firearms; must take reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. In the same line is the obligation for a legal and administrative framework to be defined that will limit the circumstances in which law-enforcement officials may use force and firearms, followed by high professional standards to be set within their law-enforcement systems and to be ensured the persons serving in these systems to meet the requisite criteria. Finally, the selection of agents allowed to carry firearms must also be subject to particular scrutiny. Contrary to all the above said, these obligations were not fulfilled in the incident in which Gorgiev sustained serious bodily injury with life-threatening damage and lasting consequences. Therefore, this incident should be seen as negative example that must not be repeated.

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LEGISLATIVE-TECHNICS' CHARACTERISTICS OF CRIMINAL OFFENCE OF ILL-TREATMENT AND TORTURE IN THE REPUBLIC OF SERBIA[1]

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Abstract: In the paper author deals with the criminal law aspect of the protection of the absolute prohibition of torture, inhuman and degrading treatment and punishment, and the manner and modalities of criminal law protection against ill-treatment and torture in the legislation of the Republic of Serbia, in general.

The incrimination of ill-treatment and torture is envisaged within the group of criminal offenses against fundamental freedoms and rights of men and citizens and represents the *ultima ratio* form of state reaction to the violation and threatening of one of the most important civilization heritage. In addition to analyzing the characteristics of the criminal offense and the latest changes regarding the penalties for this offense, the topic of this paper is the nomotechniques - the legislative techniques characteristics that the legislator has chosen in formulating the legal description of this criminal offense. The author will try to answer to several groups of questions regarding the temporal dimension, the development of the legal description structure of this offense, the reasons for predicting two principally separate offenses within a single criminal offense, the extended notion of torture in relation to the relevant international documents.

In conclusion, it is stated that the analyzed offense is in line with international standards and that any modifications, can be based *pro futuro* on differently recognized dominant protection object to which the violation and endangerment of this action are directed.

Keywords: Prohibition of abuse, inhuman and degrading treatment and punishment, criminal offense of ill-treatment and torture, legislative technics characteristics.

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INTRODUCTION

The criminal law system of norms as part of the domestic, public law, regulates the relationship between the state, on the one hand and individual or legal persons on the other, in relation to the commission of the offense and the subsequent imposition of an appropriate sanction to the perpetrator. Criminal law is based on the idea of achieving the protection of society from crime. A modern democratic state, based on the basic ideas of legality and the rule of law, entails a complex legal system which, through stability, certainty and coherence, should ensure the prerogatives of democracy.

This implies the need for the criminal justice system of standards, in which even its basic units, are capable to create and apply the standards by themselves, in accordance with some general, proven legal and dogmatic principles, which provide them with quality and a high degree of adaptability on a *pro futuro* basis.

Therefore, the issues of the quality and manner of construction of criminal law norms appear as a previous legal issue in relation to their later application, since the application of law is deeply and inseparably linked to the norm itself, in the legislative - technical sense, i.e. in relation to its logical and semantic content.

The author will try to determine the importance of the nomotechnical approach chosen when drafting the criminal law norm in relation to its application.

The author will also discuss the compliance of the analyzed norm with the normative regulation of the same legal relationship at the international level, on the example of a specific criminal offense, ill-treatment and torture, from Art. 137 of the Criminal Code of Serbia. She endeavors to determine this norm in relation to its addressee, the way it is formulated, the degree of determination, its creator and the validity, in order to connect it with other norms of the Criminal Code of Serbia and the legal system in general, all listed above in order to assess its quality in the context of the standards of modern legislative procedure, the facilitation of implementation and the achievement of its basic purpose, which is to protect society from crime.

CRIMINAL LAW AS AN INSTRUMENT OF STATE RESPONSE TO ILL-TREATMENT AND TORTURE AND ANALYSIS OF ITS BASIC CHARACTERISTICS

The criminal law of a liberal, democratically oriented state is based on five basic principles — legality, legitimacy, guilt, humanity, and proportionality and fairness. Although criminal law, as a whole, is given the prerogative of democracy, only through their complementary relationship, some of them are of particular importance when it comes to the protection of certain basic human rights and freedoms.

In this context, the constitutional principle of the prohibition of torture, ill-treatment, degrading punishment and treatment, in Art. 25 of the Constitution of the Republic of Serbia[3], has its basis both in the principle of legitimacy and in the principle of humanity. As Art. 3 of the Criminal Code of Serbia (CC) [4] implicitly stipulates that the basis and limits of criminal coercion are the protection of man and other social values necessary for the realization of these rights, it is clear that criminal law, as an instrument of state response to crime, is primarily humanistic oriented.

This implies that the basic aim and function of criminal law is the protection of human rights and the effort, on the other hand, to reduce as much as possible threats and violations of human rights through criminal sanctions as necessary repressive measures, both victims of the crime and the perpetrator.

The criminal law is a mechanism for the protection of the basic constitutionally proclaimed values, but also a corrective of *ius puniendi,* which leads to the achievement of the desired standards of protection of society from crime, with minimal limitation of basic freedoms and rights of man and citizen.

The prohibition of ill-treatment and torture, as a constitutional standard, is one of the issues that must be specified in criminal law, through an incriminatory expression, which provides, in its dispositive part, an unlawful form of abstract wrong, and in the sanction section provides a range of punishment, which presupposes a proportionate and just ethical reprehension, which society has the right to impose on an individual, who can be found guilty of a specific wrong.

The criminal offense of Ill-treatment and Torture, under Art. 137 of the CC, is systematized in *Chapter XIV of the Criminal Offenses against the Freedoms and Rights of Man and Citizen,* and the legal description provides, in the first paragraph, that whoever abuses another or treats him in a manner that offends human dignity will be punished by imprisonment for up to one year. The second paragraph provides that whoever cause great pain or grievous suffering to another, by force, threat or other illicit means, with the aim of obtaining recognition, testimony or other notice from that person or from a third party or intimidating that or a third party to unlawfully punish, or whoever does so to another initiative based on any form of discrimination, will serve a term of imprisonment of six months to five years. The third paragraph provides qualified form of this offense. It implies more severe punishment in cases the offense is committed by an official in the performance of the service, with different criminal ranges depending on which of the first two forms of the offense is committed by an official, with a

3 The principle of inviolability of physical and mental integrity stipulates that no one may be subjected to torture, inhuman or degrading treatment or punishment, or subjected to medical and scientific trials without his free consent, "The Official Gazette of the Republic of Serbia", br.98/2006.

4 "The Official Gazette of the Republic of Serbia", br.85/2005,88/2005-ispr.107/2005 ispr.72/2009,111/2009,121/2012,104/2013,108/2014 i 94/2016.

sentence of three months to three years for the offense referred to in paragraph 1. and imprisonment of one to eight years for the offense referred to in paragraph 2.[5]

This offense as a direct object of protection in the first paragraph has human dignity, as an internationally guaranteed category, which implies the honor and reputation of a person, that is, the right to respect and appropriate ethical treatment of an individual from birth to throughout life, while the second paragraph implies protection physical and physical integrity.

A protective object that is violated or endangered by the commission of this criminal offense are fundamental freedoms and rights of a person and a citizen- personal rights and freedoms, rights related to a person or a personal sphere. [6]

In a legislative-technical sense, this incrimination is complex. It has two basic forms and one qualified form. Its structure is particularly interesting because of the existence of two separate criminal offenses within the same article, which could in principle be systematized in different heads of criminal offenses, within a separate section of the Criminal Code, [7] since these are multipurpose offenses with plurality of protective object, [8] in which only the systematization criterion defined their prediction within the same head of crimes, even within the same criminal law norm, first because of the significant similarities. [9]

Therefore, even before the analysis of the characteristics of the criminal offense under Art. 137 starts, it may raise the principal problematic question of whether these two paragraphs of incrimination could be separated, not only as two separate offenses, but also as normative expressions from different groups of offenses, which differ primarily according to the group protection object.

In relation to the aforementioned, it should be emphasized that ill-treatment existed earlier as a criminal offense in national legislation under the different

5 The latest amendments to the CC have tightened the sanction provided for in paragraph three, such that in Art. 137, paragraph 3, the words "one to eight" are replaced by the words "two to ten". *The Law on Changes and Amendments of the Criminal Code,* "The Official Gazette of the Republic of Serbia", br 35/2019.

6 **Z. Stojanović,** *A Comment on the Criminal Code*, The Official Gazette, Beograd,2016, p. 466.

7 Ill-treatment in the group against honor and reputation, and torture in the group against basic freedoms and rights of man and citizen, or else in the group against humanity and international law, since this is an *ius cogens* norm and a criminal offense is from the category *mala in se.* The classification of this offense in the group of criminal offenses that protect internationally accepted values inherent to man in the context of civilizational norms and humanity, in principle, could be considered and labeled legitimate. The issues of systematization criteria and the predominance of the importance of the object to which criminal protection is given priority are from the category of general criminal policy and orientation of the entire legal text.

8 **Z. Stojanović, O. Perić,** *Krivično pravo – posebni deo,* Pravna knjiga, Beograd 2011, p. 3.

9 In connection with the above, different understandings have Lj. Lazarevic and Z. Stojanović. Lazarević believes that in the relation of paragraf 1 and paragraf 2 a word is about the ratio of the lighter and the qualified form of the same criminal offense. Contrary, Stojanovic considers that these are two separate offenses, which are covered by the same legal article only for certain nomotechnical reasons and the chosen systematization criterion. **Lj. Lazarević,** *A Comment of the Criminal Code,* Faculty of Law of the Union University, 2015, p. 528-529 and **Z. Stojanović**, *op.cit.,* p.485.

name of Malpractice in Service, Art.66 Criminal Code of Republic of Serbia.[10] Torture as a new criminal offense transposed into national law as a result of the need to align the corpus of national criminal law provisions with relevant, binding international instruments ratified by our country.[11] Therefore, not only that one criminal offense, in the normative sense, already existed in the previous criminal laws, and another was not, [12] but it was introduced later as a consequence of the development of criminal law and its standards, but the object of protection itself is different. This could be viewed, *pro future,* as a reason for separating ill-treatment and torture into two separate incriminations, viewed from the angle of their *ratio legis.* [13]

Objective features of the criminal offense of abuse under para. Article 137 (1) consists in the taking of an act of abuse or in any other way that offends human dignity.[14] The term abuse, in the broadest sense, refers to the infliction of physical and mental suffering of lesser intensity, such as slapping, pouring some fluid, pulling on the nose, ears, pushing, and the like, but without causing even slight bodily harm. The notion of acting in a way that offends human dignity is a general clause whose existence will be assessed by the court in each case, appreciating it from the aspect of objective criteria, which can indicate whether certain actions, by quality, could cause a citizen to feel that their dignity was hurt, but not appreciating it subjectively, as the feeling of the passive subject that their dignity was hurt.[15] As an example of such activities, certain actions such as leaving the other person unjustifiably waiting, for an unreasonable period of time, for the exercise of a right, ridicule, non-discussion, etc.[16]

The subjective characteristics of an offense imply intent, and its perpetrator can be any person, which is different from the previous solution, which was *delicta propria.*

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10 This criminal offense was systematized within a group of offenses against the freedoms and rights of man and citizen, and could have been made by an official in the exercise of official duty by abusing, insulting or at all acting in a manner that offended human dignity. This offense was punishable by a term of imprisonment of three months to three years. **D. Jovašević,** *Leksikon krivičnog prava,* Beograd, 2002, p. 148-149.

11 The 1987 United Nations Convention against Torture and Other Inhuman or Degrading Treatment or Punishment and the 1987 Council of Europe Convention on the Prevention of Torture, Inhuman or Degrading Treatment or Punishment.

12 So the legal protection of certain values was only partially covered by some other incriminations.

13 **D. Kolarić,** „Mučenje, nečovečno i ponižavajuće postupanje i Krivični zakonik Srbije", *Pravni život,*9/2017, p. 702.

14 **M. Žarković , I. Bodrožić , N. Kovačević,** „Normative regulation of prohibition of ill-treatment in the criminal law framework of the Republic of Serbia", in: *Towards a better future: Democracy, Eu integration and criminal justice,* Conference proceedings of the international scientific conference, Faculty of Law, „St. Kliment Ohridski", University of Bitola, Bitola, 2019, p. 169.

15 **Z. Stojanović, N. Delić,** *Krivično pravo – posebni deo,* Pravni fakultet Univerziteta u Beogradu i Pravna knjiga, Beograd, 2013, p. 49.

16 **Lj. Lazarević,** *op. cit.,* p.529.

In paragraph two of Art. 137, torture is incriminated. It involves the infliction of great pain and grievous suffering, which may be physical or mental, for the purpose of achieving specifically the objectives listed in the Code, namely: obtaining confession, testimony or other information, intimidation or unlawful punishment. These actions must be undertaken in a specific manner which involves the use of force, threat or other authorized means, or alternatively, the activities mentioned above from other initiatives, which must be based on some form of discrimination.

The subjective character of being a criminal offense involves, in addition to intent, the attainment of a specific goal. It is an intention that directs the intent toward the achievement of the stated purpose. As with all offenses that contain intent as a subjective feature of the crime, its realization is irrelevant from the point of view of the existence of the offense, but the offense alone will not exist unless the intent is proven. Alternatively, in order to achieve the above goals, it is envisaged to take actions from certain motives, such as hatred, malice, cunning, which are based on some form of discrimination, such as religious, racial, national, political and other.

As relevant international documents link torture to the characteristic of officials as perpetrators, it can be stated that the legislator in the Republic of Serbia has enhanced criminal justice protection for human dignity and integrity of body and mental integrity, providing for punishment for abuse and torture and when undertaken by any which person in the capacity of the executor.

Both criminal offenses, or both basic forms of this criminal offense, shall receive their qualified form if the criminal offense referred to in paragraphs 1 and 2 is committed by an official in the exercise of his or her service. **It is an unlawful** crime against official duty, which implies that an act can be committed by any person, and becomes an offense against official duty only when it is performed by an official and is not contained in the head against official duty, but in the head against liberties and human and citizen rights. The term official is defined in Art. 112. 3 and means: a person who performs official duties in a state body; an elected, appointed or appointed person in a public authority, local self-government body or a person who permanently or occasionally performs official duties or official functions in those bodies; notary public, executor, arbitrator, as well as a person in an institution, enterprise or other entity entrusted with exercising public authority, which decides on the rights, obligations or interests of natural or legal persons or on the public interest, as well as a person effectively entrusted with exercising certain official duties and jobs and a military person. The term in the performance of the service implies the act of an official within the scope of his authority.

LEGISLATIVE TECHNICS' CHARACTERISTICS OF CRIMINAL OFFENSE OF ILL-TREATMENT AND TORTURE

After analyzing the characteristics of the criminal offense of abuse and torture, an analysis of its legislative technics characteristics can be carried out in order to provide an answer regarding the ways and modalities of constructing the standard under consideration. By its legal nature, this article is a criminal law regulation and as such has a specific structure. It consists of two parts, one of which contains a provision of an offense, that is, a commandment, a ban or an expectation, which society places before an individual, abstractly observed, or a dispositive part of a criminal law regulation, while the other contains a provision on the punishment for that crime, that is, sanction.

Depending on how the disposition is determined, they can be divided into simple and complex ones, and the dispositions can then be divided into ordinary, descriptive, pointing and blank ones, depending on their formulations. [17] In relation to the above, the incrimination under Art. 137 of the CC constitutes a complex incrimination composed of two separate simple incriminations, both of which are plain and descriptive in content.

Incrimination, nomotechnically, is in accordance with basic criminal law principles, most notably the principle of humanity, which is manifested in criminal law in such a way that the protection of fundamental human freedoms and rights is at the heart of criminal law, since its primary function is the protection of society from crime. On the other hand, there is a guarantee function, which is precisely a defense, restriction and corrective to the state's limited repression in exercising the right to punishment. The incrimination under Art. 137 of the Criminal Code represents a coherent whole with other criminal offenses in the group of criminal offenses against the freedoms and rights of man and citizen, and has its closest connection with the criminal offense under Art. 136 CC Extortion of testimony. This criminal offense provides that a sentence of imprisonment for a term between three months and five years will be imposed on an official who uses force or threat or other illicit means or illicit means in order to deliver a statement from a witness, expert witness or other person, while according to Art. 2 of the same article, the perpetrator shall be punished by imprisonment for a term between two and ten years if the extortion of the statement or statement was

17 Ordinary dispositions are those for which the offense is defined by a term whose content is considered to be known, so its description is not made. Descriptive dispositions contain the definition of an offense by describing in the disposition what the offense consists of. Referral dispositions are those in which the description of the act is partly used and the formulation of a term given in some other provisions of the Criminal Code and blank dispositions imply that they provide a description of the offense, but that some element of the term of this offense is not specified, but *instead it must determine on the basis of other legal provisions to which such dispositions refer.* **Đ. Đorđević,** *Krivično pravo – posebni deo,* Kriminalističko – policijska akademija, Beograd, 2014, p. 2 -3.

accompanied by grave violence or if the grave consequence resulted in particularly grave consequences for the defendant in the criminal proceedings.[18]

What can be observed is that only in the case of criminal offense under Art. 137 the perpetrator of the first and second forms does not have the capacity of an official, while this property implies more severe punishment and a more severe form. It should be noted that this form of norm, which essentially extends the criminal zone, since it is not limited to an official as a potential perpetrator, is something that provokes criticism by the United Nations Committee against Torture and Inhuman or Degrading Treatment or Punishment (CAT), which requires States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) to make a clear distinction between acts of ill-treatment and torture taken by officials from those who study not persons who do not have this status. Here, the author emphasizes the importance of a good knowledge of nomotechnical rules, and points out that the extension of the scope of application of the norm, in criminal law, by extending the criminal zone to a larger circle of persons, can in no way be interpreted as a reflection of the inconsistency of national legislation with the relevant international document, but only as the freedom and right of the national legislator to give the norm greater latitude, so as to first reduce the number of incriminating expressions of the national legislator, in an era of criminal expansionism, which takes not only national character but the supranational level also. Therefore, we consider that the objection does not stand, since the state has the possibility to prosecute individuals, without the status of an official on the basis of the same incriminating expression, by no means gives the norm less importance, but rather shows that the Republic of Serbia is beyond the required set a criminal zone.[19]

In the context of the certainty of disposition and sanction in the criminal offense of ill-treatment and torture, the author states that the dispositive part of the regulations is defined in a clear and precise manner, and that a high degree of certainty of the content is fulfilled. Conduct that is punishable is defined in such a way that it leaves room for the subject to oblige himself to choose whether to act in accordance with the disposition, which is consistent with both the principle of

18 CAT remains concerned about the inconsistency of Art. 136 and 137 c. 2 and 3 of the CC relating to acts of torture and the fact that they are not harmonized with all elements of the crime of torture, as defined in Art. 1 of the Convention, and considers that there is an overlap between the two offenses. **N. Kovačević, R. Dragićević Dičić, G. Jekić Bradajić, J. Tintor,** *Zabrana zlostavljanja,* Beogradski centar za ljudska prava, Beograd, 2017, p. 67.
Although these kinds of remarks refer to the simplification of the system of criminal law norms of the republican legislation and as such they are good in dogmatic terms, nevertheless there are differences in the characteristics of the beings of the two criminal offenses, which justify their independent existence. This does not mean that the *de lege ferenda* could not consider the separation of the criminal offenses of abuse and torture into two separate criminal offenses, and in this context the potential merger or prediction of the acts of torture and extortion of testimony within a new renumbered and reformulated norm.
19 States similarly: D. Kolarić, *op. cit.,* p .706.

legality and the general rules for constructing disposition, as the central imperative part of the legal norms.[20]

Considering the fundamental values of the legal system, which are given their expression through the principles of law, it can be stated that the analyzed criminalization is in a qualitative way connected with other parts of the system, which means the principle of coherence and the principle of completeness and the principle of certainty are respected.[21]

According to the degree of generality, [22] the norms can be divided into abstract and concrete, and in the context of the mentioned division the criminal law norm referred to in Art. 137 has to be designated as a concrete norm, since it can be directly applied.

According to the scope and range of entities on which this norm can be applied, norms can be divided into general and individual,[23] so criminal offense of ill-treatment and torture is classified as general norm, because it is adaptable to the application of a potentially indefinite number of delinquent situations, which corresponds to the degree of abstract injustice which must be attained in criminal law regulations in a Special Part of CC.

The division of norms according to the way, the order in the operative part of the regulations is formulated, divides them into ordering, prohibiting and authoritative, so in the context of such classification, the offense of ill-treatment and torture can be defined as a prohibiting norm, since it specifies the constitutional prohibition of abuse, torture and inhuman and degrading treatment and punishment.

According to temporal validity, norms can be norms with definite or indefinite validity, as well as norms with retroactive, current and deferred validity,[24] so the norm from Art. 137 of the CC is considered the norm for an indefinite period of validity.

Finally, we emphasize that the nomotechnics or the linguistic-semantic structure of the norm of the criminal offense, has been well placed, in compliance with both the basic criminal law principles and the basic standards of legal norm construction, and that only in cooperation with relevant international bodies, non-governmental organizations, law enforcement and ultimately the legislator, may be considered the justification of further modification of this provision in order to put it into practice and to improve the quality of nomotechnical expressions, from the dogmatic point of view.

Adherence to modern nomotechnical rules on language clarity, overlapping of normative solutions, avoiding incoherence and inconsistency of a number of

20 About the legal norm and its structure in more detail: **R. Zekavica, M. Živković,** *Uvod u pravo,* Kriminalističko – policijska akademija, Beograd,2014, p. 241- 256.
21 **D. Mitrović,** *Uvod u pravo,* Pravni fakultet Univerziteta u Beogradu, Beograd,2011, p. 189.
22 ***Ibid,*** p. 188.
23 ***Ibid.***
24 ***Ibid.***

norms within the legal system are standards that a modern legislator must respect in order to remain true to the cultural and legal traditions of his country.

On the other hand, the legislator should harmonize its normative framing of the same phenomena with relevant international instruments, within a broader process of harmonization of provisions of national legislations at regional and non-national level.[25]

CONCLUDING CONSIDERATIONS

In the end, we consider that the importance of incriminating ill-treatment and torture as a separate criminal offense in the group of criminal offenses against human and civil liberties and rights is a priority in concretizing and strengthening the constitutional principle. It represents an unequivocal reflection of the connection and linking of criminal provisions with constitutional postulates, that is the result of harmonization of national corpus of criminal law norms with ratified relevant international regulations in this field and it should be an example of continuous improvement of criminal law in accordance with *maximus ius criminale semper reformanum est.* Aforementioned does not, in any way, means that in some future amendments to the criminal legislation *de lege ferenda* could not be considered separation into separate incriminations, which would further strengthen criminal repression and a preventive effect on the counteraction to ill-treatment and torture.

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SEARCH AND SEIZURE OF LAWYER'S COMPUTER

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Abstract: A lawyer's duty of professional secrecy is the cornerstone of confidence relationship. The search and seizure at a lawyer's office for the purpose of criminal procedure may have repercussions not only on the interest of clients, but on the proper administration of justice. For this reason, law should protect the lawyer's duty of professional secrecy by preventing abuse or arbitrariness. The risk of impinging on this duty is particularly present when lawyer's computer, containing massive volume of electronic data, is being searched, because some of the stored files may be in connection with criminal procedure, while others may be genuinely irrelevant or contain information subject to professional secrecy. Also, some additional procedural safeguards must be taken into consideration when ordering and executing this investigative measure. The failure to comply with those safeguards would render the search of computer and seizure of the electronic data illegal or disproportionate. The author considers these legally controversial questions.

Keywords: criminal procedure, search and seizure, computer, lawyer.

INTRODUCTION

Lawyers play a significant role in democratic society based on the rule of law, which is to protect the interests of the parties, and they may not perform this task if they cannot guarantee to those, whose interests they protect, their correspondence will remain confidential. However, based on these presumptions, the search and seizure at a lawyer's office for the purpose of criminal procedure should not be prohibited, because, when a lawyer is a suspect of criminal offence or even a third party, relevant items or data of evidential importance may be found in his office. As being needed in both of these scenarios, this measure should be legally allowed and regulated by strict and considerate norms, in order to take into account the aforementioned interests.

The guaranty of secrecy of correspondence between individuals provides even stronger protection of communication between lawyers and parties. The risk of impinging on lawyer's duty of professional secrecy is particularly present when lawyer's computer, containing massive volume of electronic data is being

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searched, because some of the stored files may be in connection with criminal procedure, while others may be genuinely irrelevant or contain information subject to professional secrecy. As the search and seizure of lawyers' computer and the data stored within bear a great potential risk for lawyer's duty on professional secrecy and at the same time may result in information valuable for the criminal procedure, the question whether these investigative measures are allowed and to what extent cannot be answered without in-depth analysis of wording of law on criminal procedure in combination with the statutes regulating the position of lawyers, while differentiating the situation when the lawyer is a suspect of criminal offence and when he is only a third party.

When accessing electronic data carriers, a search can in fact come close to a targeted search for findings by chance. In case of a computer, it can be assumed that the stored data, in addition to the potentially evidence-relevant information, include considerable amounts of evidence irrelevant to the proceedings. In case of search of lawyer's computer, this may lead to a situation in which not only the data of the non-accused professionals may be affected, but also the data of clients who are in no connection to the procedural charge. Thus, it should be born in mind that some techniques and methods of digital forensics allow a differentiated search, which can often be matched with the person concerned, for example, to avoid that, when searching a law firm's computer, client files that have nothing to do with the allegation are seized only because they are on the same hard drive as for the procedure relevant data (Pisarić, 2019: 199). For that reason, relevant provisions in German law and several cases before the European Court of Human Rights are analysed.

SEARCH AND SEIZURE OF LAWYER'S COMPUTER IN GERMANY

In Germany the search serves to find and capture the perpetrator, or to find traces and objects that are temporarily confiscated because they may have the significance of evidence in criminal proceedings. German Code of Criminal Procedure (StPO) distinguishes two types of search: 1) the search of the defendant based on §102, and 2) the search of another person based on §103. The search of the law office for the purposes of criminal proceedings can be determined on both basis. However, it is to be carried out with certain legal restrictions provided by the StPO that serve to protect the trust relationship between the lawyer and the party. Some additional criteria have been created in case-law in order to justify entering this protected sphere, within the principle of proportionality. Special protection requires the most careful examination of the conditions of intervention and the principle of proportionality when ordering and executing the search of a law firm and seizure of objects found on that occasion, meaning that the aim of the search must be in a reasonable proportion to the (concrete) seriousness of the criminal offense and to the degree of suspicion that the offense is com-

mitted (Meyer-Goßner&Schmitt, 2018:491). This is also related to the potential evidential significance of the objects which are presumed to be found, as well as the degree of probability of their disclosure (Meyer-Goßner&Schmitt, 2018:494).

The seizure and confiscation of data carriers and data stored thereon is allowed, although not expressly regulated by law: data are not physical objects *per se*, nevertheless, they can be seized and confiscated according to §94, which regulates the seizure of objects of evidential significance. Investigation in cyber space is governed by the same principles: both the seizure and confiscation of e-mails at the sender or recipient computer as well as the seizure and seizure of e-mails temporarily or permanently stored on the mail server of a provider can be based on § 94 (Pisarić, 2015: 222). However, when seizing data carriers and data stored thereon, these measures must be viewed as successful for the purpose of criminal procedure, necessary (which is not the case when other less restrictive means are available) and proportional with the seriousness of the offense and the strength of the suspicion (BverfG, Beschluss von 31.8.2010 – 2 BvR 223/10).

The exclusion of some categories of persons from the duty to testify on the basis of §53 (professional secrecy holders) results in prohibition of the seizure of: 1) communication between the defendant and the defence attorney, or the lawyer; 2) the documents drawn up by the defence attorney, or the lawyer, on other circumstances to which the right relates not to testify relates; 3) other objects to which the lawyer's right not to testify refers (§97).

The German Constitutional Court dealt on several occasions with the question of how these investigative interventions directly affect the trust relationship between the professionals and their clients and what the conditions are for the admissibility of comprehensive data access for the purpose of criminal proceedings (BVerfG, Beschluss von 12. 4. 2005 - 2 BvR 1027/02).

When searching a computer, especially the lawyer's one, there is always a question of so-called findings by chance. The StPO in §108 contains the provision on *Zufallsfunde,* which ensures the usability of any evidence found at the place of search for offenses other than those which gave rise to the search itself. Although the data carrier is treated as the object of search and seizure, it is questionable if the procedural intervention regime is tailored to them, because of the considerable information content on data carrier and the fact that, as a rule, only certain data stored thereon are of evidential importance for the criminal procedure. That is why the view that the database as a whole is evidence, regardless of whether there are also other data in addition to the ultimately evidence-relevant, goes too far, because only potentially relevant evidence may be confiscated or otherwise ensured (LG Köln (12. Große Strafkammer), Beschluss von 11.08.1994 - 112 Qs 2/94). From the point of potential evidential significance, the scope of seizable evidence must not be drawn too narrowly, but on the other hand, unrestricted seizure even of data that is obviously without evidential significance would be disproportionate (BVerfG (1. Kammer des Zweiten Senats), Beschluss von 18. 3. 2009 - 2 BvR 1036/08). That is why the access to the entire database is not re-

quired and cannot be viewed as proportional, if securing the evidence-rich data can be achieved in a way that is less burdensome to those affected (Löwe-Rosenberg StPO, 2018: 27).

In one case, for example,[2] the first-instance court ordered the search and seizure of computers and electronic database of a law firm and a tax consultancy in the context of a preliminary investigation against one of its professionals. It was expected that the search would lead to the discovery of evidence, in particular the documents concerning the business relations of the accused persons with each other and the companies they operate with. The search order extended the authorities' right to access to various data stored on media, i.e. to make on-site copies of all data on the hard disks of the law firm's and tax consulting firm's computers. The police confiscated computers and seized data from the entire database of the firm. The lawyers objected that this access to the computer data had severely disturbed the trust relationship with their clients.

Constitutional complaint challenged the fact that the entire data of the law firm was copied and retained by the prosecution during the search and seizure, and was aimed to prevent law enforcement authorities from gaining the full access to them. The Constitutional Court found that, although the criminal procedural intervention regime basically allows the seizure and confiscation of data carriers and data stored thereon, the first-instance courts failed to recognize that the principle of proportionality is of particular importance in securing the data medium and all the data on it.

The principle of proportionality can be taken into account in the search, seizure and confiscation of data media and the data on them in a variety of ways. If potential information is contained on the data carriers affected by the measure, it must be checked whether it is necessary to secure the data medium and all data on it. Permanent access to the entire database is not required if the assurance of only the evidence-relevant data can be achieved in a different way. The extraction of over-the-top and confidential information that is meaningless for the process must be avoided within the limits of what is justifiable. Insofar as it is possible to differentiate the data according to their potential procedural relevance, the possibility should be examined of a separation of the potentially significant from the rest of the data. In addition to the creation of a (partial) copy with regard to the process-relevant data, consideration is given to the deletion of the data irrelevant. Also, the seizure of the entire database violated the right to informational self-determination of clients, because there are technical possibilities for an automatic processing of the collected data, and the possibility of unrestricted access to the database by law enforcement authorities could jeopardize the clients' right to confidential communication, especially when no connection between the mandate and the accused under any circumstances can be determined (BVerfG, Beschluß von 17. 7. 2002 - 2 BvR 1027/02).

2 BVerfG, Beschluß von 17. 7. 2002 - 2 BvR 1027/02.

SEARCH AND SEIZURE OF LAWYER'S COMPUTER IN CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

In several cases before the Court applicants complained in respect of the search of lawyer's computer and seizure of stored data, which represent a serious interference with the right guaranteed by Article 8 of the European Convention on Human Rights.

In the case of *Petri Sallinen and others v. Finland*[3] two searches of the law office were ordered: the first during police investigation against the lawyer's clients X and Y, in which he was considered as a witness, and the second during investigation against him, as a co-suspect of crime of X and Y. Upon the searches, X and Y were charged, but no charges were pressed against the lawyer.

In the course of search, the police perused all of the lawyer's client files, examined all floppy disks and searched, copied and seized hard disks from one of lawyer's computers - two were copied on-site and two computers were seized for later disk-copying on police premises. Three of four hard disks were returned to the lawyer and their copies were destroyed, while a copy of one hard disk remained with the police until a final court decision on lawfulness of the seizure. Lawyer's clients requested the court to revoke the seizure of the copy of the fourth hard disk arguing that the copy was of no relevance to the pre-trial investigation concerning X and Y, since it contained material relating to their instructions to the lawyer.

The lawyer and his clients complained to the Court that the search and seizure of privileged material and retention by the police of a copy of the fourth hard disk had breached Article 8 of the Convention. The Court examined whether this interference was in accordance with the law: it found that the interference had a legal basis in the Finnish law, and that the accessibility of the law was not problematic. However, even there is a general legal basis for the measures in the Finnish law,[4] the absence of applicable regulations specifying with an appropriate degree of precision the circumstances in which privileged material could be subject to search and seizure deprived the applicants of the minimum degree of protection to which they were entitled under the rule of law. The relationship between laws read together was unclear and gave rise to diverging views on the extent of the protection afforded to privileged material in searches and seizures. Therefore, the search and seizure measures were carried out without proper legal safeguards.

3 ECHR Judgment in case of Petri Sallinen and others v. Finland (Application no. 50882/99) of 27 September 2005.

4 A document shall not be seized for evidential purposes, if it may be presumed to contain information in regard to which a person is not allowed to give evidence (chapter 4, section 2, and subsection 2 of the Coercive Measures Act). A counsel may not testify in respect of what a client has told him or her for the purpose of pleading a case (chapter 15, section 23 of the Code of Judicial Procedure). The Court found these provisions unclear, while it is not clear whether pleading a case covers only the relationship between a lawyer and his/her clients in a particular case or their relationship generally, which permits various interpretations as to the extent to which privileged material could be subject to search and seizure.

In the case of *Wieser and Bicos Beteiligungen GmbH v. Austria*[5] in investigating illegal trade in medicaments against a number of persons and companies in Italy, invoices addressed to company B had been found. Company B is owned by company A whose owner and general manager was a lawyer in Salzburg. Upon the request for legal assistance from the Italian authorities, Salzburg Regional Court issued a search warrant of both companies' offices based in the law office, in order to seize all business documents which could reveal contacts with the suspected persons and companies. One group of officers searched the law office for hard-copies of files relating to company A or company B, in the presence of the lawyer and a representative of the Bar Association. All documents were shown to them before seizure and if they objected to the immediate examination of a document, it was sealed and deposited with the regional court, as required by Article 145 of the Code of Criminal Procedure.[6] All seized and sealed documents were listed in a search report signed by the lawyer and the officers and handed over to the investigating judge, who opened them in the presence of the lawyer: some were copied and added to the file, and some were returned to the lawyer on the ground that their use would impinge on his duty of professional secrecy. At the same time, another group of officers examined the lawyer's computer and copied several files to disk. The administrator of computer system was called upon to provide some technical assistance but left after about half an hour, while the representative of the Bar Association attended that search only briefly. When terminated the search of the computer, the officers left without drawing up a search report and without informing the lawyer about the results of the search. The report drawn up later that day indicated that a complete copy of the server was not made, as the search was carried out using only the names of the companies involved and the names of the suspects in the Italian proceedings. As a result, a folder named Company B containing ninety files and a file containing one of the search items were copied, as well as retrieved, previously deleted files corresponded to the search items. These disks and printouts of files were handed over to the investigating judge.

The lawyer complained to the domestic courts, as the search of his premises and the seizure of electronic data violated his right and duty of professional secrecy under section 9 of the Lawyers Act in conjunction with Article 152 of the Code of Criminal Procedure,[7] as some officers had proceeded unobserved to examine and subsequently copy electronic data. These complaints were dismissed.

5 ECHR Judgment in case of Wieser and Bicos Beteiligungen GmbH v. Austria (Application no. 74336/01) of 16 October 2007.

6 When searching through (paper) documents steps must be taken to ensure that their content does not become known to unauthorised persons: if the owner of the documents does not want to permit their being searched, they shall be sealed and deposited with the court, and the Review Chamber must determine immediately whether they are to be examined or returned. According to case-law, these provisions apply also to the search and seizure of electronic data: if the owner of disks or hard disks on which data is stored objects to their being searched, the data carriers are to be sealed and the Review Chamber must decide whether they may be examined.

7 This article exempts lawyers from the obligation to give evidence as witnesses in respect of information given to them in the exercise of their profession. Also, in the courts' case-law it

The applicants (lawyer and company A) alleged that the search and seizure of electronic data in the context of a search of their premises violated their right under Article 8 of the Convention.

The Court found that, although the Code of Criminal Procedure does not contain specific provisions for the search and seizure of electronic data, it contains detailed provisions for the seizure of objects and specific rules for the seizure of documents, which apply to the search and seizure of electronic data, as established in the domestic courts' case-law. The measures were ordered in the context of criminal proceedings, and therefore served a legitimate aim (prevention of crime). The search warrant was based on reasonable suspicion, it limited the documents or data to be looked for in a reasonable manner and the search remained within these limits (the officers searched for documents or data containing either the word Company A or Company B or the names of any of the suspects). The question was whether they were proportionate to this aim and whether provided procedural safeguards designed to prevent any abuse or arbitrariness and to protect the lawyer's duty of professional secrecy were adequately complied with.

The Court found that the safeguards had been complied with in respect of the hardcopies of the documents seized, but not in respect of the electronic data, so the lawyer's rights were restricted.[8] As for violation of lawyer's right to professional secrecy, although he was not the counsel of company A or B, he was the counsel for numerous companies whose shares were held by the company A. The same reason for which some paper documents were returned to him by the investigating judge (as being subject to professional secrecy), had to be applied to electronic data as well, as they might contained some information subject to professional secrecy. The Court concluded that the failure to comply with these procedural safeguards made the search and seizure of the lawyer's electronic data disproportionate to the legitimate aim.

In the case of *Robathin v. Austria*[9] in course of criminal investigation against a lawyer in connection with a series of thefts and frauds, an investigating judge issued a search warrant of his law office. The lawyer, his defence counsel and a representative of the Bar Association were present. The relevant data covered by the search warrant were copied and saved on separate disks. Although the representative of the Bar Association insisted that it was technically possible, by using appropriate search criteria, to search for and copy only those files which corresponded to the criteria set out in the search warrant, the search of computer was extended to all stored data which were also copied. Following the search, a review chamber authorised the examination of all the materials, after noting that the

is established that documents which contain information subject to professional secrecy may not be seized and used in a criminal investigation.

8 The member of the Bar Association was only temporarily present during the search of the computer and did not properly exercise his supervisory function as regards the electronic data; the officers left without informing the lawyer or the representative of the Bar Association of the results of the search, and the report was not drawn up at the end of the search.

9 ECHR Judgement in case of Robathin v. Austria (Application no. 30457/06) of 3 July 2012.

data had been seized in the context of preliminary investigations and that a lawyer could not rely on his duty of professional secrecy and the attendant guarantees of Article 152 § 1 of the Code of Criminal Procedure[10] when he himself was the suspect. Ultimately the lawyer was acquitted of the offences.

The Court found that the search and seizure were in accordance with the law, pursued a legitimate aim and were carried out upon a warrant based on reasonable suspicion. However, the warrant was not reasonably limited, because it was written in very broad terms, authorizing, in a general and unlimited manner, the search and seizure of all documents, and hence, it did not provide protection against abuse or arbitrariness. Also, the Review Chamber gave only very brief and general reasons when authorising the search of all the electronic data - it did not address the question whether it would be sufficient to search only those files which contained relevant data, nor did it give any specific reasons for its finding that a search of all of the applicant's data was necessary for the investigation. Therefore, the search of all of the lawyer's electronic data was not proportionate and represents a violation of Article 8 of the Convention.

In the case of *Sérvulo & Associados - Sociedade de Advogados, Rl v. Portugal*[11] in course of investigation against several persons, including a lawyer who worked on behalf of the law firm (the applicant), on suspicion of corruption, acquisition of prohibited interests and money laundering, two warrants for searches of the law firm's computer system were issued. The search order allowed the authorities to seize stored data on the basis of a list of 35 keywords, including the names of companies and banks linked to the investigation and terms such as "financial contributions" and "funding". After the search is finished, the report was made, listing all the seized documents and data-carriers.

The Court of Appeal found that keywords were related to the investigation, that the information seized was relevant, and that there had been no flagrant breach of legal professional secrecy. The seized computer files and emails were sent back to the investigating judge, who, after viewing them in the presence of law firm's partners, a public prosecutor, a police officer and three IT experts, ordered the deletion of copy of 850 records on hard disks and DVDs, considered to be private, to be covered by professional secrecy or to have no direct bearing on the case. The original data-carriers were returned to the law firm, and the rest of 89.000 files and 29.000 e-mails were further analysed. Ultimately, the investigation was dropped.

The law firm and several lawyers complained to the ECHR, because keywords in the warrants would lead to finding of a disproportionate number of irrelevant and protected data on clients not related to the investigation.

10 This article exempts lawyers from the obligation to give evidence as witnesses in respect of information given to them in the exercise of their profession.
11 ECHR Judgement in case of Sérvulo & Associados - Sociedade de Advogados, Rl v. Portugal (Application no. 27013/10) of 3 September 2015.

The Court found that the scope of warrants were too broad, because some of the keywords enumerated in the warrants were either in general use or routinely used in a law firm specialised in financial law. However, the Court found that all the procedural safeguards against abuse, arbitrariness and breaches of legal professional secrecy in the course of search and seizure operations in law firms, provided by the Code of Criminal Procedure and the Bar Association statutes, were adequately and sufficiently applied, thus there was no violation of Article 8 of the Convention.

CONCLUSION

While professional secrecy serves to protect the special relationship between a lawyer and a client, it does not protect the lawyer himself against criminal prosecution or the measures in connection with such prosecution. However, in both cases, and even when search and seizure of lawyer's computer is carried out for the purpose of investigation of a serious crime of which the lawyer is a suspect, he should be treated differently, with regard to lawyer's general obligation of professional secrecy and confidentiality. As, at the same time, these measures represent a serious interference with private life, home and correspondence, they must be accordingly based on a law that is particularly precise and clearly determines the extent of the protection afforded to privileged material.

The search and seizure of lawyer's computer serve a legitimate aim when ordered in the context of criminal proceedings. However, the search warrant should be based on reasonable suspicion, should limit in a reasonable manner the documents or data looked for and the execution ought to remain within these limits. But there is also the question whether they are proportionate to this aim and whether provided procedural safeguards designed to prevent any abuse or arbitrariness and to protect the lawyer's duty of professional secrecy are adequately complied with. As for the necessity of the interference, the question whether these measures are proportionate to the legitimate aim pursued, these procedural safeguards should be provided for by the law: the search is based on a warrant issued by a judge on reasonable suspicion, the scope of the warrant is reasonably limited, and the search is carried out in the presence of an independent observer in order to ensure that materials subject to professional secrecy is removed. The search carried out in this manner minimises the risk of impinging on lawyer's right and duty of professional secrecy. The failure to comply with some of these procedural safeguards would render the search and seizure of the electronic data disproportionate to the legitimate aim pursued.

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PRACTICAL ASPECTS OF THE PLEA AGREEMENT IN THE CRIMINAL PROCEDURE LAW OF THE REPUBLIC OF SERBIA

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Abstract: Changes in the sphere of Serbian criminal procedure legislation in the previous years have led to a large number of new legal solutions. One of the major innovations was the introduction of the plea agreement. This institute has been introduced into our criminal procedure law by the Law on Amendments to the Criminal Procedure Code in 2009[2], and with the adoption of the Criminal Procedure Code from 2011[3], it received the legal form in which it is still applied today.The plea agreement has been a topic of interest of the professional public since the very indication of its introduction into our criminal procedure legislation, given that it represents an institute which originates from the Anglo-Saxon law and as such is not inherent to a continental legal system such as ours. Bearing in mind its growing presence, as well as the significant period that has passed since its introduction into our legislation, we consider it necessary to point out some practical aspects of this institute. Therefore, this paper will, on the one hand, present the prosecution's aspect of this institute through the Obligatory Instruction of the Republic Public Prosecutor's Office No. O 5/2013 of 12/26/2013 in relation with the conclusion of plea agreements, which helps to achieve the legality, effectiveness and uniformity of the actions of the prosecutors' offices in its implementation, as well as through certain opinions of the Working Group of the Appellate Public Prosecutor's Office in Novi Sad, formed in order to monitor the implementation of the CPC. On the other hand, the paper will present and analyse the answers of the Criminal Department of the Appellate Court in Novi Sad and the Criminal Department of the Supreme Court of Cassation in connection with some of the controversial legal issues arising from the application of the plea agreement.

Keywords: *plea agreement, prosecutor's actions, case law.*

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2 "Official Gazette of RS", No. 72/2009.
3 "Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014. Hereinafter: CPC.

INTRODUCTORY NOTES

The plea agreement is characteristic of Anglo-American legal systems dominated by the accusatory criminal proceedings, however, contemporary tendencies in European law have shown a readiness for its introduction.[4] One of the more significant peculiarities brought about by the process of reforming the criminal legislation of Serbia is the legalization of the plea agreement institute (Бејатовић, 2014: 411). Faster and more efficient criminal procedures and the disburdening of the judiciary have been indicated as the *ratio legis* of this new institute (Шкулић, 2014: 331; Лечић, 2017: 402), and it is believed that in this way a contribution is given to the idea of re-socializing the defendant and humanizing the criminal proceedings (Grubač, Vasiljević, 2013: 576).[5]

In American law, from which it originates, the conclusion of a plea agreement is defined as a procedure in which the defendant and the prosecutor in a criminal case agree to resolve said case, in a mutually satisfactory way, subject to the court's approval. The defendant usually pleads guilty to a lesser criminal offense or to just one or some of the criminal offenses of which he has been charged, and in turn receives a milder sentence than the one that would have been possible for more serious charges (Black's Law Dictionary, cited by: Richardson, 2010: 17). The essence of the plea agreement is an agreement on the concessions that constitute a consideration in response to the defendant's act of self-incrimination (Damaška, 2004: 7).

The long-standing existence of this institute in our criminal procedural law has been marked by a gradual acceptance by the public prosecutor's offices and an increased number of concluded agreements year after year.[6] In addition, certain dilemmas and problems have also arisen, which is not strange, since the institute in question did not previously exist in our legal system. The prosecutorial and judicial organization has made a significant contribution in overcoming them. Namely, the Republic Public Prosecutor has issued the Obligatory Instruction No. O 5/2013 of 12/26/2013, on the application of the plea agreement, bearing in mind the need for lawful and uniform conduct of the public prosecutors in its implementation. Additionally, the Obligatory Instruction of the Republic Public Prosecutor No. O 4/13 of 10/09/2013 has instituted the formation of groups in the appellate public prosecutor's offices, responsible for monitoring the application of the CPC and providing opinions on the perceived difficulties in its application. On the other hand, the criminal departments of the Supreme Court of Cassation and the appellate courts have, through their answers regarding controversial legal issues of the lower courts, constituted a significant mechanism for the unification of court practice in relation to this institute.

4 Settlements with the defendants are more difficult to incorporate into the continental type of penal processes, given that the consensual outcomes undermine several weakened, but still functioning principles of the traditional judiciary, whereby wider cultural differences can also not be denied (Damaška, 2004: 9).

5 For more information on the arguments supporting the introduction of the plea agreement, see: Миловановић, 2010: 417– 420.

6 See: Турањин, 2016: 391– 395 and Трешњев, 2013: 245.

In this sense, a review of the prosecutorial and judicial practical aspects in the implementation of this institute will be presented further in this paper.

ACTIONS OF THE PUBLIC PROSECUTOR IN THE IMPLEMENTATION OF THE PLEA AGREEMENT

In order to achieve the principles of legality, effectiveness and uniformity in the conduct of all public prosecutors, i.e. deputy public prosecutors, the Republic Public Prosecutor has issued the Obligatory Instruction No. O 5/2013 of 12/26/2013 on the implementation of the plea agreement.[7] The justification of its adoption stems from the proclaimed principles on which it is based. It excludes the arbitrariness of prosecutors when concluding the agreement, achieves uniform conduct in these procedures, and thus attains efficiency and facilitates the control of work. It should be kept in mind that the public prosecutor does not have absolute freedom of negotiation in general, nor in respect of certain issues. He has to assess the circumstances of the case and account for his actions as he does in the event of any other decision based on the principle of expediency (Grubač, Vasiljević, 2013: 576).

When proposing, negotiating and concluding the agreements, the actions of the public prosecutor are based on the principles of efficiency, transparency, uniformity, absence of discrimination, protection of the interests of the injured party, as well as on the protection of the public interest in the effective and consistent application of criminal law. In the procedure of concluding the agreement, an obvious tendency can be observed to satisfy the interests of the state, which exercises its right to conduct punishment through the prosecutor, but also to satisfy the individual interests of the defence, through obtaining a more favourable judgment. An intention is also noticeable to, through the agreement, as one of the instruments of consensual, but also restorative justice, simultaneously perform the restitution of the injured person (Илић, 2012: 407).

The right to propose the conclusion of the agreement belongs exclusively to the public prosecutor and the defendant, i.e. his defence counsel, and it is entirely irrelevant which of these entities will initiate the conclusion of the agreement (Чворовић, 2013: 275). Information on proposing, negotiating and concluding the plea agreement are entered into an official note signed by the public prosecutor/deputy public prosecutor, defendant and the defence counsel.

According to the Instruction, the procedure for the conclusion of the agreement includes the following stages: proposal, negotiation, conclusion of the agreement and procedure before the competent court.

The proposal represents the stage of the proceedings in which the readiness to negotiate a plea agreement is expressed. The proposal may contain an invitation to negotiate the conclusion of the agreement, and it may also contain the offer

7 Hereinafter referred to as: Instruction.

itself, that is, a proposal of the elements of the agreement. When considering the possibility of proposing an agreement, the public prosecutor is obliged to conscientiously and responsibly analyse the criminal charge, the order for conducting the investigation, as well as the indictment, the report from the penal and misdemeanour records for the defendant and additionally, depending on the evidentiary actions that have been taken, to hear the defendant. When considering whether to propose the conclusion of a plea agreement in a specific case, the prosecutor should take into account the gravity of the criminal offense, possible punishments, the interests of the injured parties, the probability of success in trial, prosecutorial resources and the degree of remorse of the defendant. On the other hand, the defence counsel should consider the strength of the prosecution evidence and the defendant's attitude on the conclusion of the agreement (Richardson, 2010: 23).[8]

According to the Instruction, the negotiations are conducted by the public prosecutor or the deputy public prosecutor acting in the case, per prior approval of the public prosecutor or person so authorized by him, for the offer which will be presented during the negotiations, or for the reply to an already presented offer, i.e. for all conditions within the framework of the negotiations. If the person authorized to file a restitution claim has failed to institute a restitution claim, the public prosecutor will invite said person to file the claim prior to the conclusion of the agreement, as well as to submit the evidence for such a claim. The invitation of the public prosecutor and the response of the authorized person will be entered into an official note. If possible, the public prosecutor will, before the commencement of negotiations with the defendant or his defence counsel, hear the injured party with regard to the restitution claim, and inform him on the possibility of the defendant becoming obliged to fulfil one of the measures that can be imposed in the course of the procedure for the deferment of criminal prosecution.[9] The Instruction provides that, prior to the commencement of the negotiations, the public prosecutor is obliged to instruct the defendant on the following: 1) that he must hire a defence counsel, if he has not already done so; 2) that he can withdraw from the proposal (given or offered) until the conclusion of the agreement; 3) on the legal elements of the agreement referred to in the provision of Art. 313 of the CPC and the consequences of the concluded agreement, and in particular that

8 In addition to receiving a more lenient punishment, which is the primary goal of the defendant, his additional incentive to conclude the plea agreement may be to avoid the uncertainty related to the outcome of the proceedings, which certain individuals find hard to endure, as well as to avoid the unpleasant situations that may arise during the trial. In particular, the motive of the defendant to engage in the conclusion of an agreement may be the desire to avoid the costs of the criminal proceedings or an inability to bear them (Delibašić, 2014: 264).
9 See provision of Art. 283, p. 1 of the CPC. In this respect, we consider that, of particular interest for the injured party are the measures that have the potential to bring said party into a state which existed prior to the commission of the criminal offense, and these are measures ordering the defendant to rectify the detrimental consequences resulting from the commission of the criminal offense or to indemnify the damage caused (Art. 283, p. 1, item 2 of the CPC) and to fulfil the maintenance obligations which have fallen due (Art. 283, p. 1, item 4 of the CPC).

he is waiving the right to a trial and that he accepts the limitation of the right to appeal against a court decision issued on the basis of the agreement. The public prosecutor makes an official note on this.

An official note is composed on the course and outcome of the negotiations, into which relevant circumstances are entered, particularly the date, time and place of the negotiations, information on the identity of the persons present, personal data of the defendant if he is present, criminal offense or offenses which are the subject of the negotiations, case number, legal advice given to the defendant, possible interruptions and continuations of the negotiations, reasons for the presented offer, possible new offer, circumstances relevant for the determination of the sentence, and reasons for the final acceptance or rejection of the offer by the opposing party. Consent to the terms agreed upon in the course of the negotiations is given by the public prosecutor or person so authorized by him.

The negotiations refer to the harmonization regarding the obligatory elements of the plea agreement.[10] Therefore, the provision of the agreement containing the description of the criminal offense and the confession of the defendant must contain a detailed description of the criminal offense and a full confession related both to the factual description of the events, from which the elements of the body of the criminal offense, i.e. criminal offenses, are derived, and to their legal qualification. The confession cannot be partial, conditional or incomplete. Also, other evidence must also exist, not in conflict with the confession.

An important element of the agreement is the consent of the defendant and the prosecutor on the level of punishment and other criminal sanctions that will be imposed on the defendant. When negotiating the level of punishment and other criminal sanctions, the public prosecutor must take into account the rules of criminal law related to the determination of the punishment referred to in Art. 54 of the Criminal Code[11], the rules on the legal limitations for the mitigation of penalties referred to in Art. 57 of the CC, as well as the conditions for pronouncing a suspended sentence and other criminal sanctions. All circumstances from Art. 54 of the CC, i.e. Art. 56 of the CC, as well as those based on which the remittance from punishment is carried out (Art. 58 of the CC), must be established, especially when it comes to especially mitigating circumstances that justify the application of the institute of penalty mitigation.

10 The plea agreement contains the following: 1) a description of the criminal offense which is the subject-matter of the charges; 2) a confession of the defendant that he committed the criminal offense that is the subject-matter of the agreement; 3) an agreement on the type, extent or scope of the penalty or other criminal sanction; 4) an agreement on the costs of the criminal proceedings, on confiscation of pecuniary benefits from the crime and the restitution claim, if one has been submitted; 5) a statement on the parties' and defence counsel's waiver of the right to appeal against a decision with which the court has accepted the agreement in its entirety, except in the case when the judgement is not related to the agreement or if there are reasons for the criminal proceedings to be suspended and 6) the signatures of the parties and the defence counsel

11 "Official Gazette of RS", No. 85/2005, No. 88/2005, No. 107/2005, No. 72/2009, No. 111/2009, No. 121/2012, No. 104/2013, No. 108/2014 and No. 94/2016. Hereinafter referred to as: CC.

In addition to the type of criminal offense and the prescribed punishment for the criminal offense which is the subject of the negotiations, the public prosecutor must also bear in mind the following circumstances: the previous life of the defendant, his previous convictions, i.e. recidivism, his conduct after the committed offense, degree of remorse, incentives, motives, health condition, family situation, financial situation, etc. The public prosecutor is obliged to obtain information on the above circumstances and, as a rule, the facts regarding these circumstances must be known prior to the commencement of the process of negotiating an agreement and used as guidelines during the negotiations and conclusion of the plea agreement. In this sense, the public prosecutor is obliged to obtain a report from the penal and misdemeanour records for the defendant. When it comes to the proposal of a fine, whether in daily amounts or in a fixed amount, as well as in the event of a restitution claim, it is necessary for the public prosecutor to obtain the information on the financial situation of the defendant.

The public prosecutor and the defendant must settle on the type and measure or extent of the criminal sanction in the agreement. If a penalty is proposed for several criminal offenses, the agreement must indicate a specific penalty for each offense, followed by a single penalty, in accordance with the rules on the determination of a single penalty referred to in Art. 60 of the CC, in order for the court to be able to assess whether the agreement is lawful in relation to the proposed criminal sanction.

When negotiating the level of punishment and other criminal sanctions, the public prosecutor must take into account the penal policy of the competent court in relation to the criminal offense that is the reason for conducting the negotiating procedure for the conclusion of the agreement. In this regard, the appellate public prosecutor's offices are obliged to draft and submit to the public prosecutors' offices in their appellate area, an analysis of the penal policy, twice a year. The above analysis provides data on the penal policy of the competent court, i.e. data on the legally pronounced criminal sanctions for specific criminal acts for which plea agreements are negotiated.

Another obligatory element of the agreement is the costs of the criminal proceedings. If the agreement has been concluded, thus avoiding the long-running criminal proceedings, the public prosecutor may reach an agreement on the exemption from the costs of the criminal proceedings with the defendant, if the defendant is of poor financial situation or for other justified reasons.

If material gains have been obtained by the criminal offense, the provision on their seizure is entered into the agreement.

A provision of the agreement may, in accordance with the provisions of the CPC and the Law on Obligations, determine the type, amount, time limit and manner of realizing the restitution claim, or provide that the agreement shall have no effect on the rights of the injured party to the realization of the restitution claim. The agreement will provide that the defendant will, fully or partially, in-

demnify the injured party for the value requested by the restitution claim, or that the restitution claim will be discussed in civil proceedings.

Given that the legislator has also provided, as an obligatory element, the waiver of the parties and the defence counsel of the right to appeal against a decision by which the court has fully accepted the agreement, except in the cases when the judgement is not related to the agreement or if there are reasons for the criminal proceedings to be suspended, it is necessary to enter this statement into the agreement.

In the end, the plea agreement is signed by the public prosecutor, i.e. deputy public prosecutor, the defendant and his defence counsel.

A plea agreement may also contain some optional elements.[12]

If the defendant is charged with several criminal offenses, the parties may agree that the public prosecutor shall refrain from criminal prosecution for some of these offenses, if this proves to be expedient in terms of achieving the purpose of the plea agreement, in the circumstances of the given case, whereby the reasons are entered into the official note.

The criminal offense, or criminal offenses for which the public prosecutor has given a statement on desisting from criminal prosecution, not covered by the plea agreement, will be an integral part of the indictment submitted to the court together with the agreement.

The law provides a possibility to determine obligations – measures referred to in Art. 283, p. 1 of the CPC, for the defendant, in the course of the negotiations, in relation to the criminal offenses that are the subject of the agreement. Bearing in mind that the condition for determining these obligations by a plea agreement is that, with regards to the nature of the obligations, it is possible to commence their fulfilment prior to the submission of the agreement to the court, when the defendant and the public prosecutor reach an agreement on the application of one of the listed obligations or measures, it is necessary for the defendant to submit proof of commencing the fulfilment of these obligations to the public prosecutor.

The agreement may specify which property originating from the criminal offense will be seized from the defendant. Even though, in general, the possibility of an agreement of any kind exists here as well, it is considered unacceptable to contract the possibility of retaining the obtained material gains in the agreement (*Илић et al.*, 2013: 723).

The plea agreement is considered concluded when it is signed by the public prosecutor, i.e. deputy public prosecutor, the defendant and his defence counsel. The public prosecutor submits the signed agreement to the competent court for further action, along with the indictment, the evidence that is not in conflict with the confession and possible proof of the commenced fulfilment of obligations referred to in Art. 283 of the CPC.

The Republic Public Prosecutor's Office has established a control regime over the concluded agreements. Namely, the first instance prosecutor's office that con-

cluded a plea agreement is obliged to inform the Republic Public Prosecutor's Office on the case in which this institute has been applied, through its regional appellate prosecutor's office, in a manner in which, upon the completion of the procedure for the conclusion of the agreement, it submits, with the memo, all submissions and documents related to the specific procedure, from its beginning to the end, regardless of the manner of its completion, along with the legally binding court decision rendered in the procedure for the verification of the agreement (memo of the Appellate Public Prosecutor's Office in Novi Sad No. A 84/14 of 03/20/2014). In this way the Republic Public Prosecutor's Office supervises the work of the prosecutor's offices in the implementation of the conclusion of the agreement, thus avoiding potential unlawfulness, and monitors and examines the practice of the prosecutor's offices regarding the plea agreements.

SOME CONTROVERSIAL ISSUES FROM COURT PRACTICE REGARDING THE IMPLEMENTATION OF THE PLEA AGREEMENT

For a certain time in practice it was questionable whether the implementation of the agreement is allowed in summary proceedings (where there is no investigation stage), bearing in mind the provision of Art. 313, p. 1 of the CPC, according to which the public prosecutor and the defendant can conclude a plea agreement from the moment of issuance of an order to carry out an investigation, until the conclusion of the main hearing. A literal interpretation of this provision would mean that the application of the agreement is not possible in cases where only certain evidentiary actions are carried out, i.e. where there is no investigation. However, according to the opinion of the Working Group of the Appellate Public Prosecutor's Office in Novi Sad, given in the report No. A 168/13 of 10/09/2013, the conclusion of an agreement is allowed in this situation as well, which is in accordance with the purpose which was intended by the introduction of this institute. Namely, a wider interpretation is more in line with the *ratio legis* of the plea agreement, according to which the conclusion of the agreement is always possible, in the summary proceedings as well as in the general criminal procedure, when the indictment is filed directly (Škulić, Ilić, 2013: 69).

The dilemma in court proceedings arose in a situation in which, in a plea agreement, the public prosecutor and the defendant reached an agreement that the court shall pronounce a safety measure of compulsory drug addiction treatment to the defendant, without subjecting the defendant to an expert examination during the investigation, meaning that the pronouncement of said measure was not proposed by an expert, nor was any medical documentation indicating that the defendant is a drug addict submitted with the agreement. At the sessions of the Criminal Department of the Appellate Court in Novi Sad held on 10/29/2014 and 10/30/2014, a view was adopted that, in this situation, there are conditions for the agreement to be rejected in the sense of the provision of Art. 318, p. 1, item

2 of the CPC, since the condition from Art. 317, p. 1, item 4 of the CPC has not been met, given that the criminal sanction, which is a safety measure of medical nature, in relation to which the public prosecutor and the defendant have concluded the agreement, was not proposed in accordance with the law. We consider this view to be correct, because it is our belief that, for each element envisaged by the agreement, there must be a factual basis in the case file. In the described situation this was not the case, since the agreement between the prosecutor's office and the defendant in this part was not based on any evidence that would indicate that the safety measure needs to be imposed on the defendant.

At the same session, an issue of how to act in a situation in which the public prosecutor and the defendant, in a plea agreement, stipulate that the drugs, money, telephones or weapons are to be seized from the defendant, when these objects are not in the deposit of the prosecutor's office or the court, was also discussed, i.e. whether a judge can impose a measure of seizure of objects, without actually seeing said object. Similarly to the previous case, it is necessary to have evidence in the case files that the said objects have indeed been seized (e.g. a certificate on the seizure of objects) and that the seized objects are related to the committed criminal offense, and that the obtained evidence casts no doubt on this fact. In this case it is irrelevant if these objects are in a court deposit or possibly stored by another state authority.

A controversial issue of applying the provision of Art. 406, p. 1, item 5 of the CPC, i.e. of presenting the contents of the testimony of a co-defendant, also arose in practice. Specifically, if several persons were indicted in one proceeding and separate proceedings were then initiated for some of these persons, for certain reasons, or if they were tried *in absentia*, whether such persons can be examined as witnesses or should the contents of the testimonies of co-defendants, for whom the procedure has been completed, be presented by applying the said legal provision?

According to the stance of the Supreme Court of Cassation from the session held on 05/13/2014, there are three procedural situations in which this issue arises as controversial. First, a situation in which the proceedings were conducted against several persons, and then repeated against the defendant who was tried *in absentia* (the proceedings have been finally completed against the co-defendants). In this procedural situation, the provision of Art. 481, p. 2 of the CPC is applied, according to which the accomplice of the defendant who has already been convicted cannot be questioned or confronted with the defendant in the repeated proceedings, but instead the presentation of the content of the testimony of the convicted accomplice should be performed in accordance with Art. 406, p. 1, item 5 of the CPC, whereby the judgment cannot be based exclusively or to a decisive extent on such evidence.

The second procedural situation occurs when several persons are indicted, but the verdict against one person is abolished in the appeals procedure, while the verdicts against the others are confirmed and become enforceable, so the ques-

tion arises as to whether the co-defendants, whose verdicts have become final, can be examined as witnesses?

The third procedural situation occurs when the procedure against several co-defendants is separated (irrespective of whether one of the proceedings has been legally terminated or two proceedings are in progress).

Considering that the legislator's intention was to avoid the duplication of the process roles in the given procedural situations (that the person becomes both the defendant and the witness), the Supreme Court of Cassation is of the view that, in these three procedural situations, the defendants cannot be examined as witnesses, but that instead, the transcripts of the contents of their previous testimonies should be presented in the manner provided for by the provision of Art. 406, p. 1, item 5 of the CPC, i.e. so that the transcripts of their testimonies are read, and if the panel considers it necessary, the president of the panel will summarize their contents or read them. In other procedural situations, apart from the ones described above, guided by the principles of immediacy and contradiction, the court is not obliged to apply this provision, but must explain in detail and clearly justify such a decision. In the above sense, the co-defendant whose criminal proceedings have already been completed by a legally binding judgement rendered under the plea agreement cannot be summoned and re-examined at the main hearing, but instead his testimony should be presented by applying the provision of Art. 406, p. 1, item 5 of the CPC (response of the Criminal Department of the Supreme Court of Cassation of 03/31/2014).

In practice, the courts have interpreted the permissibility for the court to determine that the sentence of imprisonment of up to one year, determined by a plea agreement, is to be enforced as house arrest, in a situation where the public prosecutor and the defendant did not agree that the prison sentence will be so executed, in various ways. In part of the practice, there is an attitude that there are no obstacles for the court to determine this manner of execution of the prison sentence.[13] On the other hand, in court practice there have also been attitudes that the court is not authorized to act in this way, so the controversial issue was referred to the Supreme Court of Cassation.

According to the legal understanding of the Criminal Department of the Supreme Court of Cassation, determined at the session held on 09/28/2015 and verified on 11/09/2015, the sentence of imprisonment of up to one year, which will be executed as house arrest, must be proposed in the written plea agreement between the parties which is submitted to the court, and the court that is deciding on the agreement is authorized to accept it if it has been proposed by the concluded agreement in accordance with the criminal law and other laws. If this is not provided for in the submitted plea agreement, the deciding court is not authorized to independently rule that the imprisonment sentence be served as house arrest in the verdict accepting the agreement, not even following a consensual, oral proposal of the parties at the hearing at which a decision on the agreement is

13 See: Турањин, 2016: 145 – 146.

being reached, nor if it is of the opinion that the conditions for determining the so-called house arrest have been met. Therefore, the view is that the court must not exit the framework set forth by the agreement.

Even though in the agreement, in general, there is a possibility of negotiations of any kind with respect to the seizure of material gains as well, it is considered unacceptable for the agreement to allow the possibility of retaining the acquired material gains (*Илић et al.*, 2013: 723). However, in court proceedings, cases have been noted in which the court has, contrary to the imperative provisions of criminal substantive law, accepted an agreement, even though the agreement excluded the implementation of obligatory seizure of means intended for or used for the commission of a criminal offense. In one case, the defendants A.A. and B.B. were found guilty by a verdict reached on the basis of a plea agreement, for the criminal offense of an illicit crossing of the state border and attempted people smuggling in co-perpetration referred to in Art. 350, p. 2 in relation to Art. 30 and Art. 33 of the CC. However, the agreement did not include a provision stating that the means intended for or used in the commission of this criminal offense will be seized, which is obligatory in the sense of the provision of Art. 350, p. 5 of the CC, and in that sense there was no possibility for the parties to exclude the application of this norm of the criminal law which is imperative in nature. That is why the Supreme Court of Cassation found that, in this case, the law was violated in favour of the defendants, since the court should have rejected such an unlawful plea agreement (Verdict of the Supreme Court of Cassation No. Kzz 979/2017 of 10/11/2017).

In practice, the dilemma arose as to whether the public prosecutor can be obliged by an agreement to provide a "positive opinion", i.e. to agree to a release on parole, if the defendant files a motion for a release on parole. It is clear that the prosecutor's office cannot assume this type of obligation, because that would mean undertaking obligations that depend on future uncertain circumstances. On the other hand, this would obstruct the very institute of parole. Despite the fact that the consent of the prosecutor's office is not a condition for passing a court decision, it is our belief that such a determinant should not be found in a plea agreement. However, this is not an obstacle for the prosecutor's office to accept the obligation to give consent for the defendant's release on parole, if and when the legal requirements for the defendant's release on parole become fulfilled (Трешњев, 2013: 248). Such a solution has found its application in court practice, so, in addition to the obligatory and optional elements, this circumstance can also be provided for in the agreement (e.g. Decision of the Appellate Court in Belgrade Kž2 Po1 No. 212/12 of 05/22/2012).

The starting point of each agreement is the statement of the defendant by which he confesses to committing a criminal offense of which he is charged. The confession should also include the subjective and objective characteristics of the criminal offense, as well as its legal qualification.[14] In that sense, the confession of

14 In theory, two groups of motives which guide the defendants in giving confessions have

the defendant, as an essential element of the agreement, must be complete, voluntary, conscious, and supported by other evidence (Бајовић, 2009: 168). However, the question arises as to whether the defendant can withdraw the confession given under the agreement, and if he can, what the fate of the agreement is in that situation. The answer to the first part of the question arises from the provisions of Art. 68, p. 1, item 2 and Art. 86 p. 4 of the CPC. Namely, it is stipulated that the defendant, during the hearing, has the right to admit or not admit guilt, and that he may withdraw his previously given confession, whereby the proceeding authority may invite him to state the reasons for doing so. Therefore, there are no impediments for the defendant to revoke his confession during the proceedings, even in the case of an already concluded agreement. If this happens, the court will reject such an agreement, because this will cause one of the elements, which the agreement is based on, to cease to exist. Such a case also occurred in court practice: a stance was taken that the defendant can revoke his confession even after the agreement has been signed, and that the court is to reject an agreement if the defendant declares that he is revoking his confession at a hearing scheduled in connection with the agreement (Decision of the Higher Court in Belgrade – War Crimes Department SPK. Po2 No. 1/12 of 05/18/2012).

CONCLUSION

There is no doubt that the plea agreement has, within a relatively short period of time from its introduction into our criminal procedural legislation, become a very common and efficient way of ending the proceedings. In addition, there is a noticeable growing trend when it comes to the application of this institute. We believe that this acceptance of the agreement stems from several circumstances.

The prosecutorial organization has, in the previous period, organized several seminars on the topic of the plea agreement, which, in addition to the normative and theoretical aspects of this institute, also consisted of workshops that represented the simulations of the procedure for the conclusion of the agreement. An Obligatory Instruction of the Republic Public Prosecutor was also issued, regarding the application of the agreement, in order to achieve the legality, effectiveness and uniformity of work of the prosecutor's offices in its implementation, control mechanisms have been established and working groups have been formed at the appellate public prosecutor's offices in order to monitor the implementation of the CPC, which have, by resolving the issues of the lower prosecutor's offices, solved practical dilemmas and thus motivated and encouraged the prosecutor's offices to continue with the application of the agreement.

been emphasized: an awareness of the existence of other evidence, for which it is assumed that they can lead to a conviction in and of themselves, and expectation of a lower sentence. Empirical studies have not confirmed a significant effect of the defendant's prognosis of the inevitability of a conviction due to other evidence, on his decision to give a confession. This means that the provided confessions were motivated by an expectation of a more favourable sentence (Бркић, 2014: 325).

Judicial officials have also attended seminars on this topic, and through the rationales of the answers adopted at the sessions of the Supreme Court of Cassation and the appellate courts, as well as the actions of higher courts, views have been adopted regarding controversial legal issues in court practice, in relation to the implementation of the agreement.

The defence counsels, as obligatory participants in the procedure for the conclusion of the agreement, have also attended seminars in this area, and a Handbook for Lawyers in relation to the expertise of representation in criminal proceedings, which also relates to the plea agreement, has been published as well (Lochary, 2013: 8– 12).

It is our belief that the joining of said circumstances, along with the views of the professional public, which are, with certain reserves, almost unanimously oriented in favour of the plea agreement, have created the preconditions for this institute to be accepted in our law.

Last but not least, it should be noted that the legal formulations of the provisions related to the plea agreement, despite certain deficiencies and vague points that were not the subject of this paper, represent a generally good foundation for its implementation.

Of course, not all controversial situations that may arise from the application of the agreement in the future have been solved during its implementation thus far. However, it was demonstrated that the previous difficulties in practice were not insurmountable and that they did not pose an obstacle to the ever-increasing application of the agreement.

We are of the opinion that the application of the plea agreement, with certain improvements of the legal text, and with the continuation of the activities of the judicial and prosecutorial organization in the field of solving practical problems in the conclusion and application of the agreement, will continue its growing trend, and that the plea agreement will continue to justify its purpose as an institute that contributes to faster and more efficient criminal procedures.

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LEGISLATION CHANGES - PERMANENT PART OF CRIMINAL PROCEDURAL LAW IN SLOVENIA

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Abstract: In 2016, the legislator has changed or tried to change the Criminal Procedure Act (hereinafter: CPA) for the fourteenth time since 1995 in order to achieve a more efficient and economical performance of criminal proceedings while ensuring an appropriate level of rights protection of participants in proceedings, a more adversarial nature of criminal proceedings, elimination od shorcomingof shortcomings and greater legal certainty and legality in proceedings. Unfortunately, the Act was not adopted by the National Assembly. However, the latter has changed this year. The aim of the revision was also the different regulation of certain investigative acts. Taking into account the recent practice of the Constitutional Court of the Republic of Slovenia and the European Court of Human Rights, the Act systematically regulates the seizure of objects, files and electronic devices of lawyers and other persons in the case of their material containing privileged communication, or if it is necessary to investigate the electronic device that was seized and contains information that are is not secured and sealed but may also be part of the so-called (professional) secrecy. A large part of the novelty also refers to the modification and completion of the regime of undercover investigative measures. Moreover, according to the needs of the police, a catalogue of serious criminal offences has been completed, in respect of which this measure is permissible. CPA – N (Official Gazette RS, 22/2019) thus improves the legal basis for the cooperation of competent authorities and a faster progress of criminal proceedings. In this way, the balance between the guarantee and the protective function of the procedure is ensured.

Keywords: criminal proceedings, investigative acts, legal certainty, legality, judicial practice.

INTRODUCTION

Criminal Procedure Act (hereinafter CPA) has been amended fourteen times since 1995. As always, the reason for the change is mandatory implementation of transnational regulations, decisions of the Constitutional Court, and more im-

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portantly, achieving a more efficient and economical performance of criminal proceedings while ensuring an appropriate level of rights protection of participants in proceedings, a more adversarial nature of criminal proceedings, elimination of deficiencies, and greater legal certainty and legality in criminal proceedings. According to some of the reactions to the amendment to the proposal of the CPA-N (Act Amending the Criminal Procedure Act, Official Gazette RS, 22/2019) in the legislative procedure in 2017, the proposal for the amendment to the act clarifies more clearly the possibility of carrying out certain individual investigative acts. Taking into account the recent decisions of the Constitutional Court of the Republic of Slovenia and the European Court of Human Rights, the seizure of objects, files and electronic devices of lawyers and other persons is systematically regulated providing that the material contains privileged communication. The arrangement of the house investigation is corrected by, on the one hand, protecting the rights of the property owner, where the latter is unavailable. In terms of increasing the effectiveness of the work of law enforcement agencies and investigating criminal offenses and gathering evidence, the issues of using traffic data and obtaining confidential bank data are regulated in a more clear, definite, and constitutional manner. When joining cases in pre-trial procedures, in filing a chargeable act and requesting an investigation, the state prosecutor should proceed more rationally. Nevertheless, in addition to respecting rights, this is the guideline of the entire criminal procedure.

NEW REGULATION OF CERTAIN INVESTIGATIVE ACTS

The article further introduces some investigative acts and their new arrangements which, in practice, should have long-term positive consequences in regard to successful prosecution of perpetrators of criminal offenses.

Undercover investigative measures:

Pthe proposed act amending and supplementing CPA-N (Ministry of Justice, 2018) directs undercover investigative measures, the conditions and procedures for their imposition and execution in Articles 149a to 155a and Article 156a: secret surveillance, acquisition of traffic data in the electronic communications network, control of electronic communications, control of letters and other shipments, computer systems of banks, eavesdropping and recording of conversations, eavesdropping and watching a person in a foreign residence or other premises, quasi buying-in, activities of secret service. The measure of secret surveillance is permissible in the light of the needs of the police for criminal offenses for which the Act prescribes a prison sentence of five years or more; criminal offenses of unlawful deprivation of liberty, stalking, threats, misuse of personal data, illegal employment, fraud, concealment, fraud to the detriment of the European Union, attacks on the information system, falsification or destruction of business

documents, disclosure and unjustified acquisition of business secrets, misuse of the information system, abuse of office or official rights, disclosing classified information, public incitement to hatred, violence and intolerance, forbidding the crossing of the border or territory of the country, pollution of drinking water, food or feed contamination, and torture of animals (CPA-N, Official Gazette RS, 22/2019). Acquisition of data on participants, circumstances and facts of telecommunications traffic, such as numbers or other means of identifying users of electronic communications services, the type, date, time and duration of the call or other electronic communications service, the amount of data transferred and the place from which the service was provided is regulated in such a way that it specifies that such information shall be communicated by the operator to the competent authority on the basis of a prosecution order, suggested by the public prosecutor, providing that the prescribed conditions are given. In the meantime, the third paragraph stipulates that the operator must, upon written request of the police, communicate to the police the information about the owner or user of a particular communication medium for electronic communications traffic from an unpublished directory and the time at which the user used or still uses such an asset, e.g.for example, a mobile phone (Ministry of Justice, 2018).. Thus, it is the duty of the operators to provide such data at the request of the police (i.e. without the investigating judge's order) because such data do not constitute content or messages in terms of the constitutionally protected secrecy of information. The Constitutional Court of the Republic of Slovenia (2013) abolished the entire chapter XIII of the Electronic Communications Act, which stipulated compulsory fourteen or eight months of storage of certain traffic, location and subscriber data for public communications service operators for the purpose of their subsequent acquisition in accordance with the proposed act amending and supplementing CPA-N (Official Gazette RS, 22/2019) , Slovene Intelligence and Security Agency (Official Gazette RS, 81), or the Defense Act (Official Gazette RS, 95/15). Among other things, it was considered that the above measure was not necessary because the legislature did not merely restrict the use of personal data stored in the course of criminal proceedings solely to investigation, detection and prosecution of grave crimes, which is also the opinion of the Court of Justice of the European Union (2014). The legislator interfered with the right to the protection of personal data by defining the obligatory storage of traffic data, while at the same time it did not carefully assess the circumstances on the basis of which the interference would be interrupted. Taking into account the judgment of the Constitutional Court of the Republic of Slovenia (2013), it was therefore necessary to also adapt the provisions on the acquisition of traffic data in the course of criminal proceedings in a manner that would define a more procedurally determined approach. The proposed act amending and supplementing CPA-N (Official Gazette RS, 22/2019*)* provides a new, more detailed and up-to-date regime for the acquisition of traffic and related data. The measure is divided into two separate measures, namely on the renewed Article 149b, which regulates the acquisition of traffic data, which includes the acquisition of stored traffic data already legally

stored by the operators, and a new article 149c governing freezing and forwarding traffic data forwards. The part of the transfer of the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways (Official Journal of the European Union L 276/3 2015) to the Slovene legislation is also mentioned. In this way, in order to access stored traffic data, which also affects a large number of subscribers or users, according to the requirements of the aforementioned decision of the Constitutional Court, it is bound to a narrower catalog of criminal offenses (Gorkič, 2014). At the same time, the measure of obtaining certain subscriber data is clearly and precisely regulated in the new Article 149.č. Moreover, Article 149d is added and it regulates the access to subscriber data by the private prosecutor. The latter was necessary in particular to prosecute crimes against honor and good name made on the internet (Ministry of Justice, 2018). Article 149b must also be harmonized with the provisions of the Electronic Commerce Market Act (Official Gazette RS, 96/09) (hereinafter ECMA), since the current text only allows the acquisition of traffic data from operators, but not from providers of other services performed via electronic communication networks. These are services that are usually provided for remuneration, remotely, by electronic means and at the individual request of the recipient of services, and for which the police often have to obtain information about the final recipient of the service or the communication itself through which the service was performed. ECMA (Official Gazette RS, 96/09) already stipulates that service providers should notify the competent authorities at their request no later than within three days of receipt of the information on the basis of which it is possible to identify the recipients of their services (name and surname, address, company, e-mail address). However, it also adds that providers must communicate such information on the basis of a court order and, without a court order, if so provided by a sectoral law. The rules for obtaining data from banks, savings banks, payment institutions or electronic money issuing companies are set out in Article 156 of the proposed act amending and supplementing CPA-N (Official Gazette RS, 22/2019) , where it is also stated which data the police can obtain from these institutions without the order of the investigating judge. The investigating judge's order is required for data on application forms, deposits, balance and turnover in invoices or other transactions. What is more, the basis for obtaining data on traffic on the use of these services was arranged as well. The detection and investigation of complex and serious crimes and rapid technological development are the reasons why the competent authorities for the detection and prosecution of offenders must have effective investigative measures. The latter is even more important for organized criminal groups in a narrow and closed circle of persons with precise roles and a high level of caution in the conduct of criminal activity. Their operation is organized in such a way that individuals who carry out criminal acts in a criminal organization use only known telephone devices and numbers, and at short intervals. They change both the apparatus and the numbers during personal contact. The aforementioned means that the police cannot acquire telephone numbers used for communication with criminal organization through classical methods of investi-

gation, and consequently also do not intercept these communications with established undercover investigative measures. In the light of the above and given the fact that there are technical possibilities, authorities that detect, investigate and prosecute such offenses and perpetrators must also be enabled the use of technical means for identifying data for identifying the number of the communication medium and the electronic communication numbers for the purpose of identifying location of the communication medium (Ministry of Justice, 2018). The Constitutional Court of the Republic of Slovenia (2013) annulled the entire section XIII of the Electronic Communication Act (hereinafter ECA) (Official Gazette RS, 96/09), whereby the then regime of storage and use of traffic data was blamed for not being necessary and, consequently, disproportionate for several reasons. Taking into account the said decision, a more tangible approach is proposed to obtain traffic data in pre-criminal or criminal proceedings. At the same time, the evidential standard for obtaining traffic data in order to comply with the constitutional principle of proportionality is lifted on justified grounds for suspicion (Supreme Court, 2018). The content of the previous measure of obtaining existing (already stored) traffic data with the so-called. ex tunc provisions (Ministry of Justice, 2018). There are also solutions for some problems that have been detected in practice. In exceptional (urgent) cases, an oral order of the investigating judge is permitted with an obligation of a subsequent written copy (Supreme Court, 2018=. For these exceptional (urgent) cases, an ex post system of supervision of this measure is prescribed by laying down the obligation to inform the person concerned about the information which has been transmitted to the police. For other cases, a clause is added which temporarily restricts the withdrawal from the general rules regarding the familiarisation with own personal data. At the same time, it is explicitly defined that the order may relate only to uniquely defined means of communication (the identification of a communication medium must be sufficiently precise to restrict the claim to a pre-defined and determinable list of persons) and that, pursuant to this Article, it is not possible to require data relating to the content of the communication, or that the acquired data can be used only in the case in which they are obtained. The new Article 149.c of the proposed act amending and supplementing CPA-N (Official Gazette RS, 22/2019). regulates the so-called ex nunc provisions, i.e. orders to start storing traffic data for each subscriber or user. As this is a forward-looking action, which means greater focus and, consequently, lower invasiveness compared to pre-nonselective storage, the catalog of criminal offenses is appropriately broadened, thus respecting the principle of proportionality. Such a way of obtaining traffic data could replace most of the deficits that the police would suffer due to the loss of access to stored traffic data under the previous article. Specifically, according to the available information of the proposer, a relatively large proportion of the proposals under the previous article 149.b deals primarily with the crimes of denial, theft and big theft for which this article may apply (Ministry of Justice, 2018). It should be emphasized in particular that, on the basis of this article, it is possible to do the so-called real-time tracking if technical conditions are given for this purpose, for the cata-

log criminal acts referred to in Article 149a or if the consent of the legal user is given. This last example covers statistically common situations in using this measure, such as theft or failure to use a mobile phone. With the proposed new Articles 150a and 150b of the proposed act amending and supplementing CPA-N (Official Gazette RS, 22/2019) , the conditions and procedure for the use of an IMSI catcher are defined. It is a special technical tool that can simulate certain functions of the base station of mobile telephony and in this way perform certain investigative actions on nearby mobile phones. Due to the difficulties in ensuring control over the legality of the implementation of the measure (in comparison with the existing control measures for communications that require the participation of the operator or service provider), the permissible uses of the catcher are limited to the identification of a particular mobile telephone connection, or to a more precise determination of the location of such a connection. Thus, the police will not be allowed to perform »eavesdropping from the air«, passive (deciphering existing traffic) and not active (i.e. man-in-the-middle attack), nor other advanced investigative actions. As a systemic safeguard against possible misuse or misapplication of this article, there are two measures provided. The Act predicts the possibility of an operator or an information service provider to forward information directly (in writing) to the competent court instead of the police or public prosecutor at its own expense. The investigating judge then performs a proper assessment and collects the collected data for the police or destroys them. If he destroys them, he shall make an official note thereof and forward it to the operator or service provider of the information service provider, the head of the district state prosecutor's office or the competent state prosecutor and the Ministry of the Interior and the Police, who have the opportunity to introduce the necessary (e.g. internal organizational) measures. The last system safeguard is ex post control, which is provided through the possibility of informing the person whose information was provided by the operator or the provider. The scope of the persons liable for the transmission of traffic data is extended from only the operators under the ECA-1 (Ministry of Justice, 2018)also to providers of other information society services (according to ECMA - Official Gazette RS, nr. 96/09). Given that practice has shown that the inability to test the decision of rejection made by an individual investigating judge (in terms of ordering undercover investigative measures) is blocking the development of case law and the clarity as well as the certainty of criteria in more borderline or sensitive cases.

Hearing of the suspect and witnesses by the state prosecutor or the police in the pre-trial procedure

According to Article 148a of the proposed act amending and supplementing CPA-N (Official Gazette *RS,* 22/201*)*, a suspect may also be interrogated without the presence of an advocate. A prerequisite for a »valid« hearing of a suspect without the presence of an advocate is that after the legal instruction he has waived the

right to the presence of an advocate, and this is recorded in the audio and image recording of the hearing. On the one hand, audio and video recording acts preventively (in terms of possible abuse) and, on the other hand, it strengthens the quality and credibility of the evidence thus obtained, since the defense, the court and, finally, the public prosecutor, as a quasi judicial guarantor of the lawfulness of police tasks in pretrial procedure get the possibility of a more accurate and credible test and verification of the legality and correctness of the conduct of law enforcement and prosecution authorities. The sound and image recording medium of the hearing shall be attached to the record of the hearing. If the suspect does not have an advocate, and the hearing will not be recorded (according to the judgment of the interrogator), so the record will not have a procedural value in the proceedings. The possibility of hearing a witness before the state prosecutor or police is envisaged, and the court can base its decision on this type of test under certain conditions. Regarding who is the person who can do the hearing, the provisions governing the questioning of the suspect shall apply mutatis mutandis. The provisions governing the questioning of the suspect shall also apply mutatis mutandis as regards the acquisition of the sound carrier of the audio-visual recording of the hearing itself. The question whether the court will be able to base its decision on hearing a witness before the public prosecutor or the police depends largely on the witness himself who can refuse to have the hearing recorded (Ministry of Justice, 2018). Given the fact that it is a hearing of a witness before the state prosecutor or the police (and that during the hearing from the point of view of the suspect the contradiction is not guaranteed) and that the court can base its decision on such a confession under certain conditions, a somewhat broader legal instruction is foreseen: a person should be taught that the hearing is voluntary and that it will be recorded acoustically and impersonally, unless the person has explicitly opposed it.

House search with an emphasis on the search of the law firm

The Constitutional Court of the Republic of Slovenia (2013) has assessed the initiative of the Bar Association of Slovenia (hereinafter: BAS). In this case, questions were raised as to the extent to which the police had intervened in the confidentiality of the relationship between a lawyer and the client (in cases where the lawyer is not a perpetrator of the crime), as well as the possibility of a representative of the BAS to prevent the seizure of objects from being examined by the lawyer's office protect the rights of third parties, especially when seizing and investigating an electronic device. The Constitutional Court of the Republic of Slovenia (established the unconstitutionality of the two aforementioned laws with the Constitution (Ministry of Justice, 2018). The explanation states that the legal privacy protected by Articles 35, 36 and 37 of the Constitution (Official Gazette 33I/91-I, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13 in 75/16) refers to facts, relationships, things, premises, data and communications that have a substantive

relationship with the practice of a lawyer's profession. Through it, both the privacy of the lawyer and the privacy of his clients are protected and they are connected into an inseparable complex whole based on mutual trust and expectation of confidentiality which forms the core of the relationship between a lawyer and his client. The collection of confidential information related to the legal profession, which consists of lawyer privacy, is not only protected in law firms but everywhere the lawyer performs his business. Therefore, all such sites are protected within the spatial aspect of the lawyer's privacy. An admissible judgment is required for the admissibility of interventions; even if it is an interference with that part of the lawyer's privacy that is protected only by Article 35 of the Constitution, as this interference by the nature of things is so severe and intertwined with specific aspects of privacy. House investigation at a law firm, seizure of documents and objects and search of electronic devices interfere with the lawyer's privacy. Effective prevention, detection and prosecution of criminal offenses, or the introduction and the course of criminal proceedings are constitutionally permissible for the purpose of interfering with human rights and fundamental freedoms, as a rule also in the legal profession. However, the defendant's right to defense and the privilege against self-incrimination preclude the issuance of a court order for an investigative act by a lawyer who is the advocate of the person against whom the pre-trial or criminal proceedings are being conducted with regard to the information concerning the confidentiality of advocacy between a lawyer as an advocate and a charged person. If there is a constitutionally admissible target for interference with the lawyer's privacy, the interference with investigative acts is admissible if this is necessary for the initiation or conduct of criminal proceedings. An interference with the lawyer's privacy is necessary if it is evident from a court order that permits it why the information or data directly related to a precisely determined criminal procedure can only be obtained through the investigation of the lawyer's office and why other investigative actions to obtain them are not enough. In addition, the Constitution requires that, in the light of the urgency of the interference, any interference with the lawyers' privacy is limited to a sufficient degree. In a lawyer's office and other equally protected premises and on an electronic device of a lawyer, confidential information are concentrated which, according to the nature of the matter, needs to be regulated by a special way of investigating them in order to satisfy the constitutional requirement for the demonstrated necessity of intervention in each individual case. Therefore, according to the opinion of the Constitutional Court of the Republic of Slovenia (2013), the law should further regulate the mere implementation of an otherwise appropriately ordered interference with lawyer privacy. In order to limit interference with lawyer privacy to constitutionally admissible and urgent cases, two more lenient measures are taken into consideration: the presence of a lawyer and a representative of the BAS in the investigation activities of a lawyer and the possibility of a lawyer and a representative of the BAS to object to access to certain data or their seizure. However, the judge shall be obliged to have the final word on the admissibility of the interference and the judge shall make a final and neutral decision on

this. The question of the investigation of the lawyer's office must also take into account the previous constitutional practice of the Constitutional Court (Ministry of justice, 2018). In the past, the European Court of Human Rights (hereinafter: ECtHR) has already made a statement on issues relating to the protection of the confidentiality of lawyer-client relationships and the investigation of the lawyer's office or the seizure and investigation of electronic devices. The ECtHR does not distinguish between the investigation of a lawyer's residence and his office; it is decisive whether there are objects, files or data in whatever form that the lawyer has been provided with. At the same time, the proceedings contain procedural safeguards during the investigation (the presence of the investigating judge, a representative of the state prosecutor's office and a representative of the Bar Association). The latter must have an active role in declaring the investigation and seizure itself and recording statement in regard to the investigation and the case dealt with (European Court of Human Rights, 2010, 2012). Following the experience from the practice, it is necessary to ensure the protection of the rights of the owner of an apartment or premises in the house investigation when the owner or his representative is unavailable. The arrangement of the house investigation shall be corrected in such a way as to protect the rights of the holder of the immovable property. In cases where the holder of property is not available, the court shall appoint an attorney from among the lawyers. In this way, indirect exclusion of the evidence obtained is prevented. However, it would be necessary to consider who can apply for a court order for a house or personal investigation, and whether, as in the case of undercover investigative measures, it would be necessary to provide for the transmission of an opinion to the Out-of-court Chamber in the event of a dispute with the investigating judge, disagreeing with a written petition for a home or personal investigation.

CONCLUSION

The proposed act amending and supplementing CPA-N (Official Gazette RS, nr. 22/201) takes into account the principle of effectiveness with adequate protection of the rights of defendants, victims and third parties. In this context, the proposer highlights, in particular, the proposed new undercover investigative measures (and the modified regulation of the conditions for the use of traffic data), as well as proposals regarding the improvement of the legal bases for the cooperation of competent authorities and speeding up of procedures. The principle of the rule of law or the principles of clarity and precision of legal regulations included in the aforementioned constitutional personal investigations are also taken into account. By completing the seizure of lawyer's articles, files and electronic devices, the intervention of competent authorities in the confidentiality of the relationship between a lawyer and a client is more appropriately regulated. The same holds true for other confidentiality relationships that are otherwise protected by the proposed act amending and supplementing CPA-N (*Official Ga-*

zette RS, nr. *22/2019*. The proposed regulation, which follows the practice of the ECtHR and the Constitutional Court of the Republic of Slovenia, regulates the issue systemically, thus taking into account other types of confidential communication. Following the experience from the practice, the proposed solution is the basis on which the protection of the rights of the owner of the apartment or premises in the house investigation is ensured (the latter can be either a suspect or a third person). Where the holder or his representative is unavailable, the court shall, ex officio, appoint an authorized representative from among the lawyers. The proposed solution indirectly prevents the exclusion of the evidence obtained. In addition, it is envisaged that the court will issue an order for a home or personal investigation based on a reasoned letter from the state prosecutor, who is otherwise responsible for law enforcement and police direction. In the same way as with the proposed change in the decision of the investigating judge in relation to undercover investigative measures, if the investigating judge fails to agree with the received letter of the public prosecutor for a home or personal investigation, the investigating judge shall forward the proposal and his reasoned request for review to the senate. The change in the hearing of the suspect is that it can be done without the presence of an advocate, except in cases of compulsory defense. The recording remains at the discretion of the interrogator, as is also the case with the proposed act amending and supplementing CPA-N. (Official Gazette RS, 22/2019*).* Amendments are also connected to modification of the arrangements for undercover investigative measures. The amending act also brings a new, more detailed and up-to-date regime for acquiring traffic and related data, thereby reducing interference with the protection of personal data. The amendment also improves the legal basis for the cooperation of competent authorities and speeding up of procedures in line with sectoral legislation, taking into account and respecting the rights of persons in the procedure, as well as ensuring security which is one of the main objectives of the criminal procedure.

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CONVICTED ON THE BASIS OF A PLEA AGREEMENT AS A WITNESS[1]

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Abstract: In practice, the extended effect of the plea agreement has been noted in criminal cases where the conviction based on the plea agreement is used as evidence in criminal proceedings against other defendants. At that, the defendant at whose trial the plea agreement or the decision based on such an agreement is used as evidence is denied the right to examine the person who has concluded the plea agreement as a witness. The paper presents the reasons due to which a defendant should be allowed to examine the person who has concluded a plea agreement in his/her capacity as a witness. It also points out to the rights of the defendant and the criminal procedure principles that are infringed upon in such a case. The attitude taken by the Supreme Court of Cassation regarding this issue has been subjected to a critical analysis and possible solutions to this problem have been suggested.

Key words: confession of a criminal offence, agreement, convict, witness.

INTRODUCTION

The Serbian legislation on criminal procedure recognizes three types of agreements between the parties: the plea agreement, the agreement on the defendant's testimony and the agreement on the testimony of the convicted person. The main purpose of the institute of the plea agreement is to simplify criminal proceedings. The criminal proceedings are expedited by avoiding the evidentiary proceedings.[3] The public prosecutor and the defendant reach an agreement on the existence of a criminal offence on the part of the defendant and if the court verifies such an agreement, the proceeding is completed.

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3 This also reduces the costs of proceedings and saves financial means, enabling at the same time courts to cope with enormous amounts of judicial cases without increasing the number of judges (Grubač, 2015: 6).

The purpose of the agreement on testifying of the defendant and the agreement on testifying of the convicted person is different. These two types of agreement represent the ways of co-opting cooperative witnesses. The goal is to obtain the statements of the cooperative witness that would allow for and facilitate the proving of criminal offences within the jurisdiction of the public prosecutor's office of special jurisdiction.

In practice, a controversial situation occurs when a decision based on a plea agreement is used as evidence in a criminal proceeding against another defendant. The said decision is used to prove certain facts and thereby extends the legal effects of the plea agreement, which is made for the purpose of summary proceedings for a criminal offence. This practice represents a way of bypassing legal provision because it serves the purpose of furtherance of the interests that can be achieved only through the agreement on testimony (Škulić, 2015: 214).

If a decision based on a plea agreement in a criminal case is used as evidence and if it is used to establishes a fact in a criminal procedure against another defendant, then it is necessary to enable the defendant to probe the veracity of such evidence by questioning the person who has concluded the plea agreement. However, in practice, the courts decline the motion of the defence to summon the person who has concluded the plea agreement to the trial in order to testify.

CASE STUDY

Criminal proceedings involving a number of co-defendants may lead to a situation in which the public prosecutor reaches a plea agreement with one of the defendants. During informal negotiations which precede the conclusion of a plea agreement, the public prosecutor can ensure that the defendant, in his statement, incriminates other co-defendants or mentions other circumstances that ease the burden of proof for the prosecution in criminal proceedings against other defendants (Bajović, 2017: 725). In return, the defendant who concludes the plea agreement will receive a more lenient punishment. In this way, the public prosecutor obtains a 'weapon' that he/she may use to prove criminal offences of other defendants. Thus in one proceeding the public prosecutor used the court decisions based on plea agreements made by persons V. B., K. J., P. D. and O. A. as a basis to prove the factual existence of an organised criminal group. At that, the court denied the proposal of the defence that the person V. B. and other individuals who had made plea agreements be examined during the trial as witnesses regarding the issue of the existence of an organised criminal group. The defence pointed out in its appeal against conviction that it was denied the constitutional and legal right to question the individual V. B. from whose statement, i.e. from whose plea agreement and the decision based on that agreement, a certain fact was established.

A final decision of the Appellate Court confirmed the view of the first-instance court that the persons convicted on the basis of plea agreements cannot be ex-

amined as witnesses in order to prevent them from being at the same time the defendants and witnesses in the course of one and the same procedure.[4]

The above mentioned example shows that there are situations in practice in which a decision reached in one proceeding is based on a decision from another proceeding, a decision that has been based on a plea agreement. Yet the defence is denied the right to question the person whose statement, i.e. whose plea agreement implicates the defendant.

THE VIEW OF THE SUPREME COURT OF CASSATION

The Supreme Court of Cassation (hereinafter: SCC) has taken a stance according to which a co-defendant, now defendant, who has concluded a plea agreement cannot be summoned to a trial and heard or questioned as a witness in a criminal proceeding against another defendant and that provision of Article 406 para. 1, item 5 of the Criminal Procedure Code (hereinafter CPC) (The Criminal Procedure Code – CPC, Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014) should apply to the inspection of the contents of documents on earlier statements.[5] In addition to this, the SCC lists three more procedural situations when co-defendants cannot be examined as witnesses, but the contents of their previous statements can be inspected in the manner stipulated under Article 406 para. 1, item 5 CPC. The SCC allows for a possibility that the courts, in other procedural situations and bearing in mind the principles of directness and contradiction, should not apply this provision provided that they offer a detailed and clear justification of such a decision.[6]

The first among the three mentioned procedural situations occurs when a proceeding is conducted against several persons and is repeated against a defendant who has been tried *in absentia*. In this case, Article 481 para. 2 of the Code (CPC, Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014) stipulates that an accomplice who has already been convicted may not be heard or confronted with the defendant but that the contents of the statement made by such a convicted accomplice may be presented to the court in keeping with Article 406, para. 1 item 5 CPC, although the decision may not be based exclusively or mainly on such evidence. The *ratio legis* is contained in the fact that the defendant tried *in absentia* is sanctioned by not being allowed to reverse the case for a re-trial.

Thus - in the situation described above - there is not only an explicit legal provision banning the accomplice who has already been convicted from being heard or confronting the defendant, but there is a justifiable reason for that. No parallel

4 See the decision of the Higer Court in Belgrade no. K Po1 37/2012 of 12.02.2014 and the decision of the Court of Appeal in Belgrade no. Kž1 Po1 22/14 of 06.02.2015.

5 The stance was taken at the session of the Criminal Division of the Supreme Court of Cassation held on 31 March 2014.

6 The stance was taken at the session of the the Criminal Division of the Supreme Court of Cassation held on 13 May 2014.

should be made between this situation and the situation of examining a person who has concluded a plea agreement as a witness. The former involves a repeated procedure on the basis of an extraordinary legal remedy, whereas the latter involves a regular criminal procedure wherein a defendant is tried for the first time.

Another procedural situation occurs when several persons are accused and when the appeal is granted to one person in the course of the appellate procedure, reversing the decision and returning the case to the first-instance court for new adjudication, whereas the appeal is not granted to the other defendants, and the first-instance decision is confirmed and final. Then the co-defendants for whom the decision has become final cannot be examined as witnesses. In this situation there is a minor infringement of the principles of directness and contradiction. The persons against whom the decision has been confirmed, have been heard within a single proceeding, so that the co-defendant whose decision was reversed had an opportunity to ask questions and raise objections to their statements (Spasojević, 2014: 20).

Finally, the third procedural situation occurs when the proceeding for a number of co-defendants is severed (regardless of whether one of the proceedings is final or whether there are two proceedings going on at the same time). According to the view of the SCC, the provision from Article 406 para. 1, item 5 CPC is also to be applied in this situation, i.e. the contents of the accomplice's statement should be presented.

The SCC has taken the said view providing a justification that it finds that "the intention of the legislator in the given procedural situations was to avoid the overlapping of procedural roles (a person being a defendant and a witness)".

THEORETICAL ANALYSIS

It appears that the view of the SCC constitutes a misinterpretation of the provision from Article 406 para.1, item 5 CPC as the said provision stipulates that the records of the co-defendants' statements may (may, but do not have to) be inspected, without mentioning that such a person may not be examined as a witness. So the provision under Article 406 para. 1 item 5 CPC allows for an insight into the statement of a co-defendant due to which the criminal proceeding was severed or finished by a final conviction, but does not make it mandatory.

In addition to this, a plea agreement and a decision on the basis of the agreement cannot be treated equally as the testimony of a co-defendant under Article 406 para.1 item 5 CPC because the said provision applies to a statement given in accordance with the provisions for a hearing. It is the statement, i.e. the defence of a co-defendant that is given in the form of a free-style narrative. After the person freely presents his/her defence, he/she is questioned by a defence counsel, prosecutor, court, co-defendant and other persons in order to probe the veracity of the testimony or to establish all relevant facts. Thus in the situation of giving

a statement in accordance with the provisions pertaining to hearing, the public prosecutor and the defendant are two opposing parties. The public prosecutor strives to prove the defendant's crime and may find it useful to question the veracity of the defendant's statement.

Conversely, in the case of a plea agreement, the public prosecutor and the defendant work together to conclude an agreement that will be accepted by the court. Moreover, the court does not examine the substantive part of the agreement, i.e. it does not check the truthfulness of the facts stated in the agreement, as it is sufficient that there is no evidence contrary to the admission and that other formal requirements are met for the court to accept the agreement.

The agreement constitutes a product of a bargain between the public prosecutor and the defendant. Both parties to the negotiations on concluding a plea agreement are usually experienced participants. Both public prosecutors and defence attorneys, based on their experience, have a good feeling for a 'market price' of a criminal offence in each individual case (Scott & Stuntz, 1992: 1922). It is necessary for the public prosecutor and the defendant to reach a consensus regarding the legal qualification of the criminal offence and its factual description, that the defendant unconditionally confesses having committed the criminal offence defined in such a way, that they agree on a specific penalty or the scope within which the court will pronounce the sentence, as well as that they agree on who will pay for the expenses of the criminal proceeding. The benefit of such 'cooperation' for the public prosecution is reflected in the significance which the defendant's testimony has for corroborating the statements of the prosecution (Ilić, Majić, Beljanski & Trešnjev, 2018: 817). On the other hand, by pleading guilty, the defendants 'sell' their procedural rights to the prosecutor, in exchange for concessions which they value above the rights that they forfeit (Easterbrook, 1992: 1975). Hence the agreements and settlements are not a reliable way towards establishing facts as is the case in some other fields (Damaška, 2004: 1032).

Based on everything said so far, it is clear that the plea agreement and the decision reached on the basis of such an agreement cannot be treated equally as the statements of co-defendants under Article 406 para.1 item 5 CPC. Hence the motion of the defence to examine the person who has concluded such an agreement cannot be denied by referring to the said legal provision.

As regards the statements of the SCC that provision from Article 406 para.1 item 5 CPC is to be applied in the specified procedural situations because it is deemed that it is the intention of the legislator to avoid - in the given procedural situations - the overlapping of procedural roles (a defendant and a witness), we would like to point out to the following.

Although it concerns the same event, it involves two different procedures, one of which has been concluded by a decision based on a plea agreement. Even if there was a joint procedure which was severed for the purpose of concluding a plea agreement, after the severance there would be two separate proceedings. This

means that the same person may be a defendant in one proceeding and a witness in the other one (Delibašić, 2014: 276).

Such a legal stance has been taken by the Supreme Court of Montenegro, which had to deal with the same disputable issue, and in its justification of the legal stance, the court pointed out the following: "There is no bar for a person who has been finally convicted on the basis of a plea agreement and who is within the reach of public authorities, to be examined in the capacity as a witness in criminal proceedings against another defendant. Such a possibility is not contrary to the prohibition of double procedural role of the same person in criminal proceedings. The reason for this is that the criminal proceedings against such persons have been finally concluded so that they no longer have the status of a party to an ongoing criminal proceeding against another defendant."[7]

"Incompatibility of the roles of a defendant and a witness is a purely theoretical construct stemming from a belief that 'a defendant cannot be trusted'. Yet the very fact that our legislation has accepted the institute of a cooperative witness, i.e. a cooperating defendant, has quashed the quoted proposition" (Bajović, 2017: 722). The cooperating defendant appears at the same time as a defendant and a witness, which indicates that the intention of the legislator is not to prevent the overlapping of procedural roles in all situations. Yet, we still support the view that in the specific case under consideration there would be no overlapping of procedural roles.

When concluding a plea agreement, the defendant is not obliged to tell the truth, that is, he/she shall not be sanctioned if the confession from the agreement does not correspond the factual state of affairs. If the defendant who has concluded an agreement were to be summoned in his capacity as a witness in criminal proceedings at which the decision based on the agreement is presented as evidence, he would, just as any other witness, be legally obliged to tell the truth. If the content of his testimony should differ from the confession from the agreement, in order not to commit the criminal offence of false testimony, and if a decision was reached based on such a testimony, a situation would occur in which two decisions could be made regarding the same event with differently established facts. However, the 2011 CPC no longer stipulates the duty of the court to fully and truthfully establish the facts, that is, to clarify everything. The truth is implicitly designated as a luxury because not only establishing the truth by the professional participants in the proceedings, but also striving towards it is not mentioned at all as a goal of the criminal procedure (Škulić, 2013:75). The investigative method has been replaced by the adversarial model and the emphasis has been placed on the burden of proof. The parties propose and present their evidence, and the court is an impartial arbiter whose task is to decide who wins the 'battle of evidence'. It is therefore even more illogical and unjust to decline the defence's motion to question the person who has concluded a plea agreement as a witness.

7 See the legal stance of the Supreme Court of Montenegro Su.VI no. 64/17, available at: *https://sudovi.me/podaci/vrhs/dokumenta/5625.pdf*, accessed on 22 January 2019.

An alternative solution, whereby the overlapping of procedural roles would be avoided, is to subject the person who has made the agreement to a hearing rather than to being questioned as a witness. Then the defendant would not be obliged to tell the truth. However, such a thing is unacceptable for a number of reasons. First, it involves an already convicted person, and only a person against whom a criminal procedure has been instituted can be subjected to hearing. Second, it is unjust and illogical to found a decision against one defendant on a testimony of a person who is not bound to tell the truth. Such a testimony should be dealt with a certain degree of caution. As opposed to the situation in which the person who has made a plea agreement is not allowed to attend the trial in order to testify, a significant difference would be the case in which the defendant would be able to question the person who has made the agreement and probe the veracity of the given testimony.

The position of the defendant in the adversarial procedural model differs from that of the defendant in our legislation. If the defendant testifies, he is examined just like any other witness, which means that he/she is sworn in and therefore criminally liable for a false testimony. His position is the same if he testifies against co-defendants. In this regards, a complex question – which calls for a comprehensive analyses of legal provisions, and concerns the situation under scrutiny in this paper – arises as to whether it would be possible and whether it should be stipulated in our legislation that a co-defendant may act in the capacity as a witness when giving the statement.

Preventing the defendant from questioning the person whose plea agreement is presented as evidence in the proceeding infringes upon the basic rights of the defendant guaranteed under Article 68, para. 1, item 10 CPC (CPC, Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 33 para. 5 of the RS Constitution (Constitution of the Republic of Serbia, Official Gazette of RS, No. 98/2006) and Article 6 para. 3 item d of the European Convention for the Protection of Human Rights (Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950). The above listed legal documents guarantee the defendant's right to question the witnesses for the prosecution and defence. In the specific case, the term witness should encompass co-defendants against whom procedures have already been completed as, 'from the perspective of the defence, it is irrelevant whether a testimony is given by a witness or another defendant, since both of them testify about the relevant facts and circumstances, and the court assesses both testimonies according to its discretion" (Bajović, 2017: 723).[8] The rule on the necessity of questioning the co-defendant was introduced by the European Court of Human Rights in the case of

8 Such a view was also taken by the Europran Court of Human Rights in the case of *Isgro v. Italy* stating that the statement of the codefendant that had been read at trial could be considered a statement of a witness and that the defendant should have the same right as the codefendants as well as other witnesses. See the ruling in the Case of Isgro v. Italy, Application No. 11339/85, Strasbourg 1991.

Kaste, Mathisen v. Norway, taking the stance that a ruling must not be based on the statement of the co-defendant whom the other co-defendant or his defence counsel could not question at any stage of the procedure.[9]

Further, the reading of a decision made on the basis of a plea agreement without questioning the person based on whose confession the decision has been made, constitutes a departure from the principle of directness. A situation arises in which a court bases its ruling on a statement, i.e. an agreement of a person it has never seen or heard, while on the other hand Article 419 CPC (CPC, Official Gazette of RS, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014) stipulates that the court is to base its decisions only on the evidence presented at trial. Given the fact that the principle of directness is a rule, and that exceptions to this rule are strictly defined in the Code, the exemptions should be interpreted restrictively and not extended to similar cases. In other words, the provisions of Article 406 para. 1, item 5 CPC which pertain to the reading of the co-defendant's statement should not be extended to encompass the reading of the decision based on the plea agreement because, as we have already explained, the said decision does not constitute a statement given in keeping with provisions that apply to hearing.

There are certain situations in which the legislator stipulates that a decision may not - solely or to a decisive extent - be based on certain statements. Such a situation involves the statement of an undercover investigator. This also applies to the statement given by a witness to the public prosecutor in the absence of the suspect or his defence attorney in the course of investigation, for fear that their presence may influence the witness in the proceedings for criminal offences, especially from the domain of the public prosecutor's office of special jurisdiction. The legislator's *ratio legis* due to which the decision may not be based solely on such statements is that the defendant would be unable to question the veracity of the statement. An analogy would be in order here with a case in which a defendant is not allowed to question the person on whose confession an agreement has been based and thereby decision has been reached which is presented as evidence at trial.

Finally, if the court would grant the motion of the defence to question the person who has made an agreement as a witness, the defence would perform the examination-in-chief and the cross examination would be assigned to the prosecution. However, the defence could see the person whose plea agreement is submitted as evidence for the prosecution as a 'hostile' witness. In this light, the defence would probably feel the need to cross examine the person in order to pose leading questions. Given that the legal provisions accurately regulate who is responsible for examination-in-chief and who is in charge of cross examination, this would not be possible (Delibašić, 2015: 67).

9 See the following decisions: Case of Kaste and Mathisen v. Norway, Application No. 18885/04 and 21166/04, Strasbourg 2006; Case of Luca v. Italy, Application no. 3354/96, Strasbourg 2001; Al-Khawaja and Tahery v. United Kingdom, Application no. 26766/05 and 22228/06, Strasbourg 2011.

CONCLUSION

Extending the legal effects of the plea agreement constitutes downplaying of legal provisions. Additionally, the court flagrantly violates the fundamental right of the defendant guaranteed by the Criminal Procedure Code, the Constitution, and the European Convention on Human Rights, and that is the right to question the witnesses of both prosecution and defence. In that way the burden of proof is significantly reduced for the prosecution. On the other hand, the defence is placed in a significantly more difficult situation as it has no way to refute the evidence presented by the prosecution. This also constitutes a departure from the principle of directness as the court bases its decision on the agreement, i.e. the statement of a person whom it has never seen or heard.

It seems that the Supreme Court of Cassation has made a number of omissions when taking a legal stance that the person who has made a plea agreement cannot be questioned as a witness or heard in a proceeding wherein the agreement is presented as evidence. Initially, the provision from Article 406 para. 1 item 5 of the CPC was misinterpreted as prohibiting that a co-defendant for whom the proceeding is severed or finally completed by a conviction be questioned as a witness. Further, the plea agreement has been mistakenly equated with the statement of the co-defendant under Article 406 para. 1 item 5 CPC which pertains to the statement given in accordance with provisions pertaining to hearing. Finally, the SCC justifies its stance by claiming that the intention of the legislator is to avoid overlapping of procedural roles (a defendant and a witness) in the given procedural situations. However, as it has been explained, there is no duplication of procedural roles in the given situation because two different proceedings are involved. Besides, the existence of the institute of a cooperating defendant indicates that the intention of the legislator is not to prevent overlapping of procedural roles in all of the procedural situations.

1. Should the court allow a person who has concluded a plea agreement to be summoned to the trial, it might give rise to dilemmas of other type. The question is whether such a person should be questioned as witness or subjected to a hearing. The paper elaborates on the reasons due to which we find the first solution to be appropriate, that is, due to which the person who has made a plea agreement in respect of a certain criminal offence is to be examined as a witness. And finally, yet another problem occurs. If a person who has made a plea agreement were to be questioned in the capacity as a witness at the suggestion of the defence, then the defence would be in charge of the examination-in-chief. However, in practice, the defence is likely to perceive such persons as 'hostile witnesses' and therefore may feel the need to cross examine them in order to pose leading questions.

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VOLUME I

Topic III

CONTEMPORARY SECURITY CHALLENGES

DIGITAL EVIDENCE FROM THE INTERNET AND THE CLOUD

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Abstract: In the modern world, the use of ICT communication technologies has become an integral part of life. ICT Infrastructure is the bearer of digital traces of overall legitimate and illegal activities that are through it an unavoidable source of digital evidence. However, in order to prove something, it must also obtain the law as envisaged by the law of an authorized person. The legal norm thus defined is not a problem in the analog world, but it is a big problem when it comes to the virtual world. Namely, the virtual infrastructure, especially the Internet and the new challenges that the cloud architecture brings to us, because of its physical positioning outside the state borders, questions the legality of search and collection. Within this paper, the legal bases for handling the virtual space at the international level are analyzed, such as the Council of Europe Cybercrime Convention, the US CLOUD Act, Australian Decryption Bill and GDPR. The article's intent is to support decision-makers in taking clear national positions regarding the aforementioned legal norms and their mutual interaction. The paper compares the legal consequences of such behavior and the acceptability of such digital evidence collected and possible violation of the privacy of legal and natural persons!

Keywords: Digital Evidence, Virtual Infrastructure, Legal Standards, Internet, Cloud.

INTRODUCTION

At present, evidence of crimes is increasingly being collected by smartphones, gadgets, IOTs, the Internet and the cloud. This is also the main reason why digital evidence has become essential in almost all criminal investigations. But that does not mean that gathering such evidence is simple and effortless. Law enforcement agencies are faced, among other things, with two major challenges in their investigations, namely: jurisdiction and encryption.

Effective criminal investigations often depend on whether a country conducting an investigation is authorized under its domestic law to obtain electronic data held by ISPs' Internet service providers under its authority, including their affiliates outside state borders.

The competence of national legal frameworks is limited to a certain state territory, while our communication and use of data, due to the Internet, cloud computing and technological development, is one that does not know the state borders. A provider of communication and cloud computing platforms such as Skype, WhatsApp, Microsoft, Google and Dropbox will more often than not store data in the country where the user resides, thus depriving the national legal system of its ability to legally act.

Communication service providers who often have electronic evidence of certain criminal acts can have clients around the world, and business offices and data storage facilities in many different countries. As a result, ISPs and data controlled may be subject to the laws of multiple states. Conflicting legal obligations can arise when an ISP receives an order from a government that requires disclosure, but the rest of the government restricts the disclosure of these same information, although they may be vital for timely and effective criminal investigations.

VARIOUS APPROACHES

Lawmakers responded to these challenges by introducing new legal solutions, and examples of these solutions were: The Bill on Clarifying Legitimate Data Use Rights (CLOUD Act), Australian Decryption Bill, Council of Europe Cybercrime Convention, GDPR - which cares about privacy on electronic infrastructures, as well as many others. It is often neglected by the public that the consequences and dilemmas that providers of ISP services might face with criminal reports due to non-compliance with legal frameworks, because the penalties are large. For example, for non-compliance with the EU General Data Protection (GDPR) regulation up to EUR 20 000 000 or 4% of the total annual worldwide turnover of the previous financial year.

ACCESS TO THE PROBLEM BCOUNCIL OF EUROPE CYBERCRIME CONVENTION

The Cybercrime Convention (also called the "Budapest Convention") requires each of the more than 60 countries that the signatories of the agreement have to retain the statutory power to compel companies in their area to disclose the stored electronic information under their control in accordance with the applicable legal process, without exception to the information that the company sells in another country.

Article 18 (1) (a) of the Budapest Convention obliges each Party to "adopt legislative and other measures that may be necessary to enable its competent authorities to order a person in its territory to supply certain computer data in the possession of that person or control, which is stored in a computer system or a storage medium for computer data. "

However, ISPs may also be subject to the laws of other countries that restrict the disclosure of certain types of data, either because the data is stored in another country or require action in another country to disclose them, or because the data relate to other nationals country.

If national laws are in conflict, civil servants may be forced to choose which country's laws will follow, knowing that they can face the consequences of violating the law of another country. Such conflicts pose serious problems for government-seeking data and may hinder important investigations.

Sometimes such conflicts of law problems can be solved by submitting a request for "mutual legal assistance" to another country, using a system of agreements called "Mutual Legal Aid Treaty" (MLATs), but this process has many steps and depending on country and complexity may take several months. This is certainly one of the reasons why "Mutual Legal Assistance (MLA) is generally considered ineffective and accentuated in relation to obtaining electronic evidence, as the binding time is a response to the requirements of the six to 24 months standard. Many requests and thus investigations are abandoned. This negatively affects the government's positive commitment to protecting society and individuals from cybercrime and other criminal acts involving electronic evidence.

In order to overcome the challenge of jurisdiction and speed up the investigation process, local authorities have started searching for information relevant to their criminal investigations over the past few years, directly from service providers, regardless of the location of the data, and some countries also adopted regulations that make such a process legitimate.

ACCESS TO THE PROBLEM CLOUD ACT

One, if not the most prominent instance where the required data is stored on foreign-site servers, is Microsoft Ireland. The case began in December 2013, when the US court ordered Microsoft to surrender data belonging to Microsoft's email account in Ireland. The service provider disputed a court order based on arguments on jurisdiction and sovereignty, resulting in a legal battle between the Ministry of Justice (DOJ) and Microsoft, which ended before the Supreme Court in 2017.

However, before the Supreme Court could decide on this issue, in March 2018, the US Congress passed the CLOUD Act, which now allows American LEAs to request data from US service providers even if these data are stored on servers abroad.

The United States has passed the CLOUD Act, which accelerates access to electronic information held by global ISP providers based in the United States.

Law on Clarification of Legitimate Overseas Data Use Law or the "Law on Clouds". The Law on Clouds allows the United States to conclude executive agreements with other countries that meet certain criteria, such as respect for the rule

of law, in solving the problem of conflict of law. For investigations of serious criminal offenses, ISPs may qualify for qualified, legitimate electronic data orders issued by another country.

The CLOUD Act explicitly states in US law the long established US and international principle that a company under the jurisdiction of a country may require to deliver the information the company controls, no matter where it is stored at any time. The CLOUD requires that CSPs subject to US jurisdiction must disclose information that corresponds to the lawful US legal code, no matter where the company stores the data.

CLOUD requires that foreign governments' orders subject to an executive agreement should not deliberately target individuals or individuals in the US in the United States. The foreign government is free in negotiations to look for similar restrictions that would prevent the United States from using orders subject to an agreement to target its citizens or residents. The US and other countries may continue to use their existing legal process to search for data outside the CLOUD law, but under such circumstances they may still face a conflict of laws.

At the same time, the court proceedings required by a lawsuit requesting State under the CLOUD Act do not have to comply with legal requirements in the United States. Instead, judicial proceedings must comply with the requirements of domestic law for the information requested.

When acting under the CLOUD Act, foreign bodies may use their domestic legal procedures directly to service providers in accordance with their own law, and service providers may disclose responsible information directly to foreign authorities.

The CLOUD Act has not changed or extended the historical scope of orders issued under US law, i.e. random or bulk data collection is not permitted.

The CLOUD Act is applied in accordance with the following definitions: 18 U.S.C. § 2510 (15) ("electronic communications service" means any service that provides users with the ability to send or receive wire or electronic communications); identity card. § 2711 (2) ("Remote Computer Services" means the provision of computer storage and data processing services through the electronic communications system of the public).

These definitions include companies such as email service providers, mobile phone companies, social media platforms, and cloud storage services. They do not include a business just because they have some interaction with the Internet, like certain e-commerce sites.

These definitions are in accordance with Article 1c. Budapest Convention, which includes "any public or private entity that provides its users with the possibility of communicating via a computer system" and "any other subject that processes or stores computer data on behalf of such a communication service or user of such service."

Even if LEAs gain access to data, for example, either by downloading a mobile phone or by requesting data from providers, the increasing popularity of encryption technology prevents LEAs from understanding the data. Data in encrypted format only detects encrypted information.

An example of real life should help to better understand these challenges. The Federal Judge asked Apple to assist the Federal Bureau of Investigation in providing reasonable technical assistance to unlock the encrypted iPhone, which belonged to San Bernardo's terrorist shooter since December 2015. Apple has refused, fearing that such assistance would could set a precedent and hurt the security of encryption technology in the coming years. Finally, the FBI managed to unlock the iPhone without Apple's help, which is why the case did not continue.

Another example relates to encrypted communication. In a two-year investigation that was alive to the media, in 2013, the FBI removed the Black Market Silk Road forum, which allowed drug trafficking and other inadequate goods online. The Silk Road owed its success to a combination of anonymity and encryption. It was a hidden service in Darknet, a network of computers using a cryptographic communications protocol, making it difficult to enforce laws to locate a site server, its administrators, and its users. Finally, the server, at which time it was a party, was in Iceland and confiscated after a successful US mutual legal assistance request.

ACCESS TO THE PROBLEM IN AUSTRALIAN "DECRYPTION" BILL

Australia already has laws that require service providers to file information to the suspect police, but the issue with encrypted messages now is coming. Deciphering is possible if the service provider uses a form of encryption that allows them to view the user's message. But in recent years, services such as WhatsApp, Signal, etc., adding an additional layer of security known as end-to-end encryption, disable decryption, which even the FBI admits is a big problem.

Because end-to-end encryption only allows the sender and receiver to view the message, preventing it from decrypting the service provider.

Australia and other countries say terrorists and criminals exploit this technology to avoid surveillance.

On the other hand, Australian lawmakers have now decided to ensure that national security and law enforcement agencies have the modern tools they need, with appropriate powers and oversight, to access encrypted conversations of those who want to do harm, by granting the Assistance Act and access only recently 6 December 2018. The Australian Law on Telecommunication Access and Assistance allows the government to foster cooperation and capabilities from companies such as social media companies, telecommunications, manufacturers, or even any retail company that provides its customers with WiFi. The law will

force technology companies to help Australian governments decipher network users' communications - and this could be a big blow to privacy in other parts of the world. The law provides for up to $ 7.3m for corporations as well as jail.

Privacy agents fear that the bill could have implications for other countries such as the United Kingdom or the United States. But such exploratory powers are necessary in the light of the above-mentioned examples, however, the obligation to create a backdoor for "good guys" will ultimately lead to the weakening of security measures that "bad guys" can also take advantage of CLOUD does not require service providers to decrypt data in response to law enforcement requirements. The CLOUD law is "neutral encoding". It does not create any new law enforcement authority to force service providers to decrypt communications. It neither prevents service providers from assisting in such deciphering or preventing countries from addressing decoding requests in their domestic laws.

PRIVACY POLICY GDPR VS CLOUD ACT

Privacy concerns created by GDPR on EU territory in the application of CLOUD law are also reflected in the fact that ISP service providers can notify search account owners in accordance with the US court's order under the Law on Preserved Communications unless an independent judge has issued a security order. Protective orders pertaining to all provisions of the Act on Preserved Communications (and not just orders in accordance with the CLOUD Act) shall be issued when the Independent Judge finds that there is reason to believe that a notification of a court order may result in adverse outcome (1) physical security of an individual; (2) escape from persecution; (3) Destruction or manipulation of evidence; (4) intimidation of potential witnesses; or (5) otherwise seriously endangers the investigation or unjustifiably delayed the trial. In accordance with the US Department of Justice's policy, such orders must in general be limited to one year.

In the modern world, the use of information and communication technologies - ICT has become an integral part of life. ICT infrastructure is the bearer of digital traces of all legitimate and illegal activities that through it are inevitable sources of digital evidence. However, in order to prove something, it must also obtain the law provided for by the law of the authorized person. The so-defined legal norm is not a problem in the analog world, but it is a big problem when it comes to the virtual world. Namely, the virtual infrastructure, especially the Internet and the new challenges that cloud architecture brings to us because of its physical positioning outside the state borders, challenges the legality of search and collection.

DIGITAL EVIDENCE ON THE CLOUD

Cloud computing as part of ICT is a paradigm of information technology (IT) that describes the provision of IT infrastructure such as storage space or application software as an Internet service. Technically, it describes the access to IT infrastructure that is available through a computer network without the need for installation on a computer.

The most interesting cloud service model is certainly an electronic (digital) proof of service database service model (DbaaS). Users can access database without the need to install physical hardware and software. Maintenance and administrative services are performed by the service provider while the user pays the service using that database. Looking at the security aspect of the data, the user who stores the Cloud data protection data is transferred to the service provider, while reducing the control over that data. It is very complicated when such providers are out of reach of domestic legislation, which in many cases is the rule because servers of such clouds can be anywhere in the world.

Investigators of this kind of crime are a major obstacle to "protecting personal data" and the obligation to keep such data on a server that regulates GDPR. A legal conclusion regarding the definition of public, private, personal and all other types of data circulating on the Internet is the protection of even what could be used as electronic (digital) evidence. Three types of data can be interesting for the purposes of criminal investigations: subscriber data, traffic data and so-called content data.

ACCESS TO THE PROBLEM NATO APPROACH

NATO also supported "Improved cyber defense policy", based on its cyber defense policy in 2011. In a statement accompanying the meeting of heads of state, NATO confirmed that "international law, including international humanitarian law and the UN Charter, applies in cyberspace" and clarified that "the North Atlantic Council will decide when cyber attack will bring to refer to Article 5 [governing the collective defense] ".

Contrary to the potential consensus that is developing on cybercrime, disputes over cyber security and sovereignty issues are more fundamental and less likely to make wider international agreements. The Chinese and Russian "Information Security" concept suggests that they advocate a governance model that is geared to sovereignty, which is opposed to the multiple-access, bottom-up approach advocated by the United States and the European states. Regional agreements establishing these fundamentally different approaches are likely to be barriers rather than step-by-step steps for wider future agreements. However, regional agreements such as NATO's declaration can provide useful clarity as to how individual countries and their allies see specific behavior in cyberspace and how they will respond to cyber security incidents. In other words, although conflicting regional

agreements can not encourage a broader agreement, they can at least help to promote clarity and conflict avoidance.

COUNCIL OF EUROPE CYBERCRIME CONVENTION RUSSIA, CHINA, INDIA

Whether a comprehensive international treaty is needed that could also cover the crime and behavior of the state in the cyber space is one of the major issues related to cyber security with which the international system is currently facing. Some have argued that it is just now impossible to negotiate even a limited-scope agreement on the Cybercrime Convention at a global level - the differences in opinions about what constitutes the corresponding global standards are simply too big, it is claimed that it is particularly difficult to extend the process and collaborative obligations to global level. At the same time, however, if alignment is crucial to the effectiveness of cybercrime, as the advocates of the Budapest convention discuss, it is legitimate to ask whether we really have the option of choosing whether a new contract should be tried: what is the value of the Convention cybercrime if some of the countries with whose territory there is a significant part of such crime, such as Russia and China, will never sign?

Perhaps the most controversial provision of the Budapest Convention, such as Article 32, on cross-border access to stored computer data with the consent or if it is publicly available. The article reads as follows: The party may, without the consent of the other party:

a. access to publicly available (open source) stored computer data, regardless of where the data are geographically located; or

b. to access or receive, through the computer system on its territory, stored computer data located in the other Party, if the party obtains the lawful and voluntary consent of a person with the statutory authority to disclose information to a party through that computer system. Paragraph (b) of this Article is particularly a cause for concern; for Russia, this clause was in fact the main reason for her decision not to sign an agreement, because she believed that he violated the sovereignty of the country.

Boris Vasiliev of the Office of the Special Coordinator for International Information at the Russian Ministry of Foreign Affairs said: "According to the Budapest Convention, the only condition for accessing the data of citizens of other states is the permission of any other company involved in the processing." Then he explained that, in reading his country, this contributed to the practice of mass surveillance of the NSA and their colleagues. Such permission allows intelligence agencies to review and analyze Internet history in emails and track user files and transfer them to US and overseas territory, he said at a meeting.

Since then, the Council of Europe's Convention on Cybercrime has issued instructions on how to read Article 32, which explicitly contradicts this reading, particularly on two important points.

First, the Guideline explicitly states that service providers generally can not provide access to or disclose information under this provision: service providers are unlikely to be able to validly and voluntarily agree to disclose their users' information under Article 32. Usually providers will only be the carriers of such data; they will not control or own the data and therefore will not be in a position to agree.

Secondly, the article explicitly states that the article "is irrelevant to orders for domestic production or similar legal requirements within a party". Even in those rare cases where a service provider can provide access or disclosure, this provision can not be mobilized if the service provider stores data in the territory of the requesting state.

Although reading Russia could be a misinterpretation, a simple case can clearly show that the problems remain even after the clarification provided by the Guideline. What if a country hostile to India claims that a computer in India was used for a crime in that country and that its law enforcement agencies have the consent of the computer owner to access his computer and his files in India? Such a case falls into the parameters set out in the footnotes, and therefore does not require notification of the Indian law enforcement body.

Indeed, as the Guideline always emphasizes, "it is assumed that the parties to the Convention are a community of trust". But although such a presumption can work well with the relatively homogenous initiators of the Convention, it does not necessarily have to be in the world as a whole. For India, Article 32 (b) can not be a major concern as long as the other Parties to the Convention of the State with which they are friendly are concerned. Once this is changed - for example, because the country with which India has traditionally had more tense relations joins the deal - India could have justified reasons for concern.

The efforts made today to make the Second Additional Protocol to the Council of Europe Convention on Cybercrime are currently the ones that promise to reach the broader acceptable global legal norms, but the time passes will show whether this really is going to happen.

CONCLUSION

Without a common legal framework that will be globally acceptable, it is not possible to speak about legitimate data exclusion, from parts of the global Internet infrastructure, particularly those cloud types, which are physically located outside the national territories. The existing legal solutions of the national and regional levels, which are still not globally accepted, will continue to be the reason for accepting certain digital evidence in one country and rejecting it in other

countries. But without strong reasons, it will not be possible to successfully complete the process of global acceptance of a common legal framework. Following this work, there remains a challenge for the future, exploring what can be a strong enough reason to achieve global consensus over the global legal framework. Because there is no doubt that, globally, we recognize the importance of the question of lawfully excluding evidence from virtual infrastructure, which is physically located outside of our national borders and / or outside the EU.

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EU - NATO COOPERATION TO COUNTER HYBRID THREATS

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Abstract: The current and foreseeable security landscape looks increasingly 'hybrid' in nature. Hybrid operations and tactics combine military and non-military as well as covert and overt means, including cyber-attacks, disinformation campaigns, use of irregular groups and regular armed forces, espionage, sabotage, economic pressure and personal coercion. The strategic aim of such activities is to blur the lines between peacetime, crisis and conflict – to sow doubt and to foment divisions. The speed, scale and intensity of hybrid threats have increased in recent years. Responsibility for building resilience against, and responding to, hybrid attacks lies primarily with individual states. However, it is impossible to deal with the range of such threats alone. Given the multitude of domains and individuals potentially affected, as well as the cross border nature of many hybrid activities, more cooperation is required at all levels. Being prepared to prevent, counter and respond to hybrid attacks, whether by state or non-state actors, is a top priority for NATO as well as for the EU. The purpose of the article is to explain the meaning and the content of hybrid threats and hybrid warfare, having in mind that various definitions of hybrid threats and warfare exist, as well as the cooperation between EU and NATO in countering them. To explain the meaning and the content of hybrid threats and hybrid warfare various definitions of the security analysts and practitioners, policy-makers as well as international organizations and bodies will be analysed. Also, in order to examines and explain recent development of the EU-NATO cooperation in countering hybrid threats official documents of both organizations will be analyzed. Countering hybrid threats has quickly become a central vehicle for strengthened cooperation between NATO and the European Union, based first on mutual interest. The analysis of complex challenges facing the EU and NATO led both organisations to develop a comprehensive approach that blends all relevant actors and available instruments: military forces, diplomacy, humanitarian aid, political processes, economic development, and technology. NATO and the EU could create an effective institutional tandem that has a wide range of both political and military instruments at its disposal.

Keywords: security, hybrid warfare, hybrid threats, European Union, NATO.

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INTRODUCTION

Hybrid threats have become the 21st security challenge for Western countries. They reflect significant change in the nature of international security. The picture of the security environment is not simply black or white. It is complex, multi-layered and multi-dimensional. Thus, analysis of what has changed, how it is changed and what does it mean for democratic states is at the core of understanding the nature of the current security environment in Europe.

Six major changes are driving hybrid threats to the fore. The first is the changing nature of world order. The post-Cold War era has ended. Relational power[1]– that is the power to change others' beliefs, attitudes, preferences, opinions, expectations, emotions and/ or predispositions to act – is today more important than material power.

Second, the world sees a new type of network-based action. The internal and external dimensions of security are interconnect more strongly than they were in recent decades.

Third, fast developing technologies give rise to new domains like cyber space where national and international rules of the game have to be created.

The changing domain of information space, and the media landscape, is the fourth major change affecting today's security environment. The Internet has become a new battlefield where rules are not still formulated.

The fifth change is the changing nature of conflict and war. In today's wars, soldiers should not die and civilian casualties should be avoided. This has led to the debate about the blurred lines between war and peace.

Finally, there is generational change. The Cold War and even the post-Cold War era are behind us. The Cold War had two very distinct features, which underpinned a clear world order: superpower relations – and the ideological struggle between communism and capitalism – dominated, while the fear of nuclear war guided many security policy decisions. During the post-Cold War era, globalization, emphasizing ideas of integration and interdependence, became the fashionable way of describing the world. Today's new generation is a digital generation informed by two contradictory trends – cosmopolitanism and neo-nationalism. Historical memory also changes along with generations, which leaves space for the political manipulation of historical events.

The changes in Europe's security environment raise important questions regarding the responses of the international organisations. When a country is attack by conventional land, sea or air forces, it is usually clear how to best respond. What happens when it is attacked by a mixture of special forces, information campaigns

1 Relational power is the perception of one unit's ability to influence others in a specific bilateral or multilateral relationship. https://www.google.com/search?ei=ZFEHXYS-J5qo1fAP4bqc2A8&q=relational+power&oq=relational+power&gs_l=psy-ab.3..0i203l10.51954.54415..55803...0.0..0.291.1065.0j4j2.....0....1..gws-wiz.WtLlCLvnX58

and backdoor proxies? What is the best response and how can international security organisations like NATO and EU adapt to these attacks?

In response to the changing security environment, the EU and NATO need new strategies or policies. The new world requires a strategic relationship instead of a set of military-technical arrangements between the EU and NATO. This might also have consequences for the capacities that the two organisations should be able to deploy. What should be the priorities for each of them? How can the capacities of the EU and NATO be synchronised in order to realise a more systematic, coherent and efficient response by Europe and North America to the changing world?

THE "HYBRID THREATS" AND "HYBRID WARFARE" - INTRODUCTION TO THE TERMS

Security analysts and practitioners have a tendency to coin new terms, which capture the challenges they are facing. Terms such as 'low-intensity conflicts', 'failed' or 'fragile' states, 'asymmetrical' threats or even, for that matter, 'comprehensive approach' are all relevant examples. 'Hybrid threats' and 'hybrid warfare' are potentially, another case in point.

As hybrid threats to international security have been evolving, their use in scholarly and policy debates has become a source of on-going confusion. In many instances, it can be noticed that the concepts such as 'hybrid threat' and 'hybrid war' or 'hybrid warfare' are used randomly, without even providing a working definition for the terms. This has led to the further confusion of the policy-makers instead of much needed conceptual clarification. The very term 'hybrid' refers to something heterogeneous in origin or composition (a mixture or a blend), or something that has "two different types of components performing the same function" (Merriam Webster Online Dictionary).

The concept of 'hybrid threats' is not new. The term appeared at least as early as 2005, and was used specifically to describe Hizbollah's strategy in the 2006 war with Israel. The concept of hybrid threat has been revived in relation to Russia's actions in Ukraine and the ISIL/Da'esh campaigns going far beyond Syria and Iraq. However, elements of hybridity can be traced in many other dimensions of the current security environment.

Hybrid threat is a phenomenon resulting from the convergence and interconnection of different elements, which together form a more complex and multidimensional threat. The term 'hybrid threat' is a metaphor that captures complexities and dilemmas related to a changing global environment. As such, it is a useful concept that embraces:

- the interconnected nature of challenges (i.e. ethnic conflict, terrorism, migration, and weak institutions);
- the multiplicity of actors involved (i.e. regular and irregular forces, criminal groups); and

- the diversity of conventional and unconventional means used (i.e. military, diplomatic, technological).

In an analysis devoted explicitly to what he called "not-so-new warfare," Frank Hoffman, of the U.S. National Defense University, defined the hybrid threat as, "Any adversary that simultaneously employs a tailored mix of conventional weapons, irregular tactics, terrorism, and criminal behavior in the same time and battlespace to obtain their political objectives" (Hoffman , 2014).

According the definition of the European Center of Excellence for Countering Hybrid Treats (Hybrid CoE) hybrid threats can be characterized as coordinated and synchronized action that deliberately targets democratic states' and institutions systemic vulnerabilities, through a wide range of means. Activities exploit the thresholds of detection and attribution as well as the border between war and peace. The aim is to influence different forms of decision-making at the local (regional), state, or institutional level to favor and/or gain the agent's strategic goals while undermining and/or hurting the target (Hybrid threats, n. d.) .

Definition used in Joint Communication of 6.4. 2016 (JOIN(2016) 18) is: Hybrid threats can be characterised as a mixture of coercive and subversive activity, conventional and unconventional methods (i.e. diplomatic, military, economic, technological, information), which can be used in a coordinated manner by state or non-state actors to achieve specific objectives while remaining below the threshold of open organised hostilities.[2] There is usually an emphasis on exploiting the vulnerabilities of the target and on generating ambiguity with the intention to hinder decision-making processes. Massive disinformation campaigns, using social media to control the political narrative or to radicalise, recruit and direct proxy actors can be vehicles for hybrid threats.

The document titled 'NATO 2020', prepared by a group of 'wise persons' for the 2010 NATO Lisbon Summit note the 'hybrid variations' of threats (NATO 2020, 2010: 15). The 2014 NATO Wales Summit Final Declaration refers to 'hybrid warfare threats' where "a wide range of overt and covert military, paramilitary, and civilian measures are employed in a highly integrated design" (Wales Summit Declaration, 2014). Furthermore, the 25 June 2015 Statement by NATO Defence Ministers talks about 'hybrid threats', for which "we will seek close coordination and coherence with the European Union's efforts in this field" (Statement by NATO Defence Ministers, 2015).

For a threat to be of a 'hybrid' nature it needs to be the product of multiple ways to threaten or attack its intended target – much as a hybrid species is produced by combining different breeds or varieties. It is therefore the mix of different methods – conventional and unconventional, military and non-military – that makes a threat hybrid. In this sense, not all contemporary threats are hybrid. Terrorism, cybercrime, trafficking and extortion are not *per se* hybrid in nature;

2 This definition is, also, used in JOINT STAFF WORKING DOCUMENT EU operational protocol for countering hybrid threats 'EU Playbook' (SWD(2016) 227 final)

they may become so depending on how (and to what extent) they are pursued using multiple tactics simultaneously (Anderson & Tardy, 2015:.2).

In general terms, hybrid threats are characterized by:

- the combination of conventional and unconventional, military and non-military, overt and covert actions;
- the aim of creating ambiguity and confusion on the nature, the origin and the objective of the threat;
- the ability to identify and exploit the vulnerabilities of the targets;
- the capacity to keep the level of hostility below the 'threshold' of conventional war (Anderson & Tardy, 2015:2).

Since the start of the Ukrainian conflict, a new buzzword has dominated the international security debate: hybrid warfare. Russia's recent behavior and actions are often refer to as 'hybrid warfare'. They have been an effective and sometimes surprising mix of military and non – military, conventional and irregular components, and can include all kinds of instruments such as cyber an information operations. It is the combination and orchestration of different actions that achieves a surprise effect and creates ambiguity, making an adequate reaction extremely difficult, especially for multinational organizations that operate on the principle of consensus.

However, hybrid warfare is not a new invention by Russia. The idea of using unconventional means and actors in conflict is not new. In fact, it is as old as warfare itself. [3] In his speech, NATO Secretary General Stoltenberg reiterated that '… the first hybrid warfare we know of might be the Trojan Horse, so we have seen it before" (Stoltenberg, 2015). According to P.M. Breedlove"… new things are how these tools that we have recognize from before are now put together and used in new ways to bring new kinds of pressure" (Breedlove , 2015).

Propaganda, economic blockades and covert activities have been used in many international confrontations in combination with full-scale war. Both World Wars in the previous century serve as examples. What is new in the 21st century is the greater effect of hybrid warfare due to the innovation in means and methods combined with increasing economic global interdependencies. The internet and the media offer unprecedented scope for generating domestic support as well as influencing the 'opponent'. The cyber domain is not just a modern realm for espionage; it can also be used offensively, for example to disrupt communication

3 For example the Cambridge publication „Hybrid Warfare *Fighting Complex Opponents from the Ancient World to the Present*" shows that the combination of different tactics and combats is not a modern military strategy but existed even during the ancient world, it is the term that is newer (Murray&Mansor, 2012). Nicu Popescu in his paper "Hybrid Tactics: neither new nor only Russian" says that such combinations of unconventional tactics "are as old as war itself" and Western states used to use them effectively on the tactical level themselves. (Popescu, January, 2015) Similarly Michael Kofman and Matthew Rojansky in their article "A Closer Look at Russia's 'Hybrid War'" (Rojansky, 2015, p. 2) say that the term is „as old as warfare itself". Some of the mentionable examples of hybrid warfare are the conflicts of Hezbollah movement in Lebanon, Georgia, Russian invasion in Afghanistan, Spanish Guerrillas during Napoleon's Spanish invasion and many others.

networks or other essential enablers for combat forces. Distance and time offer no protection against such a threat – this is very different from the classical danger posed by armies and fleets. In addition, closing the valve of a gas pipeline can paralyse society in a country that is largely dependent on energy imports.

A critically important aspect of hybrid warfare is to generate ambiguity both in the affected population under attack as well as in the international community. The aim is to mask what is actually happening on the ground in order to obscure the differentiation between war and peace. This ambiguity, the lack of full attribution, can paralyze the ability of an opponent to react effectively and mobilize defense as it becomes unclear who is behind an attack. Even more, ambiguity can divide the international community, limiting the speed and scope of a response to the aggression.

General Valery Gerasimov, Russia's Chief of General Staff, whose often cited 2013 article stated that, "the rules of war have cardinally changed," and that the effectiveness of "non-military tools" in achieving strategic or political goals in a conflict has exceeded that of weapons. According to General Gerasimov, this new generation of warfare includes the following elements:

- Military action is started during peacetime (without declaring war);
- Non-contact clashes between highly maneuverable specialized groups of combatants;
- Annihilation of the enemy's military and economic power by quick and precise strikes on strategic military and civilian infrastructure;
- Massive use of high-precision weapons and special operations, robotics, and technologically new weapons;
- Use of armed civilians;
- Simultaneous strikes on the enemy's units and facilities throughout all of its territory;
- Simultaneous battles on land, air, sea, and in the information space;
- Use of asymmetrical and indirect methods;
- Management of combatants in a unified information system (Gerasimov, 2013).

COUNTER HYBRID THREATS: A CHANCE FOR NATO AND THE EU TO WORK TOGETHER?

Countering hybrid threats is about gaining new understanding of such threats and the innovative use of existing capabilities, many of which – like economic development, the fight against corruption or eliminating poverty – reside in nonmilitary governmental and intergovernmental agencies, private sector and international nongovernmental organizations. The analysis of complex challenges facing the EU and NATO led both organizations to develop a comprehensive

approach that blends all relevant actors and available instruments: military forces, diplomacy, humanitarian aid, political processes, economic development, and technology.

Since 2016, NATO and the European Union have identified countering hybrid threats as a priority for cooperation. Acknowledging the need for dialogue and coordination with likeminded partners in countering hybrid threats, the EU's joint communication (JOIN (2016) 18 final) and "EU Playbook" (SWD (2016) 227 final) [4] identified a number of areas for closer EU-NATO cooperation, including situational awareness, strategic communications, cybersecurity, and crisis prevention and response. Namely, in 2016, the European Commission and the EEAS developed a joint framework on countering hybrid threats, containing 22 actions for member states and the institutions that set out ways to recognize hybrid threats, improve awareness thereof, and take steps to build resilience (Nikodinovska-Stefanovska, 2018:74-75). Although the actions are by no means exhaustive, the framework established a clear ambition to make countering hybrid threats an EU priority. The most tangible effects were the establishment of a Hybrid Fusion Cell as part of the EU Intelligence and Situation Centre, and a European Centre of Excellence for Countering Hybrid Threats in Helsinki.

The commitment to a deeper partnership with NATO in countering hybrid and cyber threats was also expressed in the European Union global strategy of June 2016. At the European Council on 28 June 2016 EU - NATO cooperation was discussed. It contributed to the adoption of the EU-NATO Joint declaration at the NATO Summit in Warsaw (8-9 July 2016).

Hybrid threats also rose to the top of NATO's agenda following the appearance of "little green men" in Crimea in 2014, which created an acute awareness of how military force could be used in the Euro-Atlantic area below the legal threshold of war. NATO was quick to adopt a strategy to counter hybrid threats based on a horizontal "all-of-NATO" approach. Similarly, to the European Union, NATO has created a capability to monitor and analyze hybrid threats, based in the intelligence community and cooperating with other NATO authorities. Furthermore, NATO has established counter hybrid support teams that can be sent in support of the Allies upon their request, in preparing and responding to hybrid activities (NATO's response to hybrid threats, 2018).

NATO Secretary General Jens Stoltenberg and European Commission and Council Presidents Jean-Claude Juncker and Donald Tusk signed a joint declaration in Warsaw in July 2016.The joint declaration set out a "common set of proposals" with 74 concrete actions, many of which focus on hybrid threats, building resilience in cyber security, and strategic communications (Nikodinovska-Stefanovska, 2018: 75-76). A second joint declaration agreed in Brussels in July 2018

4 This document is prepared in order to implement Action 19 of the Joint Framework, which foresee a "common operational protocol between Member States, the Commission and the High Representative is to outline effective procedures to follow the case of the hybrid threat, from the initial identification phase of the attack to the final phase of the attack, and mapping the role of each Union institution and actor in the process".

provided an additional focus on military mobility, counter-terrorism and resilience to risks posed by chemical, biological, radiological and nuclear agents (Joint Declaration on EU-NATO Cooperation, 2018).

In addition to giving NATO-EU cooperation a long-awaited platform of common interest, countering hybrid threats has led to some other important new developments in the European Union. The European Commission and the EEAS have set up an inter-service group for countering hybrid threats that meets regularly at different levels. This group – designed to ensure common awareness of events and processes throughout European institutions relevant to countering hybrid threats – is a promising first step towards a comprehensive model for security-related challenges. Ideally, it could lead to a more solid platform for civil and economic preparedness, cyber security and other inherently multi-sectoral issues.

Furthermore, the European Council Friends of the Presidency Group for Countering Hybrid Threats (FoP) has been awarded an extended and significantly broadened mandate, stretching through the next four presidencies until June 2020 (Cooperating to counter hybrid threats, 2018). Whereas the initial FoP mandate from 2017 was very limited, the new one call for an overview of ongoing EU efforts on countering hybrid threats, so as to spot shortfalls, avoid duplication, and support political decision making across Council bodies. By the end of the new mandate, the FoP could even become a permanent body responsible for maintaining cross-sectoral awareness and – similarly to NATO's Civil Emergency Planning Committee – supporting member states' civil preparedness and thereby their resilience against hybrid threats (Insitutional Framework for Countering Hybrid Threats, n.d., point.6).

One key field where cooperation between the European Union and NATO should be intensified is training and exercises. Multi-faceted, complex exercises that test the ability to respond to hybrid threats below the threshold of war would be a particularly ideal area for the two organisations to explore their strengths and weaknesses, and perhaps discover complementarities. In September, an informal meeting of the North Atlantic Council (NAC) with the EU Political and Security Committee (PSC) included a hybrid scenario-based discussion facilitated by the Hybrid CoE (Insitutional Framework for Countering Hybrid Threats, n.d., point.7). This initiative should become a recurring element of future NAC-PSC deliberations, and other joint meetings as appropriate.

Joint exercises could also be designed to link up functional counterparts in EU and NATO institutional structures around a mutually relevant hybrid threat scenario, supported by the CoE. Furthermore, the NATO School in Oberammergau and the European Security and Defence College could open up their training courses for selected EU and NATO staff respectively (Insitutional Framework for Countering Hybrid Threats, n.d., point. 8).

CONCLUSION

Countering hybrid threats has quickly become a central vehicle for strengthened cooperation between NATO and the European Union, based first on mutual interest. Hybrid threats are diverse and ever changing, and the tools used range from fake social media profiles to sophisticated cyber attacks, all the way to overt use of military force and everything in between. Hybrid influencing tools can be employed individually or in combination, depending on the nature of the target and the desired outcome. As a necessary consequence, countering hybrid threats must be an equally dynamic and adaptive activity, striving to keep abreast of variations of hybrid influencing and to predict where the emphasis will be next and which new tools may be employed.

To counter hybrid threats the EU has a wide range of instruments at its disposal, from sanctions, trade agreements and imposing anti-trust charges to CSDP missions and operations. However, the effectiveness of EU counter-measures will largely depend on successful coordination of all policies, tools and means available to the EU and its member states. The common policy framework for countering hybrid threats is an important prerequisite for such coordination.

NATO should consider a more flexible policy and strive to deter prospective adversaries with a wide range of instruments. By partnering with the EU and expanding its set of instruments, the Alliance will be able to tackle the threat from multiple angles. What is more, it may be even able to prevent it.

The EU seems the organisation best suited to complement NATO's crisis management efforts, as it offers a diversity of instruments that can be employed in hybrid warfare. NATO and the EU could create an effective institutional tandem that has a wide range of both political and military instruments at its disposal. The NATO Summit in Wales acknowledged the EU as a strategic partner of the Alliance. Moreover, the common threat of hybrid warfare within the Euro-Atlantic area presents a solid opportunity to develop this partnership even further.

The EU and NATO can become a stronger force by coordinating and cooperating with each other more closely. The new challenges and threats leave no other choice. It is the primary responsibility of all member states of both organisations to make this happen, by setting aside the heritage of the past and by focusing on the strategic needs of today and tomorrow.

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EUROPEAN LEGAL STANDARDS FOR THE SUPPRESSION OF INTERNATIONAL TERRORISM

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Abstract: The subject study contains an analytical overview of the most important legal acts on the suppression of terrorism adopted under the auspices of European regional organizations - the Council of Europe and the European Union. These acts essentially complement the United Nations legal framework, which aims to contribute to the universal fight against terrorism as an international crime that threatens international peace and security. Hence, in contemporary international relations, European countries have accepted the obligation to cooperate with each other in taking preventive and prohibitive measures and actions in the fight against international terrorism. Given that there are general standards in assisting in the detection, extradition, prosecution and punishment of perpetrators of terrorist acts, Serbia, as a candidate country for membership of the European Union, is obliged to harmonize its internal legislation with European legal standards for the suppression of international terrorism. This is due to the fact that Serbia through this process demonstrates its ability to engage in dialogue with all EU Member States on the implementation of the objectives of its Common Foreign and Security Policy, as well as on the fulfilment of the obligations arising from the pre-accession Chapter 24 concerning the harmonization of the domestic legal and institutional system with European standards in the area of freedom, justice and security.

Keywords: Combating Terrorism, Council of Europe, European Union, Serbia, Common Foreign and Security Policy.

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A FEW INTRODUCTORY REMARKS ON TERRORISM

In the international community for decades, there has been a failed debate about the essential determinations of the international crime of terrorism. The fight against this international crime has begun under the auspices of the League of Nations. Unfortunately, due to the lack of ratifications and the outbreak of the Second World War, the 1937 Convention on the Prevention and Punishment of Terrorism of the League of Nations has never entered into force (*League of Nations Official Journal,* 1938; Hudson, 1972: 862; Franck & Lockwood, 1974). After the Second World War, several anti-terrorist conventions were passed under the auspices of the United Nations. However, the international community has not reached an agreement on one general definition of terrorism due to the ideological breakdown between developed and developing countries. The main obstacle was his "chameleon nature", that is, in the fact that terrorism appeared in a large number of forms that, depending on the circumstances, could have represented various types of international crimes - from war and crimes against humanity to a separate international crime (Dinstein, 1989; Cassese, 2003; Saul, 2008). The important distinction that separated terrorist acts from other international crimes was the fact that those acts were incriminated in most of the national legal systems, and then that they dealt with the most serious crimes such as murder, kidnapping, hostage taking, bombardment, torture, as well as other severe forms of torture directed against a certain group of persons, States, and even international organizations with the aim of provoking general fear and uncertainty. Unlike purely political crimes that were motivated by political reasons and which, by their very nature, have exclusively political goals, terrorist acts as extremely serious and severe acts of violence could have been motivated not only by political but also religious and other ideological reasons, for which they had to be treated differently by international law (for example, in the past, acts of "freedom fighters", that is, various categories of national liberation movements that fought for the realization of the right of the people to self-determination were interpreted differently) (Reisman at al., 2004: 262; Aust, 2010: 266; Hudson, 2014: 19). It was therefore considered that no agreement on the definition of terrorism could be achieved until the historical, social, political and economic causes on which this crime was based had previously been eliminated (Cassese, 1989). Neither the attempts made in the negotiations in the adoption of the Statute of the International Criminal Court that international terrorism included in the crimes falling under its jurisdiction also did not lead to positive results, due to the lack of consensus on its definition. For political reasons, terrorism is not included in the jurisdiction of this, or other international courts (Guillaume, 2004: 541). Namely, it is still considered that it is most effective to persecute perpetrators of terrorist acts at the national level, and in the event of the need for concerted action by more States at the regional level. A positive international legal order that regulates the problem of combating international terrorism is reflected in numerous multilateral

international treaties. International treaties are in most cases concluded under the auspices of the United Nations or under the auspices of significant regional organizations. (Dimitrijević, D. 2016: 61-78). However, even though these international instruments have a "sectoral" approach in regulating specific aspects of terrorism, in most cases they prescribe the universal jurisdiction of States in terms of the prosecution of perpetrators of terrorist acts found on their territory (Higgins, 1994). In other words, the instruments are applied irrespective of the fact on which territory the terrorist act is committed, regardless of the nationality of the perpetrator and the motives were decisive in the execution of this incriminating act (Lambert, 1990, p. 234).

EUROPEAN LEGAL FRAMEWORK ON THE SUPPRESSION OF TERRORISM

European Council in fight against terrorism

The Council of Europe's activities in the fight against terrorism are, *inter alia,* based on the strengthening of legal action against terrorism, which should lead to the elimination of its causes. Under his auspices, a number of legally relevant acts were adopted. Our analysis is therefore limited to those most important conventions:

1. European Convention on the Suppression of Terrorism, Council of Europe of 1977, adopted in Strasbourg (E.T.S. 90), supplemented by the 2003 Protocol (E.T.S. 190);

2. The Convention on Laundering, Search, Seizure and Confiscation of Proceedings from Crime adopted in Strasbourg in 1990 (E.T.S. 141);

3. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism adopted in Warsaw in 2005 (E.T.S.198);

4. The Convention on the Prevention of Terrorism adopted in Warsaw in 2005 (E.T.S.196).

All of these Conventions aim to strengthen the fight against terrorism on the national and international levels through enhanced cooperation among States. Thus, the 1977 European Convention on the Suppression of Terrorism, as well as its Additional Protocol of 2003, focuses on the punishment of acts of terrorism (their perpetrators, accomplices, organizers, etc.) (Jovašević, 2017: 318). The Convention confirms the conviction of the States that extradition, i.e. the extradition of persons considered to be the perpetrators of these acts as an effective means of achieving this goal. According to the Convention, legal assistance between States cannot be refused solely because the perpetrator's work relates to a political criminal offense or a criminal offense related to political offenses or a criminal act inspired by political motives. The Convention and the Additional

Protocol emphasize the duty of extradition for acts covered by universal legal instruments of the UN, namely: The Convention on Offences and Certain Other Acts Committed On board Aircraft *(Aircraft Convention)* adopted at Tokyo 1963 (UN Treaty Series, 1963); The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention) adopted at Montreal 1971 (UN Treaty Series, 1963); The Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation from 1988 (UN Treaty Series, 1990); The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents *(Diplomatic Agents Convention),* adopted in 1973 (UN Treaty Series, 1973); The Convention on the Physical Protection of Nuclear Material *(Nuclear Materials Convention),* adopted in Vienna in 1988 (UN Treaty Series, 1980); The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation *(Maritime Convention)* adopted at Rome 1988 (UN Treaty Series, 1988); The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf *(Fixed Platform Protocol)* (UN Treaty Series, 1988); The International Convention for the Suppression of Terrorist Bombings *(Terrorist Bombing Convention)* adopted in New York in 1997 (UN Doc. A/RES/52/164); The International Convention for the Suppression of the Financing of Terrorism *(Terrorist Financing Convention)* adopted in New York in 1999 (UN Doc. A/RES/54/109). If the States Parties do not have bilateral agreements on extradition and provision of legal assistance, they may treat this Convention as the legal basis for the extradition of persons accused of having committed, tried, coerced or organized crimes that constitute an attack on the life, physical integrity or liberty of a person entitled to international protection or diplomatic personnel, and also criminal offenses involving abductions, hostage taking, arbitrary deprivation of liberty, use of bombs, missiles, grenades and automatic weapons and explosives. In that sense, the Convention also provides for certain restrictions on the extradition of persons considered to be prosecuted and punished for racial, religious or political reasons, or because of the fact that the condition of such a person would be difficult (for example, if it were subjected drastic torture, life imprisonment without the right to pardon or the death penalty). In this regard, the Convention with the Additional Protocol is on the line of solutions contained in the European Convention on Human Rights. The principle of protecting the rights of persons accused of having committed terrorist acts is hereby confirmed. States generally reserve the right to lay down certain reserves that will apply on a case-by-case basis, which they can withdraw in whole or in part by sending a Statement to the Secretary General of the Council of Europe. Thus, each State Party may, when accepting the Convention, limit its application to a specific part of its territory, as it may extend its application by withdrawal of the reserve. In addition, States Parties may express their reservations when filing a ratification instrument relating to the extradition of the perpetrators of terrorism if they find that it is a criminal offense that is politically motivated. Refusal of extradition is conditioned by the obligation to consider and assess the nature of the offense as

well as its severity (for example, does the crime constitute a collective danger, whether it is damaged persons who are not related to the motives from which the offense was committed or whether they terrorist act used cruel or perfidious methods. The implementation of the Convention is in practice supervised by the European Committee on Criminal Matters. In the event of a dispute over interpretation and application, the Convention provides for an arbitration procedure. The arbitration body in these cases shall be formed from the representatives of the States in dispute who elect the third arbitrator. In case of opposing views on the selection of a third arbitrator, the President of the European Court of Human Rights makes a decision. Otherwise, decisions made by arbitration by a simple majority are final for the parties to the dispute. It follows that the Convention with the Additional Protocol was of great importance for the development of European law in the field of the fight against terrorism (Bodrožić, 2016: 212.)

The Convention on Laundering, Search, Seizure and Confiscation of Proceedings from Crime of 1990, adopts minimum standards for the establishment of international cooperation in the investigation, search and seizure of profits, which are essentially considered measures to combat various forms of organized crime. The next Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism from 2005 expands the scope of incrimination and terrorist acts related to organized crime.

With the Convention on the Prevention of Terrorism of 2005, the Council of Europe has legally synchronized the measures that Member States should take in the fight against terrorism. The Convention focuses on the suppression of terrorism and its negative consequences in relation to the overall enjoyment of human rights, and in particular, the right to life. The States Parties have undertaken to take appropriate measures at the national and international levels, while respecting international obligations accepted by international treaties. Special emphasis is placed on national policies where States provide for special training measures for members of law enforcement bodies and other bodies, as well as conditions in the fields of education, culture, information and the media. In addition to these obligations, States are obliged to exchange information, improve the physical protection of persons and facilities, strengthen training and contingency plans and promote tolerance by fostering inter-confessional and intercultural dialogue. In addition, States are obliged to strengthen and promote public awareness of the causes and seriousness of the threats that constitute the crimes of terrorism and other acts listed in this Convention. The Convention specifically incriminates public provocation, recruitment and training for the purpose of committing terrorist acts (Kolarić, 2013: 54-55). These crimes are characterized by a specific intent that must be proven in each specific case. However, for the existence of the criminal offense itself, it is not necessary that the criminal offense of terrorism to which a person is publicly promoted, for which it is recruited or trained, is actually and done. States Parties are obliged to incorporate into their legislation the solutions to sanction these offenses, in particular their attempt, complicity, organization and deliberate contribution to the execution of one or more of

these acts. It is significant that the Convention adopts additional criteria for the liability of legal persons for the aforementioned criminal offenses, and in that sense prescribes the obligation of harmonization of internal law (criminal, civil and administrative). Penalties for those acts at the national level should reflect the principles of effectiveness, proportionality and prevention. According to the Convention, victims should primarily be financially compensated by the States in whose territories terrorist acts were committed. Means of achieving satisfaction may be covered by specific national programs adopted in accordance with national legislation. This equation of criminal law regulation in the fight against terrorism allows for more effective international legal assistance in criminal matters, as well as more effective extradition mechanisms, which is best reflected in the provisions of the Convention, in which, in the absence of international treaty solutions and adequate solutions in domestic legislation, the Convention itself may supersede the legal basis for the extradition of perpetrators of terrorist acts and terrorist acts related to terrorism.

European Union in fight against terrorism

Terrorist acts represent the most serious forms of violation of the universal values of human dignity, freedom, equality and solidarity and the enjoyment of human rights and fundamental freedoms. In view of this fact, the European Union, as a supranational organization, based on human rights ideas, has worked continuously to strengthen cooperation in criminal and security matters. It also adopted a number of legal acts in order to suppress international terrorism. As the terrorist acts changed over time, the European Union also gradually changed, abolished and supplemented earlier legal acts aimed at improving the fight against terrorism. This was for the purpose of eliminating any negative consequences of terrorist acts directed against democracy, the rule of law and values that are common to all member States. Due to methodological reasons, the author devoted special attention to the following legal acts of the European Union:

1. Council Framework Decision of 13 June 2002 on combating terrorism, 2002/475/JHA (Official Journal of the European Communities, L 164);

2. Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (Official Journal of the European Communities, L 330/21);

3. Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (Official Journal of the European Communities, L 253/22);

4. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (Official Journal of the European Communities, L 88/6);

5. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Official Journal of the European Communities, L 309);

6. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Official Journal of the European Communities, L 141/73);

7. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Official Journal of the European Communities, L156/43);

8. Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (Official Journal of the European Communities, L 344);

9. Council Regulation (EU) 2016/1710 of 27 September 2016 amending Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (”Official Journal of the European Communities, LI 259/1).

The aforementioned legal regulation of the European Union represents a legal framework for generally acceptable legal solutions in the fight against international terrorism. The determination of the criminal offense of terrorism and related crimes is aimed at harmonizing national legislation of the Member States and the legislation of candidate States for accession to the European Union, such as the Republic of Serbia. In this respect, in the next part of our work, the author will focus on the analysis of the basic concepts and categories that are covered by the legal regulations of the European Union.

The Council Framework Decision of 13 June 2002 on combating terrorism, 2002/475 / JHA, defines terrorist acts as acts that can cause serious harm to the State or international organization and are carried out with the intent of serious intimidation of the population, in order to apply coercion to the government or international organization as well as for serious destabilization or destruction of the basic political, constitutional, economic or social structures of a country or an international organization. Terrorist acts include crimes committed to life, physical integrity or freedom. They may include acts carried out by abduction or taking hostages, the destruction of State or public facilities, traffic systems, infrastructures including information systems, fixed platforms located in the epicontinental zone, abduction of aircraft, ship or other means of public transport or transport of goods, production, possession , the supply, transportation, supply or use of nuclear, biological, chemical or other weapons, explosives, nuclear or

radioactive materials or devices, or the research and development of nuclear, biological or chemical weapons, the release of hazardous substances, fires, floods or explosions that could endanger the lives of people, interrupting or discontinuing water supply, electricity, or other basic natural resources that could endanger people's lives. The threat of doing one of the aforementioned acts is covered by this incrimination as well. The Framework Decision of the Council of the European Union also defines criminal acts related to terrorist acts such as acts of serious theft, forgery and extortion.

With the Council Framework Decision 2008/919 / JHA of 28 November 2008 amending the Framework Decision 2002/475 / JHA on combating terrorism, the existing list of accompanying criminal offenses has been extended to public incitement to commit terrorist acts, recruitment and training for the commission of terrorist acts. Public incitement to commit terrorist acts involves the distribution, or otherwise making available to the public of messages, in order to encourage the commission of a terrorist act, regardless of whether or not the offense is committed. Recruitment for terrorism signifies the search of other persons who will commit an act that constitutes a criminal offense of terrorism. Terrorism training means the delivery of instructions for the manufacture or use of explosives, weapons or harmful and dangerous substances, or the giving of instances of specific methods or techniques in the intent of committing a terrorist act. An incriminated act appears to be intended to be used exclusively for these purposes. Hence, terrorism-related offenses can lead to the commission of serious terrorist acts by terrorists or terrorist groups, which largely justify the incrimination of such behaviour.

After the terrorist attack in New York and Pennsylvania on September 11, 2001, a global "war on terrorism" has been considered (Dimitrijević, V. 2004: 80). The European Union, as the most important supranational organization on the European continent, brought about a series of measures that emphasized the importance of a common fight against terrorism in all its forms. Thus, for example, the European Council adopted Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences. The decision regulates cooperation between operational services responsible for the fight against terrorism: the European Police Office *(Europol),* the European Union's Judicial Cooperation Unit (*Eurojust),* the intelligence services, the police forces and the judicial bodies. Starting in principle from the respect of human rights and fundamental freedoms, the Decision extends the cooperation of the Member States to the exchange of information at all stages of the criminal proceedings. Each Member State has an obligation to establish a special body or service and take appropriate measures in order to collect and distribute the necessary information. Delivery of information appears in accordance with domestic law and international standards. As Member States cannot independently achieve appropriate results in this plan, the European Union may adopt measures on the basis of the principles of subsidiarity and proportionality to achieve the objectives set out in this Decision.

Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and replacing Council Framework Decision 2002/475 / JHA and amending Council Decision 2005/671 / JHA, defines minimum rules concerning the definition of terrorism and sanctions for these crimes are related to terrorist groups and terrorist activities. In this respect, the Directive shows the real State and the existence of a new category of terrorists called: foreign terrorist fighters, who go abroad to commit terrorist acts. Starting from the development of terrorist threats, this Directive points to the need for a new definition of terrorist acts at European Union level, then related to terrorist groups and criminal offenses related to terrorist activities. According to the Directive, this would additionally approximate the behaviour of Member States in relation to acts related to foreign terrorist fighters and to acts related to the financing of terrorism. These forms of behaviour should be sanctioned if they are made *via* the Internet and through public media. The Directive contains an exhaustive list of terrorist offenses such as an attack on life, deliberate acts that can be classified as terrorism when they are committed with a specific terrorist target. In this sense, terrorist acts could be directed at intimidating the population or by unlawfully forcing governments or international organizations to act or omission that could be aimed at seriously destabilizing or destroying the political, constitutional, economic and social systems. Criminal offenses not specified on the list shall not be considered as terrorist acts under this Directive. Otherwise, the Directive has extended the meaning of the offending criminal offenses. Hence, public incitement to commit terrorist acts includes the glorification and justification of terrorism or the spread of messages or images on the Internet and beyond, *inter alia* those related to victims of terrorism, in order to receive help for terrorist ideas or serious intimidation of the population. Such conduct should be punishable when it causes the danger that the terrorist acts might be committed, which in each particular case is assessed and considered in the light of the particular circumstances of the case and the context in which the offense was committed. Recruitment under the Directive includes the attendance of training for terrorist acts. Training means acquiring knowledge and practical skills, as well as obtaining information with the intention of conducting terrorism. Self-study, *inter alia via* the Internet or the use of teaching documentation, could also be considered as attending training if, as a result, it arises with the intention of committing terrorist acts. The Directive also introduces a novelty such as that relating to the incrimination of travel abroad for the purpose of committing terrorism. In this regard, preparatory actions are especially incriminating, which may include planning and association for the execution of terrorist acts. Also, special incrimination is also provided for helping to organize trips abroad and to attempt to travel for the stated purpose. The Directive emphasizes the need for the exchange of information collected by the competent authorities and bodies of the Member States for the purpose of conducting criminal proceedings in relation to individual and group perpetrators of terrorist activities. Under the "criminal procedure", all stages of the proceedings shall be considered as from the moment when a per-

son is suspected or accused of committing a criminal offense until the moment when the judgment becomes final. The directive defines the "terrorist group" as an organized group with more than two persons organized to act for a longer period of time for the commission of criminal acts of terrorism. In other words, the Directive prescribes the obligation of member States to sanction acts related to terrorist groups, such as: conducting a terrorist group and participating in its terrorist activities, among others, in the collection of information or material resources necessary to finance its activities in any way, aware of the fact that such participation may contribute to its criminal activities. In line with such a solution, the Directive reaffirms the earlier adopted Directive 2005/60 / EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of purifying money and financing of terrorism (Third Directive) and Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of piracy or financing of terrorism, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60 / EC of the European Parliament and of the Council Directive 2006/70 / EC (Fourth Directive), which establishes common rules on the prevention of the use of the European Union financial system for money laundering or terrorist financing. It also addresses the decisions adopted in Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism committed to the implementation of Common Foreign and Security Policy (CFSP). From this Regulation and the supplementary legislative acts adopted in the following period, first of all the amendments contained in Council Regulation (EU) 2016/1710 of 27 September 2016 amending Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending the Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of purifying money or terrorist financing, and in the amending Directives 2009/138 / EC and 2013/36 / EU (Fifth Directive), there is a clear intention to introduce special measures to prevent the implementation of new forms of terrorist acts and the financing of terrorism in the territory of the European Union. (Dimitrijević, D. 2015: 167-178). The said solutions are in some way extorted, since the latest terrorist attacks have indicated the emergence of new trends regarding the way terrorist groups finance and carry out terrorist acts. Technological advances have led to the emergence of alternative financial systems and virtual (crypto) currencies that, with the connection of organized crime and terrorism, have remained beyond the reach of national jurisdictions, which in itself represents a new security threat not only for EU Member States, but for the third States. In order to keep pace with the changing trends, the Fifth Directive elaborated precise rules for taking additional measures needed to achieve greater transparency in the financial transactions of companies and all other legal entities as well as trusts and other legal entities that function equally (so-called "similar

legal arrangements"), with the aim of improving the existing legal framework and more effectively combating terrorism financing. According to the Fifth Directive, it would also be important for States to take into account the application of the principle of proportionality in relation to existing security risks when undertaking additional measures.

CONCLUSION

The paper analyzes some of the most important legal instruments adopted under the auspices of the Council of Europe and the European Union. These instruments essentially complement international legal instruments adopted under the auspices of the United Nations, which aim to contribute to the universal fight against terrorism. In that sense, all the countries of these regional European organizations are obliged to cooperate in taking preventive and prohibitive measures against terrorism (Račić, 2015: 357). Given that there are general European legal standards for suppression of terrorism, Serbia, as a candidate country for admission to the European Union, is obliged to harmonize its internal legislation with European law. This is because Serbia through this process shows its ability to engage in dialogue with all EU Member States on the implementation of the objectives of the Common Foreign and Security Policy. This is because Serbia through this process shows its ability to engage in dialogue with all EU member states on the implementation of the objectives of the Common Foreign and Security Policy, as well as the obligations arising from the Accession Chapter 24 concerning the harmonization of the domestic legal and institutional system with the European standards in the area of freedom, justice and security. Security is the central issue that is being discussed in the process of accession to the European Union, so Serbia has a duty to gradually align itself with the European Union's attitudes to the application of measures to prevent the financing of terrorist acts. This is especially important if we have in mind our policy towards Kosovo and Metohija where there is recorded activity of various terrorist groups. Therefore, the European Union rightly expects Serbia to support the Common Foreign and Security Policy through the application of adequate measures against persons and organized criminal groups who are seriously suspected of terrorism. Serbia is bound by internal legislation and concluded international treaties and conventions, as well as a medium-term political program set out in the National Strategy for the Fight against Money Laundering and Financing of Terrorism, adopted by the Serbian Government on 12 October 2017. (Dimitrijević, D. 2018: 156-174)

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PRACTICAL LESSONS OF PAST EUROPEAN DISASTERS

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Abstract: The subject of the paper is the necessity of paying attention to practical lessons of the past European disasters in order to improve adequate responses of today. The main goal is to show possible ways of improving resilience of the countries and regions by implementing the principle of "build it better", not only to domain of construction building, but also to societal relations. The method is critical analysis of the past disasters, e.g. the European tsunami that happened about eight thousand years ago, the Little Ice Age that occurred at the end of the 13th and beginning of the 14th century, the hurricane of 1674 in Northwestern Europe, and the Great Storm of 1703. There are presented relevant recent international documents which advocate the strengthening of preventative measures and the development of communities and nations resilience, in relation to the consequences of disasters, combined with the current gender theory demands. The most significant result of the paper is raising risk awareness that disasters do not always hit "others and other continents", but could happen in Europe too. As the paper's implication, there is also stressed the necessity of different societal organization, based on gender equality and inclusion of all citizens as actors in risk management efforts.

Keywords: disaster prevention, resistance strengthening, practical lessons from past European disasters, "build it better" principle

INTRODUCTION

Almost fifteen years have passed since a double disaster (earthquake and tsunami) devastated many communities in Southeast and South Asia in 2004. The catastrophe overwhelmed the capacities of governments, NGOs and communities in the affected countries at that time. However, it also gave them a great opportunity to improve ways in which to help the affected populations, strengthen

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their capacities and learn many practical lessons to enhance their organizational capacity to prepare for, respond to, and to recover from the devastating impact of the disaster. The affected countries have launched a large number of institutional structures to achieve technical monitoring, capacity building, preparedness and response to disaster risk reduction (South Asia Disaster, 2014).

The principle of "build it better" first attracted global attention during the reconstruction of Aceh in Indonesia following the 2004 Indian Ocean earthquake and tsunami. Efficient recovery and reconstruction are now globally recognized as imperative to sustainable development. The principle was incorporated into international documents signifying an attempt to strengthen the resilience of communities, societies and states in relation to the consequences of disasters by correcting past deficiencies. To be successful, recovery and reconstruction programs require a high degree of political will, strong institutional frameworks and intensified international cooperation, all together providing greater opportunities for reducing risks and building resistance, as well as greater recovery and reconstruction capacities that will be implemented in an efficient and effective way, in order to avoid negative consequences (UN World Conference on Disaster Risk Reduction, 2015).

Resistance is defined as the ability of a system, community or society at risk, to resist, absorb, adapt, transform, recover from and adapt to the effects of hazards in a timely and effective manner, including through the preservation and restoration of its basic structures and functions by means of risk management (United Nations, 2016). It is important to understand that the strengthening of resilience is not only considered to include coastal defenses and similar physical and organizational environmental improvements, but also changes in discriminatory social relations, especially gender inequalities (Mršević and Janković, 2018: 401-411). Namely, in agrarian societies – those most often affected by disasters – women are significantly underrepresented in politics, institutions, social organizations and all forms of activism (Đurašinović, 2019). Countries that are most prominent in women's leadership and in general implementation of the concept of gender equality, i.e. the Nordic states (Norway, Sweden, Finland) (Đurašinović, 2019) and other western-located post-industrial countries, have rarely been affected in recent decades by disasters with catastrophic consequences, which clearly indicates that such phenomena are not only conditioned by nature but also by discriminative social relations.

Recovery is much more than just a simple return to the pre-event state. The recovery of communities affected by disasters should not only reduce the risk of the same or similar hazardous events recurring, but also improve the capacities for identifying other hazards and conditions that have had no impact on a recent event, but which could jeopardize a given community in the future. Recovery must be addressed in a cyclical manner – in which action is taken to strengthen resilience both before and after future catastrophes – instead of a linear approach

that limits recovery actions to the consequences of a disaster as an event that has already happened (UN World Conference on Disaster Risk Reduction, 2015).

Disasters are not only painful lessons of people's struggle to survive, they also change the world as evidenced by the Black Death that came to Europe in the middle of the 14th century. It was the one that changed the development of the European civilization and the entire world, in spite of killing a third of the European population of that time — about 25 million people. There was a rise in the development of medicine and the appearance of the concept of "quarantine". The church started to lose its power, and there happened development of cities and industrialization grew more rapidly. Women started doing men's jobs because there was a terrible lack of people who could work (Brightside, 2019).

The global disaster risk growth, including the increased exposure of people and property, combined with lessons learned from past disasters, point to the need to further strengthen disaster preparedness in the form of a pre-arranged response. The development of the analytical perspective of disasters can eliminate some of their harmful consequences or even eliminate them (Öcal, 2018). This includes taking action to anticipate events, increasing the physical and social aspects of community resilience, integrating various types of disaster risk reduction into the preparation of responses, and also ensuring sufficient capacity for effective response, and recovery of the existing forms of response, at all levels of the affected society. In this sense, not only are recent disasters and the lessons learned from them useful, but likewise similar events that occurred long ago, the awareness of which is an increasing trend in Europe. The reason is that earthquakes, hurricanes, landslides and similar events cannot be induced in laboratories for investigations regarding the mechanisms of their functioning, intersectional cause-effect correlation between different risk factors, or, in particular, the mapping of possible places of events and the significance of warning signs. The reason for this is that in modern times such events do not affect Europe as strongly as some other continents, and therefore it is necessary to examine such events from our continent's past in order to discover the specificities of European disasters.

EUROPEAN TSUNAMI

This event was chosen to illustrate the necessity of raising disasters' risk awareness even of tsunamis, mostly (wrongly) perceived as something which could never happen in Europe, as being allegedly only typical "Asian disaster". Although the general public does not know much about the European tsunami from the far past (Ruggeri, 2016), experts today pay much attention to this ancient event and its causes. In fact, it is little known that Europe was in the past been affected by numerous tsunamis, but studies of their characteristics today warn that similar events could be repeated because their underlying causes continue to exist. Some 8000 years ago, waves up to 25m in height devastated the Scottish islands and the coast of Great Britain. This European tsunami turned Great Britain into an

island, and, as the current analysis suggests, it was triggered by the Storegga Slide, a landslide off the coast of present-day Norway. Geologists, paleontologists and archaeologists are today working together to reconstruct precisely what had happened, what the effects of the tsunami were, and how likely it would be that a similar event would recur, because, as history proves, tsunamis are a more frequent European event than people would tend to believe. However, while the landslide is now considered to be the primary cause of this separation, the increase in volume of water could also have played a role in the destabilization of the continental ridge. Alternatively, this could have been the result of an earthquake, or the sudden release of large quantities of methane gas trapped underground, or a combination of several causes. Some of these factors are still in play today: oceanic warming can destabilize sediments, and the melting of ice sheets can increase the frequency of large earthquakes. In the 21st century, a combination of all these changes could lead to submarine landslides, triggering tsunamis, and so the frequencies and timing of these factors are important avenues of research.

EUROPEAN LITTLE ICE AGE

The European Little Ice Age (Black, 2012) at the end of the 13th and the beginning of the 14th century was most likely caused by the effects of global cooling due to large volcanic eruptions, leading to the changes in Arctic ice cover. The event is presented here as an illustration of adaptation manifested in the construction of barriers to protect from sea level rises and the breeding of crops capable of survival in low temperature conditions, wet and shorter summers, and conditions of frequent droughts. This Little Ice Age is characterized by a global temperature decline during this period, although there are indications that cooling in the Arctic and sub-Arctic began several centuries earlier. It is not known exactly what led to it, but our modern fear of possible repeated, similar climate changes has led to studies of the impacts of the Little Ice Age across Europe. Thanks to such research, its occurrence can be associated with a series of four explosive volcanic eruptions between around 1250 and 1300 in tropical areas, which caused huge clouds of sulfate particles in the upper atmosphere. When researchers processed a series of eruptions and model of the climate, they discovered that a short-but-intense burst was enough to trigger the growth of summer ice sheets around the Arctic Ocean and the glaciers. Ice mirrored more sunlight into space, thereby weakening the Gulf Stream in the Atlantic Ocean. The proliferation of sea ice in the North Atlantic established this self-sustaining reversal process, and proved how mid-term changes, for example sea ice penetration into the North Atlantic, can lead to climate change; a process that has been going on for centuries. The lesson of this event, is necessity of *adaptation* – in contrast to mitigation of the consequences of disasters – i. e. an action that helps in dealing with the long lasting effects of climate change.

EUROPEAN HURRICANE

Disasters are sometimes caused by very quick and short events. That is why this event is mentioned here, with the intention to illustrate the necessity of building architectural and urbanistic resilience capable to face strong and intensive, although short lasting, hits. Understanding exactly how the hurricane developed in 1674 and the careful study of the documentation of the damage caused has proved useful for designing and constructing buildings that are robust enough to withstand similar hurricanes, by implementing the "build it better" principle. This hurricane lasted only a few minutes, but it caused enormous damage to the city of Utrecht (Barras, 2017). An intensive and powerful – but short-lived – hurricane crossed Northwestern Europe one summer afternoon in 1674. It left social and architectural consequences upon the city of Utrecht that are still felt to this day. The problem is that this hurricane was too localized and too time-limited to cause such damage to Utrecht. Several hotspots of strong activity in the wider region of Northwestern Europe cannot be explained, but what is known today, based on the study of this past event, is that a special form of stormy system called the 'bow echo' occurred. Coincidentally, this hurricane is one of those rare events that was well-documented. The images of destruction show that the cathedral and a number of church bell towers collapsed in a northerly direction – the path the weather front took – but others fell westward, vertically towards the front. Only the impact of hurricanes that produce strong gusts to the west could have torn these down. The implementation of the "build it better" was thus shown as urgent necessity for the future constructions of the town.

THE GREAT STORM OF 1703

This past event was picked up also to illustrate the necessity of risk awareness. Namely, before a disaster many individuals, as well as whole nations and inhabitants of the whole regions, perceive their own risk as sufficiently low, reflecting an 'it will not happen to me' set of beliefs. Or, if it happens, it happens as unpredictable God's will. The development of meteorology help eliminate God's will as a cause of disasters and promotes scientific approach to weather phenomena. Disastrous storms may happen in present time, as happened in the past centuries. On December 7, 1703, England and Wales were hit by an extreme weather event (Jones, 2018). After a few weeks of wind and rain, a cyclone stormed through the country, from the Welsh shores through the Midlands and South of England in the middle of the night, hitting Bristol and London particularly hard. It was considered to be the worst storm Britain has ever witnessed, and as such it has remained in the collective memory. The consequences were particularly difficult because they hit the south of England, where large settlements, cities and ports with frequent traffic were situated. The storm uprooted thousands of trees, ripped tiles from roofs, smashed and tore windows from their frames, and

sunk ships in their berths along the River Thames. It is believed that a total of between 8,000 and 15,000 people were killed. Thousands of sailors died; around 6,000 in total. Thirteen warships and many merchant ships, along with their sailors, were lost in the Channel. Atmospheric sciences barely existed in 1703, and most people had a profoundly religious view of increment weather events as being 'God's will' or 'God's punishment'. The Great Storm, according to the records of that time, prompted early scientific curiosity about extreme weather events, eventually leading to the development of meteorology as we know it today, which includes atmospheric chemistry and atmospheric physics, with a strong focus on weather forecasting. Thanks to the detailed descriptions of the Great Storm of contemporaries who did not accept 'God's will' as a simple explanation, seeking to build a scientific approach, in the 19th century meteorologists realized what had happened: it was the fact that winds that caused the Great Storm were circular systems, as opposed to the usual linear flows, that made the storm so devastating. Awareness that such phenomena can occasionally occur arose, and that the attention should be also paid to wind flow type, not only to its direction.

SOCIETAL ASPECTS OF DISASTERS

The key lessons of the above-mentioned historical European catastrophic events are, if it is not possible to avoid them, it is necessary to learn how they functioned in order to predict at least some of them since all is never possible, and to make it possible to live with them and to recover in their wake. Disasters bring with them sociological, psychological, economic, as well as legal and other effects. It is impossible to realistically manage a catastrophe or disaster without considering its social causes and consequences. Social sciences must therefore be capable of dealing with their consequences and impacts (Öcal, 2018).

At the global level two parallel processes are considered: the inclusion of a gender perspective in the process of implementing the concept of sustainable development (realization of the Millennium Development Goals) and efforts to build a framework for reducing the risk of disasters in the world (Čović, 2015).

All people (potentially) play a role in leading and participating in humanitarian preparedness and response to disasters. Due to gender traditions within the family and community, women often find themselves, both as individuals and together as a group, obstructed from changing the existing situation (Kasymova, 2008). Therefore, it is necessary to emphasize, bearing in mind the lessons of past disasters, that the roles of women, besides those of men, are part of building a common resistance that must be organized in an effort to adequately respond to challenges ahead (Tanner, Markek and Komuhangi, 2018). Gender analysis is vital in all phases, from defining the problem to implementation and, furthermore, in the field of building resistance. It should be borne in mind that resistance is a dynamic rather than a fixed state, and should not only mean survival, but also advancement (Gender and Disaster Network GDN, RUET and UCL, 2017). Pro-

gress is also needed in terms of changing the existing discriminative social relationships into those that enable women and men to have equal social treatment. If women are obstructed from having managerial positions in disaster response management, and their possible roles in the community and participatory development processes of building resistance are neglected, gender-based violence would increase during disasters. This increased vulnerability of women during disasters is not caused by nature, but is rather socially conditioned (Ocampo, 2016), because the disaster is not only a 'natural' inevitability of its causes, but rather the synergy of factors combining natural risks and human vulnerability, in which gender-based inequalities are an important cause of increased female vulnerability in disasters (Mršević and Janković, 2018: 209-216).

Therefore, gender perspectives should be included into mechanisms and processes of governance and creation of policies for building resistance to disasters. The application of a gender perspective will provide a focus for the voices of women and marginalized female subgroups, further revealing intersectional dimensions of vulnerability, including, but not limited to, age and disability. Monitoring processes should also examine unexplored spaces within the given socio-cultural context, judging the significant participation of women and their right to make decisions (Chaman, 2019). Empowerment helps women to recognize the fact that, although they may be individually weak, they can be collectively strong. Through this process, they can also recognize that their problems are not only a consequence of individual weaknesses, but of the social circumstances in which they are born and live. Furthermore, the empowerment of social communities aims to ensure that their subgroups (e.g. women) who do not have sufficient social power, in cooperation with other actors, participate in actions to achieve change. This not only reinforces this subgroup, but also increases the capacity of the entire community to use all available resources in the social environment through cooperation and competent involvement of all in social relations without exclusion, discrimination or marginalization (Petrović, 2013).

Women have specific needs during disasters, and women's involvement in decision-making is crucial to ensuring that these needs are met. As men and women view the world differently, it follows that they also perceive risks differently. Being housekeepers and child caretakers, make them more likely to be more sensitive to environmental threats. Gender roles within the household and community may have direct implications to the successful prevention, mitigation, and management of hazard situations. Moreover, women displayed a deeper understanding of disastrous events and demonstrated more household-caring attitudes and behaviours and were more prone to report a willingness to help flood victims at reception centers (Cvetković, 2018: 3). Women are more realistic in evaluating personal and household preparedness. Family and children related responsibilities may lead to a focus that allows them less time to consider the additional responsibility of being prepared for a possible natural hazard event. Higher percentage of women, compared to men, reported having water storage and a higher proportion of food supplies. Significantly more women compared to men reporting that they

had secured copies of important personal, financial, and insurance documents in a safe place women demonstrated more sensitivity in taking care of aspects of household organization and safety. Females (55.2%), when compared to males (51.5%), displayed higher sensitivity to the evacuation procedures of the elderly, the disabled, and infants. Women (6.1%) demonstrated significantly more proactive attitudes about effective assistance at reception centers compared to men (Cvetković, 2018: 11). It is therefore not surprising that those in disaster-affected communities are increasingly leading and facilitating intervention activities, such as nutrition, shelter building, development of standard operational procedures for communicating with affected communities, dissemination of early warning information, and similar. Women contribute to rescue efforts, participate in advocacy for the protection of women during disasters, undertake the implementation of needs assessment, and provide better support to families through responsibility for financial decisions.

However, it is not enough to engage women and assume that they will address all specific needs of women, because it is not certain that they will have an understanding of and knowledge/experience pertinent to a particular context. Instead, it is necessary to create and abide by policies that advocate the participation of women affected by disasters in the development of programs. Women affected by catastrophes must be involved in making decisions that affect their lives. Research highlights the need to fund programs that specifically promote gender equality (Tanner, Markek and Komuhangi, 2018).

All of this requires deep commitment in combination with strong political will, adequate allocation of funding for the address of gender disparities, and continuous engagement in exploring methods and strategies to promote women's leadership and authority in disaster risk reduction processes at all levels. These voices will ultimately bridge the currently existing gap between women's capacities and the policy-making process (Chaman, 2019).

Managing the risks and effects of natural disasters to as great an extent as possible is an urgent global priority (Al Jazeera Balkans, 2017). Learning the lessons of past disasters, among other things, significantly reduces the phenomenon of so-called 'black swans'. 'Black swan' is a metaphor that describes a surprising event: such 'black swans' are unexpected events, they have significant consequences that endure, and they are retrospectively explainable so as to be expected again in the future (Papić, 2018). The recent sudden increase in precipitation in Serbia, causing floods and significant damage to property, may be interpreted as an unexpected, "black swan" type of event. Although spring floods in Serbia were announced and expected this year, surprises (black swans) have nevertheless occurred. Namely, the meteorologists explain that in one night in June, between Sunday 2nd and Monday 3rd, as much rain fell as normally falls during the whole month, due to the movement of a strong cloud system, which was moved from Bulgaria and Greece to Serbia on that night (Tanjug, 2019). Taking both the possibility of black swan events into consideration together with the lessons learned

from the past is necessary to prepare an adequate response to today's disaster challenges.

One contemporary reaction is the growing need for national and international cooperation in terms of readiness and disaster relief. This is because the events that cause disasters pay no respect to political and administrative boundaries. Even countries in conflict with one another (even fighting wars) may have to cooperate in the fight against catastrophes (Öcal, 2018).

Today, given the lessons of past disasters and the need for their study and analysis, an emphasis must be placed on inclusion of disaster education in contemporary education. For example, an earthquake is essentially a geological event, but its effects are studied within disciplines as diverse as Economics, Sociology, Psychology, Geography, History, Law, International Relations, and Gender Studies. Poor knowledge on the history of occurrences of such events in certain places might lead to loss of life and property in such disasters in the present day. Geophysical events such as volcanoes and earthquakes are difficult to predict in terms of the time and intensity of their next occurrence, but at least their most likely locations are relatively well known (Öcal, 2018: 52).

The recommendations stemming from disasters in the recent past for public administration are complex, although the most important among these are as follows: support for the implementation of scientific research in smaller areas on disaster risk exposure and readiness to respond; support for the preparation and implementation of information campaigns to familiarize the population with the law, the obligations of public administration, the obligations of citizens relating to the work of the Civil Protection Department and others; support for the organization of the first aid exercises (Djukić and Petronijević, 2019: 54). At both national and local levels, it is necessary to define measures for achieving gender equality during the rehabilitation processes in the wake of natural disasters and to define indicators to monitor the vulnerability and the effects of rehabilitation and reconstruction measures on women and men. It is necessary to work more efficiently on inclusion, information and motivation of the population, especially the involvement of women in decision-making and management of natural resources, environmental protection and risk prevention from natural hazards (Baćanović, 2015: 32). Finally, as such disasters cannot be studied in laboratories, it is necessary to investigate and analyse all their known elements in order to learn lessons which might be useful today.

CONCLUSION

The last word is that should always be borne in mind that disasters do not discriminate, but people do so when adhering to traditional gender prejudices and stereotypes. In summarizing the authors' thoughts it should be mentioned that policies, instruments, mechanisms, and tools used to respond to disasters

and climate change must not be neutral in relation to gender, and should not be formulated and applied without considering specific gender differences.

The larger significance of our study is warning on the consequences of wrong assumption that the disaster risk is gender neutral. These are incorrect identification and risk assessments, keeping women excluded in all phases of risk management, treating women as victims only, neglection or reduction of the risk of gender-based violence, inadequately conceived policy response, gender discriminative prioritization and risk financing at the national and community level.

A gap in the literature has been addressed by stressing the necessity of gender sensitive approach in reducing the risk of disasters and promoting the culture of disaster relief, while bearing in mind that the starting point lies in the knowledge of the dangers of physical, social, economic and environmental disaster vulnerabilities that most societies face.

In introducing possible new or expanded ways of thinking about the research problem we consider that it is still necessary to learn more about emphasized role of women and men in emergency management planning. Necessary are more in-depth research on gender roles in the dynamics of their changes, including more in-depth qualitative or mixed methods research that uses interviewing and/or focus group methodologies on gathering more in-depth information. The data obtained by the research is to be helpful in developing strategies to empower women, educate men, and promote both genders working together synergistically to prepare effectively while also perhaps, at the same time, overcoming gender stereotypes.

As the result, gender-sensitive preparedness will be promoted by using networks that appeal to and advocate for women, including those that have a long history of assessing and addressing public health issues (e.g. women's social and health care providers). For all mentioned it is necessary to use a range of communication channels for increasing hazard knowledge and preparedness, including gender-related scenarios or case studies that appeal to people and promote empowerment and working cooperatively together within households and communities.

At last but not the least, the early age education which includes flood hazard education should be introduced in children's school curricula (e.g., education on gender empowerment and cooperation in the context of creating a current and future population that has resilience and risk management knowledge and skills) with the purpose to prepare for and solve problems linked to a range of risk scenarios in life such as flooding and other natural hazards.

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THE RELATIONSHIP BETWEEN THE US AND CHINA IN THE CYBER SPACE

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Abstract: Modern society is critically dependent on information and information-communication technology. Information becomes increasingly important for national security, especially in the armed conflict. Modern conflicts are also strongly characterized as a battle in the information spectrum. Information-communication technology has created a new environment (cyber space), as well as the emergence of new resources and with them new ways of conducting conflicts. Such non-traditional attacks on information infrastructure could significantly jeopardize the military and economic power of the attacked state. In addition to the general considerations of cyber security, the paper presents some activities of the US and China in cyberspace as well as certain measures that they take to achieve domination in cyberspace.

Keywords: cyberspace, ralations, USA, China.

INTRODUCTION

Information-communication technology (ICT) has created a new environment (cyber space) that encompasses residents of any part of the world, of all age groups and social classes. Culture, economy and life in general in the information society are critically dependent on information and information-communication technologies. The companies have been pulled in all segments into a race for information as key resources. In the information society, the raw materials are less and less valuable, while an increasing part of the value creation is done through information. As a result of accelerated growth and dependence on information and information- communication technology, vital national infrastructures are becoming increasingly automated and interconnected. The information provided by information and communication technology serves as a basis for making optimal decisions at all levels of society and contributes to the efficient utilization of the resources needed for the implementation of decisions.

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Modern society critically depends on information, as a strategic resource and information-communication technology, which carries out its transmission, processing or exchange of information (Vuletić, 2012). However, in addition to the advantages they provide, information has become an important goal of the opponent. In accordance with this, modern conflicts are characterized as fighting in the information spectrum. Domination in the information spectrum is a necessary condition for success and victory in the conflict. The new mode of engagement of states in the conflict has caused the emergence of new resources, and with them new ways of conducting the conflict (Vuletić, 2011).

CYBER SPACE AND CYBER SECURITY

The term "cyber space" consists of two words with a different meaning - cyber and space. In order to define the term "cyber space", it is necessary to determine the meaning of the word "cyber" and "space" (Vuletić, 2015). The cyber prefix refers to the term cybernetics. The word "cybernetics" comes from the ancient word *kybernao*, which in translation means to manage, in general terms. Although the roots of the word cyber can be seen in Viner's perceptions, the real meaning was given by William Gibson in his novel Neuromancer in 1984 where the term cyber means - virtual, invisible, unlimited, technology-based. In the dictionary of Matica srpska, the "space" is defined as unlimited ambience, distance in all dimensions and directions (Rečnik srpskohrvatskog književnog jezika, 1973). The word 'space' has a different meaning in different scientific disciplines and hence it is difficult to find a universal, universally accepted definition.

Gibson sees the cyber space as the universe of computer networks, a world in which multinational companies, societies and other subjects struggle to conquer data and information. Under cyber space, it is understood that the type of community is composed of a computer network in which the elements of the classical society are in the form of bits and bytes, that is, the space created by computer networks. Cyber space is the term that connotates the online world of the Internet (computer networks), but also the digital world in general (Tipton & Krause, 2004). Vera Tasić and Ivan Bauer in the ''Dictionary of Computer Terms" define the cyber space as a virtual reality environment (such as the Internet) in which people communicate using connected (networked) computers (Tasić & Bauer, 2003). In the Joint Publication (JP) 1-02 of the United States Department of Defense, a cyber space is defined as an unpredictable environment in which digital data is transmitted using computer networks (Joint Publication 1-02, 2010).

These definitions in essence connect the cyber space for computer networks. Cyber space, therefore, represents an immaterial, unlimited interactive space created by computer networks (Vuletić, 2017). Aljoša Mimica and Marija Bogdanović consider that cyber space is a new form of mental dimension of human existence within which a simulated reality arises as a result of the interaction between the human and artificial interface. It represents an alternative dimension within which a connection

between different personal computers, computer networks, different virtual communities and individuals is established (Mimica & Bogdanović, 2007).

In everyday life, "cyber space" is commonly used as a synonym for the Internet. This identification is not entirely justified, because the global computer network, the Internet, is only part of the cyber space. However, the Internet is the largest information and communication system, both in terms of size and number of users. The Internet, therefore, has become a communication tool of global dimensions, with a basic and indisputable role in the economy and social life of all countries (Putnik, 2009). Cyber space represents a globally integrated information and communication infrastructure. It is an artificial creation created as a result of social needs and technological innovations.

Richard Coyne looks at the cyber space as a world (a set of physical entities, e.g. hardware, communication lines), as space (objects can be close or far from each other so that distance can be measured) and as a place (for example, a website can be viewed as a site) (Coyne, 1995).

New technologies bring benefits as well as new problems, so that the use of ICT should be viewed as a "mix of benefits and disadvantages". New research highlights the threat that connected devices pose to critical infrastructure. Academics in Israel warned that it would be possible to hack internet-connected irrigation systems, turning these on remotely in order to drain a city's water reserves. A group of researchers from Princeton University found that a malicious botnet of water heaters and air conditioners could be used to manipulate the demand for energy by as much as 1%, leading to a blackout. These scenarios illustrate the challenge of securing critical infrastructure, suggesting that if industrial control systems are sufficiently hardened, attackers will shift their focus to connected devices with weaker security standards (Critical infrastructure exploits, 2018).

According to Business Insider, hackers in Ireland, stymied by Apple's information systems security, are taking another approach to gain access to the corporation's data. They are offering Apple employees up to 20 000 Euros for valid login credentials. While not all approaches to insiders are so overt, this case nevertheless serves as a great reminder that malicious actors are actively recruiting insiders to exploit their status. Beyond that, it demonstrates that the insider threat is not just confined to an Edward Snowden type who steals a mass of data in one swoop before leaving the company. Insiders can pose a far more subtle and enduring threat (When Cyber Security Is an Inside Threat, 2016).

A massive ransomware[2] attack affecting more than 70 countries took place on May 12 2017. Over 36 000 Wannacrypt (Wanna Decryptor virus) cases have been detected globally in the United States, Russia, Spain, Turkey and the United Kingdom. The attack struck targets as diverse as the Russian Ministry of the Interior, the British National Health Service, Reuters news agency and Spain's largest telecom

2 Ransomware is a type of malicious software that forcibly encrypts data on a targeted system, usually requiring a ransom to be paid in return for decrypting the information. If the ransom (in bitcoins) is not paid, then the data is invariably wiped.

firm, Telefonica. A number of European banks were also affected. Ransomware is an increasingly common cyber threat. Similar large-scale attacks are already occurring and will likely become more common in the future (Global: Massive Ransomware Attack Goes Viral, 2017).

The mentioned and other numerous incidents in cyber space show that the protection of information communication resources is becoming one of the priorities of national security. The protection of information communication resources is becoming one of the priorities of national security. Cyber security is defined and understood in different ways. In a narrow and technical sense, cyber security has been defined as the ability to control access to network systems and the information they contain (Nissenbaum, 2005). The cyber security concept has also gained a national security dimension as the public, businesses and the military have become increasingly dependent on computer and networked technologies.

Cyber crime generates cost for national economies. In a report by McAfee and the Centre for Strategic and International Studies (CSIS), the annual cost of cyber crime to the global economy was estimated to be more than $400 billion. It is a global average loss of 0.5 per cent of gross domestic product (Net Losses: Estimating the Global Cost of Cybercrime, 2014). Research shows that developing countries are most vulnerable to cyber threats. Wealthier countries have higher levels of Internet connectivity, and hence the people, businesses and institutions in those countries are more likely to be affected by cyber crime (Kaspersky Lab, 2014).

Geopolitical disagreements spill over into cyber space (e.g. Estonia in 2007 - disruption of the functioning of government and computer networks of the banking sector, Georgia 2008 - attack on computer networks and government sites, Sweden in 2009 - disruption of the functioning of websites and computer networks of banks, police and other government institutions).

USA AND CHINA IN CYBER SPACE

World powers, e.g. The United States and China views cyber space as the new, fifth, warfare area. Speaking at DEF CON 2018, senior National Security Agency (NSA) official and former White House Cyber security Coordinator Rob Joyce outlined his perspective on the state of cyber security. Joyce specifically called out four nations – China, Iran, North Korea and Russia – for irresponsible behaviour on the internet (NSA calls out adversary cyber activity, 2018).

Numerous cases indicate an endeavor or race between the United States and China for economic and technological supremacy. One of the main arenas for this competition is cyber space (China Won't Back Down on Cyber Espionage Anytime Soon, 2018). The US Department of Defense (DoD) has released a summary of its 2018 Cyber Strategy that highlights Russia and China as long-term

threats to the US. The Strategy states that the Department must take action in cyber space during day-to-day competition to preserve US military advantages and to defend US interests. This DoD summary, which focuses on deterring malicious cyber activities, defending critical infrastructures and strengthening the security in cyber space, does not adequately predict the features of information conflict through cyber space (Director's cut - *Insight from Sean Kanuck, 2018)*.

At the cyber security conference ''Zero Day Con", Defense Intelligence Agency Director Lt-Gen Robert Ashley highlighted the intersection between great-power competition and cyber power. Top US officials have also expressed growing concerns over what Secretary of Homeland Security Kirstjen Nielsen and Vice President Mike Pence have called ''unprecedented efforts" by China to compromise US interests. In his speech on 4 October 2018, Pence denounced China's growing aggression, referencing its expanding civilian surveillance programme and continued theft of US technology. Some analysts believe that after a reduction in activity in 2016, China has restored efforts to use methods of cyber espionage and hacking ''against Western industry". Such responses come on the heels of the extradition, and pending prosecution, of Chinese intelligence official Yanjun Xan (Great power cyber competition, 2018).

The US Department of Justice announced the creation of a multi-departmental task force to counter Chinese economic espionage. In a speech, then-Attorney General Jeff Sessions cited incidents such as the indictment of a Chinese state-owned company, Fujian Jinhua Circuit Co Ltd, for allegedly stealing intellectual property from the US firm Micron Technology Inc. The Chinese company and affiliated entities were added to the US Department of Commerce ''entity list", which prevents them from trading in any US patented technological goods. These moves follow charges brought against ten Chinese nationals for a cyber espionage campaign against the US aerospace companies (NSA calls out adversary cyber activity, 2018).

The US investigators allegedly discovered that Chinese People's Liberation Army operatives inserted spyware microchips into the US hardware during the manufacturing process in China. The microchips were found inside devices produced by Supermicro, one of the largest suppliers of server motherboards. With memory, network capabilities and advanced processing power, chips the size of a pencil tip created a backdoor to any network connected to the affected devices. Almost 30 companies were affected by the breach, including Amazon and Apple. (Chinese firmware compromises the US tech supply chain, 2018).

China is taking extensive steps to present itself as a viable cyber security partner and all-round good global cyber-citizen. The exploitation of cyberspace meets a critical need in terms of China's core strategic objectives. China aims to continue establishing itself as a major regional and global power. The last several 5-year-plans identify the development of key strategic emerging industries as a major component. Among other things, it includes the development of information-communication technology. Cyber espionage is useful tool to obtaining

valuable information and avoiding an open conflict. Strategic emerging industries are prominent targets of cyber-attacks. Despite any international commitments, it is unlikely that countries intend to give up or reduce exploitation of cyber space. China's interest in bilateral agreements and international norms is best understood as something between smokescreen and stalling strategy. By engaging internationally and securing bilateral agreements, China mitigates or avoids negative costs (political, diplomatic and economic) attached to its widespread cyber espionage, while also utilising the process of engagement to delay the development and implementation of effective counter-strategies while the benefits accrue. International engagement and agreements bolster China's legal standing and promote China as a viable cyber security partner (Sawers, 2018).

That effort is more important to China as the internet becomes more essential to China's economy. In 2015 Premier Li Keqiang launched the ''Internet Plus initiative", a plan to incorporate the internet across nearly all sectors of the Chinese economy. The central government hopes that the integration campaign will enable China to collect an unrivaled store of data that it can use to strengthen its networks and technologies (China Won't Back Down on Cyber Espionage Anytime Soon, 2018). As China increasingly gains the economic benefits of global connectivity, the West's technological edge is fast eroding. China's emergence as a major global power is reshaping the cyber domain. The country has the world's largest internet-user community, a growing economic footprint and increasingly capable military and intelligence services (China's Cyber Power, 2016).

Despite the criticisms of China's offensive actions, such as industrial espionage, China's cyber security policy focuses predominantly on defensive strategy. China is concerned that outside rivals such as the United States could invade its cyber space to spread disinformation or subvert the state through asymmetric attacks. In fact, it views the internet as a tool that the United States has created to exploit to its benefit. It is hardly surprising then that one of the main priorities behind China's internet strategy is keeping unwanted information and intruders out of its cyber space with the Great Firewall (China Won't Back Down on Cyber Espionage Anytime Soon, 2018).

China tries to control and disconnect, optionally, the country from internet and uses its own technology. The plan is as much a strategic initiative as an economic one, and it will help the central government protect China from its rivals, both at home and abroad. China enacted a cyber security law in 2017 that gives the government a legal basis for forcing foreign companies to relinquish control of their data and to submit source code for review (China Won't Back Down on Cyber Espionage Anytime Soon, 2018). The Cyberspace Administration of China issued stricter rules for internet companies. The rules call for companies to increase policing efforts of online speech, regularly report on 'harmful' content and maintain extensive user records (Asian countries tighten control of internet, 2018).

The fact is that the United States and China will continue using the internet and cyber space against each other. A 2015 agreement stipulating that neither would engage in cyber espionage to steal trade secrets or intellectual property from the other has reduced but apparently not eliminated these practices. In November 2017, the United States charged three Chinese hackers working at an internet security firm based in China with eight separate counts of conspiring to commit computer fraud and trade secret theft. The current U.S. administration takes aim at China's economic and industrial strategies through tariffs and trade investigations, China will use cyber space to insulate itself from the United States (China Won't Back Down on Cyber Espionage Anytime Soon, 2018).

China has the capabilities and the will to surpass the West in military capability. However, no one is sure how far China's current strengths, long-term plans, technical solutions, achievements in the field of ICT can reach (The Uncertain Future of Warfare, 2018). China is the country with the economic and military capacity to truly challenge the United States and to disrupt the international system it presides over. The internet is an increasingly critical part of that system. Consequently, cyber space will be an important battlefield between the US and China (China Won't Back Down on Cyber Espionage Anytime Soon, 2018).

CYBER WAR (WARFARE) STRENGTH

Cyber Warfare is a type of hostile activity undertaken against computer networks, computer systems and databases with the goal of degrading or destroying targeted systems. In this way, targeted systems can be unusable, have degraded performance, which can affect the commander to make a bad decision due to lack of information. The cyber warfare is as an unauthorized access in computers or networks of another nation, or undertaking other activities affecting the computer system with the aim of adding, modifying or falsifying data or causing interruptions or damage to computers, network devices or objects for controlling computer systems. Libicky thinks that cyber attack deliberately disables or removes the computer systems of a subject by another subject (Libicki, 2009). The attacking entity may be a national or non-state actor. The cyber warfare, therefore, is a form of information warfare that consists of a series of actions that break down or destroy the information-communication systems of the opponent (for example, insertion computer viruses in the opponent's military systems). Mark cyber attack as cyber crime, terrorism or otherwise somewhat disputable because it is difficult to determine the identity, intent, or political motivation of the attackers.

In addition to the US, Russia and China, there are between 20 and 30 countries with respectable cyber warfare capabilities (Clarke & Knake, 2010). The United States has the most sophisticated and most complex cyber warfare capabilities, followed by Russia and China. The United States is likely to possess the most sophisticated offensive capabilities for cyber warfare, but there are some weaknesses

when it comes to defense. China has devoted much more attention to the defense all national networks. In China, networks that comprise Chinese infrastructure are controlled by the government either through direct ownership or through a close partnership with the private sector. China has the power to disconnect "their part" of cyber space from the rest of the world, which they can do in the potential conflict. The United States does not have such capabilities (Paul 2008).

The United States is currently far more vulnerable to cyber attacks than China and Russia. The potential cyber war at the moment is a drawback for the US, cyber security experts say. Measurement of cyber war strength, in addition to the offensive aspect, also implies defense (a measure of national capacity to take action if attacked, actions that will block or mitigate the attack) and dependency (reliance on computer networks and systems that can be vulnerable to cyber attacks). Measurement of cyber war strength Clarke and Knake has been based on the assessment of offensive power, defensive capabilities and computer system dependencies. Dependence refers to critical information systems that do not have a real substitute that depend on cyber space. A smaller dependent nation gets a higher score when ranked (Clarke & Knake, 2010).

According of their measurement:

US – total 11

Cyber Offense: 8
Cyber Dependence: 2
Cyber Defense: 1

China – total 15

Cyber Offense: 5
Cyber Dependence: 4
Cyber Defense: 6

China has a high score for defense because it has the plan and ability to disconnect national networks from the rest of the cyber space. In the opinion of Clarke and Knake, the United States does not have this possibility.

CONCLUSION

Modern society is characterized by the increasing use of information-communication technology. Most countries have essential resources based on information and communication technology, including defense systems and infrastructures that include control of electricity, telephone system, money flows, air transport, oil, gas and other information-dependent areas. In this context, it must

be understood that future enemies, either states, groups or individuals, can try to endanger these infrastructures by using non-traditional methods, and such non-traditional attacks against information infrastructure could significantly jeopardize the military and economic power of the attacked state. Accordingly, the information revolution and associated organizational and functional changes alter even the nature of the conflict.

The information revolution causes changes in how societies will be able to come to conflict and how their armed forces will be able to lead an armed conflict. The development and expansion of information-communication technology will significantly change the conduct of military operations. These changes in the information environment make information superiority a key enabling factor in the evolution of the operational capabilities of the armed forces. The evolution of information-communication technology will enable the integration of the traditional form of information operations with sophisticated intelligence activity of all sources, observation and reconnaissance in a fully synchronized information campaign.

Society becomes increasingly dependent on ICT, which will lead to its increasing sensitivity due to an increasing number of users of information-communication technology and the trend of interconnection of computer networks. Strategic importance is the identification of critical national infrastructures that can be endangered, the constant exchange of information and experiences as well as cooperation between the private and the state sector.

Cyber attacks against states are becoming more numerous and more serious. Military presence in cyberspace is undoubtedly. Numerous examples show that for complex, coordinated attacks, it takes several years of preparation.

The future of cyber will depend on the future of vulnerabilities, especially the development of the internet of things (IoT). The digital revolution has produced a new warfare domain in which it is possible to spy, sabotage and prepare the battlefield. Some experts think that the worst gaps in defenses have been filled. A new generation of military and civilian leaders seems increasingly aware of the seriousness of the problem. (The Uncertain Future of Warfare, 2018). China's ability to cyber warfare is on a constant growth. China has the knowledge and ability to overcome the US in the future and become the world's leading power in cyber space.

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FUTURE SECURITY CHALLENGES AND CONTEMPORARY TRENDS IN PROFESSIONAL MILITARY EDUCATION

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Abstract: System of military education and training is a core entity which prepares military professionals for coping with ongoing and future challneges for national defence. Those challenges are complex, numerous and of various characters, with tendency to become even more complicated and diverse in the future. They are termed as hybrid, unrestricted, asymetric, compound, ambigious, multi-domain, etc. That place the basic questions: how to prepare, train and educate in order to effectively and efficently respond to such challenges? Does it require some changes in educational system and concept, and what kind and scope of changes? Answers should be created in the wider context of compliance with civilian educational and acreditational standards, restrictive financing, organizational cutt-offs and harmonizations with the European Union. The goal of this paper is to analyse impact of contemporary and future security challenges on the long-term development of military educational system..

Keywords: security challenges, military education, hybrid warfare, long-term, strategy.

INTRODUCTION

Consideration of preparations for future security challenges is an actual issue today (Last, Morris and Dececchi, 2019). Higher military education is a specific kind of education whose main mission is to create (graduate level) and develop (postgraduate levels) professional military officers. System of military education and training is a core entity in the national defence structure that prepares military professionals for facing with ongoing and future challneges to the national defence. The aim of the paper is to present a proposal of guidelines for future long-term development of the higher military education in the context of the current and future security challenges.

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Security and defence challenges and the system of military education have their own intensive and dynamic character and intersection with other aspects: politics, economy, technology, social issue, etc. At the moment, two actual phenomena dominate. Firstly, in the domain of national security and defence there is a widely considered and investigated phenomenon of the hybrid threats and warfare. Secondly, in the domain of higher military education, it is a challenge of a permanent fulfilement of the academic accreditaion standards. For example, the last decade in the Serbian higher military education was very demanding because of transitions towards fulfilment of general standards prescribed for all higher educational institutions in the country, while at the same time there was a traditional imperative to satisfy specific expectations as an inherent part of the armed forces.

The following section presents in short the ongoing debate on the nature and character of contemporary conflicts and relevant vision on future security challenges for the case of Europe. Instead of wide discusion on particular aspects of contemorary conflicts where phenomenon of the hybrid threats and hybrid warfare is just the most popular at the moment, we offer a list of terms which were more or less present during few last decades. After that, what follows are the newest relevant visions of security threats related to Europe through the last Security Strategy of the European Union (European External Action Service, 2016). Last sections present some findings useful for future development of the higher military education, and a drfat proposal of guidelines for long-term development of our higher military education.

ON THE FUTURE SECURITY CHALLENGES

Contemporary challenges to the national security and defence are complex, numerous and of various characters with tendency to become even more complicated and diverse in the future. Many of those challenges are out of control of small states. Small countries have to be aware of that and able to recognize timely and clearly the mechanisms of power and threats projections (Dengg, 2014). In order to be identified and named in a better way, new faces of modern conflicts are sometimes marked as hybrid (D'Agostino, 2010), unrestricted (Liang & Xiangsui, 1999), asymetric, or by other terms, Table 1.

That places the basic question to the defence and security experts and establishment: how to prepare, train and educate in order to effectively and efficently respond to such challenges; does it require some changes in educational system and concept, and what kind and scope of changes? Besides this, there are other social, political and legal factors, such as the process of joining the European Union, a compliance with civilian educational and acreditational standards, restrictive financing, organizational cutt-offs, new missions, etc.

Table 1: *Spectra of modern conflict concepts through adjective terms (kinds of wars, not finite)*

Ambiguous warfare	Fourth-generation warfare	Psychological warfare
Asymmetric warfare	Full-spectrum conflict	Religious war
Biological warfare	Grey wars	Regulations warfare
Chaoplexic warfare (chaotic+complex)	Humanitarian war	Smuggling warfare
Chemical warfare	Hybrid warfare	Special warfare
Cold war, Cold war 2.0	Ideological warfare	Space warfare
Compound warfare	Information warfare	Star wars
Conventional warfare	Intelligence warfare	Swarming
Cyber warfare	Irregular warfare	Terror warfare
Drug warfare	Media warfare	Total warfare
Diplomatic warfare	Multi-domain battle	Trade warfare
Economic warfare	Network-centric warfare	Unconventional warfare
Ecological warfare	Non-linear warfare	Unrestricted warfare
Electronic warfare	Nuclear warfare	War beyond rules
Financial warfare	Political warfare	War on terror

The main conclusion after recognizing wide spectra of security challanges which at the end may produce conflicts with some specific characteristics which usually leads to profiling some adequate term as it is presented in Table 1, is that future challenges for security and defence branch will be even more dynamic, unpredictable and numerous than ever in the past. Exhaustive list of terms presented in the Table 1, contains only those which were actual in last few decades and it is not a complete list of all possible kinds of warfare. If we expanded time perspective on a century, than a list would contain the following kinds of wars as well: colonial wars, guerrila wars, liberation wars, revolutionary wars, etc. Consideration (Nikolic, 2017, 2018) of the every single "kind of warfare" which may characterize modern conflicts, outreach the scope of this paper and is more appropriate for some comprehensive research studies.

Perception of security threats may vary over time (Nikolic, 2015), because of changes in strategic environment and in economical, political, technological, demographical domains. This is particularly evident by comparing the novel security strategy of the European Union from 2016 and previous security strategy of the EU from 2003. The novel one is few times larger, more concrete, better structured, more pragmatic and action oriented. It is not strange if we remember the main events relating to direct and indirect security violation of the EU in the period after 2003: growing trend of oil prices which errupted in June 2008 (more then 140$), global economic and financial crisis from 2007; "Olimpic war" Russia-Georgia in August 2008; the Arab spring; the rise of China; change in strategic

pivoting of the USA towards Asia; wars in the Middle East; migrant crisis (more years, multi-directional); the crisis in Ukraine; terrorist attacks in a number of the EU cities; the Wester Balkans instability; Brexit; etc. It is interesting that the novel security strategy of the EU was officially presented on 28 June 2016, only a week after the Brexit referendum in the UK.

The last strategic document on the EU security recognizes main security challenges and threats, as well as a vison of respond to them through defining five prioroties for external actions (foreign and defence policy). Table 2 presents main issues, for the context of this paper, destiled from the EU Global startegy for the foreign and security policy.

Table 2: *Security challenges – the EU view in 2003 and 2016*

<table>
<tr><td>Challenges and Threats
to the EU Security, 2003
(European External Action Service, 2003)</td><td colspan="2">Challenges and Threats
to the EU Security, 2016
(European External Action Service, 2016)</td></tr>
<tr><td>Terrorism
Proliferation of weapons of mass destruction
Regional conflicts
State failure
Organized crime</td><td colspan="2">Terrorism
Hybrid threats
Cyber threats
Economic volatility
Climate change
Energy insecurity
Organized crime
External border management</td></tr>
<tr><td>Strategic Objectives (3)
(2003, EU Security Strategy):</td><td colspan="2">Priorities of EU External Action (5):
(2016, EU Security Strategy):</td></tr>
<tr><td rowspan="5">(1) Addresing the threats</td><td rowspan="5">(1) Security of EU</td><td>Security and Defence</td></tr>
<tr><td>Counter-terrorism</td></tr>
<tr><td>Cyber security</td></tr>
<tr><td>Energy security</td></tr>
<tr><td>Strategic communications</td></tr>
<tr><td rowspan="6">(2) Building security in the EU neighbourhood</td><td rowspan="3">(2) State and societal resilience to the EU East and South</td><td>Enlargement policy</td></tr>
<tr><td>EU neighbours</td></tr>
<tr><td>Resilience in the EU surrounding regions</td></tr>
<tr><td colspan="2">Effective migration policy</td></tr>
<tr><td rowspan="3">(3) Integrated approach to conflicts and crises</td><td>Pre-emptive peace</td></tr>
<tr><td>Security and stabilisation</td></tr>
<tr><td>Conflict settlement</td></tr>
<tr><td colspan="2">Political economy and peace</td></tr>
</table>

(3) An international order based on effective multilateralism	(4) Cooperative regional orders	The European security order
		Peaceful and prosperous Mediterranean, Middle East and Africa
		A closer Atlantic
		A connected Asia
		A cooperative Arctic
	(5) Global governance for the 21st century	Reforming
		Investing
		Implementing
		Deepening
		Widening
		Developing
		Partnering

Wide spectra of future security challenges generate needs for a wider set of competencies and intelectual resilience of the security and defence professionals. One of main providers of the competent security and defence professionals is University of Defence. This perception of the role and importance of military educational institutions for preparing adequate respond to the changing character of threats, conflicts and wars, is recognized at the global level (Yong-De, 2017) as well.

CONTEPORARY TRENDS IN MILITARY EDUCATION DEVELOPMENT – AN EXAMPLE

The security and defence establishments are expected to respond adequately to almost all security challenges. To be succesfull, they must be prepared for that. And that is responsibility of the education and training institutions. In order to offer high quality and relevant education and training, the educational institutions have to be aware with the state-of-the-art of security challenges as well as to have a vision of the future challenges.

However, there is one more pilar for long-term development of the system of higher military education. That pilar consists of a number of national standards which regulates whole domain of higher education and rules for accreditation of faculties and universities. Due to both main pilars, the military education system needs periodical re-visioning and strategic guidance creation and adjastment for its long-term future development. Here, we will present an interesting approach to profiling long-term strategic guidance for the military education. Few years ago a "Long-Term Strategy 2015-2025" has been issued by the Armed Forces Academy of General Milan Rastislav Stefanik (2014), for their system of military education. This document is well structured as a strategy document should be, clear, concrete, very concise and short but at the same time sufficiently comprehensive. As

such, it could be used as a good model for similar documents production in cases of countries comparable to Slovakia.

The strategy highlights six sections which are parts of the whole system of military education as follows: higher education; life-long learning and training; research and development; human resources and working environment; cooperation; and administration and internal services. For each of this six sections, they define sets of goals, tools and measurable indicators. Due to a space limit, only two sections will be presented in this paper. First of them is the section for higher military education, and it is evaluated through goals, tools and measurable indicators as follows:

- Goals of higher military education: accreditation of study programmes; attractiveness for quality applicants; quality that will satisfy the needs of the Armed Forces; provide adequate level of language proficiency; enhance the teacher-student relationships.
- Tools for higher military education: knowledge of current and future needs of the Armed Forces; sustaining comparability with other universities and looking for posibilities of new study programmes; promoting moral aspect and patriotism as an inherent component of military education; stimulate teacher-student relationships as partnership; promote teamwork; develop responsibility and perspective of life-long learning; motivate learning of foreign languages; direct learning as a continual process.
- Measurable indicators for higher military education: the number of accredited study programmes; the number of interested applicants for Military Academy; the number of acceptable and accepted aplicants; the number of interested students for particular study programmes; the number of graduates; the number of unsuccessful students; the number of subjects taught in English language; the number of students who achieved particular levels of English language proficiency; level of students' satisfaction with peadgogical and professional treatment and education process; and evaluation of graduates to perform their functions as military officers.

Next section is dedicated to the Human resources and working environment. To be acredited as a higher education institution, an organization has to have and sustain a required number of appropriate professors for each study programme. In order to obtain this, the following issues should be meet:

- Goals: achieve and sustain the staf competence for accreditation of study programmes; obtain the staff competence for research and development; acquire appropriate supporting personnel; establish appropriate working conditions and environment, and ensure job satisfaction of the staff.
- Tools: support career development for the staff; obtain and educate appropriate young higher education lecturers; develop relationships based on competences and responsibilities; strenghten interpersonal relationships and

direct activities around the joint objectives; develop healthy and friendly working environment.

- Measurable indicators: professional structure of the staff; number of lecturers with adequate specialisations and titles; age structure; indicators of negative interpersonal relationships; assessment of competences and proficiency; number and structure of the staff; average wages per individual employee.

Declared goals and tools are clear and short, while measurable indicators are very concrete and unbiased. This approach seems to be very applicable in practice for development of long-term guidance for the system of the higher military education (HME) in countries like Serbia.

PROPOSAL OF GUIDELINES FOR LONG-TERM DEVELOPMENT OF HME

Here, we will consider how to profile a draft proposal for defining guidance for Serbian military higher education. The structure of the proposal is as follows: declaration of main mission and vision of the system of higher military education; review of main organizational elements; objective review of current state-of-the-art (draft self-evaluation with empasize on weakness and strenghts); declaration of guiding principles; declaration of the system sections (and their main missions) which will be monitored and developed in the long-term aspect; detailed presentation of the trinity: goals-tools-measurable indicators; and a sketch of the monitoring dynamics and corrective measures which will be undertaken.

Declaration of main mission and vision of the system of higher military education. The main mission of the military education system in Serbia is to create "the identity of a professional officer – a leader, honorable, loyal, trained and prepared for intellectual and ethical challenges of an officer's vocation in service of the homeland" (Military Academy, 2009), while at the same time perform high quality higher education according to the national standards for higher education.

Review of main organizational elements. The latest organizational changes started during last year and some novelties assumed incorporation of the Strategic Research Institute into the structure of the University of Defence, and stronger integration of the Military Academy and the Medical Faculty of the Military-Medical Academy into the University structure. Furthermore, some military scientific journals and center for scientific information entered the University structure.

Analysis of current state - Objective self-evaluation (University of Defence in Belgrade, 2013) with emphasis on weakness and strenghts. This document briefly describes current state of affairs with emphasis on problems which where actual at that time. In order to get fresh description and ongoing problems it is needed to conduct new self-evaluation. Insight into actual problems would be a starting point for solving urgent problems, but also to define a long-term actions.

Declaration of guiding principles. Military education system in Serbia is obligated to fulfil all standards of higher education prescribed by the national Ministry for higher education and science. One of those general documents is the Strategy for education development in the Republic of Serbia up to 2020. This strategy defines long-term vision of academic education development taking in mind current state-of-the-art and future desired state. The Strategy (Ministry of Education and Science, 2012) defines several guiding principles which are marked as crucial characteristics for future successful development and those are as follows: quality, relevance, efficiency, internationalization, mobility, scope, and modernization. Being part of national strategic document, above listed principles should be respected as well in the case of military higher education. While principles of quality, relevance and efficiency are quite self-explanatory, we will discuss the implementation of a few other principles in more details.

Internationalization and Mobility. Strategic documents on education recognize importance and role of internationalization and academic mobility. Internationalization and mobility in education as well as in the research is part of overall national strategic orientation towards values and standards of the European Union. However, it must be noticed that beyond European orientation, there is almost unavoidable process of globalization. That phenomenon additionally strengthens importance and need of internationalization including domain of military education (Urban, 2015). Strategic documents also underline importance of academic mobility where it is seen as a tool for better learning and interoperability at the European level (Paile-Calvo, 2016). Mobility implies all sides: students, lecturers, administration staff, and researchers. University of Defence recently issued few documents as regards this topic: a Strategy of internationalization (University of Defence in Belgrade, 2018) and Strategy of mobility for students and academic staff (University of Defence in Belgrade, 2018). Both of them are expected to contribute to the following goals: improvement of academic curriculum, enlargement of academic mobility for students and academic staff (professors, researchers and instructors), and advancement of international cooperation with universities, research institutes and partner institutions (University of Defence, 2018).

Scope. Unlike civilian counterparts where different dynamics and priorities are present, higher military education and research are very specific. Scope of military education is dominantly rooted in strategic documents of national security and defence, as well as in doctrinal military documents and vision of long-term development of the military organization. In simple words, whatever the quality of military educational system and research capacities is and whatever the level of attractiveness for joining those institutions is, students and educational and research staff could not be enlarged unlimitedly.

Organizational modernization. Organizational modernization of higher military education is challenged permanently, mainly because of new requirements which arise from new and dynamic changes in the field of security and de-

fence. Strategic documents underline importance of involvement of the scientific research activities into the educational process particularly at the higher levels (master and doctoral studies). How to achieve that? Here we will point out one of connecting points between education and research. Research personnel should be involved much more in the education process at those levels but with expectations that they will apply and engage their (research) views and in that way bring the new quality and perspective in the educational process.

Additional principles. Due to specific characteristics of the military domain, a few additional principles for development of military education should be placed here as follows: resilience, flexibility and intelectual curiosity.

Declaration of the system sections (and their main missions) which will be monitored and developed in a long-term aspect. Functional distinguishing seems to be appropriate for declaration of main sections of interest in this context:

- Education (acredited study programmes). This function is primary in the higher military educational system. Once being accredited, study programmes should be monitored, sustained and further developed according to national accredittion standards.
- Research. Scientific research is the second most important function in the higher education in general, so it could be valid for the case of the miltary.
- Training (set of various courses). The function of military training is very important for all military academies. It is one of the cornerstones for the development of future military officers. Moreover, it is part of a life-long learning through military career. However, it is not mandatory nor necessary to fulfill academic standards in the sense of accreditation.
- Human resources (educational and research staff). All issues related to the educational staff, that is, professors who conduct study programmes, are well defined by accreditation standards and corresponding regulations which are a basis for selection, sustaining and development of educational staff. Similar statemet is valid for research staff as well. Scientific research is a subject of detailed regulations relating to the accreditation standards.
- Support (administrative, financial and logistics support). Unlike civilian universities, elements for support function at University of Defence have much more work to do. Besides regular administration and students affairs, as well as material support to the educational process and quartemaster support for military cadets and participants of various training courses, they have to support all kinds of activities with regard to military training, including field exercises.

Detailed presentation of the trinity: goals-tools-measurable indicators. This part could be developed in the same way and with very similar content as it was done in the Slovak Long-Term Strategy for the system of military education. Appropriate changes and adjasted solutions for the case of national specific conditions are considered by default.

Sketch of the monitoring dynamics and mechanism for corrective measures. Defining and applying monitoring dynamic is essential for control of the whole process. The same importance concerns the efficient mechanism or procedure for application of corrective measures. Otherwise, even the best strategy guidance would exist only in theory and paper, but not in practice, in real life.

CONCLUSION

Future security challenges will be complex and numerous. However, the form does not change the essence, and in the future we can expect such kinds of violations which for potential adversary think that it is his best choice in a given conditions and time. Because of wide scope of future security challenges, a wider set of competencies and intelectual resilience of the future security and defence professionals are needed.

Future defence and security personnel have to be intelectually superior and curious, able to "think unthinkable", and be ready to create effective respond to the new security and defence challenges. The main providers of such professionals are higher education institutions in the fields of national defence and security. The University of Defence is one of them.

University of Defence is on its way towards consolidating higher military education and research function. It has recently started with organizational changes which strengthens relations between education and research function and organizations. This should bring a new quality into education as a primary function of University of Defence, while at the same time is expected to enhance research capacity. Both, education and research functions are under transformation in order to satisfy relevant needs of the military organization now and in the future. A new self-evaluation of the higher military education is needed as a tool for highlighting actual problems. This step should be a starting point for solving urgent problems but also for defining long-term actions.

In the paper, we proposed an approach for clarifying principles and guidance for a long-term vision of development and future work at University of Defence. In profiling the proposal, we found as very useful some novel foreign experiences, which will be continued. Future work will be oriented towards elaboration of operational details and information campaign for spreading, understanding and accepting long-term changes in the educational and research field.

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SECURITY CULTURE IN THE SECONDARY EDUCATION SYSTEM

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Abstract: In this paper we will present the thesis that the development of a security culture through education in the secondary education system is one of the possible answers to many contemporary security challenges and threats. Prior to this, we will present the current Basics of the Defence System program, initiated and implemented by the Ministry of Defence of the Republic of Serbia, which has been in use since the 2018-2019 school year. Believing that with this approach many important problems remain unresolved, we suggest modifying and expending the program from the field of defence to the field of overall security culture, by deeply respecting the educational needs of secondary school students in the context of human security. We will strive to prove that the range of qualified professionals who can be deemed competent for teaching should be expanded, taking into account the characteristics of the educational process which requires not only professional, but also pedagogical knowledge and skills.

Key words: security challenges, security culture, educational needs, defence.

INTRODUCTION

The hypothesis of this paper is positioning education in the centre of complex relations that are established and mediated between an individual and society. In the last few decades, a number of questions addressing individual and social values of education have arisen. They are motivated by two types of benefits. On the one hand, there are economically inspired goals, where education is seen as an undoubted factor of global economic growth, but also as a profitable investment on an individual plan. On the other hand, there are democratically inspired aspirations and needs of individuals and society, which emphasizes its emancipatory character. Although research does not suggest that education is a panacea for all individual and social problems, it is undoubtedly one of the important factors of individual and social development. The phenomenon of education goes beyond

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the education acquired at educational institutions, including integral and various informal forms of gaining knowledge, self-education and informal education. Yet when one talks about education, even though this identification is wrong, it is mainly related to formal education which, with its institutional background and longevity, has a profound and pervasive influence. The importance of formal education, in relation to its other forms, stems from the fact that institutional education can have a considerable influence on social life outside the school, as well as on individual human destinies.

From the perspective of this paper, the significant feature of education is its ability to overcome a lack between the knowledge, abilities, skills, habits and attitudes that individuals possess and those that they would ideally possess in order to function in a satisfactory way. This lack of knowledge, which could be acquired through education, in the field of security can be considered as some kind of a guarantee that we act more safely in different situations that endanger security, that we acquire "tools" which we can act preventively with, that we prevent the main causes of anxiety and fear. From the point of view of society and global educational needs, the choice, selection and approach to a particular type of knowledge indicate a status that certain scientific or professional areas have, i.e. they suggest what knowledge is considered as the high status knowledge in a certain society, the knowledge that is worth handing down to future generations, and therefore should have a prominent place in the curriculum (Apple, 2012; Gevirc & Krib, 2012). Pedagogy thus becomes "essentially political" (Žiru, 2013: 14), and education never neutral when it comes to value, even though in layman's terms they are often perceived as neutral techniques used to spread objective truths. Therefore, the solutions to key educational issues in a democratic society should be formulated after professional and public discussions, and they should be closely connected to the public interest and strong needs of the society and individuals in order to provide a fair distribution of educational benefits.

THE PILLARS OF SECURITY

Different security crises in the wider community, as well as in schools, have made the theorists of various profiles to have a growing interest in questions of security in the school environment. Educational institutions, relevant ministries and individuals with experience in this field have faced various challenges as well. The Ministry of Defence has recently started an initiative, called *Basics of the Defence System,* which attempts to contribute to strengthening the security culture of secondary school students in Serbia. It is still too early to make accurate conclusions about the results of this project, but it is possible to point out some conceptual and practical inconsistencies.

In order to understand the complex influence of education and security on each other as a whole, it is useful to understand security and the role of education in general, as well as in the process of achieving security. Numerous meanings of

the word "security" make it difficult to understand the structures derived from the use of this term, and thus to comprehend the security culture. Security is one of the most frequently used terms which, in spite of that or exactly because of this, is not used precisely enough even in scientific discourse. Security is most often perceived as a state of not being exposed to danger or being protected from it, but the same thing refers to other terms such as safety, protection and defence. The concept of security is fundamentally disputable and subject to various interpretations. As is often the case in other scientific disciplines, in a scientific community of authors in the field of security sciences there are at least two scientific paradigms, two disciplinary matrices. On the one hand, there is a traditional understanding of security as state security, which addresses the national, global, international security and other similar concepts. On the other hand, there is a wider and more comprehensive understanding of security that includes societal and individual security objects, non-military threats to security and human security. As said by Kuhn, "the paradigm rules not the matter, but a group of experts" (Kuhn, 2013: 80). Thus, various experts in the field of security suggest different versions of education for security. Different ideas, assumptions, intellectual approaches and the movement within a certain paradigm have not only theoretical, but also practical consequences. In the field of security education, by supporting one concept or another, they lead to strengthening or suppressing of certain social and political values of a wider society. The framework around which the conceptual similarities and differences are formed is about the coherent answers to several seemingly simple questions (Teriff, 1999; according to: Simić, 2002: 22):

- Who or what is the object of security?
- What is the nature of a threat?
- Who is responsible (who handles the security)?
- What methods, means and ways can help achieve, maintain and improve security?

Where we will seek support and who will be responsible for security should logically follow from the initial decision concerning the object under protection and the nature of the threat. In a traditional state-centric approach, these would be professional groups such as the military and police, while in a wider approach the responsibility would be distributed among the population, which would then require the strengthening of citizens' competences in the domain of a wider security agenda. The human-centric approach implies the individuals as the objects of security, and recognizes new threats that traditional security structures cannot defend against. A multifunctional concept of human security develops seven key dimensions of security: personal, ecological, economic, political, social, health and food security (UNDP, 1994: 25; Dulić, 2006; Kerr, 2006; Hadžić, 2003; Katić, 2018). The desirable condition in these domains is not so easy to associate with the presumed forces and means for reaching it. Raising the level of citizens' security culture, as a complement to the activities of state structures, is a slow but potentially optimal way to achieve fundamentally strong security in democratic societies.

Allocating citizens a part of the responsibility for security and preparing them for that role through the school system should be dealt with extreme care. At first glance, there is not much to object to. However, the reality of current social and educational formations requires serious and deep consideration. Similar initiatives that existed in our country in the past, such as the study of Defence and Protection subjects (under different names) in secondary schools and universities, were abandoned decades ago (Bebler, 2017, Katić, 2018). Their ideology, the lack of realism and respect for the properties of the school as a micro social community has resulted in giving up this form of education exactly at a time when security was extremely imperilled. There are numerous assessments about the current detachment of education from humanistic values and the common good, about the negative consequences of the dictates of efficiency in educational activities, about the responsibility of education for maintaining and deepening inequalities in society. Furthermore, there are assessments about gradually directing social and educational policies towards the economic usability, profit, competitiveness, and school's service towards economy, corporate and military interests. All of them require that each step in planning and programming this education be tackled carefully (Filipović, 2013; Tadić, 2019; Apple, 2012; Apple, 2014; Liessmann, 2009; Sennett, 2015; Žiru, 2013; Gevirc & Krib, 2012; Freire, 2018; Nussbaum, 2010).

It was necessary to define what we mean when we mention security - whether we are referring only to defence or if we are interested in the comprehensive achievement of security; whose security we are interested in – of children, a wider community, the state, the environment or all together; what will be given priority in the case of opposing values. In the same way, it is necessary to clarify which educational contents and forms should be emphasized – education, coaching, preparation or even training, because they fulfil different aims, lead to different outcomes, knowledge, skills and attitudes. Depending on these initial assumptions, it will be determined which professions will be considered competent to take part in the aforementioned forms of education. Furthermore, it will be specified which experts will be able to equally, with other teachers, organize the educational process while taking into account the properties of the school as the social environment, developmental and psychological needs of the children, as well as what competences they should have. All these, and many other issues, should be solved when engaging in the establishment of a new educational reality; the reality which has the potential to improve the security culture of young people as mature individuals who consciously take part in their community and its culture, and which should serve as another means of turning social problems into security concerns.

NEEDS AND EDUCATIONAL PRACTICE

Maintaining and strengthening, or suppressing and weakening a prevailing system of ideas in a society, greatly depends on the school curriculum, educational plans and programs. Curriculum contents do not randomly "enter" the programs of schools, and others are not accidentally omitted. The fact is that schools seem to be neutral. However, thorough analyses indicate that the power the public and hidden curricula hold has both positive and negative sides. The burden of great expectations set up before the school system is followed by great disappointments as well, especially when the school is perceived to be responsible for the problems arising outside of it. The measure of its responsibility depends on what it does with the detected social problems, whether it problematizes, reproduces, emphasizes and intensifies them, or whether it attempts to alleviate and reduce them. In the struggle against many social problems, including those connected to security, the school cannot be engaged alone, especially if its key, essential characteristics that compose its essential quality are not sufficiently respected.

A prior educational practice focused on strengthening a certain security segment, taking place within the educational process in educational institutions, is related to the activities of three state ministries: the Ministry of Education, Science and Technological Development, the Ministry of Defence and the Ministry of Internal Affairs.

For a long period of time, while the idea of studying security culture in schools was being created, current initiatives were preceded by a pilot project "Security through learning", in which the Faculty of Security of the University of Belgrade, under the former name, and the Ministry of Education were included. This program was designed in 2005 as an attempt to highlight the contribution that schools and learning can play in the improvement of complex youth security profile. In addition to keeping the idea of education for security, the key contribution of this project is in positioning the security culture as an integral part of culture as a whole; in emphasizing the need to expand the base of knowledge that is considered necessary for every citizen with knowledge in the field of security. Although the pilot project was terminated after several years, it gave a practical incentive to the introduction of Security Culture subject into school and faculty curricula. In the aspect of theory, it resulted in a series of scientific and professional papers, monographs and textbooks in which the concept of security culture was established and theoretically grounded (Stajić, Mijalković & Stanarević, 2004; Stajić, Mijalković & Stanarević, 2006; Katić, 2006; Stanarević & Ejdus, 2009). From early works to date, security culture is defined as "a set of adopted attitudes, knowledge, skills and rules in the field of security, manifested as behaviour and process, on the need, ways and means of protecting personal, social and international values from all sources, forms and carriers threats" (Stajić, Mijalković & Stanarević, 2004: 32), suggesting that the optimal path through which the line connecting the acquisition of knowledge, skills and attitudes should pass through the whole education system.

Current initiatives have been launched on several fronts. Since 2017, the Ministry of Internal Affairs has organized a program called *Basics of Child Safety* implemented in the fourth and sixth grades, and in the first grade since 2019.[3] Besides traditional teaching methods, there have been competitions *(What I Know about Traffic),* mobile applications (*Basics of Child Safety)* and similar activities. The Ministry has encouraged some forms of cooperation with the non-governmental sector such as training the volunteers of the Tijana Jurić Foundation, as well as *"Matura" (Graduation) Action*, in order to improve the safety of graduates on excursions and during prom nights. These activities are carried out by police officers.

Since 2018/2019, the Ministry of Defence has conducted a program *Basics of the Defence System* in the fourth grade of secondary schools.[4] Teaching is carried out in the form teacher's lessons by the members of the Ministry of Defence. According to the materials available on the official site of the Ministry of Education, Science and Technological Development, there are eleven topics:[5]

- The place, role and tasks of the Serbian Armed Forces (hereinafter: SAF) in the system of security and defence of the Republic of Serbia (hereinafter: the RS)
- Military service in the RS
- Working and material obligations in the RS
- Application for enrolment at secondary and higher military schools in the RS
- How to become a professional soldier
- Physical readiness as a prerequisite for military service
- Observation and information service
- Forms of unarmed resistance
- Personal and collective protection from chemical, biological and toxic agents; chemical weapons, biological and flammable materials
- Civil protection in the RS
- Tactical-technical meetings.

It is not easy to relate some of the aforementioned topics to the needs of children in secondary schools, and therefore there is an impression that the designers of the program were guided by the needs of the military organization to interest, approach and motivate secondary school students for military service. Had this motive been dominant, we could pose a question if it is justifiable that one profession in society has a privileged position to be presented to young people, in comparison to all other professions that may be their life choices. The foundation of some other topics, such as those related to the means of protection, civil protection or unarmed resistance, is easier to be found in the current and future needs of children. Besides that, these classes begin with the RS anthem, which

3 http://www.mup.gov.rs (retrieved April 28, 2019)
4 http://www.mpn.gov.rs/srednje-obrazovanje/; Obaveštenje- Osnove sistema odbrane Republike Srbije; (retrieved April 28, 2019)
5 http://www.mpn.gov.rs/srednje-obrazovanje/; Obaveštenje- Osnove sistema odbrane Republike Srbije; Materijal-za-srednje-škole-MO-XI-2018.(3).zip

can be interpreted as aiming at the development of patriotism and ideological homogenization.[6]

The first attempts of integrating the important contents for the development of security culture in the RS school system could be considered useful if they developed, both in a pedagogical and professional sense, more towards fulfilling the needs of children than the unchanged collectivist matrices.

As with any other form of education, the planning and programming of the contents of education, important from the point of view of the developing youth's security culture, should begin by establishing the current and future educational needs. A long time ago educational sciences identified the elements of the educational cycle which commences by identifying the needs, then there are planning and programming phases, and finally undertaking the teaching (Pastuović, 1978; Pastuović, 1999; Savićević, 1989; Despotović, 2000). After the evaluation, the re-examination of needs usually repeats the cycle to improve the educational spiral. If educational needs remain unexplored, the educational programs can be the results of someone's arbitrary decision, the result of agreement and concession. This way the best interest for children could, but not necessarily, be taken into account. In our case, some of the topics related to weapons or tactical-technical meetings, in certain conditions can lead to a fascination with weapons, which can lead to violence (Bralić, Katić & Orlović Lovren, 2016).

Some characteristics of educational needs, in comparison to others, demand inductive and deductive ways to be determined. This happens because besides the descriptive level - the state as it is, a normative addition is necessary - as it should be, which is derived deductively from the theory. Although individuals are the best judges of their own needs, the experts who are familiar with pedagogical principles and the contents of some disciplines are more relevant in the field of education.[7] Agreeing that there is an educational need, the individuals "admit" that they lack knowledge whose type and scope is further mainly judged by the experts. Thus, simplifying the process of making a program and conducting it, as well as centralizing the decision-making of implementing it, represents an uncertain way which can lead to disputable solutions. Education management, which no longer requires the opinion of the profession,[8] can hardly lead to the improvement in the quality of education.

6 In some countries, such as the USA, where this is traditional, the litigation was conducted because some children received disciplinary punishments because they rejected to stand up and repeat the lyrics of the anthem (the case of the twelve-year-old boy D. Spricler who won a court case) (Chomsky, 2017:27).

7 During the micro examination at the Faculty of Security Studies, the students of the final year, who were in the role of experts, agreed that secondary schools should deal more with the topics of wider security, and less with the topics of defence.

8 Solutions that strengthen centralized governance and the minister's authorisations, while the authorisations of the National Education Council and Institute for the Improvement of Education deal with giving opinions. The Law on the Fundamentals of Education System, (2017), Official Gazette of the RS, no. 88.

Apart from the characteristics of a wider educational context, the most important factor in a quality education is the quality of the teachers' work. They can adapt to the age and needs of children, because they possess certain competences that are further developed through rapport. Teachers influence not only the achievements of the children, but also the development of their personalities. Therefore, teachers' competences should be multidimensional. They should include the knowledge and use of procedural strategies of education, interpersonal relations and the creation of a positive school climate, as well as didactic-methodical procedures. That does not mean that some people without pedagogical, psychological and didactic-methodical knowledge cannot participate in teaching as guest teachers. They can, but through the coordination and cooperation with the teacher and with the teacher's guidance. Perhaps introducing military and police officers in teaching can allow children to acquire certain knowledge from the point of view of those professions. However, it should not be forgotten that in a school, as a micro social community, the interest, well-being and needs of the children are crucial.

CONCLUSION

Sector initiatives, launched by the Ministry of Internal Affairs and the Ministry of Defence in cooperation with the Ministry of Education, Science and Technological Development and directed towards the development of particular segments of the youth's security culture are deemed as one of the possible answers to the existing security challenges and threats. We believe that they should be complemented with a wider approach where security is interpreted as a multidimensional area which, apart from the problems of internal and state security, includes non-military threats to the community, individuals and environment. In that context, the contents and approaches would be closely related to the needs of young people and their personal security.

As teaching is conducted in the school environment, it is necessary to distance it from the possible ideological bias, by respecting the primary function of the school as well as the essential pedagogical principles, including those associated with the quality and competences of the people in the role of teachers.

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ROAD INFRASTRUCTURE SAFETY MANAGEMENT AS A PART OF THE ROAD TRAFFIC SAFETY PROTECTIVE SYSTEM

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Abstract: Road infrastructure has been identified as one of the pillars of traffic safety policies that should significantly contribute to the reduction of road traffic injuries. Directive 2008/96/EC on road infrastructure safety management. The Directive prescribes the implementation of procedures in the field of road infrastructure safety improvement, which have the highest degree of effectiveness, and which are mandatory for the trans-European road network, and are recommended for use on other roads. Apart from the prescribed, there is a possibility of applying other procedures. The following procedures are in use: RIA (Road Safety Impact Assessment); RSA (Road Safety Audit); EuroRAP (Europe Road Assessment Program) i iRAP (International Road Assessment Program); RSI (Road Safety Inspection) (as a proactive measures); and BSM (Black Spot Management); IDSA (In Depth Study of Accident); and NSM (Network Safety Management) (as a reactive measure). The first two procedures (RIA and RSA) are applied in the design phase of the roads, before construction, as well as in the case of reconstruction of roads that are already in operation while others (ERAP and iRAP; RSI; BSM; IDS and NSM) are applied on the existing roads in exploitation. The amending of Directive 2008/96/EC is underway, and it is based on the proposed road safety framework that follows safe system approach, i.e. it assumes that human beings can and will continue to make mistakes and that it is up to all actors to ensure that road accidents do not lead to serious or fatal injuries (shared responsibility). The paper presents the history and basic characteristics of certain procedures, as well as the field of their application.

Keywords: road safety, road infrastructure safety improvement, procedures, hazardous areas/black spots, proactive measures, reactive measures.

INTRODUCTION

The number of road traffic deaths has reached 1.35 million in 2016. Road traffic injury has become the leading cause of death for children and young adults

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aged 5–29 years (World Health Organization, 2018: XI). Road safety is becoming the greatest risk in our lives.

One of the pillars of the Global Plan for the Decade of Action for Road Safety 2011-2020 is "**Safer roads and mobility"** (WHO). This pillar strongly emphasises the role of road infrastructure in road traffic safety improvement. In order to achieve good results, effective tools should be used. A set of such tools has been introduced with a Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management. The Directive prescribes the implementation of procedures in the field of road infrastructure safety improvement, which have the highest degree of effectiveness, and which are mandatory for the trans-European road network, and are recommended for use on other roads.

Road Traffic Safety Law of the Republic of Serbia (RTSL, Official Gazette of Republic of Serbia, No. 41/2009, 53/2010, 101/2011, 32/2013 – decision of the Constitutional Court, 55/2014, 96/2015 – other Law, 9/2016 – decision of the Constitutional Court, 24/2018, 41/2018, 41/2018 – other Law and 87/2018) sets a framework for road safety management (Nešić & Lipovac, 2017), and sets obligations for major stakeholders. Thus, for the road authorities it is required by RTSL (article 4) that: "*An enterprise, another legal entity or an entrepreneur who designs, constructs, reconstructs, maintains and manages the roads is obliged to do so in a manner that enables safe traffic.*" Financing is provided within State budget for State Roads Authority and as a part of Road Traffic Safety Fines (15%) for the Local Government Road Authorities (Nešić & Lipovac, 2017).

On the other hand, Law on Roads (LR, Official Gazette of Republic of Serbia, No. 41/2018 and 95/2018 – other Law) sets a framework for a Road Infrastructure Safety Management. It is required from road authorities by LR (article 78) to plan, design and build public roads in accordance with road traffic safety requirements, and also to conduct Road Safety Impact Assessment (RIA) and Road Safety Audit (RSA).

X SPECIAL CONDITIONS FOR CONSTRUCTION AND RECONSTRUCTION OF PUBLIC ROADS

(LR, Official Gazette of Republic of Serbia, No. 41/2018 and 95/2018 – other Law)

Planning, design and construction of public roads

Article 78

Public roads are planned, designed and constructed so that the planning and technical solutions are aligned with the latest knowledge in the design and construction of public roads with traffic safety requirements, demographic and economic needs, economic principles and criteria for assessing the justification of their construction, regulations on the protection of life environment and regulations governing agricultural land.

An integral part of the project documentation of the projects for the construction and reconstruction of public roads are the reports on the assessment of the impact of the road on traffic safety and the reports on the audit of projects in terms of road safety characteristics, in accordance with Art. 88 and 89 of this Law.

In LR, there is also a whole chapter (XI) which contains special requirements that public road must fulfil regarding Road Traffic Safety. The Chapter prescribes the use of certain procedures used worldwide to improve Road Traffic Safety through actions by road authorities.

These provisions are the basis for the Road Infrastructure Safety Management system in Republic Serbia, which is explained in this paper.

ROAD INFRASTRUCTURE SAFETY MANAGEMENT IN EUROPE

Road Infrastructure Safety Management (RISM) refers to a set of procedures that support a road authority in decision making related to the improvement of safety on a road network (Persia et. al., 2016).

Procedures regarding Road Infrastructure Safety Management that are in operation across Europe (and worldwide) are: Road Safety Impact Assessment (RIA); Road Safety Audit (RSA); Europe Road Assessment Program (EuroRAP) and International Road Assessment Program (iRAP); Road Safety Inspection (RSI); Black Spot Management (BSM); In Depth Study of Accident (IDSA); Network Safety Management (NSM) (Nešić, Lipovac and Jovanović, 2012).

Those procedures can be of proactive and of reactive nature. Proactive ones are used in early stages of a project's life-cycle, whereas reactive ones are used on the existing infrastructure. First four procedures are of preventive nature. The others are reactive.

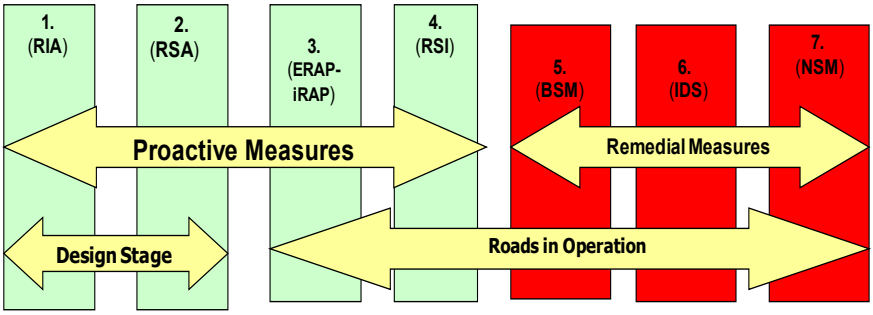

Figure 1: *Schematic view of RISM procedures (Nešić, Lipovac and Jovanović, 2012).*

Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management prescribes most of

the above procedures on the roads which are part of the trans-European road network, whether they are at the design stage, under construction or in operation (article 1). Directive 2008/96/EC required from member states to establish and implement procedures relating to Road Safety Impact Assessments (article 3) and Road Safety Audits (article 4) for infrastructure projects, and Safety Ranking and Management (article 5), and Safety Inspections (article 6) of the road network in operation. The implementation date was set to 19 December 2010 (article 14). Directive 2008/96/EC also allows usage of these procedures as a set of good practices, to national road transport infrastructure, not included in the trans-European road network, that was constructed using Community funding in whole or in part (article 1). In order to provide successful implementation, provisions regarding the adoption of guidelines were also prescribed (article 8). The same applied to training curricula for road safety auditors and a certificate of competence for auditors (article 9). The procedures are defined as (article 2):

- "road safety impact assessment" means a strategic comparative analysis of the impact of a new road or a substantial modification to the existing network on the safety performance of the road network;
- "road safety audit" means an independent detailed systematic and technical safety check relating to the design characteristics of a road infrastructure project and covering all stages from planning to early operation;
- "ranking of high accident concentration sections" means a method to identify, analyse and rank sections of the road network which have been in operation for more than three years and upon which a large number of fatal accidents in proportion to the traffic flow have occurred;
- "network safety ranking" means a method for identifying, analysing and classifying parts of the existing road network according to their potential for safety development and accident cost savings;
- "safety inspection" means an ordinary periodical verification of the characteristics and defects that require maintenance work for reasons of safety.

There is an ongoing activity by the European Commission to change Directive 2008/96/EC. On 17 May 2018, the Commission adopted a proposal for a Directive amending Directive 2008/96/EC on road infrastructure safety management[2]. The proposed revision extends the application of procedures outside the trans-European transport network (TEN-T) to motorways and primary roads. It also proposes replacement of "ranking of high accident concentration sections" and the "network safety ranking" with a "network-wide road assessment" to map the risks of accidents, and introduces provisions regarding protection of vulnerable road users to be applied in all road safety management procedures. "Network-wide road assessment" would be defined as *an assessment of the safety of the road network within the scope of this Directive in order to benchmark accident and impact severity risk* (article 2c). "Road safety inspection" would change definition

2 http://www.europarl.europa.eu/legislative-train/theme-resilient-energy-union-with-a-climate-change-policy/file-road-infrastructure-safety-management, accessed on 23.03.2019.

to: *a targeted on-site inspection of an existing road or section of road to identify hazardous conditions, faults and deficiencies that increase the risk of accidents and injuries* (article 2c). So, if the proposal should be adopted, there would be 4 procedures, as follows: "road safety impact assessment", "road safety audit", "road safety inspection" and "network-wide road assessment"

ROAD INFRASTRUCTURE SAFETY MANAGEMENT IN SERBIA

Law on Roads (LR, Official Gazette of Republic of Serbia, No. 41/2018 and 95/2018 – other Law) brings a provisions with special road traffic safety requirements that public road must fulfil. The provisions include the following six (6): Road Infrastructure Safety Management (RISM) procedures: Road Safety Impact Assessment (RIA); Road Safety Audit (RSA); Road Safety Inspection (RSI); Risk Mapping (RM); Black Spot Management (BSM); In Depth Study of Accident (IDSA).

XI SPECIAL REQUIREMENTS WHICH THE PUBLIC ROAD MUST FULFIL FROM TRAFFIC SAFETY ASPECT

(LR, Official Gazette of Republic of Serbia, No. 41/2018 and 95/2018 – other Law)

Road Safety Impact Assessment

Article 88

„When designing for the construction of a new, or reconstruction of the existing state road of 1st order, the state road authority must provide an assessment of impact of that road on the traffic safety on the network of public roads (hereinafter: Assessment).

The report of Assessment referred to in paragraph 1 of this Article shall be drawn up.

The state road authority shall act upon accepted recommendations from the report referred to in paragraph 2 of this Article no later than the beginning of the next phase of design.

In case of inability to act upon the recommendations from the report referred to in paragraph 2 of this Article, the state road authority has, within 30 days from the receipt of the report, to explain the possible non-submission to the authority competent for traffic affairs.

The authority competent for traffic affairs shall give a final opinion on the explanation of the state road authority referred to in paragraph 3 of this Article.

The state road authority is obliged to act upon the final opinion of the authority competent for traffic affairs.

The Minister shall prescribe the method for the implementation of the Assessment and the content of the Assessment Report."

Road Safety Impact Assessment (RIA) is defined as: *strategic comparative analysis of the impact of variants of a new or reconstructed road on traffic safety on the road network (LR, a. 2, p. 1, pt. 67).* It is required for making a decision to build a new State Road of 1st order, or to reconstruct the existing one, which is aligned with 2008/96/EC provisions which require carrying it out at the initial planning stage, before the infrastructure project is approved, for all infrastructure projects.

Audit and inspection
(LR, Official Gazette of Republic of Serbia,
No. 41/2018 and 95/2018 – other Law)

Article 89

The state road authority has to provide for the Road Safety Audit of a state road of 1st order from the aspect of the road safety features (hereinafter: Audit) for all new road construction projects and reconstruction projects of the existing road, at all design stages, immediately before the road is put into operation and at latest six months after the release of the road into exploitation.

The public road authority has to provide for the Road Safety Inspection (hereinafter: Inspection):

1) periodical inspection of state road of 1st order at least once in a five years period;

2) targeted Inspections for public roads sections with the highest risk, according to risk map of roads and streets.

A report is made on the performed Audit referred to in paragraph 1 of this Article.

The public road authority shall act upon the accepted recommendations from the report referred to in paragraph 3 of this Article no later than the beginning of the next stage of design.

A report is made on the performed Inspection referred to in paragraph 2 of this Article.

The public road authority shall initiate a procedure for remedying the deficiencies according to accepted recommendations from the report referred to in paragraph 5 of this Article within 90 days from the date of receipt of the report.

In case of inability to act upon the recommendations from the report referred to in paragraph 3 and 5 of this Article, the public road authority has, within 30 days from the receipt of the report, to explain the possible non-submission to the authority competent for traffic affairs.

The authority competent for traffic affairs shall give a final opinion on the explanation of the public road authority referred to in paragraph 3 and 5 of this Article.

The public road authority is obliged to act upon the final opinion of the authority competent for traffic affairs.

The Minister shall prescribe the method for the implementation of the Audit and Inspection and the content of the Audit and Inspection Report.

Audit and Inspection referred to in Article 88 of this Law may also be implemented on other public roads designated by the Government.

Road Safety Audit (RSA) is defined as: *Road safety audit of safety features of road projects is an independent, formal and systematic check of the road project from the aspect of traffic safety (LR, a. 2, p. 1, pt. 68)*. It has to be carried out on the design characteristic of a project for a new State Road of 1st order, or the existing one to be reconstructed, in all phases of designing before opening a road and six months after opening. 2008/96/EC basically covers the same requiring RSA to form an integral part of the design process of the infrastructure project at the stage of draft design, detailed design, pre-opening and early operation.

Road Safety Inspection (RSI) is defined as: *independent, formal and systematic road traffic safety inspection of existing road elements (LR, a. 2, p. 1, pt. 69)*. Road Authority must provide RSI on a new State Road of 1st order (at least once in five years), and on highest risk road sections, identified as a result of risk mapping. Similarly, Directive 2008/96/EC requires that periodic road safety inspections are undertaken in respect of the roads in operation in order to identify the road safety related features and prevent accidents. Covering highest risk road sections (for other roads) is just a bonus to a provision basically aligned with 2008/96/EC.

Risk mapping, dangerous location identification and ranking

(LR, Official Gazette of Republic of Serbia,
No. 41/2018 and 95/2018 – other Law)

Article 90

„The state road authority has to, at least once in three years, provide for projects of risk mapping for determining the sections of highest risk (hereinafter: Risk Mapping), i.e. projects of identification and ranking of dangerous locations (black spots).

The municipality roads and streets authority has, at least once in five years, to provide for projects of risk mapping, i.e. projects of identification and ranking of dangerous locations (black spots) on the roads under their authority.

For highest risk road locations and sections the public road authority referred to in paragraph 1 and 2 of this Article shall examine in detail the problems of road traffic safety and take measures to eliminate risks.

The Minister shall prescribe the manner of determining the sections of the highest risk and the identification and ranking of dangerous locations (black spots).

Risk Mapping (RM) is defined as: *an objective method of evaluating road safety based on actual unwanted events on the observed road network (LR, a. 2, p. 1, pt. 70)*. In order to identify highest risk road sections and/or highest risk road locations, State Roads Authority must conduct RM procedure at least once in three years, and Municipality Roads Manager at least once in five years. Black Spot Management (BSM) is provided as an alternative or addition to RM. Provisions regarding RM are similar to those prescribed within Directive 2008/96/EC regarding the use of "ranking of high accident concentration sections" and maybe

even "network safety ranking". Exact application of RM has not been clearly defined, but it will be further developed by the rulebook of the respective ministry.

Independent assessment of the impact of road infrastructure on traffic accidents with dead persons (IARAD) is defined as: *independent assessment of the contribution of the public road to the occurrence, or the consequences of a traffic accident*. Assessment should be done based on accident police report (police are obliged to send an accident report to road authorities within 60 days), within 30 days from reception, and remedial measures (if any) should be applied within next 60 days. Inspiration for this procedure has been found in "In Depth Study of Accident" (IDSA).

Independent evaluation of road impact on road traffic accident with dead persons

(LR, Official Gazette of Republic of Serbia, No. 41/2018 and 95/2018 – other Law)

Article 91

In the event of a road traffic accident with at least one dead person, the ministry responsible for internal affairs shall submit a report on the road traffic accident to a competent public road authority, within 60 days from the date of occurrence of a traffic accident.

In the event of a road traffic accident referred to in paragraph 1 of this Article, the public road authority shall provide an independent evaluation of the contribution of the public road to the occurrence or consequences of a road traffic accident (hereinafter: Independent Evaluation) within 30 days from the date of receipt of the road traffic accident report referred to in paragraph 1 of this Article.

The public road authority is obliged to submit the Independent Evaluation to the Public Roads Inspection within 30 days from the date of its receipt.

Based on the Independent Evaluation, in which it was determined that the road contributed to the occurrence or consequences of a road traffic accident, the public road authority, within 60 days from the day of receipt of the Independent Evaluation, takes measures to improve road traffic safety and prevent the occurrence of road traffic accidents, or severe consequences of traffic accidents.

The Minister, with the consent of the Minister of the Interior, prescribes the contents of the report of traffic accidents.

The Minister prescribes precisely the content and method of implementation of the Independent Evaluation.

PROPOSAL FOR CHANGES TO DIRECTIVE 2008/96/EC

On 17 May 2018, the Commission adopted the proposal for a directive amending Directive 2008/96/EC on road infrastructure safety management (Proposal for a Directive of the European Parliament and of the Council amending Directive

2008/96/EC on road infrastructure safety management[3]). It proposes key changes to strengthen road infrastructure safety management procedures and extends the scope of the directive beyond the trans-European transport network (TEN-T). It is based on a proposal for a new road safety framework that follows "safe system approach" which assumes that human beings can and will continue to make mistakes and that it is up to all stakeholders to ensure that road accidents do not lead to serious or fatal injuries (shared responsibility), and in which the concept of "forgiving roads" can also reduce the severity of the accidents that happen.

The proposal replaces the existing provision on the reactive "*safety ranking and management of the road network in operation*" with a new risk-based and pro-active "*network-wide road assessment*" procedure. Such assessments shall be carried out on the entire road network covered by the directive and comprise, according to the proposal, a visual inspection, an analysis of traffic volumes and historic accident data and an assessment of crash and impact severity risk (Debyser, 2018).

Another key change to the existing legislation is the extension of the scope of the directive beyond the trans-European transport network (TEN-T) to motorways and primary roads outside the network as well as road infrastructure projects outside urban areas that are completed using EU funds in whole or in part (Debyser, 2018).

The proposal also establishes general performance requirements for road markings and road signs in order to facilitate the development of cooperative, connected and automated mobility systems. It also makes it mandatory to take vulnerable road users into account in all road safety management procedures (Debyser, 2018).

CONCLUSION AND RECOMMENDATIONS

Currently, Serbian Law on Roads requires almost all Road Infrastructure Safety Management Procedures prescribed by the Directive 2008/96/EC on Road Infrastructure Safety Management. RIA, RSA and RSI are fully aligned with 2008/96/EC provisions. Ranking of high accident concentration sections as per Directive is covered by Serbian Risk mapping. Network safety ranking is not clearly covered since rulebook for the application of Risk mapping has not yet been adopted.

Serbian Law goes even beyond Directive 2008/96/EC requirements, since there are two more procedures to implement: BSM and IDSA. BSM is a very old procedure, but still usable in Serbian conditions, considering road conditions. IDSA is very important to learn about accident causes.

3 European Commission. Brussels, 17.5.2018. COM(2018) 274 final. 2018/0129(COD). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0274. Accessed on 24.03.2019.

Proposal for a directive amending Directive 2008/96/EC will also probably bring a "safe system approach" and concept of "forgiving roads", which are neither present nor planned for the near future in Serbian law.

Vulnerable road users have not been especially taken into account in Serbian Law, but they are included in Road Safety Strategy and probably will be a part of the new Road Safety Law.

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REEXAMINING THE JUSTIFICATION FOR INTRODUCING LIFE IMPRISONMENT IN SERBIAN CRIMINAL LEGISLATION

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Abstract: Amendments to the Criminal Code (CC) of the Republic of Serbia from 2019 modify the system of criminal sanctions with the introduction of a new penalty – life imprisonment. The punishment of life imprisonment is prescribed for the most serious crimes and the most severe types of serious crimes, and it, basically, replaces and abolishes the sentence of imprisonment of 30 up to 40 years, which was the most severe punishment within the existing penal system. The idea of introducing life imprisonment in criminal justice system was not new because the Draft amendment to the CC from 2015 contained a similar solution, but it was withdrawn from the procedure after a public hearing and expressed scientific and professional criticism and division. In a repeated process of amending the Law in 2019, performed without a public debate, the Draft contained a similar proposal, which was finally adopted. Bearing in mind the broader social context, the legislator's retributive attitude (reflected in frequent changes of criminal legislation and making the penal policy stricter), media content that spreads moral panic and reflects the message that only severe punishing is the way to oppose different forms of criminality and (projected) punitive attitude of the general public, the introduction of life imprisonment, presents a logical result of turbulent and unnecessary changes and experiments in the sphere of criminal legislation. This paper is devoted to reexamining the justification for the introduction of life imprisonment in criminal legislation of the Republic of Serbia by analyzing the new internal provisions and controversial" norms, issues of (im)possibility for conditional release of the convicted sentenced to life imprisonment (with reviewing the relevant jurisprudence of the ECtHR in connection with possible violation of Article 3 of the ECHR) as well as to present comparative legal modalities and practices in imposing and implementing the sentence of life imprisonment.

Keywords: criminal sanctions, life imprisonment, prison sentence, conditional release.

INTRODUCTION

The system of criminal sanctions in the Republic of Serbia was amended by adopting the Law on Amendments and Supplements to the Criminal Code from 2019 (Official Gazette RS, 35/2019) which introduced a new penalty – life imprisonment. The current system was based on the existence of four sentences: imprisonment, fines, community service and seizure of driver's license. The prison sentence, traditionally, occupies a central role in the system of criminal sanctions and it is prescribed for almost all incriminations. The most severe punishment in the system was the imprisonment up to 20 years, i.e. (long-term) imprisonment from 30 up to 40 years - for the gravest crimes or the most serious forms of crimes. The imprisonment from 30 up to 40 years was not isolated in the penal system, taking into consideration that it has different duration and some legal regime in relation to the prison sentence up to 20 years, but it could be argued that essentially, (albeit, not formally) Criminal Code (CC) recognizes two types of deprivation of liberty (Stojanović, 2017: 218). On the other hand, this practically means that there were two general maximum sentences of imprisonment: 20 years beyond which it is not possible to go even for joinder of offences, and, 40 years for the gravest crimes or the most severe forms of serious crimes (Đokić, 2016 : 223, 224;).

The imprisonment from 30 up to 40 years introduced by the Criminal Code from 2006 (Official Gazette RS, 85/2005) actually represents a substitute for the death penalty, abolished in the Republic of Serbia, at first by legislative activities on the federal level in 1993, and then in 2001 (when it was replaced by a prison sentence of 40 years), that is, in 2002, when it was abolished for the remaining criminal acts prescribed in the Serbian Criminal Law. The new Criminal Code has retained a similar concept - upper limit of 40 years for the gravest crimes or the most severe forms of serious crimes, but instead of its fixed duration, it established the long-term penalty range - maximum imprisonment from 30 up to 40 years. At the same time, after the abolition of the death penalty, most of the other contemporary national criminal legislation adopted a different approach – introduction of the life imprisonment.[1] This fact is put to the forefront by those who supported the introduction of **the** life imprisonment, emphasizing that it should be an exceptional punishment that replaces the death penalty (Stojanović, Kolarić, 2015: 6).

According to the data collected by the Statistical Office of the Republic of Serbia (Bulletin, 2015; Bulletin, 2018), from its introduction in 2006, until 2017, the

1 Out of 51 countries (or territories) in Europe, 42 of them, including now the Republic of Serbia, have sentence of a life imprisonment in their legislation. European countries in which it is not prescribed are: Andorra, Bosnia and Herzegovina, Croatia, Faroe Islands, Montenegro, Norway, San Marino and the Vatican. In the African continent, it is not prescribed in 3 out of 55 national systems, in Asia in 3 out of 29 countries. Only 2 out of 22 Caribbean states, 6 out of 8 Central American states, 1 out of 18 Oceania countries, 1 out of 4 North America and 7 out of 12 South American countries do not have a life sentence prescribed (Source: Van Zyl Smith, Appleton, 2019).

prison sentence of 40 years was imposed to 45 perpetrators of the crimes, while the imprisonment from 30 up to 40 years was imposed in other 127 cases. Therefore, the annual average was approximately 14 sentences ranged from 30 up to (or) 40 years. If in the observed period a total number of imposed imprisonment sentences was 102,964 (including those executed as "house arrest"), a simple calculation would show that the total number of 172 sentences of long-term imprisonment represents only 0.167% in the structure of imposed prison sentences.

The presented data indicate that the frequency of imposing the imprisonment from 30 up to 40 years certainly does not represent a reason for its exclusion from the penalty system,[2] neither trends of the rising number of violent crimes[3], or "insufficient" retributive and punitive effectiveness of the long term imprisonment. However, it is too short period of time so that we can discuss or make any conclusion about the effectiveness and consequences of the long-term imprisonment.

We still do not know whether a decade and a half after the introduction of imprisonment from 30 up to 40 years, and a few more years after the abolition of the death penalty in the Republic of Serbia, the practice has shown that the system is "overly" humanistically oriented and whether it is necessary to introduce more severe penalties? Or, perhaps, the wrong approach was applied at the time when the death penalty was abolished and the life imprisonment was supposed to be a part of our newly established tradition after the abolition? Some authors claim that the introduction of the life imprisonment, theoretically, is, no doubt a more "straightforward" solution because naturally the capital penalty that is not to be estimated - only the court makes its decision (Stojanović, 2015: 6,7). Everything abovementioned raises another question - whether the new approach, which introduces the life imprisonment into our legislation, represents a progressive or regressive solution?

Before attempting to provide answers to these questions, it should be noted that, in 2015, the Draft Amendments to the CC were presented to the public, which also proposed the introduction of the life imprisonment. The Draft was withdrawn from the procedure after a public debate, because of the different views in public and the criticism from the most scientific and professional circles (for example, the judges of the criminal department of the Supreme Court of Cassation had a unique attitude against the introduction of the life imprisonment, Dragičević-Dičič, 2015:15). Therefore, at that moment, the idea of the introduction of the life imprisonment was abandoned.

2 The provisions on imprisonment for a term from 30 to 40 years are exempt from the Criminal Code, so they will not be applied from 1 December 2019 and the entering into force of the amended provisions, except in cases of retroactive application of a milder law to the perpetrator.

3 The total number of persons convicted for violent crimes is not increasing, moreover, it is decreasing. According to data (Bulletin, 2018), in 2008, 3.982 were convicted for crimes against life and limb, while in 2017 number was 1.913. For crimes against sexual freedom, in 2008, 265 were convicted, while 189 sentenced in 2017.

However, a series of grave crimes that have taken place over the past few years, especially the monstrous murders of children,[4] have determined the legislator's decision to introduce the life imprisonment, this time without holding a public debate on the Draft.

Several other factors were in support of the prediction that the sentence of life imprisonment will be incorporated into the system of criminal sanctions: frequent amendments of the CC that make the penalties of high number of crimes stricter and prohibit the mitigation of penalties, expanding the criminality zone and constantly introducing new criminal offences; creating and spreading moral panic through media content (Ignjatović, 2018: 145,146) and the officials claiming the repressive punishing to be the only effective way of combating crime; media sensationalism in displaying the content of criminal events, but also, (projected) retributive attitude of the general public on the punishing and the necessity of total and lasting isolation of the perpetrators of the most serious crimes. However, it is indisputable that the key factors for the rapidly implemented procedure in the amendments of the CC was the activism of family members of the murdered children and their submission of the national initiative (through the *Tijana Jurić* Foundation with over 158,000 signatures)[5] but also the media supporting the idea of introducing the life imprisonment as a mechanism for the prevention of the most serious crimes in which victims can be children.

The aim of this paper is to analyze the adopted provisions related to the sentence of the life imprisonment, as well as other "controversial" provisions related to the (varied) purpose of punishment, the right to conditional release and its „duration", prohibition of conditional release for certain crimes, pardon as a mechanism to mitigate the sentence (with reviewing the jurisprudence of the European Court of Human Rights in relation to potential violations of the Article 3 of the European Convention on human rights), but also to present comparative legal modalities of prescription and practice of imposing the life imprisonment.

4 The public was horrified by the cases of murdering: Tijana Jurić, a 15-year-old girl from Subotica who was abducted, raped and killed in Bajmok on the night between July 25th and 26th 2014 while visiting her grandparents. Her body was found on August 7th, 12 days after the disappearance. The killer first hit the girl with his car, then he kidnapped and thrown a girl into the car, raped, then strangled, and hid the body on an improvised garbage dump near Sombor, 23 kilometers from the place where she was abducted. The killer Dragan Đurić, a butcher from Belgrade, sentenced to 40 years of imprisonment; Three-year-old Anđelina Stefanović, a girl from the village of Vratarnica near Zaječar, was murdered on July 9th, 2016. Murderer Vladica Rajković, a neighbor of the family, took the girl away from the celebration of a child's birthday into a nearby forest. According to the media, killer first rape the girl and then he took a stone and smashed the child's head. After executing a murder, killer changed his clothes and returned to the birthday party. He was caught and sentenced to imprisonment of 40 years; We will also mention the case of three-year-old Katarina Janković, girl raped and beaten up to death on July 17th, 2005, Killer, Mališa Jeftović, was the unmarried partner of the girl's mother Ana Filipović. The case of sexual abuse and brutal murder happened in the Zvezdara Forest in Belgrade. An autopsy revealed that the girl had bled because of a split of liver and injuries to other internal organs. The killer was convicted to 40 years of imprisonment, while the girl's mother was sentenced to 37 years for aiding.

5 More on Foundation and its activities on: https://tijana.rs/fondacija/, Access: May 30th 2019.

LIFE IMPRISONMENT IN COMPARATIVE LAW AND PRACTICE

Life imprisonment as a penalty, according to its contents, denies (suspends) the possibility of a convicted person ever being released from a prison institution, if there are no legal basis for early or conditional release (parole) or for reconsidering the imposed penalty. Accordingly, the perpetrator shall be punished in proportion to the gravity of the committed crime and the degree of guilt, and permanently excluded from the society and, in regard to the principles of justice and proportionality, deprived of liberty for the rest of his life, which, practically, "postpones the death penalty by the time he spends in the prison institution".

The sentence of life imprisonment is present in most countries in the world, in one of two basic modalities of prescription. Comparative legislation contains formal (*de jure)* and informal (*de facto*) sentences of life imprisonment. The formal, prescribed by the law, include: life imprisonment without parole (LWOP) – which is completely irreducible, life imprisonment without parole (LWOP) – which is practically irreducible, life imprisonment with parole (LWP) and symbolic life imprisonment. Informal penalties of life imprisonment include: long-term (time-specified) sentences of imprisonment the duration of which exceeds the life expectancy of the convicted person (including penalties the reduction of which can not be considered before the period of at least 35 years passes) and indefinite post-conviction preventive detention (Penal Reform International, 2016: 2) such as e.g. "forvaring" in Norway (Jacobsen, Hallgren-Sandvik, 2016:176) or "sicherungsvervahrung" (custody for the purpose of incapacitation) prescribed by § 66 StGB in Germany.

A comprehensive study of the life imprisonment from 2019, published by Dirk Van Zyl Smith and Chaterine Appleton, is presenting, among other things, the data of prescribing and imposing the life imprisonment on national and global level. Formal life imprisonment is a statutory penalty in 184 out of a total of 216 countries and territories in the world, while in only 32 countries this penalty is not prescribed by national legislation (the original number of 183 was published before the sentence was introduced in the Republic of Serbia). In practice, by the end of April 2014, life imprisonment was the most severe penalty in 149 out of 216 countries and territories, while in 51 of them, the death penalty was still in the statute book but a moratorium on the executions had been declared, or there had been no executions, in practice, in the last ten years.

The life imprisonment with parole (conditional release) – LWP - is the most common modality of this sentence globally. In 144 out of 183 counties, there are provisions that provide certain possibilities for the release of the convicted. In 65 countries a life imprisonment without parole (conditional release) -LWOP- is prescribed.

Data on the number of prisoners sentenced to life imprisonment, shown in the study, were collected in 2014. (in 2016. for the territory of the United States) from 114 countries in which life imprisonment was imposed, indicating that a total of 304.814 persons were serving the formal life imprisonment.

And 51 countries, which had 257.372 life-sentenced prisoners **in** them, provided data on the number of women serving life sentences. Women comprised 3.7 percent (9.648) of these life-sentenced prisoners.

Bearing in mind that the data had not been collected for a number of Asian countries (e.g. China, Vietnam, Philippines), the Middle East and Africa, the study estimated the total number of prisoners to life sentence to be 479,000, in 2014. If this figure was about 261,000 in 2000, it is easy to determine the trend of the increasing number of sentences to life imprisonment in the world. (Van Zyl Smith, Appleton, 2019: 87, 88).

According to the data on the total number of convicted and detained persons in the world in 2015, the prison population consisted of 10.357.134 persons (Walmsley, 2019: 18). Compared to the estimated number of prisoners sentenced to life imprisonment, we find that 4.62% of the total world prison population are persons convicted to life imprisonment.

In the national statistics, the largest number of formal sentences of life imprisonment was recorded in the United States with 161.957 convicted persons in 2016 (the total number of detainees was 2.121.600, Walmsley, 2019: 16). The United States had more life-sentenced prisoners than the other 113 countries. This does not mean that the United States had more than half of the life-sentenced prisoners in the world, for, as indicated, there are some major jurisdictions for which we were unable to obtain numerical information. The United States accounts for about 34% of the estimated total of the world's life-sentenced population. In California, there were 39.697 life- sentenced prisoners (including 5.090 serving LWOP) in 2016. If California were a single country, it would have more life-sentenced prisoners than any other country in the world, with the exception of India. In Florida, there were 13.005 prisoners serving life sentences: more than two-thirds of these (8.919 prisoners) were serving LWOP. In other states, this ratio is dramatically different. In the State of New York, for example, where there were 9,535 prisoners serving life sentences in 2016, only 275 were serving LWOP. Data collected by Nellis in 2017, showed that in California, Louisiana, and Utah, in 2016, one in three sentenced prisoners was serving either a formal life sentence or a de facto life sentence (Van Zyl Smith, Appleton, 2019: 89).

If one compares the United States with Europe, there were 27.213 life-sentenced prisoners in the whole of Europe, including Turkey and Russia, two countries that in large part go beyond the geographical boundaries of Europe. The difference becomes even more prominent when one realizes that the population of Europe is more than double that of the United States. The number of life-sentenced prisoners as a proportion to the national population of the United States in 2016 was 50.3 per 100.000, whereas in Europe in 2014, it was only 3.3 per 100.000. United Kingdom (England and Wales, Scotland, and Northern Ireland) and Turkey, with 8.661 and 6.687 life-sentenced prisoners, respectively, accounted for more than half, 56% of the total European life-sentenced prison population. High rates of life-sentenced prisoners per 100.000 of national population in 2014, were

found in the United Kingdom (13.4), Greece (9.2) and Turkey (8.6), but much lower in France (0.7), Poland (1.0), Russia (1.2), Germany (2.4) and Italy (2.7). The difference between France and the United Kingdom is remarkable. As a proportion to the national population, there were 18 times more life-sentenced prisoners in the United Kingdom than in France. These comparisons are particularly significant because both of these countries have long used life imprisonment as their ultimate penalty. When one compares these figures with those of the United States, the differences are even more astonishing. Again, as a proportion to the national population, there were seventy times more individuals serving life sentences in the United States than in France. Even compared to the United Kingdom, which had the highest rate and number of life-sentenced prisoners in Europe, the United States had almost four times more life-sentenced prisoners per head of population. (Van Zyl Smith, Appleton, 2019: 93-94). In 2017, the Council of Europe presented a report showing the exact number of persons sentenced to a life imprisonment. For example, in Albania there were 159, in Belgium 217, in Bulgaria 175, in Finland 200, in Poland 380, in France 489, in Germany 1.863, and in Turkey 7.303 convicted persons (Aebi, M. F, et al, 2017: 87).[6]

In the whole world, a total number of 64.306 persons are serving life imprisonment without parole, of which 53.290 are in the United States (or about 80% of all the prisoners in the world), and there are only 2.156 convicts in Europe, of which at least 24 are in Bulgaria, 50 in England and Wales , 41 in Hungary, 118 in Lithuania, 12 in Malta, 32 in the Netherlands, 126 in Turkey, and 1.753 in Ukraine (Van Zyl Smit, Appleton, 2019: 89-94).

In addition to the national criminal legislations, the life imprisonment was imposed before the International Military Tribunals in Nuremberg and Tokyo,[7]and, in a "specific" manner is prescribed in the sources of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda,[8] and is also a part of the system of penalties prescribed by the Rome

6 The country that in 2014 had the second largest number of life-sentenced prisoners (71.632) was India. However, given that the national population of India is more than 1 billion, this amounted to only 5.5 per 100.000 of the population. In other words, relatively speaking, the US life-sentenced prison population was 9.2 times greater than that of India. South Africa, which had a total life-sentenced prisoner population of 13,190. This amounted to 22.7 per 100.000, which is slightly less than half that of the United States.

7 In accordance with its Statutes, International Military Tribunals could impose a death sentence or another sentence they consider to be justified. Three sentences of a life imprisonment were imposed before the Nuremberg Tribunal, while the tribunal in Tokyo imposed 12 life imprisonment sentences (to the half of the convicted persons).

8 The Statutes of the Tribunals do not explicitly provide for the possibility of imposing a life imprisonment, but rather imprisonment (taking into account the practice of imposing imprisonment in national states). However, the provisions of the Statute have been derogated, the practice of national courts has not been accepted, and the sentence of a life imprisonment has been prescribed and imposed by the amendments to the other legal source of the Tribunals - Rules of Procedure and Evidence (adopted, amended by the judges of the Tribunal). In its practice, the International Criminal Tribunal for the Former Yugoslavia imposed 8 sentences of a life imprisonment, while the International Criminal Tribunal for Rwanda total number of sentences was 20.

Statute of the International Criminal Court (Grujić, 2010: 263). The Rome Statute proposes that a convict may be imposed by the Court: (a) imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) a penalty of life imprisonment when it is justified by the extreme gravity of the crime or the specific circumstances related to the personality of the convicted person.[9] Article 110, paragraph 3 of the Rome Statute proposes that when the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced. Such a review shall not be conducted before that time."

The length of 25-year period for persons sentenced to life imprisonment presents the "established standard" for considering the conditional release, which has repeatedly been pointed out by the jurisprudence of the European Court of Human Rights - if national legislation does not specify the period or the possibility of reviewing the sentence, or if the prescribed period is not shorter than the time limit proposed by the Rome Statute.[10]

LIFE IMPRISONMENT IN SERBIAN CRIMINAL LEGISLATION

Normative regulation of the life imprisonment

In the first part of the paper we pointed out that the sentence of life imprisonment, after the amendments of the CC, is part of the system of criminal sanctions in the Republic of Serbia. According to the Article 44a, for the gravest crimes or the most severe forms of serious crimes, a sentence of life imprisonment may be prescribed, in addition to the prison sentence. Legislator came up with a solution that the life imprisonment and prison sentence can only be imposed as the main sentences, but that life imprisonment can be prescribed only in addition to the time-specific prison sentence. Bearing in mind that the punishment of life imprisonment is not assessed, the new legal decision proposes that in every concrete case the court has the possibility to choose - to determine and impose a time-specific sentence of imprisonment or to impose a sentence of life imprisonment.

This fact may have a significant impact on the criminal policy of courts in the future period. Namely, before the amendments of the CC, in the case of incriminations in which there was an opportunity to impose time-specific prison sentence or long term imprisonment, the court had the possibility to determine

9 The Rome Statute of the International Criminal Court, UN Doc. A&CONF, 183/9, 17 July 1998.

10 National (or territorial) legislations contain a variety of solutions, for example: Kosovo and Metohija (UN 1244) 40 years in prison before applying for conditional release, Argentina and Peru 35, Philippines, Cuba, Estonia 30, Serbia and Israel 27, Italy 26, Albania, Northern Macedonia, Poland, Russia, Slovakia, Spain, South Africa 25, Turkey 24, France 18, Belgium, Germany, Greece, Switzerland 15, Cyprus, Denmark, Finland, Sweden 12, South Korea, Japan 10, Botswana and Ireland 7.

and impose imprisonment up to the limits of the general (or specific) maximum or to impose a prison sentence from 30 up to 40 years. This practically meant that the court could "double-determine" within the "two general maximum" of imprisonment. However, the new decision limits the possibility of determination to a "single" general maximum of 20 years of imprisonment. Such a limitation will, logically, lead to the practice of imposing a greater number of sentences of life imprisonment in cases in which the court considers the prison sentence of 20 years not to be adequate and proportionate to the gravity of the crime and the degree of guilt of the perpetrator, and in which it does not have the possibility to impose severe time-specific prison sentences.[11] The logic of this conclusion will be reviewed in the first years of imposing the life imprisonment.

In addition to the fact that it is prescribed with a prison sentence, imposing the life imprisonment is limited on two more grounds. The punishment of life imprisonment, according to paragraph 2 of the Article 44a, cannot be imposed on a person who did not reach the age of twenty one at the time of committing the crime. The next paragraph of the same article stipulates that life imprisonment can not be imposed in cases in which the law proposes that the punishment can be mitigated (Article 56, paragraph 1, item 1) and when there is some basis for the exemption from the punishment. If the criminal policy is taken into consideration, the issues are indisputable – the first was related to the imposing of prison sentence from 30 up to 40 years, while the other derives from the nature and the consequences of applying the institutes of penalty mitigation and the exemption from the punishment.

Supplementary content to the purpose of punishment - the principles of proportionality and justness

The general purpose of prescription and imposing of criminal sanctions, in Serbia's legislation, is to suppress acts that violate or endanger the values protected by the criminal legislation (Art. 4, para. 2. CC), and the purpose of their execution is to achieve the general and individual purpose of them being imposed with the aim of successfully reintegrating the convicted persons into the society (Art. 2 LECS - ZIKS).[12] The purpose of the punishment referred to in the Article 42 of the CC, before the amendments, was (a) to prevent an offender from committing criminal offences and leave an impact on him not to commit criminal offences in the future; (b) to deter others from committing criminal offences; (c) to express social condemnation of the criminal offence, enhance moral strength and reinforce the obligation to respect the law, while the purpose of the execution of the prison sentence, referred to in the Article 43 of the ZIKS, is that, during the execution, the convicted person, by applying appropriate conduct programs,

11 Not to lose sight of the fact that many judges pointed to the lack of a previous legal solution that prevented imposition of the imprisonment from 20 up to 30 years.
12 Law of Enforcement of criminal sanctions, Official Gazette RS, 55/2014, 35/2019.

adopts socially acceptable values in order to be more easily included in life conditions after the execution of the sentence, so as not to do any criminal offenses in the future.

The life imprisonment is, according to its content, the punishment of an eliminating character which excludes the sentenced person from the society and incapacitates him in the prison institution for the rest of his life (if there is no possibility of conditional release or pardon), so, as a consequence, it cannot be expected that the purpose of this punishment and its implementation can be neither to achieve a successful reintegration of the convicted into the society or the acceptance of social values in order for him to be more easily included in life conditions after the execution of the sentence, nor to deter the convicted person of committing crimes in the future, or in the case of positive general prevention, to enhance the moral strength and reinforce the obligation to respect the law. Without raising the questions, due to the scope of this paper, of the purpose of punishment and the purpose of life imprisonment, we must point out that the Serbian legislator resorted to a "specific" decision that "complements" the purpose of the punishment. Namely, the new aim and purpose of the punishment, in the amended Article 42 of the CC, is attaining justice (fairness) and proportionality between the crime and the gravity of the criminal sanction.

Proportionality between criminal offense and punishment and satisfying the principle of justice in contemporary criminal law is achieved through the penal policy of the legislator by prescribing the type and (minimum and maximum) duration of the penalty for each individual incrimination. The range of prescribed penalties is the basis for proportionality and for determining the crimes gravity. The imposition of "classical" or "bekarian" thinking in defining the "new" purpose of punishing appears to be the result of the legislator extorted decision. The justice and proportionality between the crime and the gravity of the penalty, now as the proclaimed principle, on the one hand, attempts to create an impression of the necessity to return to a retributive and more punitive concept of punishment, while, at the same time, "justifying" the introduction of a severe sentence, such as life imprisonment. At the same time, the impossibility of social reintegration of the convicted person, as the proclaimed purpose of the execution, will be compensated by the principles of justice and proportionality, and during the process of the execution of life imprisonment, until the next renewal of the criminal legislation and until achieving adjustments for the proclaimed purpose of imposing and executing penalties.

(Non)conditional release and duration of release

The introduction of life imprisonment requires the normative regulation of the application of various institutes, inter alia, the issue of conditional release of persons sentenced to this penalty. Conditional release by definition means the fulfillment of certain conditions. In almost all the models of the conditional re-

lease, there are assumptions of formal nature that relate to the part of the sentence which the convicted persons must endure before the release, as well as the material assumptions concerning the quality of the prisoner's conduct while serving the sentence and the assessments of fulfilling the purpose of the punishment (Sokolović, 2014: 41). The amended provisions regulate the formal conditions on the part of the sentence that persons sentenced to life imprisonment must serve before acquiring the right to apply for the conditional release, while the provisions on material conditions are predetermined according to all the categories of those sentenced to imprisonment.

However, the legislator decided on two mainly controversial solutions. The first is to forbid the conditional release of the convicted to life imprisonment for determined serious crimes, thus opening up the issue of compliance of this solution with numerous international documents on the protection of human rights and the rights and position of persons deprived of liberty, and, in particular, to the jurisprudence of the European Court of Human Rights relating to possible violation of the Art. 3 of the European Convention on Human Rights.[13] The second solution is concerned with the temporal duration of the conditional release of persons convicted to life imprisonment of 15 years, without regulating the issues of the rights of the convicted and the decision-making process after the expiration of this period.

Thus, CC in the Article 46, paragraph 2, provides an optional conditional release for persons sentenced to life imprisonment after serving 27 years in prison institution and if they fulfill the conditions necessary for the mandatory conditional release prescribed in paragraph 1 of the same article. Namely, a convicted may be released on parole by the court, if in the course of serving the prison sentence he has improved so that it is reasonable to assume that he will behave well while at liberty and particularly that he will refrain from committing a new criminal offence until the end of the imposed prison sentence. In deliberating whether to release the convicted person on parole, his conduct, while serving the sentence, shall be taken into consideration, his performance of work tasks relative to his abilities, and other circumstances indicating that the purpose of the punishment has been achieved. However, the court cannot release a convicted who, in the course of serving the sentence, is twice punished for serious disciplinary offenses and who is deprived of the granted privileges.

The questions arise why the legislator has opted for a period of 27 years of imprisonment before the conditional release and whether the material conditions can practically present a real obstacle to obtaining the right to release. In the first case, although there are comparable systems that propose a longer period of time and an "established" standard of maximum 25 years in international criminal law, in reality, the legislator has resorted to a mathematical model when determining

13 Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4. November 1950.
Article 3. Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

the formal condition for the release. It is easy to determine the logic behind the decision on the period. Namely, if the sentence of life imprisonment is more severe than a 40 year of prison sentence, the conditions for parole should be more stringent. In the case of imprisonment of 40 years, the right to parole was obtained after 2/3 of the sentence served, i.e. after 26 years and 8 months. The period of 27 years in the case of life imprisonment is by four months more stringent in relation to the maximum period in the imprisonment of 40 years.

In the second case, having in mind the elimination character of life sentence imprisonment and penological knowledge of the problems of persons condemned to long-term imprisonment, the gravity of the committed crime and the degree of guilt of the perpetrator, it is difficult to expect that in the sentenced period of 27 years convicted will be dedicated to treatment programs and resocialization, by accepting the values on the basis of which he can be involved in life when at liberty, respecting the rules of conduct in a prison institution. On the contrary, limitations related to the execution of two serious disciplinary offenses or the deprivation of the granted privileges to this category of the convicted, practically hinder them from the right to conditional release. If, at an early stage of the execution of the sentence, the convicted committed two serious disciplinary offenses or if his privileges were seized, the sentence becomes life imprisonment without the possibility of release.

The most controversial decision is provided in paragraph 5, which prohibits the conditional release of a person convicted for: aggravated murder (Art. 114, para. 1, p. 9), rape (Art. 178, para. 4), sexual intercourse with a Helpless Person (Art. 179, para. 3), sexual intercourse with a child (Art. 180, para. 3), and a sexual intercourse through abuse of position (Art. 181, para. 5), for which life imprisonment in prescribed by the latest amendments of CC.[14] After prohibiting the conditional release for those convicted of these crimes, a new form of life imprisonment was introduced – a life imprisonment without conditional release.

Bearing in mind the general international standards in the field of the rights of prisoners, as well as their resocialisation and social reintegration as the purpose of executing sentences proposed in numerous international acts, the question arises whether the sentence of life imprisonment without the possibility of conditional release, although prescribed in comparative law, is a negation of the principle of resocialization and social reintegration of the convicted. Is it a form of torture, an inhuman or degrading punishment and treatment? The jurisprudence of the European Court of Human Rights in relation to the potential violations of the Article 3 of the European Convention on Human Rights, is important in addressing this problem.

Namely, in one of the latest verdicts from 12 March 2019, in which, inter alia, the issue of life imprisonment without the possibility of conditional release was

14 The legislator did not provide the prohibition of conditional release for genocide, crimes against humanity or war crimes against the civilian population whose acts of execution can be same as those prescribed in this five incriminations.

considered, in the case *Petukhov v. Ukraine*, the Court affirmed, after referring to „relevant texts of the Council of Europe and other international legal texts on the imposition and review of life sentences and earlier judgments which pointed on the importance attached to rehabilitation, that there has been a violation of Article 3 of the Convention on account of the applicant's irreducible life sentence".[15] However, this is not a generally accepted opinion, nor there is a consistent policy of judicial practice.

For example, Grand Chamber Judgment from 12 February 2008 in the case *Kafkaris v. Cyprus* (Application no. 21906/04), pointed, in para. 97, that "the imposition of a sentence of life imprisonment on an adult offender is not in itself prohibited by or incompatible with Article 3 or any other Article of the Convention."

In the Grand Chamber Judgment of 9 July 2013, in the case *Vinter and Others v. United Kingdom* (Applications Nos. 66069/09, 130/10 and 3896/10), the Court made a distinction between three types of life sentence: "(i) a life sentence with eligibility for release after a minimum period had been served; (ii) a discretionary sentence of life imprisonment without the possibility of parole (that is, a sentence which is provided for in law, but which requires a judicial decision before it can be imposed); and (iii) a mandatory sentence of life imprisonment without the possibility of parole (that is, a sentence which is set down in law for a particular offence and which leaves a judge no discretion as to whether to impose it or not)." In the first two forms of life imprisonment, no issue could therefore arise under Article 3 (or issue cannot arise at the moment when it is imposed), but the issue can be raised only with a compulsory life imprisonment without the possibility of conditional release if: "(i) continued imprisonment could no longer be justified on any legitimate penological grounds; and (ii) that the sentence was irreducible *de facto* and *de jure*". Yet, in para. 119 and 122, it is stated that "the Court considers that Article 3 must be interpreted as requiring reducibility of the sentence, in the sense of a review which allows the domestic authorities to consider whether any changes in the life prisoner are significant enough, and so much progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds… Each life prisoner is entitled to know, at the outset of his sentence, what he must do in order to be taken into consideration for release and under what conditions, including when a review of his sentence will take place or when it may be sought. Consequently, where domestic law does not provide any mechanism or possibili-

15 Noting, in the para. 107 of the judgment, CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) Report to the Ukrainian Goverment (CPT/Inf (2018)41), which, in para. 81 indicates that: basic principle that, in order to reduce the harmful effects of imprisonment and to promote the resettlement of prisoners under conditions that seek to guarantee the safety of the outside community, the law should offer a realistic prospect of conditional release to all sentenced prisoners, including life-sentence prisoners and again calls upon the Ukrainian authorities to amend the legislation with a view to making conditional release (parole) available to all life-sentenced prisoners, subject to a review of the threat to society posed by them on the basis of an individual risk assessment. Reference is also made here to the CPT's 25th General Report.

ty for review of the whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration."

An opinion that the other legal or factual possibility of acquitting a person sentenced to irreducible life imprisonment, as a mechanism whose potential application indicates that there will be no violation of Article 3 of the Convention, raised the issues of the conditions and procedures for determining the prospect (path/hope) to release the convicted. Is the institute of pardon a satisfactory mechanism that can ensure early release or reduction of sentences? Should those sentenced to life imprisonment have the possibility of rehabilitation as a basis for early release? Is that a logical question or an established standard?

The Court in case *Kafkaris v. Cyprus* states in para.103, that "the prospect of release for prisoners serving life sentences in Cyprus is limited, any adjustment of a life sentence being only within the President's discretion, subject to the agreement of the Attorney-General…Notwithstanding, the Court does not find that life sentences in Cyprus are irreducible with no possibility of release; on the contrary, it is clear that in Cyprus such sentences are both *de jure* and *de facto* reducible."

The Grand Chamber Judgment from 26 April 2016, in the case *Murray v. The Netherlands* (Application no. 10511/10) in para 104. stated that "life prisoners are thus to be provided with an opportunity to rehabilitate themselves. As to the extent of any obligations incumbent on States in this regard, the Court considers that even though States are not responsible for achieving the rehabilitation of life prisoners, they nevertheless have a duty to make it possible for such prisoners to rehabilitate themselves. Were it otherwise, a life prisoner could in effect be denied the possibility of rehabilitation, with the consequence that the review required for a life sentence to be reducible, in which a life prisoner's progress towards rehabilitation is to be assessed, might never be genuinely capable of leading to the commutation, remission or termination of the life sentence or to the conditional release of the prisoner. In this connection the Court reiterates the principle – well established in its case-law – that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective.

The judgments we analysed indicate that there is no consistent attitude of life imprisonment without the right to conditional release as a form of violation of Article 3 of the Convention. In relation to the decisions proposed in the national criminal systems, the modalities that eventually provide for the possibility of early release have been evaluated differently. Undoubtedly, in the future, the jurisprudence of this court will discuss and decide the normative solutions provided in our legislation.

Finally, we must point out the solution proposed in paragraph 7 of the Article 46 of the CC, which refers to the duration of the conditional release. Namely, the legislator predicted that the release for persons sentenced to life imprisonment lasts 15 years. Such a solution is illogical and controversial. Namely, it is not clear why the legislator decided on the duration of the conditional release for

this penalty, contrary to the provisions related to the prison sentence. In addition, the provisions do not specify what happens with the convicted person after the expiration of the period of 15 years - whether he is again referred to serving the sentence or if there is a possibility of a new conditional release in 15 years. In any case, the legislation does not propose the rights of the convicted or the procedure in which a conditional release would be decided on after the expiration of 15 years. Future law changes are necessary and are to regulate these open issues. We are of the opinion that, if there are no possibility for the revocation of conditional release, there is no obvious reason to temporarily limit its duration.

CONCLUSION

Reexamining the justification for introducing a sentence of life imprisonment in the criminal legislation of the Republic of Serbia after the adoption of the amended provisions and the abolition of the imprisonment from 30 to 40 years, after presenting the modality of life imprisonment in comparative legislation and practice, analysis of the normative content of the sentence of life imprisonment and "controversial" issues of changing the purpose of punishing, the application of the institute of conditional release and the prohibition of conditional release of the convicted to life imprisonment for certain crimes, the limited duration of release and presentation of the jurisprudence of the European Court of Human Rights in relation to potential violations of Article 3 of the Convention, we must finally point out the following facts and conclusions.

Proposing the sentence of life imprisonment in modern criminal law is not an exception, but a rule. It is prescribed in 184 legislations of 216 countries (or territories) in the world, in various modalities. Only 32 countries in the world have no prescribed life imprisonment. Out of 184 legislations that contain life imprisonment in the system of criminal sanctions, it is applied in practice within 149. On a global scale, the estimated number of persons serving life sentences was around 479,000 in 2014, which is slightly below 5% of the total prison population in the world. The sentence of life imprisonment is part of the international criminal law, it has been imposed by the international military and ad hoc tribunals, and is proposed in the Rome Statute of the International Criminal Court.

After the abolition of the death penalty, our criminal legislation was among the few contemporary (and progressive) systems which defined the imprisonment of 40 years and, a little later, from 30 to 40 years, as the most severe punishment, although, according to the literature, the introduction of life imprisonment presents a "cleaner" solution. The retributive concept of the legislator and the punitive attitude of the general public, regardless of the criticisms and disagreements in the professional public, contributed to the reform of the penal system and the introduction of the sentence of life imprisonment, without realizing the real scope and effectiveness of the long-term imprisonment.

The argument that the dangerous condition of the perpetrator of the most serious crimes constitutes the basis for his complete incapacitation in prison institution because it allows the protection of the society, cannot be accepted. Namely, dangerous condition is a category which has, when choosing a criminal sanction, significance only for security measures. A life imprisonment and its imposing must be based on the gravity of the crime and the degree of guilt of the perpetrator, the same as when it comes to any other punishment. (Stojanović, 2015: 7).

The introduction of life imprisonment will, undoubtedly, greatly affect the penal policy of the courts. Following the revision of the CC, the courts are limited to the general maximum of 20 years of imprisonment, which will, in the case of the gravest crimes and the most serious forms of serious crimes, lead to more frequent use of life imprisonment.

In this regard, it is important to emphasize that the prison system is not prepared for the treatment of this category of convicted persons, while the question of the purpose of punishing and executing sentences is additionally made complicated by predicting the new principles of justice and proportionality of punishment. Undoubtedly, the regime and conditions under which life sentence is served must be the same as for the other convicted population, without segregation on the basis of the imposed sentence, and the programs of treatment are directed towards achieving resocialization and potential social reintegration of the convicted persons.

Observed in the broader context, a sentence of life imprisonment with the conditional release after 25 years in prison (as the "established" standard) for all the categories of convicted persons is not a more severe sentence than 40 years' imprisonment. The introduction, after the abolition of the death penalty in our legislation, would not lead to greater controversy or criticism.

However, the introduction of life imprisonment without considering the effectiveness of long-term imprisonment, with decisions that change the purpose of punishing, makes the terms for conditional release stricter, prohibits conditional release for certain offenses, determines the duration of conditional release, and cannot be considered progressive. On the contrary, having in mind numerous international acts in the field of human rights protection, as well as the practice of the European Court of Human Rights, many of the proposed solutions will be subject of reviewing and re-amending the law.

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THE ROLE OF RELIGIOUS LEADERS IN THE CREATION OF THE 21st DIVISION OF THE SS - SKANDERBEG AND THEIR INVOLVEMENT IN THE WAR CRIME IN VELIKA

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Abstract: The paper deals with the role of fanaticized religious leaders in the creation of the 21st Division of the SS "Skanderbeg", developed on the basis of the ideas of the League of Prizren which laid the foundations of the so-called "Greater Albania". The authors analyze the activities of the German Counter-Intelligence Service "Abwehr" in the creation of such an "elite" division, whose operatives and agents skillfully mislead religious leaders and religiously fanaticized aghas and beys in order to preserve occupying power in the Balkans without the involvement of German regular troops. Within this unit there were numerous ballist and volunteer forces from the territory of Kosovo and Metohija, Northern Albania, Western Macedonia, but also from Plav and Gusinje (Montenegro) and from the Raška area, while only the commanding staff (officers and non-commissioned officers) were Germans. Since the creation of this unit, religious and nationalist fanatics have been attempting to ethnically cleanse the multinational region from all Non-Albanians, committing mass crimes against the unprotected population. The list of crimes committed by this unit is very long, but definitely the most brutal was the one committed on 28 July 1944. On that day, in an event that is known in historiography as "The Velika Massacre", for just two hours and fifteen minutes in the villages beneath the mountain Čakor called Velika and Gornja Ržanica the fanatics blinded by their religion murdered and then burned down most of their 458 victims, 120 of which were children.

Keywords: religious extremism, Greater Albania, war crimes, SS division "Skanderbeg", ballists, volunteers, intelligence services.

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INTRODUCTION

Over hundred years have passed since the creation of the Albanian League, well-known Kongra, later known as the League of Prizren which laid the foundations of so-called "Greater Albania". The League was a sort of military-political association formed by a group of Prizren people on 10 June, 1878, when the war among Russia, Serbia and Montenegro against the Ottoman Empire ended (1877–1878). Protecting the interests of the Ottoman Empire, the aim of the League was to prevent the Serbian and Montenegrin annexation of territories predominantly inhabited by the Albanian and Bosniak population (mostly Muslims and Catholics). The Prizren League planned to achieve this goal in the armed struggle for the Ottoman Empire and perform the unification of all the territories inhabited by the Albanians, regardless if they were majority population or not. At the Congress of Berlin, The League tried to act on behalf of the Albanian people, fighting for protection of border territories aspired by the neighboring countries.

In order to realize the proclaimed goals, the league of Prizren sent a Memorandum to the Congress of Berlin requesting the Great Powers to acknowledge the national identity of the Albanians and Albanian autonomy within the Ottoman Empire. Along with Memorandum action, the League of Prizren sent a delegation led by Abdullah-Hysni Dume bej Frashëri and Mehmet Ali Vrioni to Vienna, Berlin, Paris, London and Rome. The delegation's goal was to defend the stands of the Prizren League Memorandum (Military encyclopedia, item 4, 1972:656). However, the Congress of Berlin ignored the League's Memorandum and the Chancellor of the German Empire Otto von Bismarck even took a stand that the Albanian nation did not exist. The Albanian delegation was not allowed to participate at the Congress of Berlin. Territories inhabited by the Albanian population were treated as a part of the Ottoman Empire and the Albanians as its citizens.

Albanian aspirations towards the autonomy were expressed through the first League of Prizren which simultaneously raised the effect of religious fanatism with the Albanian Muslims. Among others, it included looting, rape and arson of Serbian settlements and assassinations of prominent Serbs. For instance, on 23 June, 1880 Kongra sentenced to death and executed 14 prominent Serbs from Prizren. Upon foundation of the first League of Prizren, the conditions became unbearable. This was the result of an Anti-Serbian propaganda orchestrated by the Great Powers through their operating intelligence centers in the territory of Kosovo and Metohija. This led to exodus of 400 000 Serbs from their old country from the Serbian-Turkish War in 1876 till the beginning of the Balkan Wars in 1912. Arbanasi crimes against Serbs had a history which was going to be continued in the Second World War.

Before the onset of the Second World War, the Albanians from the Balkans became the key collaborator of the fascist Italy and Nazi Germany. Through different organizations and associations of political, religious and military character, they supported the idea of "the Greater Albania" along with extreme Anti-Serb

feelings. The ideas of "the Greater Albania" were the foundations for all the quisling units in the Second World War formed at this territory. Among them, central place belonged to the notorious 21st Division of the SS – "Skanderbeg". In the division's formation, central place was assumed by the Mufti of Jerusalem Mohhamed Amin al-Husseini, who served in German forces and used hodjas to influence the Muslim population to enlist the mentioned unit. Since mid May to beginning of June in 1944, this unit committed huge crimes against Jews in Prishtina, but will certainly be remembered for the mass crime against the civilians in two villages under the mountain of Cakor, Velica and Gornja Rzanica.[3] On that day, 28 July, 1944 in just two hours, the members of this unit slaughtered 458 women, children and old men (Paunović, 2015:144). Number of casualties in this crime was not final, although lots of effort has been put in the identification of victims.

HISTORICAL CONTEXT- PARTIAL EXPLANATION OF CRIMES GENESIS AT THE TERRITORY OF "THE GREATER ALBANIA"

Before the Second World War, foreign intelligence services in Kosovo and Metohija were very active. They undertook various subversive actions, preparing field for the arrival of the armies that invaded these territories in April 1941. Intelligence services of Germany, Italy, England and Bulgaria had a wide network of associates in Kosovo and Metohija, consisted of Albanian collaborators. Security situation at this territory was additionally burdened by the fact that both Germany and Italy had extremely opposite interests. The division of Kosovo and Metohija supported by the Nazi Germany interfered with Mussolini's plans engaged in creation of "the Greater Albania" including Kosovo-Mitrovica District, which was not suitable for the Germans due to the "Trepca" mine.

Before the beginning of the Second World War, the Germans were trying to buy off "Trepca" mine bonds owned by the English capitalists. Due to its reserves in lead, the Trepca mine was highly significant to German war machinery. However, British Intelligence Service, through its agents in Skoplje and Kosovo and Metohija confronted German interests, in order to protect their capital in "Trepca" mine, all for purpose of realizing its military and political goals in the Balkans (Dželetović, 2012:70).

Without any doubt, the strategic goal of Germany in Kosovo and Metohija was a geo-strategic space between Kosovska Mitrovica and "Trepca" mine. At that point, Italy did not comply with it, not to mention the Albanians who had believed

3 Villages of Velika and Gornja Ržanica (Plav Municipality) are highland settlements in the upper North-East of Montenegro. The majority of Velika region is situated around the Velika river, a right tributary of the Lim. In its east part, the village goes to Cakor Pass and reaches the spring of Pecka Bistrica river. The first written record of the Velika village is found in St. Stephen Crysobull issued by Serbian king Stefan Milutin, dated 1314-1316, depicting Banjska monastery confines in the mountain region of Velika (Otašević, 2002.)

that the dream of "Greater Albania", including the region of Kosovska Mitrovica, would be easily realized if supported by the fascist Italy. But, the importance of Kosovska Mitrovica region for the Hitler's war machinery could be best described by the fact that the German Counter-Intelligence Service "Abwehr" had spread a wide intelligence network in Kosovo and Metohija even before the Second World War started. Service Head Office was right in Kosovska Mitrovica and the main agent was Xhafer Deva.[4] He had established a Humanitarian Organization "Merhamet" ("Mercy") involved in politics rather than humanitarian work. Its main activity was to stir up the ethnic hatred of the Albanians towards the Serbs, for the interests of Nazi Germany whose strategic goal was to recruit the Albanians for quisling military formations that were about to emerge during the war throughout the region. Germany tried to create as many as possible of these formations, in order to spare its own resources in the Balkans. Before the war broke out, they were aware of the fact that the majority of its resources would have to be engaged in the Russian front, leaving the Albanian population as a reliable source to fill voids in quisling military formations personnel.

Italy launched the invasion of Albania on April 7, 1939. The fascist governments of Italy and Albania immediately began with their plan for dismantling of the Kingdom of Yougoslavia, spreading harsh anti-Serb propaganda among the Albanians in Kosovo and Methohija, but also in Macedonia and Plav and Gusinje in Montenegro. Their goal was to create union with "the Greater Albania", "The Independent State of Croatia" and "the Greater Montenegro". In the summer of 1939, the Italian Ministry of Foreign Affairs sent the instructions to the administrative bodies to initiate the action in Kosovo and Metohija, the action which should have proceeded in three phases: general propaganda based on cultural and religious ground, public organization in that field and secret military organization for collaboration with the Italian army in case the Yougoslav crisis began (Sekulović&Forca; 2019:243). The substantial emigration from Kosovo and Metohija became an excellent base for the Italian Military Information Service SIM (Servizio Informazioni Militari) and the Civil Secret Service OVRA (Organization for Vigilance and Repression of Anti-Fascism) that helped creating intelligence checkpoints firstly in Albania and then in Yugoslavia.

When Count Galeazzo Ciano, the Italian Minister of Foreign Affairs, paid a visit to Albania on 19 August, 1939 he was presented with geographic charts of Albania with 32 Yugoslav districts in it. It was pointed out that the Albanian aspiration went to the unification of all the Albanians, supported by the Italy, paroles "Kosovo, Kosovo, Chameria[5]"were shouted out while Count Ciano replied that "their wishes will be realized soon". Since the chart of "the Greater Albania" by Mehmet Vokshi published in Rome in 1931 till many present charts of Albanian

4 Xhafer Deva was selected and trained by ABWEHR since 1936. He was a typical representative of the Islamic fundamentalism and Greater-Albanian nationalism with separatistic tendencies of Kosovo and Metohija Dželetović, 2012:30).

5 Chameria is a term used by the Albanians to denote coastal parts of Epirus region in southern Albania and north-eastern Greece inhabited by the Chams (Albanians).

pretensions in the Balkans, it was quite obvious that "the Great Albania" project incorporated parts of Albania's neighboring countries – Serbia, Montenegro, Greece and North Macedonia. In case of North Macedonia, this region covered more than half of its present territory (Sekulović&Forca; 2019:243).

After the fall of the Kingdom of Yugoslavia on 17 April, its territory was dissoluted and the region of Kosovo and Metohija was divided among three invaders: the Italians who supported creation of "Greater Albania", the Germans who were holding Kosovska Mitrovica and Trepca and the Bulgarians who got smaller part of Kosovo. When he got what he wanted in Kosovo, Mussolini issued a decree on 29 June, 1941 and established "Greater Albania" as a quisling formation constituting of not only Kosovo and Metohija, Plav and Gusinje but also parts of Western Macedonia – Debar, Tetovo, Gostivar and Kitchevo. This Mussolini's unilateral act implied the transition of all rights from these territories to the Government of "the Greater Albania" in Tirana. Till the capitulation of Italy on 8 September, 1943, the Pro-Italian government of "the Greater Albania" remained an absolute puppet state to the fascist Italy. The invader had delegated authority to aghas and beys, trusted fascists and hodjas. In former Gendarmerie stations, illiterate Albanians formed Militia units, being unconditionally loyal to new masters.

Based on historical documents from the Second World War and many anthropo-geographic and ethnological researches, we can undoubtedly determine genocide against the Serbian population in the territory of "Greater Albania". After the April War and the capitulation of the Kingdom of Yugoslavia, just by the end of 1941, the Shqiptar quislings with the support of the invaders, killed 10 000 ethnic Serbs and Montenegrins and destroyed or burnt down their houses (Gaćeša, 1993:146). By the end of war, the persecution of ethnic Serbs continued with unabated violence. It is estimated that around 30 000 Serbian houses were burnt down and evicted properties were possessed by the Shqiptar colonists from Albania. According to Italian sources, their number ranged from 150 000 and 200 000 persons (Pejin, 1993:44). The displacement was executed systematically with the aim of creating the ethnically cleansed "Greater Albania". The ones who suffered the most were the colonists who settled in from underdeveloped regions after the First World War and were allocated with a piece of land as part of the Agrarian Reform. The assassinations of prominent people were part of the vision to create more fear and panic among the ethnic Serbs and Montenegrins and to persuade them that their further staying in Kosovo and Metohija would be impossible. The representatives of the quisling authorities and Albanian members of volunteers' units used to come to Serbian villages and order villagers not to cultivate the land, as they did not own it. All the Albanian military formations, from the "Vulnetari" – "volunteers" to Ballists and others had the same mission - to expel ethnic Serbs and Montenegrins from the territory of Kosovo and Metohija and, by doing so, complete the ethnic cleansing.

Looking for a way out, many have decided to seek refuge in Serbia and Montenegro. During 1941, 11 168 families were expelled from Kosovo and Metohija

and according to Memoirs of Carlo Umilta, an Italian diplomat travelling through Kosovo and Metohija that year, ethnic Serbs experienced great calvary: 'The Albanians are out to exterminate the Slavs…People stand in the streets waiting for our military trucks and vehicles to pass by, begging our soldiers to take them to Old Serbia and Montenegro, awaiting the salvation there". Umilta has visited Prishtina, Djakovica and Pec. In one region he found villages where 'not a single house has a roof; everything has been burned. There were headless bodies of men and women strewn on the ground' (Borozan, 1998:37).

However, parts of Montenegro (Plav and Gusinje) were also annexed by "Greater Albania", bringing the same destiny to the Serbs from these regions as to those in Kosovo and Metohija. At that time, the Muslims from the cities Plav and Gusinje started feeling the old hatred against the Serbs, which led to a decision reached at one of their gatherings: "No mercy for the Serbs! Capture them all and shoot them at the Orthodox cemetery!" Thus, in one "savage rush" the Muslim and Albanian patrols captured around 50 prominent Serbs from Plav and surroundings and shot them at the Orthodox cemetery on the east side of Plav (Popović, 1959). In this and all other crimes committed in the regions of Gornje Polimlje, Velika, Plav and Gusinje, the special part belonged to religious leaders and religiously fanaticized aghas and beys who misused religious blindness of the Muslims from the city of Plav to disseminate propaganda and hatred of everything that was Non-Muslim.[6] When the first military units entered the settlements which they had just occupied, a large number of Islamic scholars decided to become collaborators to the invaders and took active part in crimes against the Serbs and the Montenegrins. A drastic example of religious fanaticism could be heard in the speech of Tahir Hodja of Tropoje, made in July, 1941 in Plav in front of the local Vulnetars (Albanian Volunteers' Militia), saying, among others: "The soul of every our believer will go to Jannah, if you show no mercy in revenge to the Vasojevic tribe (Dželetovic, 2012a:160). You will make no sin if you burn their homes, cottages and yards, if you steel their cattle and rip out their crops. Seize their girls and women and take them to be yours, while men, even in cradles, kill to each and everyone, leaving no trace of our old blood enemies, the Vasojevics". This religiously fanaticized scholar originated from Northern Albania. He came into region of Plav and Gusinje according to instructions of the Italian Service, with aim to organize the quisling military formations for cleansing the region from Plav to Andrijevica from the Orthodox Christians.

CREATION OF THE 21ST DIVISION OF THE SS "SKANDERBEG"

After the capitulation of Italy on 8 September, 1943 the Germans occupied Albania, but also Kosovo and Metohija. There were no major changes in administrative divisions, same personnel remained in civic administration, whilst only

6 Such hatred is present even today (Mijalković, 2018: 222–223).

changes were made in top governance[7]. The aim of Germany was to unify nationalists of the Greater Albania in the fight against the National Liberation Movement at the territory of "the Greater Albania". German instructors trained Albanian quisling Military and Gendarmerie formations, supporting creation of Ballists', SS and other fascist formations. They were aware of total loyalty of the Kosovo and Metohija nationalists, unlike the ones coming from Albania. The Second League of Prizren executed most of the intelligence and military actions on their behalf, so they did not have to engage their own forces in that part of Yougoslavia.

It is well-known that the Second league of Prizren gathered most prominent Nazi collaborators. In preparations that preceded its foundation and during its foundation, one of the active participants were Capt. Josef Matl, Chief of the First Unit of Belgrade ABWEHR and SS Capt.Gunther Hausding (Dželetović, 2012:86). The Second League of Prizren planned to recruit an army of 150 000 soldiers with the main task of defending borders of "the Greater Albania", especially towards Montenegro and Serbia. As future would tell, these intelligence evaluations proved to be wrong.

Preparations for the foundation of the 21st Division of the SS "Skanderbeg" began in early 1944. Goebbels personally was responsible for naming this notorious division (Dželetović, 2012:96), a man who claimed to be a good connoisseur of the history of the Balkans ethnicities. Its garrison was located in the town of Prizren. The unit was formally a part of the Albanian Ministry of Interior, while it was placed under the complete Command of German commissioned officers. Even the sub-officers positions were rarely allocated to Albanians, except to extremists who "were justified" in killing of Orthodox Christians in the territory of Kosovo and Metohija and the valley of the Lim river in Montenegro.

The division was composed of:

1. Ethnic Albanians already recruited in the "Handschar" division. Also, there were many Muslims from Bosnia and Herzegovina, Montenegro and Raska District. According to Dzeletovic's estimations, this division was composed of 60% of the Bosniaks and 40% of the Albanians.
2. Approximately 10 000 Albanians recruited after the capitulation of the fascist Italy at the territory of Kosovo and Metohija, Albania and North Macedonia;
3. Albanians from Kosovo and Metohija who were held captive in Germany as prisoners of war and were used as forced labor at German estates;[8]
4. Ethnic Muslims from the towns of Plav, Gusinje, Petnjica and Novi Pazar;

7 At that time, the conditions for forming the Second League of Prizren had been met and it was formed on 16 September 1943, with a mission to preserve Greater Albania including Kosovo and Metohija, parts of North Macedonia and Montenegro (Plav, Gusinje, Tuzi and Ulcilj) after the capitulation of Italy. Members of the Second League of Prizren did not forget to raise the issue of Kosovska Mitrovica Districta, a constituent part of Serbia under Nedic

8 On that occasion, 4000 prisoners of war (POW) were released in hope that they would enlist the future SS division. However, their enlistment was low as, just by being held in concentration camps in Germany, they were able to witness the agony of the Nazi Germany

5. Criminals from Kosovo and Metohija who were pardoned for most severe crimes, should they have accepted the recruitment to this division (Dželetović, 2012: 96).

The idea for formation of this unit was proposed by Xhafer Deva who became the Minister of Interior of the so-called "Greater Albania" after the capitulation of Italy, as one of "German trusted man". It consisted of the Albanians of Muslim and Catholic religion.

Xhafer Deva was responsible for recruiting volunteers for this division, as during its formation he had no official function, but was responsible for the ABWEHR intelligence work (Dželetović, 2012:98). For that purpose, many conferences were held disseminating recruitment propaganda for the division. Besides aghas, beys and fascist intellectuals, speeches were held by a newly appointed Divisional Commander SS Untergruppenfuhrer August Schmidhuber.[9] Volunteers were promised material benefits, comfortable life in the unit, along with the privileges in the "New European Order" provided by the Nazi Germany. Along with German Military Intelligence Service, the Germans have brought to Kosovo and Metohija approximately 140 former Muslim soldier who were fighting in the Red Army. Their mission was to agitate and recruit the local ethnic Muslims into SS Divisions.

The individuals who had an active part in dissemination of propaganda were the religious scholars who were under the direct influence of the Mufti of Jerusalem Mohhamed Amin al-Husseini. These scholars were trained in the Centre for Imams' Training located in Germany (Berlin) formed by the mentioned Mufti of Jerusalem (Dželetović, 2012a:163). His activities were completely under the supervision of Reichsfuhrer-SS Himmler. Al-Husseini paid a visit to the imams who were attending the special course for work in SS units. There were around 15 of them and, according to visions of Himmler and Mufti Al-Husseini, their mission was to support the spirit of Islam and to "evolve in good SS members and soldiers by awakening and strengthening the faith" (Dželetović, 2012:102). It was recorded that they had been sending letters to many Muslims living in the region of Novi Pazar, Plav and Gusinje, suggesting them to seize the opportunity and enable Hitler to lead them on into the Holy War. The historians who fully researched biography of the Mufti of Jerusalem Mohhamed Amin al-Husseini stated that he allegedly said that it was time for the Muslims to redeem their sins by massive enlisting to the 21st Division of the SS "Skanderbeg" (Dželetović, 2012:102). He also participated in the formation of notorious SS - "Handschar" Division in Bosnia and Herzegovina.

9 August Schmidhuber was born in Augsburg, Germany on 8 May 1901. He was an SS Brigadefuhrer of the 7the SS Volunteer Mountain Division Prinz Eugen since 20 January 1944 till 8 May 1945 and 21st Waffen Mountain Division of the SS Skanderbeg since May 1944. After the war, Yugoslav authorities sentenced him to death. He held trial of many crimes at the region of former Yugoslavia, but not for the one in Velika and Gornja Rzanica. He was executed by a firing squad in Belgrade on 19 February 1947.

After the war, the Yugoslav authorities declared him a criminal, but from the authentic copy of the decision it remained unclear whether there had been a formal trial to the Mufti. One thing is for sure: the Mufti remained unpunished for the monstrous atrocities he had organized and committed at the territory of Yugoslavia (Paunović, 2015:70).

The Imams spoke openly of the religious, Jihadi character of the Anti-Partisans' War. The Albanian Muslim population was highly religious. So, invoking the Islam was the most favorable way of attracting wide public to enlist the quisling units of the Second League of Prizren. The Second League of Prizren actually advocated for the creation of the Islamic State in the Balkans. It is clear that, in its nature, this was a Pan-Islamic organization rather than a nationalistic or any other.

However, it should be emphasized that both the Muslim and Catholic ethnic Albanians equally participated in awful atrocities towards the Serbian population, under the leadership of hodjas and Roman Catholic priests. Crimes were committed on ethnic and religious ground, even the Serb Orthodox Cemeteries were desecrated and Serbian churches and monasteries devastated and turned into camps for torturing the ethnic Serbs (so-called cultural genocide – culturocide (Mijalković, Popović-Mančević: 2018: 150)). This consequently led to continuous displacement of the Serbs from Kosovo and Metohija and between 1941 and 1944 almost 100 000 Serbs were expelled from this region and banned from returning in the post-war period by the Communist regime (Pejin: 1994:19). At the same time, 75 000 ethnic Albanians who settled to Kosovo and Metohija during the World War II acquired the Serbian citizenship (Bataković, 2009).

In spite of the mentioned propaganda activities disseminated by the German Counter-Intelligence Service "Abwehr", the 21st Division of the SS "Skanderbeg" never reached its divisional strength, being always under 50% of planned formation rate (25 000 soldiers). Even during its formation, the Division became responsible for securing the region of Kosovo and Metohija, Kukes in Albania, Plav and Gusinje in Montenegro and Western Macedonia. At the same time, this military formation secured the railway from Kosovska Mitrovica to Skoplje, actually the part that was going through the Albanian territory and the railway from Kosovo Polje to Pec.

VELIKA IN THE SECOND WORLD WAR

In the beginning of the Second World War, the territory of Montenegro, including the village Velika and other villages under the mountain of Cakor went under Italian occupation government. Although Velika village had never been under the administration of towns of Plav and Gusinje, along with other villages under mountain Cakor, Velika became a part of Greater Albania, along with other Montenegrin villages - Gornja Rzanica, Novsic, Pepic, Masnica and Murina. Municipal administration was located in Gornja Rzanica. President of the

Municipality was Avdo Avdic, a Muslim from Plav, who administered his policy against the ethnic Orthodox Christians in a quite brutal manner (Otašević&Otasević, 2019:192).

Kosovo Albanians welcomed the arrival of German and Albanian troops in Yugoslavia with great rejoice. As we have already pointed out, the mass exodus of the Orthodox Christians had already begun and they were expelled from the region of Kosovo. Once the exhausted refugees had crossed Cakor, a mountain covered with snow and ice started descending into the villages beneath the mountain. The inhabitants of Velika village knew this was a certain sign of upcoming suffering and suspense. Many sufferers found shelter in homes of the inhabitants of Velika, and the displaced people of Velika origin who fled from Metohija found shelter with their relatives and neighbors in Velika. As Milos Dzudovic, member of Partisan forces later recalled, the villages of Velika, Novsici, Gornja Rzanica and Murina were overwhelmed by the columns of refugees, seeking refuge at their relatives (Lekić, 1961.). During the Second World War, the village of Velika was burnt down to the ground three times (in 1941, 1943 and 1944). However, all the atrocities and cruelties imposed to villagers of Velika and Gornja Rzanica in the period 1941-1945 were overshadowed by the atrocity that happened on July 28, 1944. On that day, one of the most infamous massacres of innocent and helpless children was committed, being the utmost monstrosity not only in the World War II, but also the modern history.

Namely, after huge preparations, in order to prevent the penetration of the National Liberation Army from the region of North-East Montenegro to Serbia, the South-East Command of the German Wehrmacht launched the military Operation „Draufgenger“on 18 July, 1944, in our history known as the Andrijevica Operation. The troops deployed in the operation were the 7th SS Volunteer Mountain Division "Prinz Eugen" and the 21st Division of the SS "Skanderbeg". Many Ballists and Vulnetars volunteers from the region of Kosovo and Metohija, Plav, Gusinje, Sandzak and Northern Albania were deployed as parts of these military divisional formations (Otašević, 2017: 63).

In the second half of July 1944, battles were fought across the whole region of Andrijevica district. In the fierce fights around Andrijevica, Velji Krs and Balja, the Partisans decisively defeated the formations of "Prinz Eugen" and "Skanderbeg" divisions (The Proceeding "Fires from Komovi"1978:108), who, in complete disarray, fled across the Lim valley to break through the Cakor Pass and Rugova Gorge towards Pec. The civilians who were found in villages in Polimlje region and Gornja Rzanica and Velika were severly tormented. Speaking about the Velika Massacre in his book "The Ballists", Milovan Celebdzic says: "This poor village of Montenegrin highlanders has experienced the slaughter of unthinkable proportions. There were arson fires in houses, cottages and sheds, with people in it. Burnt human flesh could be smelt miles away. Girls were killed while defending their honor. They raged to frenzied SS soldiers and Ballists and were killed by bullets or fire to which they have been thrown alive" (Dželebdžić, 1989).

The villagers of Gornja Rzanica and Velika remember clearly the perfidious role of the religious leaders while preparing the crime, especially of Sait Hodja Sahmanovic, notorious villain who used to visit hamlets in these two villages, pretending to be a good-will ambassador and persuading villagers to stay at their homes because the Germans would not harm them. It is remembered that this criminal, who was sentenced to death after the war and executed, used to tell the Velikians: "The Germans will not harm anybody they find in his house, you should offer them with bread and salt, as the soldiers are hungry, but if they find someone in shelter or out of house, will be shot immediately." However, as time has shown, the soldiers who had committed these atrocities in two villages were the Shquiptars, Ballists and Vulnetars, sworn enemies to the Orthodox Christians, already serving in the mentioned SS Divisions. People knew well what atrocities were done by Sait Hodja Sahmanovic and how much he was to be trusted. However, some miserable people had failed to choose the right way, left the shelters and returned to houses where they paid the highest price for being naive. It must be especially emphasized that the testimonials of the survivors of Velika and Gornja Rzanica Massacre entirely match in two things. Firstly, that the criminals spoke excellent Serbian and secondly, that "someone" came to all the villages on a day of the Massacre or a day ahead, persuading people to stay put at their homes (Novović, 2011; Dželetović, 2012; Paunović, 2015).

According to some, yet unconfirmed data, Sait Hodja Sahmanovic and his assistants brought three old men from Velika to the "Prinz Eugen" Division Command to hear there what he had to say and to use them afterwards to persuade families from Velika who had found shelter in the surrounding woods to return to their homes. In order to deceive them even further, the "Prinz Eugen" Division Command instructed the detained old men to order the Velikians to prepare plenty of food and provide assistance to the repair of bridges and culverts in country roads leading to Cakor mountain (Lekić, 1961: 511). It was obvious that the enemies used all means at their disposal to return civilians from shelters to homes or to be more exact, gather them in several checkpoints in order to execute mass murders and realize its previously planned crime.

Sait Hodja Sahmanovic was the immediate participant of the Gornja Rzanica and Velika Massacre and a member of SS Division "Prinz Eugen" (Lekić, 1963: 510), serving as an Intelligence officer. Before the outbreak of the WWII, he came back from Albania, where he emigrated in 1921 (Lekić, 1963) and was an active collaborator to the occupiers for the whole period of the World War II. It is well-known that he was strongly connected to the Kosovo Committee, especially with its members who originated from Plav and Gusinje.

Hodja Osman Rastoder (Paunović, 2015:81) from Petnjica, of Montenegro origin, also participated in the Velika Massacre. Osman Rastoder was born in 1882 in Radmanci (Petnjica), Montenegro. He completed six grades of the Turkish Madrasa in Djakove, three grades in Novi Pazar and another three in Constantinople. He taught religious education in Primary schools in Petnjica and Savin

Bor. From 1926 to 1929 he served as a Registrar in Petnjica. In the WW II he organized the Quisling Military Formation "Muslim Militia" as a close collaborator to the Italian military formations serving at the territories of Novi Pazar, Rozaje, Berane and other border towns between Serbia and Montenegro. This military formation was composed mainly of ethnic Muslims and was notorious for its numerous atrocities against the Orthodox Christians residing in Polimlje.

Still, regardless the undisputable historical facts, the Bosniaks cultural community in Luxembourg still aggressively attacks the historical truth of the Osman Rastoder's crimes during the World War II and keeps on promoting the criminals among them, by establishing the "Mulla Osman Hrastoder"[10]Award since 2013. Allegedly, this award is given to the distinguished individuals who, in their work and commitment, have contributed to the affirmation of the Bosniaks' national, religious and cultural values.

CRIME IN GORNJA RZANICA AND VELIKA VILLAGES

The Massacre in Velika, also known in historiography as the Velika Slaughter was preceded by calvary of innocent civilians in the villages of Luge, Ulotina, Masnica, Gracanica and Gornja Rzanica. The members of notorious "Prinz Eugen" and "Skanderbeg" divisions started to annihilate everyone right after exiting the "Suceska" Gorge. In a village of Gornje Luge, in the house of Miladin Culafic they burned down two women and five children. In the house of Novica Soskic in Ulotina they killed three children and a woman by forcing them into the house and burning it afterwards (Otašević, Otašević, 2019:197).

In the village of Gracanica, the criminals tried to rape 16-year old Saveta Mijovic. She tried to defend herself by holding tightly to an oak tree. The criminals started pulling her hair, and when they saw that she was utterly persistent, they began smashing her with a rifle butt until she fainted and then killed her. Her calvary was depicted in a novel "Black Wind" written by Veljko Mijovic, a novelist from Berane (Mijović,1993). Also, in Krivace hamlet, situated at the end of Masnica village, in the house of Milija Krdzic, Milija's wife Saveta and her three children were killed: sons Sava (4) and Nikola (6) and a daughter Radosava (age unknown).

In Gornja Rzanica village, in hamlets of Firista and Polje, the criminals have committed a monstrous crime against innocent civilians. Comparing the references researching Gornja Rzanica crime, we found that the casualties' records do not entirely match. The most complete list of victims was provided by Branko Paunovic who registered 69 killed inhabitants of which17 were and 52 women. Even 31 children were killed (Paunović, 2015: 168).

10 Ref internet: **https://sandzakpress.net/luksemburg-dodjela-priznanja-mula-osman-hrastoder**, browsed on 10 June, 2019

After Gornja Rzanica, the enemy continued their path of blood to Velika. The criminals managed to trick the villagers of Velika and keep them at their houses. Meantime, while the villagers were leaving shelters in the surrounding woods and returned homes, "Prinz Eugen" and "Skanderbeg" troops surrounded the villages. Around 10 o'clock in the morning, the sound of machine guns' incessant fires and bombs' explosions was heard, while the houses at the village outskirts burst into flames and screams and shouts were echoing the village.

There were few survivors who weren't burnt alive, who managed to escape the destiny of their loved ones, becoming live witnesses to this horrible crime in Velika. In the house of Tomica Gojkovic, out of 23 members, 19 were killed and only four survived by mere chance. In the house of Milivoje Stesevic, the arsonists grabbed Mileva and Novka Stesevic and threw them alive to a burning house. They tried to rape Danica and Mileva Tomovic, but they faced strong resistance. They cut them with knives and threw them into the fire. Dusan Simovic's children were killed: Zorka (14), Kristinja (8) and Milorad (2). They slashed open pregnant Milica Simonovic, ripped her guts out and the baby fell out and cried. Stana Zivaljevic along with her three daughters and a son were thrown alive into a burning house. They killed Jela Zivaljevic, a 90-years old woman… and so on. Firstly, they killed the children while the others witnessed. In front of the terrified mothers, children were slaughtered in utmost ordeals. The Ballists skinned them alive, ripped off their arms and legs and then threw them into flames of the burning houses. Few families were able to find shelter in the surrounding woods from where they were able to witness burnt houses, screams and shouts of the children, innocent mothers and weak old men. They looked at the crying sky through heavy clouds of smoke and gloomy red flames, hoping that fire and death would not swallow up everything. Futile to resist, they could only helplessly stand and eyewitness the Shquiptar mob's killing, slaughtering, massacring and burning alive the children of Velika. Scream after scream, whine after whine. After two hours of insane fascist tyranny, Velika sank into grief (Otašević, Otašević, 2019: 198).

The list of victims is long, ranging from the newly born to the ones whose life was at the end. The soldiers of "the Great Albania" left their bloody traces everywhere. They were committing systematic murders in order to create ethnically cleansed state (Dželetović, 2000: 181). Paunovic reports that on 28 July 1944 in Velika Massacre 358 women, children and old men were killed (according to 1948 Census, Velika's population was 1352). All the clans in Velika suffered casualties. Fourteen children were under the age of one. Ten pregnant mothers were killed. Out of slain mothers' wombs, in one skilful stroke of a sharp knife, they cut out the unborn babies, trying to keep them alive, in a morbid satisfaction, in front of completely frantic mothers. After such atrocities, they killed both the mother and the child (Paunović, 2015: 143–144).

The same author concluded that till now it has been undisputedly estimated a total of 458 casualties in this Massacre, in only two villages - Velika and Gornja

Rzanica, while the casualties including other villages in Gornje Polimlje region exceeded this number to the great extent.

CONCLUSION

From the Turkish invaders and then followed by the Italian fascists and German Nazis, the idea of "the Greater Albania" was highly manipulated by each of them, who disseminated national and religious hatred in Kosovo and Metohija, parts of Montenegro and North Macedonia, in order to realize their interests in the Balkans. Collaborating with all of them, secluded by the shadows of the conquerors, the Albanians have tried to create their own state. The first time they succeeded in their intent was a century ago by forming the so-called Principality of Albania (1913) and now they are trying to make the so-called Republic of Kosovo (by a Self-Proclamation in 2008). Besides, they are continuously trying to create ethnically cleansed geo-political space by putting enormous pressure to Non-Albanians, forcing them to displace, exterminating them in terroristic attacks, military uprisings and civil war.

Except the so-called state-building intentions, the other source of the Albanian extremism is the ethical and religious chauvinism. In spreading and promoting this extremely dangerous form of extremism, the significant role was played by the religious scholars, both Muslims and Catholics. With regards of this, in a case-study of one of the cruelest war crimes during the World War II, this claim has been proved.

Namely, war crimes committed in these villages enlist Velika and Gornja Rzanica among the places of utmost Calvary in the history of Serbia and Montenegro, from which they never recovered. On 28 July 1944, in only two-hour time, 458 women, children and old men, including 120 children were killed. All were the ethnic Serbs and Montenegrins and Orthodox Christians. They were killed in the most cruel manners by the members of the 21st Division of the SS "Skanderbeg" formed upon ideology of the League of Prizren that also set up the foundations for the so-called "Greater Albania". The Unit mainly consisted of Muslim Albanians (including Catholic Albanians) – the Ballists and the Vulnetars, blinded by the religious fanaticism. The Unit was commanded by the German Nazi Military officers, mentored by the operatives of the German Counter-Intelligence Service ABWHER. The special role in inducing this and many other crimes in the region of Gornje Polimlje, Velika, Plav and Gusinje belongs to the religious leaders and religiously fanaticized hodjas, aghas and beys who took advantage of the blind fanaticism of the Muslims from Plav (including the Catholic Albanians) to spread their propaganda and hatred against everything that is Non-Muslim and Non-Albanian.

This case-study has shown the dangerous nature of any crime committed on ethnic and religious identity conflicts; ethnic cleansing and destruction of cultural and historical monuments (settlements, cultural monuments, religious objects,

cemeteries, etc.) is rightfully called "spiritual genocide", i.e. "killing of eternity". Besides, by the "policy of forgetfulness" induced in the post-war regime, trying to reinforce the policy of so-called "brotherhood and unity" the crime in Velika was suppressed and the victims were forgotten. To forget a crime is equally dangerous as the crime itself, and by doing so the crime may be repeated, resulting in new victims. It happened to the Serbian and Montenegrin people in Kosovo and Metohija in 1999 and is still happening today.

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THE NEW EU DIRECTIVE ON COMBATTING TERRORISM: A CRITICAL APPRAISAL

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Abstract: The terrorist attacks in Paris during 2015 particularly prompted the European Commission to submit a proposal for a new Directive on combating terrorism in December 2015, which was fast – tracked and finally enacted in March 2017. The Directive aims to eliminate the possibilities for future impingement on fundamental human rights. The most important changes are the criminalization of travel of foreign terrorist fighters and curbing their finances, cyber-attacks and receiving training for terrorism. Added value represent the new rules on protection and support for the victims of terrorism. However, still some unclear wording remained which potentially leaves a leeway for the national authorities to engage in abusive practices in the practical application of the Directive. That's why the aim of this article is to give critical appraisal of the novelties introduced by this Directive and give an assessment whether they represent a *saut qualitatif vis-à-vis* the situation *ex ante*.

Keywords: European Union, counter-terrorism, human rights

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INTRODUCTION

The new Directive on Combating Terrorism (2017) represents the most significant legal instrument directed to address the dangers of contemporary terrorism by means of criminal law. In large extent, it represents continuation of the previous legal regime introduced back in 2002 by the Council Framework Decision 2002/475/JHA, important changes being the incrimination of travel of foreign terrorist fighters, providing and receiving training for terrorism and extended protection for the victims of terrorism acts. In this regard, the EU legislation applies the contemporary international standards and addresses the dynamic changes of the phenomenon of terrorism.

Namely, one research in 2016 showed that the number of FTF originating mostly from Belgium, France, Germany and the United Kingdom was between 3 922-4 294 individuals. Of those, around 30 % had already returned to their home countries (Van Ginkel &Entenmann: 2016).

However, recent Europol Report states that by the end of 2017 the number of people from European countries that joined ISIL was around 2 500. It is estimated that 1 500 FTFs returned on European soil and 1 000 were killed (Europol, 2018:26). Due to the embedded home-grown terrorism and the FTF, there was a pressing need for EU to adopt an effective counter-terrorism arsenal (Paunovic, 2018: 532-533).

Some authors argue that EU instead of narrowing down the net and smarter targeting of perpetrators of terrorist acts/plotters, is in fact widening the net. Case in point is the incrimination of preparatory acts required under the said Directive, which expands the culpability in the 'pre-crime space'. As a consequence, the number of potential perpetrators of terrorist acts which will fall under the remit of the new Directive increases. The latter occurs, despite the fact that maybe the most of them will remain in the preparatory stage and will not actually commit a criminal offence (Wensink, 2017:73).

The returnees from Syria pose a significant problem for several reasons: 1) they pose a security threat for the Member State whose nationals are; 2) their families are often involved (the phenomenon of "jihadi wives", their children who in some cases themselves have undergone military training), 3) the need for coordinating the prevention of radicalization, information exchange on EU level, criminal justice response and disengagement/deradicalisation and rehabilitation inside and outside prisons for convicted individuals (Scherrer, 2018).

That's why, the European Commission is planning to set up an EU Centre of Expertise for Victims of Terrorism, which will serve as a hub of expertise, guidance and support (European Commission: 2019a).

On the negative side, the Directive uses unclear wording when defining terrorist offences, which could lead to abusive practices by national authorities. In addition, it says that consulting terrorist websites can be a terrorist crime. This is particularly interesting because the French Constitutional Council ruled uncon-

stitutional a similar provision in two occasions, most recently on 15 December 2017. According to the legislator, the continuous consultation of websites that contain material glorifying or inciting terrorism represents an offence. Exception was consultation of such web sites in good faith, for instance by researchers or professionals directed at informing the general public. The offence was punishable by a two-year prison sentence and a €30,000 fine. Interestingly, the French National Center for Scientific Research, retrieved names and coordinates of its researchers who consulted such terrorist websites in order to provide defence if the French police made any inquiries. The French Constitutional Council found that the provision was unconstitutional since it egregiously restricted freedom of communication (Houry, 2017).

Similarly, the Belgian Constitutional Court in March 2018 annulled articles 2, 3°, of the Law of 3 August 2016, considering several legal obligations, the most relevant being one included in Directive 2017/541/EU. Namely, contentious issue was the deletion of the condition that an action should pose a real risk to society in order to be qualified as an incitement to terrorism. In such way, national authorities enjoy too wide margin of interpretation, to assess when certain action poses a real risk. A possibility was inserted for direct or indirect incitement to commit a terrorist act, which is too vague (Roson, 2018), and contravenes the basic principles of legal certainty and proportionality. The aim of this article will be to give an overview of this new legal framework, its critical assessment and comparison with the previous one.

New criminal offences related to terrorism

The new Directive sets out a three-part definition of terrorism, consisting of: (i) the context

of the action; (ii) the aim of the action; (iii) the specific acts being committed (Salerno, 2016, according to Maliszewska-Nienartowicz, 2017:192). In addition to the list of offences already contained in the said Framework Decision and its amendments in 2008**,** the new Terrorism Directive requires the Member States to criminalize also: 1) receiving training for terrorism, 2) travelling for the purpose of terrorism, 3) organising or otherwise facilitating travelling for the purpose of terrorism, 4) terrorist financing and other related offences (EP & Council, 2017: Arts:5-12). Aiding and abetting of offences described Articles 3 to 8, 11 and 12 is punishable. Inciting is punishable for offences in Articles 3 to 12 (Art.14).

Regarding public provocation to commit terrorist offence, there should be a prompt removal of such online content by the national authorities. This is valid when the site is hosted in their own territory, but also is applicable to content hosted on foreign servers. In the latter case, if the blocking is not possible, the access should be blocked for the users on their territory (EP & Council: 21).

Under the purview of Art.8 falls training for terrorism like obtaining knowledge, documentation or practical skills, self-study etc. Here, the *mens rea* will

need to be that of a person receiving training with the intention of carrying out a terrorist offence (Hurley, 2018: 22-23). Low-tech attacks refer to the use of everyday tools and vehicles for violent ends (the attacks in Berlin, Barcelona and London with trucks/vans).

Most importantly, in order to address the overgrowing problem of foreign terrorists fighters and the returnees mostly from Syria, the Directive stipulates that travelling to a country outside the Union in order to committing, or contributing to the commission of, a terrorist offence or participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in Article 4, or for the purpose of the providing or receiving of training for terrorism should be criminal offences *when committed intentionally*.

Member States should criminalize: 1) travelling to that Member State for the purpose of committing, or contributing to the commission of, a terrorist offence, for the purpose of the participation in the activities of a terrorist group, or for the purpose of the providing or receiving of training for terrorism; or alternatively 2) preparatory acts undertaken by a person entering that Member State with the intention to commit, or contribute to the commission of, a terrorist offence. Specific terrorist intent is required (Ibid.: Art.9(2)), which can be used as a criterion for distinguishing terrorist offences listed in Article 3(1) of the Directive from other offences (Maliszewska-Nienartowicz, 2017:193).

Any act of organisation or facilitation that assists any person in travelling for the purpose of terrorism, as referred to in Article 9(1) and Article 9(2) (a), knowing that the assistance thus rendered is for that purpose, is punishable as a criminal offence of *Organising or otherwise facilitating travelling for the purpose of terrorism*.

So far, some Member States in order to curb the activities of terrorist groups resorted to administrative measures like travel bans, exclusion orders, or assigned residence. Often these measures are substitution for formal criminal justice measures, particularly where prosecution would not hold due lack of evidence/circumstantial evidence, or when there is a danger to encroach upon traditional procedural guarantees under national criminal procedural law (Wensink et al, 2017: 63).

Recent Amnesty International Report states that overly – broad definitions and applications of counter-terrorism law can be detrimental to some rights and freedoms. Case in point is the Art 578 of the Spanish Penal Code which restricts the freedom of expression in Spain. Broadly and vaguely defined criminal offences like "glorifying of terrorism", "apology of terrorism" and the "humiliation of victims of terrorism" have been used by the prosecutors to fight political speech, particularly in cases when the "perpetrators" acted via social media platforms. Sentencing was pretty harsh: for instance, the singer César Strawberry to one year imprisonment and six years and six months' disqualification from the public sector; while, on 4 December 2017, 12 rappers of the group *La Insurgencia*, were sentenced to individual sentences to two years and a day in prison, 9 years disqualifi-

cation from the public sector and a 4,800 Euro fine. Moreover, the aftershocks of such prosecutions in Spain were the promotion of climate of self-censorship and extreme cautiousness when expressing critical opinions online (Amnesty International, 2018:7-11). Also, the number of convictions rose sharply from 1 in 201, to 35 in 2016 and 31 in 2017 (Ibid: 2). Art.5 of the new Terrorism Directive seems to encourage national legislators to go down this road.

In comparison, US criminal law uses catch-all definitions for terrorist offences, while some EU Member States such as the UK, the Netherlands and Germany have all adopted approaches where specific terrorist offences are used, providing greater clarity and guidance as to the necessary elements for the given offences (Paulussen & Pitcher, 2018:16-19).

It can be contemplated that not always such clear delimitation will be possible. Furthermore, the extent of "seriously damaging" a country or an international organisation can be interpreted *stricto sensu* or *lato sensu*. Although these problems existed previously, the Directive does not offer any further clarification in comparison with the situation *ex ante*. In the criminal trial, the judge will determine whether there is compelling evidence under each of the subjective and objective elements of the particular criminal offence (Scheinin, 2019).

In order for an indictment for the terrorist offences defined in the new Terorist Directive to hold in court, specific terrorist intent should be proven. However, no political or ideological motives need to be proven, and in this way the work of the prosecutors is significantly facilitated, since it is particularly difficult to prove such motives in concrete criminal proceedings. So, on the plus side, the prosecutor is obliged to prove who did the terrorist act and how, but is not required to prove why the perpetrator did it (Borgers: 2012:69-71).

But another problem will be the unclear wording in the definition of terrorist offences. This concerns not only the objective element concentrating on the consequences of an offence, but also the specific terrorist aims and the list of the acts which the Member States are required to incriminate under their national law. Consequently, it is difficult to foresee how certain general terms will be interpreted in practice, e.g. phrases like "seriously destabilising or destroying", "extensive destruction" or "major economic loss."

The new Terrorism Directive takes into account the new technological developments, so the list of terrorist activities includes the use of radiological weapon and on illegal system and illegal data interferences (Directive 2013/40). The latter can be seen as an attempt to address the growing number of cyber-terrorist attacks. However, the wording is somewhat general and does not include specifics.

Under national criminal law, terrorist offences listed in Art.3 and Art.14 should be punishable by custodial sentences heavier than those imposable under national law for such offences in the absence of the special intent required pursuant to Article 3. The maximum sentences for directing a terrorist group should not be less than 15 years imprisonment, and no less than 8 years for participation in the activities of a terrorist group. When the leader of the terrorist group threatened

to commit the terrorist offences listed in Art.3 (1) of the Directive, the penalty should be not less than 4 years (Ibid. Art.15).

As a major innovation *vis-à-vis* the Council Framework Decision, the Directive requires special attention by the courts when sentencing perpetrators of offences which involve children.

The Directive requires adequate penalties for both natural and legal persons for any of the offences referred to in Articles 3 to 12 and 14 (Art.18).

The mitigating circumstances that should be taken into account by the courts are unchanged: the indicted person should help the authorities with the information which they would not otherwise have been able to obtain, helping them to:

prevent or mitigate the effects of the offence;

identify or bring to justice the other offenders;

find evidence; or

prevent further offences referred to in Articles 3 to 12 and 14. Cumulatively, the offender should renounce terrorist activities.

The rules on determining jurisdiction remain the same as in the Framework Decision. But, a new rule is inserted to ensure that an individual providing training for terrorist purposes can be prosecuted in the Member State where the training is received.

When an offence falls within the jurisdiction of more than one Member State and when any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to Eurojust in order to facilitate cooperation between their judicial authorities and the coordination of their action (Ibid: Art.19(3)). Also, the Directive calls for adequate investigative tools for national authorities investigating and prosecuting terrorist offences, and freezing or confiscation of proceeds and "… instrumentalities used or intended to be used in the commission or contribution to the commission" of terrorist offences (Ibid: Art.20).

Special rights for the victims of terrorism

Under the Directive, if there is a causal link between certain terrorist offence, and a harm/damage, every person has a right to compensation. This applies also to family members who have suffered harm as a result of that person's death.

In fact, the rights guaranteed by the new Terrorism Directive are complementary to those already guaranteed to all victims of crime under the Directive 2012/29/EU. Those are: assistance and support to victims of terrorism, protection of victims of terrorism and rights of victims of terrorism resident in another Member State. Under the new Directive, Member States shall ensure prompt

availability of support services for the specific needs of victims of terrorism after they suffered terrorist attack and continue to provide them as long as necessary. These services ought to be confidential, free of charge, easily accessible to all victims of terrorism. For example, this support can be exercised via (but not limited to): emotional and psychological support; advice and information on any relevant legal, practical or financial matters, including facilitating the exercise of the right to information of victims of terrorism; support with claims regarding compensation for victims of terrorism available under the national law of the Member State concerned; adequate medical treatment, etc. For victims of terrorism, it is essential to make an individual assessment to identify specific needs. Therefore, this provision complements Article 22 of the Directive 2012/29/EU which obliges the EU Member States to ensure an individual assessment of victims to identify possible specific protection needs, including victims who have suffered considerable harm due to the severity of the crime.

In the immediate aftermath of the attack, physical care equals psychological care. Victims of terrorism attacks should be provided with safety, adequate shelter, immediate medical assistance, food and drink. This will particularly require adequately trained medical personnel as well adequate hospital capacity (Miller, 2002: 283-296).

The Member States should ensure adequate medical treatment for victims of terrorism as well as the access to the legal aid in accordance with Article 13 of Directive 2012/29/EU. Undoubtedly, these provisions require quite a significant commitment of resources on the part of the Member States' health services, the funding of which may prove a challenge in practice (Murphy, 2016). Similarly, the legal aid which should be provided by the Member States requires additional costs, but it also seems indispensable in the framework of the support services for terrorism victims.

Under the Directive, the competent authorities should pay particular attention to the risk of intimidation and retaliation and to the need to protect the dignity and physical integrity of victims of terrorism, including during questioning and when testifying. This provision is of immense importance when determining whether and to what extent victims should benefit from protection measures in the course of criminal proceedings.

In order to achieve this, special protection by the police or other security services could be necessary, especially where the terrorism victims are important witnesses in criminal proceedings concerning an act of terrorism. The Directive also underlines the need to protect the dignity and physical integrity of such persons and this requirement. In order for these rights to be exercised, usually the perpetrator or the perpetrators of the terrorist acts should be apprehended and indicted (Steiger, 2009: 171).

For persons who become victims of crime when travelling to another EU country, it can be even more difficult to receive compensation (European Commission: 2019b). In this regard, the Directive acknowledges the cross-bor-

der dimension of terrorist attacks and the need to ensure both access to information and the available support services in the Member State where the terrorist offence was committed as well as assistance and support services in the victim's home Member State.

The Preamble to the Directive suggests that Member States should set up a "single and updated website with all relevant information and an emergency support centre for victims and their family members providing for psychological first aid and emotional support."

A good example in this regard is the UK, where clear information to victims of terrorism through a dedicated website is available at: https://victimsofterrorism.campaign.gov.uk/. Here, links to the wide range of services offered to victims of terrorism in UK are offered, like: access helplines and support services, access to NHS mental health and medical support, advice on supporting children, information for affected foreign nationals, access to charitable funds, advice on handling media attention, advice on your rights to compensation and welfare benefits etc. Similar website exists in Ireland, but with no specific reference to the rights of victims of terrorism (https://crimevictimshelpline.ie).

But merely two years after the adoption of the Directive, a Special Report to the European Commission noted the need for improvements of the status of the victims of terrorism: the need for recognition and respectful treatment, access of information, accessible medical, social and psychological care (Milquet, 2019).

This Report calls for an adoption of and EU wide Victims Rights Strategy. The key shift should be on the victims' *rights*. Namely, today victims of violent crimes have only a mere right to the schemes of compensation available in the Member States, and often there is no adequate compensation (if at all). The new right to compensation should entitle to seek total compensation either from the offender or by the state.

Moreover, the Report requires introduction of the concept of "reparation". The latter should embrace all harm suffered (physical, psychological and financial), but also recognition, reparation, rehabilitation and building resilience (Milquet, 2019:32). Other innovations proposed for the new Strategy include establishing a EU Victims' Solidarity Fund, EU Victims' Rights Coordinator, special status for victims of terrorism, the right of cross-border victims to seek compensation in their country of residence, emergency payments, etc.

CONCLUSION

Evidently**,** the new Terrorism Directive makes only incremental changes to the legal regime that existed previously. Most notably, separate criminal offences of receiving training for terrorism, travelling for the purpose of terrorism or organizing/ facilitating such travel and terrorist financing are introduced. These incriminations raise serious doubts about their justifiability, since they pose seri-

ous impediment to the free movement of persons, which is guaranteed not only by EU Law, but also by several international instruments. There are no specific indicators for the Member States how to assess whether particular travel abroad is for the purpose of terrorism. There is no requirement for red-flagging persons suspected for links with terrorist activities or already indicted or sentenced for terrorist offences in the SIS (like the U.S. Terrorist Screening Database), nor for regular reporting by financial institutions for the trading activities of organized crime groups whose proceeds often end up financing terrorists. The Directive does not contain any benchmarks for flagging suspicious financial transactions into single database by entities that can have links with organized crime and/or terrorist groups. Another problem is the introduction of terrorism incitement offences, which can be at odds with the freedom of expression enshrined in Art.10 ECHR. *One-size-fits–all* approach by the national authorities in the process transposition can undoubtedly be detrimental to the latter. Too broad or vague definitions of terrorist offences cannot pass the test of proportionality and fairness. This was shown by the abovementioned extremely harsh prosecutions and convictions in Spain, and the decisions by the French and Belgian Constitutional Courts. That's why, precise definitions should be used, where particularly the public provocation to commit terrorist acts (including via social media) would be punishable, in order to reduce the possibility for abuse by national authorities. In this regard, EU legislator is rapidly moving from the *actus reus* itself, to the early preparatory stages of the particular offence. Case in point is Art.13 of the Directive, which does not require actual terrorist act to be committed in order the said offence to exist. The latter raises particular concern, since the EU Directive goes beyond the requirements set by UN and CoE instruments in this regard. Moreover, UN Special Rapporteur for freedom of opinion and expression stated that such public provocation should be directly causally responsible for increasing the actual likelihood of a terrorist act occurring. There is no reference in the Directive for the need for *sufficiently imminent and serious* danger that terrorist offences could be committed in order particular message inciting them to be punishable. The Directive also lacks effective set of legal remedies for persons or entities whose rights and freedoms will be potentially infringed by state authorities when exercising their counterterrorism powers, and does not provide sufficient guarantees that the use of the latter will be proportionate and ensure respect for fundamental due process rights. So, national legislators must ensure adequate precision, legal predictability and credible legal safeguards. We will see how this will play out in the national courts in concrete criminal cases.

Maybe the most significant step forward is the new rights for the victims of terrorism which are specifically tailored. The establishment of the EU Centre of Expertise for Victims of Terrorism represents a further step forward in this regard. However, the presented Report to the European Commission by Special Counsel Milquet earlier this year identified many other points where the rights of victims of crime, including victims of terrorism should be improved. Also, series of obstacles to the effective exercise of these rights were identified both on EU and

national level. The proposed establishment of EU Solidarity Fund for Victims of Terrorism, EU Coordinator for victims' rights and the rights-based approach that will make the state a duty-bearer towards the persons living under its jurisdiction will most certainly finalize the whole framework on the victims' rights in future. It is too early to assess whether amendments to the Directive will be introduced in order to remedy the noted deficiencies.

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INTERNATIONAL MIGRATION AND TERRORISM AS THE MAIN SECURITY CHALLENGES IN THE 21st CENTURY

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Abstract: People migration is a phenomenon which has significantly contributed to the development of the human civilization. On the other hand, military clashes and terrorism in recent times are the main reasons for people migrating not only from one state to another, but from one continent to another. The so-called "Arab spring" at the beginning of the second decade of the 21st century has caused hundreds of thousands of people from Africa and Asia to seek a better life in Europe and America. At the same time, terrorism successfully uses people's migration to infiltrate deeply in the territory of its military and political opponents in Europe and America, creating preconditions for transferring its activities deeply to the territory of Europe and America. In this way, the symbiosis of the migration of people and terrorist organizations originating in the north of Africa and the Asian Middle East are becoming a major security challenge for Western civilization, and therefore Southeast Europe.

Keywords: international migration, conflicts, terrorism, national security, security challenges

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INTRODUCTION

Terrorism as a phenomenon is not anything new at all. It is wrong to say that it becomes relevant with the events of September 11, 2001, because it is an integral part of the existence of the mankind from the earliest times to the present. On the other hand, the international migration of people is an integral part of the development of society and states, given that a large number of countries have their roots in people's migrations, not only from a state to state, but from a continent to continent (an example for this are the United States, Canada and Australia). What is common for terrorism and international migration is that both phenomena do not know and do not recognize state borders, and both have a global dimension. National security, that is, the security of states and their citizens is the highest priority for the existence of each country, and that is why it is a top priority for each country separately, but also for international organizations such as the European Union, NATO and the United Nations Organization. From the foregoing, the goal is to write this paper.

MIGRATION IN THE 21ST CENTURY

Migration of people has always existed and will always exist. What is interesting today is that we are living in times of migration, whether they are voluntary or involuntary, that is, legal or illegal. One in seven people globally (knowing that our planet has 7 billion inhabitants) is a migrant, and that is about a billion people. Of these, 740 million are internal migrants, and the remaining 260 million have the status of international migrants (Schmid, 2016: 6). These traveling people are driven by economic, environmental, political and other push and pull factors (Schmid, 2016: 12)

Certainly the focus of our interest is forced migration, because it is the result of civil war, government repression, state failure, and of course terrorism. When the two phenomena, international migration and terrorism are intertwined, the problems of the security of the states and of the international community arise in their entirety.

The migration of people as a phenomenon unites two categories of threats to the security of states: terrorist and criminal organizations. For the former (terrorists), migration is the ideal way for migrants to install their members who, under the guise of a migrant, will be able to penetrate deeply into the territory of their potential enemies. For the latter (criminal organizations), the migration of people, especially when it comes to trafficking of women and children, and trafficking in human organs, is a way to make huge financial gain.

In the beginning of 2015, Louise Shelley and John Picarelli envisaged the relationship as a terror-crime interaction spectrum which includes five phases:

1. Activity appropriation: Terror and criminal groups may imitate other's methods

2. Nexus. Seeking efficiency, each group begins to outsource services such as forgery or bomb making, leading to business relationships,
3. Symbiotic Relationship: as a "natural progression" the groups then start collaborating more regularly and sharing goals and methods,
4. Hybrid group: Next the two groups' activities converge to the point where terrorism and organized crime reach equal footing and both become central to a group's existence,
5. Transformation: In rare cases, a group may become so focused on the activities of the other that it drops its initial motivation completely and evolves into purely criminal or political" (Shelley & Picarelli, 2005:54).

It is evident that poverty is a major driver of people's migration. Just as the difficult economic situation in certain states can cause internal clashes in which both parties, both state institutions and rebel groups can use terrorist methods in the course of their actions toward the opponent. Simply put, in many cases, terrorism is fuelled by the poverty of people, which contributes to the country's difficult economic situation, accompanied by certain internal oppositions in the state (ethnic, religious, political) to motivate people to join terrorist organizations, thinking that in this way they could solve their own problem.

The so-called Arab Spring culminated in 2011 with the events in North Africa, with its culmination in Libya and Egypt. This was followed by a civil war in Syria, in which as the drivers of the conflicts emerged, the various ethnic, political and religious causes. It was an extraordinary ground for strengthening the capacities of the most effective and brutal terrorist organization nowadays - the Islamic State.

Wars and clashes in Libya, Egypt, Syria, etc. have caused a wave of millions of refugees to move from the north of Africa, the Middle East, Syria, towards Western Europe.

More precisely, "there were three main routes of illegal migration for migrants heading for the EU before the migrant crisis: SOUTH ROUTE (from Africa through Mediterranean sea to Spain, France and Italy, SOUTH-EAST ROUTE (through Turkey, the Balkan and the states of former Yugoslavia) and NORTH ROUTE (from Asia through Russia, Ukraine to the EU countries" (Kesel, 2017: 9). Obviously, the final destination for majority of the migrants were the richest EU States - Germany and France.

And now we come to two important moments when we talk about international migration, on the one hand, and terrorism on the other. International migration is a phenomenon that is an integral part of the evolution of the human civilization. Without migration, the discovery of new continents, new worlds, would not be possible. But, on the other hand, migration has allowed one civilization to try to dominate another civilization, which can very often cause a conflict based on ethnic, religious, and generally civilization oppositions. Western civilizations think that Eastern civilizations bring them prosperity, a better and easier life, but they never wondered if they wanted it. That is why it happens because of

the influence of the West on the East, the population of Asia, Africa for various reasons are motivated or forced to seek a better life in Western Europe and even further, in the United States, Canada, Australia and so on.

Usually the first generation of economic, and even the migrants who for political reasons are trying to find a better life in Western Europe or America, has no problems with the authorities there. The reason is simple: they want to justify the trust of the state that gave them a chance for a better life, so they work hard, pay taxes, and respect the laws. They simply want a better future not only for themselves but also for their children. The problem occurs when their children and their children's children grow up and when they start asking themselves some questions. The child of Turkish migrants, born in Germany, will ask the question: am I a German or a Turk?! His neighbours Germans will always see him as a Turkish migrant. His relatives in Turkey, who see him perhaps once or twice a year, will see him more German. That is what is most dangerous: the desire for a person to belong or belong to a particular ethnic or religious group at a time when the same group accepts you or does not accept you, may result in the person being recruited by a terrorist organization. It is important to point out that the perpetrators of the terrorist attacks in London in 2005, the Airport in Brussels in 2016 are precisely the migrants who either received a permit to represent them in these two countries, or are the second or third generation whose parents migrated for economic reasons from Asia or Africa to Western Europe. The second or third generation of migrants are also the perpetrators of terrorist attacks in France, Canada and the United States that occurred in the period from September 11, 2001 to the present.

It only confirms that the children of migrants from Asia and Africa in Western Europe and America due to various reasons fail to integrate into the countries they migrated to because they were simply caught in a discrepancy between the two cultures. Seeking their identity and place in the society, the jihadists recognized the model of their identity. The consequence is that thousands of them went to Syria and became foreign fighters.

Migrants can be terrorists and terrorists can be migrants in many ways:

a. migration to the Caliphate is portrayed as an individual Muslim obligation and has attracted thousands of young Muslims in Western diasporas,

b. some jihadists who cannot return to their country of origin without being arrested migrate from one jihadist theatre of war to the next (Afghanistan-Bosnia-Chechnya-Somalia-Syria-Libya),

c. some economic migrants are abducted and forced by the terrorists to join their ranks - a practice they also use for captured children and women, e.g. by Boko Haram in Northern Nigeria,

d. a few foreign fighters have engaged in acts of terrorism, including suicide terrorism, upon migrating back to their home countries as part of refugee streams" (Schmid, 2016: 4).

It is no coincidence that to the Islamic State (IS) that migration (the so-called hydra) is an individual commitment for all Muslims, motivating or forcing, voluntarily or forcibly migrating to the West, altering the demographic structure of the Western countries.

The terrorist organizations, and above all the Islamic State, have found that the migration of people can be their powerful weapon in the fight against the West. The best example of this is the events of 2015, when the Islamic State at one time was able to flood Europe with half a million refugees through Libya. The Islamic State's intentions were announced through a statement that they plan to incorporate 4,000 jihadists into the ranks of migrants through Turkey's territory to move towards Europe (Schmid, 2016: 8).

RESTRICTIVE IMMIGRATION POLICY VERSUS REDUCE OF TERRORISM

The presence of large numbers of migrants in Western Europe and America coincided with the commission of a number of terrorist attacks, the perpetrators of which were migrants. Therefore, it should not be surprising that the results of surveys in European countries show that 59% of Europeans consider that the increasing number of migrants increases the possibility of committing terrorist attacks (Stokes, 2016: 8). Initiated by such trends, many European politicians have demanded that restrictive migration measures be introduced in order to counter terrorism. For example, the French far-right politician Marine Le Pen "underlined the importance of countries being able to protect their borders and stepping up general security measures" (Henley, 2017: 7). It is also interesting that the analysis carried out in the USA, according to which "by analysing the demographic origin of 63 home-grown terrorists with a sample of approximately 1,000 Muslims Americans, it was concluded that non-US citizens are at greater risk of becoming America's home-grown terrorists (Krueger, 2008: 14). At the same time, some studies show that a quarter of the terrorists (from 1993-2001) were illegal aliens and another fourth had pending asylum applications. The Al-Qaida operatives knew how to enter the state by exploiting weaknesses in American immigration laws and regulations (Camarota, 2002: 12).

Does restrictive immigration policy reduce terrorism? In the short term, perhaps. In the long run, terrorists will find ways to do what they plan to do. It does not matter if they find a way for their members to cross the border of the state they have defined for their own purpose, or simply for their operatives/perpetrators of terrorist attacks will be used by persons who share their ideas and have long legally lived in the territory of their enemies (the second or third generation migrants).

CONCLUSION

In the minds of the residents of the Western European countries, an increasing number of migrants can trigger an economic crisis in their countries. But this is not quite true knowing that a large number of those migrants with their abilities can increase the quality of their lives, filling certain job positions which were empty at that time. For large companies in the West, migrants are a source of cheap labour. But migrants are not just workers, they are not even terrorists, at least not everyone. Restrictive migration policies of Western countries, whether introduced as protection against potential terrorist attacks or the intention to avoid financial costs for covering certain social programs designed for migrants' needs can very easily have a counter-effect. The first counter-effect is, of course, the return of migrants to their countries of origin, where they could easily be victims of multiple points of view: to return back to the arms of poverty or to be victims of military or terrorist conflicts.

The second counter-effect is causing dissatisfaction with their relatives/friends who already have a regulated legal residence in the Western countries. The same dissatisfaction can cause frustration, which can very easily be transformed into joining a particular terrorist organization. What can the Western countries do to ease the situation with migrants, and to indirectly prevent the integration of some migrants with terrorist organizations? Above all, the document of the European Union is especially important with the title 2015 European Agenda on Migration. The Agenda uses the potential of the EU agencies and tools and involves the member states, international organizations and third countries in its activities. In its Agenda, the EU outlined the measures to be adopted immediately in order to react to the critical situation in the Mediterranean region (Kesel, 2017: 66). The Agenda was also confirmed by the High Representative of the European Union for Foreign Affairs and Security Policy Federica Mogherini, who stated: "By this radical program the European Union showed that it is ready to solve the situation of people running away from their countries due to wars, persecution and poverty. All the member states are responsible for migration and that is why all of them are now asked to contribute to the solution of this historic problem. It is not only Europe but the entire world which faces this problem. By this agenda we confirm and extend our cooperation with the countries of origin and transit in order to save human lives, prevent any smuggler group activities and protect people in despair. We all know, however , that the actual and long-term reaction will only be possible once the main route causes are solved, starting with hunger and ending with an unstable situation caused by wars following crisis in Libya and Syria. The European Union has been involved and it is determined to cooperate with the international community in this field" (European Commission, 2015b).

The European Agenda on Migration reacted to the migrant crisis by immediate measures and long-term measures called the four pillars of migration. It is important to mention that the four pillars of migration are as follow:

PILLAR No.1 Reducing the incentives for irregular migration (283.532 illegal border crossings detected in 2014 - 164% increase compared to 2013),

PILLAR No. 2 Saving lives and securing the external borders in 2015, almost 7,300 out of 24,000 migrants rescued in the Strait of Sicily were rescued by the forces deployed by Frontex,

PILLAR No. 3 Strengthening the common asylum policy, 626.715 asylum seekers in 2014 (45 % increase compared to 2013),

PILLAR No.4 Developing a new policy on legal migration -17 million Schengen visas and 2,3 million of residence permits issued in 2013 (European Commission 2015b).

It is a fact that not all of the migrants are terrorists. At the same time, many countries will equate their restrictive migration policy with the fight against terrorism, considering migration policy as a kind of preventive part of its fight against terrorism.

Migration has always existed and will exist. Just as terrorism will always be an integral part of the weaker policy against the stronger ones. It is evident that terrorism in people's migrations has found an extraordinary tool for expanding its capacities and facilitating the performance of its own activities. As no country can fight terrorism independently, neither country alone can deal with migration of people, whether it is legal or not.

From there arises the need for joint efforts at the international level, involving not only countries, but also international organizations, in constant mutual cooperation and coordination, with the ultimate goal: reducing the negative and increasing the positive effects of migration of people, whether they occur from country to country or from continent to continent. With the realization of the uneducated, the impact of terrorism as the main and most important asymmetric threat to the security of the states will be reduced.

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LEGAL AND INSTITUTIONAL ACTIVITIES OF EU MEMBER STATES TO COUNTERACT FALSE NEWS AND DISINFORMATION

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Abstract: Since the ancient times information has been used for manipulative purposes, and also as a means for carrying on conflicts. In the modern information age information space has only been given an added topicality, as a battlespace of today's global society. This added topicality also applies to the use disinformation and fake news within the concept of "hybrid and information warfare"as a way of waging geopolitical conflicts between the great powers. Social media and online platforms play an important role in accelerating the spread of fake news because they enable its global reach. For that reason, modern states are confronted with a problem of ensuring an efficient control and protection of the national information sphere, and, by the same token, national security. The mentioned issue ranks high on the security agenda of European legislators due to the fact that the European Parliament election will be held in 2019. In this connection, an EU-wide campaign against fake news in the field of legislation is being conducted by the governments of many Europen countries. Bearing in mind the above-mentioned, counteracting fake news and disinformation can be considered from the two aspects, namely:1) from the aspect of defense and protection of national security, and 2) protection of the electoral political process. On legal level, at the end of 2016, the European Parliament passed a resolution on EU strategic communication to counteract propaganda against it by third parties. European Commission presented at the end of 2018 an Action Plan against Disinformation setting out additional steps against disinformation. On the institutional level, the Task Force East Stratcom was set up in 2015 within the European Service for External Action. So far the team made up of 16 staff members, recruited from the EU institutions or seconded by EU Member States, has documented, analysed and published over 4,500 examples of disinformation and has thus contributed to understanding tools, tactics, techniques and intentions of disinformation disseminated by foreign sources.

Keywords: disinformation, fake news, social media

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INTRODUCTION

Owing to the massive use of information technology in the area of communications, modern states are confronted with a problem of ensuring efficient control and protection of their national information sphere, and by the same token, national security. Since the ancient times, information has been used for manipulative purposes, and as a means for carrying on conflicts. In the modern information age information space has only been given an added topicality, as a battlespace of today's global society. This added topicality also applies to the use of disinformation and fake news within the concept of "hybrid and information warfare", as a way of waging geopolitical conflicts between the great powers.

From the aspect of protecting internal security and political stability, the use of propaganda and disinformation in the context of "information operations" by an external factor is classified as a type of subversive activities that, as such, can be divided into the following: 1) political influence operations, 2) media and public opinion influence operations, and 3) ideological- political indoctrination (Miljković, 2016:206).

Fake news poses a significant security problem to the present day society, as indicated in an EU survey conducted in February 2018 by interviewing over 25,576 respondents in 28 member states, on which occasion 85% citizens have identified fake news as a problem in their countries,.[2] The foregoing issue ranks high on the security agenda of European legislators due to the fact that the European Parliament election will be held in 2019. In this connection, an EU-wide campaign against fake news in the field of legislation is being conducted by the governments of many Europen countries. Germany and France have already introduced and implemented, respectively regulations aimed at removing or blocking hate speech and untrue contents on online communications platforms. The Great Britain is planning to designate a unit within its security apparatus to counteract the above threats. The Czech Republic has already set up such a body within its Ministry of Interior to counteract hybrid threats and disinformation, to mention just a few examples.

DEFINITIONS OF TERMS AND KEY FEATURES OF DISINFORMATION AND FAKE NEWS

The term disinformation, as defined by the High level Group on fake news and online disinformation, includes all forms of false, inaccurate or misleading information designed, presented and promoted to intentionally cause public harm or for profit.[3] Disinformation, i.e. provably false or misleading information, fabricat-

2 Final results of the Eurobarometer on fake news and online disinformation, https://ec.europa.eu/digital-single-market/en/news/final-results-eurobarometer-fake-news-and-online-disinformation

3 *Report of the independent High level Group on fake news and online disinformation, https://ec.europa.eu/digitalsingle-market/en/news/final-report-high-level-expert-group-fake-news-*

ed, presented and disseminated in order to gain an economic profit or purposefully mislead the public is harmful to the public debate; it undermines citizens' trust in institutions and media, and weakens a country's internal stability and its democratic processes, such as electoral processes. Therefore, the goal of information manipulation is not to pursuade people to accept any alternative political ideology, but to bring about a weakening of the existing internal stability of a country.

That broad definition also covers partly the term "fake news", which has been put into the political context by most of the public and experts over that past few years. In this regard, fake news is, in fact, a considerably narrower term than the concept of disinformation. As defined by experts, false news is a deliberate or conscious online presentation of false claims as news (Gelfert, 2018: 97). The term also implies "news with no factual grounds, that is nonetheless presented as news" (Hunt, 2017: 4). The goal of fake news grounded on non-existing or distorted "facts" is to mislead and manipulate the public opinion.

Human behaviour on social networks is a key factor in spreading fake news, along with the fact that social media have almost replaced traditional media. A growing number of EU citizens (46% on average in 2016) follow news on social networks; six out of ten news articles shared are passed on without being read first.[4] The findings of a survey show that fake information is shared more than true information, and that false stories get more attention, and are therefore distributed at a greater speed.[5] According to the survey conclusions, true news is very rarely spread to more than 1,000 individuals. On the other hand, 1% of the most popular fake news usually reaches 1,000 to 100,000 people. Moreover, it takes six times longer for true information to reach 1,500 people in comparison with false news.

Crisis situations, such as natural disasters, bomb attacks or armed assaults, are fake news authors' favourites; they draw on people's emotions surrounding such events in an attempt to produce maximum reveberations for their creations. The authors of a study inspired by a circulation of numerous rumours after the 2013 Boston marathon, claim that political fake news spreads at the fastest rate, well ahead "urban legends" and economy news. The "terrorism and war " news category is ranked fourth, whereas natural disasters news is placed at the bottom of the list.

In addition to malicious intentions, confusion and bustle that follow in the wake of emergencies may contribute to the appearance of fake news due to the lack of time to verify information with traditional media, or owing to errors of official sources.

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4 Lažne vesti i odgovor EU, . https://europa.rs,

5 A study by the prestigious Massachuttes Institute of Technology published in *Science*, March 2019 claims that fake news spreads much faster on social networks than true news, regardless of its subject.

POLITICAL AND SECURITY-RELATED SIGNIFICANCE AND CLASSIFICATION OF SPREADING FAKE NEWS AND DISINFORMATION

The fake news issue, as a salient challenge to states' internal security is linked to the fact that social media and online platforms, which represent an important source of information nowadays, play an important role in accelerating the spread of fake news, and enable their global dissemination and reach, thus also accelerating the spread of internal instability of a country. Moreover, that issue is compounded by a rapid spread of massive quantities of false information, which may cause considerably adverse and manipulative effects on the public opinion and therefore become a major security problem of today. (Lohr, 2018).[6]

The political and security-related significance of spreading fake news can de determined on the basis of various criteria. National authors point out that if the extent of harm is used as a classification criterion, it will produce a differentiation between *national and international political implications.* At the same time, they suggest that such a classification is essentially relativised by the very fact that global communication networks make it possible for fake news to be available across the whole globe within a very short period of time.

Further to the above mentioned, if fake news is classified according to the source of dissimination, it can be divided into fake news coming from individuals, political parties, interest groups or intelligence services of some states.

Moreover, when classification proceeds from the criterion of target object, fake news is divided into that aimed at a particular politician, collectivity, political party or state.

All the above-mentioned criteria are relevant while examining the reach of fake news in relation to the target of its dissimination. However, the objective of every pseudo-news item is to effectuate a propaganda activity, as a planned and designed dissemination of political ideas and attitudes for the purpose of exerting influence on the cognition and behaviour of both individual and collectivity. Detecting the ultimate goal, as something that steers the process of dissiminating fake news, considerably determines the character and importance of political implications, and then, in the context of threat it can be qualified as risks from secessionist strivings, armed rebellion, terrorism, national and religious extremism, intelligence activities, preparation of a political assassination, so-called "colour revolutions", etc. (Bodrožić, 2017: 253).

Having in mind the above-stated, counteracting fake news and disinformation can be considered from the two aspects, namely: 1) from the aspect of de-

6 Lohr, S. (2018). "It's True: False News Spreads Faster and Wider. And Humans Are to Blame". The New York Times. https:// www.nytimes.com/2018/03/08/technology/twitter-fake-newsresearch. html, see also: Vosoughi, S., Roy, D., and Aral, S. (2018). "The spread of true and false news online". Science, 359(6380), 1146-1151. http://science.sciencemag.org/content/359/6380/1146.

fense and protection of national security – when it is classified as an element of the information and hybrid warfare concept, and 2) protection of the electoral political process.

USE OF FAKE NEWS AND DISINFORMATION WITHIN THE CONTEXT OF INFORMATION AND HYBRID WARFARE

The news in general, and fake news, as its subcategory, carried by modern technological means, enabling its fast and inexpensive broadcasting, are emerging as a generator of political, moral and other attitudes of individuals and societies, and by the same token, drivers of internal political events in a country (Bodrožić, 2017: 251).

Sometimes the goal of fake news is merely to increase the network traffic (clicbaits). However, when it is used for the prupose of political deception or deception for the purpose of international relations, it falls into the category of disinformation, as a strategic tool for undermining internal stability and, by the same token, national security of an external adversary.

Fake news is considered as a part of subversive activity, specificly as a component of information warfare, that is to say as an instrument of information operations aimed at producing information effect on an adversary's internal stability either in the context of a doctine of crisis causation or crisis management, and, in a broader sense, public opinion management, citizen discontent and riot causation, thus covertly imposing one's own interests, or it is regarded in the context of influencing national and world public opinions in such a manner so as to create conditions for a media warfare to develop into a real war *(Stajić, Gaćinović, 2007: 242)* .

Military experts' assessments of an increasingly diminishing borderline between war and peace in the modern age also point to the topicality of fake news as an information weapon in contemporary conflicts, and to the fact that "the methods of conflict being used are changing toward the all-inclusive employment of other non-military measures." (Gerasimov, 2017). The foregoing statement by General Gerasimov, the current Chief of the Russian Federation Armed Forces General Staff is quoted by many modern security and military theoreticians with the intention of stressing the significance of fake news as a technique of information operations in contemporary conflicts, i.e. hybrid warfare.

Information operations (IO) have been defined by civil experts in the subject area, as well as in doctrinal documents of the Western countries' armed forces. According to the U.S. authors, information warfare covers 1) a striving to learn everything about an adversary, and to prevent an adversary from learning much about you; 2) turning "the balance of information and knowledge" to one's advantage, especially if there is no balance of power; 3) using knowledge in such a manner, so as to enable small capital and labour to increase (Arquilla, Ron-

feldt, 2017). The following definition of the term offered by Richard Szafranski is regarded as the most complete and acceptable one: "information warfare is a hostile activity directed against any part of the knowledge and belief systems of an adversary". Regardless of whether or not it is conducted against an external adversary or internal groups, the ultimate goal of information warfare is using information warfare for bringing about a change (influence, manipulation, attack) to the knowledge and belief system of an external adversary.

So far several Russion authors have defined information warfare and information operations. The Russian expert S.P. Rastorguyev discussed the concept of information warfare in his book *An Introduction to the Formal Theory of Information Warfare* published in 2003. He defines information warfare "as a battle between states involving the use of exclusively information weapons in the sphere of information models". The ultimate goal to be achieved is to gain knowledge of a specific information system, and to subsequently use such knowledge purposefully in order to distort or destroy the model of an adversary's world (environment). He argues that an information weapon can be a technical, biological, or social instrument used for purposeful production, transmission, presentation or blocking of data and processes connected to a database. (Rastorguyev, 2003: p. 6,7).

Similarly, hybrid warfare consists of different elements of conventional and non-conventional capabilities, political and economic activities, information activities, irregular tactics and formations, terrorist acts, including indiscriminate violence and coercion, and criminal disorder (Hoffman, 2007). The use of information activities for achieving political and military goals in a conflict has increased, and in many cases it has exceeded the power of weapons in its effectiveness (Gerasimov, 2013). "The soft dimension" of information operations, i.e. its information-perceptive aspect (propaganda, deception and disinformation) demand much less financial means, which opens up possibilities for using disinformation and fake news as hybrid weapons (Miljković, 2017: 169-180).

In this regard, it can be concluded that the use of fake news and disinformation represents one of the techniques for conducting information and hybrid warfare in times of peace and war alike which is undertaken to undermine an adversary's internal stability and its citizens' confidence in their own military and state leaderships and institutions.The use of fake news has notably gained importance due to the fact that a significant part of the contemporary population gets informed through modern mobile communication devices and social networks disseminating information that has not been subjected to any control of the state authorities so far.

EU'S EXPERIENCE WITH REGARD TO COUNTERING "FAKE NEWS" FROM THE ASPECT OF DEFENCE AND PROTECTION FROM HYBRID AND INFORMATION WARFARE

Fake news and disinformation are identified as significant security threats in national security strategies of many EU countries. Along these lines, the Czech Republic and Poland consider hybrid threats and fake news "as significant challenges to the national security and defence". Their security experts hold a view that "a hybrid" war incorporates spreading fake news for the purpose of changing public attitudes.

The Security Strategy of the Czech Republic 2015 states that "threats to the security of allies may be of the classical military nature or they make take the vague form of hybrid warfare." In this connection, the above Security Strategy identifies threats that can bring about "the weakening of the cooperative security mechanism and of political and international legal commitments in the area of security ", and claims that some states seek to achieve a revision of the existing international order and are ready to pursue their power-seeking goals through hybrid warfare combining conventional and non-conventional military means with non-military tools (propaganda using traditional and new media, disinformation intelligence operations, cyber attacks, political and economic pressure, and deployment of unmarked military personnel). [7]

On the legal level, the Czech legislation does not formally recognise the concept of "disinformation" or "propaganda" from the aspect of criminal law, and consequently there is no definition of factual circumstances of "disinformation-" or "propaganda-based" crime. It follows from the above that fake news and disinformation are, first and foremost, brought into relationship with criminal offences concerning terrorism and counteracting foreign intelligence services' impact on internal developments in the country. In this regard, as stated in the Czech Ministry of Interior's reports, disinformation campaigns are divided into three groups: 1) terrorism-related disinformation campaign - aimed at inciting and provoking individuals to solve their problems by transforming themselves into followers of the fundamentalist ideology; 2) extremism-related disinformation campaign - aimed at inciting and provoking society to crimes connected to extremism and actions in contravention of democratic and constitutional principles, and 3) pro-Kremlin disinformation campaign - aimed at provoking undemocratic and extremist attitudes, and causing a feeling of helplessness in a democratic system by using lies and half-thruths, relativising facts, and manipulating society.[8] In view of the above-mentioned, the task of countering fake news, disinformation and hybrid threats on the institutional level in the Czech Republic is entrusted to its Ministry of Interior. To that end, it set up the Centre against Terrorism and hybrid threats in 2017.[9]

Similarly, the fight against fake news in Poland is most noticeable in the form of counteracting activities of foreign intelligence services towards its population, or neutralising Russian hybrid warfare networks operating in Poland and inspiring its citizens to take targeted subversive activities against their own country in the interest of the Russian Federation, as stated by representatives of Polish security services. Namely, in May 2018 the Polish Intelligence Service (ABW) released a press statement on the arrest of a female Russian national on Polish soil on suspicion of instigating tensions with Ukraine in collaboration with her associates.[10]

The issue of countering fake news was given an extra topicality in France from the aspect of protecting national interests during 2017, the year of the presidential election, which was won by Emmanuel Macron eventually. At the beginning of 2018, President Macron stressed that *CSA* (French Media Regulatory Authority) should provide necessary capacities and a legal framework to effectively counter attempts made by television channels controlled by foreign states to destabilise the internal situation in France. Such an initiative was justified by a need to protect democratic institutions from any regime propagating "political non-liberalism." Owing to that, following the adoption of a Fake News Act at the end of 2018 the Broadcasting Council was given a power to prevent, suspend or stop programs broadcast by television channels "controlled by a foreign state or under the influence of that foreign state", if they have a harmful impact on France's fundamental interests.[11]

EU'S EXPERIENCE IN COUNTERING "FAKE NEWS" FROM THE ASPECT OF PROTECTING ELECTORAL PROCESS BY CRIMINAL LAW

Eariler periods of societal development have also been characterized by dissimination of fake news, particularly in the times of obvious conflicts. Nowadays, online media stand for what the printed press, radio and television used to be. The increase in audiences and quantity of distributed messages has not, however, brought about an increase in the quality of information; instead, both traditional means of public information and new communication technologies are emerging (when observed in conjunction) as powerful mechanisms of political activity, particularly during the period of conducting an electoral process (Parezanović, 2013: 324-337) .

When considering challenges in countering fake news in the electoral process from the aspect of criminal law, it should be underlined that fake news is not, in most cases, illegal information, i.e. statements incriminated by criminal laws, such as defamations or posted contents inciting racial hatred. In addition,

10 Poland busts Russian ′ hybrid warfare′ ring, https://www.dw.com/en/poland-busts-russian-hybrid-warfare-ring/a-43831566

11 France passes controversial 'fake news' law , https://www.euronews.com/2018/11/22/france-passes-controversial-fake-news-law

fake news most often represents neither a satire nor a journalistic error, to which corrective policies are applied. The focus in this case is on countering deliberate disinformation, whether it be politically or commercially motivated. For that reason, countering fake news poses a challenge to any acting judge with no power to simply put a ban on it. This happens mainly due to the speed at which fabricated news spreads through social media and other digital platforms. Furthermore, it is very hard to establish the "real truth" about such issues in every particular case, given that any undue interference by a court of law would be perceived as an act of censorship and abrogation of the freedom of speech.

Shortly before holding the Federal Elections in Germany in September 2017, the Bundestag adopted an Act to Improve Enforcement of the Law in Social Networks, commonly knows as *NetzDG*. It prescribes that social media platforms (Facebook, Twitter and Youtube) be sanctioned with regulatory fines of up to 5 million euros, if they fail to remove fake news and hate speech within 24 hours from issuing a regulatory fine order. The monetary penalties shall be imposed on the foregoing and similar online platforms if they fail to respond efficiently enough to an unlawful content. The German authorities introduced such a legal solution in an effort to regulate activities of the social network management companies, force them to label a disputable content, and remove it from their websites, if it turns out that it is about child pornography, instigation to terrorism, hate crimes, and also so-called fake news. In addition, *NetzDG* stipulates individual responsibility, so that managers of the companies in question run the risk of being ordered to pay fines of up to 5 million euros, if they fail to comply with the *NetzDG's* provisions.

Along these lines, at the end of 2018 the French Parliament endorsed two laws against fake news and information manipulation during the electoral period, the passage of which was supported by president Macron himself. Those laws should enable a candidate or political party to complain to the court and demand an urgent suspension of fake news dissemination during a three-month period prior to a national election. Those legal acts also aim at achieving a stronger transparency of online platforms, such as Facebook and Twitter in the course of dissiminating a political content in terms of publishing transparent information on entities paying for an online political campaign, and the amount of finances spent during a campaign. In that regard French high-ranking officials stated that their passage should provide a greater transparency of information about sponsored contents on social media, not only in terms of disclosing the identity of an advertiser, but also with regard to limiting the level of monetary amounts that could be spent on such messages. Further to this, French experts stated that the laws were passed with the view to preventing fake news from spreading disinformation during every electoral period.

Nonetheless, some of the experts hold a view that France already has an effective repressive law in this area in the form of the Republic Act of 29 July 1881 on the freedom of the press that prohibits publication or broadcasting disinforma-

tion. Thus, on the basis of its Article 27, dissimination of false news "by whatever means", will be subject to a fine of 45,000 euros. However, the above act applies only to information that has a disturbing effect on the public peace, which is very hard to define and prove. There is also another law, being a part of the French Electoral Code, that stipulates that anyone who uses false information or other "fraudulent manoeuvers" to steal votes shall be pronounced a one-year prison sentence and imposed a monetary penalty of 15,000 euros. However, that stipulation applies primarily to cases of electoral fraud. For that reason, French political representatives are planning to ensure the implementation of the passed laws in an electoral process.

The laws foresee the introduction of a summary procedure under which judges can order deletion of a conent, removal of websites from the search engines or their complete blocking. For the time being promises are made that the above legal framework will apply only to the period before an election, which is a sensitive time for every country from the political and security aspect.

EUROPEAN DOCUMENTS IN THE AREA OF COUNTERACTING DISINFORMATION

At the end of 2016, the European Parliament passed a resolution on *EU strategic communication to counteract propaganda against it by third parties*.[12] The resolution states that "the hostile propaganda" poses the main security challenge Member States are confronted with. It further notes that the hostile propaganda against the EU and its Member States is aimed at distorting truth, provoking doubts and dividing the EU and its North American partners, paralysing the decision-making process, discrediting the EU institutions and inciting fears and uncertainty among the EU citizens. Its authors conclude that effective injection of hostile propaganda into the EU's information sphere is caused by the substantial non-supervised permeability of social networks and media that uncritically broadcast also entirely false or falsified information by continually copying news generated by foreign government-sponsored institutions and services that operate very professionally.

In mid-2018 the issue of counteracting fake news was given a significant topicality in the EU against the backdrop of launching the preparatory process for the 2019 European Parliament election. In this connection, the European Commission's representatives demanded that media outlets and social networks immediately solve the issue of dissiminating fake news on their portals, and deal with the matter of using citizens' personal data for forecasting election outcomes in the manner of the recently published *Cambridge Analytica* case. Reacting to that initiative, Julian King, the EU's security commissioner stated that the short-term specific plans to regulate dissemination of news on social networks were foreseen to be implemented before

12 European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)), http://www.europarl.europa.eu/doceo/document/TA-8-2016-0441_HR.pdf

the European election when voters in 28 EU's Member States would head to the polls to elect Members of the European Parliament.

According to the statements made by representatives of the above EU's security commissioner, social media outlets are under obligation to sign a Code of Practice on Disinformation on a voluntary basis, so as to prevent the misuse of platforms for disseminating false information.[13] The code foresees a greater transparency to enable social networks users to understand why their Facebook or Twitter accounts are targeted by a specific advertisement or content. It also put forwards that political advertising should include actual sponsor identity and amounts spent. In the event media outlets and social network platforms fail to reach an agreement, and do not commit to the above Code of their own accord, the European Commission may propose further actions of regulatory nature to make social media outlets implement the foregoing measures.

2016 saw the adoption of the *Joint Communication to the European Parliament and the Council: Common Framework on countering hybrid threats* on the EU level, which was followed by the 2018 *Joint Communication: to the European Parliament and the Council: Increasing resilience and bolstering capabilities to address hybrid threats*.[14]

The European Commission presented a European approach to fight disinformation online in its Communication of April 2018, pressing for a more transparent, trustworthy and accountable online ecosystem,[15] and outlining actions for counteracting online disinformation, including:

- a self-regulatory EU-wide Code of Practice on counteracting disinformation signed by the major internet platforms and advertising industry,
- supporting an independent European network of fact-checkers,
- underlining the importance of secure and resilient election processes,
- fostering education and media literacy, and
- support for quality journalism.

The European Commission called to all relevant actors to strengthen strategic communication. Furthermore, in order to secure free and fair European election, it put forward on 12 September 2018 a set of measures, such as recommending greater transparency in online political advertising and targeting, and also a legislative amendment to tighten the rules on European political party funding to make it possible to impose financial sanctions for breaching data protection rules in order to deliberately influence the outcome of the European election.

13 Code of Practice on Disinformation, https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation

14 Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the committee of the regions, Brussels, 26.4.2018 COM(2018) 236 final, Tackling online disinformation: a European Approach, https://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016JC0018&from=en.

15 Tackling online disinformation: a European Approach, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236

Following up on the foregoing efforts, on the European Commission presented at the end of 2018 an Action Plan against Disinformation setting out additional steps against disinformation[16]. It outlines the measures for a concerted and coordinated EU approach to countering disinformation in the four areas considered to be of key importance to the effective development of the EU capabilities and strengthening of cooperation between Member States and the EU, namely:

- *Improving the capabilities of Union institutions to detect, analyse and expose disinformation.* In this regard, the Strategic Communication Task Forces and the EU Hybrid Fusion Cell within the European Service for External Action (EEAS), as well as the Union Delegations in the neighbouring countries have to be reinforced by a number of additional specialised staff and data mining tools. The EEAS's budget for strategic communication, which includes implementation of activities on counteracting disinformation and raising awareness about its harmful effects, is to be more than doubled, and is expected to rise from 1.9 million euros in 2018 to 5 million euros in 2019. Member States should complement such actions by bolstering national capabilities and increasing their own resources for counteracting disinformation.

- *Strengthening coordinated and joint responses to disinformation on the part of EU institutions and Member States.* To that end, a dedicated Rapid Alert System will be established between the EU institutions and Member States by March 2019 to facilitate the exchange of information and analyses of disinformation campaigns, as well as to enable timely provision of disinformation alerts.

- *Mobilising private sector to tackle disinformation*. For that purpose, online platforms and advertising industry, as signatories to the Code of Practice on Disinformation are expected to implement their commitments quickly and effectively, while giving priority to activities connected to the 2019 European Parliament election. Such commitments specifically include ensuring transparency of political advertising, stepping up efforts to close down fake accounts active on online platform services, identifying automated bots, and cooperation with fact-checkers and academic researches in order to detect disinformation campaigns and ensure a greater visibility and dissimination of checked contents. The European Commision will ensure a detailed and continuous monitoring of the implementation of the foregoing commitments with the support of the European Regulators Group for Audio-visual Services.

- *Raising awareness and improving societal resilience.* In addition to targeted awareness raising campaigns, EU institutions and Member States are expected to improve citizens' media literacy through specifically designed programmes. National multidisciplinary teams composed of independent fact-checkers and researchers will be set up and provided support to identify and expose disinformation campaigns on social networks.

16 Action Plan against Disinformation, https://ec.europa.eu/digital-single-market/en/news/action-plan-against-disinformation

The Action Plan against Disinformation foresees that Member States should improve coordination in tackling disinformation in cooperation with the EU institutions and other Member States in order to detect, analyse and expose disinformation campaigns, and raise awareness about the negative effects of disinformation. To that end, it also proposes activities to be undertaken by Members States, such as:

- to designate their own national contact points to participate in the work of the EU Rapid Alert System owing to which all its partcipating members will be provided real-time information on a situation to enable their coordinated response;

- to raise awareness on the negative effect of disinformation and support the work of independent media, fact-checkers and investigative journalists, and

- to set up multidisciplinary teams with specific expertise in a local information ecosystem.

EU'S INSTITUTIONAL FRAMEWORK FOR COUNTERACTING DISINFORMATION AND FAKE NEWS

On the institutional level, the *Task Force East Stratcom* was set up in 2015 within the European Service for External Action. So far the team made up of 16 staff members, recruited from the EU institutions or seconded by EU Member States, has documented, analysed and published over 4,500 examples of disinformation and has thus contributed to understanding tools, tactics, techniques and intentions of disinformation disseminated by foreign sources. It is planned to recruit additional 50 to 55 staff members in the course of next two years to step up the team's activities.

The core activities performed by the *East Stratcom Task Force* in cooperation with the relevant European Commission's services are as follows:

- efficient communication and promotion of the EU policies towards the Eastern Neighbourhood,

- strengthening the overall media environment in the Eastern Neighbourhood, and

- provision of support to media freedom and strengthening of independent media, as well as improvement of the EU capacities to forecast, address and respond to disinformation activities by external actors.

In addition to the East StratCom Task Force, the South and Western Balkans StartCom Task Force operating on the similar principle has also been established within the European External Action Service.

Further to this, in 2016 the *EU Hybrid Fusion Cell* was set up within the EU Intelligence and Situation Centre to monitor and counteract hybrid threats related to foreign actors, including disinformation and manipulation of political decisions in the EU and its neighbourhood.

Together with the *European Centre of Excellence for Countering Hybrid Threats*, which was recently set up in Helsinki, the foregoing bodies constitute core institutions for a reinforced EU response, and are a relevant element of cooperation between the EU and NATO in strengthening coordination and preparedness for hybrid threats.

Taking also into consideration that information sharing is a key factor in countering disinformation, the *Rapid Alert System (RAS)* was established on 18 March 2019 to tackle disinformation on the EU level. This early warning system is based on a secure digital platform enabling Member States to share real-time information on the existing foreign disinformation campaigns, and coordinate their response. The Rapid Alert System operates with open and unclassified information only, while focusing solely on foreign actors' coordinated attempts to manipulate free speech and open debates. In order to establish the foregoing system by March 2019, each Member State should designate its contact point, ideally within its strategic communication unit.

In addition to the foregoing structures, in January 2018 the European Commission set up a *High-level Expert Group on Fake News* - HLEG-FK. It is made up of 39 members (journalists, representatives of the civil society and fact-checking organisations) and tasked with advising the EU on initiatives for countering fake news and disinformation spread across traditional and social media. The High-level Expert Group on Fake News has also a sub-group that represents media, civil society, academic community and GAFA platform (composed of the Google, Apple, Facebook and Amazon reprsentatives).[17]

Furthermore, an independent *European Network of Fact-checkers* is being established to counteract online disinformation across the EU. They have a crucial role in tackling disinformation because they check out and assess the thruthfulness of contents on the basis of facts and evidence, thus helping towards a cleaner and stronger information ecosystem. The European Commission intends to support cooperation between the European fact-checkers to which end it will provide the right conditions for the establishment of their network. The fact-checking community will determine the pre-requisites for membership in the coming months. The European Network of Fact-checkers will be independent in editorial terms. An initial funding of 2.5 million euros is envisaged under the Connected Europe Facility Instrument (CEF) for the purpose of creating an online platform to connect fact-checkers and researachers. In the initial phase the European Commission will offer fact-checkers online tools to enable their cooperation. In the next phase it will create a secure European online platform on disinformation, which will make it possible for cross-border data collection, analysis tools and access to data on the EU level in support of cooperation between the fact-checking community and academics working on the problem of online disinformation.

17 Call for applications for the selection of members of the High Level group on Fake News, https://ec.europa.eu/digital-single-market/en/news/call-applications-selection-members-high-level-group-fake-news

The activities undertaken by individual EU Member States in the area of countering disinformation are illustrated in this paper by the Spanish and Bulgarian examples. Each country has set up its unit and contact points for countering fake news with a view to protecting its election processes. Thus, in view of the four elections coming up in April and May, the Spanish Government set up a cyber security group at the beginning of 2019. The group of experts will monitor hybrid threats ahead of the local, regional and European election on May 26 and a general election on April 28, while focusing on the identification on threats. As regards cyber security, all computer systems to be used in the election process will have to be certified by the National Encryption Centre to prevent an external impact. The Spanish experts point out that disinformation threats are much more complex because for the time being there are no computer tools that can guarantee the detection of fake news. Spain will task more than 100 police officers with searching the internet for fake websites and news, given that the major companies, such as Google, Facebook and Twitter are still making a slow progress towards creating programmes for detecting and labelling fake news.[18]

At the beginning of 2018, the Bulgarian Government also established an Anti-disinformation unit, which is positioned within the Council of Ministers and operates under the the Deputy Prime Minister's responsibility. Its establishment is enshrined in the Joint Action Plan of the European Commission and the European Parliament adopted in Dcember 2018.[19] The Bulgarian unit will be a "contact point" with the Rapid Response System to be led by the High Representrative of the European Union for Foreign Affairs and Security Policy. The goals of the Rapid Response System are to ensure coordination between Member States, the European External Action Service and the real-time information exchange on false information. It is planned that the system be linked to the existing Emergency Response Coordination System, as well as to the Situation Centre of the European External Action Service (these systems operate on a 24/7 basis). The EU plan envisages that the system will work together with the existing networks of the European Parliament, NATO and the G7.

Some EU countries have set up strategic units within their Ministries of Foreign Affairs. The Bulgarian contact point - Deputy Prime Minister will coordinate activities of all relevant national authorities in connection with signals received by the system. The European system will be based on on a secure platform, enabling Member States to exchange information about foreign campaigns and attempts to disseminate fake news.

18 Spain launches unit to fight disinformation ahead of elections, https://elpais.com/elpais/2019/03/11/inenglish/1552290997_611483.html?id_externo_rsoc=TW_CC&fbclid=IwAR0XrUt9xP9IRsSyJMeEjtGErNMHon6I3aSTfv3NAYeVP3HJMk_3ej5GXk&utm_source=newsletter&utm_medium=email&utm_campaign=kremlin_watch_briefing_european_parliament_calls_out_russia_and_calls_for_magnitsky_act_like_sanctions&utm_term=2019-03-28

19 The Bulgarian Government is Setting up an Anti-disinformation Unit
https://www.novinite.com/articles/195338/The+Bulgarian+Government+is+Setting+up+an+Anti-disinformation+Unit

CONCLUSION

On the global and national level "traditional and new media" play a very significant role in creating public opinion, political, social and public life and, by the same token, security of national information sphere. The entry of the major media companies into media space of other countries has diminished a control of small countries over that part of national information sphere.

In the time of "information warfare" and "hybrid threats", the legal framework in the countries that implement such operations has become a relevant factor in creating a favourable or unfavourable environment for potentially hostile actors' activities in the information space of adversarial countries. It means that laws have a new, but very complex role in defining, classifying, and also sanctioning those threats. In this regard, a lot of EU Member States are considering ways to counteract propaganda and fake news, assessing a legislative form of such counteraction as the most efficient one.

A legal analysis of "hybrid threats" involves open issues and uncertainties due to the lack of agreed definitions of terms, such as "disinformation" or "fake news". In this connection, criminal laws of many countries do not mention those terms. In addition, there are no specific regulations nor any judicial practice to provide explanations of regulations, and sanctioning of activities regarded as hybrid threats. Similarly, there is no sufficient state-related practice to outline how a state should respond to challenges arising from the understanding of the term "hybrid threats." However, it is more urgent than ever to ensure that the area of national legislation should diminish possibilities of an "external factor", in the shape of malicious individuals and groups, to exploit a vacuum in our legal environment with a view to influencing the internal political stability and security of the Republic of Serbia, particularly taking into account that in our recent history media figured as one of the most relevant factors in influencing internal developments in the Republic of Serbia, and political changes that took place in the past.

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UNEMPLOYMENT AND POVERTY AS A SECURITY RISK

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Abstract: In contemporary living conditions, low living standards, high unemployment and poverty pose a serious potential danger to the security of a modern democratic society. Today we live in a time when security risks dominate the modern security horizon, what is missing is scientific research the results of which will point to the dangers of modern types of risks and their threat to vital interests and citizens' safety above all. Scientific research in the area of security risks in the Republic of North Macedonia is insufficient, and studies that have been made are without a solid theoretical development of the research problem.In the paper, we place an emphasis on the results of the interlocutory research of the academic public on the topic of "Exploring the security risks in the Republic of North Macedonia", preceded by theoretical development of the approaches in defining the security risks, with a special emphasis on the impact of unemployment and poverty on security of the state.The research includes the expert public, that is, representatives of the institutions that have direct competence in the area of dealing with security risks of threats.

Keywords: *risk, security risk, threat, security, security institution, unemployment, poverty*

INTRODUCTION

The rapid development of science, technology, new world processes, and forms of international cooperation have established new values and standards. The rapid pace of change has contributed to international security (and thus to national security) by bringing about new types of serious threats. When we talk

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about the dangers and risks of the new millennium, we can say that the dangers that were characteristic of the last century, such as military risks, aggression and the like, are diminishing today. Threats to national security, according to values and interests, have become multiplied, more complex and less predictable and come from different directions, making them more difficult for analysis and control. The state union has always been exposed to jeopardies, with the forms and intensity of their manifestation changing. The seriousness of the threats of the 21st century lies in the application of the information infrastructure in decomposition of values, and such types of threats do not allow guaranteeing the life and health of citizens, as their seriousness jeopardizes the values and interests of the citizens. Threats in the new millennium can be resolved only by means of an internationally created security policy, on the basis of which the policy of national security should be defined. [4]

The Republic of North Macedonia, within the framework of the security policy, has the intention to provide security and protection of the citizens both from external and internal influences and threats of various natures: security, economic, political, ecological, cultural, etc. The main threat to security involves the tensions and antagonisms that result from inter-ethnic conflicts, extreme nationalism, religious radicalization, wrong reforms and economic inefficiency, frequency and enormous dimensions of natural and / or technological disasters with a major impact on society. Apart from the weak economy (high unemployment, low standard of living, cheap labor), political, social and ethnic conditions in the country, new types of hazards should be mentioned: international terrorism, organized crime (human trafficking, weapons, drugs, money laundering, migration, violent extremism, fundamentalism) and so on.

These kinds of threats can directly or indirectly affect the national security of the country. They undermine the security, democratic and economic foundations of society through the weakening of state institutions and the loss of confidence in the rule of law.

Despite the attempts of the institutions to detect and deal with potential threats to the security of the country in a timely manner, today the state faces a serious economic, political and security crisis that tends to endanger the survival of the country. Unfortunately, this situation lasts too long, starting with the demands of the former opposition political parties that the current government resign in order to form a technical government and organize early parliamentary elections. The non-functioning of the institutions appeared to be an appropriate ground for the development of organized crime and corruption, a drop in foreign investment and, above all, a decline in the economy. If this is added to the global migration crisis, which unfortunately has a direct impact on the economic, political and

4 National Security Policy means an interdependent and complex system of measures, plans and programs undertaken by the Republic of North Macedonia for the protection, preservation and promotion of the security of the Republic of North Macedonia and its citizens, in accordance with the political, economic, defense, internal, security, social, environmental and other resources

security system of the Republic of North Macedonia, we can talk about the risks that pose a serious threat to the security of the citizens. Starting from these bases, as well as the seriousness of the issue focusing on the research of security risks, a scientific study was conducted on the opinion of the expert public, representatives of several security institutions regarding issues related to prevention of certain risks so that they should not become threats or even threats of a larger scale.

EXPLORING THE SECURITY RISKS IN THE REPUBLIC OF NORTH MACEDONIA

The world today lives in times of globalization and postmodern social perceptions. Developmental dynamics is not linear and it is characterized by many ambivalent processes that have bad influence on security and freedom as values. Namely, the social circumstances create an environment and a culture of living that call for greater freedom and realization of personal freedom as a universal social, cultural and civilization benefit. However, the complex network of social relations and interdependence in the era of globalization, which greatly contributed to the breakthrough in the sphere of freedom, simultaneously led to the rise of security risks and, more closely, the preoccupation with the security risks. Security risks today have become, if one may say, the basic paradigm of the study of security sciences. First, because we live in a time when security risks dominate the theory and practice and have undergone a shift from neutral to negative (security) in understanding and defining modern risks. Second, since security risks are increasingly less locally determined, they are increasingly the consequence of the complex interdependent relationships of a globalizing society, are more predictable, more numerous, and with ever more harmful possible consequences. Third, contemporary security risks are hard to be determinate and prevent because of the new scope and structure of their nature. Fourth, because the strategies and ways of handling, managing and assessing security risks have become the basis for the modern way of treating security risks. Fifth, since there is obviously a change in the structure and types of security risks, in which the manufactured are dominating over external risks and the exposures over the self-extinguishing security risks.

The Republic of North Macedonia is not and cannot stay out of this intricate network of social relations in which the nature of modern security risks changes. It must necessarily reflect in some way these tectonic movements in the security sphere, and especially in the area of security risks. It is precisely because of this fact, but also because of the fact that in the Republic of North Macedonia so far there has been no such kind of scientific research and study of security risks, we have decided to fill one significant gap in our security science and practice related to the study and treatment of security risks. In essence, it is necessary to investigate to what extent and in what way the wider changes in the nature of security risks affect the scope, structure and type of security risks in the con-

temporary Macedonian society and state. This would give a clear picture of the nature of the contemporary security risks and it would be easier to determine the most appropriate approaches to the security prevention, handling, management and assessment of security risks by the security policy makers in the Republic of North Macedonia.

The unfavorable economic, political and security situation requires, on its part, a profound analysis and inclusion of all segments of society, each contributing to the timely detection of potential risks and security threats and taking timely adequate measures by the competent institutions, so that potential risks are prevented and they do not grow into threats and threats to security on a wider scale.

By doing so, in the course of 2017, our team carried out a research project opting for empirical research - surveying the expert public about the current risks and threats to the security of the Republic of North Macedonia.

In the questionnaire were investigated the opinions and attitudes of the expert public-representatives of the security institutions on the issues related to the security risks in the Republic of North Macedonia. The survey included representatives of the security institutions whose main competence is security, such as:

1. The Cabinet of the President of the Republic of Northern Macedonia;
2. The Intelligence Agency;
3. Ministry of Defence - security organs;
4. Ministry of Internal Affairs (Security and Counter-Intelligence Directorate and Public Security Bureau, Criminal Police and Uniformed Police); and
5. The private security chamber

The purpose of the research project is based on the perceptions of the current opinions and attitudes of the expert public on the security risks, to obtain valid scientific knowledge about the existence of security risks, their types, the process of handling and management as well as the assessment of security risks.

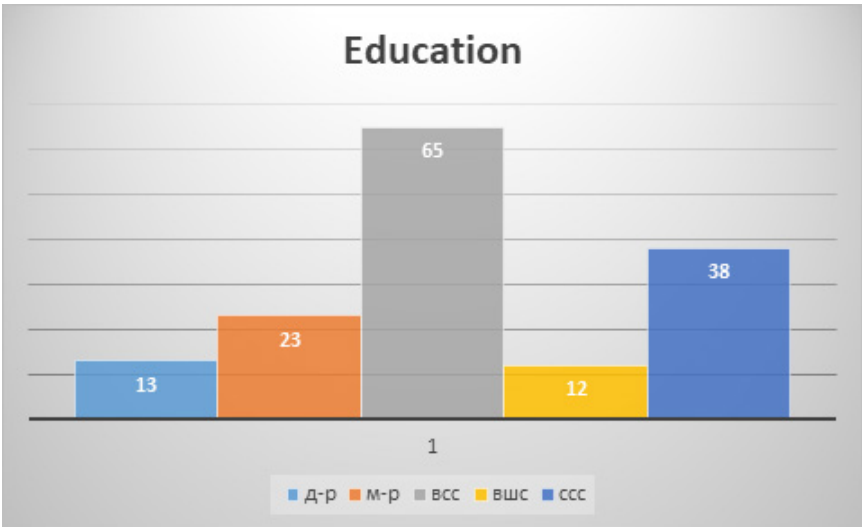
The obtained results from the survey, and from the entire scientific research project, will be of benefit for the scientists working on the research of security in the Republic of North Macedonia, the security policy holders and the security management of security institutions.

The **questionnaire** itself contains several sets of questions: biographical data, understanding-defining the notion of risk, ways of acquiring knowledge of risks, assessing the vulnerability of society to the types of risks. an assessment of what kind of society we are living in relation to risks; a number of risks are listed, and the respondents were asked to construct the risks that threaten security, starting from the most important to the less significant, the intensity of the influence of the risks on the personal safety of citizens, and on the security of the vital interests of the state, exploring the reasons for the current security risks in the Republic of North Macedonia, assessing the quality in creating and implementing the security policy Quality in the application of methodology in assessing security risks and creating security strategy. At the end of the questionnaire, there are open

questions for commentaries and presentation of certain attitudes of the expert public on certain issues related to security risks, for which issues are not covered in the questionnaire.

The survey covered a total of 151 interviewed persons from the above-mentioned security institutions, from several cities in the Republic of North Macedonia: Skopje, Kumanovo, Bitola, Vinica, Kicevo, Kratovo, Ohrid Struga.

Table no. 1: *Tabular display of the educational level of the respondents*



According to the educational structure, there are polled: 13 doctors of science, 23 masters, 65 with higher education, 12 with college education and 38 with secondary school.

Of the total of 151, almost a half, 65 or 43% are with higher education, if we add masters and doctors of science to this group, the number of respondents is 101 out of 151 or 66.88%, highly educated staff who has been working for years on assessment and management of risks, so we consider their answers to be relevant, and in particular the outstanding issues and their considerations and suggestions for a more detailed assessment of the dangers of certain types of risks, as well as a proposal for measures to overcome such a situation, are timely detection, quality and assessing and taking appropriate measures and actions to prevent potential risks from becoming dangers of a wider scale.

In the paper we will try to elaborate the results to several questions.

In the analysis, we reserve the processing of data related to the influence of the economic factors, i.e. unemployment, low living standards, poverty, migration movements and labor market impacts, their impact as a potential risk to the security of the Republic of North Macedonia.

STRUCTURE OF THE SAMPLE

Selection of the sample is based on the distribution of certain socio-demographic characteristics among the employees in the security organizations.

Thus, the gender structure of the sample shows a certain disproportion in favor of the male sex (70:30), which is a result of the greater presence of the male sex in the security institutions of the Republic of Northern Macedonia, that is, it is about replicating the real situation in this domain. As for the age structure, the percentages show the largest number of respondents from the older category (over 40) - 30%, and the lowest participation of the youngest age category (up to 25 years) - 14%. The remaining age categories are in the range between these two intervals, and the value of the standard deviation (1,425) indicates the dispersion of the different age groups. The structure according to place of residence reveals the prevalence of the respondents from Skopje (93%), while the respondents from other cities participate with 7% only (5% from Western Macedonia, 2% from Eastern Macedonia). The ethnic structure indicates the highest participation of respondents from the Macedonian ethnic community (86%), members of the Albanian ethnic community participate with 6% in the sample, the Turkish with 3%, etc. The religious structure reveals the prevalence of the respondents who are Orthodox Christians - 81%, then Muslims -11%, atheists - 4%, etc. The structure according to education reveals that almost every other (47%) respondent has completed university education, and almost one in three (29%) has secondary-school education. 90% of the respondents are employed, in institutions / organizations that deal with security issues: the largest part - 43.5% are employed in private security agencies, and 41.3% in the state intelligence agency. In a smaller percentage, the sample includes police officers (6.5%), employees in the criminal police (5.4%) and the Security and Counter-Intelligence Directorate - 3.3%, which means that the research findings are created with the participation of all security organizations in the sample.

ECONOMIC DIMENSIONS OF SECURITY

Where do the security risks come from in the Republic of North Macedonia? Are they the result of a turbulent regional environment or the general globalization trend? The respondents, although not rejecting external influences, still consider that security risks mainly originate from "home", i.e. from the state itself (44%). However, a high percentage of respondents (39%) see regional security risks as the main reason for endangering security in the country, while additional 17% of respondentssee globalization as the source of the security risks in Macedonia(Table 1).

Table 1: *Origin of the security risks in the Republic of Macedonia*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Globalization	17	17.0	17.0	17.0
	Regional security risks	39	39.0	39.0	56.0
	Security risks in the country in country	44	44.0	44.0	100.0
	Total	100	100.0	100.0	

Because the respondents consider that the situation in the country is the main source of security threats, several important socio-economic issues (above all, unemployment and poverty) and their impact on security are analyzed for labor needs.

From here, respondents in the largest percentage (39.2%) consider that poverty "extremely much" affects personal safety, and an additional 29.9% think that poverty "has a great deal of influence" on personal safety. This means that almost 7 out of 10 respondents consider that the impact of poverty on personal safety is high or very high (Table 2)

Table no.2: *Impact of Poverty on Personal Security*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Extremely little	3	3,0	3,1	3,1
	Little	4	4,0	4,1	7,2
	Partly	23	23,0	23,7	30,9
	A lot	29	29,0	29,9	60,8
	Extremely	38	38,0	39,2	100,0
	Total	97	97,0	100,0	
Missing	System	3	3,0		
	Total	100	100,0		

The in-depth analysis reveals that certain socio-demographic characteristics influence the perception of the impact of poverty on security. Namely, Table 3 reveals that religion, that is, religious affiliation plays a certain role in the perception of the relationship of poverty-safety. Namely, 41% of Orthodox Christians believe that the impact of poverty on personal security is "extremely high", while only 18.2% of Muslims think the same. For most Muslims, in fact, the impact of poverty on personal security is relative (according to 45.5% of the respondents).

Table no.2: *Impact of Poverty on Personal Security*

Religion		Extremely little	Little	Partly	A lot	Extremely a lot	Total
Orthodox	Count	3	4	14	25	32	78
	% within	3.8%	5.1%	17.9%	32.1%	41.0%	100,0%
Muslims	Count	0	0	5	4	2	11
	% within	.0%	.0%	45.5%	36.4%	18.2%	100,0%
Catholic	Count	0	0	1	0	1	2
	% within	.0%	.0%	50.0%	.0%	50.0%	100,0%
Protestant	Count	0	0	1	0	0	1
	% within	.0%	.0%	100.0%	.0%	.0%	100,0%
Atheist	Count	0	0	2	0	2	4
	% within	.0%	.0%	50.0%	.0%	50.0%	100,0%
Other	Count	0	0	0	0	1	1
	% within	.0%	.0%	.0%	.0%	100.0%	100,0%
Total	Count	3	4	23	29	38	97
	% within	3.1%	4.1%	23.7%	29.9%	39.2%	100.0%

On the other hand, when answering the direct question, with the offered answers "yes" and "no", 2/3 of the respondents do not see poverty as a factor of influence on the general security. An attempt has therefore been made to differentiate their responses according to certain characteristics.

Table 4: *Does poverty affect general security*

			Yes	No	Total
Security organization	Administration for Security and Counter-intelligence	Count	3	0	3
		% within	100..0%	..0%	100.0%
	Intelligence agency	Count	10	28	38
		% within	26..3%	73..7%	100.0%
	Police officer	Count	5	1	6
		% within	83..3%	16..7%	100.0%
	Criminalistics police	Count	2	3	5
		% within	40..0%	60..0%	100.0%
	Private security agencies	Count	11	29	40
		% within	27..5%	72..5%	100.0%
Total		Count	31	61	92
		% within	33.7%	66..3%	100..0%

Crossing the view on the impact of poverty on general security, with the affiliation to a particular security organization, reveals certain differences. Namely, Table 4 reveals that employees of the Security and Counter Intelligence Directorate (fully) and police officers (on a large scale) see poverty as a factor in endangering general security. On the other hand, almost 3/4 of the respondents - employees of the Intelligence Agency and private security agencies (and 3/5 of the crime investigating police) - do not see poverty as an influential factor.

A square check test confirmed that there was a statistically significant link between employment in a particular security organization and the stance on the impact of security or vulnerability. Namely, the value of the Pearson Chi-Square of 14.223, 4 degrees of freedom and 5% permissible error, is higher than the minimum value – 9.488; which implies a connection between these variables. The Contingency coefficient of 0.366 indicates a significant correlation between the security organization and the position on the safety impact of security.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	14.223[a]	4	.007
Likelihood Ratio	14.584	4	.006
Linear-by-Linear Association	.761	1	.383
N of Valid Cases	92		

a. 6 cells (60.0%) have expected count less than 5. The minimum expected count is 1.01.

Symmetric Measures

	Value	Approx. Sig.
Nominal by Contingency	.366	.007
Nominal Coefficient		
N of Valid Cases	92	

Almost 2/3 of the respondents estimate that very high (30.9%) or extremely high (36.1%) affects personal safety, while only 7.2% consider this impact to be minor. (Table 5).

Table 5: *Impact of unemployment on personal safety*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Extremely little	7	7.0	7.2	7.2
	litle	4	4.0	4.1	11.3
	partly	21	21.0	21.6	33.0
	A lot	30	30.0	30.9	63.9
	Extremely a lot	35	35.0	36.1	100.0
	Total	97	97.0	100.0	
Missing	System	3	3.0		
Total		100	100.0		

Certain socio-demographic characteristics of the respondents influence their attitude towards the unemployment-personal link security. Thus, the structure of responses among younger respondents reveals greater heterogeneity in the answers, than in the elderly. Thus, as much as 21.4% of respondents under 25 years of age believe that unemployment affects "very little" personal security, and 50% of them that unemployment affects "extremely much". Much greater consistency exists in older age categories (36-40 years) and especially over 40 years, where it is evident that most of the answers (over 70%) are concentrated in the categories "extremely much" and "many", and in minor percentages (3.6%, or 6.3%, respectively), attitudes for "extremely low" and "small" influence are present.

Table 6: *Impact of unemployment on personal safety*

Age			Extremely little	Little	Partly	A lot	Extremely a lot	Total
	To 25 years	Count	3	0	2	2	7	14
		% within	21.4%	.0%	14.3%	14.3%	50.0%	100.0%
	26-30 years	Count	2	1	3	7	4	17
		% within	11.8%	5.9%	17.6%	41.2%	23.5%	100.0%
	31-35 years	Count	0	0	7	8	7	22
		% within	.0%	.0%	31.8%	36.4%	31.8%	100.0%
	36-40 years	Count	1	1	4	4	6	16
		% within	6.3%	6.3%	25.0%	25.0%	37.5%	100.0%
	More 40 years	Count	1	2	5	9	11	28
		% within	3.6%	7.1%	17.9%	32.1%	39.3%	100.0%
Total		Count	7	4	21	30	35	97
		% within	7,2%	4.1%	21.6%	30.9%	36.1%	100.0%

Crossing the attitude about the impact of unemployment on general security, with the affiliation to a certain security organization, again reveals certain differences. Namely, Table 7 reveals that the employees in the Security and Counter-intelligence Administration (100%) see the unemployment factor as a security threat. On the other hand, most of the respondents - employees of the Intelligence Agency and private security agencies, the police and the criminal police - do not see unemployment as an influential factor in the domain of security.

Table 7: *Does unemployment affect general security?*

Security organization				Total
		Yes	No	
Administration for Security and Counter-intelligence	Count	3	0	3
	% within profesion	100.0%	.0%	100.0%
Intelligence agency	Count	12	26	38
	% within profesion	31.6%	68.4%	100.0%
Police officer	Count	1	5	6
	% within profesion	16.7%	83.3%	100.0%
Criminalist police	Count	2	3	5
	% within profesion	40.0%	60.0%	100.0%
Private security agencies	Count	9	31	40
	% within profesion	22.5%	77.5%	100.0%
Total	Count	27	65	92
	% within profesion	29,3%	70.7%	100.0%

CONCLUSION

- Security risks originate from "home"

Although they do not rule out external influences, security service employees still consider that security risks mainly originate from "home", that is, from the situation in the country itself.

- Impact of unemployment and poverty on personal security - high and extremely high

Most employees in security organizations perceive poverty and unemployment as factors that "very" and "extremely much" affect personal security. The affiliation to a particular security organization affects the attitude of the impact of poverty and unemployment on general security.

The affiliation to a particular security organization affects the attitude of the impact of poverty and unemployment on general security

Employees in the Security and Counter-Intelligence Directorate (fully) and police officers (on a large scale) see poverty as a factor in endangering general security, unlike employees in other security organizations. Also, employees in the Security and Counterintelligence Administration (100%) see the unemployment factor as a security threat, unlike employees in other security organizations that do not share this attitude.

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THE CONSTITUTION OF SERBIA – WEAKNESSES AND SUGGESTIONS FOR THEIR ELLIMINATION

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Abstract: This paper analyzes the constitutional system of the Republic of Serbia that has been established by the Constitution of 2006. That Constitution has accepted principles of a liberal-democratic model of constitutionalism and a "rationalized" parliamentarianism. Special attention is paid to the constitutional development of Serbia in last two centuries. Questions that are analyzed in detail are the principles of the Constitution of Serbia of 2006, human and minority rights, position and relations of central authorities and territorial organization of the state. In the end, there are the appropriate conclusions and proposals for improving of the existing constitutional framework.

Keywords: – Constitution of the Republic of Serbia of 2006. – Constitutional history of Serbia. – Parliamentary system. – Autonomous province. – Constitutional reform.

PRE-HISTORY OF THE DEVELOPMENT OF THE CONSTITUTION

Serbia is a country with very rich and turbulent constitutional history. During last two centuries, Serbia was a monarchy and a republic, it was an independent state and part of wider state communities and since 1835 until today Serbia had brought numerous constitutional acts. In the 19th century, although it has not gained formal independence from the Ottoman Empire, Principality of Serbia had three constitutions that were adopted in 1835, 1838 and 1869 (Marković, 2014: 96). After gaining formal independence at the Berlin Congress of 1878, Serbia became only 27th independent state in the world. Up to the World War I, Serbia (elevated to the rank of Kingdomin1882) had brought three constitutions: in 1888, 1901 and 1903 (Jevtić, Popović, 1997: 136).

Special significance in the constitutional genesis of Serbia had the Constitution of the Kingdom of Serbia of 1888. With its adoption Serbian constitutionality moved towards the most liberal constitutional tendencies in Europe. "In terms of the Constitution of 1888, our science and the public has generally accepted opinion that this is the best Serbian constitution, of course together with its little 'complemented and improved edition', the Constitution of 1903" (Jovičić, 1999:

311). Although the Constitution contained some solutions that today seem very retrograde (i.e. state was not separated from the church, although such provisions still exist in the constitutions of some European countries, such as Norway and Denmark), it was at the time of its adoption, and long time after, a very progressive constitutional text. Thus, the Constitution of 1888 is probably the best Serbian constitution, taking into account the time and the circumstances in which it was adopted. But perhaps its greatest weakness lies there – it was too modern for Serbian society of that time, so it was not a "mirror of the social reality" (Stanković, 2014: 20). The quality of the constitutional text was nearly flawless, devoid of ambiguous provisions and legal gaps. Moreover, proclaimed human and civil rights were directly applied on the basis of the Constitution, which was the best guarantee of their inviolability. When it comes to the system of government, Constitution of 1888 introduced a parliamentary system with well-balanced separation of powers and an independent judiciary. The National Assembly had finally become a true legislative power (along with the King), and a system of proportional distribution of seats and free deputy mandate were also established. This Constitution experienced its "second youth" after returning of the Karadjordjevic Dynasty to the Serbian throne until the end of the World War I, in a somewhat amended text. It was formally applied as the new Constitution of 1903, although it was in essence a repeated Constitution of 1888. In both periods of the validity of this constitutional text (1888-1894 and 1903-1918), Serbia was a parliamentary monarchy which followed the latest trends of the European constitutionality.

From 1918 to 2006, Serbia was not an independent state, but part of wider state communities. After World War I, as one of the winner states, Serbia was the backbone of the unification of the South Slav peoples in the so-called "First Yugoslavia", which was initially named the Kingdom of Serbs, Croats and Slovenians. The Kingdom was a unitary state, despite the fact that there were clearly expressed reasons– national, historical, geographical and economic – for the establishment of a federation. That country, which in 1929 changed its name to the Kingdom of Yugoslavia, brought two constitutions. The Constitution of 1921 was the constitution of a parliamentary monarchy, while the Constitution of 1931 quit parliamentary principles and strengthened the position of the monarch, which places it into the group of authoritarian constitutions of the time (together with the constitutions of Portugal of 1933, Austria of 1934 and Poland of 1935).

After the World War II, Yugoslavia made considerable constitutional turnaround. It has adopted a socialist model of constitutionality, whose main comparative model was the Constitution of the Soviet Union of 1936, the famous "Stalin Constitution". Such constitutional system was not a "fertile" ground for classical liberal-democratic constitutionality. The principle of "democratic centralism", which was the basis of state organization from the highest to the lowest level, implied a lack of self-government, while the single-party system meant the actual decision making at the level of the Communist party, rather than at the national or local authorities. Major novelty in the post-war Yugoslav constitutional system was a change of the state structure from unitary to federal, where Serbia was one

of the six federal units in the Federation (other five were Slovenia, Croatia, Bosnia and Herzegovina, Montenegro and Macedonia). Socialist Yugoslavia has brought three complete federal constitutions (1946, 1963 and1974) and one constitutional law (1953), in which constitutional matters have not been regulated comprehensively (Đorđević, 1989: 109). Serbia as the Yugoslav federal unit brought its own respective constitutions, which had to be in accordance with corresponding federal constitutions. This period of development of constitutionalism in compliance with socialist principles is almost without any importance for the present constitutional order of Serbia, except the fact that socialist Yugoslavia had constitutional judiciary, starting from 1963 (Stanković, 2012: 48).

By adopting the Constitution of 1990, although at that time it was still a federal unit within the socialist Yugoslavia, Serbia restored the tradition of the liberal-democratic model of constitutionality. This tradition Serbia cherished back in the 19th century and the first half of the 20th century as an independent state. For this reason, the Constitution of the Republic of Serbia of 1990, in addition to the Constitution of the Kingdom of Serbia from 1888, is considered the most significant for the development of Serbian constitutionality. Basic achievements of liberal-democratic constitutionalism are two principles – the principle of popular sovereignty and the principle of separation of powers. Modern democracy, therefore, rests on two grounds: first, all the power comes from the citizens, and they exercise it either directly or through their freely chosen representatives, and second, three main functions of state power (legislative, executive and judicial) have different holders. Serbian Constitution of 1990 stipulated the so-called "organic concept" of state functions, under which three classic state functions are defined in relation to the organs that exercise them – constitutional and legislative powers belonged to the National Assembly, the executive power to the Government and the judiciary to the courts. Two organs remained outside of this classic division of powers: President of the Republic, who had the so-called "moderating power", and the Constitutional Court, which was entrusted with the function of judicial review (Art. 9 of the Constitution of 1990).

After secession of four Yugoslav federal units in 1991 and 1992 (Slovenia, Croatia, Macedonia and Bosnia and Herzegovina), the third "Yugoslav" state was formed as a two-member federation consisting of only two republics – Serbia and Montenegro. The Constitution of the Federal Republic of Yugoslavia of 1992, similarly to the Constitution of the Republic of Serbia two years earlier, turned back to the principles of liberal-democratic constitutionalism, breaking up that way with the socialist model of constitutionality. In Serbia, during the entire existence of the Federal Republic of Yugoslavia, the Constitution of 1990 was in force. Federal Republic of Yugoslavia existed just little longer than a decade, because in 2003 it was replaced with the State Union of Serbia and Montenegro. The State Union was, as it turned out, the last in a series of steps towards the final separation of the Republic of Serbia and the Republic of Montenegro and their constitutional and international constituting as independent states. That form of union is closest to the theoretical model of real union (and the most notable example of

real union in history was the Austro-Hungarian Empire), with only several common competencies, among which essential were only competencies in foreign affairs and defense (Marković, 2014: 146-147).

Changes in the constitutional arrangement of the Republic of Serbia were made following the secession of Montenegro from the State Union of Serbia and Montenegro in 2006, when Serbia, after almost nine decades, once again became an independent state, which was one of the main reasons for the adoption of a new Constitution of 2006. Conceptually speaking, the adoption of the Constitution of 2006 was not a revolutionary constitutional change in relation to the Constitution of 1990, given that the current constitution adopted almost all of the key solutions that its predecessor contained, with certain adjustments, which in some places are a step forward and in others a step backwards.

PRINCIPLES OF THE CONSTITUTION

The Constitution of the Republic of Serbia of 2006 is an expression of the constitutional continuity in relation to the Constitution of 1990, both in formal and substantive sense. In formal sense because it was passed by the revision procedure which was envisaged by the Constitution of 1990, and in substantial sense because it accepted almost all principles that had been provided by its predecessor (Marković, 2007: 7).

The entire text of the Constitution is divided into ten parts. The first one is entitled "Principles of the Constitution" and contains 17 provisions (principles). A special, difficult procedure is prescribed for their change (Art. 203 of the Constitution). All of the principles can be divided into three groups: 1) general principles; 2) principles relating to the formal characteristics of the state, and 3) principles relating to human and minority rights.

The first group of principles includes *general principles* of the Constitution. They refer to the sovereignty holders (Art. 2), rule of law (Art. 3), division of powers (Art. 4), political parties (Art. 5), prohibition of the conflict of interests (Art. 6), secularity of the State (Art. 11) and provincial autonomy and local self-government (Art. 12). These principles have a fundamental importance and completely determine the constitutional system of Serbia. Constitution accepts the principle of popular sovereignty (Art. 2), according to which "sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives". It established the so-called semi-direct democracy, in which, on the one hand, there is a popular representation (parliament), but, on the other, citizens themselves have the opportunity to participate directly in the exercise of state power through referendums and people's initiatives (Stanković, 2015: 138). The principle of the rule of law (Art. 3) is defined in its "classical" form, as it was determined by a famous British constitutionalist Albert Venn Dicey long time ago (Dicey, 1979: 193-194), because Constitution stipulates that it shall be exercised through free and direct elections,

constitutional guarantees of human and minority rights, separation of powers, independent judiciary and observance of Constitution and Law by the authorities. When it comes to the separation of powers (Art. 4), Constitution provides that "government system shall be based on the division of powers into legislative, executive and judiciary", while relation between branches of powers shall be based on "balance and mutual control", but judiciary power shall be independent. This provision clearly shows that the principle of division of powers is accepted in its "soft" form, typical for a parliamentary system of government. Constitution anticipated a political pluralism as one of its principles (Art. 5), because "the role of political parties in democratic shaping of the political will of the citizens shall be guaranteed and recognized and that political parties may be established freely". This principle is characteristic of constitutions of post-socialist countries, which had a single-party system in their relatively recent history. On the other hand, it is rare in classic democracies, because it is included in the constitutional freedom of association. The Republic of Serbia is a secular state, churches and religious communities are separated from the state and no religion may be established as state or mandatory religion (Art. 11). It is important to point out that the Constitution raised the right to local self-government and provincial autonomy to the rank of constitutional principle (Art. 12), which made this form of vertical division of powers very significant. State power is restricted by the right of citizens to provincial autonomy and local self-government. The right of citizens to provincial autonomy and local self-government shall be subjected only to supervision of constitutionality and legality, while the control of suitability (opportunity) of their work is disabled (Stanković, 2015: 107).

The second group of the constitutional principles refers to the *formal characteristics of the state*. These include: definition of the Republic (Art. 1), symbols of the State (Art. 7), territory and border (Art. 8), Capital City (Art. 9), language and script (Art. 10) and international relations (Art. 16). State symbols, territory and borders, Capital City and language and script are hallmarks of the identity of the state, i.e. its legitimacy with which it is identified in the international community (Marković, 2007: 10). So, a special explanation is necessary only for two principles from this group – definition of the Republic and the principle of international relations. The Constitution stipulates that "The Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values". Therefore, the Constitution of 2006 resorted to "ethnic definition", wishing to express that the Republic of Serbia is a state of all Serbian people, including those members of the Serbian people who live in other countries (Venice Commission, Opinion No. 405/2006, 4). This clearly derives from the constitutional provision according to which "the Republic of Serbia shall develop and promote relations of Serbs living abroad with the kin state" (Art. 13.2). On the other hand, the Constitution has also clearly expressed its loyalty to the international law, stipulating that "the foreign policy of the Republic of Serbia shall be based on generally accepted prin-

ciples and rules of international law" (Art. 16). The Constitution additionally provides that generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly, but ratified international treaties must be in accordance with the Constitution. Anyway, the ratified international treaties, according to the Constitution (Art. 194), have a lower legal force than the Constitution, but higher than the law (Marković, 2007: 39).

Finally, a third group of constitutional principles relates to *human rights and minority rights*. This group consists of the principles of gender equality (Art. 15), protection of citizens and Serbs abroad (Art. 13), protection of national minorities (Art. 14) and status of foreign nationals (Art. 17). The State guarantees the equality of women and men and develops equal opportunities policy, protects the rights and interests of its citizens abroad, develops and promotes relations of Serbs living abroad with the kin state, protects the rights of national minorities and guarantees special protection to national minorities for the purpose of exercising full equality and preserving their identity. Pursuant to international treaties, foreign nationals in the Republic of Serbia have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law (Marković, 2014: 490).

In the end, the preamble to the Constitution of 2006 can be classified as a constitutional principle, because it is not just a solemn text that precedes the normative part of the Constitution, but has a legally binding effect. Primarily, the reason for that is that a constitutional norm prescribes a process of change of the preamble (Art. 203 of the Constitution), which implies that the decision of two thirds of the deputies in the National Assembly must be verified by citizens at the mandatory referendum (Marković, 2007: 43).

FUNDAMENTAL RIGHTS AND FREEDOMS

The Constitution of the Republic of Serbia of 2006 pays a lot of attention to human rights. They are a constitutive element of every constitution to that extent that Maurice Hauriou says that every state has two constitutions at the same time - a "social constitution", which regulates the position of citizens, and a "political constitution", which determines the position of the government. The second part of the Constitution of Serbia, which is named "Human and Minority Rights and Freedoms" (Art. 18-81), is a kind of mixture of human rights provided in the most important international documents (The European Convention of Human Rights of 1950, International Covenants of the UN of 1966 etc.) and minority rights stipulated in the Framework Convention for the Protection of National Minorities of the Council of Europe of 1995 (Marković, 2007: 12-13). It is very important that the Constitution stipulates (Art. 18) that human and minority rights guaranteed by the Constitution shall be implemented directly. The law may prescribe the manner of exercising these rights only if explicitly stipulated in the

Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right. Law, thereby, should not affect the substance of the guaranteed rights. Provisions on human and minority rights shall be interpreted to the benefit of promoting "values of a democratic society", pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.

The Constitution provides even broader protection of human rights with a norm on the hierarchy of legal acts (Art. 194), by which it gives to the international treaties legal force above statutes. This means that, first, ratified international treaties have lower legal force than the Constitution but higher legal force than the statute, and, secondly, courts and other state authorities are obliged to apply the provisions of ratified international treaties, thus providing citizens with comprehensive legal protection.

Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right (Art. 20). Attained level of human and minority rights may not be lowered. When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.

The Constitution of the Republic of Serbia of 2006 stipulates a *wide range of human rights* of all three generations - civil, political, economic, social, cultural, as well as the rights of national minorities. The Venice Commission in its Opinion on the 2006 Constitution of Serbia stated: "In sum, nearly 70 Articles are dedicated to fundamental rights, i.e. approximately one third of the 206 Articles of the Constitution. From an international and a comparative perspective this number is quite remarkable, in absolute and in relative terms. It shows that Human Rights form an integral and important part of constitutional law and it makes it clear that attention is paid to this element and basic feature of a democratic society in the sense of European Standards such as the European Convention on Human Rights" (The Venice Commission, Opinion No. 405/2006, 6-7). On the other hand, there is an opinion that this "part of the Constitution is, normatively speaking, a failure", because "it is unnecessarily drawn out and detailed" (Marković, 2007: 11).

Finally, the Constitution contains a number of mechanisms to ensure the *realization and protection of constitutionally guaranteed rights*. The most important guarantee of realizing the constitutional rights is the direct implementation of guaranteed rights (Art. 18) and restriction of human and minority rights only if the Constitution permits such restriction and for the purpose allowed by the Constitution (Art. 20). From the special legal tools of protection it is important to

mention the right to equal protection of rights and legal remedy (Art. 36.2), right to judicial protection (Art. 22), constitutional complaint(Art. 170), administrative litigation (Art. 198), right to legal assistance (Art. 67), right to rehabilitation and compensation (Art. 35) and the protection of Civic Defender (Art. 138).

HORIZONTAL ORGANIZATION OF GOVERNMENT

The system of government in the Republic of Serbia according to the Constitution of the 2006 is specific – by its external characteristics it is a semi-presidential system, and by an internal it is "rationalized" parliamentary system – *parlamentarisme rationalisé* (Favoreu et. al, 2010: 398). If we take purely a formal criterion for differentiation of parliamentary and semi-presidential system, i.e. the method of election of the President of the Republic, there is no doubt that the system of government in Serbia is semi-presidential, because President of the Republic of Serbia is elected directly. On the other hand, if we adopt an essential criterion, i.e. the position and powers of the central state authorities (parliament, government and head of the state) then Serbian system of government is without doubt a parliamentary system. The President of the Republic of Serbia, however, does not have broad powers which would be the logical consequence of the great democratic legitimacy which brings direct election. In other words, his constitutional position is much closer to the position of the monarch in a parliamentary monarchies– England, Belgium, the Scandinavian countries (Bradley, Ewing, 2007: 263-268), than to the President of the Republic in the "real" semi-presidential systems – France, Russia (Favoreu et. al., 2010: 675-688). The holder of an active executive power in Serbia is the Government, while the President of the Republic is a passive, moderating power (*pouvoir modérateur*), as it was called by Benjamin Constant and Carl Schmitt (Schmtt, 2008:312). This authority disables blocking of the institutions, prevents escalation of conflicting opinions and leads to joint conclusions and to harmony between all political authorities in the country.

National Assembly

The Parliament is one of the greatest achievements of modern democracy. In countries with a parliamentary system of government, parliament has a central place in political life, because in addition to its core legislative function, it has another equally important function – control over the work of the executive.

Serbian parliament is called National Assembly. The National Assembly of the Republic of Serbia is unicameral, because Serbia is a unitary state. It consists of 250 deputies, who are elected on direct elections by secret ballot. In the National Assembly, equality and representation of different genders and members of national minorities shall be provided (Art. 100). According to the Constitution, "the National Assembly shall be the supreme representative body and holder of

constitutional and legislative power in the Republic of Serbia" (Art. 98). This constitutional provision is not entirely correct, because constitutional power is not performed only by the National Assembly, but this power is shared with the electorate. The Constitution of the Republic of Serbia belongs to the category of rigid constitutions and can be changed only by votes of two-thirds majority in the National Assembly, followed by majority of citizens in a referendum, which is in some cases mandatory, and in the others facultative (Art. 203.6).

The Constitution of 2006 gave important and numerous responsibilities to the National Assembly (Art.99) and they can be classified into three groups: 1) constitutional and legislative functions; 2) competences of the National Assembly as a representative of popular sovereignty and 3) achieving a balance and cooperation between authorities. The first group of competencies has a normative character and includes adopting and amending of the Constitution, enacting laws and other general acts (including budget), granting amnesty for criminal offences, ratification of international contracts and giving previous approval for the Statute of the autonomous province. Secondly, as a representative of popular sovereignty, the National Assembly decides on changes concerning borders, decides on war and peace and declares state of war and emergency, adopts defense strategy, calls for the Republic referendum, adopts development plan and spatial plan and supervises the work of security services. Finally, the third group of competencies – achieving a balance and cooperation between authorities – is of crucial importance for the functioning of system of government in the Republic of Serbia. In that capacity, the National Assembly: a) decides on the dismissal of the President of the Republic (with the prior decision of the Constitutional Court that the President of the Republic had violated the Constitution); b) elects the Government, supervises its work and decides on expiry of the term of office of the Government and ministers (political control of the Government) and c) appoints holders of other state functions (judges of the Constitutional Court, President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, Governor of the National Bank of Serbia, Civic Defender, etc.).

Most critics of the domestic and international expert society regarding the constitutional norms on the National Assembly, caused a provision (Art. 102.2) which prescribes that "under the terms stipulated by the Law, a deputy shall be free to irrevocably put his/her term of office at disposal to the political party upon which proposal he or she has been elected a deputy". This created an opportunity to convert free deputy mandate to politically (party) imperative mandate, which caused a flood of criticism (Pajvančić, 2009: 129). However, recent changes of legislation of 2011 have completely annulled this constitutional possibility, so a deputy mandate in Serbia is completely free today and there is no chance to put it at the disposal of the political party (Stanković, 2011: 218). Therefore, the mentioned constitutional norm should be deleted from the text of the Constitution during the first constitutional revision.

The parliamentary system is a system of government in which legislative authority may affect the existence of the executive and *vice versa* (Bradley, Ewing, 2007: 87-88). It is, therefore, a system of equilibrium, in which the balance is achieved by two means: the right of parliament to dismiss the government, on the one hand, and the right of the executive to dissolve parliament, on the other. Dissolution of parliament is a counterweight to its right to vote no confidence to the government and thus take away its mandate. In the Republic of Serbia, the President of the Republic may dissolve the National Assembly, upon the elaborated proposal of the Government (Art. 109). This means that no organ of bicephalous executive power cannot dissolve parliament independently, but both bodies in cooperation. This is the expression of the function of the President of the Republic as a moderator of the constitutional system. In addition to the dissolution of the National Assembly by the will of the executive power, there are four cases of dissolution *ex constitutione*, when the President of the Republic is obliged to dissolve the National Assembly if it fails to elect the Government within the prescribed period (90 days from the day it has been constituted – Art. 109, or 30 days from the time the Government "fell" in the National Assembly –Art. 130-132). This dissolution by force of the Constitution is an asset of "rationalization" of parliamentarianism in the Constitution of Serbia and it contains some elements of the so-called "constructive vote of no confidence" to the Government, which was first time introduced to the world of constitutionality by the Basic Law of Federal Republic of Germany in 1949.

Considering the fact that the Constitution of the Republic of Serbia accepted the principle of the popular sovereignty, which usually involves a semi-direct democracy (Art. 2), it is important that citizens themselves have the opportunity to directly affect decisions about the most important legislative acts through popular initiative (Art. 107, 203) and a referendum (Art. 108, 203). Popular initiative is a possibility of citizens to propose changes in the Constitution or a law they want, while referendum enables them to decide on confirmation of the proposal about amending the Constitution or adopting a particular law. In other words, the popular initiative allows citizens to participate in a phase of proposing regulations, while their participation in the referendum enables them to participate in a phase of their adoption and entry into force. Hypothetically speaking, these two institutes, whose widest application still exist in Switzerland, provide virtually "perfect democracy": out of three stages of the legislative process (phases of initiative, debate and adoption), in the hands of the parliament fully remains just one phase – debate.

Executive – President of the Republic and Government

Countries with parliamentary system of government are characterized by bicephalous executive, consisting of Head of State and the government. Head of State is usually stable and inoperative part of the executive; on the other hand, the

government is unstable and operative part of it. This means that Head of State has no operational powers and he is not responsible for his work, because the government takes over the responsibility for his acts through the institution of ministerial countersignature. The government, by contrast, is the body that has the levers of power in its hands, but it is politically responsible before the parliament. As explained, the system of government in the Republic of Serbia is a semi-presidential by its external features, but it is essentially parliamentary system. The holder of an active executive power is the Government, and the President of the Republic has the moderating authority – prevents the blockade of institutions and provides harmony (Schmitt, 2008: 312).

The President of the Republic "shall express state unity of the Republic of Serbia" (Art. 111 of the Constitution). It is therefore of great importance that the President is neutral, which is provided by a direct election (Art. 114). The President of the Republic is thus the representative of all citizens and has popular legitimacy (Marković, 2014: 324). The term of office of the President of the Republic lasts five years, and no one can be elected to a position of the President of the Republic more than twice (Art. 116).

When it comes to the powers of the President of the Republic of Serbia, they are considerably less than the powers of the presidents in comparative semi-presidential systems, and only slightly larger than powers of Head of State in the parliamentary systems (where Head of State is either a monarch or a president elected by parliament and not directly). At the same time, the powers of the President of the Republic under the Constitution of 2006 are somewhat larger than those under the previous Constitution of 1990. All powers of the President of the Republic (Art. 112 of the Constitution) can be divided into three groups: 1) classical powers of Head of State; 2) mediating powers and 3) powers in extraordinary situations. Classical powers of the President of the Republic are: to represent the Republic of Serbia in the country and abroad, to promulgate laws upon his decree, to propose to the National Assembly holders of positions, to appoint and dismiss ambassadors, to receive letters of credit and revocable letters of credit of foreign diplomatic representatives, to grant amnesties and to award honors and command the Army. The second group of powers is mediating authority, when the President of the Republic acts as a mediator in relations between the National Assembly and the Government. In that capacity, the President of the Republic proposes the National Assembly a candidate for the Prime Minister (after considering views of representatives of elected lists of candidates), has suspending legislative veto and dissolves the National Assembly upon the elaborated proposal of the Government. These powers especially reflect the "weakness" of the position of the President of the Republic of Serbia. Firstly, the President of the Republic of Serbia, unlike the presidents in semi-presidential systems, has no right to independently choose the Prime Minister, but only to propose a candidate to the National Assembly. And secondly, the President of the Republic of Serbia has no right to dissolve the National Assembly on his own, as in semi-presidential systems (Fraisseix, 2006: 167-169). The right of dissolution is "shared" with the

Government. The third group of powers of the President of the Republic are competencies in extraordinary situations, such as state of emergency and war. The President of the Republic has subsidiary jurisdiction in these cases only if the National Assembly is unable to convene, and this jurisdiction is then exercised together with the President of the National Assembly and the Prime Minister (Art. 200-201of the Constitution).

The mandate of the President of the Republic may be terminated before the expiry upon his/her will (resignation) or against his/her will (dismissal).The resignation is a personal gesture, and shall be submitted in written form to the Chairman of the National Assembly (Art. 117). The term of office terminates *ipso facto* when the resignation of the President of the Republic arrives to the National Assembly. Dismissal is a form of legal, not political responsibility, because it can be done only because of violation of the Constitution (Art. 118). The President of the Republic can be dismissed for the violation of the Constitution, upon the decision of the National Assembly, by the votes of at least two thirds of deputies if the Constitutional Court decides that the President of the Republic has violated the Constitution. The procedure of dismissal is one of weak points of the Constitution of 2006, as the President of the Republic can be dismissed easier than elected, which decreases authority of the function, and is not dismissed by the one who has entrusted him the mandate – citizens (Marković, 2014: 332). According to the previous Constitution of 1990, the responsibility of the President of the Republic was realized before the electoral body, which was much more in harmony with the direct election.

When the President of the Republic is prevented from performing the duties, the term of office of the President of the Republic ends before the expiry of the period of time for which he/she has been elected, the President of the Republic shall be replaced by the Chairman of the National Assembly (Art. 120). The Chairman of the National Assembly may replace the President of the Republic for maximum three months, whereby the Chairman of the National Assembly does not have all the powers. This limit has been introduced because the right to replace the President of the Republic under the previous Constitution of 1990 was not time-limited, so it was abused by the chairman of the parliament who performed as Head of State more than a year continuously.

The organ of operative executive power in the Republic of Serbia is the *Government* (Art. 122 of the Constitution), because it holds almost the entire executive power in its hands. In other words, the Government of the Republic of Serbia has all the features typical for a parliamentary system of government. Its competences (Art. 123) can be divided into four groups:1) establishing and pursuing policy (external and internal); 2) executing laws and other general acts; 3) directing and adjusting the work of public administration bodies and performing supervision of their work and 4) representing the Republic of Serbia and managing its property. The Government, therefore, has a triple role: political, executive and controlling. In the area of foreign policy, the Government keeps relations

with other countries, international organizations and institutions, establishes and breaks off diplomatic relations, participates in the conclusion, ratification and implementation of international treaties, decides about membership in international organizations, etc. In the area of internal policies, the Government proposes laws, the budget and other general and individual acts to the National Assembly and gives opinions on draft laws of other authorized proponents.

The Government is politically accountable for its work to the National Assembly, which elects and dismisses it. The Government is elected if the majority of the total number of deputies votes for its election (Art. 127.4). Members of the Government may not be deputies in the National Assembly (the so-called "non-deputy government"). The model of "non-deputy government" is characteristic of the Fifth French Republic, because President Charles De Gaulle thought that no one can ever be "the controller and controlled one" at the same time, i.e. a member of government cannot and will not control himself or herself as a member of parliament (Favoreu et. al., 2010: 690). The Government is accountable to the National Assembly for the policy of the Republic of Serbia, for enforcement of laws and other general acts of the National Assembly, as well as for the work of the public administration bodies (Art. 124). Its political responsibility is realized through classic institutes through which the parliament informs about its work (a deputy question, interpellation etc.). And non-confidence can be voted by the same majority required for its selection (Art. 130-131). However, the responsibility of the Government of Serbia is "narrowed" in relation to responsibility in other parliamentary systems, because there is no institute of ministerial countersignature, which is the reason why the Government is only responsible for its own acts and not for the acts of the President of the Republic. It is logical solution if we have in mind the democratic legitimacy of the President of the Republic, given by a direct election. The Government whose term of office has expired (the so-called "technical government") may only perform affairs stipulated by the Law, until the election of the new Government (Art. 128.4).

The Constitution of 2006 has strengthened the position of the Government in relation to the previous Constitution of Serbia of 1990, so it has predicted special mechanisms for the stabilization of the Government, which was called a "rationalization of parliamentarianism" (*rationalisation du parlementarisme*) by the famous Russian-French constitutionalist Boris Sergeyevich Mirkin-Getzevich (Pinon, 2005: 61-123). Firstly, the Constitution of 2006 has anticipated formal mechanisms that make fall of the Government in parliament more difficult: an increased number of delegates needed to initiate an interpellation and voting of no confidence to the Government and longer terms in processes of interpellation and voting of no confidence to the Government (Art. 129-131). Secondly, the Constitution prescribed relatively short deadline (30 days) in which parliament must elect a new Government after the old has ceased to function; otherwise the National Assembly will be dissolved *ex constitutione* (Art. 130-132). Thirdly, the Constitution established "non-deputy" Government (Art. 126), which made that authority much more independent from the National Assembly. And fourth-

ly, the Constitution has strengthened the position of the Prime Minister, who is not only a "first minister" or *primus inter pares*, but has special powers which make this position closer to the position of Prime Minister in the countries that have adopted the model of chancellor (*Kanzlerprinzip*). The Prime Minister is a personification of whole Government – the Prime Minister manages and directs the work of the Government, takes care of coordinated political activities of the Government, coordinates the work of members of the Government, represents the Government and has th8e so-called "golden voice" in cases of shared voting at the meeting of the Government. Resignation of the Prime Minister terminates the term of office of the whole Government (Art. 132).

Judiciary

One of the basic requirements of the rule of law is an independent judiciary. Unlike the two political powers – legislative and executive – whose relationship rests on checks and balances, judicial power as a professional function must be independent. This can be ensured only by the Constitution, as both legislative and executive branches are subjected to the Constitution. So, the supreme law must protect judicial power from the possibility of the influence of political powers. This means that the Constitution itself must turn off any possibility of legislative and executive to violate constitutionally guaranteed status of judiciary. In addition, independent judiciary is a direct consequence of the principle of separation of powers, independent judiciary acts on that principle in turn, because it is responsible to "keep the balance" in the system of government, since its role is to prevent the abuse of power. That is why James Bryce concluded long time ago that there was no better proof of the validity of a rule than the work of its judicial system (Brajs, 1933: 88). In order to ensure a proper position of the judiciary in the constitutional system, Serbian Constitution of 2006 provides plenty of constitutional principles about judicial power: autonomy and independence of courts, constitutionality and legality, obligatory nature of court decisions, court trials conducted by judge panels (collegiality of conducting trials), citizen participation in the trial (system of mixed jury), public character of the hearing before a court, permanence of judicial office, judicial immunity and incompatibility of judicial office with other public offices, activities or private interests (Art. 142, 145, 146, 149-152).

Undoubtedly, among the most important guarantees of the independence of judges is permanent tenure of their office and methods of their appointment and dismissal. The permanent tenure of office provides the ability to resist the influence of political powers and perform its function professionally. When a judge fears for its own position because of the possibility of being subjected to re-election, he/she cannot be independent in the enforcement of law. In that situation, a judge consciously or unconsciously thinks about the will of the political and financial elite. The Serbian Constitution predicts the permanent tenure of office, with the exception of the first election to a judicial position, which lasts three

years and can be considered a kind of "probation period". The Venice Commission in its opinion (Opinion No. 405/2006, 14) on the Serbian Constitution of 2006, presented compliments to the duration of this trial mandate.

Status matters concerning judicial authority are entrusted with High Judicial Council, which is constitutionally defined as an "independent and autonomous body which shall provide for and guarantee independence and autonomy of courts and judges" (Art. 153). Although the establishment of this body is a step forward compared to the Constitution of 1990, according to which judges were elected by political authority (the National Assembly), the complete independence of the High Judicial Council is not provided, because all of its 11 members are directly or indirectly elected by the National Assembly. In other words, emancipation from the influence of political factors in the selection of judges has stopped halfway.

Another issue regarding the constitutional position of the judiciary in Serbia is the absence of norms that would prescribe termination of office and dismissal of judges in detail, but the regulation of these issues are left to the legislator (Art. 148). As it is said by Ratko Marković, "the deconstitutionalization of the grounds for termination and for relieving from judicial office weakens the position of the judiciary as an independent branch of power in the system of governance" (Marković, 2007: 22).

Finally, the only court whose existence is *expressis verbis* provided by the Constitution is the highest judicial authority in the Republic of Serbia – Supreme Court of Cassation, and the legislator is authorized to arrange the structure of the courts. There is no doubt that the Constitution should contain a little more detailed provisions on the court network.

In summary, the position of the judiciary in Serbia can be improved. It seems that if a constitutional revision comes soon, framers of the Constitution will have to correct their errors made in a period of the adoption of the Constitution and to eliminate the influence of political authorities to the selection of judges, as well as to prescribe the rules about the dismissal of judges in order to give the true meaning to the constitutional principle of the independence of the judiciary.

Other constitutional organizational bodies

In addition to legislative, executive and judicial organs, the Constitution of the Republic of Serbia of 2006 prescribes the existence of some other high authorities, which have an enormous importance for the functioning of the constitutional system.

The Constitutional Court is established as an organ that performs specific state function–the function of judicial review, in the sense in which it was defined by Hans Kelsen (Kelsen, 1928: 201). This is a centralized system of judicial review, as determined by Mauro Cappelletti (Cappelleti, 1989: 132-133). Constitutional

judiciary in Serbia has a tradition of more than half a century, as the Constitutional Court of Serbia was founded already in 1963, during the era of socialist Yugoslavia. The Yugoslav experiment with constitutional judiciary, as it turned out, outlived both the state and the socio-political order in which it was created, because constitutional courts still exist in all of six former federal units of the Federation, which are now independent states. Anyway, the former Yugoslavia had accepted the German model, which takes into account federal state structure in the organization of the constitutional judiciary. So, in addition to the Federal Constitutional Court, there were constitutional courts of federal units.

The position of the Constitutional Court of Serbia in the Constitution of 2006, its composition and competencies is an area of *materiae constitutionis* which is probably the most innovated in comparison to the Constitution of 1990. "Nonetheless, it is still the state organ whose primary function is to protect constitutionality and legality from violations by general legal acts, although the 2006 Constitution underlines, to a greater degree than was the case before, its function of the conflict court (the court for resolving conflicts of jurisdictions)" (Marković, 2007: 27). The Venice Commission positively evaluated the organization of the Constitutional Court in the Constitution of 2006 (Opinion No. 405/2006, 17). The number of justices of the Constitutional Court of Serbia has been increased from 9 to15, and the justification for it can be found in one of its new competences – to decide on constitutional complaints. The issue of election or appointment of justices is regulated in a completely new way in relation to the Constitution of 1990. The Italian system from the Constitution of 1947 served as a model for it, because it essentially takes into account the three-branch separation of powers (legislative, executive and judicial): five of justices are elected and appointed by holders of each of the three branches of government – the National Assembly, the President of the Republic and the Supreme Court of Cassation (Art. 172.2). The Constitutional Court justice may not hold any other public or professional office or be employed, except for being Professor at a Law School in the Republic of Serbia. The Constitution of 2006 prescribes a time-limited mandate of 9 years, whereby a justice cannot perform that function more than two terms. The question is whether such solution is good, because the justice during his/her first term can, performing the function in an appropriate manner, "offer" himself or herself for re-election or re-appointment to the one who decides on it, and all at the expense of conscientious and objective exercise of the function. Competences of the Constitutional Court of Serbia(Art. 167) are relatively wide: 1) normative control of law (statutes and regulations); 2) conflict competence; 3) deciding on whether the President of the Republic has violated the Constitution (in the procedure dismissal); 4) deciding on constitutional complaints; 5) solving electoral disputes and 6) deciding on banning of a political party, organization or civic association. The Constitutional Court decisions are generally binding (have the *ergaomnes* effect), final and enforceable (Art. 166).

The Civic Defender is an independent state body who shall protect citizens' rights and monitor the work of public administration bodies, the body in charge

of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organizations, companies and institutions to which public powers have been delegated (Art. 138). The Civic Defender is elected and dismissed by the National Assembly and accounts for his/her work to the National Assembly. The Civic Defender is not authorized to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutor's Offices.

Public Prosecutor's Office is an independent state body which prosecutes the perpetrators of criminal offences and other punishable acts, and takes measures in order to protect constitutionality and legality (Art. 156). That is one of the main achievements of modern rule of law – that the prosecutorial function is separated from the judicial. In comparison to the 1990 Constitution of Serbia, the principle of permanence of the public prosecution office was abandoned (the term of office of the Republic Public Prosecutor is six years, and he/she can be re-appointed to the same office), and a differentiated legal regime for the appointment to office, termination of office and the term of office of the public prosecutor, on the one hand, and the deputy public prosecutor, on the other, was introduced. The State Prosecutors Council is an autonomous body which shall provide for and guarantee the autonomy of Public Prosecutors and Deputy Public Prosecutors (Art. 164).

The Constitution stipulates the existence of two bodies that are important for economic regulation and public finances in the Republic of Serbia. *The National Bank of Serbia* (Art. 95) is a central bank of the Republic of Serbia, independent and subject to supervision by the National Assembly to which it accounts for its work. It is managed by the Governor elected by the National Assembly. *The State Audit Institution* (Art. 96) is the supreme state body for auditing public finances in the Republic of Serbia, independent and subject to supervision by the National Assembly to which it accounts for its work.

VERTICAL ORGANIZATION OF GOVERNMENT

As noted above, the Constitution of the Republic of Serbia of 2006 has raised local self- government and provincial autonomy to the rank of constitutional principle (Art. 12). Moreover, the Constitution has defined provincial autonomy and local self-government as citizens right "which they shall exercise directly or through their freely elected representatives" (Art. 176). The contents of this right are concretized in the section of the Constitution on Territorial Organization (Part Seven, Art. 176-194). Everything mentioned supports the fact that the Constitution of Serbia of 2006 sets the vertical (territorial) division of power in a very high position in the constitutional system.

Local Self-Government

The Constitution has found that "local self-government units shall be municipalities, towns and the City of Belgrade" (Art. 188). Although at first sight it appears that there are three different types of local self-government units, this is actually *single-stage and monotypelocal self-government*, which base unit is municipality, and within such local self-government there are some special solutions for towns and the City of Belgrade (the capital). Thereby, the uniformity of municipalities mitigates to some extent. Such conclusion clearly derives from the fact that all units of local self-government have the same original competences, identical organs and the same legal regime in relation to the state.

Currently, there are 174 local self-government units in the Republic of Serbia – 145 municipalities, 28 towns and the City of Belgrade (the Capital). The number of local government units in the Republic of Serbia is very small considering the size of the territory and the population. As an illustration, the number of local self-government units in Serbia can be compared with the number of units in some European countries, which are similar to the Republic of Serbia in terms of the territory and population .In the first place, as states with a large number of local self-government units, we should mention Switzerland and Austria, which have 2,551 or 2,359 municipalities. Then,there are the countries with "medium" number of municipalities, such as Belgium and the Netherlands with 589 to 393 municipalities. Finally, as examples of a relatively small number of municipalities we can mention Greece with 325 municipalities and Bulgaria with 265. Serbian concept of "large municipalities" has its advantages and disadvantages and its reform should be considered (Stanković, 2015: 152-157).

The self-governing status of municipalities in the Republic of Serbia is composed of several elements. Firstly, they have an independent scope of competencies guaranteed by the Constitution and by law (Art. 190 of the Constitution). These are their original competences, and the state may delegate them other competencies from its own jurisdiction by law. Secondly, they choose their organs autonomously (Art. 191). Thirdly, local self-governments have permanent and stable sources of incomes, which they can spend autonomously. And fourthly, they enjoy the protection of their self-governing status (Art. 193).

When it comes to local self-government organs, the Constitution of 2006 anticipated the right of local self-government to autonomously regulate the organisation and competences of its bodies and public services (Art. 179). In this way the Constitution implemented the principle of organizational and personal independence of local self-government, which is one of the key elements of this political institution. The only organ of local self-government which is mentioned *expressis verbis* in the Constitution is the Assembly of the local self-government, which is defined as the "supreme body" of local self-government(Art. 180). "This is the so-called assembly system of governance, which is based on unity (not sep-

aration) of power for the benefit of the assembly, which was present in the time of the socialist Yugoslavia (1946–1992)" (Marković, 2007: 34).

The Constitution stipulates that citizens' right to local self-government "shall be subjected only to supervision of constitutionality and legality" (Art. 12). In this way, the framers of the Constitution stepped away from the generally accepted standards in comparative law, where it is common that the state controls only the constitutionality and legality of local self-government in the sphere of original competencies, while the state controls the expediency of their work in the sphere of delegated competencies in addition to the constitutionality and legality.

Provincial Autonomy

Serbia's experience with the provincial autonomy began with a fatal acceptance of socialism during the World War II. Provinces in the countries in the world usually have adequate historical foundation and tradition, which is the case for example in Spain or Italy. Serbia owes this "tradition" to the decision of the former Yugoslav communist leadership to form autonomous provinces only in Serbia, of all six former Yugoslav federal units. They formed the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohia. These two provinces, "inherited" from the socialist Yugoslavia, were also kept in the Serbian Constitutions of 1990 and of 2006.

According to the Constitution, "in the Republic of Serbia, there are the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohia". Further, "the substantial autonomy of the Autonomous province of Kosovo and Metohia shall be regulated by the special law which shall be adopted in accordance with the proceedings envisaged for amending the Constitution" (Art. 182.2). New autonomous provinces may be established, and already established ones may be revoked or merged following the proceedings envisaged for amending the Constitution.

Provincial autonomy in Serbia according to the Constitution of 2006 has three basic characteristics: 1) it introduced a symmetric state structure; 2) the position of provinces is uneven(differentiated) and 3) the process of forming of new provinces is open (Marković, 2014: 450). The first characteristic means that not the whole national territory is divided into autonomous provinces (as in the case of Spain and Italy), but only one-third of the national territory. The second characteristic means that the two existing provinces have different constitutional treatment: Autonomous Province of Vojvodina has an "ordinary autonomy", which is prescribed by the Constitution, while the Autonomous Province of Kosovo and Metohia has a "substantial autonomy", which has to be regulated by a special constitutional law. The third characteristic of provincial autonomy means that the number and territory of autonomous provinces is not immutable, so it is possible to establish new provinces, as well as to remove or merge the existing ones (in the procedure of amending of the Constitution).

The status of autonomous provinces in the Republic of Serbia stipulated in the Constitution does not significantly differ from the standard theoretical model of territorial autonomy. The Constitution regulates the most important issues regarding the autonomous provinces: competences (Art. 183), financial autonomy (Art. 184), legal acts of autonomous provinces (Art. 185), monitoring the work of bodies of autonomous province (Art. 186) and protection of the provincial autonomy (Art. 187). Furthermore, the Constitution guarantees the autonomous provinces to autonomously regulate the organization and competences of its bodies and public services, prescribing that Assembly shall be the "supreme body" of the autonomous province (Art. 179-180). All other questions considering the status and organization of the autonomous provinces are regulated by the laws of the National Assembly and the statutes of the autonomous provinces.

CONCLUSION AND REFORM AGENDA

Serbia can be proud of its rich constitutional tradition. Back in the 19th century it had very progressive constitutions, the kind of even developed European democracies did not have. But it is likely that a problem in their practical application was that those constitutions, especially the one of 1888,were too modern for the Serbian society of that time. Serbia had preserved that tradition of liberal-democratic constitutionalism in the 20th century, initially as an independent Kingdom, and after World War I as a part of the Kingdom of Serbs, Croats and Slovenes (i.e. The First Yugoslavia). The Second Yugoslavia, which was created during World War II and which adopted the socialist model of constitutionality, was not a fertile soil for the development of liberal-democratic constitutional institutions, to which Serbia again returned after the adoption of the Constitution of 1990.That trend of development of liberal-democratic constitutionalism in its social-democratic form continued after the adoption of the current Constitution of 2006.

The Constitution of the Republic of Serbia of 2006 has been in force for exactly a decade. In that time, the constitutional practice has shown good features and flaws of this legal act and crystallized the concrete proposals for its amendments in order to improve the existing constitutional framework.

In the area of *human and minority rights*, the constitutional norms are on a very high level. All the groups of rights – civil, political, economic, social, cultural, as well as the rights of national minorities, are well constitutionally regulated. Naturally, there is always a question about their realization in practice, but we must emphasize that the Constitution of Serbia provided a series of effective means of protecting them. In this regard, we should mention the institution of constitutional complaint, which is a novelty in the Constitution of 2006. However, for the realization of rights of certain groups, such as social rights, a good legal framework is not enough. To make the system of protection of social rights function properly, it is necessary to satisfy all the capacities – financial, technical and human, as well as the efficiency in solving of the cases.

Horizontal organization of government in the Constitution of 2006 was made with the acceptance of a "soft" variety of the principle of separation of powers, in the form of a parliamentary system. Notwithstanding the fact that Head of State is directly elected and has great democratic legitimacy (the same as that of the National Assembly), its powers are only slightly greater than the powers of the monarch in a parliamentary monarchy. The relations between the political authorities that "reflect" the character of a government system as a mirror, are well regulated, as the President of the Republic has role of a moderator between the holders of active powers – parliament and government. The procedure of dismissal of the President of the Republic for the violation of the Constitution requires a better constitutional regulation. The problem that existed with the constitutional possibility to prescribe a politically imperative mandate in the National Assembly was solved in 2011 by adopting appropriate legal solutions, although the disputed constitutional provision (Art. 102.2) should be removed from the Constitution in the near future.

The position of the *Constitutional Court* in the constitutional system of Serbia relies to the half-century tradition of constitutional judiciary in Serbia, which was introduced back in 1963. The Constitutional Court is designed as a carrier of special state function which is in any sense separate from the regular judicial power, i.e. as a "negative legislator" in Kelsen's sense. Serbian Constitutional Court performs many functions, among which the most important are judicial review and deciding on constitutional complaints. The existing legal framework is good, but there is a need for increasing the efficiency in resolving constitutional complaints. That is best evidenced by the fact that there are constant fluctuations in the European Court of Human Rights on whether a constitutional complaint in Serbia is an "effective legal remedy" which has to be exhausted before the direct addressing to the Court.

The independence of the judiciary is probably the weakest point of the valid Serbian Constitution. In summary, the Constitution of Serbia has made four key failures in relation to the judicial power. Firstly, although it has formed a specialized organ of judicial administration – the High Judicial Council, the Constitution has not provided true autonomy and independence of that body, which is under the political influence of the National Assembly. Secondly, an exception to the principle of permanent judicial tenure in the form of a "trial period" of three years is problematic both because it is too short and because the judges "beginners" are elected by a political organ – the National Assembly. The third failure is the lack of precise constitutional provisions on the termination of judicial tenure and leaving these issues to the legislature (although in this area it is possible to follow the good example of the previous Constitution of 1990). And finally, the fourth flaw of the Constitution in the area of judiciary is the lack of more detailed provisions on the establishment of courts, their competence and composition. Altogether, the constitutional position of the judiciary in Serbia today is such that it cannot be considered fully independent, which is in modern times one of the basic elements of the rule of law. It seems that the framers of the Constitution need to correct their errors made in the adoption of the Constitution and to

eliminate the influence of political authorities to the selection of judges, as well as to constitutional rules on the dismissal of judges. Proclamation of constitutional principles is a "dead letter on paper" if these principles are not adequately confirmed and developed in constitutional norms and laws based on them.

In the area of *vertical organization of government* there is a possibility of improvement of existing standards. First of all, it is unclear why the Constitution contains any "common provisions" for the local self-government and provincial autonomy, when it comes to two completely different types of territorial decentralization. In the field of local self-government there are several issues that should be considered in order to improve local self-government in the Republic of Serbia:1) the number and size of units of local self-government; 2) local democracy and election of local representatives, in order to reduce the influence of political parties; 3) method of electing the mayors, for possible increase of the efficiency of local self-government and 4) property of local self-government, whose status should be regulated in a comprehensive manner. On the other hand, in the domain of provincial autonomy some improvements are also possible, because many issues related to this form of decentralization should be resolved by the Constitution. In addition, the adoption of a constitutional law that would regulate the "substantial autonomy" of Kosovo and Metohia is likely to be postponed for a longer period, at least until the end of the so-called "negotiations between Belgrade and Pristina" which take place through the mediation of the European Union.

Finally, the *revision procedure* that is prescribed by the Constitution has often been the subject of critics as too complicated, so it maybe also possible to make a step forward in that field. The Venice Commission itself expressed such an opinion (Opinion No. 405/2006, 21): "It strikes the Venice Commission, first of all, that the procedure drafted is very complex, as it involves two or even three steps: first, the National Assembly has to adopt, by a two-thirds majority of all deputies, a proposal to amend the Constitution (Article 203.3), and then the same National Assembly has to adopt an act amending the Constitution by a two-thirds majority of all deputies (Article 203.6). Finally, Article 205 seems to require the adoption, again by a two-thirds majority, of a further constitutional law for the enforcement of the amendments to the Constitution."

Overall, with the adoption of the Constitution of 2006, the Republic of Serbia has confirmed its belonging to the liberal-democratic type of constitutionality, which has been developing in Europe for centuries and that Serbia has been keeping to since the 19thcentury, with an interruption in the era of socialist Yugoslavia. The return to the liberal-democratic "roots" was achieved a quarter of century ago with the adoption of the Constitution of 1990, and the current Constitution has been striving to eliminate shortcomings of its predecessor. However, during the first ten years, the application of the Constitution of 2006 has also shown some weaknesses that should be corrected during its first revision.

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FIRST AID DISASTER KIT FOR A FAMILY: A CASE STUDY OF SERBIA

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Abstract: In the period after the manifestation of the consequences of disasters, the first responder's members will approach the rescue of people and the provision of the first medical assistance to the injured in the shortest possible time. However, due to the specific nature of such events, they will not often be able to help everyone in the coming hours and days, and the survival rate of such events depends to a large extent on having a first aid kit as well as other disaster supplies. For these reasons, the research was conducted with the aim of the scientific explanation of the factors affecting the possession of the first aid disaster kit for a family. Using face-to-face interviews, two thousand and five hundred respondents in nineteen local communities were interviewed. The results of the conducted research show that more than half of the respondents do not possess the first aid kit in the household, their vehicle and that it is not kept in an easily accessible place. It has also been established that certain personal and environmental factors influence the possession of such supplies. The obtained results of the research could be used to create programs for improving the level of resilience of citizens in conditions of disasters.

Keywords: disasters, first aid kit, family, research, Serbia.

INTRODUCTION

Despite innovative scientific and technical achievements, people continue to be greatly affected by the multidimensional effects of various disasters. Certainly, the level of vulnerability of people and their property, apart from the intensity of their exposure to danger, depends also on the way people behave in the identified and existing dangers surrounding them (Adem, 2019; Alksandrina, Budiarti, Yu, Pasha, & Shaw, 2019; Xuesong & Kapucu, 2019). The unpredictable nature of natural and technological hazards, as well as the social system impossibility of functioning in such circumstances, clearly indicates that there is no such thing as absolute security and that citizens largely depend on themselves. It is widely known that the members of the emergency rescue services or the protection forces and rescue system do not have sufficient human and material capacities to provide the first and indispensable assistance to injured and vulnerable people in

a short period of time. For these reasons, in a large number of scientific papers and strategic documents, the necessity of improving the readiness of citizens to respond in such circumstances is emphasized (Baker & Grant Ludwig, 2018; Jang, Wang, Paton, & Tsai, 2016; Kumiko & Shaw, 2019; Ronan, Alisic, Towers, Johnson, & Johnston, 2015). Without considering the further elaboration of the necessary preconditions for survival in such events, it can be stated that it is vital to have the first aid disaster kit for a family. Possession of such a set enables citizens to provide themselves or others with the necessary first aid in the immediate and very fast period. Also, it is very important that besides having such a set, citizens are trained to use them and keep them in an easily accessible place. The paper gives a modest contribution to a better understanding of the readiness of citizens to respond by improving the level of their first aid disaster kit.

LITERARY REVIEW

By analysing various papers from the field of disaster studies (Ahmad & Rahman, 2019; Jawahar, Varghese, & Shenai, 2018; McNeill, Killian, Moon, Way, & Betsy Garrison, 2018; Pickering et al., 2018; Tam, Chan, & Liu, 2019), it can be noticed that the examination of the possession of the first aid disaster kit is often observed in the context of the general readiness of citizens and households to respond in disaster conditions. In a study carried out in the USA (Goddard, 2017), 69% of respondents possess the first aid disaster kit, and 66.2% believe that improvements in preparedness will greatly mitigate the future consequences of disasters. Martins, Louis-Charles, Nigg, Kendra, and Sisco (2018) have established a high level of readiness of the households in New York, especially in relation to the possession of emergency supplies and communication resources. It is important to look at the results of the research (Beatty, Shimshack, & Volpe, 2019) according to which the sale of emergency supplies is increasing when certain parts of local communities are endangered by the emerging threats. These results can be used to create campaigns that can help raise people's awareness of the importance of owning such supplies. In the research conducted by Cvetković, Gačić, and Jakovljević (2017) it was found that 61.5% do not have supplies for disaster survivor, that 37.2% of the respondents have food supplies for 4 days, while only 12% have food supplies for 1 day. It was also found that 17.6% of the respondents own a radio transistor, 40% a torch, 40.6% a shovel, 25.8% a hack, 33.6% a hook and wash and 13.2% a fire extinguisher. In one study (Kapucu, 2008) conducted in Florida, it was found that only about 8% of respondents have a disaster supplies kit that can settle food, water and medicine needs for the next three days.

METHODS

The subject of the research is the scientific description of the level of possession of the first aid disaster kit in households, which enables the improvement of a more effective response as well as raising the level of their resistance. In addition, the aim of the research is the scientific explication of the impact of certain demographic and socioeconomic factors on the possession of the first aid disaster kit. Namely, it wants to examine whether men in relation to women, older in relation to younger, more educated related to less educated, etc. possess such sets, with the aim of finding the most optimal solution for improving the situation in that area. For the needs of the research, a survey of 2500 citizens in 19 local communities was conducted in the period from 2015 to 2016: Obrenovac (178), Šabac (140), Kruševac (180), Kragujevac (191), Sremska Mitrovica (174), Priboj (122), Batočina (80), Svilajnac (115), Lapovo (39), Paraćin (147), Smederevska Palanka (205), Sečanj (97), Loznica (149) Bajina Bašta (50), Smederevo (145), Novi Sad (150), Kraljevo (141), Rekovac (50) and Užice (147). By analysing the structure of the sample, it was determined that there were 50.2% female respondents and 49.8% male ones. Out of the total number of respondents, there was the highest number of younger respondents (28.4%), and the average age is about forty years. According to the level of education, the most represented respondents had secondary education. The presented methodological framework of the research is part of a more comprehensive research on the readiness of citizens to respond to disasters in the RS (Cvetković, Filipović, 2018; Cvetković, 2017; Cvetković, Milašinović, & Lazić, 2018; Cvetković, Roder, Öcal, Tarolli, & Dragićević, 2018; Cvetković & Filipović, 2018).

RESULTS AND DISCUSSION

The question, "Do you have a first aid disaster kit in your household?" was answered by 2270 respondents (90.8%). This sought to examine whether and to what extent the citizens were resistant to the consequences of disasters. More than half of the respondents (53%) expressed the view that they do not have a first aid kit in their households. The implications of not having such a kit can be serious having in mind the consequences of a quick and effective first aid. On the other hand, it is not possible to expect rapid arrival of an emergency medical service that can be prevented in various ways from accessing the area where the injured persons are: fully or partially damaged critical infrastructure; lack of human and material capacities due to a large number of injuries or affected people; the inability to timely call the emergency medical service due to damage to the functionality of the communication and communication system, etc. In addition, it is very important to have a first aid kit in the vehicle. Apart from the reasons for improving the safety of road users, it is advisable and legally prescribed that all citizens have a first aid disaster kit in their vehicles. When asked "Do you have

a first aid disaster kit in your vehicle", the answer was given by 74.2% (1855) respondents. According to the obtained results, more than half of the respondents, 57.8% (1445) have a first aid disaster kit. Starting from the legal obligation of the citizens envisaged by the Law on Road Traffic Safety (Official Gazette RS, no. 41/2009, 53/2010, 101/2011, 32/2013 - resolution US, 55/2014, 96/2015 – state law, 9/2016 - resolution US, 24/2018, 41/2018, 41/2018 – state law, 87/2018 and 23/2019), it can be pointed out that the obtained results are not satisfactory bearing in mind the sanctions for their disregard as well.

One of the conditions for improving the resilience of citizens, besides having a first-aid kit, also refers to the information about its content, as well as the training for its use. Of the total number of respondents who have a first aid disaster kit, only 59.8% of respondents are familiar with its content, while 50.2% of respondents are not. So, apart from having a first-aid kit in emergency situations, the citizens must be familiar with its content and trained to use it in order to be able to provide assistance to themselves or others in a short period of time. In addition, disasters as unpredictable and sudden events are characterized by an intense and rapid manifestation of consequences that do not give much time and space for a timely response. In doing so, it is very important that at any time of the day and night, the members of a household are familiar with the location of the first aid disaster kit. Such situations are often accompanied by an interruption of electricity that prevents the normal functioning of people, especially at night hours. When asked "Do you keep the first aid kit in an easily accessible place", 52.4% of respondents gave a positive answer. The results obtained were expected, given that such a kit is not used very often.

Starting from the first research question, whether there is a difference between men and women regarding the possession of the first aid kit in conditions of disasters in their households and vehicles, the information on the content and holding such a kit in an easily accessible place, it has been established that there is a statistically significant influence of gender on having a first aid kit in the vehicle χ^2 =13.90, p=0.001 and keeping the kit in an easily accessible place χ^2 =3.35, p=0.187. There was no statistically significant association of gender with the possession of a first aid kit in the household, as well as information about the content of the kit itself (Table 1). According to the results obtained, further analyses show that male respondents (79.5%) in relation to women (76.2%) have a first aid disaster kit in the vehicle to a greater extent. It can be assumed that men spend more time in the vehicle and are aware of the significance of such a kit, or on the other hand, more often they resort to certain risky situations when driving a vehicle, so they are aware of its significance. Also, men (69.2%) compared to women (61.6%) have such a set in an easily accessible place more often.

In further research, differences were examined with respect to the age of the respondents and on this occasion it was established that there was a statistically significant influence on the following variables: the first aid kit in households χ^2 =117.16, p=0.000; the first aid kit in vehicles $\chi 2$ = 75.08, p = 0.000; information

about the content $\chi 2 = 44.74$, $p = 0.000$. There was no statistically significant age-related relationship with variables - an easily accessible place (Table 1). On the basis of further analysis, it was established that the elderly (61.6%) compared to the younger (51.5%) respondents expressed the attitude that they had the first aid kits in their households. In contrast, the younger respondents (81.5%) compared to the older ones (35%) are more likely to have the first aid disaster kit in their vehicles. One of the basic drivers of a certain behaviour is fear of disaster (Cvetković, Öcal, & Ivanov, 2019a). In the results of this research, it was established that there is a statistically significant correlation of fear with possession of the first aid kit in the household $\chi 2 = 13.10$, $p = 0.001$; having the first aid kit in the vehicle $\chi^2 = 9.10$, $p=0.011$; and keeping the kit in an easily accessible place $\chi 2 = 11.59$, $p = 0.003$. Statistical significance of respondent's age with variable was not established: content information (Table 1). According to the analysed data, the respondents with fear of disasters (54.7%) compared to those without it (48.4%) express their opinion that they have the first aid disaster kit to a greater extent. The results obtained were expected, given that the fear of future negative consequences can directly affect the possession of such a set that can prevent the emergence of the worst case scenario. Also, the respondents who have a fear of disasters (80.7%) compared to those who do not have it (74.9%) are more likely to have the first aid disaster kit in their vehicles. In addition, the respondents who have fear (61%) compared to those who do not have it (58.3%) keep such a set in an easily accessible place to a slightly greater extent.

Human education is crucial to reducing the risk of disasters by improving resistance and preparedness for proper response in given situations (Cvetković et al., 2018; Cvetkovic, 2019; Cvetković, Öcal, & Ivanov, 2019b; Johnson, Ronan, Johnston, & Peace, 2014; Strayhorn, Dasmohapatra, Tilotta, & Mitchell, 2012). The obtained results of the research show that the education of citizens has an impact on the possession of the first aid kit in households $\chi 2 = 36.90$, $p = 0.000$; the first aid kit in the vehicle $\chi 2 = 41.35$, $p = 0.000$; and the level of information about the content $\chi 2 = 36.20$, $p = 0.000$. There was no statistically significant link between the educational levels with the variable: an easily accessible place (Table 1). When analysing the obtained results, it is noticed that highly educated respondents (55.4%) have the first aid kit in their households compared to those with primary school education (47.7%). It can be assumed that in the education process certain information are generated that create awareness of the necessity and importance of owning such supplies. The results obtained are similar when it comes to having the first aid kit in the vehicle. Namely, highly educated respondents (83.3%) compared to respondents with elementary school (65.3%) have such kits. By contrast, of the total number of respondents who possess the kit, the most informed about its content are the respondents with completed secondary school (65.1%).

Table 1: *Chi-square test results between the first aid disaster kit variables and gender*

Variable	First aid kit in the household		**First aid kit in the vehicle**		**Information about the content**		**Easily accessible place**	
	χ^2	Sig. (2-Tailed)	χ^2	Sig. (2-Tailed)	χ^2	Sig. (2-Tailed)	χ^2	Sig. (2-Tailed)
Gender	3.55	.169	13.90	.001**	3.35	.187	13.08	.001*
Age	117.16	.000**	75.08	.000**	44.74	.000**	11.33	.500
Education	36.90	.000**	41.35	.000**	36.20	.000**	6.95	.860
Fear	13.10	.001*	9.10	.011*	2.65	.265	11.59	.003*
Marital status	70.14	.000**	78.92	.000**	73.90	.000**	74.22	.000**
Risk perception	17.71	.001*	28.76	.000**	23.86	.000**	40.97	.000**
Employment status	9.46	.009*	30.05	.000**	7.36	.025*	14.45	.001*
Income level	32.71	.000**	57.86	.000**	33.30	.000**	27.02	.000**

The status of employment of citizens largely determines the way in which an individual works in a society. The results of the survey show that the education of citizens has an impact on having a first-aid kit in the household $\chi2 = 9.46$, $p = 0.009$; the first aid kit in the vehicle $\chi2 = 30.05$, $p = 0.000$; information about the content $\chi2 = 7.36$, $p = 0.025$ and easily accessible place $\chi2 = 14.45$, $p = 0.001$ (Table 1). According to the obtained results, the employed respondents (52%) compared to the unemployed respondents (48%) have the first aid disaster kit in the household to a greater extent. Also, the employed respondents (81.2%) compared to the unemployed (70.8%) are more likely to have the first aid disaster kit in their vehicles. When it comes to informing citizens about the content of the kit, the results are similar to the previous findings and it has been established that the employees are more informed about the first aid kit and to keep it more readily available in an easily accessible place.

One of the most important variables that can be related to the possession of a first-aid kit is the marital status of the respondents. The results of the survey show that marital status of citizens has an impact on having a first-aid kit in the household $\chi2 = 70.14$, $p = 0.000$; the first aid kit in the vehicle $\chi2 = 78.92$, $p = 0.000$; information about the content $\chi2 = 73.90$, $p = 0.000$ and easily accessible place $\chi2 = 74.22$, $p = 0.000$ (Table 1). Based on the results obtained, it can be pointed out that non-married respondents (54%) are more likely to have such a set in their households. It can be assumed that the respondents who live alone, because of their inability to help someone, have a kit to a greater extent in order

to protect themselves. In contrast, the respondents who are married (82%) are more likely to have such a kit in their vehicles. Additionally, they are more informed (67.2%) about the content of such a kit and they keep them in an easily accessible place (70.9%). The perception of risk as a cognitive process of seeking, receiving, selecting and processing various irritations plays an important role in the decision-making process in taking certain preventive measures. The results of the study show that the perception of risk has an impact on the possession of the first aid kit in the household $\chi2 = 17.71$, $p = 0.001$; the first aid kit in the vehicle $\chi2 = 28.76$, $p = 0.000$; information about the content $\chi2 = 23.86$ $p = 0.000$ and easily accessible place $\chi2 = 40.97$, $p = 0.000$ (Table 1). Further analyses show that the respondents who perceive a high level of risk (54.7%) more than others have a first aid kit in their homes. Expectedly, they also have the first aid disaster kit in the vehicle (80.7%). Finally, the influence of the level of income of citizens on the possession of the first aid kit was examined and it was established that the results of the study show that the level of income has an impact on the first aid disaster kit in the households $\chi2 = 32.71$, $p = 0.000$; the first aid kit in the vehicle $\chi2 = 57.86$, $p = 0.000$; information about the content $\chi2 = 33.30$ $p = 0.000$ and easily accessible place $\chi2 = 40.97$, $p = 0.000$ (Table 1). The respondents with incomes of up to 250 EUR (27.8%) and over 800 EUR (11.1%) have the first aid disaster kit to a less extent. On the other hand, the citizens with income up to 500 EUR mostly (39.6%) have such kits. Similar results were obtained when it comes to having the first aid disaster kit in vehicles. To the largest extent, such a set is possessed by the respondents with income up to 500 EUR (40.2%), while the respondents with income over 800 EUR (10.1%) have it to the least extent. Also, it was determined that most respondents who have incomes up to 500 EUR keep the first aid disaster kit in an easily accessible place and are informed about its content.

CONCLUSION

Disasters often occur suddenly and without timely warnings, leaving little time to people to respond efficiently and rationally. Most of them will be caught up and surprised, and only then will they realize the importance of timely preparedness and ability to respond in such situations. In Serbia, citizens' awareness of the necessity of owning the first aid disaster kit is still at a low level, having in mind the obtained results of the research. In that sense, it is necessary to further improve programs and awareness-raising campaigns, but also their training to respond in such situations. Accordingly, it is advisable to organize certain training of citizens in providing the first aid, as well as in using the first aid disaster kit in the conditions of disasters. Although a certain number of citizens have such a set, it has been found that a good part of them is not even familiar with its content, as well as with the ways of its use. Improving effective responses to reduce the disaster risk, according to the Sendai Framework implies profitable investments by local and national entities in the design and implementation of educational programs

with the aim of raising the level of resilience of the society. Unfortunately, in Serbia, the provisions of international regulations on disaster risk reduction have been implemented, but they are not applied to a large extent. For these reasons, it is necessary to continue with continuous research in order to direct the decision makers in the country to a more comprehensive and permanent solution to increase the readiness of citizens to respond to disaster conditions.

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CONTRIBUTIONS OF THE CHURCH AND RELIGIOUS COMMUNITY TO NATIONAL SECURITY OF THE REPUBLIC OF SERBIA

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Abstrakt: Thus, a comprehensive understanding and study of the structure of the population with special emphasis on its characteristics especially the churches and religious community in the sphere of social development is a critical factor in the security culture of the entire community and understanding among people. Similarly, certain factors from the national security infrastructure of the Republic of Serbia are presented and the result of the relationship between churches and religious communities, and how they contribute to the state of national security of the Republic of Serbia.The elements of the contribution of churches and religious communities in the Republic of Serbia in terms of attitudes that endanger the security if the Republic of Serbia are described and explained in detail. These attitudes are oriented towards the acceptance or rejection of elements that contribute to mutual assistance, cooperation, smooth relations and other values of significance for the national security of the Republic of Serbia. The paper was written as part of the research conducted for a doctoral dissertation that was defended at the Serbian Military Academy, University of Defense, Belgrade.

Keywords: Contribution, Security, Church, Religious Communities, Republic of Serbia

INTRODUCTION

There are many reasons for the actualization of studying the problems of communities and security of the Republic of Serbia. Current trends and changes in the regional environment condition them. Initial activities should be to determine a clear public attitude about formulation of the role of churches and religious communities in the entire system and the formulation of national interests on which the security of the Republic of Serbia is based.

The research began from the established assumption in a multinational and multi-confessional community, security is always dependent on the state of in-

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ter-ethnic, inter-confessional relations, so that identifying the factors that influence these relationships, and we indirectly identify the factors that determine safety.

Key results of the survey show that within the security of the Republic of Serbia, churches and religious communities can have a central place. It is very important to distinguish important socio-demographic factors that affect the forming, maintenance and modification of the security situation. Particularly important is the diversity of churches and religious communities and its impact on the security of the Republic of Serbia. Starting from the assumption that churches and religious communities are one of the important factors in a multiconfessional environment such as the Republic of Serbia, the paper identifies features related to the moral, ethical and cultural properties of people who can be brought into relation with the subject of research.

CONFESSIONAL STRUCTURE OF THE POPULATION OF SERBIA

The confessional structure of the Serbian population in the first half of the 20th century can be studied based on the final results of the census in 1921 and 1931. In 1921, the population of Serbia declared in accordance with their religion in the state called Kingdom of SHS, which had an administrative division by districts, and in 1931 in the state called Kingdom of Yugoslavia, which was divided into banovina areas[2]. The present population in Serbia, as well as in the Kingdom of SHS in 1921 by religion, was declared as Orthodox, Roman Catholic, Greek Catholic, Evangelical, Muslim, Israelis and "Other" or "Without a confession and unknown" (*Table 1*). According to the available information, there were very few other religions.

Table 1: *Population of Serbia in the Kingdom of SHS by religion according to the census of January 31, 1921.*[3]

Religion	Population in the Kingdom of SHS	Population in Serbia
Orthodox	5 593 057	3 351 574
Roman Catholic	4 708 657	37 720

2 The Law on Amending and Supplementing the Law on the Allocation of the Kingdom to Administrative Regions from 28th of August 1931 changed more or less the boundaries of all banovina areas. This way the changed banovina areas were finalized in Art. 83 of the Constitution from 03rd of September 1931. The Kingdom of Yugoslavia consisted of the following banovina areas: Dravska, Drinska, Dunavska, Moravska, Primorska, Savska, Vardarska, Vrbaska, Zetska and the Administration of the City of Belgrade.

3 Republički zavod za statistiku, Popis stanovništva od 31. januara 1921. godine, Kraljevina Jugoslavija. Opšta državna statistika. Definitivni rezultati popisa stanovništva od 31. januara 1921.

Greek Catholic	40 338	1 025
Evangelical	229 517	2 749
Muslims	1 345 271	728 476
Israelis	64 746	11 814
Other	1 944	21
Without confession	1 381	99
Total	11 984 911	4 133 478

After only ten years, i.e. in 1931, the population of Serbia in the Kingdom of Yugoslavia declared by confession as Orthodox, Roman Catholic, Evangelical, Islamic and "Others" (*Table 2*).

Table 2: *Population of Serbia by confession according to the census from 31st of March, 1931.* [4]

AREA	Total	Confession				
		Orthodox	Roman Catholic	Evangelical	Islamic	Others
Yugoslavia	13 934 038	6 785 501	5 217 847	231 169	1 561 166	138 355
Serbia[5]						
Serbia	5 795 724	4 195 670	867 762	175 818	493 832	62 642
Vojvodina	1 739 735	727 049	789 183	171 831	1 884	49 788
Kosovo and Metohija	552 064	150 745	20 568	114	379 981	656

With comparative analysis of the population census results from 1921 and 1931 valid conclusions about the confessional structure of the population of Serbia cannot be made, bearing in mind the different criteria of religious expression, both by the territorial (administrative) division of Serbia and by "offered" categories of confession. Due to complexity of social and political circumstances and security sensitivity, population did not declare by confessions on the censuses in the SFR Yugoslavia for 60 years, until the 1991 census.

Vujadin Rudic regarding religious expresions of the population in the second half of the 20th century points out: "After World War II, no attention was paid to the confessional structure of the population. In the last ten years the Orthodox population returns to its roots: Orthodoxy and Serbian. Muslim population, in general, confessed their religion during the time of communist rule. New socio-political conditions allow each individual to freely express its religious feel-

4 Definitivni rezultati popisa stanovništva od 31. marta 1931. godine, popis stanovništva po veroispovesti, Republički zavod za statistiku, Beograd, 1938.
5 Republički zavod za statistiku: Podaci za Srbiju, Vojvodinu i KiM dati u tabeli preuzeti su iz: Demografska statistika, Stanovništvo predratne Jugoslavije po veroispovesti i maternjem jeziku, po popisu od 31. marta 1931. godine; pregled po srezovima, Beograd, 1945.

ings. This has already yielded results in 1991's population census, in the case of both confessions". (Влаховић, 1968: 113)

Table 3: *Population of Serbia according to religion according to 1991 census*[6]

AREA	Total		Confession							
			Islamic		Catholic		Orthodox		Others	
	No	%	No	%	No	%	No	%	No	%
Republic of Serbia	9778991	100	219114	2,24	496182	5,07	6328627	64,72	2735068	27,97
Central part of Srbia	5806906	59,38	209339	3,61	37499	0,65	5157933	88,82	402135	6,93
AP Vojvodina	2013889	20,59	9775	0,49	458683	22,78	1170694	58,13	374737	18,61
AP Kosovo	1956196	20,00								

Table 4: *Population of Serbia by confession according to the 2002 census*[7]

AREA	Total		Confession[8]							
			Islamic		Catholic		Orthodox		Others	
	No	%	No	%	No	%	No	%	No	%
Republic of Serbia	9665437	100	239658	3,20	410976	5,48	6371584	84,98	475783	6,35
Central part of Srbia	5466009	72,90	231585	4,24	22663	0,41	4970109	90,93	241652	4,42
AP Vojvodina	2031992	27,10	8073	0,40	388313	19,11	1401475	68,97	234131	11,52
AP KiM	2164436	28,9	–	–	–	–	–	–	–	–

One of the criteria used to examine the ethnic composition of the population is the affiliation to a particular religion. This issue was not set in the previous censuses, so the results of religious affiliation of the population of the Republic of Serbia exist for 1991 and 2002. The share of population in Serbia in 1991 was as follows: Islamic confession 2,24%, and 3,20%; in 2002 Catholic confession 5,07%, and 5,48%; in 2002, Orthodox confession 64,72% and 84,98% in 2002, while the category Others 27,97% and 6,35% in 2002 in relation to the total population (*Table 3* and *Table 4*).

The tabular display of the population of certain confessions share in the total population of the Republic of Serbia by macro-regional units indicates their

6 Popisi stanovništva 1991, Veroispovest, Knjiga 2, SRJ, SZ Srbije, Beograd, 1993.
7 Popisi stanovništva, domaćinstava i stanova 2002, Republika Srbija, veroispovest, maternji jezik i nacionalna pripadnost, Knjiga 3, RZ Srbije, Beograd, 1993.
8 There are no reliable data available for the KiM region.

exceptional territorial inequality. For example, according to data from 2002, in the Republic of Serbia are 3,20% members of Islam, 5,48% Catholics and 6,35%, Others which is different from the 1991 census.

In other confessions, there was a fall. Further movement of population based on confessional structure gave the 2011 census (*Table 5*)

Table 5: *Population according to religion, according to the census 1953, 1991, 2002 and 2011.*[9]

Confession	***1953***	***1991***[10]	***2002***[11]	***2011***[12]
Christian	***5 374 634***	***6 931 527***	***6 876 274***	***6 555 931***
Orthodox	*4 595 336*	6 347 026	6 371 584	6 079 396
	634 349	496 226	410 976	356 954
Protestant	111 637	86 894	78 646	71 284
Other Christian	33 312	1 381	2 191	3 211
Islamic	699 839	224 120	239 658	222 828
Others	904 681	603 924	282 069	408 103

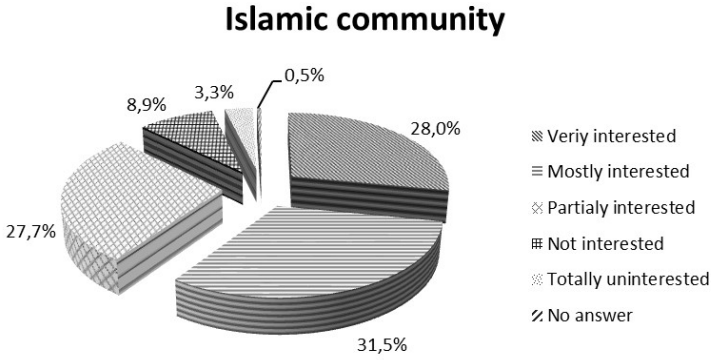

Chart 1: *Level of interest in security events*

This should be kept in mind, primarily for the sake of the overall state of affairs in the state, which also speaks about the degree of integration of members of the Islamic community into the entire life in the Republic of Serbia.

9 Popis stanovništva, domaćinstava i stanova 2011. u Republici Srbiji, Republički zavod za statistiku, Beograd, 2013, str. 13.
10 For 1993, were enumerated data only for the reported population (due to the boycott of the census by the major part of the Albanian population there are no actual data available for the municipalities of Bujanovac and Presevo).
11 The difference between the total number of the Christian religion population (the line Christian) and the collection of lines for Orthodox, Catholic, Protestant, and "other Christian" population are persons who, when asked about religion, only defined as Christians.
12 Ibid., p. 13

In order to examine the attitudes of the members of the Serbian Orthodox Church, (*Table 6*) shows the comparative data of attitudes of members of the Islamic community and the Serbian Orthodox Church. The table shows the characteristics in the attitudes inherent in both populations. Namely, members of the Islamic community and the Serbian Orthodox Church are very interested in events in the field of security. The difference in attitudes and intensity is not statistically significant.

Table 6: *Level of interest for events in the field of security and defense*

LEVEL OF INTEREST	Islamic Community		Serbian Orthodox Church	
	f	%	f	%
I am very interested in events in the field of security	213	28,0	175	30,5
I'm mostly interested in events in the field of security	240	31,5	216	37,7
I have a partial interest in security events	211	27,7	143	25,0
I do not care about security events	68	8,9	18	3,1
I do not really care about security events	25	3,3	20	3,5
No answer	4	0,5	1	0,2

N=1334 (100%)

The intensity of interest in security events between members of the Islamic community and the Serbian Orthodox Church is different in the category of "mostly interested". However, given the difference in terms of respondents' response, then it is not statistically significant. It can be concluded that both populations of respondents are interested in events in the field of security, in 59,5% of the members of the Serbian Orthodox Church, while the level of interest of members of the Islamic community is slightly higher and amounts to 68,2%.

The application of the t-test found that there is a statistically significant difference between the respondents regarding the issue of interaction with security events in the Republic of Serbia. In the Islamic community, the average value of the assessment is 3,70, and the standard deviation is 1,099; among members of the Serbian Orthodox Church, the average value of the assessment is 3,88, and the standard deviation is 1,005. The corresponding t-ratio is 3,057 and is significant at p = 0,01 (*Table 7*).

It can be noted that members of the Islamic community and the Serbian Orthodox Church give significance to events in the field of security, while a very small percentage of members opted for the category "completely disinterested" or "uninterested". This indicates that members of the Islamic community are interested in its security and stability.

Table 7: *Level of interest in events in the field of security and defense*

Value Categories	Islamic Community	Serbian Orthodox churches
Scale value	3,70	3,88
Standard deviation	1,099	1,005
t ration [13]	3,057	
Level of significante[14]	0,01	

THE IMPACT OF OBSERVED STANCES ON THE SECURITY OF THE REPUBLIC OF SERBIA

In order to implement a security policy based on mentioned strategic documents, the Republic of Serbia has been responsibly involved in resolving all problems in the international community, primarily through participation in the Partnership for Peace program. Related to this, joining the Partnership for Peace program is one of the aspects of Serbia's cooperation with NATO. The Republic of Serbia was invited to join the Partnership for Peace program, at the NATO Summit in Riga on November 29, 2006. In accordance with this invitation, and the decision of the Government of the Republic of Serbia, a framework document was signed on December 14, 2006 in Brussels. The selection and adoption of the objectives of the partnership, in particular of objectives L 0035 and L 0047, imposes a new obligation and a requirement that the member state of the Partnership for Peace program, has to declare specific forces (units) in accordance with its own capabilities, that will fulfill the obligations set forth in these objectives. Regarding to this, the orientation of the Republic of Serbia is on its security, bearing in mind that it provides security from direct threats or aggression to our country. In order to achieve goals, the Republic of Serbia has declared its units. (Радончић, 2014:213)

The security issue is important for the Republic of Serbia. Through the process of reform, which is continuously implemented on the basis of the established policy, the security and defense system of the Republic of Serbia is synchronized with the challenges, security risks and threats, the citizens needs, and generally accepted democratic standards and security organization flows of modern states, and within the capabilities of the Republic of Serbia. (Радончић, 2014:224) That's how Serbia is for the first time, adopted two important security documents (the National Security Strategy of the Republic of Serbia and the Defense Strategy of the Republic of Serbia). The security system of the Republic of Serbia will develop in the following period in accordance with the existing challenges, risks and threats. The directions of their development and the scope of reforms will depend on the

13 The limit values t with given number of degrees of freedom are t≥2,58 and statistically significant at the level p = 0,01; and p≥1,96 to p <2,58 and statistically significant at p = 0,05; Петз, Б.: Основе статистичке методе за нематематичаре, СНЛ, Загреб, 1985, стр. 341

14 Ibid, p. 341.

concrete, general conditions and intensity of possible military security threats. Modern socio-political and security-defense trends condition the manifestation of immediate and significant impacts on national, regional and collective systems. The security system of the Republic of Serbia necessarily follows the changes in the environment, which is indicated by the development of new strategic documents that are in the final stage. In these documents, special attention is paid to the modern challenges, risks and threats to the security of the Republic of Serbia, whose key factors influence its security, which in particular refers to national and religious extremism, which has been considered as a factor in the security system. (Радончић & Каровић, 2016)

If we observe the strategic documents of the Republic of Serbia we can notice that national and religious extremism are recognised among the challenges, risks and threats. It was important for us to observe the views of churches and religious communities in the Republic of Serbia as a multifaceted state, which is a segment that can significantly have positive or negative implications on the overall situation in the country, especially from the security aspect. In the context of security, churches and religious communities, as a connection between people, may have a central place especially if we take into consideration the recent past and the events in the areas affected by war actions caused by the disintegration of the former SFRY.

Taking into consideration the importance of churches and religious communities and their relevance in the security of the Republic of Serbia, it was important to identify the factors influencing the security in the Republic of Serbia that are related to churches and religious communities. Based on the postures of members of the Islamic community, in accordance with the identification of relevant factors that are influential within the framework of security, the attitude of the members of the Islamic Community is shown in (*Table 8*).

Table 8: *Assessment of the impact factors on the safety of Islamic community respondents*

Serial number	FACTORS	The degree of influence (%)					
		Very big	A large influence	Medium influence	Small influence	No influence	Without answer
1.	Media support to one of the Islamic communities	48,1	22,6	15,0	7,0	5,8	1,6
2.	Inter-ethnic trust in Serbia	44,0	26,3	16,0	7,8	4,9	1,1
3.	Unstable political relations in Serbia	45,1	24,7	12,7	7,6	8,0	1,8
4.	Support of the institutions (government) of the Republic of Serbia to one of the Islamic communities	45,6	22,7	14,1	8,7	7,0	2,0
5.	Multinational composition of the population of Serbia	38,9	21,7	24,2	7,8	6,7	0,8

6.	Multi Religious composition of the population of Serbia	37,3	25,8	21,6	7,1	7,0	1,3
7.	Negative attendance of religious officials	43,1	20,1	15,6	10,0	9,2	2,0
8.	Extreme declarations of individuals and groups in Serbia	37,1	21,6	14,3	16,2	9,7	1,2
9.	Nationalistic action of some groups	35,2	22,6	16,7	15,5	7,4	2,6
10.	Unstable relations in the Islamic community	33,4	20,4	19,3	11,0	13,4	2,5
11.	Non-governmental organizations in Serbia	25,8	24,0	21,3	19,4	7,9	1,6
12.	The existence of two Islamic communities	30,4	17,0	19,4	11,2	20,9	1,2

The highest scaling values have the factors "media support for one of the Islamic communities (M=3,96)", "inter-ethnic confidence in Serbia (M=3,94); "Unstable political relations in Serbia (M=3,86)" and "support of the institutions (Government) of the Republic of Serbia to one of the Islamic communities (M=3,85)".

The lowest rank and scaling values have the factors of the "non-governmental organization in Serbia (M=3,36)" and "the existence of two Islamic communities (M=3,21)" and a somewhat lower value of the arithmetic average is expressed according to the factors "(M=3,76)", "the multi-religious composition of the Serbian population (M=3,75)", "negative incursions of religious officials (M=3,72)", "extreme statements of individuals and groups in Serbia (M=3,57) ", "nationalist action of individual groups (M=3,55)", and "unstable relations in the Islamic community (M=3,42) ".

Based on the value of standard deviation it is possible to determine which factors have a high level of agreement between respondents and those factors around which there is a low level of consent. If we examine the first six ranked factors it is notable that their standard deviations are within the limits of σ=1,231 to σ=1,371. Such a range of standard deviations indicates a relatively high agreement in the opinions expressed about the offered factors.

Members of the Islamic community show the greatest unity over the media support factor for one of the Islamic communities (σ=1,297), inter-ethnic confidence in Serbia (σ=1,231), multinational composition of the population of Serbia (σ=1,271) and the support of institutions (Government) of Republic of Serbia to one of the Islamic communities (σ=1,366).

When considering the six lowest ranked factors, it is notable that the values of the standard deviations are in the range of σ=1,341 to σ=1,548. This range indicates that there is a significant disagreement about the degree of agreement with the given factors. The least agreement within this group lies in the facts that

there are two Islamic communities (σ=1,548), as well as unstable relations in the Islamic community (σ=1,496).

In order to obtain the point of view of members of the Serbian Orthodox Church, which should practically reflect the mood of the majority nation in the territory of the Republic of Serbia, according to relevant factors related to security, (*Table 9*) shows the views of members of the Serbian Orthodox Church.

According to the point of views of Serbian Orthodox Church members, the most important factors that have an impact on security in the Republic of Serbia are "unstable political relations in Serbia" (M=4,07), "multinational composition of the Serbian population" (M=3,99) and the "multi-religious composition of the population of Serbia" (M=3,88), while the lowest ranked factors are: "media support for one of the Islamic communities" (M=3,25), unstable relations in the Islamic community (M=3,25) and the existence of two Islamic communities (3,23).

Table 9: *Factors that are influencing security*

Serial number	FACTORS	The degree of influence (%)					
		Very big	A large influence	Medium influence	Small influence	No influence	Without answer
1.	Media support to one of the Islamic communities	17,8	29,1	27,4	14,0	9,2	2,4
2.	Inter-ethnic trust in Serbia	31,4	38,0	21,5	6,1	0,7	2,3
3.	Unstable political relations in Serbia	45,9	31,4	13,1	5,1	2,3	2,3
4.	Support of the institutions (government) of the Republic of Serbia to one of the Islamic communities	17,8	28,1	29,5	15,2	7,5	1,9
5.	Multinational composition of the population of Serbia	36,6	38,9	15,9	5,6	1,6	1,4
6.	Multi Religious composition of the population of Serbia	29,7	42,8	17,8	6,5	1,9	1,4
7.	Negative attendance of religious officials	38,7	26,2	20,8	7,9	4,0	2,4

8.	Extreme declarations of individuals and groups in Serbia	37,3	27,2	19,4	9,8	4,4	1,9
9.	Nationalistic action of some groups	36,3	30,5	17,8	9,8	3,7	1,9
10.	Unstable relations in the Islamic community	21,6	24,6	26,0	16,1	8,4	3,3
11.	Non-governmental organizations in Serbia	27,6	27,1	25,8	11,5	6,3	1,7
12.	The existence of two Islamic communities	20,8	25,1	25,0	16,6	10,8	1,7

Bearing in mind the above mentioned, members of the Serbian Orthodox Church are not particularly interested in the situation in the Islamic community, nor they consider that relations within the Islamic community can significantly influence the state of security in the Republic of Serbia. However, if we look at the wider context of action and the factor that relates to the unstable political relations in Serbia, which is regarded as a priority, by the members of the Serbian Orthodox Church, then we return to the elements of the sources of political instability, expressed in relations within the Islamic community and with the Islamic community. Therefore, this segment is not negligible, and should always be taken into consideration when analyzing attitudes of members of both populations. This is a key issue because it is in direct correlation with the stability of political relations in Serbia and, of course, the possibility of spreading problems that are characteristic today.

The other two factors that are relevant in terms of multinational and multireligious composition confirm the importance of stability within the Islamic community and are also relevant and related to the Islamic community and should not be ignored.

In order to compare the relevant factors that have an impact on the security in the Republic of Serbia and to see the consent of the members of both populations, (*Table 10*) shows the comparative data of the views of members of the Islamic community and the Serbian Orthodox Church.

Table 10: *Comparative overview of the calculated values of the factors that have impact on safety*

FACTORS	Islamic community			Serbian Orthodox Church		
	Rank	M	σ	Rank	M	σ
Media support to one of the Islamic communities	1.	3,96	1,297	10.	3,25	1,294
Inter-ethnic trust in Serbia	2.	3,94	1,231	4.	3,87	1,088
Unstable political relations in Serbia	3.	3,86	1,371	1.	4,07	1,165
Support of the institutions (government) of the Republic of Serbia to one of the Islamic communities	4.	3,85	1,366	9.	3,28	1,242
Multinational composition of the population of Serbia	5.	3,76	1,271	2.	3,99	1,056
Multi Religious composition of the population of Serbia	6.	3,75	1,285	3.	3,88	1,056
Negative attendance of religious officials	7.	3,72	1,433	5.	3,80	1,238
Extreme declarations of individuals and groups in Serbia	8.	3,57	1,428	7.	3,78	1,269
Nationalistic action of some groups	9.	3,55	1,422	5.	3,80	1,238
Unstable relations in the Islamic community	10.	3,42	1,496	10.	3,25	1,359
Non-governmental organizations in Serbia	11.	3,36	1,341	8.	3,53	1,273
The existence of two Islamic communities	12.	3,21	1,548	12.	3,23	1,337

From a comparative table, it is noted that members of the Islamic community give more importance to the factors "support of the media to one of the Islamic communities" (M=3,96), "inter-ethnic confidence in Serbia" (M=3,94), " the support of institutions (governments) of the Republic of Serbia to one of the Islamic communities "(M=3,85) and " unstable relations in the Islamic community (M=3,42), unlike the members of the Serbian Orthodox Church, because they give more importance to the factors"unstable political relations in Serbia (M=4,07)", "the multinational composition of the population of Serbia (M=3,99)," the multireligious composition of the population of Serbia (M=3.88) and so on.

If we compare the homogeneity in expressing the significance of the factors that influence security and defense, it is noted that members of the Islamic community have expressed greater disunity in giving the importance to the all factors unlike the members of the Serbian Orthodox Church.

There is a significant statistical difference between the views of the respondents about influential factor '' media support to one of the Islamic communities, ie its influence on the security and defense of the Republic of Serbia. In the Islamic community, the average value of the assessment is 3,96, and the standard deviation is 1,297, while the average value of the members of the Serbian Orthodox Church is 2,25, and the standard deviation is 1,294. The corresponding t-ratio is -9,852 and is significant at p=0,01.

While examining the factors of inter-ethnic confidence in Serbia, ie its impact on the security of the Republic of Serbia, it was found that there was no statistically significant difference between the respondents. In the Islamic community, the average value of the assessment is 3,94, and the standard deviation is 1,231, while the average of the Serbian Orthodox Church members is 3,87, and the standard deviation is 1,088. The corresponding t-ratio is -1,120 and is not significant.

"Unstable political relations in Serbia", as a factor of the impact on the security of the Republic of Serbia - according to the stances of the respondents, there was a statistically significant difference in the viewpoint of the factor mentioned above. In the Islamic community, the average value of the assessment is 3,86, and the standard deviation is 1,371; among members of the Serbian Orthodox Church the average value of the assessment is 4,07, and the standard deviation is 1,165. The corresponding t-ratio is 3,037 and is significant at p=0,01.

The stances of the respondents towards the factor of support of the institutions of the Republic of Serbia to one of the Islamic communities statistically differ significantly. In the Islamic community, the average value of the assessment is 3,85, and the standard deviation is 1,366; among members of the Serbian Orthodox Church, the average value of the assessment is 3.28, and the standard deviation is 1,242. The corresponding t-ratio is -8,038 and is significant at p = 0,01.

In considering other factors, it should be emphasized that for the factor "multinational composition of the population", "unstable relations in the Islamic community", "the nationalist action of individual groups "," non-governmental organizations in Serbia "and" extreme indignation of individuals and groups in Serbia "there is a significant statistical difference in stances towards these factors. There are special differences between the respondents and in the range of certain factors that have an impact on the security and defense of the Republic of Serbia and there is no need to explain them in more detail, because they are presented in Table 5 as well as their rank.

The attitude of the respondents to the factor of the multireligious composition of the population of Serbia is statistically unique and there are no significant differences in the attitudes of the respondents. In the Islamic community, the average value of the assessment is 3,75, and the standard deviation is 1,285; among members of the Serbian Orthodox Church, the average value of the assessment is 3,88, and the standard deviation is 1,056. The corresponding t-ratio is 1,899 and is not significant.

Statistically significant difference between the respondents and the factor of the existence of the two Islamic communities in Serbia was not determinate.

The stances of the respondents towards the negative attendance of religious officials, as an influential factor on the security of the Republic of Serbia, are not statistically significantly different. This position is relatively high in both populations (at the 7th place among members of Islam, and among SOC members in the 5th place out of 12 offered) and the respondents give him considerable attention. In the Islamic community, the average value of the assessment is 3,72, and the standard deviation is 1,433; among members of the Serbian Orthodox Church the average value of the assessment is 3,80, and the standard deviation is 1,275. The corresponding t-ratio is 1,135 and is not significant.

The members of the Islamic community, and somewhat smaller members of the Serbian Orthodox Church, expressed greater intensity according to the above factors. This is logical, because they are a majority of the people in the Republic of Serbia, and the state of influential factors is differently experienced in regard to members of the Islamic community as a minority nation, that is, a national minority.

CONCLUSION

According to the statistical data of the population census of Serbia for the census periods, a coherence between the national and confessional structure was observed. The census data confirmed the process of homogenization of the population of Serbia on a religious and national basis, where confessional belonging significantly influences the national identification that the respondents in the census list hold and want to emphasize religious and ethnic affiliation as well as family status.

It has been found that churches and religious communities are very interested in security events. Also in the analyzed positions, which primarily concern the significance of security impact factors, where significant statistical differences can be observed in the views of the respondents between members of the Islamic community and members of the Serbian Orthodox Church.

Analyzing the observed stances on the security of the Republic of Serbia, it was concluded that the analysis of the attitudes of the respondents about the influence of negative attendance of religious officials from the results concludes that the negative statements of religious officials have no impact on the security and defense of Serbia. On the other hand, the support of state institutions to one of the Islamic communities, according to the respondents, has a very negative impact on the state of inter-ethnic relations and the social position of members of Islam at all levels of social organization. It concludes that the state should not "support" the unstable relations in the Islamic community. From these results, state institutions by unified approach towards all members of the Islamic community in Serbia would gave a positive contribution to their social position and state

of inter-ethnic relations, which would ultimately have a positive impact on the strengthening of the security and defense of the Republic of Serbia.

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WILLINGNESS TO REPORT CRIME IN RELATION TO EXPERIENCE OF CONTACT WITH POLICE IN SERBIA AND CROATIA

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Abstract: Numerous research show that trust in police has important role on decision of victim or witness of criminal offence to report it. The aim of this paper is to investigate whether the willingness to report criminal offences in hypothetical situations is different with regards to police behaviour towards respondents during their last contact and whether this willingness differs in Croatia and Serbia. The research was conducted on convenience sample of 227 students from Croatia and 222 from Serbia by using the survey quantitative method. Ten hypothetical situations were described to respondents where they had to picture themselves either as a victim or a witness of particular crime and assess their willingness to report it. ANOVA statistical analysis shows significant differences in willingness to report in relation to police behaviour during the last contact. The results indicate the importance of police behaviour towards citizens and have practical implications in preventive actions and encouraging reporting of crimes.

Keywords: reporting crimes, victim, witness, police, Croatia, Serbia.

INTRODUCTION

Dark figure of crime is very important subject that is lacking research in South Eastern Europe. In order for crime that happened to be noted, usually someone has to report it, which according to studies is not the case. Therefore, officially recorded crimes and deviant behaviours are one of the least reliable of all official social statistics (Giddens, 2007: 216). In order to avoid this problem, so-called victimisation surveys are being conducted, in which respondents are asked whether they were victims of crime (usually within a year) and whether they reported crime to the police (Giddens, 2007: 217). Such surveys are relatively new and

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according to Abercrombie, Hill and Turner (2008: 175), the very first such survey was conducted by the British government in 1982. The results of that survey were that the majority of crimes were not reported to the police.

Victimisation method has some limitations, including refusing to participate in the survey, which can lead to false conclusions because the population that refused to participate has most likely unique characteristics that we know nothing of. Furthermore, the participants can also decide to neglect that they were the victim of a crime because of shame or fear, which also has effect on final conclusions. Finally, the results can also be under the influence of the current social climate or perception of particular crime to be really a crime, where sometimes the public can perceive a particular crime as a serious crime, sometimes as less serious, but sometimes no crime at all (Young, 1988, according to Haralambus & Holborn, 2002: 368). Nevertheless, such surveys are better indicators of real situation than the official records and show discrepancy between the official and real number of crimes that happened (Wittebrood & Junger, 2002).

FACTORS INFLUENCING REPORTING CRIME

According to earlier research on willingness to report crime, a few factors have emerged that are related to higher or lower willingness to report crime.

There are several research models of reporting of crimes (Goudriaan, 2006). For example, economic model deals with a decision to report crime from victim's perspective of cost, whether it is material, time or psychological cost, and benefit, whether it is material or psychological, that victim would have if the crime is reported. This research model is usually linked with property crimes, but it can also be linked with other types of crimes. Victims of crimes against life and body will, for example, make a decision based on the severity of injury, but also on the time it takes to report and the possibility of compensation of damages. In the end, the decision to report or not to report will be based on what victim perceives as more beneficial (Goudriaan, 2006: 16). A drawback of this model is in assumption that a person can, in case of being victimised, make a rational decision, and at the same time it neglects cognitive factors such as fear of shame (Greenberg & Beach, 2004), as well as other factors like former victimisation, that can have interfering effects on victims rational choices (Bowles, Reyes & Garoupa, 2009; Avdija & Giever, 2012).

Psychological model, on the other hand, as expected, takes into account cognitive factors, but emotional factors as well. According to Ruback, Greenberg & Westcott (1984) a victim is passing through three phases while making a decision to report crime: 1) identifying a crime and putting itself into a status of a victim; 2) assessing severity of crime based on their own vulnerability and harm taken, and finally 3) making a decision whether to report a crime or not based on their own cognition, and all in order to reduce experienced discomfort.

Sociological research model is observing reporting of crimes on macro level through the prism of society. This model assumes that reporting of crimes is the function of social structures in a society where both victim and perpetrator live (Black, 1976, according to Goudriaan, 2006: 19). According to Black (1976, according to Godriaan, 2006: 19), the *behaviour of law* depends on five structural social variables: social stratification, morphology, culture, organisation and social control. Many research support this model, whereby individuals who tend to report less are of lower socio-economic status (Avdija & Giever, 2012), individuals living in suburban and rural regions (Rennison, Dragiewicz & DeKeseredy, 2013), males (Skogan, 1984), older individuals (Goudriaan, 2006: 166; Avdija & Giever, 2010), if there is lower social cohesion (Skogan, 1984) and social control (Avdija & Giever, 2010; Hart & Colavito, 2011).

The model that indicated the best fit and is most comprehensive is, according to Goudriaan (2006: 21-22), the socio-ecological model of reporting of crimes that indicates that decisions are never made "in vacuum", they are a part of a larger unity, "dynamic interaction with social environment in which decision makers are integrated in" (Granovetter, 1985; Nee & Ingram, 1998). Menard (2003, according to Goudriaan, 2006: 21-22) describes the socio-ecological model as a whole context in which a crime took place, including the factors such as type of space (public, semi-public, or private), the availability of police, the strength of social connections within community, the relationship with police, attitude towards police, etc.

The decision to report crime can be influenced by radius or distance between place of residence and the place where crime was committed, as well as time spent in a specific place (Wisnieski et al., 2013) and spatial governance (Lee et al., 2013).

In addition, there is a correlation between willingness to report crime and if victim knows the perpetrator, where the victim will tend to report less if they know the perpetrator (Goudriaan & Nieuwbeerta, 2007), especially if it is the intimate partner in case of violence, but major role will be played by the facts such as if they have children or the severity of crime (Akers & Kaukinen, 2009).

The important role, maybe even the essential role in decision to report crime, is played by the relationship between citizens and the police, as indicated by some research. The relationship between citizens and the police generally plays major role in overall functioning of police system, criminal justice system and social system. The perception of police in society can be influenced by different factors, such as context, media, personal experience with criminal justice system, presence of police and police actions (Miller & Hess, 1998: 36-38). In the context of reporting crimes, less willing to report will be the victims who have lower trust in police and who have bad experience (Sparks et al., 1977), where it should be emphasized that younger individuals and men have bad experiences with police more often and consequently have lower trust (Avdija & Giever, 2010; McAra & McVie, 2005; Low & Durkin, 2001; Beck & Yulia, 2004). Great influence on deci-

sion to report also has the presence and behaviour of police officers (Levitt, 1998; Tolsma, Blaauw & Grotenhuis, 2012).

Aims and hypotheses

The aim of this paper is to investigate if there is difference in willingness to report crime in hypothetical situations in Serbia and Croatia as well as if there is difference in willingness to report crime in relation to experience of the last official contact of a respondent with the police. Furthermore, the aim is to investigate if there is difference in willingness to report crime in hypothetical situations being hypothetical victim and hypothetical witness of a crime with regards to country of residence. Considering the aims of research and relevant literature, the following hypotheses were formed:

H1: There is a difference in willingness to report crime in hypothetical situations between Croatia and Serbia;

H2: There is a difference in willingness to report crime in hypothetical situations in relation to experience of the last official contact with the police.

Methodology

The research was conducted as part of awarded international student research project *Research on frequency and readiness of students in post-socialist countries of Southeast Europe to report criminal offences.*[4] The method used is the quantitative method of survey and the instrument used for collecting data was an online questionnaire. The research was conducted during February and March 2019. The sample consisted of 1419 students from 7 countries (Bosnia and Herzegovina, Montenegro, Croatia, Hungary, Macedonia, Slovenia and Serbia), but for this paper the data for Croatia and Serbia (N=449) were used. The respondents were recruited using the social network *Facebook* through student groups. The online surveying method was selected due to two reasons: firstly, because of the sensitive nature of research topic and ethnicity, in order to increase feeling of anonymity and security during participation in survey (Kosinski et al., 2015), and secondly, the online surveying method has proven to be one of the best when researching the student population (Vehovar, Lozar, Manfreda & Callegaro, 2015: 25-26).

The research instrument contained a set of 10 so-called vignettes, hypothetical situations containing the description of a situation in which the respondents had to picture themselves as the victim of a particular crime (Cronbach α=0,66) or the witness of a crime (Cronbach α=0,637), after which they had to report to which extent they would be willing to report a specific crime, on scale from 1 to 4 (1 – I completely agree that I would not report, 4 – I completely agree that I would report), for example: *Imagine that you see a person who is trying to steal a*

4 *DIC Graduate Fellowship 2018, American Society of Criminology*

bike. Would you report it? The questionnaire also contained questions regarding the experience of contact with the police and the attitude towards the contact of citizens with the police. In order to describe their experience of the last official contact with the police, the respondents were asked how the police officers behaved during that time. With the use of seven offered answers about the level of perception of positive or negative contact, three groups were formed: *positive experience, negative experience and unknown (or does not remember)*. Furthermore, the questionnaire contained the questions regarding how much citizens should collaborate with the police and how often they would/like to have contact with the police.

Respondents

The respondents were students from Croatia and Serbia. According to the data from the Croatian Bureau of Statistics (2018) and the Statistical Office of the Republic of Serbia (2018), total number of students in both countries for academic year 2017/18 was 415 602. There were 256 172 students in Serbia and their number in this sample is 222. There were 159 430 students in Croatia and their number in this sample is 227. Proportions and percentages for the whole population and for the sample can be seen in Chart 1.

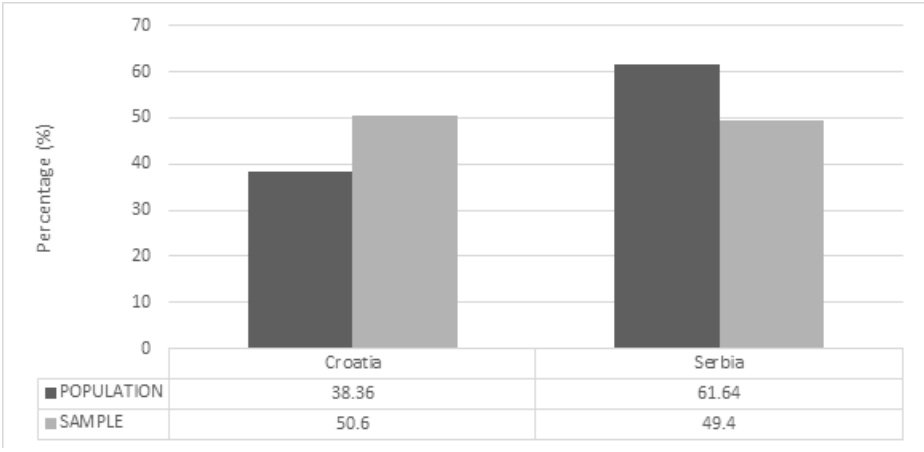


Chart 1: – *Proportion of students per country in population and in the sample*[5]

The gender structure of the sample consists of 82.6% female, and 17.1% male respondents (Chart 2). The respondents are uniformly represented according to their year of study, with most students of the fifth year of study (Chart 3). It is important to note that in the percentage of the students of the fourth and the fifth year of integrated studies there are also the students of the first and the second year of graduate studies.

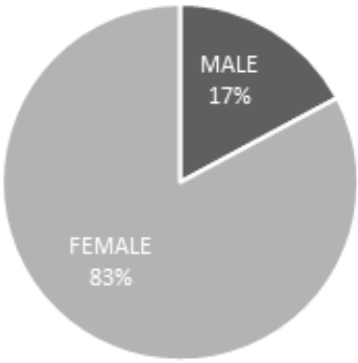


Chart 2: - *Gender*

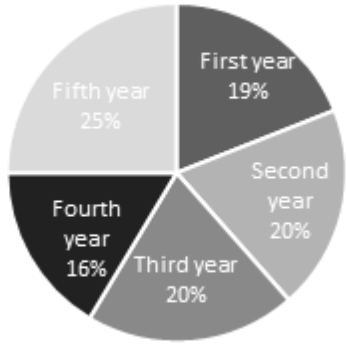


Chart 3: – *Year of study*

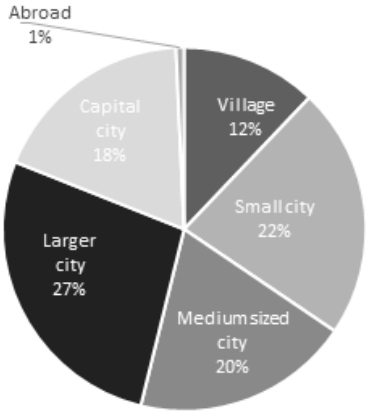


Chart 4: – *Place of birth*

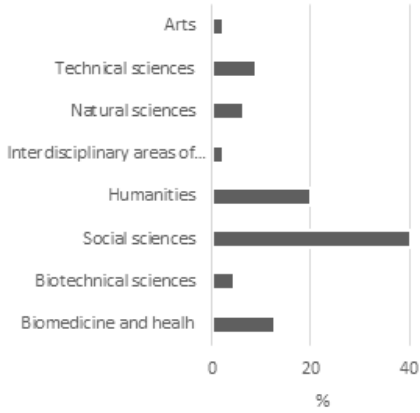
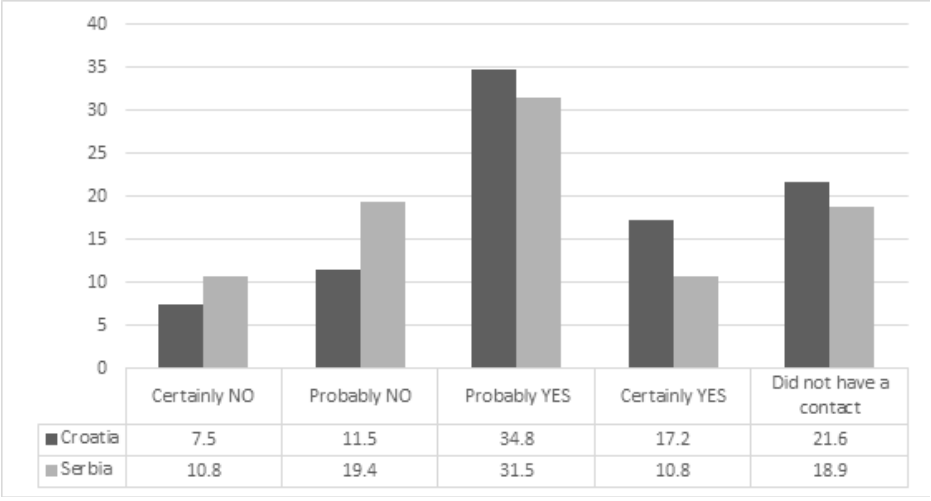


Chart 5: – *Field of study*

The respondents were mostly born in larger cities (27%), but all other categories of place of birth are evenly distributed (Chart 4). Looking at the field of study, most respondents study social sciences (40%), followed by humanities studies (20%), biomedicine and health (12.7%), and the least being interdisciplinary areas of science (2.4%) and arts (2.4%). Technical sciences and natural sciences are equally distributed.

Results

Firstly, the descriptive statistics are shown. In Chart 6 we can see how the respondents perceive that the police answered their questions, or provided them with help they expected, for Croatia and Serbia. In the same Chart we can see that the respondents from Croatia consider to a greater extent that the police answered their questions and provided them with the help they expected than the participants from Serbia. However, the respondents from both countries consider that the police answered their questions and provided them with the help they expected.



	Certainly NO	Probably NO	Probably YES	Certainly YES	Did not have a contact
Croatia	7.5	11.5	34.8	17.2	21.6
Serbia	10.8	19.4	31.5	10.8	18.9

Chart 6: – *During your last encounter with the police, did they answer your questions or provided you with the help you expected?*

On the other hand, when the respondents were asked if they helped police in the last 12 months by means of providing the police with information that they were seeking from citizens, the respondents mostly answered that they did not help police. If we look at the frequencies per county, we can see that they are mostly even (Chart 7).

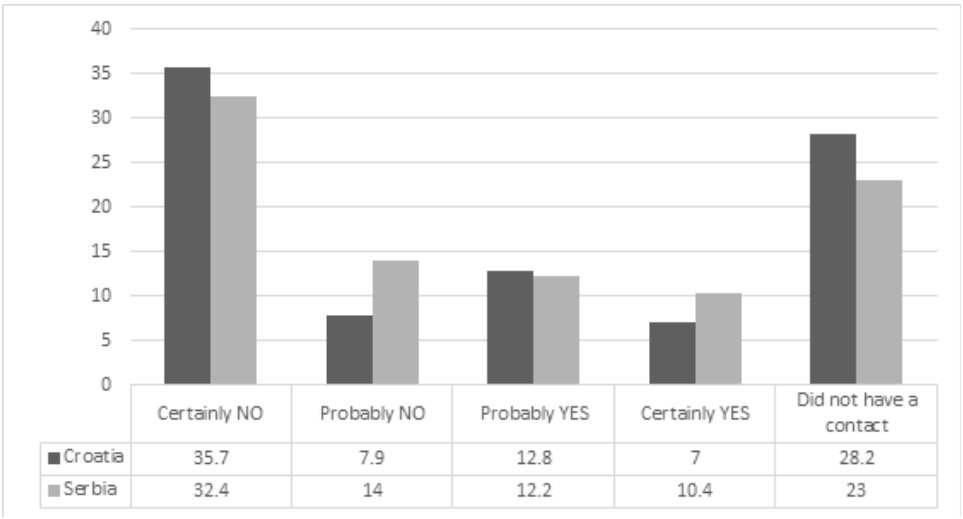


Chart 7: – *Did you help the police in the last 12 months (provided police with information they were seeking from citizens)?*

Nevertheless, the respondents from both countries express their will for helping the police in the future, while the respondents from Serbia are more willing than the participants from Croatia (Chart 8).

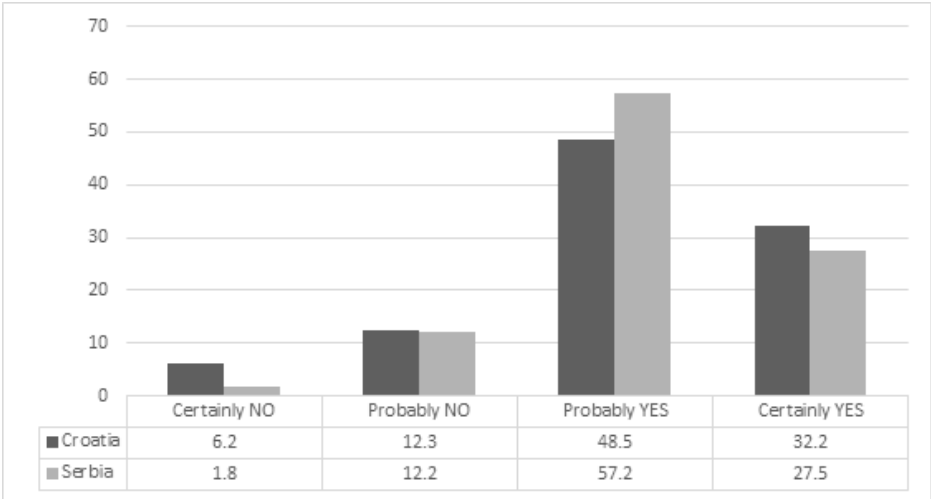


Chart 8: – *Are you willing to help the police in the future?*

However, despite the will for helping the police in the future, both respondents from Croatia and Serbia are not willing to encounter a police officer and be in contact with him, and such willingness is lower in Serbia, and a bit higher in Croatia (Chart 9).

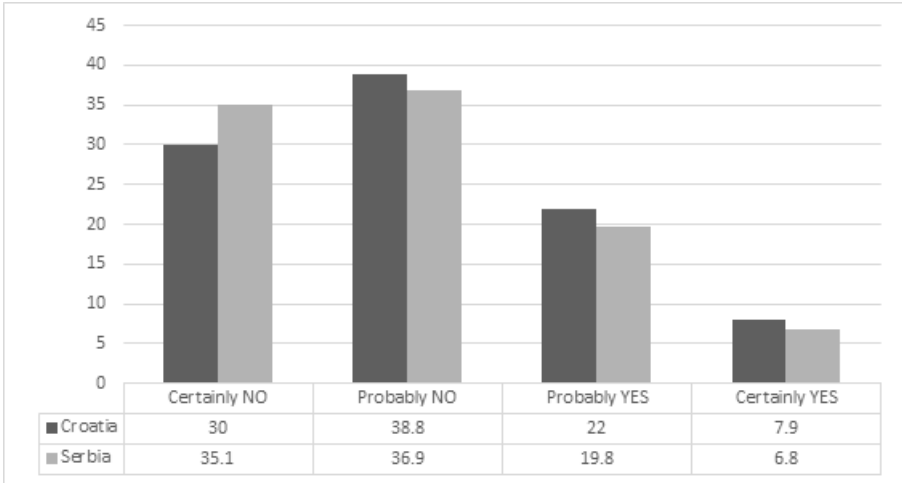


Chart 9: – *Would you like to encounter a police officer more often and be in contact with him?*

The answers that were unexpected (Chart 10) in regards to the previous chart (Chart 9) indicate that most respondents from both countries state that in order to keep order in a place/city they live in, it is necessary to establish closer cooperation and connection between the citizens and the police, while the respondents from Serbia agree a bit more.

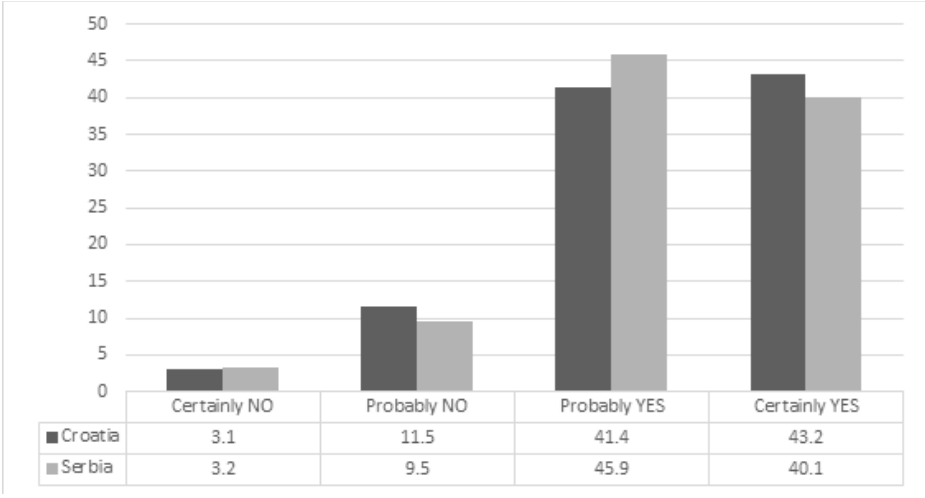


Chart 10: – *Do you think that in order to keep order in a place/city you live in, it is necessary to establish closer cooperation and connection between the citizens and the police?*

In case of the last contact with the police and their behaviour, most respondents state that police officers *dedicated a lot of attention* during the last contact, followed by *they were not interested,* then *they dedicated a lot of attention and sympathy*, and a minor part of respondents from both countries stated that police officers were behaving *irritating* and *hostile*. A large number of the respondents have stated that they do not know how the police officers behaved or they could not remember (Chart 11). Experiences are mostly the same in both countries, except for the case or disinterest which was reported more by the respondents from Serbia, while the respondents from Croatia reported more that police officers dedicated a lot of attention and sympathy (Chart 11).

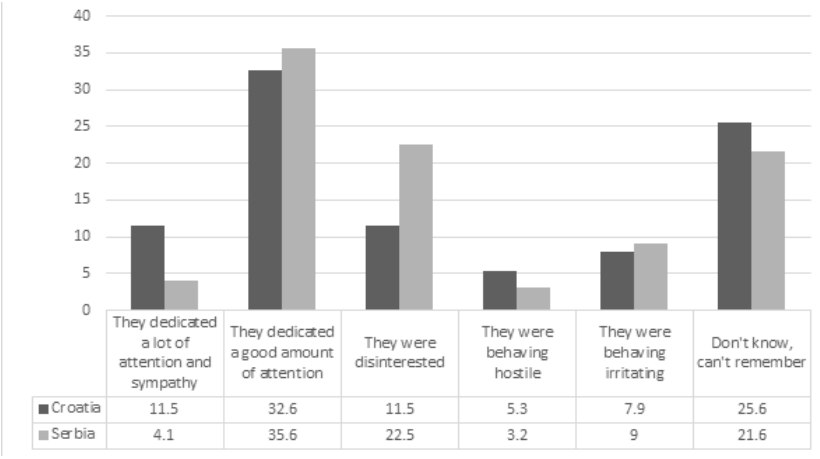


Chart 11: – *How did the police officers treat your during the last official contact?*

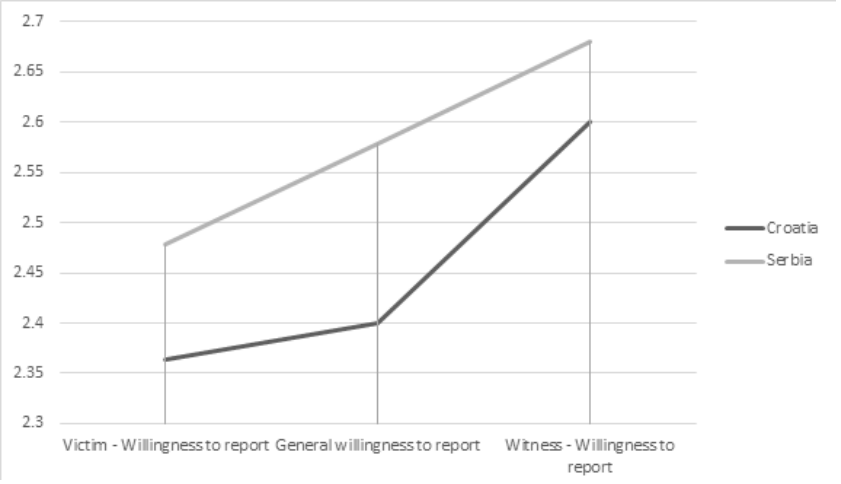


Chart 12: – *Willingness to report crime*

Willingness to report crime, Chart 12, tells us that the respondents are descriptively, on average willing to report crime, where that willingness is higher when they are placed in a hypothetical situation of a witness of a crime, than it is the case when they are placed in a hypothetical situation of victim of a crime. Furthermore, the respondents from Serbia are more willing to report crime than the respondents from Croatia in both hypothetical situations of being a victim and being a witness. We will test with the statistical analysis if there is a statistically significant difference in willingness to report crime among hypothetical victims or witnesses.

In order to determine whether there are statistically significant differences among countries in willingness to report crime and differences in willingness to report with regards to the last contact with the police, statistical variance analysis (ANOVA) and *Games-Howell post-hoc* test were conducted.

Table 1: *Table of ANOVA summary for arithemtic means of willingness to report crime and country*

		Sum of Squares	df	Mean Square	F	p
General willingness to report	Between Groups	1.086	1	1.086	4.756	0.030
	Within Groups	99.985	438	0.228		
	Total	101.071	439			
Victim – Willingness to report	Between Groups	1.447	1	1.447	4.107	0.043
	Within Groups	154.681	439	0.352		
	Total	156.128	440			
Witness – Willingness to report	Between Groups	0.702	1	0.702	3.134	0.077
	Within Groups	98.838	441	0.224		
	Total	99.541	442			

* *p<0.05*

In Table 1, we can see that there is a statistically significant difference in willingness to report crime in hypothetical situations between the respondents from

Croatia and Serbia, where the respondents from Serbia are more willing in general willingness to report as well as in hypothetical situations of being a victim. According to the ANOVA results, we conclude that there is no statistically significant difference in willingness to report crime between the respondents from Croatia and Serbia in hypothetical situations of being a witness of a crime.

Table 2: *Table of ANOVA summary for arithemtic means of willingness to report crime and experience of the last contact with the police*

		Sum of Squares	df	Mean Square	F	p
General willingness to report	Between Groups	1.861	2	0.930	4.097	0.017
	Within Groups	95.144	419	0.227		
	Total	97.005	421			
Victim – Willingness to report	Between Groups	3.056	2	1.528	4.330	0.014
	Within Groups	148.197	420	0.353		
	Total	151.253	422			
Witness – Willingness to report	Between Groups	1.094	2	0.547	2.487	0.084
	Within Groups	92.802	422	0.220		
	Total	93.896	424			

In Table 2, we can see that there is statistically significant difference in general willingness to report crime and willingness to report crime in hypothetical situations in relation with the last contact with the police. According to the ANOVA results there is no statistically significant difference in willingness to report crime among hypothetical witnesses of crime in regards to experience of the last contact with the police. In further analysis, *Games-Howell post-hoc* test will show us which groups have significant differences.

Table 3: *Results of Games-Howell post-hoc test of willingness to report crime in relation to experience of the last contact with the police*

Dependent Variable	(I) Contact	(J) Contact	Mean Difference (I-J)	Std. Error	Sig.	95% Confidence Interval	
						Lower Bound	Upper Bound
Victim – Willingness to report	Positive	Negative	,18009*	,06983	,028	,0155	,3446
		Unknown	,00788	,06880	,993	-,1701	,1544
	Negative	Positive	-,18009*	,06983	,028	-,3446	-,0155
		Unknown	-,18797*	,07546	,036	-,3660	-,0100
	Unknown	Positive	,00788	,06880	,993	-,1544	,1701
		Negative	,18797*	,07546	,036	,0100	,3660
Witness – Willingness to report	Positive	Negative	,11398	,05481	,096	-,0152	,2431
		Unknown	,01438	,05454	,962	-,1142	,1430
	Negative	Positive	-,11398	,05481	,096	-,2431	,0152
		Unknown	-,09960	,05931	,215	-,2395	,0403
	Unknown	Positive	-,01438	,05454	,962	-,1430	,1142
		Negative	,09960	,05931	,215	-,0403	,2395
General willingness to report	Positive	Negative	,14367*	,05593	,029	,0119	,2754
		Unknown	,00207	,05536	,999	-,1285	,1326
	Negative	Positive	-,14367*	,05593	,029	-,2754	-,0119
		Unknown	-,14160*	,05993	,050	-,2830	-,0002
	Unknown	Positive	-,00207	,05536	,999	-,1326	,1285
		Negative	,14160*	,05993	,050	,0002	,2830

*. The mean difference is significant at the 0.05 level.

By applying the *Games-Howell post-hoc* test (Table 3) that was used because of unequal variances, we can see that there is a difference in willingness to report among hypothetical victims of a crime in relation to positive or negative experi-

ence, where the respondents who perceived their last contact with the police as positive will be more willing to report crime than the respondent who perceived their last contact as negative. Furthermore, hypothetical victims differ in willingness to report in relation to negative experience and unknown experience of their last contact with the police whereby the respondents who have unknown experience will be more willing to report crime. When it comes to witnesses of hypothetical situations, there is no statistically significant difference of willingness to report in relation to the last contact with the police.

If we look at the general willingness to report crime, regardless of the status of a victim or a witness, there is statistically significant difference in willingness to report crime in positive and negative last contact the police, whereby the respondents who perceived their contact as negative will be less willing to report crime than the respondents who perceived their last contact with the police as positive. Also, the respondents who had the unknown experience with during their last contact are more willing to report crime than the respondents who had a negative experience during the last contact with the police.

DISCUSSION AND CONCLUSION

The results of the research have shown that there is a difference in willingness to report crime between countries. That confirmed H1 hypothesis which stated that there is a difference in willingness to report crime between Croatia and Serbia. The *Games-Howell post-hoc* test results showed that the respondents from Serbia are more willing to report crime in hypothetical situations with general willingness and willingness to report as a victim of a crime. Regarding being a witness of a crime in a hypothetical situation, there is no statistically significant difference between countries. It is important to note that witnesses are more willing to report than victims in hypothetical situations for both countries. The differences in willingness to report between Croatia and Serbia could be explained by factors on the macro-level such as opportunities, like self-help in the community, police competences (responses to reports, effectiveness), social stratification, gender roles in the country, the roles of adults and youngsters or the level of individualism (Guodriaan, 2006: 150). Willingness to report can be also influenced by the level of conformity to rules in some countries, where the countries with higher level of conformity will be more willing to report (Pavlović & Cajner Mraović, 2019). High influence on willingness to report particular crimes, like property crimes, is expressed by the citizens' trust in police, where those who have higher trust in police will be more willing to report crime (Pavlović & Vinogradac, 2019).

When it comes to the experience of contact with the police, the results have shown that there is statistically significant difference in willingness to report in relation to the perception of the last contact with the police as positive, negative or unknown, which confirmed H2 hypothesis. The results have shown that the

respondents who have positive experience of the last contact with the police as well as the respondents with unknown experience will be more willing to report crime, while the respondents with negative experience will be less willing to report. It should be noted that the respondents who had the unknown experience are still more willing to report so it can be assumed that their experience was more positive than it was negative, since it was not remembered (Christianson, Loftus, Hoffman & Loftus, 1991). Willingness to report in case of positive experience supports previous research of this topic, where for example, the encouraging attitude of the police has positive effects on the decision to report crime (Tolsma, Blaauw & Grotenhuis, 2012). Tolsma, Blaauw & Grotenhuis (2012) also found that availability and working hours of the police, the type of report and anonymity can have effect on the decision to report. The number of police officers also plays part in reporting, where with increased number of police officers, the number of reports also increased (Levitt, 1998).

When we discuss about the student population that makes our sample, it is important to note that these are young people who are *a priori* less willing to have any contact with the police and are less willing to report crime (Avdija & Giever, 2010). Still, according to the research of student population, the frequency of contact with the police, initiating a report from other citizens and from the police, can encourage this population to report crimes (Avdija & Giever, 2010). A student's decision to report can be influenced by the stage of collective efficiency, such as social control (Hart & Colavito, 2011).

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ANALYSIS OF THE PERCEPTION OF POLICE OFFICERS ABOUT VARIOUS FORMS OF RADICALIZATION AND EXTREMISM IN SLOVENIA AND CROATIA[1]

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Abstract: Recently, experts and practitioners alike noted the emergence of security challenges arising from radicalisation, often leading to extreme violence. Radicalisation and violent extremism present a security threat also to Mid Europe and Western Balkan countries. In the past few decades, the Western Balkan countries have been viewed as a breeding ground for religious radicals and violent extremism. Nowadays, the police have assumed a crucial role in facilitating a preventive multi-stakeholder approach at the local or regional levels, particularly in at-risk local settings. The paper presents findings of a study conducted on a sample of 117 students of the Croatian Police College of the Ministry of the Interior and 57 Slovenian police officers. A questionnaire was used to identify police officers' opinion on the extent of different forms of extremism/radicalization existing in their countries in general and their opinion on religious extremism/radicalisation in Slovenia and Croatia.

Keywords: *police, radicalization, perception, Slovenia, Croatia*

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INTRODUCTION

Until recent years, research and policy debate primarily focused on preventing terrorism (Macaluso, 2016). Only in the last decade have terms such as radicalization and violent extremism emerged in researches, literature and policy debates (Macaluso, 2016; Sozer, Sevinc, & Ozeren, 2015; Butt & Tuck, 2014; Veldhuis & Staun, 2009). Violent extremism is a general term that refers to any violence that is inspired by ideological beliefs including, but not limited to political ideology (Sozer, Sevinc, & Ozeren, 2015; Nasser-Eddine, Garnham, Agostino, & Caluya, 2011). Countering violent extremism refers to soft power approaches to ideologically driven violence (Sozer, Sevinc, & Ozeren, 2015). Radicalization is a process in which individuals adopt extreme political, social and/or religious ideals and aspirations, and where the achievement of particular goals justifies the use of violence (Wilner & Dubouloz, 2010).

As police play a crucial role in preventing radicalisation and violent extremism, and while respecting the need for international police cooperation in this task, the purpose of this paper is to compare Croatian and Slovenian police officers' perceptions of various forms of radicalisation and extremism in Slovenia and Croatia.

Local dimension to radicalisation and violent extremism

There is always a local dimension to radicalisation and violent extremism: it always happens somewhere, whether it is the place where radicals and extremists hide, find support and operate, or where an individual or a group becomes involved with radicalization and violent extremism ([OSCE], Organization for Security and Co-operation in Europe, 2014; Sageman, 2008). A local approach to preventing and countering violent extremism and radicalisation that leads to terrorism (VERLT) is necessary along to the ongoing regional and international strategies ([OSCE], Organization for Security and Co-operation in Europe, 2014; Butt & Tuck, 2014). Countries have sought to identify where to concentrate their efforts in trying to allocate resources better and improve the effectiveness of their action against radicalisation and violent extremism ([OSCE], Organization for Security and Co-operation in Europe, 2014; Sedgwick, 2010). Communities have suddenly become the centre of attention in the formulation and implementation of radicalization and violent extremism prevention policies ([OSCE], Organization for Security and Co-operation in Europe, 2014). The above-mentioned leads to a conclusion on the importance of putting a community at the centre of countering radicalization and violent extremism policies and measures, as well as the development of community-based approaches, with emphasis on prevention and development of partnerships with public ([OSCE], Organization for Security and Co-operation in Europe, 2014).

Traditionally, countering radicalization and violent extremism policies and practices have been community-targeted, namely targeting communities for intelligence-gathering and enforcement activities driven by the security priorities

of the country ([OSCE], Organization for Security and Co-operation in Europe, 2014). Such activities, however, involve little or no consultation with members and groups from the public, and are not aimed at gaining trust and support from people (men and women) in local communities and rarely take into consideration their diverse need or how they are differently affected by terrorism and measures against it ([OSCE], Organization for Security and Co-operation in Europe, 2014). (Macaluso, 2016)

Radicalisation and violent extremism is a threat to the public at large and, consequently, to all communities ([OSCE], Organization for Security and Co-operation in Europe, 2014). Acts of radicalization and violent extremism do not only impact communities and their members, but radicals and extremists also need to find support, sympathizers and recruits from the public to be able to carry out their plans ([OSCE], Organization for Security and Co-operation in Europe, 2014).

Local police

Struggle against radicalization and violent extremism was usually an exclusive task for security sector agencies (Prislan, Černigoj, & Lobnikar, 2018). Today, the police have taken a key role in facilitating a preventive multi-stakeholder approach at the local or regional level, particularly in at-risk local settings (Prislan, Černigoj, & Lobnikar, 2018; Butterfoss & Kegler, 2009).

Police is a crucial factor in preventing and countering radicalization and violent extremism. Community policing is a proper strategy to counter radicalization and violent extremism because it genuinely requires building a partnership with the private sector and with communities (Sozer, Sevinc, & Ozeren, 2015).

Quality partnership with the public offers enormous opportunities for countries to gather intelligence and to share information (Sozer, Sevinc, & Ozeren, 2015). Community policing poses less risk as it builds upon trust and community partnership (Sozer, Sevinc, & Ozeren, 2015). Traditional policing poses a higher risk than community policing in terms of destroying democratic principles (Sozer, Sevinc, & Ozeren, 2015). Nevertheless, the main goal of maintaining community participation requires a focus on building trust rather than gathering intelligence (Sozer, Sevinc, & Ozeren, 2015).

Community policing assumes the presence of contact police officers who have a permanent patrolling area where they rely on proactive and cooperative relations with citizens in order to observe and resolve problems in the area.

Police officers' views on preventing and countering radicalization and violent extremism

Police officers' positive attitudes towards community policing are crucial to the success of that strategy (Sozer, Sevinc, & Ozeren, 2015). Police officers' perception

of community policing determines their function becoming aligned with the objectives of community policing (Sozer, Sevinc, & Ozeren, 2015). The police redefine their role as they adopt community policing (Sozer, Sevinc, & Ozeren, 2015).

Traditionally, local police are not viewed and perceived as a factor of prevention. Community policing is a strategy that changes the view of the role of police officers' in the direction of police being a public service and changing the role of citizens and the local community in creating and maintaining security.

Croatian and Slovenian Police

Croatia as a Central European and Mediterranean country has gone through War for Independence in the early 1990s and became an internationally recognized parliamentary democratic republic (Kovčo Vukadin, Borovec, & Ljubin Golub, 2013).

Croatian police are highly centralized police, structured and operating within the Ministry of the Interior as an administrative organization for carrying out police affairs (Kovčo Vukadin, Borovec, & Ljubin Golub, 2013). The Croatian police force is hierarchically organized at three levels: (1) General Police Directorate, (2) Police Administrations, and (3) Police Stations (Kovčo Vukadin, Borovec, & Ljubin Golub, 2013).

Slovenia is a Central European Country which declared independence from Yugoslavia in 1991 (Meško, Lobnikar, Jere, & Sotlar, 2013). Since then, Slovenian police have gone through many attempts of reforms in order to move closer to the western style of policing (Meško, Lobnikar, Jere, & Sotlar, 2013).

The police organization in Slovenia is centralized, with one national and state-funded police force, leaving local authorities with almost no influence in that area (Meško, Lobnikar, Jere, & Sotlar, 2013; Durić & Šumi, 2018). All police stations are state-level units, which operate at the local level (Meško, Lobnikar, Jere, & Sotlar, 2013). The local government has no control over their operation or the appointment of their commanders (Meško, Lobnikar, Jere, & Sotlar, 2013). While such centralization feasibly eased the management of reforms from a central level, it also conflicted with the new policing strategy that the police adopted – community policing (Meško, Lobnikar, Jere, & Sotlar, 2013).

We can characterize Croatian and Slovenian police as relatively modern and professional law enforcement services far closer to their western counterparts than to the past communist "militia", a military-like organization in the service of protecting the ruling elite (Meško, Lobnikar, Jere, & Sotlar, 2013). Both Croatian and Slovenian police are public services serving citizens at the local community level by adopting community policing strategy.

Methodology Sample

The study was conducted on a sample of 117 students of the Croatian Police College of the Ministry of the Interior and 57 Slovenian police officers to evaluate the perceptions of police officers about various forms of radicalization and extremism in Slovenia and Croatia. All respondents were involved in the training process for the prevention of radicalization and extreme violence in 2017 (Slovenian subsample) and 2018 (Croatian subsample).

Instrument

The study used a questionnaire developed in the First Line – a project intended for training of various stakeholders in the area of radicalisation and violent extremism. The questionnaire was adapted to suit each country's environment, including altering different parts of the questionnaire.

Within the framework of the bilateral Slovenia – Croatia project "The Community Policing and the Role of the Police in Preventing Violent Radicalization in Slovenia and Croatia" a 4-hour training session was prepared. The participants were presented the latest trends concerning terrorist attacks in Europe and different approaches to preventing radicalisation and violent extremism. Participants were interviewed at both the start and end of the training to determine how the training had influenced their knowledge and attitudes regarding the prevention of radicalisation and violent extremism. For this study, we are using data collected from interviewing the respondents after attending the 4-hour training session.

Results

Results show an analysis of the perception of police officers about various forms of radicalization and extremism in Slovenia and Croatia.

Table 1 shows that the Croatian respondents in considerable measure (Mean 3.29; SD = 0.80) do not know anything or know very little about extremism, violent extremism and the process of radicalisation while the Slovenian respondents asses that they know a great deal (Mean 3.82; SD = 0.66) about extremism, violent extremism and the process of radicalisation. It is essential to mention that the Slovenian respondents did not answer the first two sections of offered 5-point scale, which brings us to a big difference in assessing their knowledge.

Table 1: *Knowledge about extremism, violent extremism and the process of radicalisation*

	Croatia	Slovenia
I do not know anything	1.9 %	-
2	12.1 %	-
3	44.9 %	32.0 %
4	37.4 %	54.0 %
I know a great deal	3.7 %	14.0 %
Mean	3.29	3.82
t = 4.33; p = 0,000; stat. significant		

Table 2 shows a big difference in assessing the impact of injustice in the world on the development of extremism and strengthening the radicalisation of an individual. The Croatian respondents mainly asses (Mean 3.02; SD = 1.09) that there is a weak or no impact on the development of extremism, while the Slovenian respondents mainly asses (Mean 3.82; SD = 0.93) that there is a strong impact of injustice in the world on the development of extremism. A big difference can be the result of no Slovenian respondents answering to the first section of the given 5-point scale.

Table 2: *Injustice in world impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	6.5 %	-
2	28.7 %	11.8 %
3	30.6 %	17.6 %
4	23.1 %	47.1 %
Strong impact	11.1 %	23.5 %
Mean	3.02	3.82
t = 4.76; p = 0.000; stat. significant		

Table 3 brings us an almost identical assessment of the Croatian respondents (Mean 3.36; SD = 1.01) and the Slovenian respondents (Mean 3.39; SD = 0.94) on financial/economic crisis impact on the development of extremism and strengthening the radicalisation of an individual. Both groups of respondents consider that there is a weak or no impact of the financial/economic crisis on the mentioned matter.

Table 3: *Financial/economic crisis impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	3.7 %	-
2	13.9 %	19.6 %
3	39.8 %	33.3 %
4	27.8 %	35.3 %
Strong impact	14.8 %	11.8 %
Mean	3.36	3.39
t = 0.18; p = 0.85; not stat. significant		

Table 4 shows quite a difference in the assessment of political disagreements in the world and their impact on the development of extremism and strengthening the radicalisation of an individual between the two groups of respondents. The Slovenian respondents considerably more (Mean 3.86; SD = 0.77) assess that there is the impact of political disagreements in the world on the development of extremism and strengthening the radicalisation of an individual, while the Croatian respondents assess the same problem closer to weak or no impact (Mean 3.59; SD = 0.98).

Table 4: *Political disagreements in the world impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	2.8 %	-
2	11.1 %	3.9 %
3	25.9 %	25.5 %
4	44.4 %	51.0 %
Strong impact	15.7 %	19.6 %
Mean	3.59	3.86
t = 1.82; p = 0.07; not quite statistically significant		

The Slovenian respondents (Mean 3.16; SD = 1.06), as opposed to the Croatian respondents (Mean 3.31; SD = 1.08), asses that impact of political disagreements in the local environment has a weaker or no impact on the development of extremism and strengthening the radicalisation of an individual (Table 5).

Table 5: *Political disagreements in the local environment impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	5.6 %	5.9 %
2	17.6 %	19.6 %
3	31.5 %	39.2 %
4	31.5 %	23.5 %
Strong impact	13.9 %	11.8 %
Mean	3.31	3.16
t = 0.86; p = 0.38; not stat. significant		

Table 6 shows that both Croatian (Mean 4.06; SD = 0.82) and Slovenian (Mean 4.02; SD = 0.76) respondents have a similar assessment, both groups of respondents claim that there is a strong impact of religious or other ideological indoctrination of people on the development of extremism and strengthening the radicalisation of an individual.

Table 6: *Religious or other ideological indoctrination of people impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	-	-
2	1.9 %	2.0 %
3	25.2 %	21.6 %
4	38.3 %	49.0 %
Strong impact	34.6 %	27.5 %
Mean	4.06	4.02
t = 0.31; p = 0.75; not stat. significant		

Table 7 brings up a huge difference between the two groups of respondents. While Croatian respondents' asses weaker or no impact (Mean 3.86; SD = 0.92) of promotion/fuelling of hatred by political leaders impact on the development of extremism and strengthening the radicalisation of an individual, Slovenian respondents mainly asses mentioned impact as strong (Mean 4.22; SD = 0.75).

Table 7: *Promotion/fuelling of hatred by political leaders' impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	0.9 %	-
2	6.5 %	-
3	25.0 %	19.6 %
4	40.7 %	39.2 %
Strong impact	26.9 %	41.2 %
Mean	3.86	4.22
t = 2.57; p = 0.01; stat. significant		

In table 8, it is evident that both groups of respondents assess the impact of propaganda by religious leaders on the development of extremism and strengthening the radicalisation of an individual very similarly. Both groups, Slovenian (Mean 4.00; SD = 0.95) and Croatian (4.04; SD = 0.89), claim that there is a strong impact. It is interesting to mention that no respondents, in either of the two samples, find that there is no impact of propaganda by religious leaders.

Table 8: *Propaganda by religious leaders impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	-	-
2	6.5 %	6.0 %
3	18.5 %	26.0 %
4	39.8 %	30.0 %
Strong impact	35.2 %	38.0 %
Mean	4.04	4.00
t = 0.27; p = 0.78; stat. significant		

Table 9 shows that the Croatian respondents (Mean 3.11; SD = 1.08) tend to consider the impact of an individual's feeling of powerlessness on the development of extremism and strengthening the radicalisation of an individual as weaker or as non-existing. On the contrary, the Slovenian respondents (Mean 3.96; SD = 0.80) consider the impact of an individual's feeling of powerlessness on the development of extremism and strengthening the radicalisation of an individual as strong. In addition, there is no Slovenian respondent who assesses the mentioned impact as non-existing.

Table 9: *Individual's feeling of powerlessness impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	6.5 %	-
2	20.4 %	2.0 %
3	42.6 %	28.0 %
4	16.7 %	42.0 %
Strong impact	13.9 %	28.0 %
Mean	3.11	3.96
t = 5.27; p = 0.000; stat. significant		

Table 10 shows the respondents rather similar answers about an individual's characteristics/personality impact on the development of extremism and strengthening the radicalisation of an individual. The Slovenian respondents' (Mean 3.92; SD = 0.85) assessment of mentioned impact is closer to stronger, while the Croatian respondents' assessment of the impact of an individual's personality on the development of extremism and strengthening the radicalization of an individual is closer to weak or non-existing (Mean 3.43; SD = 1.02).

Table 10: *Individual's characteristics/personality impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	1.9 %	-
2	17.8 %	4.2 %
3	31.8 %	27.1 %
4	32.7 %	41.7 %
Strong impact	15.9 %	27.1 %
Mean	3.43	3.92
t = 3.13; p = 0.002; stat. significant		

Table 11 presents the results of the respondents' assessment of the impact of reporting in the media (newspapers, TV) on the development of extremism and strengthening the radicalisation of an individual. Both Croatian (Mean 3.73; SD = 0.96) and Slovenian (Mean 3.84; SD = 0.86) respondents share the similar assessment that there is almost strong impact of reporting in the media, but there is not even one Slovenian respondent who assesses that there is no impact.

Table 11: *Reporting in the media (newspapers, TV) impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	1.9 %	-
2	7.4 %	5.9 %
3	29.6 %	27.5 %
4	38.0 %	43.1 %
Strong impact	23.1 %	23.5 %
Mean	3.73	3.84
t = 0.73; p = 0.46; not stat. significant		

When we look at the results of respondents assessment (Table 12) of Online propaganda (the Internet, FB, Twitter) impact on development of extremism and strengthening the radicalisation of an individual, we notice similar assessment of the mentioned impact in both subsamples of respondents, both the Croatian (Mean 4.08; SD = 0.89) and Slovenian (Mean 4.16; SD = 0.81) respondents claim the mentioned impact to be strong.

Table 12: *Online propaganda (Internet, FB, Twitter) impact on development of extremism and strengthening the radicalisation of an individual*

	Croatia	Slovenia
No impact	0.9 %	-
2	5.6 %	3.9 %
3	21.3 %	13.7 %
4	37.0 %	45.1 %
Strong impact	35.2 %	37.3 %
Mean	4.08	4.16
t = 0.57; p = 0.56; not stat. significant		

Table 13 shows that the respondents, Slovenian (Mean 2.96; SD = 0.94) and Croatian (Mean 2.83; SD = 1.03) are of the opinion that left extremism is not dangerous. While at all sections of the question the respondents give matching answers, the biggest difference is noticeable at assessing left extremism as not at all dangerous, where a bigger percentage of respondents belongs to Croatia.

Table 13: *Own opinion on how serious left extremism is.*

	Croatia	Slovenia
Not at all dangerous	10.2 %	3.9 %
2	25.0 %	29.4 %
3	43.5 %	37.3 %
4	13.9 %	25.5 %
Very dangerous	7.4 %	3.9 %
Mean	2.83	2.96
t = 0.80; p = 0.422; not stat. significant		

Table 14 brings a notably big difference in the assessment of how serious the right extremism is. The Slovenian respondents (Mean 3.43; SD = 0.87) have assessed that right extremism is dangerous if not very dangerous, while the Croatian respondents (Mean 2.84; SD = 0.98) assess that right extremism in not very dangerous or not dangerous at all.

Table 14: *Own opinion on how serious right extremism is.*

	Croatia	Slovenia
Not at all dangerous	11.1 %	2.0 %
2	18.5 %	11.8 %
3	50.0 %	35.3 %
4	15.7 %	43.1 %
Very dangerous	4.6 %	7.8 %
Mean	2.84	3.43
t = 4.19; p = 0.000; stat. significant		

Table 15 brings up a similar assessment of the Slovenian (Mean 3.37; SD = 1.07) and Croatian (Mean 3.23; SD = 1.25) respondents, where both groups consider religious extremism as very little or not at all dangerous.

Table 15: *Own opinion on how serious religious extremism is.*

	Croatia	Slovenia
Not at all dangerous	10.3 %	2.0 %
2	17.8 %	23.5 %
3	30.8 %	25.5 %
4	20.6 %	33.3 %
Very dangerous	20.6 %	15.7 %
Mean	3.23	3.37
t = 0.72; p = 0.469; not stat. significant		

Both Croatian (Mean 2.31; SD = 1.04) and Slovenian (Mean 2.10; SD = 0.85) respondents (Table 16) are of the opinion that environmental extremism is not very serious or not at all dangerous. It is interesting to mention that none of the Slovenian respondents assessed environmental extremism as very dangerous.

Table 16: *Own opinion on how serious environmental extremism is.*

	Croatia	Slovenia
Not at all dangerous	25.9 %	27.5 %
2	30.6 %	39.2 %
3	33.3 %	29.4 %
4	6.5 %	3.9 %
Very dangerous	3.7 %	-
Mean	2.31	2.10
t = 1.32; p = 0.187; not stat. significant		

Table 17 brings almost matching estimates of the seriousness of extremism linked to nationality. Slovenian (Mean 3,22; SD = 1,11) and Croatian (Mean 3,30; SD = 1,04) respondents assessed extremism linked to nationality as not dangerous, but it is essential to mention that none of the Slovenian respondents assessed extremism linked to nationality as not at all dangerous.

Table 17: *Own opinion on how serious extremism linked to nationality is.*

	Croatia	Slovenia
Not at all dangerous	5.6 %	-
2	15.7 %	35.3 %
3	33.3 %	25.5 %
4	34.3 %	21.6 %
Very dangerous	11.1 %	17.6 %
Mean	3.30	3.22
t = 0.46; p = 0.64; not stat. significant		

While assessing the extent to which Catholic religious extremism is dangerous in the respondent's country (Table 18), we see that regardless of whether a respondent comes from Croatia or Slovenia, we get almost matching results. Neither Croatian (Mean 2.25; SD = 1.10) nor Slovenian (Mean 2.14; SD = 0.90) respondents consider Catholic religious extremism as dangerous. Also, there are none of the respondents in the Slovenian subsample that assess Catholic religious extremism as dangerous.

Table 18: *Extent to which Catholic religious extremism is dangerous in the respondent's country*

	Croatia	Slovenia
Not at all dangerous	31.5 %	26.0 %
2	27.8 %	42.0 %
3	28.7 %	24.0 %
4	8.3 %	8.0 %
Very dangerous	3.7 %	-
Mean	2.25	2.14
t = 0.65; p = 0.51; not stat. significant		

Table 19 presents that Croatian respondents (Mean 3.48; SD = 1.27) assess Islamic religious extremism closely to being dangerous as opposed to the Slovenian respondents (Mean 3.27; SD = 1.04). When comparing answers to "Very dangerous" particle of 5-point scale, we notice that 26.9% of the Croatian respondents consider Islamic religious extremism to be very dangerous, while at the same time only 11.8% of the Slovenian respondents consider Islamic religious extremism to be very dangerous.

Table 19: Extent to which Islamic religious extremism is dangerous in respondent's country

	Croatia	Slovenia
Not at all dangerous	7.4 %	2.0 %
2	18.5 %	25.5 %
3	19.4 %	27.5 %
4	27.8 %	33.3 %
Very dangerous	26.9 %	11.8 %
Mean	3.48	3.27
t = 1.08; p = 0.28; not stat. significant		

Table 20 shows a big difference between two groups of respondents in assessing the extent to which Jewish religious extremism is dangerous. Both (Croatia Mean 2.28; SD = 1.13; Slovenia Mean 1.57; SD = 0.78) groups asses Jewish religious extremism as not very or not at all dangerous. None of the Slovenian respondents estimated Jewish religious extremism as very dangerous.

Table 20: *Extent to which Jewish religious extremism is dangerous in respondent's country*

	Croatia	Slovenia
Not at all dangerous	28.7 %	56.9 %
2	34.3 %	33.3 %
3	23.1 %	5.9 %
4	8.3 %	3.9 %
Very dangerous	5.6 %	-
Mean	2.28	1.57
t = 4.27; p = 0.000; stat. significant		

Table 21 presents results according to which Protestant religious extremism is not assessed as dangerous by either the Croatian (Mean 2.27; SD = 1.10) or Slovenian (Mean 1.55; SD = 0.88) respondents. When we look at the answers listed as 1 (not at all dangerous) on a 5-point scale, we notice a big difference – the Croatian respondents in a smaller percentage, 28.7%, think that Protestant religious extremism is not at all dangerous, while 62.7% of the Slovenian respondents consider Protestant religious extremism no to be at all dangerous.

Table 21: *Extent to which Protestant religious extremism is dangerous in respondent's country*

	Croatia	Slovenia
Not at all dangerous	28.7 %	62.7 %
2	32.4 %	25.5 %
3	27.8 %	7.8 %
4	5.6 %	2.0 %
Very dangerous	5.6 %	2.0 %
Mean	2.27	1.55
t = 4.31; p = 0.000; stat. significant		

DISCUSSION AND CONCLUSION

The results indicate the contextual differences between the two countries, Croatia and Slovenia. Thus, because of the situation in their own state, Croats are less sensitive to injustice in the world, financial/economic crises, political disagreements, promotion/fueling of hatred by political leaders. Because of the country context, Croatians assess right and religious extremism as less serious or dangerous.

Results indicate that the Slovenian respondents are better informed and educated on the topics of extremism, violent extremism and the process of radicalisation, while Croatian respondents know less about the same topics. This difference can be solved by additional training.

It is obvious that there are topics about which both Slovenian and Croatian respondents know very little. It is the topic of environmental extremism, about which the respondents can be informed by additional training, but also through co-operation of the local community with local police.

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THE POSSIBILITY OF ENGAGING HARD POWER IN COMBATING TERRORISM

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Abstract: Terrorism, as an enigma of instinct of extremism, of persons driven by ideology or of those eager to gain wealth in an incomprehensibly cruel way, is undoubtedly a global problem today. Society does not have an adequate response to this phenomenon, that is, on a cruel and uncompromising war terror.

The terrorist propaganda has created an atmosphere in which the individual does not feel free and safe. The fear of terrorism has entered all the parts of society, and the development of technology also marked a new era of terrorism.

Thus, starting from the fact that the main factor of terrorism is surprise, in modern times terrorism and fear of it have practically become part of everyday life. Because of terrorism, danger grows, like a genie from a bottle, and becomes far greater than its actual physical condition. Images of terrorism, in publicly accessible articles, newspaper caricatures, a variety of published books on the subject, usually portray giant weapons against skidding targets.

This paper aims to consider the challenges, but in the context of the effects and consequences associated with the sensibility of the role of hard power (in general), and hence its use in terms of challenges in the contemporary fight against terrorism with a brief overview of the place, role and mode of operation of the Serbian Armed Forces as part of the security apparatus.

Key words: security, hard power, force, terrorism, armed forces, fear, terror, danger, Serbian Army.

INTRODUCTION

Although terrorism has been known since the French Revolution, its unique definition does not exist. Because of the impossibility of defining this major problem of the modern world, many countries are creating their own definitions, so

that "terrorist" is actually a description that has never been accepted by any single individual or group. This name is attributed to them by others, primarily the governments of the attacking states. For example, the United States defines it as "calculated use or threat of violence in order to get into fear, with the aim of forcing or intimidating governments or societies" (Townshend, 2003: 4) or as "the use or threat of serious violence against any person or property, aimed at promoting a political, religious or ideological program of action." (Simeunović, 2009: 37).

The main goal of terrorism is undoubtedly fear, that is, awe. The victim can be absolutely unimportant and irrelevant to perpetrators, while fear is intentional and important. Therefore, terrorism can also be analyzed as a method by which a particular organized group or party attempts to achieve its goals by the systemic use of violence. Thus terrorism does not differ only from the terror of the state, but also from mass violence or mass uprising.

Christopher C. Harmon warns that terrorism is always political, even when it shows some other motives (religious, economic or social). "Fiercely small groups, state agents and wider rebel movements that seek to achieve political and military goals that, in their estimation, are impossible to achieve at regular political forums or in the battlefield against the entire army, use terrorism, which today has become a well-known feature of the world politics and conflict" (Harmon, 2000:24).

This is precisely the point - that the global fight against terrorism is long and difficult, and that the most adequate response to this kind of "global monsters" can be achieved by security forces, among which the military is also deployed or engaged. As a part of the country's security system, the army has an important role to play in fighting this phenomenon, and in itself, the phenomenon is the biggest challenge for it. Under certain circumstances, political and social conditions in society, the application of hard power (the use of military power) can also have negative consequences for future internal political relations and the realization of the rights and freedoms of citizens in a society that is affected by terrorism, or which is facing it (Nye, 2004: 12-16). Upon its implementation, hard (military) power might have an impact on the escalation of conflicts in this struggle, as well as the fact that its reactions encourage the creation of new terrorists.

THE APPLICATION OF HARD POWER IN FIGHTING TERRORISM

In the last few years, and even decades, it has been suggested that the role of military force in democratic societies should not be focused on internal threats. This has been manifested through several trends, giving the security of the borders of European countries into the hands of the internal security forces - the police, as well as reducing the active composition of the army and rejecting recruitment in a large number of countries. The countries of Western Europe, that is the EU,

have introduced a trend of demilitarization of states, focusing on internal security and the building of external military capability as part of the system of collective security (Moulson, 2015). However, with more frequent terrorist attacks, some of which led to a large number of victims, the need for engaging military forces, or their appearance on the streets (Paris, Brussels, Berlin, etc.), also arose.

In parallel with this, the questions arise: what kind of challenge this is for military forces and is the army necessary in countering terrorism?

Modern security challenges posed by terrorism are increasingly being manifested as uneasy challenges, risks and threats to security. In the changed field and approach to security at the beginning of the 21st century, it is clear that most countries have put emphasis on new, unequal challenges, risks and threats to security (Beriša, 2018: 69). In preventing and remedying the consequences of these threats, a coordinated and efficient work of several state services from different levels of hierarchy is needed (Barker: 2003, 24).

In practice, it has been shown that countries that have benefited from low-intensity conflict management have had better success in the fight against terrorism than those countries that had deployed the military to escalate the situation into high-intensity conflicts. Recognizing the fact that the US and NATO have failed to defeat terrorism with the use of military force in Afghanistan, unless they have organized it or created it for higher goals in terms of global control and domination in the world in terms of managing certain vital resources, the question arises is such a strategy unsuitable and does a challenge like this exist as a real problem without borders and the expiry date?

The answer may be sought through the application of hard power in the form of the use of the army and its fight against terrorism against movements that are in many cases closely related to ethnic-nationalist and religious reasons, political struggles for supremacy, extreme groups seeking the division of power etc., where is terrorism just an asset, not an end in itself.

Therefore, there is a longstanding debate about whether terrorism is a criminal offense or an act of war and which is the real reason for the group that uses terror to define extreme violence against the state (Hoffman, 2000:7-12). The strategy that should be used in the fight against terrorism depends on how perceived this threat is perceived. So far, the priority forces in the fight against terrorism have been police. The reason for this is to solve the problem before its escalation, or maintaining a conflict, which in itself greatly facilitates work and does not require the strain of some additional trained forces. By contrast, military forces are engaged in cases of exceptional crises, as well as assistance and support to civilian authorities.

Although action in certain situations is within the jurisdiction of civilian authorities of the country, the army can be called upon in case of major crises and more serious problems, where terrorism is certainly. In circumstances where other forces and ways of protection and rescue systems are not sufficient for an adequate response, responsible military units ensure the participation of orga-

nizational units and military facilities to provide assistance in the fight against terrorism. In the event of an attack on military facilities and the escalation of terrorist activities, the army as the highest defense body can be used for the destruction and destruction of terrorist forces..

It is important to emphasize that terrorism as a phenomenon is not a routine event. It is a very harsh and stressful event that engulfs all actors and presents a complete surprise. It is precisely the component of unexpectedness that is the main cause of the inadequate or slow response of the holders of functions in this situation, among which the Army has its place and role. If all this is added to the time limit for the action and the pressure it carries, as well as the absence of necessary or precise information on the situation on the ground, decision-making is a serious challenge, thus impeding the need to act and which forces to engage in an adequate response .

Bearing in mind that the Army is organized unit in which the executive part is followed by a decision and command, it would be on that basis, if only these would be taken into account, be the most adequate response, reaction and use. That would then be an easily solved challenge. However, given that it is something crude and unpredictable, with an ambiguously defined vision of action and an adequate risk assessment, the engagement of the Army becomes imperative.

With the emergence of transnational terrorism that knows no boundaries, what happens in one country has a major impact on international relations. The use of the Armed Forces in the fight against terrorism can have implications, primarily on the state itself, and then on international relations. It is therefore necessary to really see if military engagement is more effective than the engagement of police forces, or is the organizational culture of the Army answers to challenges of contemporary terrorism.

At this point, it seems that the behavior of the terrorists imposes a military response. A large number of world theorists and analysts agree that this is exactly the goal of the terrorists. The generally accepted view is that the intention of the terrorists was to force Western democracies to sacrifice freedom at the expense of security. Accordingly, the very appearance of soldiers on the streets of Europe over the past years could be interpreted as the success of terrorists. Terrorists in this strategy apply some guerilla general principles, such as invoking the Army to apply disproportionate force and thereby causing collateral damage to the civilian population (Dimitrijević, 1982:16).

The use of military force in the fight against terrorism can have a positive impact on the temporary suppression of terrorism, but also the negative impact on civil society, state policy and the behavior of the Army itself. The military forces in the fight against terrorism must make a series of organizational changes, including the extension of their powers in the direction of policing. It is estimated that for the victory in the anti-terror campaign, state governments must mobilize ten times more troops than an estimated number of terrorists, which is practically

the mobilization and reconstruction of the state for the war. This can mean the militarization of civil society, which is by no means good (Hughes: 2011, 26).

Contrary to anti-suppression, counter-terrorism should in principle contain more defensive measures to reduce the ability of the terrorist group to adversely affect the country's population, such as the prohibition of political action, the presence of police in public places and the design of a psychological operation against terrorists. This is where the military intelligence sector should play the main role, ie the modernly equipped teams or individuals who use modern devices and equipment in providing accurate information in real time. It is also necessary to engage individuals or teams working on the gathering of knowledge. The goal is timely detection of the intent of the enemy forces, and in other emergency situations for the detection of various criminal activities.

Within the response to the challenges of terrorism as a phenomenon, efforts should be made to establish a balance between freedom and security, with the aim of showing that the conflict did not escalate. This is usually done through communication with the population, in order to prevent the intention of the terrorist group to gain sympathy for the population.

THE HARD POWER IN THE USE OF THE MILITARY FORCE IN THE FIGHT AGAINST TERRORISM

In the fight against terrorism, countries can undergo two models: to persue terrorists in accordance with the law on armed conflict or under national criminal law. "The first is inherent, it can be said of the luxury that applies to large countries that have greater credibility in the international community. They can afford to declare war on terror and treat it as a military threat The other model is typical of small countries, restrictions in Their criminal codes prevent the use of all available capacities, they consider terrorism as a criminal offense and prosecute terrorists as criminals under the criminal law of the country. Although this model is typical for small countries, it is also characteristic of liberal democracy" (Erbay, 2012:6).

Since the most important part of the integral system of protection and rescue are trained people in the composition of specialized, highly-equipped and trained services, which especially applies to members of the Army, but also to other state structures of countries, the analysis of multilingics within the scenario analysis is an effective tool for determining functional needs and the tasks of the Army in responding to a challenge that presents a catastrophic scenario, such as terrorism, as a form of non-threatening threat.

It is also important to emphasize here that the Army in countering terrorism must also place emphasis on critical infrastructure as one of the central issues of national security.

Critical infrastructure[1] can be damaged due to a variety of factors, which, as natural as it is, can be most seriously affected by terrorism. In addition to direct consequences, the destruction of critical infrastructure can, from a psychological point of view, lead to total public distrust in public institutions, which can undoubtedly be the target of terrorist acts.

SERBIAN MILITARY FORCE IN THE FIGHT AGAINST TERRORISM

When it comes to our Army, designing needs is done on the basis of subjective and experienced assessments, but since there are no quantitative and measurable indicators of the use of the Army in various situations, the possible execution of exact ranking according to functional needs and tasks is more in the domain of theory (Pravo, 1999: 23-47).

According to the Doctrine of the Serbian Armed Forces, the Army does not develop special forces intended to support civilian authorities, but the existing ones are engaged, which, according to their basic purpose, can successfully carry out these tasks. In combat actions against terrorist forces, dedicated anti-terrorist units are engaged in accordance with their tasks and in the function of supporting other security forces forces (Serbian Army Doctrine).

Given that the consequences of terrorist acts are diverse and complex for people, animals, material goods and the environment, it is necessary to provide additional capacities for action, which is certainly a new challenge. In particular, it is necessary to provide bargaining forces, medical teams, firefighting teams, field clearing teams, decontamination teams, demining, etc.

In the case of terrorist threats, military forces can, in principle, be engaged in the execution of two types of operations. Those are:

1. Preventive deployment operations which can be carried out in peace and in a state of emergency in order to demonstrate a favorable impact on the elimination of security threats from terrorism without the use of armed forces, ensure the timely completion of the task of carrying out tasks and provide support to the state authorities in case of need for implementation armed forces. The effectiveness of preventive deployment operations depends to a large extent on the possession of timely and accurate intelligence. During military operations, military force is applied only in extreme necessity, but its application in the case of an escalation of armed violence against units of the Serbian Armed Forces or partners in the operation is not excluded.

2. Counter-Terrorism Operations - fighting operations performed in peace and armed conflict to support and assist civil authorities in disabling terrorist activities. In the case of an attack on military facilities and the escalation of

1 Critical infrastructure includes many sectors of the economy, including the banking and financial sector, transport and distribution, energy, health, food supplies, communications, and other government functions and services.

terrorist activities, the Serbian Armed Forces can be used for the destruction of terrorist forces, regardless of the forces of the Ministry of Interior.

In the case of terrorist acts, the need for engagement of military units ranges from high to low. In most cases, the rapid and powerful engagement of military special anti-terrorist units is necessary, especially when military facilities are at risk, or it is a matter of major terrorist acts and the civil sector. Although they are the carrier of such actions by the special anti-terrorist unit of the Ministry of Interior, the military units represent a very serious force in the preventive sense, as well as in counterterrorism acts itself. Illustrative example of the use of the Army in a preventive sense is terrorist acts in Kosovo and Metohija or the engagement of NATO forces in Afghanistan. Both examples have shown that the operation of the Army must be well thought out, and the use of forces selective and well organized. From practice it has been shown that the use of excessive force does not produce the desired effects, which should be made before the operation itself.

Taking into account the fact that the Army of Serbia, beside the conflicts with the terrorists in Kosovo and the NATO aggression against the Federal Republic of Yugoslavia, did not in the later period have had major challenges or problems in countering terrorism, but that according to the challenges, risks and threats, worked out various scenarios of struggle against terrorism, it is estimated that the existing organization of the Serbian army in operational terms can deal with this type of threat. Technical capacities are relatively sufficient to respond to existing challenges, while operational procedures are not best "tuned" to cover all aspects of risk, which undoubtedly needs to be done.

EUROPEAN MILITARY FORCE IN FIGHT AGAINST TERRORISM

On the other hand, many countries in Europe were directly under the terror of the terrorists, which led them to deepen the analysis and develop a strategy of direct fight against terrorism (Erbay, 2012:37). Thus, after the Paris attacks in 2015, France began to consider a national policy on the use of the army in the fight against terrorism on its territory. "In the fight against terrorism, France has hired more than 10,000 soldiers on the streets of large cities, with only about 5,000 soldiers deployed in Paris to patrol and secure important facilities. The citizens of Paris were accustomed to the presence of soldiers who were on the streets after launching Operation "Sentinel" after the attack on Charlie Ebdo in January 2015" (CNN News, 2015). Immediately after the attack in Paris, the army was also deployed in Belgium (Brussels) for reported threats and suspicions that terrorists were planning attacks in Belgium. "For the first time in 35 years, along with the police, hundreds of armed soldiers patrolled Brussels with the task of preventing terrorist attacks, while the authorities called on citizens to stay in their homes, proclaiming the highest level of threat" (Aljazeera news, 2015).

In this context, European countries, such as Germany and Austria, are considering the use of soldiers in state-wide missions to combat terrorism more effectively. In Germany, there are several reasons that limit the use of the army for missions in the interior: the German police have specialized in internal security training, which lasts for three years, while soldiers do not have this kind of training; the army has no police powers - for example, they must not arrest persons or carry out controls; the work of the police is within the jurisdiction of the German regions.

The question arises whether the use of the army in such restrictions would be useful. If multiple attacks occurred at the same time, it is questionable whether the army would respond more quickly than the police. In that case, soldiers could be used to secure large areas, not to disarm and disable attackers. It can be concluded that the use of the army within the country does not mean that it would replace the police, but would work with them to achieve a common goal, to overcome modern terrorism.

The positive side of the use of the army in the fight against terrorism is reflected in the possibility of rapidly neutralizing the existing threats and in the demonstration of the state that it will be firmly defended against future threats. In doing so, the army should be used in accordance with state laws and it should interact with units that are responsible for the fight against unconventional threats. The goal must be to keep the conflict at a low level of intensity so as not to cause further significant damage and there should be good coordination and synchronization of the military with the police force, which are usually better acquainted with the situation on the ground and with the population.

The most of European countries have chosen a police approach in the fight against terrorism, following experience that has proven to be more effective than the military one.

The negative consequences arising from the use of the army in the fight against terrorism can be: escalation of conflicts, the creation of new terrorists and granting more power to the army, which may pose a threat to democracy. The escalation of the conflict is manifested when the army enters the streets of cities and begins to act with greater power, which in the eyes of citizens means war. In an attempt to end the conflict urgently, too much force would be hired to inflict greater and unnecessary damage to the infrastructure. This could further trigger economic, social and political consequences, as well as the consequences for foreign policy. The problem with this use of the army is the linear establishment of a military organization against a threat that is non-linear, complex and involves different aspects of the social life of the country.

This means that if the military is not capable of an unconventional fight against terrorists, which are essentially irregular forces, there may be an adverse effect and escalation of the conflict. Therefore, in the fight against terrorism, in principle, the forces of special units could be used. The practice shows that the engagement of the army in the operations against terrorists in the country can cause a problem

with legitimacy, as well as the creation of new terrorists. Given the indiscriminate use of forces, there is collateral damage, which creates resentment and frustration of the population. If the population sympathizes with terrorists, it would also be possible for citizens to join the terrorist ranks.

Since there is a thin line between terror and rebellion, some terrorist groups build a political platform that would be portrayed as a legitimate force in protecting the rights of certain groups. When the state takes military action against terrorists, this can lead to the incitement to intensely recruit citizens in the ranks of terrorist groups. In this way, the army creates martyrs from terrorists and contributes to their even greater cohesion and popularity.

States that fight terrorism in accordance with the laws of armed conflict treat the fight against terrorism as a war and use all available capacities. This cannot be afforded by all countries because the international reaction to different countries varies depending on their political, economic and military power. Those countries that can afford to use the great forces treat terrorists as a national, regional or global threat and openly deploy armed forces to destroy them. But there is a risk of losing legitimacy in the fight against terrorism and condemning the country by the international community. The Russian Federation was faced with this situation in the time of Boris Yeltsin, during the First Chechen War, while fighting against terrorism on its territory. The Russian Federation was condemned by Western countries as an aggressor for the use of disproportionate force, because the Russian army caused significant collateral damage. Also, the same example was experienced by our country, which - while fighting against terrorist organizations in Kosovo and Metohija - was accused according to a similar scenario, and in turn, terrorists became rebels and then the liberation movement. This means that "in attempts to combat terrorism, states can use methods that result in consequences more harmful to democracy than terrorism itself" (Erbay, 2012: 12).

CONCLUSION

As far as it is concerned, the fight against terrorism is asymmetrical because "terrorists, as non-state actors, have incomparably smaller capacities in relation to the armies and police, for which terrorism undoubtedly poses a dangerous challenge. This gives them an advantage over the infamous military formations that can in a relatively easy way endanger the power and at the same time exploit their vulnerability" (Rykhtik, 2008:167). This is one of the reasons why many analyses indicate that military solutions in the fight against terrorism are not effective because the conflict only further intensifies, and the rise of terrorism leads to a classic rebellion.

The answer to the question whether the army can respond to a challenge such as terrorism is still unclear "because the military usually focuses on winning, while practice shows that it must focus on efficiency and, measurable with success, to reduce the destruction of infrastructure and occurrence of collateral

damage" (Rykhtik, 2008:171). What can be said is that the use of the army in the fight against terrorism can be both useful and harmful, regardless of whether the challenges posed to the army are real or not, while certainly thinking about the fact whether it is engaged within its country's territory or outside national boundaries.

Comprehensively observing, it can be concluded that the use of the army in the fight against terrorism should be the last option of states. The price that a modern democratic society must pay can be an escalation of the conflict, limitation of freedom and the potential creation of new terrorists. On the other hand, it is necessary to re-examine the nature of terrorism as a phenomenon and try to solve the problem at the start or before it arises.

In the context of the above, events in the Middle East can be considered as a consequence of the military approach in the "long war" of the Western countries in the fight against terrorism, which may have been caused by the tendency of the great to rule or the weak and the poor to strengthen or if nothing else to draw attention to themselves, and put fear in the bones of others in the sense that it is seen that they exist as a dangerous mechanism. However, although experience shows that military access is less efficient and that it is better if the problem of terrorism is treated as a criminal offense, modern terrorism has functions that resemble a rebellion in which terrorist methods are used. This mutation of global threats to terrorism will inevitably affect the changing and sensitive role of the army in democratic countries, and as such, represent an outstanding challenge in engaging in a manner and under circumstances that are not clear enough.

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ETIOLOGY OF TERRORISM

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Abstract: Terrorism as a complex form of political violence is actually a „social scourge" of the 21st century. It is a phenomenon of modern times, which involves many social phenomena and events accordingly deal with terrorism experts in various spheres of human activity. The paper was given, and semantic analysis etymological term of terrorism, or its genesis, as well as several academic and administrative definitions of this terms. In the opinion of a number of analysts of terrorism its roots are in the ancient, religious sects in the following: Zealots, Thugs and Assassins. The paper, through a comparative analysis of these sects is explained historical genesis of terrorist groups and organizations, as well as certain forms of modern terrorism.

Key words: terrorism, etiological analysis, religious sects

„In the beginning was the word ..."
The Bible, Including the Gospel of John (1:1)

INTRODUCTION

Globalism is an ideology, globalization is a process based on this ideology, a „new world order" system based on them. They occur as a product of a new form of liberalism, as a form of a new socio-political system of countries, primarily the USA and Western Europe. (Simeunović, 2010a: 5) This new form of liberalism is based on the technological revolution, which is the essence, that is, the material on which is based the whole ideology new liberalism, but a pragmatic and its practical application through a variety of variations of socio-political decoration state. Like every revolution, the technological revolution has made some progress in terms of life and work, but brought a new culture, value system, and certainly a new division of labor. All this has caused the emergence of new security trends through the challenges, risks and threats to security, which is a stronghold of the constituents of safety.

After evaluating a number of contemporary theorists security, and globalization, based constituents security in the 21st century are: (1) socio-economic

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factors, (2) economic inequality and asymmetries of life chances, (3) economy limited resources, (4) the demographic explosion (5) global culture, (6) organized crime and criminal, (7) military factors, (8) means the total of war and cosmos militarization (9) the engineering of conflicts and military intervention, (10) environmental factors, (11) technical-production disasters, (12) the lack of healthy food and drinking water, (13) extremism (national, religious and ethnic), (14) expansionism of transnational security agencies, and (15) terrorism. (Kovačević & Popović, 2016)

In this paper we deal with terrorism as one of the „social scourge" of the 21st century, with a special overview gives forerunners of terrorism and its genesis to the present time, namely the paper dealing with subject matter that is of 11th September 2001, the activists and attacks Al-Qaeda on the World Trade Center and the military-strategic facilities in Washington, and the USA in general, occupied the entire world public. How much humanity, because of fear, became in some way obsessed with terrorism is the fact that the measures, activities, actions, processes, strategy and doctrine for fighting against terrorism became the starting point for action in the foreign policy agenda of many countries, especially those most economically developed. The fight against terrorism has become the most immediate cause for military intervention in the first decade of the 21st century.

The paper is divided into three parts that give us access to an understanding of the etiology of terrorism combining semantic and etymological reflection on terrorism. The first part presents semantic and etymological analysis of the term „terrorism", as well as several modern administrative and academic definitions of terrorism. The second part refers to the explanation on the historical examples of basic and complex forms of political violence shown through the prism of activity of ancient religious sect, namely: Zealots, Thugs and Assassins can not be considered forerunners of terrorism.

DEFINITION OF TERRORISM

Terrorism viewed from the semantic and etymological point of view represents a complex social phenomenon which includes various aspects of the functioning of the entire humanity through different epochs. Phenomena in society, just as in nature, there were many before them a man labeled a special name. From birth to us, from our environment, imposing (and create) misrepresentations by us to the wrong environment or under learns about some things and phenomena, in fact, it distorts or hinders our performance on the content of their terms.

What is all wrong denoted by definitional previous achievements and conformity criteria as terrorism testify us greatly, various „histories" of terrorism and historically introduced in books on terrorism. Misunderstanding of terrorism as a phenomenon can be observed in many of the authors, but in describing his so-called „historical aspects". Usually sketchy and inaccurate statements on the subject, mostly distorted and too freely taken from foreign literature, which does

not always mean quality of scientific literature, but at the beginning of introducing readers to the phenomenon of terrorism obscure the view of the conceptual content. (Simeunović, 2010b: 308)

One common misconception by most authors dealing with terrorism is the emergence of terrorism as a concept. This shall be reflected in the lightly appropriating false claims that the word terrorism is of French origin and genesis of terrorism that occurs during the French bourgeois revolution. Viewed from the standpoint of semantic and etymological word terrorism is as much French or English or German or Serbian, and in these languages there are other phrases and/or terms to describe this type of political violence.

The word terrorism with the semantic aspect has its roots in the Latin word „terror or terrorist" which means enormous horror or fear. (Glare, 2012) Seen from the etymological point of view of the term terrorism is of Indo-European origin, and to say from the words: „**tre**" or „**ter**". It is believed that these words and etymological essence of many contemporary terms in the world from many different languages, including: terrible, deterrent, tremble, or in Serbian jitters or shake it. In the works of Roman thinkers (Ovid, Cicero, Tacitus, Titus Livius) use of the word terror is manifold, mostly in the basic meaning of an enormous mass of fear or horror. Therefore it is incorrect notion that terror, to explain the violent behavior of power used for the first time in French.

Etymologists believe that this is a terror first entered into service in French mid-14th century, and in English in 1528. It is important to point out that the term terrorists, but in a very positive context, was the first mention of 05th September, 1793, when the French revolutionaries (Jacobin faction) on the agenda of the Convention proclaimed terror as a system of emergency „and very harsh repressive measures against all kinds of traitors carried out by terrorists". It is believed that Jean-Paul Marat was the main promoter of this idea, because in his magazine „A friend of the people" of the September 1793 peak glorifies. (Laquer, 2001)

But from next year becomes a pejorative term terrorists, because the prevailing revolutionary faction that is charged with the Jacobins and as such recorded by English philosopher Edmund Burke in his paper „Reflections on the French Revolution". The statement said the reason for the negative connotation of the term terrorists from the late 18th century to the present, with the exception of cases of use of this term by the anarchists in the late 19th century.

All the complexity of the conceptual definition of terrorism does not originate here, but the complexity of the phenomenon that is the practical side almost impossible, generally accepted, defined completely accurately and concisely, and does not omit anything, given the shape of ways and methods of terrorist organizations, how their attacks by the very organization of their structure. However, the world organization, security, military and police structures of all countries in the world, mainly in its rules and manuals recommend a particular definition of

terrorism, which together are called one name – administrative definitions. We will give an example several administrative definitions.

United Nations: „A terrorist is a person who, acting independently of knowledge of a country, or as an individual or as a member of a group that is not recognized as an official body or a part of a nation, act in a manner that destroys or damages the property of the civilian population or government in order to achieve a political goal. Terrorism is an act of deprivation of life or injury or act of destruction or damage to civilian property or government, with no clear specific permission of the government, by individuals or groups of people who act independently, or governments that work from their own initiative or belief in order to achieve a political objective". (http: www.inlink.com)

USA – State Department (title no. 22 Section 2656f of the USA Code): „The term „terrorism" refers to premeditated, politically motivated violence that are committed against noncombatant targets by national groups or clandestine agents, which usually aims to operation to a certain audience. The term „international terrorism" means terrorism involving citizens or the territory of more than one country. The term „terrorist group" refers to any group of people who practiced international terrorism, or the charge of one subgroup practicing the international terrorism". (http:www.state.gov.com) Here we are facing a similar problem as in the foregoing definition, the term as political violence it is too complicate (basic and complex forms) to be used as a simple determinant of a crime or offense.

USA – Ministry of Defense „Terrorism is the unlawful use of force or violence, or the threat of force or violence directed against individuals or someone's property to coerce or intimidate governments or society, and in many cases to achieve a political or religious, or ideological goal." (http: www.periscope.usni.com)

In these definitions we have a case that alleged terrorists operating methods in order to define terrorism, and from these definitions we have a descriptive presentation of activities of terrorists, a little pragmatism of terrorism as a social phenomenon. It should be noted that in the policies of the USA administration, we can find dozens of different definitions of terrorism, apparently similar. Is not that a coincidence or a very simple message to the country's largest military, and anti-terrorism budget in the world. (Kovačević & Talijan, 2017)

In addition to the administrative definitions, there are academic definition terrorism that have been addressed by numerous researchers in this field. Due to the volume of the paper we present here the definitions of terrorism given by the leading domestic scientists. Professor Dragan Simeunović: „As a multidimensional phenomenon of modern political terrorism can be defined as the most general theory: complex forms of organized, group and less individual or institutional political violence marked not only frightening brachial physical and psychological, but also sophisticated technological methods of political struggle which usually at a time of economic and political crises, but rarely achieved in terms of economic and political stability of a society, systematically trying to

achieve „big goals" the morbidly spectacular way, and inappropriately given conditions, primarily social situation and historical possibilities of those who practiced as a political strategy." (Simeunović, 2009)

Professor Saša Mijalković: „Terrorism is the deliberate, purposeful and often organized and systematic use of violence and intimidation in order to create an atmosphere of fear and exploitation of people and of the authorities, with the aim of proclaiming certain ideological, the most common political values, goals and interests and forcing government authorities to meet the demands of terrorists. The objectives of the terrorists may be legitimate, but terrorism as a means of achieving their illegal and morally unacceptable." (Mijalković, 2011)

Professor Radoslav Gaćinović: „Terrorism is organized use of violence (or the threat of violence) by the politically motivated perpetrators, who are determined to cause fear, anxiety, panic and defeatism impose its will on the authorities and citizens." (Gaćinović, 2011)

The analyzes shown academic definition of terrorism primarily points to the critical importance of a number of constituent elements of this term as a consequence of compliance of said scientists that for a proper understanding of the nature and the internal substance of terrorism major focus attention on the determination of its constitutive elements (characters, the causes, consequences, et cetera). (Mijalković & Bajagić, 2012)

ROOTS OF TERRORISM

Regarding the forerunners of terrorism, there is a real two types of errors. First, when it uncritically as terrorism cases cited historical examples of some kind of political violence that aren`t terrorism, and other, which stems from the first, when the precursors of terrorism classify those who did not, even after a single characteristic of terrorism and its precursors. These are mistakes in terms of content and appearance of actors. The number of such mistakes in the literature on terrorism, especially in the national literature, is not negligible. These are not just mistakes in the theses and conclusions in relation to the substantive rules of thinking, but also logic errors in relation to empirical facts type „*non sequitur*". These errors indicate a preference humping under the wing terrorism of everything, either from ignorance or carelessness, which is unacceptable from the standpoint of science. (Simeunović, 2010b: 310) Accordingly here we explain the most common examples of misinterpretation of the essence of terrorism in ancient religious sects, namely: Zealots, Thugs and Assassins.

Zealots - a Greek word that means someone who is overly zealous in something, or if it's a religious context indicates followers, fanatics supporters. But by the end of 1st century AD dates Zealots had no secular connotations, but is exclusively tied to mean Jewish freedom fighters (rebels) by the Roman occupiers. Binding expressions Zealots for Jewish rebels occurred because the core of

the uprising did the Pharisees (religious sect that emphasized piety and strict maintenance of the ceremony, consequently remained faithful to them as „separated" (Pharisee in Aramaic). Because of its religious zeal, not because of diligence in the exercise of violence were called Zealots.

The reason for the uprising was not just a general desire to resist the terror of the invader, but also a refusal to pay taxes, because the religion Pharisees demanded to pay taxes only in the form of contributions to the temple. As the most fervent believers-zealots have been quite natural and most ardent patriots, they were done initially and action core of the uprising. This old Jews movement their struggle for liberation from Roman rule led from 66 to 73 AD, during the reign of emperor Nero. Roman troops in Judea, the Roman military reinforcements from Syria, they could not overpower the insurgent forces. The uprising Zealots has only managed to break the military leader, but after Nero's death and the emperor Vespasian. His son Titus, with the help of experienced troops (50,000 soldiers, brought from Rome), quelled this uprising. (Fojthvanger, 1961)

The fact that the Zealots were fighters for freedom is not what it removes from them the label of terrorist, just as they are and not imposed. The struggle for freedom is a goal, which itself can be set up by anyone, even a terrorist organization. Also, there are no methods of raids zealots, the same can`t be qualified as terrorists. The ferocity with which they fought for their goals property and many other liberation oriented organizations and movements in history and today. In general, is difficult to conclude why these Zealots were reasonably be considered terrorists. From the available sources we can see that they attacked civilians, but primarily rich compatriots who collaborated with the Romans, which is a feature of the liberation movements, but not terrorist organizations. The fact that the abducted wealthy compatriots demanded money does not belong to the most important characteristics of terrorism. The terrorists also kidnapped or hostage seek primarily the fulfillment of their political demands, not only money, and sometimes even not about the money. It should be understood and that the violent actions Zealots created as a reaction to the terror of the Roman authorities, and not from the pure peace. Their armed actions were massive in the fighting Zealots were ruthless, even cruel. However, this feature is not enough, much less lonely feature recognition of their actions as terrorism. (Simeunović, 2010b: 313)

The only, and thus not a sufficient element of their actions that they conceptual approaches to terrorism is that one faction of Zealots some of their actions, mainly murder of Roman, Jewish collaborators, as well as kidnappings of wealthy Jews, carried out in public places still unconquered cities or, as the beginning of an overall battle and the audience to such a gesture had secured the sympathy and join the rest of the occupied compatriots. (Laquer, 1977)

Thugs - Indian Hindu sect founded in the 7th century BC, is a classic example of sensationalism and arbitrariness when using the term terrorism. This religious sect is not a distinct ethnic group, although most scientists considered that the Thugs descended from the tribe Sagarts that half of the 7th century came from

Persia to India. From the standpoint of semantic word Thug in Hindi means a dangerous file, ready to kill. The term is used mainly in the north of India, while in the south of India thugs called „phansigars" because „phans" in Hindi means a loop, which is the main weapon of the Thugs.

Thugs were actually road bandit gang that had several characteristics: (1) Thugs victims were merchants and merchant caravans; (2) drowning victims are killed by means of a scarf or a leather loop, then make bodies from parted; (3) sacral Thugs colors were yellow or white; (4) the victims were offered to the goddess Kali in gratitude because the valuables of the victims stayed for yourself; (5) the rituals are performed exclusively by the members of the sect (even the older male children attended ceremonies) not before an audience; (6) Thugs are not attacked cities, as well as the authorities; (7) Thugs did not attack foreigners because they feared reprisals by the authorities, and (8) Thugs never have left no witnesses, so many years Thugs crimes they could not prove.

Eventually Thugs are starting guided solely by material gain, ignoring the basic principles of its operation and religion. The aforementioned causes degeneration religious principles at Thugs and leads to their definitive destruction in the late 19th century by the British colonial government in India.

It isn`t clear why should Thugs could be called as terrorists if we don`t think that is enough to identify a phenomenon as terrorism what the meaning of someone's name or crimes cause great fear in others. Thugs, during its existence, killed hundreds of thousands of people, but not for political reasons – but as a specific sect that time sacrificed their goddess. Thugs didn`t have any political objectives, nor any political ambitions. They didn`t attack the authorities. It is a religious and criminal violence, not political. Therefore violence committed by Thugs is not terrorism, which is always, no matter where it occurred, and whenever that happened, a form of political violence. (Simeunović, 2010b: 317)

Assassins are their stocks performed from 1090 to 1270, to a religious sect founded in the late 11th century in a mountainous region in the north of present-day Iran. It is actually the Ismail Shiites, that the supporters of a marginal teachings of Islam. Assassins were irreconcilable opponents of the government in Baghdad, and prepare their members to die while performing attacks. For myself securing publicity so they are attacking prominent officials in public places, usually on the day of the holy feast when there were lots of people in attendance who were witnesses. Assassins are disciplined and „blindly" following orders of their leader, Hasan ibn Sabbah, who were ready for anything. Death as a tribute to their credit, did not like their enemies something to avoid, but, on the contrary, the final destination of their search, and the most sublime work they could achieve in his life.

One of the characteristics of the Assassins was the use of drugs before the fight, which brought themselves into a state of intoxication, which is the fear of death suppressed. It is assumed that the word „assassin", originates from word „hashishin" which comes from the word hashish, which in Arabic language

means grass. However historians are not sure that these fanatics actually used cannabis, at least not in such a systematic and consistent manner. The descriptions of these sects, we find a number of allegations suggesting that the leaders of the drugs used in the recruitment of new members, but also to their participation in the fighting, but no real evidence to confirm their accuracy. Another feature of the Assassins is their inability to impose permanently in towns and villages. They would take targeted and quick attacks and then retreated into the mountains, where they were invincible because of the exceptional knowledge of the terrain and the inability to larger and more organized military formations to reach. It is only with the Mongolian invasion in the 13th century Assassins are finally destroyed, for the simple reason that the means which formed the their strength not demonstrated efficacy against the newly arrived mobile horsemen hordes heath from the Orient to Altai plateau.

Although violence committed by Assassins was directed against the people in power, they aren`t terrorists for the simple reason that their leader himself was in power, and they have done part of his apparatus of power, this is their violence in extreme violence was a fanaticism filled with power, but in the end still quite formalized government which possessed its own territory, and seemed to recognize part of the feudal system and regime of his area. Assassins are actually carried out assassinations on behalf of his government, specifically for his master, which is not new in history. What distinguishes them from other assassin was not that they were religious mystics, as history records, and such examples. So if Assassins were the first terrorists, they certainly be designated as fully formed in the initials, and systematically thought out and doing, induced suicide method of political struggle. (Simeunović, 2010b: 323)

CONCLUSION

Many contemporary social phenomena, and thus have their own political course of its antecedents in the historical genesis of humanity. Consequently terrorism as the relatively recently established phenomenon has its roots phenomenal. From the etymological point of terrorism is through semantically related terms terror came into use since ancient times. However we must not equate the two terms, because they are two different forms of political violence. The term terrorism has created a definitive embodiment of terrorism as a specific political phenomenon. It was first denoted genuine and imitative revolutionary terror and other, related forms of political violence, and then what we now call terrorism. Modern terrorism with their forms that we know today the mid-19th century.

Etiological root of modern terrorism is certainly there in the earliest political times. Political murder, assassination, attacks on the ruler and the order to achieve extreme political goals, causing fear of violence. Spectacular attacks challenging the absolute power of the system, are known phenomena in the history of mankind. However none of them, not in content is not sufficient for the deter-

mination of some of these events as terrorism, assassination and not every act of terrorism.

In ancient times, the murder was the most common form of the change of government. Long is the list of the Roman emperors who, before Julius Caesar and after him finished much like him. Lightly „recognition" of various phenomena of political violence in history as terrorism is further facilitated by the absence of a generally accepted definition of terrorism. The key question is what do those who are in the history of a continuous chain of terrorist events actually mean by terrorism. No wonder they usually turns out that these are not only history, but also the definition of terrorism is completely unknown. (Simeunović, 2010b: 324)

Cases analyzed in this paper are only part of the pre-history of terrorism and they can be classified in its etiology, but can not and must not themselves labeled as true terrorism. In the first case, Zealots - it is a revolt or popular uprising; in the second, when it comes to Thugs - it is a functioning religious sect whose members serve in ritual violence, or neither, in fact, not terrorism. In case of Assassins we have the basis to link the operation of this religious sect of contemporary religious funded with terrorism or with a particular kind of terrorism in accordance with the criteria of the method of operation – suicidal terrorism. In the history of political violence as an integral part of the history of mankind has many elements that also constitute terrorism, and therefore precede him as a contemporary phenomenon. Based on all findings, we conclude that all or even terrorism should be established beginning, but you have to be more than careful to not to go to improvisation, sensational, and the arbitrariness of the use of certain terms.

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